

## DISCLOSURE OF OWNERSHIP/PRINCIPALS

<b>Business Entity Type (Please select one)</b>						
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	<input checked="" type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Corporation	<input type="checkbox"/> Trust	<input type="checkbox"/> Non-Profit Organization	<input type="checkbox"/> Other
<b>Business Designation Group (Please select all that apply)</b>						
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/> SBE	<input type="checkbox"/> PBE	<input type="checkbox"/> VET	<input type="checkbox"/> DVET	<input type="checkbox"/> ESB
Minority Business Enterprise	Women-Owned Business Enterprise	Small Business Enterprise	Physically Challenged Business Enterprise	Veteran Owned Business	Disabled Veteran Owned Business	Emerging Small Business
<b>Number of Clark County Nevada Residents Employed:</b> <span style="float: right;">8</span>						
<b>Corporate/Business Entity Name:</b> Beltway Business Park Warehouse No. 10, LLC						
<b>(Include d.b.a., if applicable)</b> N/A						
<b>Street Address:</b> 13191 Crossroads Pkwy., 6th Floor			<b>Website:</b> majesticcrealty.com			
<b>City, State and Zip Code:</b> City of Industry, CA 91746			<b>POC Name:</b>			
			<b>Email:</b>			
<b>Telephone No:</b> 562-692-9581			<b>Fax No:</b> 562-692-1553			
<b>Nevada Local Street Address:</b> <b>(If different from above)</b> 4050 W. Sunset Road, Suite H			<b>Website:</b> majesticcrealty.com			
<b>City, State and Zip Code:</b> Las Vegas, NV 89118			<b>Local Fax No:</b> 702-896-5564			
<b>Local Telephone No:</b> 702-896-5564			<b>Local POC Name:</b> Rod Martin martin@majesticcrealty.com			
			<b>Email:</b>			

All entities, with the exception of publicly-traded and non-profit organizations, must list the names of individuals holding more than five percent (5%) ownership or financial interest in the business entity appearing before the Board.

Publicly-traded entities and non-profit organizations shall list all Corporate Officers and Directors in lieu of disclosing the names of individuals with ownership or financial interest. The disclosure requirement, as applied to land-use applications, extends to the applicant and the landowner(s).

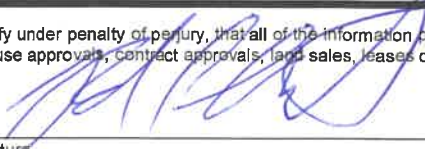
Entities include all business associations organized under or governed by Title 7 of the Nevada Revised Statutes, including but not limited to private corporations, close corporations, foreign corporations, limited liability companies, partnerships, limited partnerships, and professional corporations.

Full Name	Title	% Owned (Not required for Publicly Traded Corporations/Non-profit organizations)
Thomas & Mack Beltway, LLC	Manager/Member	See attached
Majestic Warehouse Buildings II, LLC	Manager/Member	See Attached

**This section is not required for publicly-traded corporations. Are you a publicly-traded corporation?**  Yes  No

1. Are any individual members, partners, owners or principals, involved in the business entity, a Clark County, Department of Aviation, Clark County Detention Center or Clark County Water Reclamation District full-time employee(s), or appointed/elected official(s)?  
 Yes  No (If yes, please note that County employee(s), or appointed/elected official(s) may not perform any work on professional service contracts, or other contracts, which are not subject to competitive bid.)
2. Do any individual members, partners, owners or principals have a spouse, registered domestic partner, child, parent, in-law or brother/sister, half-brother/half-sister, grandchild, grandparent, related to a Clark County, Department of Aviation, Clark County Detention Center or Clark County Water Reclamation District full-time employee(s), or appointed/elected official(s)?  
 Yes  No (If yes, please complete the Disclosure of Relationship form on Page 2. If no, please print N/A on Page 2.)

I certify under penalty of perjury, that all of the information provided herein is current, complete, and accurate. I also understand that the Board will not take action on land-use approvals, contract approvals, land sales, leases or exchanges without the completed disclosure form.

	Rodman C Martin
Authorized Agent	Print Name
Title	Date <span style="font-size: 1.5em; color: blue;">3/4/21</span>



Department of Real Property Management  
500 S. Grand Central Parkway 4<sup>th</sup> Floor  
PO Box 551825  
Las Vegas, Nevada 89155-1825  
Tel: (702) 455-4616  
Fax: (702) 455-4055

## LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as "Agreement") entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **COUNTY OF CLARK**, a political subdivision of the State of Nevada (hereinafter referred to as "County") and **BELTWAY BUSINESS PARK WAREHOUSE NO. 10, LLC**, a Nevada limited liability company authorized to do business in the State of Nevada (hereinafter referred to as "Company").

### WITNESSETH:

WHEREAS, County is the owner and operator of McCarran International Airport (hereinafter referred to as "Airport") and wishes to cause the development and construction of retail/office/warehouse facilities (hereinafter referred to as "Commercial Facilities") on property owned by Clark County within the Cooperative Management Area (defined below) and controlled by the Airport to ensure that the development of such property is compatible with Airport uses; and

WHEREAS, it is for the benefit of County to more efficiently and economically manage its Airport-controlled property to include such Commercial Facilities; and

WHEREAS, Company is engaged in the business of developing, constructing, maintaining, leasing and operating such Commercial Facilities; and

WHEREAS, County is willing and Company desires to enter this Agreement for the construction and operation of such Commercial Facilities; and

WHEREAS, on August 21, 2001 the Board of County Commissioners approved a Lease Option Agreement (hereinafter referred to as "Lease Option Agreement") between County and Beltway Business Park, L.L.C., an affiliate of Company, which was first amended on March 5, 2002, and then amended on December 3, 2002, and then amended on September 20, 2005, and then amended on May 16, 2006, and then amended on February 6, 2007, and then amended on November 5, 2019.

NOW, THEREFORE, for and in consideration of the above recitals (which are incorporated into this Agreement by this reference), and the agreements, covenants and conditions herein, County and Company agree as follows:

## ARTICLE I

### 1.1 DEFINITIONS

- 1.1.1 The term "Airport," whenever used herein, means the McCarran International Airport and all property located within its general environs at the date of execution of this Agreement or at any future date during the term hereof.
- 1.1.2 The term "Airport Environs Map," means the McCarran International Airport Environs Overlay District Map, adopted in Title 30 of the Clark County Unified Development Code, effective June 30, 2008; the North Las Vegas Airport Environs Overlay District Map, adopted in Title 30 of the Clark County Unified Development Code, effective June 30,

2008; the Henderson Executive Airport Environs Overlay District Map, adopted in Title 30 of the Clark County Unified Development Code, effective June 30, 2008, or any subsequent version of any of such maps as may be updated from time to time by the Clark County Department of Aviation.

- 1.1.3 The term "Approval Date" means the date upon which this Agreement is approved by the Board of County Commissioners.
- 1.1.4 The term "Approved Budget," whenever used herein, means the annual written budget prepared by Company and approved by County's Designated Representative pursuant to the procedure set forth in Section 1.6 (entitled BUDGET APPROVAL) below.
- 1.1.5 The term "Assignee," whenever used herein, means (i) any assignee of Lender's interest in the Loan, or (ii) any purchaser or any heir, successor, or assign of the leasehold estate evidenced by this Agreement that acquires such leasehold estate at or subsequent to a Foreclosure Transfer (as defined in Section 2.19.11.1 below), as approved by County, to the extent such approval is required pursuant to Section 2.19.11.1 below, or (iii) any assignee of Company's rights and duties under this Agreement pursuant to Section 2.1 (entitled ASSIGNMENT) below.
- 1.1.6 The term "Capital Improvement Expenditures," whenever used herein, means the expenses of a capital nature associated with the Commercial Facilities which exceed those set forth in the Approved Budget. Such expenses will require prior written approval of County's Designated Representative.
- 1.1.7 The term "County's Designated Representative (hereinafter referred to as 'CDR')," whenever used herein, means the Director of the Department of Real Property Management, or designee, acting on behalf of County.
- 1.1.8 The term "Commence Construction," whenever used herein, means commencing construction of the Commercial Facilities on the Premises by Company causing its construction contractor to obtain occupancy and control the area and to begin actual construction of the Commercial Facilities. The term shall not include any site preparation or off-site work related to the Premises.
- 1.1.9 The term "Commercial Facilities," whenever used herein, means the retail/office/warehouse improvements to be constructed on the Premises by Company in accordance with the terms and conditions of this Agreement.
- 1.1.10 The term "Company," whenever used herein, means BELTWAY BUSINESS PARK WAREHOUSE NO. 10, LLC, a Nevada limited liability company, entering into this Agreement as the developer and operator of the Commercial Facilities on the Premises as described herein.
- 1.1.11 The term "County," whenever used herein, means Clark County, Nevada, as represented by the Clark County Board of Commissioners and where this Agreement speaks of "Approval by County," such approval means action by the Clark County Board of Commissioners.
- 1.1.12 The term "Debt Service," whenever used herein, means the Company's payment of principal and interest for construction and/or permanent financing for Commercial

Facilities.

All financing for Commercial Facilities shall include any fees, including loan points, fees, closing costs, and other loan charges (monthly or otherwise) to any Lender, including without limitation, lending institutions or shareholders, officers, directors, members, and managers of Company for construction and/or permanent financing for Commercial Facilities. Except as otherwise approved in writing by CDR, the principal loan amounts of such financing shall not exceed 100% of the "Pro Forma Development Costs" (as set forth in Exhibit "A" attached hereto and incorporated herein) and shall not be amortized over more than thirty (30) years. Any such financing must be approved by CDR as outlined in Section 2.19.1 below, and shall be at commercially reasonable interest rates, points, fees, closing costs, and other terms and conditions for the same type of loan from a bank or other commercial lender.

- 1.1.13 The term "Effective Date," whenever used herein, means the date established pursuant to Sections 1.2.6 and 1.7 below for the commencement of the distribution of Net Revenues (first, to repayment of any equity contribution and second, for distribution to County and Company as provided in Section 1.7 below). All other terms and conditions of this Agreement will become effective on the Approval Date.
- 1.1.14 The term "Environmental Laws," whenever used herein, means any one or all of the laws and/or regulations of the Environmental Protection Agency or any other federal, state or local agencies, including, but not limited to the following as the same are amended from time to time:

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (42 U.S.C. Section 9601 et seq.)

RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. Section 6901 et seq.)

TOXIC SUBSTANCES CONTROL ACT (15 U.S.C. Section 2601 et seq.)

SAFE DRINKING WATER ACT (42 U.S.C. Section 300h et seq.)

CLEAN WATER ACT (33 U.S.C. Section 1251 et seq.)

CLEAN AIR ACT (42 U.S.C. Section 7401 et seq.)

NEVADA SANITATION LAWS (Nevada Revised Statutes, Chapter 444)

NEVADA WATER CONTROL LAWS (Nevada Revised Statutes Chapter 445A)

NEVADA AIR POLLUTION LAWS (Nevada Revised Statutes Chapter 445B)

HAZARDOUS MATERIALS, INCLUDING UNDERGROUND STORAGE TANK REGULATIONS (Nevada Revised Statutes, Chapter 459)

NEVADA OCCUPATIONAL SAFETY AND HEALTH ACT (Nevada Revised Statutes, Chapter 618)

and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the Federal, State or local government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment (including, but not limited to, the ambient air procedures and records detailing chlorofluorocarbons [CFC]), ambient air, ground water, surface water and land use, including sub-strata land.

- 1.1.15 The term “Hazardous Material,” whenever used herein, means the definitions of hazardous substance, hazardous material, toxic substance, regulated substance or solid waste as defined within the following:

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (42 U.S.C. Section 9601 et seq.)

RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. Section 6901 et seq.)

HAZARDOUS MATERIALS TRANSPORTATION ACT (49 U.S.C. Section 5101 et seq.) and all present or future regulations promulgated thereto

DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS TABLE (49 C.F.R. Part 172) and amendments thereto

ENVIRONMENTAL PROTECTION AGENCY (40 C.F.R. Part 300 and amendments thereto—including Appendices thereto)

HANDLING OF HAZARDOUS MATERIALS (including transportation of Hazardous Materials by Motor Carriers) (Nevada Revised Statutes 459.700 through 459.780)

and all substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any environmental law, whether such laws are Federal, State or local.

- 1.1.16 The term “Initial Improvements,” whenever used herein, shall mean completion of the site work and building shell for: (i) one hundred percent (100%) of the proposed Commercial Facilities, if consisting of two (2) or fewer commercial buildings; or (ii) not less than fifty percent (50%) of the proposed Commercial Facilities, if consisting of more than two (2) commercial buildings.
- 1.1.17 The term “Lender,” whenever used herein, shall mean the provider of construction or permanent financing (or any refinancing) to Company in connection with the construction of the Commercial Facilities, which financing arrangements are to be approved by CDR to the extent required under Section 2.19 (entitled FINANCING) of this Agreement.
- 1.1.18 The term “Loan,” whenever used herein, shall mean a loan made by a Lender to Company and secured by a mortgage or deed of trust encumbering the leasehold estate evidenced by this Agreement.
- 1.1.19 The term “Management Fee,” whenever used herein, means a fee to be deducted from Total Revenue in consideration of the expenses incurred by Company or its property manager for the project administration of the Commercial Facilities. It is understood and agreed that during the term of this Agreement such fee is to be up to three percent (3%) (for

industrial space), up to four and one-half percent (4.5%) (for office space), or up to five percent (5%) (for retail space) of the Total Revenue received by Company from Sublessees or as otherwise negotiated by County and Company. Such Management Fee shall include all compensation and property management administration expenses of all Commercial Facilities personnel. Such Management Fee may be adjusted as necessary by mutual agreement of Company and CDR and as set forth in an Approved Budget to be competitive with other fees that are standard in the industry in the metropolitan area.

- 1.1.20 The term "Maintenance and Operations," whenever used herein, means the expense for maintenance, operation, administration and repair of the Commercial Facilities.
- 1.1.21 The term "Net Revenue," whenever used herein, means the amount of available cash after allowable deductions have been made from Total Revenue which is available for an equal fifty percent (50%) distribution between the Participating Parties of this Agreement. Allowable deductions are defined as follows:
  - a. Debt Service;
  - b. Actual expenses authorized in the Approved Budget, including the cost of any Maintenance and Operations, or other Project Costs approved by CDR, which approval will not be unreasonably withheld;
  - c. Capital Improvement Expenditures;
  - d. Management Fee;
  - e. A reasonable reserve for Maintenance and Operations or any reserve required by any Lender under any approved financing; and
  - f. Repayment of equity contribution plus return on equity contribution (if applicable), as per Section 1.7 (entitled RENTALS AND FEES) below.
- 1.1.22 The term "Participating Parties" or "Parties," whenever used herein, means Company as Lessee and County as lessor (hereinafter jointly referred to as "Parties") to a participating leasing arrangement for the sharing of Net Revenues as consideration for the development and operation of the commercial facilities at the Premises.
- 1.1.23 The term "Premises," whenever used herein, means the area depicted on Exhibit "B," which is attached hereto and made a part hereof. The final legal description of the Premises will be attached to the Memorandum of Lease described in Section 1.2.3 below.
- 1.1.24 The term "Project Cost," whenever used herein, means all costs of Company actually incurred and paid by Company in designing, developing, constructing, owning, leasing, and managing the Commercial Facilities.
- 1.1.25 The term "Sublease," whenever used herein, means the documents signed by a Sublessee or Tenant for the leasing of space in the Commercial Facilities, or for the leasing of all or substantially all of the Premises.
- 1.1.26 The term "Sublessee" or "Tenant," whenever used herein, means any business firm or individual who leases (i) office, retail, industrial or warehouse space for a valid, legal commercial activity in the Commercial Facilities, or (ii) all or substantially all of the Premises. Subject to the terms of Section 1.4.1 below, the CDR will retain the right to reasonably approve the uses of such Sublessee or Tenant. These defined terms may be

used interchangeably.

- 1.1.27 The term "Release," whenever used herein, means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Material in violation of Environmental Laws.
- 1.1.28 The term "Rent Commencement Date," whenever used herein, means the date established pursuant to Sections 1.2.6 and 1.7 below for the commencement of the distribution of Net Revenues. As used in this Agreement, the "Rent Commencement Date" is synonymous with the "Effective Date."
- 1.1.29 The term "Total Revenue," whenever used herein, means the total amount of all rents, charges, fees and/or other income collected by Company from any use of the Commercial Facilities. Any space occupied by Company or any related entity which is not exclusively used for the necessary construction on and/or management of the Premises must be charged at a similar rental rate to that being charged for a similar type of rental property in the Las Vegas Valley. Such rental value shall be included in the Total Revenue, whether or not a cash payment is made.

## 1.2 TERM

- 1.2.1 The term of this Agreement will expire fifty (50) years from the Approval Date (the "Termination Date").
- 1.2.2 Except for Section 1.7 (entitled RENTALS AND FEES) below, all other provisions of this Agreement will be in force and effect upon the Approval Date.
- 1.2.3 As soon as practicable following the Approval Date, County and Company agree to execute and acknowledge a Memorandum of Lease (1) evidencing the existence of this Agreement, the ownership of the Commercial Facilities by Company, the rights of Company in the Premises, and the Approval Date and Termination Date of this Agreement, and (2) containing a legal description of the Premises. Such Memorandum of Lease shall be recorded with the official real estate records of Clark County, Nevada.
- 1.2.4 As soon as practicable following the Approval Date, Company will be entitled to receive, as a Project Cost, an ALTA leasehold policy of title insurance, together with those endorsements reasonably deemed necessary by Company, all issued by a title company selected by Company, with liability in an amount reasonably determined by Company and insuring Company's interests hereunder. Such leasehold policy will be subject only to exceptions permitted by Company.
- 1.2.5 County hereby agrees to give Lender at least thirty (30) days prior notice of any intended amendment, modification, revocation, surrender, cancellation or termination of this Agreement. County further agrees that it will not consent to or accept any surrender, revocation, cancellation or other termination by Company or amendment, nor agree to any modification of this Agreement without Lender's prior written approval. No expiration or early termination of this Agreement shall terminate or extinguish this Agreement without the prior written consent of Lender, unless the termination arises after a default and Lender has been given the notice and cure rights specified under Sections 2.15.2 and 2.19 of this

Agreement, and has failed to cure in accordance therewith.

1.2.6 Subject to Section 1.7 (entitled RENTALS AND FEES) below, the Effective Date (also known as the Rent Commencement Date) will be the first of the following dates:

- 1.2.6.1 The date of completion of the Initial Improvements for the Commercial Facilities, as evidenced by County's issuance of a Certificate of Completion.
- 1.2.6.2 The date that any portion of the Premises generates any revenue or has a Temporary Certificate of Occupancy with actual occupancy and use.
- 1.2.6.3 Subject to the extension rights set forth in Section 1.10.3.1 below, upon the first day of the thirty-seventh (37th) month following the Approval Date.

### 1.3 PREMISES

1.3.1 County does hereby demise and let unto Company and Company does hereby take from County the Premises.

Company shall be responsible to provide County with a final legal description of the entire Premises under this Agreement, which includes the depiction of all current and proposed easements and/or rights-of-way that County has or may wish to retain. Company will submit a draft description, both narrative and graphic formats, to County for its review and County has the right to modify the documents to retain County's interests in any easements and/or rights of way necessary for roads, utilities, and flood control. Once a final legal description is agreed upon by both parties, such legal description will be included in the Memorandum of Lease, as provided in Section 1.2.3 above.

