

**INDUSTRIAL BUILDING LEASE**

**between**

**USRLP DOUGLAS HILL, LLC**

**as Landlord**

**and**

**VICTORY PACKAGING, L.P.**

**as Tenant**

*November 22*, 2016

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## INDUSTRIAL BUILDING LEASE

THIS INDUSTRIAL BUILDING LEASE (the "Lease"), dated the 22 day of Nov. 2016 ("Date of Lease") is entered into by and between VICTORY PACKAGING, L.P., a Texas limited partnership ("Tenant") and USRLP DOUGLAS HILL, LLC, a Texas limited liability company ("Landlord").

### I. BASIC LEASE PROVISIONS

1.1 Premises. Approximately 190,009 Square Feet of space designated as Suite 200, located in the Building and shown on Exhibit A-1 attached hereto and made a part hereof.

1.2 Building. The building shown on the attached Exhibit A-1, containing approximately 344,327 Square Feet, located at 797 Douglas Hill Road, Douglas County, Georgia 30122.

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

1.4 Property. The Building and the Land.

1.5 Project. Intentionally omitted.

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

1.7 Term. Seventy-seven (77) months, beginning on the Commencement Date and expiring on the Expiration Date.

1.8 Commencement Date. May 1, 2017.

1.9 Expiration Date. September 30, 2023.

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

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

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

<u>Month(s)</u>	<u>Monthly Basic Rent</u>	<u>Annual Basic Rent</u>	<u>Annual Rent Per Square Foot</u>
5/1/2017- 7/31/2017*	\$57,319.38	\$687,832.58	\$3.62
8/1/2017- 4/30/2018	\$57,319.38	\$687,832.58	\$3.62
5/1/18- 4/30/2019	\$59,061.13	\$708,733.57	\$3.73
5/1/2019- 4/30/2020	\$60,802.88	\$729,634.56	\$3.84
5/1/2020- 4/30/2021	\$62,702.97	\$752,435.64	\$3.96
5/1/2021- 4/30/2022	\$64,444.72	\$773,336.63	\$4.07
5/1/2022- 4/30/2023	\$66,503.15	\$798,037.80	\$4.20
5/1/2023- 9/30/2023	\$68,403.24	\$820,838.88	\$4.32

**\*Rental Abatement.** Provided that no Event of Default (as such term is defined in **Section 21.1** of this Lease) has occurred and has not been cured, the Basic Rent shall be abated for the first three (3) months of the Term (the "**Basic Rent Abatement Period**") commencing on the Commencement Date. All of the remaining terms and conditions of the Lease shall remain in full force and effect during the Basic Rent Abatement Period, including, without limitation, Tenant's obligation to pay all Additional Rent pursuant to the terms of this Lease. If any material Event of Default occurs under this Lease during Tenant's occupancy and is not cured by Tenant within any cure period provided herein, the Basic Rent abatement provided for herein shall immediately terminate, and all Basic Rent that has then previously been abated shall immediately become due and payable. By way of example, but not in limitation of the foregoing, any monetary Event of Default shall be deemed "material" for purposes hereof. If the Basic Rent Abatement Period described above ends on any day other than the last day of the month, then Basic Rent for the partial month following said three-month period shall be due on the first day thereafter and shall be prorated, calculated on a thirty (30) day calendar month.

**1.13 Security Deposit; Advanced Rent Payment.** The amount of the Security Deposit is \$0.00. Upon execution and delivery of the Lease, Tenant shall deliver \$70,778.35 ("Advanced Rent Payment") comprised of the installment of the Basic Rent in the amount of \$57,319.38 due for the first full calendar month of the Term after the Basic Rent Abatement Period ends or is otherwise terminated and the installment of Additional Rent in the amount of \$13,458.97 due for the first (1<sup>st</sup>) full calendar month of the Term.

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

**1.15 Tenant's Proportionate Share; Initial Expense Adjustment Amount.** Tenant's Proportionate Share of the Building is 55.183% (determined by dividing the square feet of the Premises by the square feet of the Building and multiplying the resulting quotient by one hundred and rounding to the second decimal place). The Initial Expense Adjustment Amount (as defined in Section 4.3) is \$13,458.97.

1.16	<u>Broker(s).</u>	<u>Landlord's</u>	<u>Tenant's</u>
		Seefried Industrial Properties Attention: Doug Smith 3333 Riverwood Pkwy, Ste. 200 Atlanta, GA 30339	Jones Lang LaSalle Attention: Bob Currie 3344 Peachtree Road NE, Ste. 1100 Atlanta, GA 30326 & Avison Young LLC Attention: Todd Mason

1.17 Guarantor(s). N/A

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

with a copy at  
the same time to: USAA Real Estate Company  
Attention: Jason Hans, Exec. Director Portfolio Management  
9830 Colonnade Boulevard, Suite 600  
San Antonio, Texas 78230-2239

Landlord's Payment  
Address. USRLP Douglas Hill, LLC  
Dept 23509  
Dallas, TX 75320-2235

Or, for electronic fund payments:

Wells Fargo Bank  
San Francisco, CA  
ABA #121000248  
To Credit: USRLP Douglas Hill, LLC  
Account #: 4121537278

Landlord to complete and return to Tenant such forms as may be reasonably requested by Tenant to allow Tenant to pay rent via ACH transfer.

1.19	<u>Tenant's</u> <u>Notice Address.</u>	Victory Packaging 3555 Timmons Lane, Suite 1400 Houston, Texas 77027 Attn: Margaret Gay, VP – Real Estate mgay@victorypackaging.com
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with a copy to:

KapStone Paper and Packaging Corporation  
1101 Skokie Blvd, Suite 300  
Northbrook, Illinois 60062-4124  
Attention: Kathryn Ingraham – General Counsel  
Email: [Kathryn.Ingraham@kapstonepaper.com](mailto:Kathryn.Ingraham@kapstonepaper.com)

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

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

1.22 Parking Allocation. During the Term, Tenant shall have the right in common with other tenants at the Property to use (i) eighty-four (84) unreserved passenger vehicle parking spaces and (ii) thirty (30) trailer parking spaces, subject to the Rules and Regulations set forth in Exhibit C and validation, key-card, sticker or other identification systems set forth by Landlord from time to time.

## **II. PREMISES AND TERM**

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

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

2.3 Early Possession. Notwithstanding anything to the contrary, provided Tenant shall have delivered to Landlord the Advanced Rent Payment, during the Early Access Period (as defined below), Tenant shall have non-exclusive reasonable rights of entry to portions of the Premises for the limited purpose of installing furniture, fixtures, equipment (including racking and material handling equipment) and Cabling (as defined in Section 13.1) and, to the extent limited to dead storage only and not occupancy by Tenant for commencement of its operations in the Premises, delivery of Tenant's product, except that Tenant will shut down its business operations at its former location on Friday, April 21, 2017 and move its offices to the Premises between April 21, 2017 and April 23, 2017 and Tenant will open for business at the Premises on Monday, April 24, 2017. The "Early Access Period" shall mean the period commencing on March 15, 2017 and ending on the Commencement Date. Tenant's entry to the Premises before the Commencement Date shall be subject to the terms and conditions of this Lease, including, without limitation, the indemnification, insurance requirements and hold harmless agreements set forth in Article XVIII; provided, however, except for the cost of services requested by Tenant, Tenant shall not be required to pay Rent (as defined in Section 3.1) for any days of possession before the Commencement Date during which Tenant is in possession of the Premises for the sole purpose of accepting delivery of Tenant's product (for dead storage only and only to the extent permitted by applicable governmental authorities), installing furniture, fixtures, equipment, racking or Cabling, or during the period of April 24, 2017 to the Commencement Date that Tenant has commenced its operations in the Premises. Tenant will coordinate all early access activities with Landlord so as not to interfere with the Substantial Completion of the Landlord Work, with Landlord or with other occupants of the Building. Landlord may revoke Tenant's rights under this Section 2.3 upon written notice to Tenant if Landlord, in its reasonable discretion, determines that any such interference has been or may be caused.

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

3.1 Types of Rental Payments. "Rent" shall be and consist of (a) Basic Rent payable in monthly installments as set forth in **Section 1.12**, in advance, on the first day of each and every calendar month in which Basic Rent is due during the Term of this Lease; and (b) Additional Rent as defined in **Section 4.1**. Rent shall be paid electronically via automatic debit, ACH credit or wire transfer to such account as Landlord designates in writing to Tenant. Landlord may, in its sole discretion, designate an address for payment in lawful U.S. Dollars. The Advanced Rent Payment shall be due and payable at the time of execution and delivery of this Lease.

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

3.3 Net Lease. It is intended that the Rent provided for in this Lease shall be an absolutely net return to Landlord for the Term of this Lease and any renewals or extensions thereof, free of any and all expenses or charges with respect to the Premises except for those obligations of Landlord expressly set forth herein.

3.4 Security Deposit. Intentionally omitted.

### **IV. ADDITIONAL RENT**

4.1 Additional Rent. In addition to paying the monthly Basic Rent, Tenant shall pay as "Additional Rent" the amounts determined pursuant to this **Article IV** and all other amounts other than Basic Rent payable by Tenant under this Lease. Without limitation on the other obligations of Tenant which shall survive the expiration or earlier termination of this Lease, the obligations of Tenant to pay the Rent incurred during the Term of this Lease shall survive the expiration or earlier termination of this Lease. For any partial Calendar Year, Tenant shall be obligated to pay only a pro rata share of the Additional Rent, equal to Additional Rent for such entire Calendar Year divided by 365, such quotient multiplied by the number of days of the Term falling within such Calendar Year.

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

- (a) "Basic Costs" shall mean all expenses, costs and disbursements which Landlord shall pay or become obligated to pay because of, or in connection with, the normal commercial operation, maintenance and repair of the Building, including but not limited to (i) wages, salaries and fees of all personnel directly engaged in operating, maintaining or securing the Building, including taxes, insurance and benefits relating thereto (to the extent that persons are engaged with respect to more than one building, wages and salaries relating to such persons shall be equitably apportioned between all such buildings based upon Landlord's reasonable estimate of the time spent by each such person on each building relative to their total time on all buildings); (ii) a management fee payable to Landlord or the company or companies managing the Building,

not to exceed in any calendar year during the Term three percent (3%) of Basic Rent annually; (iii) all supplies, tools, equipment and materials used directly in the operation and maintenance of the Building, including any lease payments therefor; (iv) cost of reasonable repairs and general maintenance, including but not limited to the parking lot, roof maintenance (excluding, however, the cost of any maintenance thereof in excess of such annual roof maintenance as is necessary to maintain the roof warranty) and landscaping (excluding repairs and general maintenance paid by proceeds of insurance or by Tenant or other parties, and alterations attributable solely to specific tenants of the Building); (v) accounting expenses incurred with respect to the Building; (vi) Taxes; (vii) cost of all water, sewer and external electrical utility services and of all maintenance and service agreements for the Building, and any equipment related thereto, including window cleaning and snow removal; (viii) premiums and deductibles paid for insurance relating to the Building, including, without limitation, fire and extended coverage, boiler, earthquake, windstorm, rental loss, and commercial general liability insurance; and (ix) capital improvements, except that Basic Costs for capital improvements shall be limited to (A) the cost during the Term of this Lease of any capital improvement which is reasonably intended to reduce any component cost included within Basic Costs as reasonably amortized by Landlord with interest on the unamortized amount at the Interest Rate and (B) the cost of any capital improvements which are necessary to keep the Building or any part thereof in compliance with all governmental rules and regulations applicable thereto from time to time as reasonably amortized by Landlord with interest on the unamortized amount at the Interest Rate. Any capital improvement costs which are included in the term "Basic Costs" shall only be included to the extent any such costs are attributable, on a straight-line amortization (based on the life of the improvement for federal tax purposes), to the remaining portion of the Term of this Lease and any renewal or extension thereof.

(b) Exclusions from Basic Costs. Notwithstanding anything herein to the contrary, the following items are specifically excluded from the definition of Basic Costs: (i) interest (except as otherwise allowed herein); (ii) depreciation; (iii) penalties and fines; (iv) marketing expenses and commissions; (v) costs of services or labor provided solely and directly to specific tenants at the Building, including, but not limited to tenant improvement costs; (vi) organizational expenses associated with the creation and operation of the entity which constitutes Landlord; (vii) general or special assessments levied against the owner of the Building for public improvements which are not currently due; and (viii) capital improvements except as set forth in subparagraph (a) above; (ix) leasing commissions, attorneys' fees, costs and disbursements and other expenses incurred in connection with negotiations or disputes with tenants, other occupants, or prospective tenants, and all costs of alterations of space in the Building leased to or occupied by other tenants or occupants; (x) legal expenses for services other than those that benefit tenants at the Property generally (e.g., tax disputes) and accounting fees not directly related to the operation of the Property; and (xi) reserves of any kind.