1.3.2 Company acknowledges that it has inspected the Premises and accepts the Premises "as is," including, but not limited to, grades, soil conditions, and drainage with no further responsibility to Company by County for any present or further improvements or maintenance thereof, including, but not limited to, the existence of any utilities and public roadways and the potential need to cap off or otherwise abandon such utilities and/or roadways.

1.3.3 All improvements constructed on the Premises by Company (including, without limitation, the Commercial Facilities) at any time and from time to time during the term will be owned by Company during the term of this Agreement.

### 1.4 USE OF PREMISES

1.4.1 Upon performance of the agreements, provisions and conditions contained in this Agreement, Company will have the use of the Premises for the construction and operation of Commercial Facilities and for other business activities directly related thereto and for no other purposes, unless approved in writing by CDR. Such Commercial Facilities uses will be for purposes similar to other commercial developments in the Las Vegas metropolitan area and if such uses are Compatible Uses (defined below) and not Incompatible Uses (defined below), they are deemed approved by CDR. CDR, however, retains the sole right to determine if a use is compatible with Airport operations. Notwithstanding the above (or any other language in this Agreement) to the contrary, the uses set forth in Section 1.4.3.2 below, and as otherwise approved in writing by CDR, are

the only authorized Compatible Uses.

1.4.2 Neither Company nor County shall have the right to erect (or cause or permit any third party to erect) billboards (whether for commercial or non-commercial purposes) on the Premises.

1.4.3 Company also agrees that use of the Premises is conditioned upon Company's agreement that it will not develop the Premises and/or adjoining or surrounding properties in a manner that County may find objectionable to Airport and/or Aircraft operations. CDR, however, retains the sole right to determine, in its reasonable discretion, if the uses are Incompatible Uses or Compatible Uses, as defined below:

1.4.3.1 Incompatible Uses: The term "Incompatible Uses" means uses which potentially expose persons to elevated levels of Aircraft generated noise or to areas identified as necessary to protect the safe passage of Aircraft, or which have been determined by the Federal Aviation Administration (the "FAA"), the Director of the Department of Aviation, and/or the Airport Height Hazard Board of Adjustment to be hazardous to or incompatible with air navigation. Incompatible Uses include, but are not limited to: rural estate uses, residential uses, single family homes, mobile homes, low density, medium density and high density housing, apartments, group quarters, condominiums, time-sharing apartments, condominium hotels or motels, townhouses, churches, hospitals, care centers, nursing homes, schools, auditoriums and concert halls, fraternity and sorority housing, recreational vehicle parks, places of public assembly, amusement parks, outdoor sports arenas, zoos, uses that may in the future be accessory to or enhance any of the uses described above on adjacent parcels, and uses intended to fulfill development and/or zoning requirements for any of the uses described above on an adjacent parcel (including, without limitation, open space, parking and landscaping requirements). The fact that any of the foregoing uses is permitted under the Clark County Code shall have no bearing on whether they constitute an Incompatible Use under this Restriction.

No "sexually oriented" business or "adult use," as defined in the Clark County Code (e.g. CCC 6.110, 6.140, 6.160, 6.170, 7.54, 30.08.030, and 30.44.010 and as amended from time to time), or other laws, regulations and ordinances now in effect or hereinafter enacted that deal with such businesses and uses, shall be allowed upon any part of the Premises. No use for which a liquor or gaming license is required shall be allowed upon any part of the Premises without the written consent of County (refusal to consent to these uses is solely within the discretion of the Board of County Commissioners and does not need to be reasonable). Should County consent to a use involving a liquor or gaming license, Company shall pay all costs, including the cost of background investigations and attorney fees, relating to the licensing process. Notwithstanding the foregoing, CDR consents to liquor uses, subject to all normal and customary licensing procedures, in such restaurants as may be developed on the Premises.

1.4.3.2 Compatible Uses: The term "Compatible Uses," means land uses which are appropriate given the area's exposure to Aircraft overflight and noise, and the limitations on development necessary to preclude potential hazards to air navigation. Compatible Uses which may conform with the preceding definition

include, but are not limited to, commercial uses such as office, warehousing, manufacturing, business, professional, and wholesale and retail, provided any occupied structure is constructed using noise attenuation construction techniques in compliance with FAA regulations as further outlined in Sections 1.4.3.3, 1.4.3.4 and 3.18 below; communication uses; transportation uses such as railroad, motor vehicle, rapid transit and street railway transportation; street and highway rights-of-way; utility rights-of-way; parking; general dispersed recreation; golf courses; and drainage facilities.

- 1.4.3.3 Avigation Easement: Company hereby grants and conveys to County a perpetual and assignable right-of-way and easement for the free and unobstructed passage of all Aircraft, regardless of the owner or operator of such, in, through, and across all of the airspace above the Premises (including the Commercial Facilities constructed thereon) subject to such rights, terms, and conditions as contained herein. For purposes of this Agreement, "Aircraft" is defined as any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air or space, regardless of the form of propulsion which powers said Aircraft in flight.

County, its successors in interest and assigns, for the use and benefit of Aircraft owners, operators and the general public, shall have the continuing right to cause or allow in all of the airspace above the surface of the Premises such noise, fumes, vibrations, dust, fuel, particles and all other effects that may be caused by or result from the operation of Aircraft, whether or not said Aircraft over fly or intrude into the airspace above the Premises.

County reserves unto itself, its successors and assigns, for the use and benefit of Aircraft owners, operators and the general public, a right of flight for the passage of Aircraft in the airspace above the Premises (including the Commercial Facilities constructed thereon), together with the right to cause in said airspace such noise as may be inherent in the operation of Aircraft, now known or hereafter used, for navigation of or flight in said airspace, and for use of said airspace for landing at, taking off from or operating at the facilities now known as, or any future name or common reference that may be promulgated, adopted or referred to, McCarran International Airport, Nellis Air Force Base, North Las Vegas Airport, Overton Airport, Creech Air Force Base, Henderson Executive Airport, Laughlin/Bullhead International Airport, Searchlight Airport, Mesquite Airport, Boulder City Airport, and Jean Airport; or any and all future facility or facilities developed in the Ivanpah Valley, Pahrump Valley, and in the vicinity of the City of Mesquite (the "Airports").

Company covenants and agrees not to allow any improvement to become constructed on the Premises which is, will be or has been erected to a height and does extend into the airspace where, upon making application of a FAA form 7460-1 if required, the FAA determines such improvement to be an obstruction and/or hazard to air navigation pursuant to the rules and regulations of the FAA under Code of Federal Regulations ("CFR") Title 14, Chapter I, Part 77 ("Part 77"). Should the FAA determine such proposed, erected, or grown improvement to be an obstruction and/or hazard to air navigation, the improvement is to be removed, demolished, and/or lowered to a height which the FAA determines not to be an obstruction and/or hazard to air navigation, and

until such compliance is determined by the FAA, Company shall not be granted a permit under Clark County Code Chapter 20 and Chapter 30, including but not limited to Section 20.13 and Section 30.48 Part B "Airport Airspace Overlay District" as amended, or any similar federal state, or local regulation which may hereinafter be enacted in total or in part.

Company covenants and agrees not to allow any vegetation to be planted or grown on the Premises which is, will be or has been grown to a height and does extend into the airspace where, upon making application of a FAA form 7460-1 if required, the FAA determines such vegetation to be an obstruction and/or hazard to air navigation pursuant to the rules and regulations of the FAA under Part 77. Should FAA determine such proposed or grown vegetation to be an obstruction and/or hazard to air navigation, the vegetation is to be removed, trimmed, and/or lowered to a height which the FAA determines not to be an obstruction and/or hazard to air navigation, and until such compliance is determined by the FAA, Company shall not be granted a permit under Clark County Code Chapter 20 and Chapter 30, including but not limited to Section 20.13 and Section 30.48 Part B "Airport Airspace Overlay District" as amended, or any similar federal state, or local regulation which may hereinafter be enacted in total or in part.

Company shall, prior to 1) construction of any applicable improvement; 2) planting any applicable vegetation; or 3) at such time as any vegetation is grown to a height on the Premises that meets or exceeds the notification requirements of Part 77; file notice with the FAA in accordance with the requirements of Part 77 as applied to the Airports via FAA form 7460-1, as amended, or any similar regulations which may hereinafter be enacted and, where required by the Clark County Code, receive either a Director's Permit from the Department of Aviation or a Director's Permit Variance from County's Airport Hazard Area Board of Adjustment.

Company, in addition to all rights, terms, and conditions contained herein, expressly acknowledges and consents to the right of Aircraft flight set forth in Title 49 United States Code ("USC") §40102(a)(30), 49 USC§40103(a)(2), Title 14 CFR, Chapter I, Part 91, Part 101, and Part 103 as amended, including but not limited to 14 CFR Part 91.119, or any similar statute or regulation which may hereinafter be enacted in total or in part, and Nevada Revised Statute ("NRS") Chapters, including but not limited to, NRS 493.030, NRS 493.040 and NRS 493.050, as amended, or any similar regulation or statute which may hereinafter be enacted in total or in part, as may be undertaken by Aircraft arriving to or departing from the Airports.

- 1.4.3.4 Waiver: Company, its successors, assigns, licensees, invitees, and tenants, hereby waive, remise, and release any right, claim, or cause of action which they may now have or may have in the future against County, and its officers and employees, or operators or users, and their officers, directors, employees, and agents, of the above described Airports, for losses or psychological or physical effects on account of or arising out of noise, vibrations, fumes, dust, fuel, particles and all other effects that may be caused or may have been caused by the operation of Aircraft landing at, taking off from, or operating at or on the Airports, or in or near the airspace above the Premises. Company, its successors,

assigns, licensees, invitees, and tenants specifically waives any and all claims, including a claim that the easement is burdened by increases in noise, fumes, vibrations, dust, fuel, particles, or any other effects that may be caused by or result from the operation of Aircraft; changes in the type or frequency of Aircraft operations, the airport layout, or flight patterns; or increases in nighttime operations.

Further, Company, its successors, assigns, licensees, invitees, and tenants, hereby waive, remise, and release any right, claim, or cause of action as to use and/or regulation of all airspace more than fifty (50) feet above the finished grade of the Premises, except as may be granted by County.

The above grant of Avigation Easement and Waiver do not require the removal of an improvement or vegetation in the condition existing on the Premises as of the date of this Agreement.

Company expressly agrees for itself, its successors and assigns, to:

- (a) Submit to County plans showing exterior building finishes, including but not limited to glass surfaces and exterior lighting, which potentially may make it difficult for Aircraft pilots to distinguish between airport lights and other lights; produce glare or reflection which would impair Aircraft pilots landing or taking off at the Airport, impair visibility in the vicinity of the Airport, or otherwise endanger the landing, take off, or maneuvering of Aircraft; and shall not install the same without receiving a Director's Permit from the Department of Aviation or a variance from County's Airport Height Hazard Board of Adjustment. Company shall not use, permit, or suffer the use of the Premises in such manner as to create electrical interference with radio communication to or from any Aircraft or between any airport installation or navigational aid (NAVAID) and any Aircraft.
- (b) Not authorize the construction of any facility or improvement on the Premises, which attracts or results in the concentration of birds or other wildlife which would interfere with the safe operation of Aircraft in flight.
- (c) Use construction practices and materials to achieve an exterior to interior noise level reduction sufficient to achieve a maximum 40 decibel Day-Night Level (DNL 40 dB) interior noise level in any permanent structures, based on Aircraft noise contours shown on the McCarran International Airport Environs Overlay District Map, prepared by the Department of Aviation and dated April 16, 1998, or on a subsequent version of said map(s) as may be updated from time to time by the Department of Aviation (Airport Environs Map). Land, buildings, and structures shall be deemed to be impacted by the specific noise contours that cross them as shown on the Airport Environs Maps. Where a building is or would be impacted by one or more noise contours, the entire building shall be considered to be within the most restrictive noise contour.

## **1.5 STANDARDS OF OPERATION**

- 1.5.1 Company will develop and cause to be constructed Commercial Facilities in accordance with plans and specifications prepared by Company and which may be approved by CDR, if so requested, prior to the approval of the plans and specifications by County's Building Department, in order to provide a first-class commercial facility operation for use by its Sublessees or Tenants.
- 1.5.2 Company may enter into a standard form Sublease (attached as Exhibit "C" hereto and made a part hereof), which has been approved by CDR, with Sublessees or Tenants. With CDR's approval, an entirely new form of standard form Sublease may be adopted for use by Company from time to time.
  - 1.5.2.1 Consistent with Section 2.2.1.4 below, Company must obtain the written approval of CDR for any materially adverse change to the standard form Sublease.
  - 1.5.2.2 All Subleases must be for those uses permitted in Section 1.4 (entitled USE OF PREMISES) above, and must incorporate by reference all applicable provisions of this Agreement (as reasonably determined by Company) to ensure every Sublessee's operations and conduct are in compliance with such applicable provisions of this Agreement.
- 1.5.3 Company will provide County with a copy of any rules, regulations or other standards of operation developed by Company and distributed to Sublessees and Tenants.

## **1.6 BUDGET APPROVAL**

- 1.6.1 A written budget for each calendar year during the term of this Agreement will be prepared for all expenses related to the use, maintenance and operation of the Premises, including, without limitation, maintenance, operation, administration, leasing and other fees and expenses of any nature as follows:
  - 1.6.1.1 On or within thirty (30) days following substantial completion of the Commercial Facilities, Company and CDR will agree upon an initial budget to cover the period from the Effective Date until December 31 of the year in which the Effective Date falls.
  - 1.6.1.2 By October 15, annually, Company will prepare and submit to CDR a written budget for the following calendar year.
  - 1.6.1.3 Within fourteen (14) days of receipt of the proposed budget, CDR will review and approve or disapprove the proposed budget submitted by Company.
    - 1.6.1.3.1 If disapproved on reasonable grounds, CDR will inform Company in writing of its disapproval, describing the disapproved provisions of the proposed budget, or requesting further clarification of the budget elements. Company will respond within fourteen (14) days with clarification of the budget elements or with a modified written budget, which is reasonably satisfactory to CDR. The Participating Parties agree to negotiate in good faith to resolve any conflicting

issues that may arise. If CDR fails to timely respond, the proposed budget will be deemed approved and will become an Approved Budget.

1.6.1.3.2 If, however, the Participating Parties cannot agree upon the elements contained in the proposed budget or if, during the term of the following year, the parties cannot agree upon the interpretation of the intent of the Approved Budget, a neutral third party will be selected by CDR to arbitrate the disputed terms.

1.6.1.3.2.1 If, however, Company does not accept the neutral third party selected by CDR, Company will be allowed to select a second neutral party. The two selected parties will then select a third neutral party and the three together will arbitrate the disputed terms. County agrees that Company may operate under the prior year Approved Budget until the dispute is resolved. All neutral parties shall have at least five (5) years experience in commercial real estate matters and must be attorney(s) certified by the Nevada Court Annexed Arbitration Program.

1.6.1.3.2.2 CDR and Company agree to be bound by the decisions reached by the selected arbitrator. The Participating Parties will cause the arbitrator to make a determination within fourteen (14) days following submittal.

1.6.1.3.2.3 The Participating Parties agree that each party will bear its own costs and expenses incurred for attorney's fees, preparation and presentation costs for the arbitration process. The Participating Parties will share the cost of any third arbitrator.

1.6.1.4 The agreed upon budget will be deemed the Approved Budget for the applicable calendar year. Until a budget has been approved, the prior year's budget will be used.

1.6.2 Company will be entitled to expend funds in accordance with the Approved Budget during the applicable calendar year. In the event Company is over-budget on a particular line item, Company may reallocate excess funds from one line item to another line item, except that any salary line item reallocations must be approved by CDR. Any expenses not covered by the Approved Budget are subject to the reasonable written approval of CDR. In the event of emergency, Company may immediately take action necessary to complete repair and any expenses incurred by Company will be shared in accordance with the provisions of Section 1.7 (entitled RENTALS AND FEES) below.

## **1.7 RENTALS AND FEES**

Rentals and fees for the operation of the Commercial Facilities will be as follows:

1.7.1 As soon as practicable following the Approval Date, Company, at its election, will obtain

financing for the Commercial Facilities in accordance with the terms and conditions of Section 2.19 (entitled FINANCING) of this Agreement. Rentals and fees will be subject to such financing and completion of the Commercial Facilities as follows:

- 1.7.1.1 The Participating Parties acknowledge that Company may be required to make an equity contribution to fund the difference between total Project Costs and the amount of financing obtained by Company.
- 1.7.1.2 Following completion of the Commercial Facilities and once the Net Revenue from the Commercial Facilities is available, such Net Revenue will be applied to Company's equity contribution, if applicable, until such time as the amount is repaid in full together with interest at the rate of eleven percent (11%) per annum. Company will furnish documentation satisfactory to CDR showing the Total Revenues received from the Commercial Facilities and the payments applied to the equity contribution amount. Company shall not finance more than thirty percent (30%) of Pro Forma Development Costs with its equity. Notwithstanding the prior sentence to the contrary, if, following Company's reasonable efforts to obtain loans requiring not more than thirty percent (30%) equity, Company is unable to obtain such loans (on reasonable and customary terms), then, Company will be allowed to increase its equity contribution to such amounts required by its Lenders. Except as otherwise agreed by County, any amount in excess of thirty percent (30%) that is self-financed will be repaid with interest at a rate equal to the applicable loan rate (whether construction or permanent loan) plus one hundred fifty (150) basis points per annum, not to exceed eleven percent (11%) per annum.
- 1.7.1.3 The Participating Parties will acknowledge the date the equity contribution is paid in full by written notice from Company and acknowledgment by CDR.
- 1.7.1.4 In the event of default by Company and the subsequent foreclosure and sale of the leasehold interest to an Assignee as provided in Section 2.19 (entitled FINANCING) below, and assuming County declines the right to assume the Loan (as provided in Section 2.19.11 below), the above defined rentals will be abated as described in Section 2.19.11.2 below. Following satisfaction of the Loan obligation owed to an Assignee of Lender, payment to County of the rentals and fees as described in this Section 1.7 will resume.
- 1.7.1.5 Any additional capital required to be contributed for operation of the Property, following completion of construction of the Initial Improvements shall be contributed by Company, as an additional equity contribution, provided such capital is required to pay obligations arising under either an Approved Budget or a Sublease or a License Agreement (defined below in Section 2.2.1.3), or reasonably required to remedy an unforeseen situation. Any such equity contribution shall be repaid as described in Section 1.7.1.2 above.
- 1.7.1.6 Company recognizes that the Premises are within the boundary of the Cooperative Management Area as defined in Clark County Code and that this Agreement is subject to the provisions of the Southern Nevada Public Land Management Act of 1998 (hereinafter "SNPLMA"), and that County is required by the SNPLMA to receive "fair market value" for all leases on land within the Cooperative Management Area. The Parties agree and acknowledge that they

have negotiated this Agreement to be a fair market lease. If it is determined by a court of competent jurisdiction that any of the terms and conditions of this Agreement violate the SNPLMA, then Company agrees to renegotiate in good faith the applicable terms of this Agreement with County, consistent with the provisions of Section 4.6 below.

- 1.7.2 Upon the date Company's and County's equity contributions (if applicable) are paid in full, with interest, as described in Section 1.7.1.2 above, the rental for the Premises will consist of County's share of Net Revenue, as defined in Section 1.1.21 of this Agreement, calculated as follows:

Total Revenue

Less:

- a. Debt Service;
- b. Actual expenses authorized in the Approved Budget, including the cost of any Maintenance and Operations;
- c. Capital Improvement Expenditures;
- d. Management Fee;
- e. A reasonable reserve for Maintenance and Operations and Capital Improvements, or any reserve required by any Lender under any approved financing; and
- f. Repayment of equity contributions plus return on equity contributions (if applicable), as per Section 1.7 (entitled RENTALS AND FEES) above, including any initial equity over and above Debt Service paid by Company.

Equals: Net Revenue (available cash)

Distribution of Net Revenue: 50% to County  
50% to Company

- 1.7.3 On or before the twenty-fifth (25th) of each month, Company will submit a statement depicting Total Revenue received for the preceding month and allowable deductions for the Net Revenue calculation. A check for County's fifty percent (50%) share of Net Revenue will be submitted with such report.
- 1.7.4 Company will make all payments by check made payable to the Clark County Department of Aviation and deliver or mail said payments to County at 500 South Grand Central Parkway, P.O. Box 551825, Las Vegas, Nevada 89155-1825 or to such other place as County may direct Company in writing.
- 1.7.5 In the event any required payment is not made by Company to County as required and remains unpaid for a period of thirty (30) days or more, County will be entitled to, and Company will pay to County, interest at the rate of eleven percent (11%) per annum on all amounts unpaid and which remain unpaid thirty (30) days past the due date. However, the County will not be prevented from terminating this Agreement for default of payments of rents, fees, or charges or from enforcing any other provisions contained herein or implied by law.
- 1.7.6 On or prior to April 30, annually, during the term of this Agreement or any extension

thereof and within ninety (90) days after the expiration of the term of this Agreement, Company will provide County with a statement showing the entire preceding year's business operations, including revenue and expenses, which will be prepared in accordance with sound accounting principles. Such statement is to be prepared by Company's Certified Public Accountant and contain a written opinion as to whether the gross revenues and distribution of Net Revenue has been made in accordance with the provisions of this Agreement. Should such statements show that the amount paid during the period of review was less than that which was due, Company will immediately remit the additional amount to County. Should such statement show that Company paid County more than was due, after review and verification by CDR a credit will be issued to be applied against future Net Revenue, except that if such should be the case at the end of the last month of this Agreement, County will refund the overpayment to Company.

- 1.7.7 Subject to the extension rights set forth in Section 1.10.3.1 below, if the Initial Improvements are not completed by the first day of the thirty-seventh (37th) month following the Approval Date, then Company will pay flat ground rent equal to the then fair market ground rent for unimproved real estate which is: (a) subject to the same rights and interests encumbering the Premises, and (b) at this location (the "Interim Ground Rent"). Such payment of Interim Ground Rent shall continue only until the completion of the Initial Improvements. Interim Ground Rent is not to be treated as a Project Cost and is due and payable in full with no deductions. County or Company may request that Interim Ground Rent be adjusted once every two years based on an appraisal to be obtained by County. If the Company requests the appraisal, then the fee for preparation of the appraisal is not to be treated as a Project Cost, and is due and payable by Company in full with no deductions within thirty (30) days of receipt of County's invoice. If the County requests the appraisal, then the County will pay the appraisal fee. Notwithstanding any language to the contrary in this Agreement, so long as Interim Ground Rent is paid, Company shall not be in material breach of this Agreement for failure to timely complete the Initial Improvements.

## **1.8 RECORDS AND AUDIT**

- 1.8.1 Within forty-eight (48) hours of written request by County, Company agrees to provide at a location in the metropolitan area of Las Vegas, Nevada, accurate books, records, and accounts of all revenues received from Company's business authorized under this Agreement. Company further agrees to make such books, records and accounts available at any time, Monday through Friday (excluding holidays), 9:00 a.m. to 5:00 p.m. for the inspection of CDR, or such agents, employees or accountants as he/she may designate for at least a six (6) year period following the end of each annual period of this Agreement.
- 1.8.2 County will, at any time, have the right to cause an audit of the business of Company to be made by a Certified Public Accountant of County's selection and if the financial statements previously made to County by Company will be found to be intentionally understated in any respect or to be understated (either intentionally or unintentionally) by a greater margin of one percent (1%) of Company's Total Revenue for the period of review, then Company will immediately pay to County the reasonable cost of such audit, as well as the additional payments shown to be payable to County by Company. Otherwise, the cost of the audit will be paid by County.

## **1.9 IMPROVEMENTS, MAINTENANCE AND REPAIR BY COUNTY**

- 1.9.1 County has no direct responsibility or obligation for any maintenance, repair or

replacement of the leased Premises or improvements.

- 1.9.2 In connection with the Commercial Facilities, at any time and from time to time during the term of this Agreement, County agrees to, upon the written request of Company, assist Company in delivering such instruments as may be appropriate, necessary, required or desired by Company for the purpose of (a) the grant or dedication of any easement, right of way or other property right to any public entity or service corporation or for the development of the Premises, so long as such grant or dedication does not substantially impair the value of the County's fee interest in the real property underlying the Premises, or (b) the application to any governmental authority for, or the obtaining of, approvals, consents, zoning changes, conditional uses, variances, subdivision maps or the like, in each instance for the purpose of providing adequate utility services to the Premises or of permitting Company to construct the Commercial Facilities on the Premises or make any alteration or addition to the Commercial Facilities, or (c) obtaining institutional construction and permanent financing, including such Estoppel Certificates, Subordination Agreements, and/or Non-Disturbance and Attornment Agreements, in customary form, as may be reasonably required by such Lenders.

#### **1.10 IMPROVEMENTS, MAINTENANCE AND REPAIR BY COMPANY**

- 1.10.1 In the operations of Company's activities within the Premises, Company will design, develop, construct, manage and maintain and repair the following:
  - 1.10.1.1 All leasehold improvements, including but not limited to grading, fencing, paving, lighting, roadways, parking lots, drainage, structures, all applicable permits, zoning requirements as required by Company for the operation of the Commercial Facilities in the conduct of the business as authorized by Section 1.4 (entitled USE OF PREMISES) of this Agreement. Notwithstanding the assumption of any of these responsibilities by a Sublessee, Company shall remain responsible to ensure all leasehold improvements are completed in accordance with this Agreement.
- 1.10.2 Commencement of construction of the Initial Improvements will be as soon as all approvals are obtained following the Approval Date of this Agreement.
  - 1.10.2.1 If Company has not Commenced Construction by the nineteenth (19th) month after the Approval Date, it will be a material breach of this Agreement and County will have the right of termination as defined in Section 2.15 (entitled TERMINATION BY COUNTY) of this Agreement. County agrees to give Company ninety (90) days prior written notice before executing its right to terminate this Agreement. County agrees not to exercise its right to terminate until any Lender has been given its rights to cure or foreclose on Company as provided in Section 2.19 (entitled FINANCING) of this Agreement.
- 1.10.3 Subject to Section 1.10.3.1 below, the date of completion of the Initial Improvements will be on or before the first (1<sup>st</sup>) day of the thirty-seventh (37th) month following the Approval Date.
  - 1.10.3.1 In the event the Initial Improvements are not completed within such thirty-six (36) months due to circumstances beyond the control of Company, County, through its CDR, may extend the completion of the Initial Improvements

deadline for a period not to exceed six (6) months. In no event, however, will the extension period be longer than the commensurate time affected by the circumstances beyond the control of Company.

- 1.10.3.2 Should the deadline for completion of the Initial Improvements not be extended as provided above or if the Initial Improvements are not completed by the time frame allowed in such extension, County may declare this failure to perform a material breach of this Agreement and County will have the right to terminate set forth in Section 2.15 (entitled TERMINATION BY COUNTY) of this Agreement. County agrees to give Company ninety (90) days prior written notice before executing its right to terminate this Agreement. County agrees not to exercise its right to terminate until any Lender has been given its rights to cure or foreclose on Company as provided in Section 2.19 (entitled FINANCING) below.
- 1.10.3.3 If, at the end of such thirty-six (36) months (as such period may be extended as provided above), Company has not completed the Initial Improvements proposed for the Premises, then Company forfeits any rights to lease and develop the remaining undeveloped portion of the Premises (the "Undeveloped Portion"). Upon ninety (90) days written notice to Company of its intent, County will have the right to enter and occupy the Undeveloped Portion. County agrees not to exercise this right until any Lender has been given its rights to cure Company's default under this Agreement or foreclose its mortgage or deed of trust, as provided in Section 2.19 (entitled FINANCING) of this Agreement. A modified Exhibit "B," excluding the Undeveloped Portion, will then be prepared by Airport Engineering and verified by an exchange of correspondence. Such modified Exhibit "B" will be attached hereto and made a part hereof in replacement of the current Exhibit "B" to this Agreement.
- 1.10.4 Company will construct and install the following, each of which will be considered a Project Cost:
  - 1.10.4.1 Underground utility lines and connections. Company's expense will include all connection fees or all other fees.
  - 1.10.4.2 All leasehold improvements including, but not limited to, grading, fencing, paving, lighting, roadways, parking lots, drainage and structures which are required by Company in its conduct of business as authorized under Section 1.4 (entitled USE OF PREMISES) below.
- 1.10.5 Maintenance is understood and agreed to include all janitorial services and requirements and daily routine Premises cleanup, and all dust mitigation requirements.
- 1.10.6 All improvements or alterations by Company will be in accordance with the Clark County Code and all other applicable governmental rules and regulations. The shell drawings for the Initial Improvements are also subject to the prior written approval of CDR, if so requested in writing by CDR, prior to the approval of the shell drawings by County's Building Department. In the event of a default hereunder by Company, Company will provide County copies of all the following documents which are in Company's possession: as-built drawings of all improvements, along with a certification of construction costs for

all permanent improvements.

- 1.10.7 During the term or any extension of this Agreement, Company may, as a Project Cost with prior written approval of CDR, add to or alter the Initial Improvements at any time subject to the applicable provisions of this Section 1.10. Any such addition or alteration will be performed in a workmanlike manner in accordance with all applicable governmental regulations and requirements and will not weaken or impair the structural strength or reduce the value of the Premises or improvements thereon.
- 1.10.8 Company will be responsible as a Maintenance and Operation expense for the removal and disposal of garbage, debris, contaminants and any other waste material (whether solid or liquid) arising out of its occupancy of the leased Premises or out of its operation. Such removal will conform with all governmental requirements and regulations as more fully described hereinafter in Section 3.22 (entitled ENVIRONMENTAL POLICY) below.
- 1.10.9 Should Company fail to perform its maintenance and repair responsibilities, County may, but is not obligated to, provide maintenance and make repairs thereon and thereto, upon thirty (30) days prior written notice of its intent to do so; except in case of emergency for which no notice is necessary. Company shall reimburse County for any such reasonable amounts as billed, plus a ten percent (10%) administrative fee. Company may then charge such costs to the project as a maintenance expense.
- 1.10.10 In addition to this Agreement, County may enter into other ground lease agreements on substantially similar terms with affiliates of Company (the "Company Affiliates") for the development of other real property owned or controlled by County on or in the vicinity of the Airport (the "Related Lease Agreements"). Notwithstanding any language to the contrary contained in this Agreement, Company may, with CDR's prior written consent, alter the boundary lines of the Premises under this Agreement, and under the Related Lease Agreements, and reorder the sequence and timing of the commencement of construction of the Commercial Facilities under this Agreement and under the Related Lease Agreements; provided, however, that in no event shall such altering and/or reordering excuse Company or any of the Company Affiliates from fulfilling their obligations under this Agreement or under the Related Lease Agreements.
- 1.10.11 The Company shall submit a site plan ("Site Plan") for the proposed Premises, including all areas that have previously been the subject of an exercise of the lease option granted in the Lease Option Agreement, to the CDR no later than the final Approval Date of this Agreement by the Board of County Commissioners. In addition, Company shall submit an updated Site Plan in connection with any proposed amendment to this Agreement.

## **1.11 CONSTRUCTION STANDARDS, RULES AND REGULATIONS**

All Initial Improvements by Company will be in accordance with the Clark County Code and all other applicable governmental rules and regulations.

Further, design and construction specifications and documents must be reviewed by County Department of Building and Zoning prior to the issuance of a building permit and will be subject to any statute, ordinance, rule or regulation of any other applicable governmental agency, department or authority whether Federal, State or local.

## 1.12 APPROVALS TO BE REASONABLY GIVEN

It is understood and agreed that all provisions of this Agreement which require approval by or the consent of the County or CDR, except those that are specifically noted as "sole" discretion (which still require responses in a timely manner), will receive timely response and such approvals or consents will not be unreasonably withheld, conditioned or delayed.

## ARTICLE II

### 2.1 ASSIGNMENT

2.1.1 Company will not assign its rights or duties hereunder or any estate created hereunder, in whole or in part, except with the prior written consent of County. County agrees to provide such consent if the proposed Assignee presented is a "proper and fit" person or entity, which means one having (1) demonstrated experience in the management of comparable commercial real estate properties (i.e., at least five (5) years of such management experience or a contractual relationship with a manager with such minimum experience), and (2) financial resources sufficient, in County's reasonable business judgment, to be financially secure to perform Company's obligations hereunder (i.e., having a net worth of at least Two Million Dollars (\$2,000,000) as increased annually according to the percentage increase during the preceding year in the Consumer Price index for all urban wage earners and clerical workers [CPI-W] U.S. average all items prepared by the Bureau of Labor Statistics of the United States Department of Labor, with such increase not to exceed four percent (4%)). Further, any such assignment will be specifically subject to all provisions of this Agreement. Except as provided below in this Section 2.1.1, any assignment by Company without County's consent is void. Notwithstanding the above, if the proposed Assignee is an institutional investor having a net worth of at least Twenty Million Dollars (\$20,000,000) or an entity owned or controlled, directly or indirectly, by such an institutional investor, no prior written consent of County is required, but County shall be provided written notice of any such assignment within thirty (30) days following its effective date.

2.1.1.1 Any voluntary transfer of fifty percent (50%) or more of Company's equity interest will be deemed an assignment.

2.1.1.2 Before any assignment will become effective, the Assignee will, by written instrument, assume and agree to be bound by the terms and conditions of this Agreement during the remainder of the term thereafter. When seeking consent to an assignment hereunder, Company will submit a copy of the document or instrument of assignment to County. Any assignment will not release Company from its obligations under this Agreement arising prior to the date of assignment.

2.1.1.3 Any transfers by the equity owners of Company or the equity owners of the equity owners of Company to each other or to other related parties for estate planning purposes will not be considered an assignment hereunder. For purposes of this Section 2.1 (entitled ASSIGNMENT), "related parties" shall mean, in the case of individuals, any persons related by blood or marriage within the second degree of consanguinity, and in the case of legal entities, entities that control, are controlled by or are under common control with each other. Company shall

notify CDR, in writing, of any such actions.

## **2.2 SUBLEASING AND LICENSING**

Company will not sublease, rent to, or permit any persons, firms or corporations to occupy any part of the leased Premises without having first complied with the following terms and conditions:

2.2.1 Any arrangements must be in the form of a written instrument and must be specifically for purposes and uses of the Premises as authorized under this Agreement and subject to the provisions of this Agreement.

2.2.1.1 Consistent with Section 1.5.2 above, all Subleases are to be entered into using the standard form agreement attached hereto as Exhibit "C" and incorporated herein by reference; provided, however, that in the course of negotiating the final terms of a particular Sublease, Company may make commercially reasonable revisions and modifications to the standard form agreement as required to consummate the transaction, subject to the terms of Section 2.2.1.4 below.

2.2.1.2 Any arrangements for the leasing of space which are not based on the use of the standard form agreement approved in accordance with Section 1.5.2 above must receive the prior written approval of CDR.

2.2.1.3 All license agreements of Company shall be entered into using the standard form of license agreement attached hereto as Exhibit "D" ("License Agreement") and incorporated herein by reference; provided, however, that in the course of negotiating the final terms of a particular License Agreement, Company may make commercially reasonable revisions and modifications to the approved form of agreement as required to consummate the transaction, subject to the terms of Section 2.2.1.4 below.

2.2.1.4 CDR must approve any materially adverse change to the standard form of Sublease or License Agreement. For purposes of this Section 2.2.1.4, the term "materially adverse change" shall mean any change to the forms of Sublease or License Agreement attached hereto that would amend those provisions (a) dealing with the obligations of a sublessee or licensee to comply with the pertinent provisions of this Agreement, or (b) which incorporate by reference any of the terms and provisions of this Agreement.

2.2.2 All Subleases and License Agreements of Company will be subject to all terms and conditions of this Agreement.

## **2.3 ATTORNMENT**

2.3.1 In the event Company ceases to be a party to this Agreement and perform its obligations hereunder to County, other than by a transfer of interest and novation approved in writing by County, all Sublessees will recognize County as the successor to Company, and render performance hereunder to County as if the Sublease were executed directly between County and the Sublessees; provided, however, County agrees that so long as Sublessees are not in default, County agrees to provide quiet enjoyment to the Sublessees and County agrees to be bound by all of the terms and conditions of such Sublease. County shall execute a separate Subordination, Non-Disturbance and Attornment Agreement if so

required by any Sublessee.

2.3.2 All Subleases of Company will provide that:

If by reason of a default on the part of Company as lessee in the performance of the terms of the provisions of the underlying Agreement, the underlying Agreement and the leasehold estate of Company as lessee thereunder is terminated by summary proceedings or otherwise in accordance with the terms of the underlying Agreement, all Sublessees will attorn to County and recognize County as lessor; provided, however, County agrees that so long as such Sublessees are not in default, County agrees to provide quiet enjoyment to the Sublessees and to be bound by all the terms and conditions of such Sublease.

2.3.3 In the event this Agreement is terminated for any reason, all Sublessees will be liable to County for their payment of rents and fees.

**2.4 SUCCESSORS AND ASSIGNS**

All covenants and conditions of this Agreement will extend to and bind the legal representatives, successors and assigns of the respective parties hereto and all agreements with Assignees will include all provisions contained in this Agreement.

**2.5 CONTROL OF PERSONNEL**

Company will, in and about the leased Premises, exercise reasonable control over the conduct, demeanor and appearance of its employees, agents and representatives and the conduct of its contractors and suppliers. Upon objection from CDR to Company concerning the conduct, demeanor or appearance of such persons, Company will, within a reasonable time, remedy the cause of the objection.

**2.6 SIGNS AND/OR WORKS OF ART**

2.6.1 Company will not erect, install, operate, nor cause or permit to be erected, installed, or operated upon Airport property (other than the Premises), any signs or other similar advertising devices for its own business.

2.6.2 Any identifying signs erected, installed, operated or attached to the leased Premises must comply with all applicable laws, rules and regulations, pursuant to Section 3.21.2 below (including those promulgated by County and administered by any applicable County department), but any such signs need not be approved by CDR.