(c) "Taxes" shall be defined as (i) all real property taxes and assessments levied by any public authority against the Property; (ii) all personal property taxes levied by any public authority on personal property of Landlord used in the management, operation, maintenance and repair of the Building, (iii) all taxes, assessments and reassessments of every kind and nature whatsoever levied or assessed in lieu of or in substitution for existing or additional real or personal property taxes and assessments on the Building, or (iv) amounts necessary to be expended because of governmental orders, whether general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind and nature for public improvements, services, benefits or any other purposes which are assessed, levied, confirmed, imposed or become a lien upon the Premises or Building or become payable during the Term. Further, for the purposes of this **Article IV**, Taxes shall include the reasonable actual expenses (including, without limitation,

attorneys' fees) incurred by Landlord in challenging or obtaining or attempting to obtain a reduction of such Taxes, regardless of the outcome of such challenge, and any necessary costs incurred by Landlord for compliance, review and appeal of tax liabilities. Notwithstanding the foregoing, Landlord shall have no obligation to challenge Taxes. If as a result of any such challenge, a tax refund is made to Landlord, then provided no monetary Event of Default exists under this Lease, the amount of such refund less the expenses of the challenge shall be deducted from Taxes due in the Calendar Year such refund is received. In the case of any Taxes which may be evidenced by improvement or other bonds or which may be paid in annual or other periodic installments, Landlord shall elect to cause such bonds to be issued or cause such assessment to be paid in installments over the maximum period permitted by law. **Nothing contained in this Lease shall require Tenant to pay any franchise, gift, estate, inheritance or succession transfer tax of Landlord, or any income, profits or revenue tax or charge, upon the net income of Landlord from all sources.**

4.3 Expense Adjustment. Commencing on the Commencement Date and continuing throughout the remainder of the Term, Tenant shall pay to Landlord as Additional Rent, on the first day of each calendar month, an amount equal to one-twelfth (1/12) of Tenant's Proportionate Share of the total amount of the Basic Costs incurred with respect to each Calendar Year in the Term of this Lease (the total amount paid by the Tenant in each Calendar Year being referred to herein as the "Expense Adjustment Amount"). The Expense Adjustment Amount for each Calendar Year shall be estimated from time to time by Landlord and communicated by written notice to Tenant not more frequently than quarterly. Landlord shall cause to be kept books and records showing Basic Costs in accordance with an appropriate system of accounts and account practices consistently maintained. Following the close of each Calendar Year, Landlord shall cause the amount of the Expense Adjustment Amount which should have been paid by Tenant for such Calendar Year (the "Final Expense Amount") to be computed on the basis of the actual Basic Costs for each Calendar Year, and Landlord shall deliver to Tenant a statement of such Final Expense Amount within 120 days following the close of each Calendar Year. If the Final Expense Amount exceeds the Expense Adjustment Amount, Tenant shall pay such deficiency within thirty (30) days after receipt of such statement. If the Expense Adjustment Amount exceeds the Final Expense Amount, then at Tenant's option such excess shall be either credited against payments of Additional Rent next due or refunded by Landlord within thirty (30) days, provided no Tenant Event of Default exists hereunder. Delay in computation of the Final Expense Amount or any Expense Adjustment Amount shall not be deemed a default hereunder or a waiver of Landlord's right to collect the Final Expense Amount or Expense Adjustment Amount, as the case may be. Notwithstanding anything to the contrary contained in this Lease, if Tenant or any other tenant at the Property uses a disproportionate share of utilities that are included in Basic Costs, as reasonably determined by Landlord, then Landlord shall have the right to adjust the Proportionate Share of the Basic Costs attributable to such utility use as allocated to the Tenant and other tenants of the Property on a reasonable basis.

4.4 Tenant's Right to Audit. Tenant shall have a right, at Tenant's sole cost and expense, to audit Landlord's Final Expense Amount upon the following terms and conditions. Tenant shall notify Landlord in writing that it is exercising its right to audit within 90 days following delivery of the Final Expense Amount, indicating in such notice with reasonable specificity those cost components of the Final Expense Amount to be subject to audit. The audit shall take place at Landlord's regional offices or, at Landlord's option, the Building, at a time mutually convenient to Landlord and Tenant (but not later than 60 days after receipt of Tenant's notice to audit). Except as Landlord may consent in writing, the audit shall be completed within 10 business days after commencement. No copying of Landlord's books or records will be allowed. The audit may be accomplished by either Tenant's own employees with accounting experience reasonably sufficient to conduct such review, or a nationally or regionally recognized public accounting firm mutually acceptable to Landlord and Tenant that is engaged on either a fixed price or hourly basis. Under no circumstances shall Landlord be required to consent to an

accounting firm that is also a tenant of Landlord (or any Landlord affiliate) in the Building. The records reviewed by Tenant shall be treated as confidential and prior to commencing the audit, Tenant and any other person which may perform such audit for Tenant, shall execute a Confidentiality Agreement in a form reasonably acceptable to Landlord. A copy of the results of the audit shall be delivered to Landlord within 30 days after the completion of the audit. If Landlord and Tenant determine that the Final Expense Amount for the Calendar Year is less than reported, Tenant, at Tenant's option, shall either be credited against payments of Basic Rent and Additional Rent next due or refunded by Landlord within thirty (30) days, or, in the event the Lease has expired or terminated and no monetary Event of Default exists, Landlord shall pay Tenant the total amount of such overpayment within 30 days. If Landlord and Tenant determine that the Final Expense Amount for the Calendar Year is more than reported, Tenant shall pay Landlord the amount of any underpayment within 30 days. Failure by Tenant to timely request an audit, or to timely deliver to Landlord the results of the audit, or to follow any of the procedures set forth in this **Section 4.4** is deemed a waiver of the applicable audit right and any right to contest the Final Expense Amount for the applicable Calendar Year and is deemed acceptance of the Final Expense Amount for the applicable Calendar Year. Any audit review by Tenant shall not postpone or alter the liability and obligation of Tenant to pay any Rent due under the terms of the Lease. Tenant shall not be entitled to conduct such an audit if any Event of Default exists under this Lease. No subtenant shall have any right to conduct an audit except for a permitted assignee or sublessee under Article IX of the Lease occupying the entire Premises and no assignee or sublessee shall conduct an audit for any period during which such assignee or sublessee was not in possession of the Premises or for any period in which Tenant has conducted an audit.

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

4.6 Limitations on Additional Rent for Basic Costs. Anything in this **Article IV** to the contrary notwithstanding, for purposes of determining Tenant's Additional Rent for Basic Costs, in no event shall Controllable Basic Costs (as hereinafter defined) increase during any Calendar Year (or prorated portion thereof) of the Term by more than four (4%) over the previous year. For purposes of this **Section 4.6**, Controllable Basic Costs are expressly limited to those Basic Costs referenced in **Section 4.2(a)**, subparagraphs (i), (ii), (iii), (iv), (v), (vii) (except snow removal), and (ix) (except as may result from a change in law or regulation), but in no event shall include, without limitation, taxes, insurance, utilities, costs of snow removal or janitorial services or costs resulting from changes in applicable laws, rules, regulations or ordinances.

## **V. USE**

5.1 Use of Premises. In accordance with the terms, covenants and conditions set forth in this Lease, and applicable governmental regulations, restrictions and permitting (without the necessity of obtaining any zoning changes, conditional use permits or other special use permits), Tenant shall use the Premises solely for general office, storage and distribution associated with a packaging supplies company, fulfillment and all other lawful uses.

5.2 Operation of Tenant's Business. If any governmental license or permit, other than a Certificate of Occupancy (if any is issued or required), shall be required for the proper and lawful conduct of Tenant's business in the Premises or any part thereof, Tenant shall first provide Landlord with prior written notice and obtain Landlord's consent thereto. Thereafter, at its expense, Tenant shall procure such

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

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

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

Except for the Landlord Work as described in **Exhibit B-1** attached hereto, Tenant hereby agrees that Tenant is familiar with the condition of the Property and the Premises and that Tenant is accepting the Premises on an "**AS-IS**," "**WHERE IS**," "**WITH ALL FAULTS**" basis as further provided in this Section; provided that Landlord warrants that as of the date Landlord delivers the Premises to Tenant and for a period of twelve (12) months thereafter, the roof and load bearing walls (both exterior and interior) of the Premises and the loading doors and dock levelers, mechanical, electrical, heating, ventilation and air conditioning system ("HVAC"), and plumbing and sprinkler systems serving the Premises shall be in good working order and condition, with no deferred maintenance. Except for the Landlord Work and except for Landlord's obligations as set forth in **Section 14.2** below, Landlord is making absolutely no repairs, replacements or improvements of any kind or nature to the Premises or the Property in connection with, or in consideration of, this Lease. **Except as expressly set forth in this Article VI and Section 24.5, Landlord has not made any representations or warranties, express or implied, with respect to the quality, suitability or fitness thereof of the Premises, or the condition or repair thereof.** Landlord agrees to enforce, upon Tenant's request, all manufacturer's or contractor's warranties given in connection with the Landlord Work and/or the construction of the Building so long as the same are in effect.

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

This Lease is subject and subordinate to all ground or underlying leases and to any mortgage, deed of trust, security interest, or title retention interest as of the Lease date affecting the Property (or any portion thereof) (the "Mortgage") and to all renewals, modifications, consolidations, replacements and extensions thereof. This subordination shall be self-operative with respect to Mortgages existing as of the date hereof. This Lease shall also be subject to any future Mortgage so long as Tenant has received a non-disturbance agreement from such future Mortgagee (as defined below) in form and substance reasonably acceptable to Tenant. In confirmation of any subordination, Tenant shall, within 10 days of receipt thereof, execute any instrument that Landlord or any holder of any note or obligation secured by a Mortgage (the "Mortgagee") may reasonably request confirming such subordination; provided such Mortgagee agrees to recognize Tenant's rights under this Lease and agrees to the continued non-disturbed occupancy of the Premises by Tenant pursuant to the terms of this Lease. Notwithstanding the foregoing, before any foreclosure sale under a Mortgage, the Mortgagee shall have the right to subordinate the Mortgage to this Lease, and, in the event of a foreclosure, this Lease shall continue in full force and effect and Tenant shall attorn to and recognize as its landlord the purchaser of Landlord's interest under this Lease. Tenant shall, upon the request of a Mortgagee or purchaser at foreclosure, execute, acknowledge and deliver any instrument that has for its purpose and effect the subordination of the lien of any Mortgage to this Lease or Tenant's attornment to such Purchaser provided such instrument also contains provisions assuring the continued non-disturbed occupancy of the Premises by Tenant pursuant to this Lease.

## **VIII. QUIET ENJOYMENT**

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

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

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

(a) Tenant shall not assign, transfer, mortgage or otherwise encumber this Lease or sublet or rent (or permit a third party to occupy or use) the Premises, or any part thereof, nor shall any assignment or transfer of this Lease or the right of occupancy hereunder be effected by operation of law or otherwise, without the prior written consent of Landlord, such consent not to be unreasonably withheld, delayed or denied. A transfer at any one time or from time to time of a majority interest in Tenant (whether stock, partnership interest or other form of ownership or control) shall be deemed to be an assignment of this Lease, unless at the time of such transfer Tenant is an entity whose outstanding stock is listed on a recognized security exchange. Within 20 business days following Landlord's receipt of Tenant's request for Landlord's consent to a proposed assignment, sublease, or other encumbrance, together with all information required to be delivered by Tenant pursuant to the provisions of this **Section 9.1**, Landlord shall: (i) consent to such proposed transaction; (ii) refuse such consent; or (iii) elect to terminate this Lease in the event of an assignment, or in the case of a sublease, terminate this Lease as to the portion of the Premises proposed to be sublet in accordance with the provisions of **Section 9.2**. Any assignment, sublease or other encumbrance without Landlord's written consent shall be voidable

by Landlord and, at Landlord's election, constitute an Event of Default hereunder. Without limiting other instances in which Landlord may reasonably withhold consent to an assignment or sublease, Landlord and Tenant acknowledge that Landlord may withhold consent (a) if an Event of Default exists under this Lease; or (b) if the proposed assignee or sublessee is: a governmental entity; a person or entity with whom Landlord has negotiated for space in the Property during the prior 6 months; a present tenant at the Property; a person or entity of a character or reputation or engaged in a business which is not consistent with the quality of the Property; or not a party of reasonable financial worth and/or financial stability in light of the responsibilities involved under this Lease on the date consent is requested. If Tenant requests Landlord's consent to a specific assignment or subletting, Tenant will submit in writing to Landlord: (1) the name and address of the proposed assignee or subtenant; (2) a counterpart of the proposed agreement of assignment or sublease; (3) reasonably satisfactory information as to the nature and character of the business of the proposed assignee or subtenant, and as to the nature of its proposed use of the space; (4) banking, financial or other credit information reasonably sufficient to enable Landlord to determine the financial responsibility and character of the proposed assignee or subtenant; (5) executed estoppel certificates from Tenant containing such information as provided in **Article XXIV**; and (6) any other information reasonably requested by Landlord.

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

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

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

(iii) In any case where Landlord consents (or is not required to consent) to an assignment, transfer, encumbrance or subletting, the undersigned Tenant and any guarantor shall nevertheless remain directly and primarily liable for the performance of all of the covenants, duties, and obligations of Tenant hereunder (including, without limitation, the obligation to pay all Rent and other sums herein provided to be paid), and Landlord shall be permitted to enforce the provisions of this instrument against the undersigned Tenant, any guarantor and/or any assignee without demand upon or proceeding in any way against any other person. Neither the consent by Landlord to any assignment, transfer, encumbrance or subletting nor the collection or acceptance by Landlord of rent from any assignee, subtenant or occupant shall be construed as a waiver or release of the initial Tenant or any guarantor from the terms and conditions of this Lease or relieve Tenant or any subtenant, assignee or other party from obtaining the consent in writing of Landlord to any further assignment, transfer, encumbrance or subletting.

(iv) Tenant hereby assigns to Landlord the rent and other sums due from any subtenant, assignee or other occupant of the Premises and hereby authorizes and directs each such subtenant, assignee or other occupant to pay such rent or other sums directly to Landlord; provided however, that until the occurrence of an Event of Default, Tenant shall have the license to continue collecting such rent and other sums. Notwithstanding the foregoing, in the event that the rent due and payable by a sublessee under any such

permitted sublease (or a combination of the rent payable under such sublease plus any bonus or other consideration therefor or incident thereto) exceeds the hereinabove provided Rent payable under this Lease, or if with respect to a permitted assignment, permitted license, or other transfer by Tenant permitted by Landlord, the consideration payable to Tenant by the assignee, licensee, or other transferee exceeds the Rent payable under this Lease, then Tenant shall be bound and obligated to pay Landlord 50% of the Net Profits (as defined in Section 9.3) in accordance with Section 9.3 within 10 days following receipt thereof by Tenant from such sublessee, assignee, licensee, or other transferee, as the case may be.

(v) Tenant shall pay Landlord a fee in the amount of \$1,000.00 to reimburse Landlord for all its expenses under this Article IX, including, without limitation, reasonable attorneys' fees.