2.6.3 Company will not commission, install or display any work of art without the prior written approval of CDR and without a full written waiver by the artist of all rights under the Visual Arts Rights Act of 1990, 17 U.S.C. Sections 106A and 113.

**2.7 ENTRY AND INSPECTION OF PREMISES**

County, its authorized officers, employees, agents, contractors, subcontractors or other representatives will have the right to enter upon the Premises for the following reasons by providing at least two (2) business days prior written notice and while accompanied by a representative of Company (except in an emergency, in which case County will provide concurrent or reasonable subsequent notice specifying the nature of the emergency and the need for immediate entry).

2.7.1 To inspect at reasonable intervals during regular business hours (or any time in case of emergency) to determine whether Company has complied and is complying with the terms and conditions of this Agreement.

2.7.2 For the purpose of inspecting the Premises and for fulfilling County's obligations hereunder, provided however, that such entry will be at such times and in such manner as to not unreasonably interfere with the operations of Company or its Sublessees. County may, however, enter at any time for emergency repairs or maintenance without responsibility to Company for loss of business.

No such entry by or on behalf of County upon the Premises will cause or constitute a termination of this Agreement nor be deemed to constitute an interference with the possession thereof nor constitute a revocation of or interference with any of Company's rights in respect thereof for exclusive use of the leased Premises.

The inspections contemplated by the parties to this Agreement, pursuant to this Section, are for the sole benefit of the parties. No benefit to any third party is contemplated nor intended.

## **2.8 INTENTION OF PARTIES**

This Agreement is intended solely for the benefit of County and Company and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large, except for those provisions of this Agreement specifically applicable to and for the benefit of a Lender. Any work done or inspection of the Premises by County is solely for the benefit of County and Company.

## **2.9 LIENS**

Company shall take or cause to be taken all steps that are required or permitted by law in order to avoid the imposition of any lien upon the Premises or any improvements thereon.

Should Company cause any improvements to the premises, Company shall cause any contract with any contractor, designer or other person providing work, labor or materials to the Premises to include the following clause: "Contractor agrees on behalf of itself, its subcontractors, suppliers and consultants and their employees, that there is no legal right to file a lien upon County-owned property, and will not file a mechanic's lien or otherwise assert any claim against County on account of any work done, labor performed or materials furnished under this Agreement. Contractor agrees to indemnify, defend and hold County harmless from any liens filed upon County's property and shall promptly take all necessary legal action to ensure the removal of any such lien at Contractor's sole cost."

However, should any lien be placed on the Premises or any improvements thereon, Company will cause to be removed any and all liens of any nature including, but not limited to, tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Company or any of its contractors or subcontractors upon Company's Premises or arising out of or because of the performance of any work or labor to it or them at said Premises or the furnishing of any materials to it or them for use at said Premises. Should any such lien be made or filed, Company will bond against or discharge the same within thirty (30) days after written request by CDR. The cost of bonding against or discharging any such liens relating to the construction or installation of Commercial Facilities shall be a Project Cost.

## **2.10 TAXES, LICENSES AND PERMITS**

Company will promptly, as a Project Cost, pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation and lease of Premises hereunder, including any real property taxes. Company shall not be responsible for any of County's franchise, inheritance, income or other tax levied on County or County's right to receive income from the Premises. Company may elect, however, at its own cost and expense to contest any such tax, excise, levy or assessment. Company will keep current municipal, state or local licenses or permits required for the conduct of its business.

## **2.11 INDEMNITY**

Company agrees to indemnify and hold County forever harmless from and against all liability, loss, demand, judgments or other expense (including, but not limited to, defense costs, expenses and reasonable attorney fees) imposed upon County by reason of injuries or death of persons (including wrongful death) and damages to property caused during and because of Company's use or occupancy of Airport property or the leased Premises or any actions or non-actions of Company, its officers, employees, agents, or other representatives, including movement of vehicles, provided, however, that such indemnity will not apply as to any negligent act or omission of County, its employees, agents or representatives.

## **2.12 INSURANCE AND BONDS**

### **2.12.1 Bonds**

2.12.1.1 County shall waive the requirement for Company's general contractor to furnish Bonds unless County provides reasonable evidence that such general contractor(s) does not possess the financial ability or experience/reputation to complete the faithful performance of the construction of the tenant improvements or installation of equipment. Otherwise, Company will require its general contractor to furnish Bonds covering the faithful performance of the construction of the tenant improvements or installation of equipment, payment of all obligations arising thereunder to take effect upon completion of the project, in such a form and amount as CDR may approve. Bonds may be secured through the Contractor's usual sources provided the Surety is authorized and licensed to do business in the State of Nevada. Company will be allowed to name any Lender as an additional obligee under any such bond.

2.12.1.2 If required by Section 2.12.1.1 above, prior to execution of a construction contract, and not later than ten (10) calendar days after notification of award, Company will require its contractor to furnish the following Bonds to CDR:

- (a) Labor and Material Payment Bond in the amount of one hundred percent (100%) of the contract price.
- (b) Payment and Performance Bond in the amount of one hundred percent (100%) of the contract price.

CDR may waive or modify the requirements of this Section 2.12.1 upon written request by Company.

- 2.12.1.3 The Bonds referred to in Section 2.12.1.1 and 2.12.1.2 above will be written on the Payment and Performance Bond and Labor and Material Payment Bond forms approved by CDR.
- 2.12.1.4 Company will require its contractor to require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of his power of attorney.
- 2.12.1.5 Any Labor and Material Payment Bond, Performance Bond, or Guaranty Bond prepared by a licensed nonresident agent must be countersigned by a resident agent as per the provisions of N.R.S. 680A.300.

## 2.12.2 Insurance

- 2.12.2.1 Prior to the commencement of any improvement or equipment installation on or about the Premises, Company will require that its construction contractor procure and maintain insurance for such construction and installation protecting both Company and County as well as the construction contractor. Such insurance will provide coverage and limits as are determined customary in the industry by CDR and Company. Such insurance will include, but is not limited to:
  - General Liability on an "occurrence" basis only
  - Automobile Liability
  - Builder's Risk equal to the maximum probable loss covering the project and all materials and equipment.
- 2.12.2.2 Company's (or its Contractor's) insurance will be primary as respects County and Company, their officers, employees and volunteers acting as agents of County (hereinafter referred to as "volunteers"). Any other coverage available to County, its officers, employees and volunteers will be excess over the insurance required by the contract and shall not contribute with it.
- 2.12.2.3 Company will maintain worker's compensation in the amounts and form as required by the Nevada Industrial Insurance Act and the Nevada Occupational Diseases Act. Certificates evidencing the valid, effective insurance policies will be provided to and kept on file with CDR.
- 2.12.2.4 Company will keep insured with responsible insurance underwriters any improvements constructed by it upon and within the leased Premises to the extent of not less than one hundred percent (100%) of the full replacement cost of such improvements using the "all risk" form of protection (or comparable coverage) as acceptable to CDR. Company will be responsible for insuring against any rental protection resulting in loss of income or extra expense to Company.
- 2.12.2.5 Company will obtain and keep in full force and effect a policy(s) of general liability on an "occurrence" basis only and not "claims made." The coverage must be provided either on ISO Commercial General Liability form, an ISO Broad Form Comprehensive General Liability form, or equivalent, approved by CDR and Company. Any exceptions to coverage must be fully disclosed on the

required Certificate. If other than these forms are submitted as evidence of compliance, complete copies of such policy forms will be submitted to CDR within ten (10) days after notice to Company. Policies must include, but need not be limited to, coverages for bodily injury, property damage, personal injury, Broad Form property damage, premises and operations, severability of interest, products and completed operations, contractual and independent contractors, with no exclusions of coverage for liability resulting from the hazards of explosion, collapse, and underground property damage.

Company will maintain limits of no less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury (including death), personal injury and property damage.

- 2.12.2.6 Company will furnish Automobile Liability coverage for claims for damage because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicles whether owned, hired or non-owned. Company will maintain limits of no less than One Million Dollars (\$1,000,000) combined single limit "per accident" for bodily injury and property damage.
- 2.12.2.7 All required insurance coverage as stated in this Section 2.12.2 will be evidenced by a current Certificate(s) of Insurance. Such Certificates will include, but will not be limited to, the following:
  - 2.12.2.7.1 All Certificates for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada.
  - 2.12.2.7.2 Each insurance company's rating as shown in the latest Best's Key Rating Guide will be fully disclosed and entered on the required Certificates of Insurance. If the insurance company providing the coverage has a Best rating of less than A-/VIII, the adequacy of the insurance supplied by Company (or its contractor), including the rating and financial health of each insurance company providing coverage, is subject to the approval by CDR. Such approval will not be unreasonably withheld.
  - 2.12.2.7.3 Company (or its contractor) will furnish renewal Certificates for the required insurance during the period of coverage required by this Agreement. Company (or its contractor) will furnish renewal Certificates for the same minimum coverages as required in this Agreement. If such certificate(s) are not provided in a timely manner, CDR may declare Company (or its contractor) in default of its obligation under this paragraph, subject to the cure rights contained in Sections 2.15.2 and 2.19 below.
  - 2.12.2.7.4 County, its officers, employees and volunteers must be covered as additional insureds with respect to liability arising out of the activities by or on behalf of the named insured in connection with this Agreement. All property insurance policies will contain a waiver of subrogation clause in favor of Clark County.

- 2.12.2.7.5 Each insurance policy supplied by Company (or its contractor) must be endorsed to provide that the amount of coverage afforded to County by the terms of this Agreement will not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days' prior written notice by mail.
- 2.12.2.7.6 Any deductible, as it relates to coverage provided under this Agreement, will be fully disclosed on the Certificates of Insurance. Any deductible provided will be reasonable and customary for this type of risk.
- 2.12.2.7.7 If aggregate limits are imposed on the insurance coverage, then the amounts of such limits must be not less than Two Million Dollars (\$2,000,000) per occurrence or per accident. All aggregates must be fully disclosed and the amount entered on the required certificate of insurance. Company's insurer must notify CDR of any erosion of the aggregate limits. The "per occurrence" limits of insurance required herein must be maintained in full, irrespective of any erosion of aggregate. A modification of the aggregation limitation may be permitted if it is deemed necessary and approved by CDR and Company.
- 2.12.2.8 If Company fails to maintain any of the insurance coverages required herein, then County will have the option to declare Company in breach, subject to the cure rights contained in Sections 2.15.2 and 2.19 below, or CDR may purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverages may be maintained. Company is responsible for any expenses paid by County to maintain such insurance and County may collect the same from Company.
- 2.12.2.9 The insurance requirements specified herein do not relieve the Company (or its contractor) of its responsibility or limit the amount of its liability to the County or other persons and the Company is encouraged to purchase such additional insurance as it deems necessary.
- 2.12.2.10 Company (or its contractor) is responsible for and must remedy all damage or loss to any property, including property of County, caused in whole or in part by Company or its contractor, any subcontractor or anyone employed, directed or supervised by Company. Company is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with this Agreement.
- 2.12.2.11 The minimum insurance limits set forth in this Section 2.12.2 are sufficient as of the anticipated Approval Date. It is understood that due to the effect of inflation and/or other factors, it may be necessary for County to raise the minimum insurance limits to protect its interests. Company hereby agrees to maintain such insurance limits as may be reasonably required by County under the terms of this Agreement; provided, however, that any increases in limits will not exceed the average increase within the insurance industry in the State of Nevada for

comparable insurance coverage.

### **2.13 FIRE PROTECTION**

From time to time and as often as reasonably required by County, Company will conduct appropriate tests of any fire extinguishing apparatus located on the Premises. Company or its Sublessees will keep in proper functioning order all fire fighting equipment located on the Premises.

### **2.14 DAMAGE AND DESTRUCTION**

In the event of damage, destruction, or substantial loss which materially impairs Company's ability to operate or loss to any improvements constructed upon the Premises, by any cause, which damage, destruction or loss is not capable of being repaired within sixty (60) days, Company will have the option to terminate this Agreement which option will be exercisable by written notice to County within ninety (90) days after the occurrence of such event. Any such termination by Company shall require the prior written consent of any Lender. In the event Company elects to terminate this Agreement based upon such damage, destruction, or substantial loss and Company or its employees or agents cause such damage, destruction or substantial loss to occur, Company will be liable for and will pay for all cleanup or demolition of the Premises necessary to make the Premises ready for repair, replacement, restoration or rebuilding which is not otherwise covered by insurance. In the event Company does not exercise such option, or in the event said damage, destruction or loss is capable of being repaired within sixty (60) days, then Company will promptly repair, replace, restore or rebuild said improvements.

### **2.15 TERMINATION BY COUNTY**

#### **2.15.1 Default by Company**

Company will be considered in default as Lessee under this Agreement in the event of any one or more of the following occurrences:

- 2.15.1.1 The liquidation under federal bankruptcy statutes which causes the discontinuance of the fulfillment of any required provision of this Agreement by Company.
- 2.15.1.2 Company fails to pay the rental charges or other money payments required by this Agreement when the same are due and the continuance of such failure for a period of ten (10) days after written notice thereof from CDR to Company.
- 2.15.1.3 Company voluntarily abandons any of the Premises leased or assigned to it or discontinues the conduct and operation of its business at the Premises.
- 2.15.1.4 Company will be considered in default of this Agreement if Company fails to fulfill any of the other terms, covenants, or conditions set forth in this Agreement if such failure continues for a period of more than thirty (30) days unless cured as provided below.

#### **2.15.2 Cure**

Company will be considered in default of this Agreement if Company fails to fulfill any of the terms, covenants, or conditions set forth in this Agreement if such failure continues for

a period of more than thirty (30) days (except failure to pay rental charges as described in 2.15.1.2 above) after delivery by CDR of a written notice of such breach or default, except if the fulfillment of its obligation requires activity over a period of time, and Company will have commenced in good faith to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and continues such performance without interruption except for causes beyond its control.

### 2.15.3 Termination For Default By Company

Subject to the lender protection provisions of Section 2.19 (entitled FINANCING) below, if default is made by Company as described in Section 2.15.1 or 2.15.2 hereinabove, and such default is not cured as provided in such sections, County may elect to terminate this Agreement with thirty (30) days' written notice to Company.

2.15.3.1 If County elects to terminate this Agreement, it will in no way prejudice the right of action for rental arrearages owed by Company.

2.15.3.2 In the event of any termination for default by Company, County will have the right to enter upon the Premises and take possession of same. Redelivery and disposal of improvements will be as described in Section 2.18 (entitled REDELIVERY AND DISPOSAL OF IMPROVEMENTS AT TERMINATION) of this Agreement.

## 2.16 TERMINATION BY COMPANY

### 2.16.1 Default By County

County will be considered in default as lessor under this Agreement if County fails to fulfill any of the terms, covenants or conditions set forth in this Agreement if such failure shall continue for a period of more than thirty (30) days after delivery by Company of a written notice of such breach or default.

### 2.16.2 Cure

County will not, however, be considered in breach of this Agreement if the fulfillment of its obligation requires activity over a period of time and County has commenced in good faith to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and continues such performance without interruption except for causes beyond its control.

### 2.16.3 Termination For Default By County

If default is made by County as described in Section 2.16.1 above, Company may elect to terminate this Agreement with thirty (30) days' written notice to County.

2.16.3.1 In the event of the termination for default by County, redelivery and disposal of improvements will be as described in Section 2.18 (entitled REDELIVERY AND DISPOSAL OF IMPROVEMENTS AT TERMINATION) of this Agreement.

2.16.3.2 In the event of any termination for default by County, it will in no way prejudice

the right of action for rental arrearages owed by Company.

2.16.3.3 Company reserves the rights to any remedies it may have at law or in equity arising from County's breach of this Agreement.

## **2.17 WAIVERS AND ACCEPTANCE OF FEES**

2.17.1 No waiver of default by either party hereto of any of the terms, covenants or conditions hereof to be performed, kept or observed will be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, conditions herein contained to be performed, kept and observed. Neither party hereto may waive any provisions regarding Lender's rights without such Lender's prior written consent.

2.17.2 No acceptance of fees or other money payments in whole or in part for any period or periods during or after default of any of the terms, conditions or covenants to be performed, kept or observed by Company will be deemed a waiver on the part of County of its right to terminate this Agreement on account of such default.

2.17.3 Subject to the cure rights contained in Section 2.15.2 above and in Section 2.19 below, no acceptance of fees or other money payments in whole or in part for any period or periods during or after default of any of the terms, conditions or covenants to be performed, kept or observed by County will be deemed a waiver on the part of Company of its right to terminate this Agreement on account of such default.

## **2.18 REDELIVERY AND DISPOSAL OF IMPROVEMENTS AT TERMINATION**

2.18.1 Company covenants that at the termination of this Agreement, howsoever caused, it will quit and surrender such leased Premises in good repair and condition, excepting reasonable wear and tear, acts of God, the public enemy or the action of the elements.

2.18.2 Upon termination of this Agreement howsoever caused, County will require Company to remove from the leased Premises, within thirty (30) days of termination, all equipment, trade fixtures and personal property belonging to Company.

For purposes of this Section 2.18.2, the words "equipment, trade fixtures and personal property" will include, but not be limited to, signs (electrical or otherwise) used to advertise or identify Company's business, all equipment used in connection with the conduct of its business whether or not such equipment is attached to the Premises; any other mechanical device; and all other miscellaneous equipment, furnishings and fixtures installed on or placed on or about the leased Premises and used in connection with Company's business thereon.

2.18.3 Upon termination of this Agreement, howsoever caused, County will have option to require either of the following by giving written notice prior to the date of termination:

2.18.3.1 Company will, commencing within thirty (30) days following the termination date, remove all or part (as determined by CDR) of the permanent improvements made to or placed upon the Premises by Company. Company agrees that it will use due diligence in completing the removal as may be required herein.

2.18.3.2 Company will leave in place all or part, as determined by CDR, of the permanent

improvements whereupon title and ownership will pass from Company and vest in County without any further consideration required from County. Company agrees that it will immediately provide any transfers of title to County as may be required.

2.18.3.3 If no written notice is received by Company from County prior to termination of this Agreement pursuant to this Section 2.18.3, Section 2.18.3.2 above will apply.

For purposes of this Section 2.18.3, the words "permanent improvements" means all property of Company upon the Premises which will include, but not be limited to, paving, buildings, structures and related appurtenances, wall coverings, carpeting, draperies and light fixtures.

## **2.19 FINANCING**

2.19.1 Notwithstanding anything to the contrary contained in this Agreement, Company will have the right at any time during the term hereof to execute and deliver to any or all of its Lenders any documents which will operate as collateral security for any Loan or Loans made, even if such document or documents result in a form or type of conveyance or assignment of the leasehold interest demised hereunder. It is hereby agreed that Company or any such Lender(s) will have the right to immediately record such document or document(s) with an appropriate public official or officials. Company agrees that copies of all such documents of conveyance or assignment as contained in this Section 2.19 will be provided to CDR forthwith. Any financing arrangement which hypothecates any interest of Company in or under this Agreement or any conveyance or assignment to be made by Company of any interest in or under this Agreement must have the prior written consent, of CDR, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Company will have the right to refinance the outstanding principal balance of any previously consented Loan with any institutional lender at prevailing market interest rates without County's consent, provided, in the case of an existing term loan, such refinancing does not exceed the remaining original amortization period of the previously consented Loan. County's consent to the initial or subsequent assignments to a Lender or purchaser will be in accordance with Section 2.1 (entitled ASSIGNMENT) of this Agreement. Any Lender which will succeed to Company's interest hereunder will so succeed subject to all the terms and conditions of this Agreement.