9.2 Landlord's Option to Recapture Premises. Except with respect to assignments under Section 9.4 below, if Tenant proposes to assign this Lease, Landlord may, at its option, upon written notice to Tenant given within 20 business days after its receipt of Tenant's notice of proposed assignment, together with all other necessary information, elect to recapture the Premises and terminate this Lease. Except with respect to subleases under Section 9.4 below, if Tenant proposes to sublease all or part of the Premises, Landlord may, at its option upon written notice to Tenant given within 20 business days after its receipt of Tenant's notice of proposed subletting, together with all other necessary information, elect to recapture such portion of the Premises as Tenant proposes to sublease and upon such election by Landlord, this Lease shall terminate as to the portion of the Premises recaptured. If a portion of the Premises is recaptured, the Rent payable under this Lease shall be proportionately reduced based on the square footage of the Square Feet retained by Tenant and the square footage of the Square Feet leased by Tenant immediately prior to such recapture and termination, and Landlord and Tenant shall thereupon execute an amendment to this Lease in accordance therewith. Landlord may thereafter, without limitation, lease the recaptured portion of the Premises to the proposed assignee or subtenant without liability to Tenant. Upon any such termination, Landlord and Tenant shall have no further obligations or liabilities to each other under this Lease with respect to the recaptured portion of the Premises, except with respect to obligations or liabilities which accrue or have accrued hereunder as of the date of such termination (in the same manner as if the date of such termination were the date originally fixed for the expiration of the Term). Notwithstanding the foregoing, in the event Landlord elects to recapture the Premises and terminate this Lease pursuant to this Section 9.2, Tenant may rescind its proposal to assign or sublease, as applicable, upon written notice to Landlord given within 10 days after its receipt of Landlord's notice of intent to recapture the Premises and terminate this Lease, in which event the provisions of this Section 9.2 shall not apply to such rescinded proposal.

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

9.4 Transfers to Related Entities. Notwithstanding anything in this Article IX to the contrary, provided no Event of Default exists under this Lease, Tenant may, without Landlord's consent, but after providing written notice to Landlord and subject to the provisions of Section 9.1(b)(i-iii), assign

this Lease or sublet all or any portion of the Premises to any Related Entity (as hereinafter defined) provided that (i) such Related Entity is not a governmental entity or agency; and (ii) such Related Entity's use of the Premises would not cause Landlord to be in violation of any exclusivity agreement affecting the Property. In addition, unless the entity constituting Tenant hereunder remains in existence and remains liable for the obligations of Tenant under this Lease, then any such Related Entity shall have a net worth (computed in accordance with generally accepted accounting principles exclusive of goodwill) after such transfer that is greater than or equal to the greater of (a) the net worth of Tenant as of the Date of Lease; or (b) the net worth of Tenant immediately prior to such transfer, and proof satisfactory to Landlord that such net worth standards have been met shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction. "Related Entity" shall be defined as (i) any parent company, subsidiary, affiliate or related corporate entity of Tenant that controls, is controlled by, or is under common control with Tenant; and (ii) the surviving entity in the case of any merger, consolidation, dissolution or liquidation of Tenant. For the purposes of the preceding sentence, internally prepared financial statements of such Related Entity certified by an executive officer of the Related Entity shall constitute proof reasonably satisfactory to Landlord.

## **X. COMPLIANCE WITH LAWS**

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

10.2 **ADA Compliance.** Notwithstanding any other statement in this Lease, the following provisions shall govern the parties' compliance with the Americans With Disabilities Act of 1990, as amended from time to time, Public Law 101-336; 42 U.S.C. §§12101, et seq. (the foregoing, together with any similar state statute governing access for the disabled or handicapped collectively referred to as the "**ADA**");

(a) To the extent governmentally required as of the later of (i) Commencement Date of this Lease; (ii) issuance of Certificate of Occupancy and all other licenses or permits Tenant is required to obtain to commence legal operation in the Premises, Landlord shall be responsible for the cost of compliance with Title III of the ADA, and such cost shall not be included as a Basic Cost of the Property, with respect to the initial construction of the Premises (including, but not limited to, Landlord's Work as set forth in **Exhibit B-1** attached hereto) and with respect to any repairs, replacements or alterations to the Common Areas of the Property. To the extent governmentally required subsequent to the Commencement Date of this Lease as a result of an amendment to Title III of the ADA or any regulation thereunder enacted subsequent to the Commencement Date of this Lease, Landlord shall be responsible for compliance with Title III of the ADA with respect to any repairs, replacements or alterations to the Common Area of the Property, and such expense shall be included as a Basic Costs of the Property. **Landlord shall**

indemnify, defend and hold harmless Tenant and its Agents from all fines, suits, procedures, penalties, claims, liability, losses, expenses and actions of every kind, and all costs associated therewith (including, without limitation, reasonable attorneys' and consultants' fees) arising out of or in any way connected with Landlord's failure to comply with Title III of the ADA as required above.

(b) To the extent governmentally required and subject to Landlord's obligations in Section 10.2(a) above, Tenant shall be responsible for compliance, at its expense, with Titles I and III of the ADA with respect to the Premises as of the later of (i) Commencement Date of this Lease and (ii) issuance of Certificate of Occupancy. **Tenant shall indemnify, defend and hold harmless Landlord and its Agents from all fines, suits, procedures, penalties, claims, liability, losses, expenses and actions of every kind, and all costs associated therewith (including, without limitation, reasonable attorneys' and consultants' fees) arising out of or in any way connected with Tenant's failure to comply with Titles I and III of the ADA as required above.**

## **XI. INSURANCE**

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

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

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

(b) Bodily injury and property damage insurance; and

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

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

11.3 Tenant's Insurance. At all times during the Term, Tenant will carry and maintain, at Tenant's expense, the types of insurance coverage required and in the amounts specified on **Schedule XI** attached to this Lease and made a part hereof for all purposes. All insurance required under this **Article XI** shall be issued by such good and reputable insurance companies qualified to do and doing business in the state in which the Premises are located and having a rating not less than A:VIII as rated in the most current copy of Best's Insurance Report in the form customary to this locality.

11.4 Forms of the Policies. Landlord, Landlord's management company and such other parties as Landlord shall designate to Tenant who have an insurable interest in the Premises or Property shall be (i) named as additional insured with respect to the coverages provided for under **paragraphs A., B., C. and D. of Schedule XI** (other than Worker's Compensation and employers liability), (ii) as loss

payee as their interest may appear with respect to the coverage provided under **paragraph G. of Schedule XI**. Certificates of insurance together with copies of the policies and any endorsements naming Landlord, Landlord's management company, as additional insureds or loss payee (as the case may be) will be delivered to Landlord prior to Tenant's occupancy of the Premises and from time to time prior to the expiration of the term or reduction in coverage of each such policy. Each insurance policy required hereunder shall be issued by and on forms reasonably satisfactory to Landlord. All policies required to be maintained by Tenant will be written as primary policies, not contributing with and not supplemental to the coverage that Landlord may carry. Commercial general liability insurance required to be maintained by Tenant by this **Article XI**. In the event Tenant fails to purchase and maintain any of the insurance required hereunder, Landlord reserves the right, but not the obligation, to purchase such insurance on behalf of Tenant, and at Tenant's expense, with any expenses incurred by Landlord in connection therewith being reimbursed to Landlord by Tenant within thirty (30) days of written demand thereof.

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

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

## **XII. ALTERATIONS**

12.1 **Procedural Requirements.** Tenant may, from time to time, at its expense, make such alterations, additions, or improvements (hereinafter collectively referred to as "Alterations") in and to the Premises as Tenant may reasonably consider necessary for the conduct of its business in the Premises; provided, however, that the written consent of the Landlord is first obtained. Landlord's consent shall not be unreasonably withheld to Alterations, provided that: (a) the exterior of the Building shall not be affected; (b) the Alterations are non-structural and the structural integrity of the Building shall not be affected; (c) the Alterations are to the interior of the Premises and no part of the Building (including the roof) outside of the Premises shall be affected; (d) the proper functioning of the mechanical, electrical, sanitary and other service systems of the Building shall not be affected and the usage of such systems by Tenant shall not be increased; (e) Tenant shall have appropriate insurance coverage reasonably satisfactory to Landlord regarding the Alterations; (f) the Alterations do not require the issuance of a building permit and (g) before proceeding with any Alterations, Tenant shall submit to Landlord for Landlord's approval, plans and specifications for the work to be done and Tenant shall not proceed with such work until Tenant has received said approval. All computer, telecommunications or other cabling, wiring and associated appurtenances (collectively, "**Cabling**") installed by Tenant inside any of the interior walls of the Premises, above the ceiling of the Premises, in any portion of the ceiling plenum above or below the Premises, or in any portion of the Common Areas of the Building, including but not limited to any of the shafts or utility rooms of the Building, shall be clearly labeled or otherwise identified as having been installed by Tenant. All Cabling installed by Tenant shall comply with the requirements

of the National Electric Code and any other applicable fire and safety codes. All or any part of the Alterations, whether made with or without the consent of Landlord, shall, at the election of Landlord, either be removed by Tenant at its expense before the expiration of the Term or shall remain upon the Premises and be surrendered therewith at the Expiration Date or earlier termination of this Lease as the property of Landlord without disturbance, molestation or injury.

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

12.3 Lien Prohibition. Tenant shall not permit any mechanics' or materialmen's liens to attach to the Premises, the Property, Tenant's leasehold estate or any of them. **Tenant shall and hereby does defend, indemnify, and hold Landlord harmless from and against any and all mechanics' and other liens and encumbrances filed in connection with Alterations or any other work, labor, services, or materials done for or supplied to Tenant, or any person claiming through or under Tenant, including, without limitation, security interests in any materials, fixtures or articles installed in and constituting a part of the Premises and against all costs, expenses, and liabilities (including reasonable fees of attorneys of Landlord's choosing) incurred in connection with any such lien or encumbrance or any action or proceeding brought thereon.** Tenant, at its expense, shall procure the satisfaction or discharge of record of all such liens and encumbrances within ten (10) days after the filing thereof. In the event Tenant has not so performed, Landlord may, at its option, pay and discharge such liens and Tenant shall be responsible to reimburse Landlord for all costs and expenses incurred in connection therewith, together with interest thereon at the Interest Rate set forth in Section 1.14 above, which expenses shall include reasonable fees of attorneys of Landlord's choosing, and any costs in posting bond to effect discharge or release of the lien as an encumbrance against the Premises, the Property, Tenant's leasehold estate or any of them.

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

13.1 Landlord's Property. All Alterations, fixtures, machinery, equipment, improvements and appurtenances to, or built into, the Premises after the Commencement Date, whether or not placed there

by, or at the expense of, Tenant shall be and remain a part of the Premises; shall be deemed the property of Landlord (the "Landlord's Property"), without compensation or credit to Tenant; and shall not be removed by Tenant except as expressly required under this **Section 13.1** and otherwise unless Landlord requests their removal. Notwithstanding anything to the contrary in this Lease, Tenant shall be required to remove all Cabling installed by Tenant in the Premises or the Building, including, without limitation, inside any of the interior walls of the Premises, above the ceiling of the Premises, in any portion of the ceiling plenum above or below the Premises, or in any portion of the Common Areas of the Building, including but not limited to any of the shafts or utility rooms of the Building, which Cabling Tenant shall remove to the point of the origin of such Cabling. With respect to any fixtures, machinery, equipment, improvements, appurtenances or other Alterations that Tenant is required to remove, Tenant shall, on or before the Expiration Date or earlier termination of this Lease, remove the designated items, repair any damage to the Premises or Building resulting from such removal, and restore the Premises to the condition required under **Article XX**. Further, any personal property in the Premises on the Commencement Date, unless installed and paid for by Tenant, shall be and shall remain the property of the Landlord and shall not be removed by Tenant. Any flooring in the Premises during the Term shall be and remain the property of Landlord and shall not be removed or replaced without the prior written consent and approval by Landlord.

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

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

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

14.1 **Tenant Repairs and Maintenance.** Except with respect to Landlord's obligations set forth in **Section 14.2** below, Tenant, at its sole cost and expense, throughout the Term of this Lease, shall take good care of the Premises, (including, without limitation, maintenance and repair of the slab), and shall keep the same in good condition and repair, and shall make and perform all routine maintenance thereof, including janitorial maintenance. As used herein, "repairs" shall include all necessary maintenance, repairs, replacements and restorations. All repairs made by Tenant shall be at least the quality and cost of the original work and shall be made by Tenant in accordance with all laws, ordinances and regulations whether heretofore and hereafter enacted. The necessity for or adequacy of repairs shall be measured by the standards which are appropriate for improvements of similar construction and class, provided that Tenant shall in any event make all repairs necessary under this **Section 14.1** to avoid any damage or

injury to the Premises. Throughout the Term of this Lease, except for any period during which Landlord elects to maintain a Master HVAC Services Agreement (as defined in this Section 14.1), Tenant will maintain a maintenance contract for not less than quarterly servicing of the HVAC system with a servicer reasonably acceptable to Landlord, and deliver a copy of such maintenance logs on site and will cause the personnel engaged in the maintenance of the Premises to make timely and detailed entries in those logs so that the logs at all times accurately reflect the maintenance activity performed with respect to the Premises and its Building systems. Landlord's representatives may inspect and copy those logs at any reasonable time after reasonable notice has been given to Tenant. Landlord will have the right to cause the maintenance of the Premises to be reviewed and the Premises inspected annually (or more frequently if Landlord determines that it is prudent to do so) by a qualified engineer or property manager consultant of Landlord's choosing, to determine whether Tenant is maintaining the Premises in accordance with this Section 14.1 and, if it is determined that Tenant has not maintained the Premises as herein required, Tenant will reimburse Landlord for the cost of repairing the Premises and for the fees and expenses of such engineer or consultant within thirty (30) days after Landlord's demand. Tenant will cooperate with the engineer or consultant in its performance of such review and inspection. Except with respect to the maintenance contract for the servicing of the HVAC system, Tenant may fulfill its maintenance and repair obligations under this Section 14.1 at its option either through the use of its employees or through the use of Agents. Notwithstanding the above, Landlord may enter into a master service agreement for HVAC maintenance ("Master HVAC Services Agreement") with respect to the Property and Tenant shall pay its Proportionate Share of such cost in accordance with the provisions of Article IV.