2.19.2 County will deliver to any such Lender written notice of any default of Company under the terms of this Agreement and said notice will specify the nature of the default. Before terminating this Agreement, County will allow such Lender to cure or commence to cure any default of Company in accordance with Sections 2.15.2 above and this Section 2.19. The time period to cure any default of Company will commence when said notice is delivered to Lender. Lender and any person designated by Lender shall have and are hereby granted the right to enter upon the Premises at any time and from time to time for the purpose of taking any cure action as described herein. In the event Company fails to timely cure a default after receipt of written notice and expiration of any applicable cure period, County agrees to provide any Lender with a second written notice and provide such Lender with an additional thirty (30) day cure period. County will not have the right to exercise any remedies under this Agreement so long as Lender is diligently prosecuting to complete a cure of any default. If such default is of a nature which is incapable of being cured by Lender, County agrees not to exercise its remedies arising from such default if (a)

Lender notifies County in writing within such thirty (30) day cure period that Lender intends to foreclose its mortgage and Lender commences and diligently pursues such foreclosure; and (b) Lender makes all payments due by Company under this Agreement through the date of foreclosure, to the extent the amount of such payments can be ascertained by Lender.

2.19.3 Any default by Company in the payment of money as required under the terms of this Agreement may be cured by Lender in accordance with the terms of Sections 2.15.2 of this Agreement (and subject to the notification and cure provisions of this Section 2.19), and County will accept any such payment or cure from such Lender during the term of Lender's Loan to Company.

2.19.3.1 Should Company default under the terms of this Agreement and should the default be such that it cannot be cured by the payment of money, County will accept payments of rent from such Lender and this Agreement will not terminate, but will remain in full force and effect, pending Lender's cure of such default within the time periods described herein or resort to foreclosure or sale proceedings under its deed of trust or other security instruments.

2.19.4 Notwithstanding the provisions of Section 2.19.3.1 above, should Company default under the terms of this Agreement and should the default be such that it cannot be cured by the payment of money and the default (in the sole judgment of County's Designated Representative) affects the security or safety of the Premises and if Company's Lender does not wish this Agreement to terminate, then upon written notice from County such Lender will have the option to cure immediately or to commence to cure the default in accordance with Section 2.15.2 of this Agreement. However, if the nature of the default requires action before the cure time specified in Section 2.15.2 above, the County's Designated Representative may elect to cure the default. County will then present for payment to Company and Lender a detailed and itemized invoice of County's reasonable expenses incurred in curing the default.

2.19.5 Subject to the rights of a Lender as otherwise set forth in this Section 2.19 (including, without limitation, those contained in Section 2.19.13 below), and notwithstanding any other provisions of this Agreement, provided that either Company or Lender pays the full amount of the invoice described in Section 2.19.4 above within thirty (30) days following receipt, this Agreement will not terminate sooner than one (1) year from the date of County's notice of default to Company and Lender, pending such Lender's resort to any foreclosure or sale proceedings under its deed of trust or other security instrument.

2.19.6 If any default has been cured by a Lender or Assignee, County agrees that upon completion of any foreclosure proceedings or sale under the deed of trust or other security securing the Loan, or upon delivery of a deed in lieu of foreclosure, Lender or Assignee at such sale or any heir, successor, or Assignee subsequent to such sale will be recognized by County as the lessee under the terms of this Agreement for all purposes for the remaining term hereof, subject to County's approval of such Assignee, to the extent such approval is required in Section 2.19.11.1 below. The leasehold interest of Lender or such Assignee will not be adversely affected or terminated by reason of any non-monetary default occurring prior to the completion of such proceedings or sale, provided such default has been promptly remedied, or if such default requires possession to cure, provided such Lender promptly

commences to cure upon taking possession of the Premises.

- 2.19.7 Such Lender will not become personally liable under the terms and obligations of this Agreement unless and until it assumes the obligations and is recognized by County as lessee under this Agreement and will be liable only so long as such Lender maintains ownership of the leasehold interest or estate and recourse to such Lender shall be limited solely to Lender's interest in the Premises.
- 2.19.8 Within thirty (30) days after a written request by Company or any Lender (but not more than once in any calendar year, except in case of a proposed financing or refinancing), County, through its Designated Representative, will execute, acknowledge and deliver to Company or such person or entity as Company designates, a certificate stating:
- (a) that this Agreement is the only agreement between County and Company concerning the leased Premises and is unmodified and in full force and effect in accordance with the terms (or if there have been modifications, that this Agreement is in force and effect as modified, and identifying the modification agreements, or if this Agreement is not in full force and effect, that it is not);
  - (b) the commencement and expiration dates of this Agreement and the date to which rental has been paid to County under this Agreement;
  - (c) whether or not there is an existing default by Company in the payment of rental or any other sum of money under this Agreement, and whether or not there is any other existing default by either party under this Agreement with respect to which a notice of default has been served, and if there is such a default specifying its nature and extent;
  - (d) whether or not there are any set-offs, defenses or counterclaims against enforcement of the obligations to be performed by County under this Agreement; and
  - (e) such other information that a Lender or Assignee may reasonably require.
- 2.19.9 The bankruptcy or insolvency of Company will not operate or permit County to terminate this Agreement as long as all rent or other monetary payments required to be paid by Company continue and other required obligations are performed in accordance with the terms of this Agreement. In the event that County or Company terminates this Agreement, whether as a result of the rejection of this Agreement pursuant to the federal Bankruptcy Code or otherwise, then, provided that Lender has cured any monetary defaults under this Agreement, and provided further that County has not elected to assume any loan obligations, as provided in Section 2.19.11 below, Lender shall have the right within thirty (30) days after termination of this Agreement to request in writing a new lease, in which case County shall execute a new lease covering the Premises for the remaining term under same terms and conditions as set forth herein.
- 2.19.9.1 The rejection of this Agreement by a trustee-in-bankruptcy of County shall not affect or impair the lien of any mortgage or deed of trust in favor of Lender or Lender's rights with respect to this Agreement. In addition to the leasehold estate created hereunder in favor of Company and all other interest specified in

any mortgage or deed of trust in favor of Lender, the lien of such mortgage or deed of trust shall attach to, and shall encumber Company's right to use and possession of the Premises if a trustee-in-bankruptcy of County rejects this Agreement. This Agreement shall not be treated as terminated by reason of County's rejection of this Agreement pursuant to Subsection 365(h)(1) of the federal Bankruptcy Code without Lender's prior written consent, and any such purported termination without Lender's prior written consent shall be null and void and of no force and effect.

2.19.10 To the extent any of the other terms of this Agreement are inconsistent with the terms of this Section 2.19, this Section 2.19 will control.

2.19.11 Any uncured material default by Company under any approved financing will be deemed a default under this Agreement. Such default, however, will be deemed and treated by County as a default not curable by Lender in accordance with Section 2.19.2 of this Agreement. In the event of any default by Company under any approved financing, County reserves the right to assume the financing obligations of Company under the Loan before Lender resorts to any foreclosure or sale proceedings under its deed of trust or other security instrument.

2.19.11.1 Following any foreclosure, deed in lieu of foreclosure, or other transfer in full or partial satisfaction of Lender's Loan (a "Foreclosure Transfer"), County shall recognize Lender or any Lender Affiliate (defined below) designated by Lender as an Assignee (in either case, a "Permitted Assignee"). Such Permitted Assignee shall be the ground lessee under this Agreement without further consent or approval by County. In the event of a proposed assignment to an Assignee other than a Permitted Assignee, whether in connection with a Foreclosure Transfer or any subsequent assignment of the leasehold interest evidenced by this Agreement made by a Permitted Assignee (who shall have obtained such interest through a Foreclosure Transfer), County shall have the right to reasonably approve such Assignee as provided in Section 2.1.1 above. As used in this Section 2.19.11., "Lender Affiliate" means a corporation, limited liability company or other entity which controls, is owned or controlled by, or is under common ownership or control with such Lender and such Lender has a net worth of at least Twenty Million Dollars (\$20,000,000).

2.19.11.2 In the event Lender gives County forty-five (45) days' notice of a default by Company under any approved Loan and County declines the right to assume the financing obligations of Company under the Loan, the parties agree that the Permitted Assignee will be permitted to consider the total unpaid balance of the existing Loan on the date of either (a) the Permitted Assignee's assumption of this Agreement through foreclosure sale, or (b) if through a deed or assignment in lieu of foreclosure, on the date of the recording of such deed or instrument of assignment, as the equity contribution of such Permitted Assignee. Such unpaid balance of the existing approved Loan shall be the only allowable equity contribution balance upon assumption of this Agreement by such Permitted Assignee. Such equity contribution balance will be repaid upon the terms and in the manner provided in Section 1.7.1.2, as if such equity contribution had been made by Company.

In the event of a proposed assignment to an Assignee other than a Permitted

Assignee, whether in connection with a Foreclosure Transfer or any subsequent assignment of the leasehold interest evidenced by this Agreement made by a Permitted Assignee (who shall have obtained such interest through a Foreclosure Transfer), such Assignee will be permitted to consider only the initial acquisition price (net of any debt secured by the ground leasehold interest in the Premises) as the equity contribution (and any equity contribution balance of the Lender or Lender Affiliate will be disregarded and will not transfer to such other Assignee). Such equity contribution balance is to be repaid from all available Net Revenue with interest at a rate equal to an interest rate typical for comparable loans in this market until such time as such Assignee's total acquisition price is fully recovered.

Notwithstanding the above, if any Permitted Assignee or any subsequent third-party Assignee makes any other equity contribution to the Premises pursuant to Section 1.7.1.5 above, then such equity contribution will be repaid upon the terms and in the manner provided in Section 1.7.1.2 above, as if such equity contribution had been made by Company.

2.19.11.3 Subject to County's right to assume the financing obligations of Company under the Loan, before Lender resorts to any foreclosure or sale under this Section, in the event of a default under Lender's mortgage or deed of trust, Lender or Lender Affiliate shall have the right, after giving notice to County, to oust Company and take possession of the Premises in accordance with the terms of Lender's mortgage or deed of trust. Such ouster shall not constitute a termination of this Agreement, but shall be deemed an exercise of the assignment of this Agreement to Lender or Lender Affiliate, which assignment shall not require any further consent or approval by County.

2.19.11.4 Notwithstanding the above provisions of this Section 2.19 (entitled FINANCING) to the contrary, the following shall apply: (1) In the event any Lender forecloses and either a purchaser at the foreclosure sale or a subsequent assignee of such Lender acquires the leasehold estate under this Agreement, then, subject to any right by County to approve such purchaser or Assignee as provided in this Agreement, such purchaser or Assignee shall pay the same rental amount that would have been payable by Lender; (2) any Lender shall have the right to commence, but not complete foreclosure during the forty-five (45)-day period available to County to notify Lender that County shall assume the Loan (as provided in Section 2.19.11.2 above); and (3) if County assumes the Loan, County shall not take or permit any action to terminate this Lease or merge the ground leasehold estate into the fee estate prior to payment of all obligations owing in connection with the Loan. For purposes of this Section, "ground leasehold estate" shall mean the leasehold estate granted to Company by County pursuant to this Agreement.

2.19.12 Any mortgage, lien, encumbrance or deed of trust placed by County on the fee title to the Premises shall be subordinate to this Agreement (and any replacement to or amendment of this Agreement), any mortgage or deed of trust encumbering the leasehold estate in favor of Lender, and all Subleases and Licenses Agreements, whenever arising. County shall obligate the holder of any such fee mortgage, encumbrance, or deed of trust to execute and acknowledge any documentation requested in writing by Company or any Lender to

confirm such subordination.

- 2.19.13 In connection with Lender's cure rights in this Section 2.19, any Lender shall be allowed sufficient time necessary to complete any foreclosure action, including delays due to official restraint (including by law, process or injunction issued by a court), so long as such Lender is making payments required by this Agreement which can be reasonably determined prior to acquiring the Company's interest under this Agreement. Lender shall have the right to terminate foreclosure proceedings at any time if Company has cured all defaults under any Loan from Lender.
- 2.19.14 So long as the mortgage or deed of trust in favor of a Lender is in effect, there shall be no merger of the leasehold estate created by this Agreement into the fee simple estate in the Premises without the prior written consent of such Lender.
- 2.19.15 Any Lender shall have the right to participate in any settlement or adjustment of losses under insurance policies maintained by Company under this Agreement. Such Lender shall be named as a loss payee or additional insured, as applicable, in accordance with any Loan documents executed by Company, under the insurance policies required under this Agreement. In the event any proceeds of such insurance policies are to be distributed, County and Lender agree to be bound by the provisions of the Loan documents executed by Company in favor of Lender and approved by CDR concerning distribution of insurance proceeds.
- 2.19.16 Whenever in this Agreement, Company shall have the right to request any information, statements, documents, or anything else whatsoever from County, Lender shall have the right to request the same from County, and such information, statements, documents and other requested material shall thereafter be given to Lender as if Company had requested the same. In addition, County shall furnish Lender with copies of all notices of default and notices of intent served on Company under this Agreement concurrently with any delivery to Company. Such notices shall not be deemed delivered to Company until they are delivered to Lender.
- 2.19.17 In the event Lender succeeds to title to Company's leasehold estate through foreclosure or otherwise, all Subleases of the Premises shall run directly to Lender and all such Sublessees shall attorn and be permitted to attorn to Lender as the successor sublessor and perform their obligations to Lender as successor to Company under this Agreement as if the Sublease were executed directly between Lender and the Sublessee. In the event Lender succeeds to title to Company's leasehold estate through foreclosure or otherwise, all License Agreements of the Premises may, at the option of Lender, run directly to Lender and all such licensees shall, at the option of Lender, attorn and be permitted to attorn to Lender as the successor sublessor and perform their obligations to Lender as successor to Company under this Agreement as if the License Agreement were executed directly between Lender and the licensee. Provided County has elected not to assume the financing obligations of Company under the Loan as provided in Section 2.19.11 of this Agreement, County hereby agrees to subordinate County's own attornment rights with respect to any such Sublessee or licensee contained in this Agreement to the attornment rights of Lender.
- 2.19.18 County agrees to notify Lender and Company of any assignment, transfer, conveyance or sale of County's interest in this Agreement and/or the fee interest in the Premises and will furnish Lender and Company with the name and address of such assignee, transferee,

grantee or buyer.

2.19.19 Lender shall have the right to participate in any arbitration proceedings in connection with any matter under this Agreement materially affecting Lender's interest. Notwithstanding the foregoing, Lender shall not have the right to participate in any arbitration related to a proposed annual operating budget (as provided in Section 1.6 above).

## **2.20 RECOVERY OF PREMISES**

2.20.1 County may, in its unlimited discretion, at any time during the term of this Agreement or any extensions thereof, recover all or any part of the Premises for other Airport or public uses (except for commercial facilities purposes). Prior to the exercise of this power of recovery, County agrees to give Company one (1) year's prior written notice of its intention to exercise this power.

2.20.1.1 In the event of such recovery of the Premises by County (or other condemnation or recovery of all or substantially all of the Premises) during the first thirty (30) years of this Agreement, County will pay to Company an amount equal to the greater of either (i) all amounts outstanding under any Loan or under Loan documents approved by County pursuant to Section 2.19 above, or (ii) the sum of all unreimbursed equity contribution and related interest due to Company plus fifty percent (50%) of the value of the improvements (excluding land, Company unreimbursed equity, the existing approved Loan balance, if any, and any amounts paid by County pursuant to Section 2.20.1.1.1 below) as determined by a competent real estate appraiser acceptable to Company and CDR.

2.20.1.1.1 Upon notice from Company, or, in the event of a total recovery, upon notice from Company's Lender, County will pay to Company's Lender all sums due to Lender under the approved Loan documents evidencing and securing the Loan secured by the improvements on the Premises. Notwithstanding and in replacement of the foregoing, if Lender or approved Assignee of Lender has succeeded to the interest of Company, and the outstanding Loan has been repaid, County shall pay Lender the amount which was due Lender on the date of foreclosure or transfer of title (or to such approved Assignee the amount Assignee paid Lender to assume this Agreement), and an amount equal to any costs incurred by Lender or such Assignee to cure Company's defaults under this Agreement or to otherwise comply with Company's obligations under this Agreement, less any amount of equity contributions or accrued interest (in accordance with Section 2.19.11.2 above) that has previously been repaid from Total Revenue.

2.20.1.2 In the event of such recovery of the Premises by County (or any other condemnation or recovery of all or substantially all of the Premises) during the last twenty (20) years of this Agreement, County will pay to Company fifty percent (50%) of the residual leasehold value of the improvements on the Premises based on the remaining term of this Agreement, minus any outstanding Loan balance. Such leasehold value shall exclude the value of the land after deducting any amounts paid by County pursuant to Section 2.20.1.2.1 below.

The residual leasehold value will be as determined by a competent real estate appraiser acceptable to Company and CDR.

- 2.20.1.2.1 Upon notice from Company or, in the event of a total recovery, upon notice from Company's Lender, County will pay to Company's Lender all sums due to Lender under the approved Loan documents evidencing and securing the Loan, and any subsequent financing that has been approved by CDR secured by the improvements on the Premises. Notwithstanding the foregoing, if Lender or approved Assignee of Lender has succeeded to the interest of Company, and the outstanding Loan has been repaid, County shall pay Lender the amount which was due Lender on the date of foreclosure or transfer of title (or to such approved Assignee the amount Assignee paid Lender to assume this Agreement), and an amount equal to any costs incurred by Lender or such Assignee to cure Company's defaults under this Agreement or to otherwise comply with Company's obligations under this Agreement, less any amount or equity contributions or accrued interest (in accordance with Section 2.19.11.2 above) that has previously been repaid from Total Revenue to Lender or its assigns.
- 2.20.1.3 County will have no obligation for any encumbrance of the improvements, which has not received County written approval as defined in Section 2.19 (entitled FINANCING) above.
- 2.20.1.4 In the event of any partial condemnation or recovery by any agency other than County, or in the event of any such condemnation or recovery, Company will be entitled to file an action to receive condemnation proceeds for recovery of its leasehold improvements and its leasehold interest.
- 2.20.1.5 In the event of a partial condemnation or recovery by another agency, this Agreement shall remain in full force and effect as to the portion of the Premises remaining.

On a partial recovery, all sums, including damages and interest, awarded for the fee or the leasehold or both shall (i) be delivered to County and Company (or to any Lender), respectively, if such award has been apportioned between County and Company by such condemning authority, or (ii) be deposited promptly with an escrow agent selected by Company in the reasonable exercise of its discretion if there is only a single award, to be distributed and disbursed as follows:

- a. First, to taxes constituting a superior lien on the portion of the Premises taken;
- b. Second, to County an amount equal to the then present value of County's interest in the income stream from rental payments attributable to the portion of the Premises being taken, measured by the diminution in rental payments, plus an amount equal to the then present value of the reversionary interest of County at the expiration of this Agreement in that portion of the real property underlying the Premises that is taken in such partial recovery; and

- c. Third, subject to the rights of any Lender of record, the balance of the award to Company.