14.2 Landlord Repairs. Landlord shall keep in good repair, (i) the structural portions of the foundation and exterior walls (exclusive of all glass and all exterior doors) of the Building; (ii) the roof of the Building; and (iii) the outside Common Areas of the Property, including the parking lots, landscaping and underground utility and sewer pipes outside the exterior walls of the Building, if any. All such repairs shall be at Landlord's sole cost and expense, except that the cost of such items shall be a Basic Cost to the extent permitted by the provisions of Article IV. Notwithstanding the foregoing, the cost of repairs referenced in this Section 14.2 rendered necessary by the negligence or willful misconduct of Tenant or Tenant's Agents or as a result of Tenant's failure to use the Premises in accordance with the terms of Article V of this Lease, shall be reimbursed by Tenant to Landlord within thirty (30) days of Landlord's written demand. Landlord hereby acknowledges that a large portion of Tenant's business is the warehousing and distribution of corrugated products. Tenant's product cannot be exposed to water either through wet floors or leaking roofs. Tenant will immediately notify Landlord of any repair needs at the Premises with regard to water infiltration. Landlord will provide Tenant contact information for Landlord's roof repair vendor. If Landlord does not respond within one (1) business day to an emergency roof repair request, Tenant is authorized to contact Landlord's roof repair vendor directly to make necessary emergency repairs, provided the same are performed in a manner so as not to affect Landlord's roof warranty, and within thirty (30) days after written demand therefor Landlord shall reimburse Tenant its actual, out-of-pocket costs paid to Landlord's roof repair vendor in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000) unless additional costs are authorized by Landlord in writing. As used herein, "emergency roof repair" shall be deemed to refer to repairs made necessary following roof damage that results in water infiltration and the threat of imminent damage to Tenant's water-sensitive products. **Tenant hereby waives any right to make repairs and deduct the expenses of such repairs from the Basic Rent or Additional Rent due under the Lease.**

14.3 Tenant Equipment. Not less than thirty (30) days prior to commencement of the Early Access Period, Landlord shall make available to Tenant information on the maximum load limitations of the floor of the Premises on a per square foot basis and Tenant shall not place a load upon any floor of the Premises that exceeds either the load per square foot which such floor was designed to carry or which is allowed by law. Business machines and mechanical equipment belonging to Tenant which cause noise or vibrations that may be transmitted to the structure of the Building or to the Premises to such a degree as to

be objectionable to Landlord shall, at the Tenant's expense, be placed and maintained by Tenant in settings of cork, rubber or spring-type vibration eliminators sufficient to eliminate such noise or vibration.

## **XV. UTILITIES**

15.1 Purchasing Utilities. Tenant shall purchase all utility services other than water, sewer and external electrical services, and specifically including, but not limited to, fuel and electricity serving the Premises, from the utility or municipality providing such service, shall provide for cleaning and extermination services, and shall pay for such services when payments therefor are due. All such utilities shall be separately metered to the Premises at Landlord's expense. Tenant shall be solely responsible for the repair and maintenance of any meters necessary in connection with such services, necessitated by Tenant's use.

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

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

Landlord reserves the right, without any liability to Tenant and without affecting Tenant's covenants and obligations hereunder, to stop service of the heating, air conditioning, electric, sanitary, elevator, or other Building systems serving the Premises, or to stop any other services required by Landlord under this Lease, whenever and for so long as may be necessary, by reason of (i) accidents, emergencies, strikes, or the making of repairs or changes which Landlord in good faith deems necessary, or (ii) any other cause beyond Landlord's reasonable control. Further, it is also understood and agreed that Landlord shall have no liability or responsibility for a cessation of services to the Premises or in the Building which occurs as a result of causes beyond Landlord's control. No such interruption of service shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Lease including the obligation to pay Rent. Notwithstanding the foregoing, (i) if any interruption of utilities or services required to be provided by Landlord under this Lease shall continue for five (5) business days after written notice from Tenant to Landlord; and (ii) such interruption of utilities or services shall render any portion of the Premises unusable for the normal conduct of Tenant's business and Tenant, in fact, ceases to use and occupy such portion of the Premises for the normal conduct of its business; and (iii) such interruption of utilities or services is due to the negligence or willful misconduct of Landlord; then all Rent payable hereunder with respect to such portion of the Premises rendered unusable for the normal conduct of Tenant's business in which Tenant, in fact, ceases to use and occupy, shall be abated after the expiration of such five (5) business day period, in the event such utilities or services are not restored, and continue until such time that the utilities or services are restored.

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

Landlord and its Agents shall have the right to enter and/or pass through the Premises at any time or times (a) to examine the Premises and to show them to actual and prospective Mortgagees, or prospective purchasers or Mortgagees of the Building; and (b) to make such repairs, alterations, additions and improvements in or to the Premises and/or in or to the Building or its facilities and equipment as Landlord is required or desires to make; provided, however, that Landlord shall use reasonable efforts to avoid disturbing Tenant, Tenant's employees and Tenant's business operations. Landlord shall provide Tenant with reasonable prior notice of entry into the Premises (which may be given verbally), except in the event of an apparent emergency condition arising within or affecting the Premises that endangers or threatens to endanger property or the safety of individuals. Landlord shall be allowed to take all materials into and upon the Premises that may be required in connection therewith, without any liability to Tenant and without any reduction of Tenant's covenants and obligations hereunder. During the period of nine (9) months prior to the Expiration Date (or at any time, if Tenant has vacated or abandoned the Premises), Landlord and its Agents may exhibit the Premises to prospective tenants.

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

18.1 Indemnification. Except to the extent caused by the gross negligence or willful misconduct of Landlord, Tenant will neither hold nor attempt to hold Landlord, its Agents or Mortgagee liable for, and Tenant will indemnify, hold harmless and defend (with counsel reasonably acceptable to Landlord) Landlord, its Agents and Mortgagee, from and against, any and all demands, claims, causes of action, fines, penalties, damages, liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with or arising from (i) the use or occupancy or manner of use or occupancy of the Premises by Tenant or its Agents; (ii) any activity, work or thing done, permitted or suffered by Tenant or its Agents in or about the Premises or the Property; (iii) any acts, omissions or negligence of Tenant or its Agents; (iv) any breach, violation or nonperformance by Tenant or its Agents of any term, covenant or provision of this Lease or any law, ordinance or governmental requirement of any kind; and (v) any injury or damage to the person, property or business of Tenant or its Agents.

18.2 Waiver and Release. Except to the extent caused by the negligence or willful misconduct of Landlord, Tenant covenants and agrees that Landlord, its Agents and Mortgagee will not be liable, responsible or accountable for any loss, injury, death or damage (including consequential damages) to persons, property or Tenant's business occasioned by (i) any act or omission of Landlord or its Agents; (ii) any acts or omissions, including, without limitation, theft or interference with Tenant's use and enjoyment of the Premises, of or by any other tenant, occupant or visitor of the Property; or (iii) any injury or damage to persons or property resulting from any fire, theft, casualty, explosion, falling plaster or other masonry or glass, steam, gas, electricity, water, snow, ice, or rain which may leak from any part of the Building or any other portion of the Property or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place, or resulting from dampness. Tenant agrees to give prompt notice to Landlord upon the occurrence of any of the events set forth in this Section 18.2 or of defects in the Premises or the Building, or in the fixtures or equipment.

18.3 Indemnification. Except to the extent caused by the gross negligence or willful misconduct of Tenant, Landlord will neither hold nor attempt to hold Tenant or its Agents liable for, and Landlord will indemnify, hold harmless and defend (with counsel reasonably acceptable to Tenant) Tenant and its Agents, from and against, any and all demands, claims, causes of action, fines, penalties, damages, liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with or arising from (i) any activity, work or

thing done, permitted or suffered by Landlord or its Agents in or about the Property (excluding the Premises); (ii) any acts, omissions or negligence of Landlord or its Agents; (iii) any breach, violation or nonperformance by Landlord or its Agents of any term, covenant or provision of this Lease or any law, ordinance or governmental requirement of any kind; and (iv) any injury or damage to the person, property or business of Landlord or its Agents.

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

## **XIX. DAMAGE OR DESTRUCTION**

19.1 Damage to the Premises. If the Premises or the Building shall be damaged by fire or other cause, Landlord shall diligently and as soon as practicable after such damage occurs (taking into account the time necessary to effect a satisfactory settlement with any insurance company involved) repair such damage at the expense of Landlord; provided, however, that Landlord's obligation to repair such damage shall not exceed the proceeds of insurance available to Landlord (reduced by any proceeds retained pursuant to the rights of Mortgagee). Notwithstanding the foregoing, if the Premises or the Building are damaged by fire or other insured cause to such an extent that, in Landlord's reasonable judgment, the damage cannot be substantially repaired within 270 days after the date of such damage, or if the Premises are substantially damaged during the last Lease Year, then: (i) Landlord may terminate this Lease as of the date of such damage by written notice to Tenant; or (ii) Tenant may terminate this Lease as of the date of such damage by written notice to Landlord within 20 days after (a) Landlord's delivery of a notice that the repairs cannot be made within such 270-day period (Landlord shall use reasonable efforts to deliver to Tenant such notice within 60 days of the date of such damage or casualty); or (b) the date of damage, in the event the damage occurs during the last year of the Lease. Rent shall be apportioned and paid to the date of such damage.

During the period that Tenant is deprived of the use of the damaged portion of the Premises, Basic Rent and Tenant's Proportionate Share shall be reduced by the ratio that the Square Footage of the Premises damaged bears to the total Square Footage of the Premises before such damage. Rent shall not abate nor shall Tenant be entitled to terminate the Lease if the injury or damage to the Premises or the Building resulted from the gross negligence or willful misconduct of Tenant or its Agents. Notwithstanding anything herein to the contrary, Landlord shall not be required to rebuild, replace, or repair any of the following: (i) Alterations or (ii) Tenant's Property.

19.2 Condemnation. If any of the Premises, 20% or more of the Building or 30% or more of the Land shall be taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose (including, without limitation, sale under threat of such a taking), then the Term shall cease and terminate as of the date when title vests in such governmental or quasi-governmental authority, and Rent shall be prorated to the date when title vests in such governmental or quasi-governmental authority. If less than 20% of the Building (none of which is within the Premises) and less than 30% of the Land is taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose (including, without limitation, sale under threat of such a taking), this Lease shall continue in full force and effect. Tenant shall have no claim against Landlord (or otherwise) as a result of such taking, and Tenant hereby agrees to make no claim against the condemning authority for any portion of the amount that may be awarded as compensation or damages as a result of such taking; provided, however, that Tenant may, to the extent allowed by law, claim an award for moving expenses and for the taking of any of Tenant's Property (other than its leasehold interest in the

Premises)which does not, under the terms of this Lease, become the property of Landlord at the termination hereof, as long as such claim is separate and distinct from any claim of Landlord and does not diminish Landlord's award. Tenant hereby assigns to Landlord any right and interest it may have in any award for its leasehold interest in the Premises.

## **XX. SURRENDER AND HOLDOVER**

On the Expiration Date, or upon any earlier termination of this Lease or Tenant's right of possession in accordance with this Lease, or upon any re-entry by Landlord upon the Premises, Tenant shall quit and surrender the Premises to Landlord "broom-clean" and in good order, condition and repair, except for ordinary wear and tear and such damage or destruction as Landlord is required to repair or restore under this Lease, and Tenant shall remove all of the Tenant's Property therefrom, except as otherwise expressly provided in this Lease. In the event that Tenant shall not immediately surrender the Premises to Landlord on the Expiration Date or earlier termination of this Lease, Tenant shall be deemed to be a tenant-at-will pursuant to the terms and provisions of this Lease, except the daily Basic Rent shall be 150% the daily Basic Rent in effect on the Expiration Date or earlier termination of this Lease (computed on the basis of a thirty (30) day month). Notwithstanding the foregoing, if Tenant shall hold over after the Expiration Date or earlier termination of this Lease, and Landlord shall desire to regain possession of the Premises, then Landlord may forthwith re-enter and take possession of the Premises in accordance with any legal process provided under applicable state law.

## **XXI. DEFAULT OF TENANT**

21.1 Events of Default. Each of the following shall constitute an Event of Default: (i) Tenant fails to pay Rent within three (3) business days after receipt of written notice from Landlord; provided that no such notice shall be required if at least two such notices shall have been given during the previous twelve (12) months; (ii) Tenant fails to observe or perform any other term, condition or covenant herein binding upon or obligating Tenant within thirty (30) days after written notice is received from Landlord; provided, however, that if such failure cannot reasonably be cured within said thirty (30) day period, then Tenant shall have additional time to cure the default, up to an additional 20 days, provided Tenant has commenced to cure the default within the 30-day period and diligently pursues such cure to completion (notwithstanding the foregoing, if Landlord provides Tenant with notice of Tenant's failure to observe or perform any term, condition or covenant under this Subsection (ii) on 2 or more occasions during any 12 month period, then Tenant's subsequent violation shall, at Landlord's option, be deemed an Event of Default immediately upon the occurrence of such failure, regardless of whether Landlord provides Tenant notice, or Tenant has commenced the cure of the same); (iii) Tenant fails to take occupancy of the Premises within 90 days after the Commencement Date; (iv) Tenant fails to execute and return a subordination agreement or estoppel within the time periods provided for in Article VII or Article XXIII; (v) Tenant or any Guarantor makes or consents to a general assignment for the benefit of creditors or a common law composition of creditors, or a receiver of the Premises for all or substantially all of Tenant's or Guarantor's assets is appointed, or Tenant or Guarantor hereafter files a voluntary petition in any bankruptcy or insolvency proceeding, or an involuntary petition in any bankruptcy or insolvency proceeding is filed against Tenant or Guarantor and is not discharged by Tenant or Guarantor within 60 days; or (vii) Tenant fails to immediately remedy or discontinue any hazardous conditions which Tenant has created or permitted in violation of law or of this Lease. Any notice periods provided for under this Section 21.1 shall run concurrently with any statutory notice periods and any notice given hereunder may be given simultaneously with or incorporated into any such statutory notice.

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

(a) Terminate this Lease, or terminate Tenant's right of possession to the Premises without terminating this Lease, and with or without reentering and repossessing the Premises. Upon any termination of this Lease, or upon any termination of Tenant's right of possession without termination of this Lease, Tenant shall surrender possession and vacate the Premises immediately, and deliver possession thereof to Landlord. If Tenant fails to surrender possession and vacate the Premises, Landlord and its Agents shall have full and free license to enter into and upon the Premises in accordance with any legal process provided under applicable state law for the purpose of repossessing the Premises, removing Tenant and removing, storing or disposing of any and all Alterations, signs, personal property, equipment and other property therefrom. Provided Landlord acts in accordance with applicable state law, Landlord may take these actions without (i) being deemed guilty of trespass, eviction or forcible entry or detainer, (ii) incurring any liability for any damage resulting therefrom, **for which Tenant hereby waives any right to claim**, (iii) terminating this Lease (unless Landlord intends to do so), (iv) releasing Tenant or any guarantor, in whole or in part, from any obligation under this Lease or any guaranty thereof, including, without limitation, the obligation to pay Rent or Damages (as defined herein) or (v) relinquishing any other right given to Landlord hereunder or by operation of law;

(b) Recover unpaid Rent (whether accruing prior to, on or after the date of termination of this Lease or Tenant's right of possession and/or pursuant to the holdover provisions of **Article XX**, Rental Deficiency (as defined herein) and/or any Damages (as defined herein). "Rental Deficiency" is defined as a contractual measure of damages for Tenant's non-payment of Rent measured by either the (i) "Actual Rental Deficiency", which means the difference (never less than zero) between (A) the Basic Rent due for, and other Rent allocable under this Lease to, each calendar month beginning with the first month with respect to which Landlord receives rent from reletting the Premises and (B) the proceeds, if any, that Landlord actually collects from any substitute tenant for any part of the Premises in each corresponding month in which the Term and the term of the substitute tenant's lease overlap; or (ii) "Market Rental Deficiency", which is the present value (determined using a discount rate of seven percent [7%] per annum) of the difference (never less than zero) between (A) the total Rent which would have accrued to Landlord under this Lease for the remainder of the Term of this Lease (or such portion of the Term in which Landlord elects to recover this damage measure), if the terms of this Lease had been fully complied with by Tenant, and (B) the total fair market rental value of the Premises for the remainder of the Term of the Lease (or such portion of the Term in which Landlord elects to recover this damage measure). In determining the Market Rental Deficiency, the total fair market rental value will be the prevailing market rate for full service base rent for tenants of comparable quality for leases in buildings of comparable size, age, use location and quality in the marketplace in which the Property is located, taking into consideration the extent of the availability of space as large as the Premises in the marketplace. "Damages" shall mean all actual damages, court costs, interest and attorneys' fees arising from Tenant's breach of the Lease, including, without limitation, (i) reletting costs, including, without limitation, the cost of restoring the Premises to the condition necessary to rent the Premises at the prevailing market rate, normal wear and tear excepted (including cleaning and repair costs), brokerage fees, legal fees, advertising costs and the like); (ii) Landlord's cost of recovering possession of the Premises and any and all costs incurred by reason of the vacancy of the Premises until relet; (iii) the cost of removing, storing and disposing of any of Tenant's or other occupant's property left on the Premises after reentry; (iv) any increase in insurance premiums caused by the vacancy of the Premises, (v) the amount of any unamortized improvements to the Premises in connection with this Lease paid for by Landlord, as well as any portion of any Tenant work allowance which was not used to construct improvements to the Premises, (vi) the amount of any unamortized brokerage commission paid by Landlord in connection with the leasing of the Premises to Tenant; (vii) costs incurred in connection with collecting any money owed by Tenant or a substitute

tenant, (viii) any other sum of money or damages owed by Tenant to Landlord or incurred by Landlord as a result of or arising from, Tenant's breach of the Lease or Landlord's exercise of its rights and remedies for such breach, (ix) any contractual or liquidated type or measures of damages specified in this Lease and (x) any other type of measure of damages recoverable for any particular breach under applicable law statute, ordinance or governmental rule or regulation. Landlord may file suit to recover any sums falling due under the terms of this **Section 21.2(b)** from time to time, and no delivery to or recovery by Landlord of any portion due Landlord hereunder shall be any defense in any action to recover any amount not theretofore reduced to judgment in favor of Landlord. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

(c) If Landlord elects to terminate Tenant's right to possession of the Premises without terminating this Lease, Tenant shall continue to be liable for all Rent and all other Damages, except to the extent otherwise provided under **Section 21.3**, and Landlord may (but shall not be obligated to) relet the Premises, or any part thereof, to a substitute tenant or tenants, for a period of time equal to or lesser or greater than the remainder of the Term of this Lease on whatever terms and conditions Landlord, at Landlord's sole discretion, deems advisable. Notwithstanding any provision in this **Section 21.2(c)** to the contrary, Landlord may (i) at any time after reletting the Premises elect to exercise its rights under **Section 21.2(b)** for such previous breach; and (ii) upon the default of any substitute tenant or upon the expiration of the lease term of such substitute tenant before the expiration of the Term of this Lease, either relet to still another substitute tenant or exercise its rights under **Section 21.2(b)**. For the purpose of such reletting Landlord is authorized to decorate or to make any repairs, changes, alterations or additions in or to the Premises that may be necessary.

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

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

(f) Recover, but only if Tenant fails to pay Basic Rent, and Landlord terminates this Lease or Tenant's right of possession with more than twelve (12) months remaining in the Term, liquidated rental damages for the period after any such termination equal to twelve (12) times the monthly Rent in lieu of any other contractual or legal measure of damages for Tenant's non-payment of Basic Rent, and the parties agree that this is a reasonable estimate of Landlord's damages for such a breach given the uncertainty of future market rental rates and the duration of any vacancy.

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

21.3 Mitigation of Damages. Notwithstanding the foregoing, to the extent (but no further) Landlord is required by applicable law to mitigate damages, or is required by law to use efforts to do so, Tenant agrees that if Landlord markets the Premises in a manner substantially similar to the manner in which Landlord markets other space in the Building, then Landlord shall be deemed to have used commercially reasonable efforts to mitigate damages. Tenant shall continue to be liable for all Rent (whether accruing prior to, on or after the date of termination of this Lease or Tenant's right of possession and/or pursuant to the holdover provisions of Article XX above) and Damages, except to the extent that Tenant receives any credit against unpaid Rent under Section 21.2(b) or pleads and proves by clear and convincing evidence that Landlord fails to exercise commercially reasonable efforts to mitigate damages to the extent required under this Section 21.3 and that Landlord's failure caused an avoidable and quantifiable increase in Landlord's damages for unpaid Rent. Without limitation to the foregoing, Landlord shall not be deemed to have failed to mitigate damages, or to have used efforts required by law to do so, because: (i) Landlord leases other space in the Building which is vacant prior to re-letting the Premises; (ii) Landlord refuses to relet the Premises to any Related Entity of Tenant, or any principal of Tenant, or any Related Entity of such principal; (iii) Landlord refuses to relet the Premises to any person or entity whose creditworthiness is not acceptable to Landlord in the exercise of its reasonable discretion; (iv) Landlord refuses to relet the Premises to any person or entity because the use proposed to be made of the Premises by such prospective tenant is not warehouse or general business office use of a type and nature consistent with that of the other tenants in the portions of the Building leased or held for lease for warehouse and general business office purposes as of the date Tenant defaults under this Lease (by way of illustration, but not limitation, manufacturing facilities, call center or other high density use, government offices, consular offices, doctor's offices or medical or dental clinics or laboratories, or schools would not be uses consistent with that of other tenants in the Building), or such use would, in Landlord's reasonable judgment, impose unreasonable or excessive demands upon the Building systems, equipment or facilities; (v) Landlord refuses to relet the Premises to any person or entity, or any affiliate of such person or entity, who has been engaged in litigation with Landlord or any of its affiliates; (vi) Landlord refuses to relet the Premises because the tenant or the terms and provisions of the proposed lease are not approved by the holders of any liens or security interests in the Building, or would cause Landlord to be in default of, or to be unable to perform any of its covenants or obligations under, any agreements between Landlord and any third party; (vii) Landlord refuses to relet the Premises because the proposed tenant is unwilling to execute and deliver Landlord's standard lease form or such tenant requires improvements to the Premises to be paid at Landlord's cost and expense; (viii) Landlord refuses to relet the Premises to a person or entity whose character or reputation, or the nature of such prospective tenant's business, would not be acceptable to Landlord in its reasonable discretion; or (ix) Landlord refuses to expend any material sums of money to market the Premises in excess of the sums Landlord typically expends in connection with the marketing of other space in the Building.

21.4 No Waiver. If Landlord shall institute proceedings against Tenant and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any other covenant, condition or agreement herein contained, nor of any of Landlord's rights hereunder. No waiver by Landlord of any breach shall operate as a waiver of such covenant, condition or agreement itself, or of any subsequent

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

21.5 Late Payment. If Tenant fails to pay any Rent within 5 days after receipt of written notice from Landlord of such late payment, Tenant shall pay to Landlord a late charge of 7% of the amount of such overdue Rent, provided that no such written notice shall be required if at least two such notices shall have been given during the previous twelve (12) months. Such late charge shall be deemed Rent and shall due and payable within 2 days after written demand from Landlord. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is not readily ascertainable. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or deed of trust covering the Premises and/or Property. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amounts, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

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

21.7 Landlord's Lien. *Intentionally deleted.*

21.8 Landlord Default. Landlord shall be deemed to be in default in the performance of its obligations under this Lease if it fails to perform any obligation or responsibility within thirty (30) days after receipt of written notice by Tenant to Landlord specifying such failure; provided, however, that if the nature of Landlord's default is such that more than thirty (30) days are required for its cure, then Landlord shall not be deemed to be in default if it commences such cure within the thirty (30) days period and thereafter diligently prosecutes such cure to completion.

## **XXII. BROKER**

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

## **XXIII. ESTOPPEL CERTIFICATES**

Each party agrees, at any time and from time to time, as requested by the other, to execute and deliver to the requesting party (and to any existing or prospective mortgage lender, ground lessor, or purchaser designated by Landlord, or any existing or prospective lender, assignee or sublessee of Tenant, as applicable) within ten (10) days after the request therefor, a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); certifying the dates to which the Rent has been paid; stating whether or not the requesting party is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default; and stating whether or not any event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default, and, if so, specifying each such event. Any such statement delivered pursuant hereto shall be deemed a representation and warranty to be relied upon by the requesting party and by others with whom such party may be dealing, regardless of independent investigation. The responding party also shall include in any such statements such other information concerning this Lease as the requesting party may reasonably request including, but not limited to, the amount of Basic Rent and Additional Rent under this Lease, and whether Landlord has completed all improvements to the Premises required under this Lease. In the event the responding party fails to deliver to the requesting party an estoppel certificate as required by this paragraph within the specified 10-day period, in addition to any other remedies the requesting party may have, the responding party shall be conclusively presumed to have adopted and affirmed the contents of the form of estoppel certificate delivered to the responding party by the requesting party, and any prospective mortgagee, purchaser, assignee, sublessee or other third-party may rely on the accuracy of such estoppel certificate as if executed and affirmed by the responding party.

#### **XXIV. ENVIRONMENTAL**

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

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

polychlorobiphenyls ("PCB"); and (f) any substance that is or becomes regulated by any federal, state or local governmental authority.

24.3 Tenant's Liability; Special Damages. Tenant hereby agrees that it shall be fully liable for all costs and expense related to the use, storage and disposal of Hazardous Material kept on the Property and/or Premises by Tenant and Tenant shall give immediate notice to Landlord of any violation or potential violation of the provisions of Section 24.1 above. **Tenant shall defend, indemnify and hold Landlord and its Agents harmless from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including without limitation, attorneys' and consultants' fees, court costs and litigation expense), arising out of or in any way related to (a) the presence, disposal, release or threatened release of any such Hazardous Material that is on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise located on or around the Premises and caused by or resulting from a violation by Tenant of its covenants or obligations under this Article XXIV; (b) any personal injury (including wrongful death), property damage (real or personal) arising out of or related to such Hazardous Material; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material; (d) any violation by Tenant of any laws applicable thereto; (e) a decrease in value of the Property and/or Premises caused by or resulting from a violation by Tenant of its covenants or obligations under this Article XXIV, (f) damages caused by loss or restriction of rentable or usable space caused by or resulting from a violation by Tenant of its covenants or obligations under this Article XXIV; and (g) damages caused by adverse impact on marketing of the space caused by or resulting from a violation by Tenant of its covenants or obligations under this Article XXIV.** Without limitation of the foregoing, if the Tenant causes or permits the presence of any Hazardous Materials on the Property and/or Premises which results in contamination, Tenant shall promptly, at its sole expense, take any and all necessary actions to return the Property and/or Premises to the condition existing prior to the presence of any such Hazardous Material on the Property and/or Premises. Tenant shall first obtain Landlord's approval for any such remedial action. The provisions of this Section 24.3 shall be in addition to any other obligations and liabilities Tenant may have to Landlord at law or in equity and shall survive the transactions contemplated herein and shall survive the termination of this Lease. Notwithstanding anything herein to the contrary, under no circumstances whatsoever shall Tenant ever be liable hereunder for consequential damages or special damages.

24.4 Landlord's Liability; Special Damages. **Landlord shall indemnify, defend and hold harmless Tenant and its Agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including without limitation, attorneys' and consultants' fees, court costs and litigation expense to the extent caused by Landlord or its Agents) of whatever kind or nature, known or unknown contingent or otherwise, arising out of or in any way related to (i) the existence of Hazardous Materials on the Property or Premises caused by Landlord or its Agents; or (ii) relating to any clean-up or remediation of the Property or Premises required under any applicable environmental laws with respect to any Hazardous Materials on the Property or Premises not caused by Tenant or its Agents.** The obligations of Landlord under this Section 24.4 shall survive the Term of this Lease. Under no circumstances whatsoever shall Landlord ever be liable hereunder for consequential damages or special damages.

24.5 Landlord's Representation. Landlord represents, warrants and covenants that to the Landlord's knowledge, (i) the Premises are in compliance with all environmental laws and no Hazardous Materials have been released or threatened to be released or are located upon, in, at, around or under the Premises and (ii) there is not now, pending or threatened, any action, suit, investigation or proceeding against (or related to) Landlord or the Premises seeking to enforce a right or remedy under any environmental law. As used herein, "Landlord's knowledge" shall mean and refer to the current, actual

knowledge of Jason Hans, the Executive Director Portfolio Management of Landlord, without inquiry or duty to investigate.