Sums being held by an approved escrow agent pending disbursement shall be deposited in one or more federally insured interest-bearing account(s) and, upon disbursement, each party having a right to any of the sums being disbursed shall be entitled to receive the interest attributable to its share of said sums.

- 2.20.1.6 Notwithstanding any language to the contrary in this Section 2.20, in the event of partial taking of the Premises by condemnation, if, in the opinion of County, Company, and Lender, the remainder of the Premises are suitable for continued operation, this Lease shall not terminate in regard to the portion not taken. In the event of a partial or total taking of the Premises by condemnation, County and Company agree (a) to be bound by the provisions of the Loan documents executed by Company in favor of Lender concerning condemnation process and proceeds, including the right of Lender to recover from such condemnation proceeds an amount up to the then unpaid balance of its Loan, and (b) that Lender shall have the right to participate in any condemnation proceedings as set forth in this Section 2.20 or as otherwise provided by law.

### **ARTICLE III**

#### **3.1 MAINTENANCE AND OPERATION NONDISCRIMINATION COMPLIANCE**

Company, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Company will maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said Regulation may be amended.

#### **3.2 NONDISCRIMINATION IN PARTICIPATION, CONSTRUCTION AND USE OF PREMISES**

Company, for itself, its personal representatives, successors in interest and assigns and as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- 3.2.1 No person on the grounds of race, color, creed, national origin, sex, sexual orientation, gender identity or expression, religion, disability or age will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- 3.2.2 That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, creed, national origin, sex, sexual orientation, gender identity or expression, religion, disability or age will be excluded from participation in, denied the benefits of, or otherwise be subject to

discrimination.

3.2.3 That Company will use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said Regulations may be amended.

### **3.3 TERMINATION RIGHTS FOR BREACH OF SECTIONS 3.1 AND 3.2 ABOVE**

In the event of breach of any of the nondiscrimination covenants described in Sections 3.1 and 3.2 above, County will have the right to terminate this Agreement and to reenter and repossess this land and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This provision, however, does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights. Promptly upon the receipt of any complaint or other notice alleging violation of the covenants in Sections 3.1 and 3.2 above, County will notify Company and will provide Company the opportunity to defend the same. Unless disapproved by the U.S. Department of Transportation, any such termination and reentry rights shall not be exercised by County so long as the current Lender elects to exercise its rights and remedies and acquire Company's interest under this Agreement. Such Lender will not be required to cure any breach by Company of any covenants in Sections 3.1 through 3.5 of this Agreement, provided, however, such Lender shall be obligated to comply with such Sections upon any acquisition of Company's interest under this Agreement.

### **3.4 NONDISCRIMINATION IN FURNISHING ACCOMMODATIONS AND/OR SERVICES**

Company will furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof as required by state and federal law and it will charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that Company may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

### **3.5 RIGHTS FOR NONCOMPLIANCE WITH SECTION 3.4**

Noncompliance with Section 3.4 above will constitute a material breach of this Agreement and in the event of such noncompliance, County will have the right to terminate this Agreement and the estate hereby created without liability therefor or at the election of County or the United States of America either or both said Governments will have the right to judicially enforce the provision. Unless disapproved by the U.S. Department of Transportation, any such termination and reentry rights shall not be exercised by County so long as the current Lender elects to exercise its rights and remedies and acquire the Company's interest under this Agreement. Such Lender will not be required to cure any breach by Company of any covenants in Section 3.4 above, provided, however, such Lender shall be obligated to comply with such Sections upon any acquisition of Company's interest under this Agreement.

### **3.6 COMPANY'S OBLIGATION 49 CFR PART 26, SUBPART F**

3.6.1 This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 26, Subpart F. Company agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any agreement covered by 49 CFR Part 26,

Subpart F.

3.6.2 Company agrees to include the language in Sections 3.1 through 3.6.1 above in any subsequent Sublease, professional services and/or construction agreements that it enters and cause those businesses to similarly include the statements in further agreements; provided however, that the foregoing is neither intended to nor shall require any Sublessee to include any such provisions in any contracts or agreements relative to the operations of its business. Such inclusion may be made by way of reference to such sections (as opposed to restatement of such sections in any such agreement).

**3.7 SUBLEASE NONDISCRIMINATION COMPLIANCE**

Company hereby assures it will include Sections 3.1 through 3.6.1 above in all Subleases and cause Sublessees to similarly include such sections in further Subleases; provided however, that the foregoing is neither intended to nor shall require any Sublessee to include any such provisions in any contracts or agreements relative to the operations of its business. Such inclusion may be made by way of reference to such sections (as opposed to restatement of such sections in any such Sublease).

**3.8 COMPANY OBLIGATION**

Company hereby assures that no person shall be excluded from participation in, denied the benefits of or otherwise be discriminated against in connection with the award and performance of any contract, including leases, covered by 49 CFR Part 26 on the grounds of race, color, national origin or sex.

**3.9 APPENDIX 9, GENERAL CIVIL RIGHTS PROVISION**

Company assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Company or its transferee for the period during which Federal assistance is extended to the Airport program, except where Federal assistance is to provide, or is in the form of, personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. Compliance with the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, as amended, by Company, shall be considered compliance with Company's duty to assure that no person shall, on the grounds of handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

**3.10 AFFIRMATIVE ACTION EMPLOYMENT PROGRAMS**

3.10.1 Company assures that it will undertake an Affirmative Action Program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Company assures that no person will be excluded

on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Company assures that it will require that its covered sub-organizations provide assurances to Company that they similarly will undertake Affirmative Action Programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E to the same effect.

- 3.10.2 Company agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 CFR Part 152, Subpart E, as part of the Affirmative Action Program, and by any Federal, State, or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order or similar mechanism. Company agrees that State or local affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 CFR Part 152, Subpart E, only when they fully meet the standards set forth in 14 CFR, Subpart 152.409. Company agrees to obtain a similar assurance from its covered organizations, and to cause them to require a similar assurance of their covered sub-organizations, as required by 14 CFR Part 152, Subpart E.
- 3.10.3 In the event Company employs fifty (50) or more employees on the Airport, it agrees to prepare and keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with standards in 14 CFR, Subpart 152.409. Such program will be updated on an annual basis. Should Company employ less than fifty (50) employees on the Airport, it will annually send written correspondence confirming the exemption.

3.10.4 This Section 3.10 is not intended to apply to any Sublessee of Company.

### **3.11 AIRPORT MAINTENANCE, REPAIR, DEVELOPMENT AND EXPANSION**

County reserves the right to further develop or improve the landing area or any other area, building or other improvement within the present or future boundaries of the Airport as it sees fit in its sole judgment regardless of the desires or view of Company and without interference or hindrance by Company. Further, County retains the absolute right to maintain, repair, develop and expand the terminal building, any other Airport facility, Airport improvement or Airport property free from any and all liability to Company for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development or expansion.

### **3.12 MAINTENANCE, REPAIR, DIRECTION AND CONTROL**

County reserves the right, but is not obligated to exercise the right, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Company in this regard. These areas will include, but are not limited to, those areas which are not necessary to serve the aeronautical users of the Airport, except that County will not be obligated to maintain and keep in repair such areas of the Airport as may be leased to or under the control of Airport tenants whether such area serves aeronautical users or otherwise.

### **3.13 AGREEMENTS WITH THE UNITED STATES OF AMERICA**

This Agreement will be subject and subordinate to the provisions and requirements of any existing or future agreement between County and the United States of America relative to the development, operation or maintenance of the Airport. Notwithstanding the foregoing, County agrees that no existing agreements between County and the United States of America relating to the same (i)

currently prohibit or materially affect the use and/or operation of the Premises as contemplated under this Agreement, or (ii) defeat the lien of the mortgage or deed of trust in favor of a Lender and/or the leasehold estate in favor of Company created by this Agreement. Should any future agreements between County and the United States of America materially impair the use of the Premises or Lender's interest therein, such agreements shall be considered an action to recover the Premises under Section 2.20 above.

### **3.14 OPERATION OF AIRPORT BY THE UNITED STATES OF AMERICA**

This Agreement and all the provisions hereof will be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

### **3.15 PART 77 OF FEDERAL AVIATION REGULATIONS**

Company agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

### **3.16 NONEXCLUSIVE**

It is understood and agreed that nothing herein contained will be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) (formerly known as Section 308 of the Federal Aviation Act of 1958 (49 U.S. C. § 1349a)).

### **3.17 AIRSPACE**

There is hereby reserved to County, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of Aircraft in the airspace above the surface of the Premises herein leased. This public right of flight will include the right to cause or allow in said airspace, any noise inherent in the operation of any Aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of County will result from the exercise of this right.

### **3.18 AIRPORT OBSTRUCTIONS**

Company by accepting this Agreement expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder which will exceed such maximum height as may be stipulated by County. It is understood and agreed that applicable laws, codes, regulations or agreements concerning height restrictions will govern the maximum height to be stipulated by County. In the event the aforesaid covenants are breached, County reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut down the offending tree all of which will be at the expense of Company and without liability to County.

### **3.19 AIRPORT HAZARDS**

Company by accepting this Agreement agrees for itself, its successors and assigns, that it will not make use of the Premises in any manner which might interfere with the landing and taking off of

Aircraft from the Airport or otherwise constitute a hazard or obstruction. In the event the aforesaid covenant is breached, County reserves the right to enter upon the Premises hereby leased and cause the abatement of such interference at the expense of Company and without liability of any kind.

### **3.20 AIRPORT RULES AND REGULATIONS AND AIRPORT OPERATING DIRECTIVES**

County, through its Designated Representative, will have the right to adopt, amend and enforce reasonable rules and regulations and operating directives with respect to use of and the conduct and operation of the Airport, its terminal buildings or any improvements within the present or future boundaries of the Airport which Company agrees to observe and obey.

### **3.21 COMPLIANCE WITH PUBLIC AUTHORITIES**

3.21.1 Company will not use or permit the use of the demised Premises or any other portion of the Airport for any purpose or use other than authorized by this Agreement or as may be authorized by other, separate, written agreement with County.

3.21.2 Company, its employees, representatives or agents will comply with all present or future laws, rules and regulations and amendments or supplements thereto governing or related to the use of the Airport or the demised Premises as may from time to time be promulgated by Federal, State or local governments and their authorized agencies. Company will provide copies of all notices, reports, claims, demands or actions concerning any violations of note to County upon written request.

### **3.22 ENVIRONMENTAL POLICY**

#### **3.22.1 Violation Of Environmental Laws**

Company will not cause or permit any hazardous material to be used, generated, manufactured, produced, stored, brought upon, transported to or from, or otherwise released on, under or about the Premises or transported to and from the Premises by Company, its Sublessees, their agents, employees, contractors, invitees, or a third party in violation of the Environmental Laws as defined in Section 1.1 (entitled DEFINITIONS) above.

3.22.1.1 CDR will have access to the Premises to inspect same to insure that Company is using the Premises in accordance with environmental requirements.

3.22.1.2 Company, at CDR's reasonable written request, at Company's expense, will conduct such testing and analysis as necessary to ascertain whether Company is using the Premises in compliance with environmental requirements. Any such tests will be conducted by qualified independent experts chosen by Company and subject to CDR's reasonable written approval. Copies of such reports from any such testing will be provided to CDR.

3.22.1.3 Company will provide copies of all notices, reports, claims, demands or actions concerning any environmental concern or release or threatened release of hazardous materials or special wastes to the environment.

### 3.22.2 Contamination Of Premises

If the presence of any Hazardous Material on, under or about the Premises caused or permitted by Company results in any contamination of the Premises, in violation of an Environmental Law, Company will promptly take all actions, at its sole cost and expense, as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises. Company will take all steps necessary to remedy and remove any such hazardous materials and special wastes and any other environmental contamination as is presently or subsequently discovered on or under the Premises as are necessary to protect the public health and safety and the environment from actual or potential harm and to bring the Premises into compliance with all environmental requirements; provided, however, County will be solely responsible for any environmental condition existing on or about the Premises prior to the Approval Date or any environmental conditions caused by County during the term or arising in any way and at any time from the Airport. Such procedures are subject to:

- 3.22.2.1 Prior written approval of CDR, which approval will not be unreasonably withheld. Company will submit to CDR a written plan for completing all remediation work. CDR retains the right to review and inspect all such work at any time using consultants and/or representatives of his/her choice.
- 3.22.2.2 Such actions of remediation by Company will not potentially have any material adverse long-term effect on the Premises in the reasonable judgment of CDR.

### 3.22.3 Compliance With All Governmental Authorities

Company will promptly make all submission to, provide all information to, and comply with all requirements of the appropriate governmental authority under all Environmental Laws as defined in Section 1.1 (entitled DEFINITIONS) of this Agreement.

- 3.22.3.1 Should the Government determine that a site characterization, site assessment, and/or cleanup plan be prepared or that a cleanup should be undertaken because of any spills or discharges of hazardous materials at the Premises which occur during the term of this Agreement then Company shall prepare and submit required plans and financial assurances, and carry out the approved plans. Company will promptly provide all information requested in writing by CDR to determine the applicability of the Environmental Laws to the Premises, or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.
- 3.22.3.2 Company's obligations and liabilities under this provision will continue so long as County bears any responsibility under the Environmental Laws for any action that occurred on the Premises during the term of this Agreement.
- 3.22.3.3 This indemnification of County by Company includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, restoration, any fines or penalties issued to Company, or any other work required by any Federal, State or local governmental agency or political subdivision because of hazardous material located on the Premises or present in the soil or ground water on, under or about the Premises.

3.22.3.4 The parties agree that County's right to enforce Company's promise to indemnify is not an adequate remedy at law for Company's violation of any provision of this Agreement. County will also have the rights set forth in Section 3.22.4 (entitled County's Termination Rights for Violation of Environmental Laws), or Section 2.15 (entitled TERMINATION BY COUNTY) of this Agreement, in addition to all other rights and remedies provided by law or otherwise provided in this Agreement.

#### 3.22.4 County's Termination Rights for Violation of Environmental Laws

3.22.4.1 Company's failure or its Sublessees, their agents, employees, contractors, invitees, or the failure of a third party to comply with any of the remediation requirements of this Agreement or applicable Environmental Laws will constitute a material default under this Agreement and will permit County to pursue the following remedies, in addition to all other rights and remedies provided by law or otherwise provided in this Agreement, to which County may resort cumulatively, or singularly, in the alternative:

3.22.4.1.1 County may, at County's election, keep this Agreement in effect and enforce all of its rights and remedies under this Agreement, including (i) the right to recover rent and other sums as they become due by the appropriate legal action and/or (ii) the right, upon ten (10) days' written notice to Company, to make payments required of Company or perform Company's obligations and be reimbursed by Company for the cost thereof, unless such payment is made or obligation performed by Company within such ten (10) day period.

3.22.4.1.2 County may, at County's election, subject to Lender's right to cure as provided in Section 2.19 (entitled FINANCING) above, terminate this Agreement upon written notice to Company as provided in Section 2.15 (entitled TERMINATION BY COUNTY) above. If this Agreement is terminated under this provision, Company waives all rights against County, including, but not limited to, breach of contract, costs of design, installation or construction of improvements and/or interruption of business.

3.22.4.1.3 Notwithstanding any other provision in this Agreement to the contrary, County will have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, under or about the Premises.

### 3.23 AMERICANS WITH DISABILITIES ACT

Company will throughout the term of this Agreement be in compliance with all applicable provisions of the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq.

## ARTICLE IV

### 4.1 FORCE MAJEURE

Neither County nor Company will be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of governmental authority, unusual weather conditions, floods, riots, rebellion or sabotage. However, the provisions of this Section will not apply to failure by Company to pay rents, fees or any other money payments required under other provisions, covenants or agreements contained in this Agreement.

### 4.2 QUIET ENJOYMENT

County agrees that, on payment of the rentals and fees and performance of the covenants, conditions and agreements on the part of Company to be performed hereunder, Company will have the right to peaceably occupy and enjoy the Premises.

### 4.3 NON-LIABILITY OF INDIVIDUALS

No officer, member, manager, agent or employee of either party to this Agreement will be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

### 4.4 NOTICES

Any notice or communication to be given under the terms of this Agreement ("Notice") shall be in writing and shall be personally delivered or sent by facsimile, overnight delivery, by nationally-recognized courier, or registered or certified mail, return receipt requested. Notices shall be addressed as follows:

If to County: Clark County, Nevada  
Department of Real Property Management  
500 South Grand Central Parkway, 4<sup>th</sup> Floor  
Las Vegas, Nevada 89155-1825  
Attn: Lisa Kremer, Director  
FAX: (702) 455-4055

If to Company: Beltway Business Park Warehouse No. 10, LLC  
c/o Majestic Realty Co.  
4050 W. Sunset Road, Suite H  
Las Vegas, Nevada 89118  
Attn: Rodman C. Martin  
FAX: (702) 896-4838

with a copy to:

Beltway Business Park Warehouse No. 10, LLC  
c/o Majestic Realty Co.  
13191 Crossroads Parkway North, Sixth Floor  
City of Industry, California 91746  
Attn: Edward P. Roski, Jr.  
FAX: (562) 692-1553

and:

Beltway Business Park Warehouse No. 10, LLC  
c/o Thomas & Mack Development Group  
2300 W. Sahara Ave., Suite 530  
Las Vegas, Nevada 89102  
Attn: Thomas A. Thomas  
FAX: (702) 920-2826

and:

Beltway Business Park Warehouse No. 10, LLC  
c/o George Ralphs  
2300 West Sahara Avenue, Suite 550, Box 18  
Las Vegas, Nevada 89102  
FAX: (702) 870-1398

#### **4.5 HEADINGS, TITLES OR CAPTIONS**

Article, section or paragraph headings, titles or captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or extent of any provision of this Agreement.

#### **4.6 INVALID PROVISIONS**

It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision will in no way affect any other covenant, condition or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either County or Company in their respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

Should any portion of this Agreement be determined by any court of competent jurisdiction to be in violation of the SNPLMA it is expressly agreed that Company and County will negotiate in good faith to modify such terms or portions of this Agreement in order to comply with such Act. County and Company agree that they will negotiate in good faith to resolve any issue regarding compliance with the Act for a period of one hundred eighty (180) days. If the parties cannot agree on a resolution during such period, either party may terminate this Agreement with ninety (90) days written notice to the other party. Notwithstanding the above to the contrary, no such termination shall be effective without the prior written consent of all current Lenders.

#### **4.7 STATE OF NEVADA LAW**

This Agreement will be interpreted under and governed by the laws of the State of Nevada.

#### **4.8 CONSENT TO AMENDMENTS**

In the event that the FAA or its successors require modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Company agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required. Any expenses resulting from such amendments, modifications, revisions, supplements or deletions, shall be born solely by Company.

#### **4.9 ADVERSE TENANCY**

Any unauthorized holding over by Company for more than one hundred eighty (180) days after the termination of this Agreement or the expiration of its terms without the written consent of County, except for the period authorized for removal of Company's property upon the expiration or termination hereof, shall entitle County to collect from Company as liquidated damages for such holding over, one hundred twenty five percent (125%) of the then rent. County may perfect a lien on the property of Company as security for the payment of any damages or unpaid rentals, fees, and/or revenues and shall be entitled to collect the same by foreclosure of such lien and sale of such property. Any such lien shall be subordinate to the lien of a Lender. Nothing herein shall limit County's rights to seek immediate eviction.