## **XXV. SIGNAGE**

Landlord agrees that Tenant shall be permitted to install, at Tenant's sole cost and expense, (i) signage on the exterior of the Premises (provided such signage is not located on the exterior of any other tenant's premises) and (ii) monument signage on the Property in a location acceptable to Landlord; provided that all such signage shall comply with the applicable sign regulations of Lithia Springs and/or Douglas County, as applicable, without variance. Except as expressly provided for in this **Article XXV**, no sign, advertisement or notice shall be inscribed, painted, affixed, placed or otherwise displayed by Tenant on any part of the Property or the outside or the inside of the Building to the extent visible from the exterior of the Premises, Building or Property. Landlord shall provide, at Tenant's expense, signage on the entry door to the Premises listing Tenant's name and suite number in Building standard sign material and lettering. If any prohibited sign, advertisement or notice is nevertheless exhibited by Tenant, Landlord shall have the right to remove the same, and Tenant shall pay upon demand any and all expenses incurred by Landlord in such removal, together with interest thereon at the Interest Rate from the demand date.

## **XXVI. OPTION TO RENEW**

26.1 **Grant of Option and General Terms.** Provided that (i) no material adverse change has occurred in Tenant's financial condition, (ii) the Lease is in full force and effect, and (iii) no event of default shall exist under the Lease, either on the date Tenant exercises its Renewal Option (as hereinafter defined) or as of the effective date of the Renewal Term (as hereinafter defined), or would exist but for the pendency of any cure periods provided under **Section 21.1** herein; Tenant shall have the option to extend the term of this Lease with respect to the entire Premises for two (2) additional periods (each, a "Renewal Option") of five (5) years each (the "First Renewal Term" and the "Second Renewal Term," respectively). Each Renewal Option shall be subject to all of the terms and conditions contained in the Lease except that (i) the Renewal Rent (as hereinafter defined) shall be at the then prevailing Market Rate (as defined below) on the commencement date of the First Renewal Term and/or Second Renewal Term, as the case may be; and (ii) there shall be no further option to extend the term of the Lease beyond the Second Renewal Term.

26.2 **Determination of Market Rate.** Tenant shall send Landlord a preliminary expression of Tenant's willingness to renew the Lease no later than 270 days prior to the expiration of the initial Term and/or the First Renewal Term of the Lease, as the case may be (the "Renewal Notice"). In the event Tenant timely provides Landlord with Tenant's Renewal Notice, Landlord shall notify Tenant ("Landlord's Response"), on or before 240 days prior to the expiration of the initial Term and/or First Renewal Term of the Lease, as the case may be, of the Renewal Rent to be payable by Tenant during the First Renewal Term or Second Renewal Term, as the case may be. Upon receipt of Landlord's Response, Tenant shall thereafter have the right, exercisable by written notice to Landlord on or before 180 days prior to the expiration of the initial Term and/or First Renewal Term, to reject Landlord's Response, in which event this **Section 26.2** shall be null and void in all respects and Tenant shall vacate and surrender the Premises to Landlord in accordance with this Lease, upon expiration of the initial Term or First Renewal Term, if Tenant exercised its first Renewal Option. In the event Tenant fails to reject Landlord's Response on or before 180 days prior to the expiration of the initial Term and/or First Renewal Term, then it shall be conclusively deemed that Tenant shall have irrevocably exercised its Renewal Option under this **Article XXVI** for the Renewal Rent stated in Landlord's Response. In the event any date referenced in this **Section 26.2** falls on a day other than a business day, such date shall be deemed to be the next following business day.

26.3 Renewal Rent. The Renewal Rent for the First Renewal Term and/or Second Renewal Term shall be an amount equal to the prevailing Market Rate; provided that in no event shall the Renewal Rent be lower than the rental rate in effect at the expiration of the Term then in effect. As used herein "Market Rate" shall mean the then prevailing market rate for full service base rent (and with any charges for parking only to the extent parking charges are then levied in market leases, which parking charges shall be included within the determination of Market Rate herein) for tenants of comparable quality for renewal leases in buildings of comparable size, age, use location and quality in the Atlanta metropolitan area, taking into consideration the extent of the availability of space as large as the Premises in the marketplace and all other economic terms then customarily prevailing in such renewal leases in said marketplace.

26.4 Personal Option. This Renewal Option is personal with respect to Victory Packaging, L.P. Except for an assignment or sublease to a Related Entity, any assignment or subletting shall automatically terminate Victory Packaging, L.P.'s rights hereunder.

## **XXVII MISCELLANEOUS**

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

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

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

27.4 Parties Bound. Except as otherwise expressly provided for in this Lease, this Lease shall be binding upon, and inure to the benefit of, the successors and assignees of the parties hereto. However, the obligations of Landlord shall not be binding upon Landlord herein named with respect to any period subsequent to the conveyance and transfer of its entire interest in the Building, as owner thereof, and in the event of such conveyance and transfer, said obligations shall thereafter be binding upon each transferee, and **Tenant waives all rights and causes of action Tenant may then have, as against the Landlord herein named for said obligations.** Submission of this instrument by Landlord to Tenant for examination shall not bind Landlord in any manner, and no lease, option, agreement to lease or other

obligation of Landlord shall arise until the instrument is signed by, and delivered to, both Landlord and Tenant. Notwithstanding anything to the contrary in this Lease, the liability of Landlord hereunder and any recourse by Tenant against Landlord shall be limited solely and exclusively to an amount equal to the interest of Landlord in the Property, or the proceeds thereof, and neither Landlord, nor any of its constituent partners, shall have any personal liability therefor.

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

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

27.7 Prorations. Any apportionments or prorations of Rent to be made under this Lease shall be computed on the basis of a year containing three hundred sixty (360) days, consisting of twelve (12) months of thirty (30) days each.

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

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

27.10 Authority.

(a) If either party signs as a corporation or limited liability company, the person executing this Lease on behalf of such party hereby represents and warrants that such party is a duly formed and validly existing entity, in good standing, qualified to do business in the district in which the Property is located, that the entity has full power and authority to enter into this Lease and that he or she is authorized to execute this Lease on behalf of the entity.

(b) If either party signs as a partnership, the person executing this Lease on behalf of such party hereby represents and warrants that such party is a duly formed, validly existing partnership, qualified to do business in the applicable state, that the partnership, has full power

and authority to enter into this Lease, and that he or she is authorized to execute this Lease on behalf of the partnership. Each party further agrees that it shall provide the other with an authorization from the partnership certifying as to the above in a form acceptable to the other party.

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

27.12 **Financial Reports.** Within 15 days after Landlord's request, but no more often than once per year, Tenant will furnish Tenant's most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant, or, failing those, Tenant's internally prepared financial statements, certified by Tenant. Landlord shall hold all such financial statements and financial information provided by Tenant in strict confidence and will not disclose any of the same to any other party without Tenant's express written consent unless required by court order. Notwithstanding anything contained herein to the contrary, for so long as Tenant is a direct or indirect wholly owned subsidiary of Kapstone Paper & Packaging Corporation ("KPPC") and the financial statements of Tenant are reported as the "Distribution Segment" in KPPC's consolidated financial statements which are reported by KPPC on Form 10-K (annual reports) and Form 10-Q (quarterly reports) filed with the SEC and available in the SEC's EDGAR database, Tenant shall have no obligation to provide such financial statements.

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

27.14 **Force Majeure.** The obligations of each party hereunder shall not be affected, impaired or excused, and neither party shall have any liability whatsoever to the other, with respect to any act, event or circumstances arising out of (a) the other party failing to fulfill, or delaying in fulfilling any of its obligations under this Lease by reason of fire; earthquake; explosion; flood; hurricane; the elements; acts of God or the public enemy; actions, restrictions, governmental authorities (permitting or inspection), governmental regulation of the sale of materials or supplies or the transportation thereof; war; invasion; insurrection; rebellion; riots; strikes or lockouts, inability to obtain necessary materials, goods, equipment, services, utilities or labor; or any other cause whether similar or dissimilar to the foregoing; or (b) any failure or defect in the supply, quantity or character of electricity, gas, steam or water furnished to the Premises, or by reason of any requirement, act or omission of any public utility or others serving the Property, beyond a party's reasonable control. Tenant shall not hold Landlord liable for any latent defect in the Premises or the Building, provided that to the extent any such latent defects are discovered during the warranty period applicable to such component, system or other portion of the Premises or Building, then Landlord agrees to pursue a claim(s) for the repair or replacement of such item affected by the latent defect to the extent covered by a warranty. Tenant shall not hold Landlord liable for injury or damage to person or property caused by fire, or theft, or resulting from the operation of heating or air conditioning or lighting apparatus, or from falling plaster, or from steam, gas, electricity, water, rain, snow, ice, or

dampness, which may leak or flow from any part of the Building, or from the pipes, appliances or plumbing work of the same. Tenant agrees that under no circumstances shall Landlord be liable to Tenant or any third party for any loss of, destruction of, damage to or shortage of any property; including, by way of illustration and not limitation, equipment, goods or merchandise, including Tenant's Property placed on the Premises or suffered to be placed thereon by Tenant, it being the intention of the parties hereto that the risk of any and all such loss, destruction, damage or shortage shall be borne by Tenant.

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

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

**27.17 Relocation of the Premises. *Intentionally deleted.***

**27.18 Landlord's Fees. *Intentionally deleted.***

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

**27.20 Counterparts.** This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement.

**27.21 Nondisclosure of Lease Terms.** Each party acknowledges and agrees that the terms of this Lease are confidential. Accordingly, each party agrees that it, and its Agents shall not intentionally or voluntarily disclose the terms and conditions of this Lease to any newspaper or other publication or any other tenant or apparent prospective tenant of the Building, the Premises or the Property, without the prior written consent of the other party, provided, however, that Tenant may disclose the terms to prospective subtenants or assignees under this Lease.

**27.22 Joint and Several Obligations.** If more than one person or entity executes this Lease as Tenant, their execution of this Lease will constitute their covenant and agreement that: (i) each of them is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (ii) the term "Tenant" as used in this Lease means and includes each of them jointly and severally. The act of or notice from, or the signature of any one or more of them, with respect to the tenancy of this Lease, including, but not limited to the exercise of any options hereunder, will be binding upon each and all of the persons executing this Lease as Tenant with the same force and effect as if each and all of them had so acted.

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

27.24 Anti-Terrorism. Tenant represents and warrants to and covenants with Landlord that (i) neither Tenant nor any of its owners or affiliates currently are, or shall be at any time during the term hereof, in violation of any laws relating to terrorism or money laundering (collectively, the “**Anti-Terrorism Laws**”), including without limitation Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and regulations of the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) related to Specially Designated Nationals and Blocked Persons (SDN's OFAC Regulations), and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the “**USA Patriot Act**”); (ii) neither Tenant nor any of its owners, affiliates, investors, officers, directors, employees, vendors, subcontractors or agents is or shall be during the term hereof a “**Prohibited Person**” which is defined as follows: (1) a person or entity owned or controlled by, affiliated with, or acting for or on behalf of, any person or entity that is identified as an SDN on the then-most current list published by OFAC at its official website, <http://www.treas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf>, or at any replacement website or other replacement official publication of such list, and (2) a person or entity who is identified as or affiliated with a person or entity designated as a terrorist, or associated with terrorism or money laundering pursuant to regulations promulgated in connection with the USA Patriot Act; and (iii) Tenant has taken appropriate steps to understand its legal obligations under the Anti-Terrorism Laws and has implemented appropriate procedures to assure its continued compliance with such laws. Tenant hereby agrees to defend, indemnify, and hold harmless Landlord, its officers, directors, agents and employees, from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing representations, warranties and covenants. At any time and from time-to-time during the term, Tenant shall deliver to Landlord within ten (10) days after receipt of a written request therefor, a written certification or such other evidence reasonably acceptable to Landlord evidencing and confirming Tenant's compliance with this paragraph.

*Signature Page Attached*

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

**LANDLORD:**

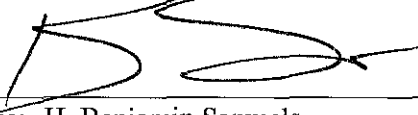
USRLP DOUGLAS HILL, LLC,  
a Texas limited liability company

By:   
Name: STANLEY R. ALTERMAN  
Title: Executive Managing Director

Date Executed: 11-22-2014

**TENANT:**

VICTORY PACKAGING, L.P.,  
a Texas limited partnership

By:   
Name: H. Benjamin Samuels  
Title: Co-President

Date Executed: 11-21-16

## **SCHEDULE XI**

### **TENANT'S INSURANCE REQUIREMENTS**

#### **Industrial Building Lease Insurance Standards**

**[Any deviation from standards must be approved by CPG prior to contract execution.]**

### **INSURANCE**

#### **A. Commercial General Liability**

- Required for all services.
- Limits of Liability Per Project: \$1,000,000 each occurrence, \$2,000,000 aggregate.
- Insurance Services Office (ISO) general liability form CG 0001 0413 or equivalent.
- Landlord to be named as additional insured as required by contract
- Personal injury and contractual liability coverage must be included for the performance of Tenant's indemnity obligations under this Lease.
- Waiver of Subrogation included in favor of Landlord and Landlord's management company.
- Coverage must be primary and non-contributory to Landlord's and/or property manager's respective policies of insurance.

#### **B. Commercial Auto Policy**

- Required for all leases, where tenant owns, operates, hires, or leases vehicles in their operations.
- Limits of Liability: Combined single limit of \$1,000,000 per occurrence, bodily injury and property damage.
- Coverage for any Owned, Hired, Non-Owned and Leased Vehicles.
- Landlord to be named as additional insured.
- Waiver of Subrogation included.
- Coverage must be primary and non-contributory to Landlords and/or property manager's respective policies of insurance.

#### **C. Umbrella Liability**

Such insurance shall provide coverage with limits of not less than the amount outlined below based on service, in excess of the underlying coverages listed in Paragraphs A and B above and D(2) below.

- Required for all tenants.
- Tenants' Limits - \$4,000,000 per occurrence, \$4,000,000 aggregate.
- Landlord to be named as additional insured.
- Waiver of Subrogation included per following form umbrella coverage.
- Coverage must be primary and non-contributory to Landlord's and/or property manager's respective policies of insurance.

#### **D. Workers' Compensation and Employer's Liability**

- Coverages "A" and "B" below required for all tenants.
  1. Coverage "A" - Statutory requirements in the State in which the Property is located, to include all areas involved in operations covered under this Lease.
  2. Coverage "B" - Employer's Liability, not less than \$1,000,000 limit.
- Waiver of Subrogation included in favor of Landlord and Landlord's management company.

F. **Pollution Legal Liability**

- Not applicable.

G. **Property Insurance**

- A policy of cause of loss-specialty property insurance coverage at least equal to ISO Special Form Causes of Loss and covering all of Tenant's furniture and fixtures, machinery, equipment, stock and any other personal property owned and used in Tenant's business and found in, on or about the Property, and any leasehold improvements to the Premises in excess of any initial buildout of the Premises by Landlord, in an amount not less than the full replacement cost.
- Required on all leased locations.
- Loss of Revenue/Business Income coverage must be included at a minimum of twelve (12) months.
- Coverage to be provided on an open perils basis insuring against "all risks of direct physical loss."
- 

Please send all policies, certificates and contracts requiring review to Cathy Moran, Cathym@cpgstrategy.com with The Corporate Protection Group. For assistance call our office (734) 667-3910.

[illegible]



MACGREGOR  
ASSOCIATES  
ARCHITECTS

Two Rivers West  
2727 Point Ferry Road, Suite 400  
Atlanta, Georgia 30331  
(404) 525-4000

2015 141

SEERIED PROPERTIES, INC.

Sanford Properties Inc.  
3113 Riverwood Parkway  
Suite 700  
Atlanta, Georgia 30328  
(404) 234-2024

DOUGLAS HILL SPEC BUILDING

DOUGLAS COUNTY, GEORGIA

01/19/16

SITE PLAN

A-1

## EXHIBIT A-2

### LEGAL DESCRIPTION OF LAND

All that tract or parcel of land lying and being in Land Lot 878 of the 18th Land District, 2nd Section, Douglas County, Georgia, said tract or parcel of land being more fully shown and designated on a plat of survey prepared by Valentino & Associates, Inc. (Job #14-048; Drawing/File #14-048), bearing the seal of Glenn A. Valentino, Ga. Registered Land Surveyor #2528, and being more particularly described, with bearings relative to Grid North, Georgia West Zone, as follows:

BEGINNING at a 1" open-top pipe found at the common corner of Land Lots 859, 860, 878 and 879.

THENCE proceeding along the line which divides Land Lots 860 and 878 South 88 degrees 17 minutes 22 seconds East for a distance of 550.60 feet to a computed point on the southwesterly right-of-way line of Douglas Hill Road (60' public r/w per Deed Book 416, Page 583 and varies; said computed point being witnessed by a disturbed 1" open-top pipe found 2.34 feet east thereof).

THENCE proceeding along said southwesterly right-of-way line of Douglas Hill Road the following courses and distances: South 16 degrees 17 minutes 17 seconds East for a distance of 70.61 feet to a computed point;

THENCE along a curve to the left having a radius of 130.00 feet for an arc distance of 29.31 feet (said arc being subtended by a chord of South 22 degrees 44 minutes 46 seconds East for a distance of 29.24 feet) to a computed point;

THENCE South 29 degrees 12 minutes 15 seconds East for a distance of 255.33 feet to a computed point;

THENCE along a curve to the left having a radius of 330.00 feet for an arc distance of 99.07 feet (said arc being subtended by a chord of South 37 degrees 48 minutes 15 seconds East for a distance of 98.69 feet) to a computed point;

THENCE South 46 degrees 24 minutes 15 seconds East for a distance of 53.90 feet to a computed point;

THENCE along a curve to the right having a radius of 289.71 feet for an arc distance of 85.17 feet (said arc being subtended by a chord of South 37 degrees 58 minutes 58 seconds East for a distance of 84.86 feet) to a computed point;

THENCE South 29 degrees 33 minutes 41 seconds East for a distance of 67.17 feet to a computed point;

THENCE along a curve to the left having a radius of 380.00 feet for an arc distance of 160.86 feet (said arc being subtended by a chord of South 41 degrees 41 minutes 18 seconds East for a distance of 159.66 feet) to a computed point;

THENCE South 53 degrees 48 minutes 55 seconds East for a distance of 224.45 feet to a computed point;

THENCE along a curve to the left having a radius of 870.60 feet for an arc distance of 53.73 feet (said arc being subtended by a chord of South 55 degrees 35 minutes 00 seconds East for a distance of 53.72 feet) to a computed point;

THENCE South 57 degrees 21 minutes 04 seconds East for a distance of 84.97 feet to a 1/2" rebar & cap found at the

intersection of said southwesterly right-of-way line of Douglas Hill Road and the line which divides Land Lots 877 and 878;

THENCE proceeding along said line which divides Land Lots 877 and 878 the following courses and distances:

South 15 degrees 25 minutes 52 seconds East for a distance of 14.69 feet to a 1/2" rebar & cap found;

THENCE South 00 degrees 08 minutes 59 seconds West for a distance of 446.70 feet to a 1/2" rebar & cap found at the common corner of Land Lots 877, 878, 934 and 935;

THENCE proceeding along the line which divides Land Lots 878 and 934 the following courses and distances:

North 84 degrees 18 minutes 53 seconds West for a distance of 41.72 feet to a 1/2" rebar found;

THENCE North 87 degrees 34 minutes 11 seconds West for a distance of 156.46 feet to a 1/2" rebar found;

THENCE North 87 degrees 32 minutes 50 seconds West for a distance of 59.90 feet to a 1/2" rebar found;

THENCE North 87 degrees 35 minutes 06 seconds West for a distance of 60.14 feet to a 1/2" rebar found;

THENCE North 87 degrees 31 minutes 30 seconds West for a distance of 60.00 feet to a 1/2" rebar found;

THENCE North 87 degrees 32 minutes 35 seconds West for a distance of 941.58 feet to a concrete monument found at the common corner of Land Lots 878, 879, 933 and 934;

THENCE proceeding along the line which divides Land Lots 878 and 879 North 00 degrees 56 minutes 45 seconds East for a distance of 1304.68 feet to a 1" open-top pipe found at the common corner of Land Lots 859, 860, 878 and 879, said 1" open-top pipe being the POINT OF BEGINNING.

Said tract or parcel of land contains 30.250 acres or 1,317,688 square feet.

## EXHIBIT B-1

### WORK AGREEMENT

This Work Agreement is attached to and made a part of that certain Industrial Building Lease dated as of the date hereof (the "**Lease**"), between USRLP DOUGLAS HILL, LLC, a Texas limited liability company ("**Landlord**"), and VICTORY PACKAGING, L.P., a Texas limited partnership ("**Tenant**"). The terms used in this Exhibit that are defined in the Amendment or the Lease, as applicable, shall have the same meanings as provided therein.

#### 1. General.

- 1.1 Purpose. This Work Agreement sets forth the terms and conditions governing Landlord's construction of the following leasehold improvements in the Premises (the "**Landlord Work**");

##### **Turnkey Improvements:**

- Warehouse walls painted white
- T-5 lighting with motion detectors in the warehouse with 25' candles at 36" above finished floor
- Nine (9) forklift chargers, 480V, 30Amp
- 26 Dock Doors to be equipped with 30,000 lbs. capacity manually operated dock levelers, dock seals with 16 ounce Hypalon Fabric, Z Guard protectors, and heavy duty B410 – 14F dock bumpers, and dock locks
- 1 drive in ramp 12' x 14'
- Install Rite Hite Fan, with quantity and placement to be mutually agreed by Landlord and Tenant
- Office build-out per the office plan agreed upon by the parties as set forth on Schedule B-2, with finish selections as set forth on Schedule B-1

**Building Depth:** 350'

**Column Spacing:** 54'w x 48'd, typical  
54'w x 62'd speed bay

**Dock Locations:** Twenty Six (26) 9' x 10' dock doors existing.  
One (1) 12' x 14' drive in door existing.

**Building Clear Height:** 36' Clear at first column line from dock doors.

**Building Floor Slab:** Ductilecrete

**Truck Court:** 185' deep, with 60' deep concrete apron.

**Building Construction:** Tilt-up construction.

**Building Roof:** TPO roof with R-20.5 insulated factor.

**Sprinklered:** Fully sprinklered to provide a rating of 75 psi utilizing ESFR technology.

1.2 Construction Representatives. Landlord hereby appoints, and Tenant hereby approves, Jason Hans as Landlord's representative ("**Landlord's Representative**") to act for Landlord in all matters covered by this Work Agreement. Tenant hereby appoints and Landlord hereby approves Margaret Gay as Tenant's representative ("**Tenant's Representative**") to act for Tenant in all matters covered by this Work Agreement. Tenant hereby appoints and Landlord hereby approves Paul Zancanelli as the alternate Tenant's Representative to act for Tenant in all matters covered by this Work Agreement in the event that Tenant's Representative is unavailable for more than one (1) business day. All inquiries, requests, instructions, authorizations or other communications with respect to the Landlord Work shall be made to Landlord's Representative or Tenant's Representative, as the case may be. Authorizations made by Tenant's Representative shall be binding and Tenant shall be responsible for all costs authorized by Tenant's Representative. Either party may change its representative at any time by written notice to the other party. Landlord shall not be obligated to respond to or act upon any plan, drawing, change order approval or other matter relating to the Landlord Work until it has been executed by Tenant's Representative.

2. Design and Schedule.

2.1 Plans for Landlord Work.

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

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

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

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

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

(iv) specifically reflect and include the finish selections attached hereto as **Schedule B-1**; and

(v) include locations of all Landlord Work including complete dimensions.

(c) All Landlord Work that is permanently affixed to the Premises or alters the operational systems of the Building shall become the property of Landlord upon expiration or earlier termination of the Lease and shall remain on the Premises at all times during the Term.

2.2 Approvals by Landlord. Following the date hereof, Landlord shall engage design professionals of its choice to generate the general design and layout of the Premises and the mechanical, electrical and

plumbing plans. Promptly after Landlord's receipt of the Space Plan, Landlord shall deliver the same to Tenant for Tenant's review and approval, not to be unreasonably withheld, delayed, conditioned or denied. If Tenant fails to respond with its approval or comments within ten (10) days after delivery thereof, the Space Plan shall be deemed approved by Tenant for all purposes. Following mutual approval of the Space Plan, Landlord's design professionals shall prepare all necessary plans for completion of the Landlord Work in a manner consistent with the approved Space Plan ("**Proposed Plans and Specifications**"). Landlord shall deliver the Proposed Plans and Specifications to Tenant for its approval, not to be unreasonably withheld, delayed, conditioned or denied; provided that if Tenant fails to respond with its approval or comments within ten (10) days after delivery thereof, such Proposed Plans and Specifications shall be deemed approved by Tenant for all purposes. The Proposed Plans and Specifications so approved (or deemed approved) by Tenant shall be the Construction Drawings and Specifications for the Landlord Work. Landlord shall cause the Space Plan and/or Proposed Plans and Specifications to be revised to incorporate any reasonable changes, additions or modifications that Tenant desires to make; provided that such changes, additions or modifications are (i) approved by Landlord, (ii) do not increase the cost of the Landlord Work, and (iii) do not affect the Building structure, Building systems, or the marketability or appearance of the Building. If the Space Plan and/or the Proposed Plans and Specifications are revised as aforesaid, then such items shall be resubmitted in accordance with the foregoing procedure until the parties agree upon a final Space Plan and the Construction Drawings and Specifications.

3. Construction of Landlord Work. Following final approval of the Construction Drawings and Specifications and Landlord obtaining building and other governmentally required permits, Landlord shall use commercially reasonable efforts to Substantially Complete the Landlord Work in accordance with the terms of this Work Agreement prior to March 15, 2017 ("**Target Completion Date**"), subject to extension for each day of delay caused by any Tenant Delay (as defined in Paragraph 6.2 below) or any delays for Force Majeure (as defined in the Lease), but neither the validity of the Lease nor the obligations of Tenant under the Lease shall be affected by a failure to Substantially Complete the Landlord Work by such date, and Tenant shall have no claim against Landlord because of Landlord's failure to Substantially Complete the Landlord Work on the date originally fixed therefor. Notwithstanding the foregoing, if Tenant cannot commence moving into the Premises as of May 1, 2017 due to the incompletion of Landlord Work, Tenant shall be entitled to a credit in the amount of one (1) day of Basic Rent for every day after the Target Completion Date (as the same may be extended as provided above) that Substantial Completion has not occurred, to be applied against Basic Rent otherwise due and payable after the Commencement Date, until said credits are fully realized by Tenant.

4. Change Orders. If Tenant desires any change or addition to the work or materials to be provided pursuant to this Work Agreement after Tenant's and Landlord's approval of the Construction Drawings and Specifications, Tenant shall provide Landlord with a request for a "**Proposal for Change**", including a change quotation containing the scope of the work, the cost, and the delay in Substantial Completion. If Landlord approves such Proposal for Change, Tenant shall issue a Change Order. All additional expenses attributable to any Change Order requested by Tenant and approved by Landlord shall be payable along with a ten percent (10%) overhead and administration fee to Landlord by Tenant upon approval by Landlord of the Change Order cost and/or delay, if any.

5. Removal of Tenant Improvements. *Intentionally deleted.*

6. Completion of Landlord Work.

6.1 Substantial Completion. Landlord shall notify Tenant in writing when the Landlord Work (or the applicable components thereof) has been Substantially Completed. "**Substantial Completion**" shall be conclusively deemed to have occurred as soon as the Landlord Work to be performed by Landlord pursuant to this Work Agreement has been constructed in accordance with the Construction Drawings and Specifications and, if certificates of occupancy are issued by the governmental authorities in the jurisdiction in which the Premises are located, Landlord shall have received on Tenant's behalf a certificate of occupancy (or equivalent) for the Premises from the applicable governmental authority. Notwithstanding the above, the Landlord Work shall be considered Substantially Complete even though (a) there remain to be completed in the Punch List (as described in Paragraph 6.3 below) items reasonably acceptable to Landlord and Tenant, including but not limited to minor or insubstantial details of construction, decoration or mechanical adjustment, the lack of completion of which will not materially interfere with Tenant's permitted use of the Premises, and/or (b) there is a delay in the Substantial Completion of the Landlord Work due to a Tenant Delay (as defined in Paragraph 6.2).