#### **4.10 DISPUTES**

Any and all disputes arising under this Agreement, which cannot be administratively resolved, shall be determined according to the laws of the State of Nevada, and Company agrees that the venue of any such dispute, shall be in Clark County, Nevada. Company agrees as a condition of this Agreement that notwithstanding the existence of any dispute between the parties, insofar as is possible under the terms of this Agreement, each party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by a court of competent jurisdiction.

#### **4.11 AGENT FOR SERVICE OF PROCESS**

The parties hereto expressly understand and agree that if Company is not a resident of the State of Nevada, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, and then in any such event Company does designate its State of Nevada registered agent as its agent for the purpose of service of process in any court action between it and County arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Nevada by serving also Company's registered agent. The parties hereto expressly agree, covenant, and stipulate that Company shall also personally be served with such process out of this State by the registered mailing of such complaint and process to Company at the address set forth herein. Any such service out of this State shall constitute valid service upon Company as of the date of receipt thereof. The parties hereto further expressly agree that Company is amenable to and hereby agrees to the process so served, submits to the jurisdiction, waives any and all obligations and protests thereto, any laws to the contrary notwithstanding.

#### **4.12 GENDER**

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

#### **4.13 ENTIRE AGREEMENT**

4.13.1 This document represents the entire agreement between the parties hereto and will not be modified or canceled by mutual agreement or in any manner except by instrument in writing, executed by the parties or their respective successors in interest, and supersedes all prior oral or written agreements and understandings with respect to the subject matter hereof. The parties further understand and agree that the other party and its agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability for cause for termination shall be asserted by either party against the other, and such party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other party being expressly waived.

4.13.2 The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

4.13.3 The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

#### **4.14 SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, or assigns, as the case may be.

#### **4.15 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when so executed shall constitute in the aggregate but one and the same document.

#### **4.16 SUSPENSION AND ABATEMENT**

In the event that County's operation of the Airport or Company's operation from the Premises should be restricted substantially by action of the federal government or agency thereof or by any judicial or legislative body, then either party hereto will have the right, upon written notice to the other, to a suspension of this Agreement and an abatement of an equitable proportion of the payments to become due hereunder, from the time of such notice until such restrictions will have been remedied and normal operations restored.

#### **4.17 INDEPENDENT CONTRACTOR**

Company is deemed to be an independent contractor for all purposes regarding its operations at the Premises, and no agency, expressed or implied, exists.

#### **4.18 FURTHER ASSURANCES**

Each party to this Agreement shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

IN WITNESS WHEREOF, County and Company have executed these presents as of the day and year first above written.


COUNTY:

COUNTY OF CLARK, a political subdivision  
of the State of Nevada

By: \_\_\_\_\_  
LISA KREMER  
Director of Real Property Management

APPROVED AS TO FORM:

STEVE WOLFSON, District Attorney

By:  \_\_\_\_\_  
MARY-ANNE MILLER  
County Counsel

COMPANY:

BELTWAY BUSINESS PARK WAREHOUSE NO. 10, LLC,  
a Nevada limited liability company

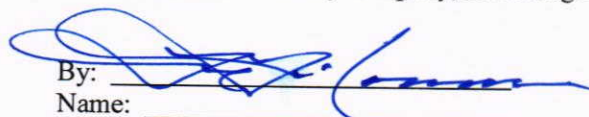
By: MAJESTIC BELTWAY WAREHOUSE BUILDINGS  
II, LLC, a Delaware limited liability company, its  
Manager

By: MAJESTIC REALTY CO.,  
a California corporation,  
Manager's Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: THOMAS & MACK BELTWAY, L.L.C.,  
a Nevada limited liability company, its Manager

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, County and Company have executed these presents as of the day and year first above written.

COUNTY:

COUNTY OF CLARK, a political subdivision  
of the State of Nevada

By: \_\_\_\_\_  
LISA KREMER  
Director of Real Property Management

APPROVED AS TO FORM:

STEVE WOLFSON, District Attorney

By: \_\_\_\_\_  
MARY-ANNE MILLER  
County Counsel

COMPANY:

BELTWAY BUSINESS PARK WAREHOUSE NO. 10, LLC,  
a Nevada limited liability company

By: MAJESTIC BELTWAY WAREHOUSE BUILDINGS  
II, LLC, a Delaware limited liability company, its  
Manager

By: MAJESTIC REALTY CO.,  
a California corporation,  
Manager's Agent



By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: THOMAS & MACK BELTWAY, L.L.C.,  
a Nevada limited liability company, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SIGNED IN COUNTERPART**

TELEFONANDO IN QUELLO

IN WITNESS WHEREOF, County and Company have executed these presents as of the day and year first above written.

COUNTY:

COUNTY OF CLARK, a political subdivision  
of the State of Nevada

By: \_\_\_\_\_  
LISA KREMER  
Director of Real Property Management

APPROVED AS TO FORM:

STEVE WOLFSON, District Attorney

By: \_\_\_\_\_  
MARY-ANNE MILLER  
County Counsel

COMPANY:

BELTWAY BUSINESS PARK WAREHOUSE NO. 10, LLC,  
a Nevada limited liability company

By: MAJESTIC BELTWAY WAREHOUSE BUILDINGS  
II, LLC, a Delaware limited liability company, its  
Manager

By: MAJESTIC REALTY CO.,  
a California corporation,  
Manager's Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: THOMAS & MACK BELTWAY, L.L.C.,  
a Nevada limited liability company, its Manager

By:   
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit A  
to  
Lease Agreement**

**PRO FORMA DEVELOPMENT COSTS**

(Attached)

**Beltway Business Park Warehouse No. 10  
Las Vegas, NV**

<b>Cost Category I - Construction Cost</b>		<b>269,025</b>	<b>SF</b>
Building Shell	\$12,670,249	\$	47.10
Site Work	\$3,463,399	\$	12.87
Retaining Wall	\$272,400	\$	1.01
Demo Parking Lot/Lights	\$136,286	\$	0.51
New Offsite Parking Lot/Lights	\$495,332	\$	1.84
Water Loop	\$295,000	\$	1.10
Import/Concealed Conditions	\$345,000	\$	1.28
Off-Site Work	\$1,178,060	\$	4.38
Contingency @ 2%	\$377,115	\$	1.40
<b>Total Construction Cost</b>	<b>\$19,232,840</b>	<b>\$</b>	<b>71.49</b>
<b>Cost Category II - A &amp; E</b>			
Architecture & Engineering	\$0	\$	-
ALTA Survey	\$5,000	\$	0.02
<b>Total A &amp; E</b>	<b>\$5,000</b>	<b>\$</b>	<b>0.02</b>
<b>Cost Category III - Tenant Improvements</b>			
Office Allowance	\$ 3,389,715	\$	12.60
Lighting Allowance	\$295,928	\$	1.10
Demising Walls	\$379,480	\$	1.41
Swamp Cooling	\$347,042	\$	1.29
Electrical	\$265,000	\$	0.99
Contingency @ 2%	\$0	\$	-
<b>Total Tenant Improvements</b>	<b>\$ 4,677,165</b>	<b>\$</b>	<b>17.39</b>
<b>Cost Category IV - Indirect Project Costs</b>			
Developer Impact Fees	\$277,925	\$	1.03
Engineering/Studies	\$0	\$	-
Utility Allowance (NVE)	\$120,000	\$	0.45
Dust Control/Water Meter	\$98,000	\$	0.36
Off-site Improvement Bond	\$14,726	\$	0.05
Water Connection	\$414,000	\$	1.54
Fire Alarm Monitoring	\$0	\$	-
Loan Fees, Costs & Legal	\$250,000	\$	0.93
Title & Escrow	\$44,525	\$	0.17
Leasing Commissions	\$728,279	\$	2.71
Marketing Fees	\$10,000	\$	0.04
Third Party Reports	\$0	\$	-
Legal Fees - Leasing	\$80,000	\$	0.30
Liability Insurance	\$8,176	\$	0.03
Course of Construction Insurance	\$79,665	\$	0.30
Property Taxes During Construction	\$303,998	\$	1.13
Development Fee	\$915,572	\$	3.40
Contingency @ 2.5%	\$0	\$	-
<b>Total Indirect Project Costs</b>	<b>\$3,344,866</b>	<b>\$</b>	<b>12.43</b>
<b>Cost Category V - Interest</b>			
Total Interest Reserve	3.75%	\$1,208,737	\$ 4.49
<b>Cost Category VI - Land</b>			
Total Allocated Land Cost		\$0	\$ -
<b>Total Project Costs</b>		<b>\$28,468,608</b>	<b>\$ 105.82</b>
Less: Rent Revenue Offset		\$0	\$ -
<b>Grand Total Project Costs</b>		<b>\$28,468,608</b>	<b>\$ 105.82</b>
<b>RENTAL REVENUE</b>		<b>\$2,648,289</b>	<b>\$9.84</b>
<b>RETURN ON PROJECT COST</b>		<b>9.30%</b>	<b>\$ 0.820</b>

**Exhibit B-1  
to  
Lease Agreement**

**DESCRIPTION OF PREMISES**

(Attached)

**WALLACE MORRIS KLINE SURVEYING, LLC**  
**Land Survey Consulting**

**EXHIBIT "A"**

**DESCRIPTION**

A PORTION OF THE NORTH HALF (N1/2) OF SECTION 01, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHEAST QUARTER (NE1/4) OF SAID SECTION 01;

THENCE ALONG THE NORTH LINE THEREOF, NORTH 87°09'25" EAST, 307.86 FEET;

THENCE LEAVING SAID NORTH LINE, SOUTH 00°43'41" WEST, 350.68 FEET;

THENCE CONTINUING SOUTH 00°43'41" WEST, 5.58 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING SOUTH 00°43'41" WEST, 307.98 FEET;

THENCE CONTINUING SOUTH 00°43'41" WEST, 177.32 FEET;

THENCE NORTH 87°16'20" EAST, 343.45 FEET;

THENCE SOUTH 39°46'43" EAST, 25.98 FEET;

THENCE SOUTH 89°47'24" EAST, 545.31 FEET;

THENCE SOUTH 00°12'09" WEST, 380.00 FEET;

THENCE CURVING TO THE RIGHT ALONG AN ARC HAVING A RADIUS OF 25.00 FEET, CONCAVE NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 54°14'21", AN ARC LENGTH OF 23.67 FEET TO A POINT TO WHICH A RADIAL LINE BEARS SOUTH 35°33'29" EAST;

THENCE SOUTH 01°58'19" EAST, 5.00 FEET;

THENCE FROM A POINT TO WHICH A RADIAL LINE BEARS NORTH 01°58'19" WEST, CURVING TO THE LEFT ALONG AN ARC HAVING A RADIUS OF 835.00 FEET, CONCAVE SOUTHERLY, THROUGH A CENTRAL ANGLE OF 00°38'36", AN ARC LENGTH OF 9.38 FEET;

THENCE SOUTH 87°23'05" WEST, 267.13 FEET;

THENCE SOUTH 87°43'34" WEST, 623.31 FEET;

THENCE SOUTH 88°40'19" WEST, 57.63 FEET;

THENCE SOUTH 87°23'05" WEST, 273.89 FEET;

THENCE NORTH 02°36'55" WEST, 5.00 FEET;

THENCE FROM A POINT TO WHICH A RADIAL LINE BEARS SOUTH 02°36'55" EAST, CURVING TO THE RIGHT ALONG AN ARC HAVING A RADIUS OF 54.00 FEET, CONCAVE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 93°58'17", AN ARC LENGTH OF 88.57 FEET TO A POINT TO WHICH A RADIAL LINE BEARS NORTH 88°38'38" WEST;

THENCE NORTH 88°38'38" WEST, 5.00 FEET;

THENCE NORTH 01°21'22" EAST, 43.86 FEET;

THENCE CURVING TO THE RIGHT ALONG AN ARC HAVING A RADIUS OF 760.00 FEET, CONCAVE EASTERLY, THROUGH A CENTRAL ANGLE OF 16°28'40", AN ARC LENGTH OF 218.57 FEET TO A POINT TO WHICH A RADIAL LINE BEARS NORTH 72°09'58" WEST;

THENCE FROM A POINT TO WHICH A RADIAL LINE BEARS SOUTH 70°35'06" EAST, CURVING TO THE LEFT ALONG AN ARC HAVING A RADIUS OF 2,445.57 FEET, CONCAVE WESTERLY, THROUGH A CENTRAL ANGLE OF 05°19'29", AN ARC LENGTH OF 227.27 FEET TO A POINT OF COMPOUND CURVATURE TO WHICH A RADIAL LINE BEARS SOUTH 75°54'35" EAST;

THENCE CONTINUING TO CURVE TO THE LEFT ALONG AN ARC HAVING A RADIUS OF 835.00 FEET, CONCAVE WESTERLY, THROUGH A CENTRAL ANGLE OF 13°11'11", AN ARC LENGTH OF 192.17 FEET;

THENCE NORTH 00°54'14" EAST, 178.79 FEET;

THENCE SOUTH 89°05'46" EAST, 5.00 FEET;

THENCE CONTINUING SOUTH 89°05'46" EAST, 0.50 FEET;

THENCE FROM A POINT TO WHICH A RADIAL LINE BEARS NORTH 89°05'46" WEST, CURVING TO THE RIGHT ALONG AN ARC HAVING A RADIUS OF 24.50 FEET, CONCAVE SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 86°12'41", AN ARC LENGTH OF 36.86 FEET TO A POINT TO WHICH A RADIAL LINE BEARS NORTH 02°53'04" WEST;

THENCE NORTH 02°53'04" WEST, 5.51 FEET;

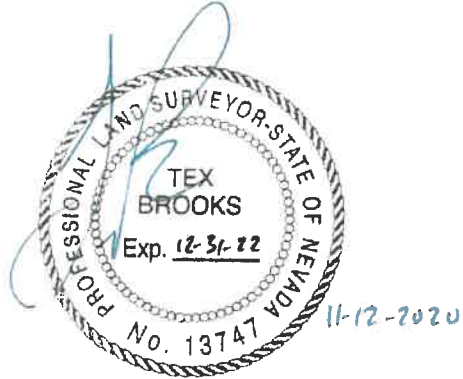
THENCE NORTH 87°06'56" EAST, 245.91 FEET TO THE POINT OF BEGINNING.

CONTAINING 15.89 ACRES, MORE OR LESS.

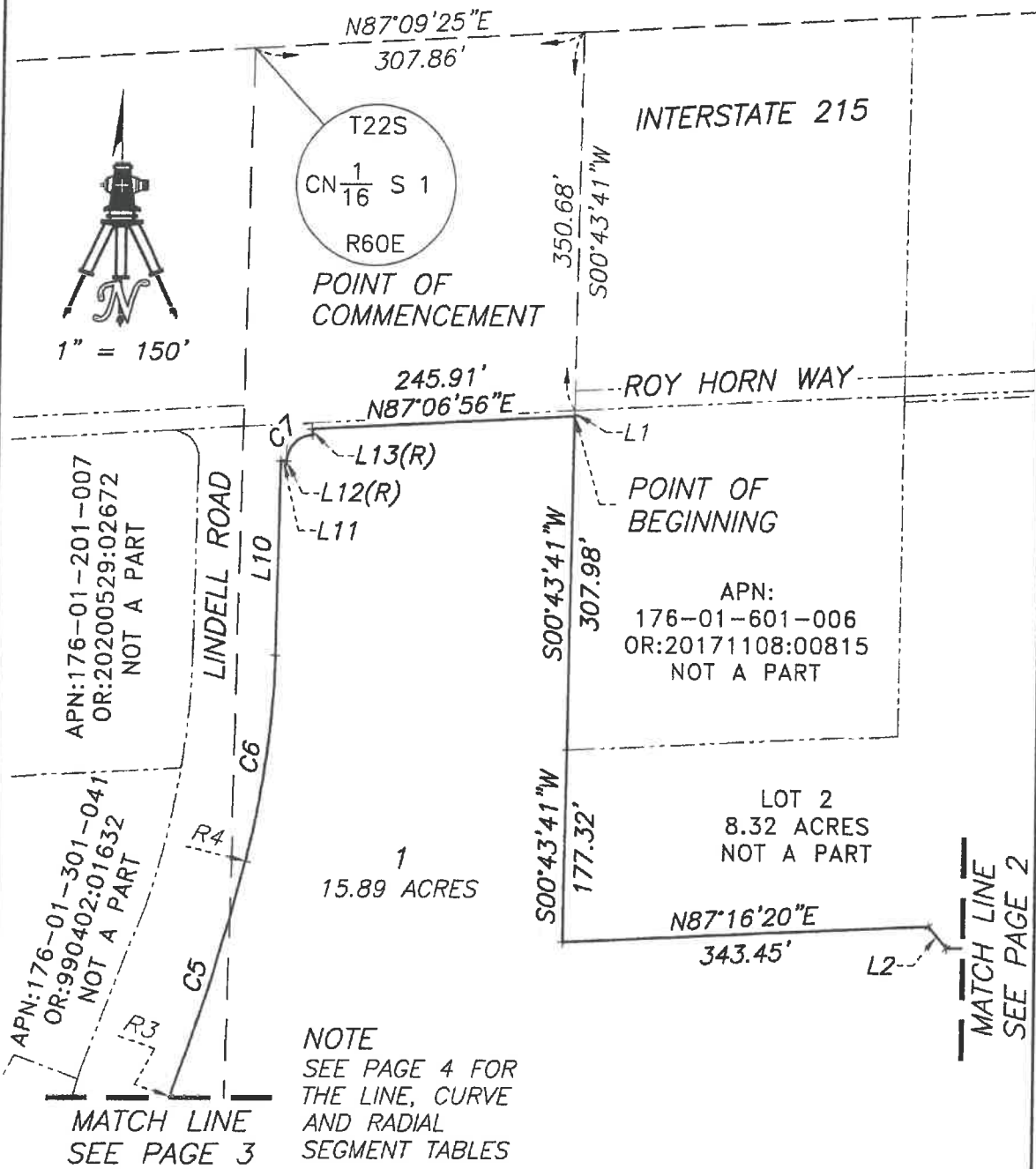
**BASIS OF BEARINGS**

NORTH 01°42'41" EAST, BEING THE EAST LINE OF THE SOUTHEAST QUARTER (SE1/4) OF THE SOUTHEAST QUARTER (SE1/4) OF SECTION 2, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA, AS SHOWN BY MAP THEREOF IN BOOK 146, PAGE 21 OF PLATS, OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

TEX J. BROOKS, PLS  
NEVADA LICENSE NO. 13747



LEASE AREA EXHIBIT



P:\SWI\19210 CC MAPPING\DWG\MAP\PM\PM2\LEASES\EXHIBITS\19210-LEASE-LOT1.DWG

WALLACE MORRIS KLINE  
 SURVEYING, LLC.  
 LAND SURVEY CONSULTING  
 5740 S. ARVILLE ST. #206  
 LAS VEGAS, NEVADA 89118

EXHIBIT "B"  
 LYING WITHIN THE NORTH HALF (N1/2) OF  
 SECTION 1, TOWNSHIP 22 SOUTH,  
 RANGE 60 EAST, M.D.M., CLARK COUNTY,  
 NEVADA  
 PAGE 1 OF 4