6.2 Tenant Delay. The following items shall be referred to as a "**Tenant Delay**":

- (a) Tenant's request for changes or additions to the Landlord Work;
- (b) Tenant's failure to pay when due any amounts required pursuant to this Work Agreement;
- (c) Tenant's failure to approve or disapprove of any action item within the time limits required herein;
- (d) The performance of or failure to perform any work by Tenant or any person or firm employed or retained by Tenant which actually causes a delay in the completion of Landlord's Work;
- (e) Tenant's request for materials, finishes or installations which are not available as needed to meet the general contractor's schedule for Substantial Completion;
- (f) Tenant's or Tenant's Agents interference with the general contractor's schedule; or
- (g) Any other Tenant caused delay.

6.3 Punch-List. On or before the Warehouse Completion Date and Office Completion Date, Landlord and Tenant shall examine the applicable portion of the Premises and shall agree upon the final "**Punch-List**" which will specify any portion of the Landlord Work that requires correction. Landlord agrees to correct and complete any such items outlined in the Punch-List as soon as practicable and in any event within thirty (30) days after preparation of the Punch-List.

*Signature Page Attached*

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

**LANDLORD:**

USRLP DOUGLAS HILL, LLC,  
a Texas limited liability company

By:   
Name: STANLEY R. ALTERMAN  
Title: Executive Managing Director

Date Executed: 11-22-2016

**TENANT:**

VICTORY PACKAGING, L.P.,  
a Texas limited partnership

By: \_\_\_\_\_  
Name: H. Benjamin Samuels  
Title: Co- President

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

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

**LANDLORD:**

USRLP DOUGLAS HILL, LLC,  
a Texas limited liability company

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

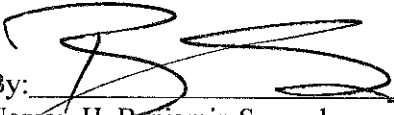
Name: \_\_\_\_\_

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

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

**TENANT:**

VICTORY PACKAGING, L.P.,  
a Texas limited partnership

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

Name: H. Benjamin Samuels

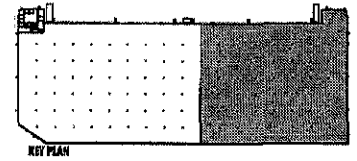
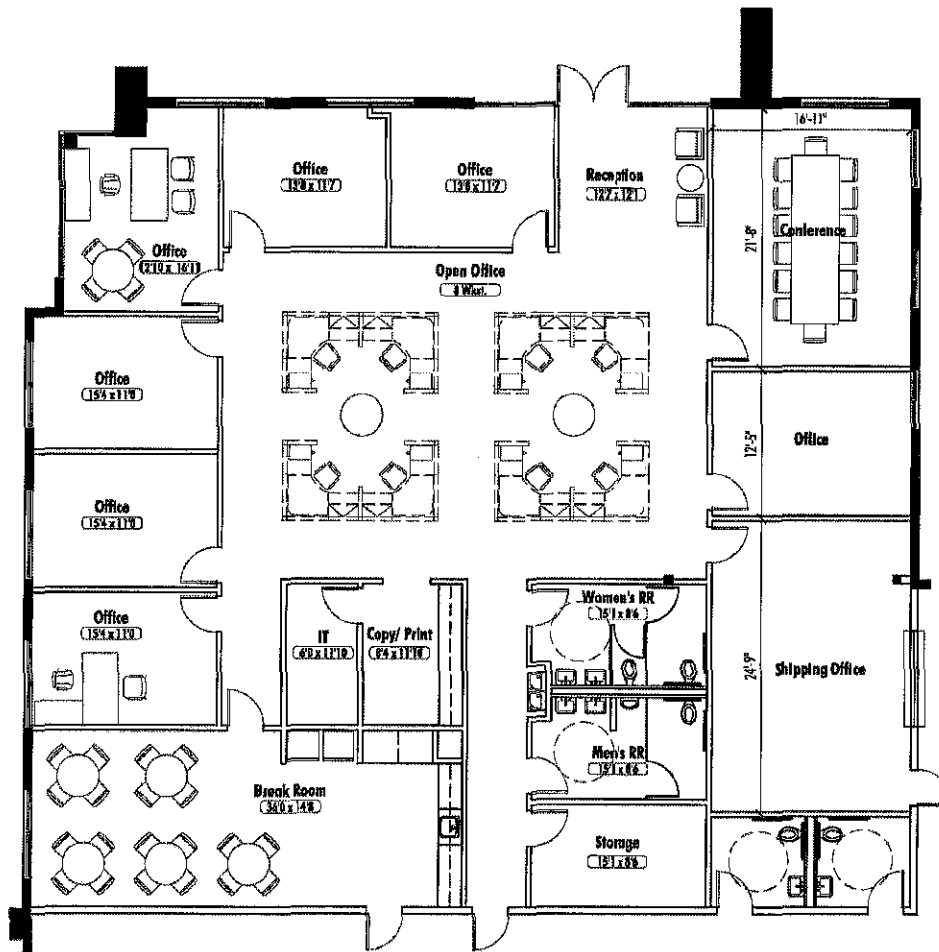
Title: Co- President

Date Executed: 11-21-16

## SCHEDULE B-1 FINISH SELECTIONS

OFFICE FINISHES - VICTORY PACKAGING					
DESCRIPTION	MANUFACTURER	PRODUCT	COLOR	LOCATIONS	NOTES
<b>FLOOR</b>					
CARPET - BROADLOOM	MOHAWK BIGELOW	NEW BASIC II26 BC265	7559 ANODIZED LAPIS	Main offices, conference rooms, design lab offices, reception and waiting area	
12"x24" PORCLIN TILE - RECEIPT	FLORIM USA - AMERICA TILE OR SM.	GALAXY 12X24 NATURAL	1095569 SILVER	Reception Area Floor	Stagger jnts., front vestibule, restroom floor, restroom walls
12"x24" PORCLIN FLOOR TILE - RR	FLORIM USA - CROSSVILLE TILE	LAYERS 12X24	SEDIMENT	1094423 - Bathrooms	Install quarter - tured on floor
12"x24" PORCLIN WALL TILE - RR	FLORIM USA - CROSSVILLE TILE	LAYERS 12X24	SEDIMENT	1094423 - Bathrooms	Install monolithic horizontal direction
6"x12" BASE - ceramic tile	FLORIM USA - AMERICAN TILE OR SIM.	GALAXY 12X24 NATURAL	1095569 SILVER	Reception Area Floor	Front & vestibule
6"x12" BASE - ceramic tile	FLORIM USA - AMERICAN TILE OR SM.	LAYERS	SEDIMENT	Restrooms	Restrooms
4" RUBBER BASE	JOHNSONITE		18 NAVY BLUE	All VET, Carpet and Concrete Floor Areas	All common areas
VINYL ENHANCED TILE	AZROCK	A2TERRA	ASSURRO AT-110		All VET locations
<b>PLASTIC LAMINATE</b>					
COUNTER TOPS	WILSONART	4142-60	GREY GLACE		Copy room, design labs Shippin offices
CABINETS	WILSONART	D315-60 - MATTE	PLATINUM		Cabinets - copy, shipping & break rooms
COUNTER TOPS	Pionite	AB141 SUEDE	BALTIC FRESCO		Break rooms
<b>NOT USED</b>					
Countertops	WILSONART	4810-60	TITANIUM EV		Modesty panels to match - restrooms
CABINETS	WILSONART	7925-38	MONTICELLO MAPLE	Main conference room cabinets	Modesty panels to match - lobby
Countertops	NEVAMART	VA600IT TEXTURED	CALM DISTINCTION	Lobby Millwork - Main conference room	Lobby
<b>PAINT</b>					
FIELD PAINT	PPG PITTSBURGH	415-1 EGGSHELL FINISH	FRENCH CREAM		Field through out
GYP. BO. CEILING	SHERWIN WILLIAMS	SW 7005 EGGSHELL FINISH	PURE WHITE		
Warehouse	PPG PITTSBURGH	415-1 EGGSHELL FINISH	FRENCH CREAM		Walls
ACCENT COLOR #1	PPG PITTSBURGH	451-7 EGGSHELL FINISH	CELESTAL BLUE		Accent walls to be selected
ACCENT COLOR #2	SHERWIN WILLIAMS	SW 6677 EGGSHELL FINISH	GOLDENROD		Accent walls to be selected
<b>OTHER</b>					
FIBERGLASS, REINF., PANELS	GLASBORD OR EQ.		48 GRAY OR SM.		Janitor Closet at sink
STAINED CONCRETE	SCOFIELD		CS 15 ANTIQUE AMBER		Design lab - open area flooring
2X4 LAY-IN TILE/GRID	ARMSTRONG OR EQUAL	FISSURED MIN. BOARD			
GYP. BOARD PAINTED	PT-2 SHERWIN WILLIAMS	EGGSHELL FINISH	SW 7005 PURE WHITE		
TOILET PARTITIONS	KNICKERBOCKER	PAINTED ENAMEL	MED. GREY 1125		
PRE-FINISHED WOOD DOORS	MARSHFIELD OR EQ.	RED OAK	RATAN 56-02		
DOOR FRAMES	AS SPEC'D	AS SPEC'D	ALUMATONE SC108		
Blinds	SWC contract	1" Blinds	Brushed Aluminum	All Exterior Windows	Match Window Mullion Finish

# **SCHEDULE B-2** **OFFICE PLAN**



**Schematic Plan #2**

WORKSTATIONS (TYP. desk)	8
PRIVATE OFFICES	7
BREAK ROOM	1
CONFERENCE	1
STORAGE/IT	2

\*All dimensions shown are for representative purposes only.  
\*\*All finishes to match Bldg #2, see attached.



797 Douglas Hill Lithia Springs, GA 30122

**VICTORY PACKAGING • DOUGLAS HILL • 5,031 OFFICE SF/ 185,045 WAREHOUSE SF**

Date: 10.13.16 | Drawn By: T. Williams | Checked By: T. Spang | Project Number: 102115.1600

## EXHIBIT C

### INDUSTRIAL PARK - RULES AND REGULATIONS

Tenant covenants and agrees to comply with the following rules and regulations as they may be modified or amended during the Term, provided such modification or amendment does not increase Tenant's financial obligations or restrict or adversely affect any of Tenant's rights under the Lease. Landlord will not be responsible to Tenant for the nonperformance of such rules and regulations by any other tenant or occupant of the Building.

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

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

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

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

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

6. Tenant shall keep Tenant's display windows illuminated and the signs and exterior lights lighted each day and every day of the Term hereof during the hours designated by Landlord.

7. No radio or television or other similar device shall be installed without, in each instance, Landlord's prior written consent. No aerial shall be erected on the roof or exterior walls of the Premises, or on the grounds without, in each instance, the prior written consent of Landlord. Any aerial so installed without such written consent shall be subject to removal without notice at any time.

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

9. Tenant shall not make or permit any noise, odor or gases which Landlord deems objectionable to emanate from the Premises. Tenant shall not suffer, allow, or permit any vibration, light, or other effect to emanate from the Premises, or from any machine or other installation therein, or otherwise suffer, allow, or permit the same to constitute a nuisance or otherwise interfere with the safety, comfort, or convenience of Landlord or any of the other tenants or occupants of the Building or their

Agents, or any others lawfully in or upon the Building. Upon notice by Landlord to Tenant that any of the aforesaid is occurring, Tenant agrees to forthwith remove or control the same.

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

11. All deliveries, loading and unloading of goods, furniture, freight and other large or heavy articles and all other deliveries shall be done only at such times, in the areas and through the areas designated for such purpose by Landlord.

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

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

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

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

16. Tenant at its expense shall participate in any reasonable window cleaning program that may be established by Landlord for all or substantially all other stores or premises in the Building and shall not permit window cleaning or other exterior maintenance or janitorial services in and for the Premises to be performed except during reasonable hours designated for such purposes by Landlord.

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

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

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

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

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

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

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

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

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

26. If required by Landlord, each tenant is required to participate in the Building's recycling or other trash management program, as well as any green initiatives that may be in effect from time to time. This includes compliance with all instructions from the Building's recycling or other vendor which Landlord shall distribute to each tenant from time to time. Each tenant shall store all trash and garbage

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

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

**EXHIBIT D**  
**NOTICE OF LEASE TERM DATES**

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

USRLP DOUGLAS HILL, LLC  
9830 Colonnade Boulevard, Suite 600  
San Antonio, Texas 78230-2239  
Attention: VP Real Estate Counsel  
Attention: VP Portfolio Management

RE: Industrial Building Lease ("Lease") dated: to be effective as of \_\_\_\_\_ ("Date of Lease") between USRLP DOUGLAS HILL, LLC, a Texas limited liability company ("Landlord"), and VICTORY PACKAGING, L.P., a Texas limited partnership ("Tenant"), concerning 797 Douglas Hill Road, Suite 200, Lithia Springs, Georgia 30122 ("Premises").

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

1. That the Premises have been accepted herewith by the Tenant as being substantially complete in accordance with the subject Lease and that there is no deficiency in construction.
2. That the Tenant has possession of the subject Premises and acknowledges that under the provisions of the subject Lease the Term of said Lease shall commence as of \_\_\_\_\_ for a term of seventy-five (75) months ending on \_\_\_\_\_.
3. That in accordance with the subject Lease, Rent commences to accrue on \_\_\_\_\_.
4. If the Commencement Date of the subject Lease is other than the first day of the month, then the first billing will contain a pro rata adjustment. Each billing thereafter shall be for the full amount of the monthly installment as provided for in said Lease.
5. Rent is due and payable in advance on the first day of each and every month during the term of said Lease. Rent should be payable via wire transfer to

Wells Fargo Bank  
San Francisco, CA  
ABA #121000248  
To Credit: USRLP DOUGLAS HILL, LLC  
Account #: 4121537278

Landlord to complete and return to Tenant such forms as may be reasonably requested by Tenant to allow Tenant to pay rent via ACH transfer.

6. The number of square feet within the Premises is 190,009 square feet.
7. Tenant's Proportionate Share is 55.183%.

[Signatures appear on following page]

**LANDLORD:**

USRLP DOUGLAS HILL, LLC,  
a Texas limited liability company

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

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

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

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

**TENANT:**

VICTORY PACKAGING, L.P.,  
a Texas limited partnership

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

Name: H. Benjamin Samuels

Title: Co- President

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