LEASE AREA EXHIBIT

NOTE  
SEE PAGE 4 FOR  
THE LINE, CURVE  
AND RADIAL  
SEGMENT TABLES

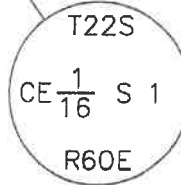
LOT 2  
8.32 ACRES  
NOT A PART



APN:  
176-01-601-027  
OR:990402:01632  
NOT A PART

APN:  
176-01-601-032  
OR:990402:01632  
NOT A PART

APN:176-01-701-019  
OR:990402:01632  
NOT A PART



MATCH LINE  
SEE PAGE 1

MATCH LINE  
SEE PAGE 3

S89°47'24"E  
545.31'

1  
15.89 ACRES

380.00'  
S00°12'09"W

S87°23'05"W

267.13'

BADURA AVENUE

EDMOND STREET

L4

C2-  
L3(R)-

P:\SWI\19210 CC MAPPING\DWG\MAP\PM\PM2\LEASES\EXHIBITS\19210-LEASE-LOT1.DWG

WALLACE MORRIS KLINE  
SURVEYING, LLC.  
LAND SURVEY CONSULTING

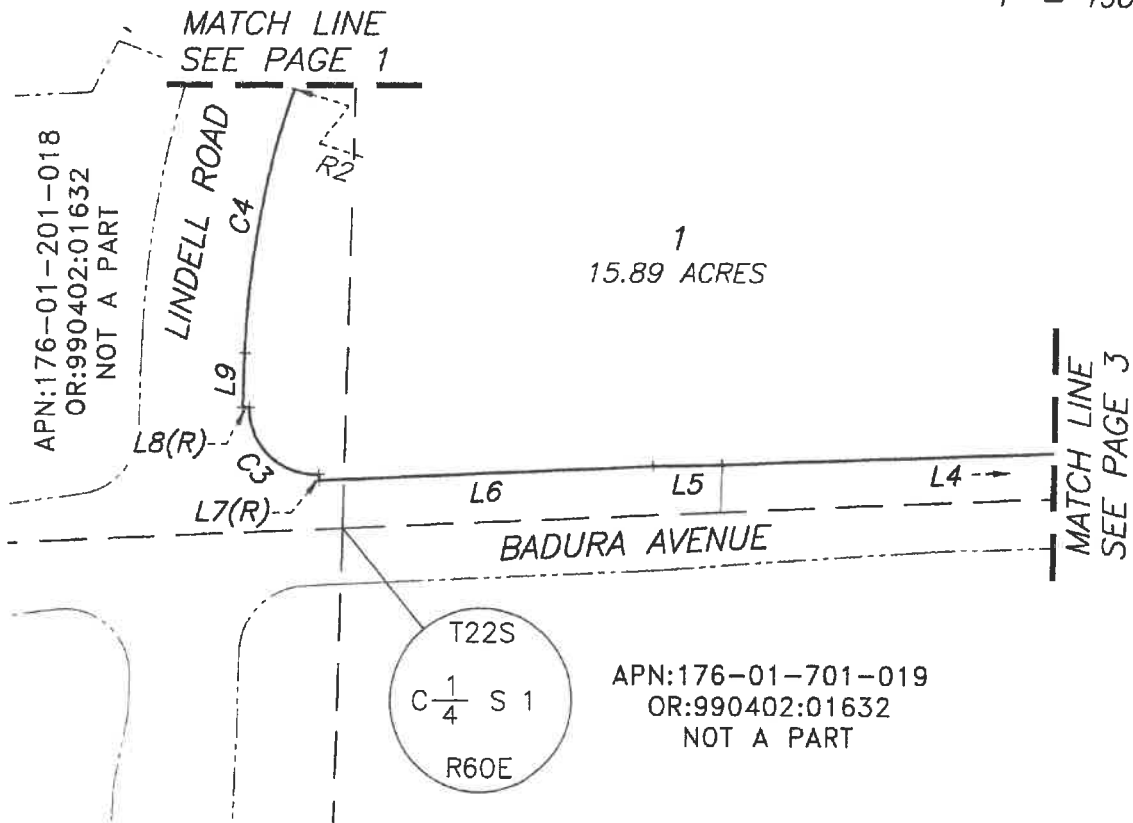
5740 S. ARVILLE ST. #206  
LAS VEGAS, NEVADA 89118

EXHIBIT "B"

LYING WITHIN THE NORTH HALF (N1/2) OF  
SECTION 1, TOWNSHIP 22 SOUTH, RANGE 60  
EAST, M.D.M., CLARK COUNTY, NEVADA

LEASE AREA EXHIBIT

NOTE  
 SEE PAGE 4 FOR  
 THE LINE, CURVE  
 AND RADIAL  
 SEGMENT TABLES



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WALLACE MORRIS KLINE SURVEYING, LLC. LAND SURVEY CONSULTING	EXHIBIT "B"
5740 S. ARVILLE ST. #206 LAS VEGAS, NEVADA 89118	LYING WITHIN THE NORTH HALF (N1/2) OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA
PAGE 3 OF 4	

LEASE AREA EXHIBIT

LINE	BEARING
R1	S35°33'29"E
R2	N72°09'58"W
R3	S70°35'06"E
R4	S75°54'35"E

CURVE	DELTA	RADIUS	LENGTH	TANGENT
C1	54°14'21"	25.00'	23.67'	12.80'
C2	00°38'36"	835.00'	9.38'	4.69'
C3	93°58'17"	54.00'	88.57'	57.88'
C4	16°28'40"	760.00'	218.57'	110.04'
C5	05°19'29"	2445.57'	227.27'	113.72'
C6	13°11'11"	835.00'	192.17'	96.51'
C7	86°12'41"	24.50'	36.86'	22.93'

LINE	BEARING	DISTANCE
L1	S00°43'41"W	5.58'
L2	S39°46'43"E	25.98'
L3	S01°58'19"E	5.00'
L4	S87°43'34"W	623.31'
L5	S88°40'19"W	57.63'
L6	S87°23'05"W	273.89'
L7	N02°36'55"W	5.00'
L8	N88°38'38"W	5.00'
L9	N01°21'22"E	43.86'
L10	N00°54'14"E	178.79'
L11	S89°05'46"E	5.00'
L12	S89°05'46"E	0.50'
L13	N02°53'04"W	5.51'

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WALLACE MORRIS KLINE SURVEYING, LLC. LAND SURVEY CONSULTING 5740 S. ARVILLE ST. #206 LAS VEGAS, NEVADA 89118	<b>EXHIBIT "B"</b>
	LYING WITHIN THE NORTH HALF (N1/2) OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA
PAGE 4 OF 4	

**Exhibit C  
to  
Lease Agreement**

**FORM OF SUBLEASE**

(Attached)

**STANDARD INDUSTRIAL REAL ESTATE LEASE**

**(MULTI-TENANT NET LEASE FORM)**

**ARTICLE ONE            BASIC TERMS**

This Article One contains the Basic Terms of this Lease between Landlord and Tenant named below. Other Articles, Sections and Paragraphs of this Lease referred to in this Article One explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

Section 1.01.    **Date of Lease:** \_\_\_\_\_, 20\_\_.

Section 1.02.    **Landlord:** \_\_\_\_\_, a \_\_\_\_\_.

Address of Landlord:    c/o Majestic Realty Co.  
13191 Crossroads Parkway North, Sixth Floor  
City of Industry, California 91746  
Attention: Property Management

With a copy of any notice to:

c/o Majestic Realty Co.  
4050 W. Sunset Road, Suite H  
Las Vegas, Nevada 89118  
Attention: Property Manager

State of Nevada.]]            **[[Master Landlord: (See Article Seventeen) County of Clark, a political subdivision of the**

Section 1.03.    **Tenant:** \_\_\_\_\_, a \_\_\_\_\_.

Address of Tenant:        \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

Section 1.04.    **Property:** **[[Revise if new construction.]]** The Property is part of Landlord's multi-tenant real property development that consists of \_\_\_\_\_ (\_\_\_\_) building(s) having a total of approximately \_\_\_\_\_ rentable square feet of space and described or depicted on the attached Exhibit "A" (the "**Project**"). The Project includes the land, the building(s) and all other improvements located on the land, and the Common Areas described in Section 4.05(a) below. The Property is that approximately \_\_\_\_\_ rentable square foot portion (known as Suite \_\_\_\_\_) of the building **[[revise if Property includes entire Building]]** that is located in the Project at \_\_\_\_\_, Las Vegas, Nevada, and identified on Exhibit "A" attached hereto (the "**Building**"). The square footage figures for the Project **[[if more than one building]]** **[[Building]]** and the Property, as recited in this Section 1.04, are approximate. No adjustment will be made to the Base Rent or any other amounts payable by Tenant under this Lease (or to any other provisions of this Lease) if the actual square footage, however measured, is more or less than the square footage recited. The Property does not include any portion of, and Landlord reserves to itself the exterior walls and rooftop of the Building (the "**Reserved Areas**"), and all components of electrical, mechanical, plumbing, heating, and air conditioning systems and facilities located in the Property that are concealed or used in common by tenants of the Building or the Project (the "**Common Systems**"). Landlord's reservation includes the right to enter the Reserved Areas to install, maintain, use, repair, alter, and replace thereon equipment that may be unrelated to the operation and use of the Building. Landlord's reservation also includes the right (but not necessarily the obligation) to inspect, maintain, repair, alter and replace the Common Systems and to enter the Property in order to do so. **[[Note: For leases in which portions of the Common Area will be reserved for Tenant's exclusive use, such as outdoor storage areas or exclusive truck or vehicle parking areas, the following optional language may be used: Although not**

included within that portion of the Project designated and defined as the "Property," Tenant shall be entitled to the exclusive use of those portions of the Project designated on the Exhibit "A" as the "Limited Common Area." For purposes of this Lease, the areas so designated (including the exits and entrances to such areas) are sometimes collectively referred to below as the "Limited Common Area." As provided in Section 4.05(a) below, the term "Common Area" includes the Limited Common Area. Tenant's exclusive use of the Limited Common Area shall be, however, subject to Landlord's right of access for the purpose of discharging its obligations under Sections 4.05 and 6.03 of this Lease, and for any of the permitted purposes described in Sections 5.03 and 5.06 of this Lease.]]

Section 1.05. **Term.**

(a) **Lease Term:** \_\_\_\_\_ years and \_\_\_\_\_ months, plus the Stub Period (defined below), if applicable.

(b) **Lease Commencement Date:** [[FOR USE WITH A TENANT BUILD:

The earlier to occur of: (i) the date upon which Tenant commences business in the Property, and (ii) \_\_\_\_\_, 20\_\_.]

[[FOR USE WITH A LANDLORD BUILD: The Lease Commencement Date (as defined in Section 2.01 below) of the initial Lease Term shall be upon Substantial Completion (as defined in the attached Work Letter) of the Tenant Improvements (as defined in Article Fourteen below), which is estimated to be \_\_\_\_\_, 20\_\_ (the "Estimated Lease Commencement Date"). Upon determination of the actual Lease Commencement Date, Landlord and Tenant shall promptly execute a Confirmation of Initial Lease Term and Amendment to Lease, substantially in the form of that attached as Exhibit "C" to this Lease.]]

(c) **Lease Expiration Date:** The expiration date of the initial Lease Term shall be the last day of the \_\_\_\_\_ (\_\_\_\_) Lease Month (defined below).

Section 1.06. **Permitted Uses:** (See Article Five) Only for warehousing and distribution of \_\_\_\_\_, and related office administration.

Section 1.07. **Initial Security Deposit:** (See Section 3.03) \$ \_\_\_\_\_.

Section 1.08. **Tenant's Guarantor:** [If none, so state] \_\_\_\_\_.

Section 1.09. **Brokers:** (See Article Thirteen)

Landlord's Broker: Majestic Realty Co.  
4050 W. Sunset Road, Suite H  
Las Vegas, Nevada 89118

Tenant's Broker: [If none, so state]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section 1.10. **Rent and Other Charges Payable by Tenant:**

(a) BASE RENT: <u>Lease Term</u>	<u>Monthly Installment of Base Rent</u>
Stub Period (if applicable)	\$ _____ (Pro-rated)
Lease Months ____ through ____	\$ _____
Lease Months ____ through ____	\$ _____

(b) OTHER PERIODIC PAYMENTS: (i) Real Property Taxes (see Section 4.02 below); (ii) Utilities (see Section 4.03 below); (iii) Insurance Premiums (see Section 4.04 below); and (iv) Tenant's initial Pro Rata Share of Common Area Costs, which is \_\_\_\_\_ percent ( \_\_\_ %) (see Section 4.05(e) below).

## ARTICLE TWO LEASE TERM

Section 2.01. **Lease of Property for Lease Term.** Landlord hereby leases to Tenant and Tenant leases from Landlord the Property, as described in Section 1.04 above. The term of this Lease (the "**Lease Term**") shall be as set forth in Section 1.05(a) above, shall commence on the date (the "**Lease Commencement Date**") set forth in Section 1.05(b) above, and shall terminate on the date (the "**Lease Expiration Date**") set forth in Section 1.05(c) above, unless sooner terminated or extended as expressly provided in this Lease. The terms and provisions of this Lease shall be effective as of the date of this Lease, except for the provisions of this Lease relating to the payment of Rent.

Section 2.02. **Delay in Commencement.** Landlord shall not be liable to Tenant if Landlord does not deliver possession of the Property to Tenant on the Lease Commencement Date **[[or the Estimated Lease Commencement Date]]**. Landlord's non-delivery of the Property to Tenant on that date shall not affect this Lease or the obligations of Tenant under this Lease, except that the Lease Commencement Date shall be delayed until Landlord delivers possession of the Property to Tenant (unless such delay is the result of Tenant Delay, as defined in the attached Work Letter) and the Lease Term shall be extended for a period equal to the delay in delivery of possession of the Property to Tenant, plus the number of days necessary to end the Lease Term on the last day of a month. If delivery of possession of the Property to Tenant is delayed **[[or -- Consistent with the terms of Section 1.05(b) above]]**, Landlord and Tenant shall, upon such delivery, execute an amendment to this Lease setting forth the actual Lease Commencement Date and Lease Expiration Date, substantially in the form attached as Exhibit "C" to this Lease, which Tenant shall execute and return to Landlord within five (5) days after receipt from Landlord. Failure to execute such amendment shall not affect the actual Lease Commencement Date and Lease Expiration Date. The failure of Tenant to take possession of or to occupy the Property upon delivery by Landlord shall not serve to relieve Tenant of any obligations arising on the Lease Commencement Date, and shall not delay the payment of Rent then due by Tenant. **[[If Landlord has agreed to construct or cause the construction of any Tenant Improvements prior to the Lease Commencement Date, then Landlord shall be deemed to have delivered possession of the Property to Tenant upon Substantial Completion of such improvements and written notice to Tenant regarding the same, regardless of whether Tenant actually takes possession of the Property on such date.]]**

Section 2.03. **Early Access.** **[[Revise if new construction.]]** Tenant shall have the right of early access to the Property, subject to (a) full execution of this Lease, (b) Landlord's receipt of all deposits and the initial monthly installment of Base Rent, (c) Landlord's and Tenant's receipt of any necessary governmental permits, approvals, or consents, (d) Landlord's prior written approval of Tenant's proposed schedule describing the timing and specific purpose of Tenant's early access, (e) the vacation of the Property by any existing tenant or other occupant **[[delete if inapplicable]]**, and (f) all of the terms and conditions of this Lease (including, but not limited to, the insurance provisions of Section 4.04 below), with the exception of the payment of Base Rent and Additional Rent; provided, however, that during such period of early access, Tenant shall be responsible for payment of the cost of utilities. Such early access shall be for the sole purpose of preparing the Property for Tenant's use, including the installation of equipment and storage of Tenant's products. During such period, Tenant shall assume all risk of loss to Tenant's equipment, products, and other personal property. **[[Tenant's access during this period shall not interfere with construction of the Tenant Improvements by Landlord's contractor, and in the event Tenant's access does so interfere, Tenant agrees to cease all construction or other activity until Landlord's contractor has completed its work.]]** Notwithstanding the above, if Tenant occupies the Property and commences business operations thereon prior to the Lease Commencement Date, Tenant's use and occupancy of the Property shall be subject to all of the provisions of this Lease, including those governing the payment of Base Rent and Additional Rent. Tenant's early access to or occupancy of the Property shall not advance the Lease Expiration Date.

Section 2.04. **Holding Over.** The parties recognize and agree that the damage to Landlord resulting from any failure by Tenant to timely surrender possession of the Property upon the expiration or earlier termination of the Lease Term will be substantial, will exceed the amount of the monthly installments of the Base Rent then payable, and will be impossible to accurately measure. Accordingly, Tenant agrees that if possession of the Property is not surrendered to Landlord on or before the expiration or earlier termination of the Lease Term, with or without the express or implied consent of Landlord, such tenancy shall be a tenancy at sufferance only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Base Rent shall be payable at a monthly rate equal to twice the Base Rent applicable immediately before the expiration or earlier termination of the Lease Term. Such tenancy at sufferance shall be subject to every other term, covenant and agreement contained herein, but Tenant shall have no right to notice of or to exercise any

extension right, right of first refusal, right of first offer or other similar right. Nothing in this Lease, including this Section 2.04, shall be construed as consent by Landlord to Tenant retaining possession of the Property after the expiration or earlier termination of the Lease Term and no acceptance by Landlord of payments from Tenant after the expiration or earlier termination of the Lease Term shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this Section 2.04, which provisions shall survive the expiration or earlier termination of the Lease Term. The provisions of this Section 2.04 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Property upon the expiration or earlier termination of the Lease Term, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold harmless Landlord (and Landlord's members, managers, partners, and shareholders, as applicable, and the affiliates, employees, agents, and contractors of Landlord and its members, managers, partners, and shareholders, as applicable) from all losses, liabilities, damages, costs and expenses (including attorneys' fees) resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom.

[[OPTIONAL --

Section 2.05. **Option(s) to Extend Lease Term.**

(a) **Grant of Option(s).** Landlord hereby grants to Tenant \_\_\_\_\_ option(s) (the "Option(s)") to extend the Lease Term for additional [[consecutive]] term(s) of \_\_\_\_\_ years each (the "Extension(s)"), on the same terms and conditions as set forth in this Lease, but at an increased Base Rent as set forth below and without any additional Option(s) other than those granted in this Section 2.05. [[Optional language for use when Clark County is the Master Landlord: In no event shall the Extensions exceed the term of the Master Lease (defined in Article \_\_\_\_\_ below).]] Each Option shall be exercised only by written notice delivered to Landlord not more than three hundred sixty (360) days and not less than two hundred seventy (270) days before the expiration of the initial Lease Term or the preceding Extension of the Lease Term, respectively. If Tenant fails to deliver Landlord written notice of the exercise of an Option within the prescribed time period, such Option and any succeeding Options shall lapse, and there shall be no further right to extend the Lease Term. Each Option shall be exercisable by Tenant on the express conditions that (a) at the time of the exercise, and at all times thereafter and prior to the commencement of such Extension, Tenant shall not be in default under any of the provisions of this Lease, (b) Tenant has not been ten (10) or more days late in the payment of rent more than a total of three (3) times during the initial Lease Term and all preceding Extensions, and (c) at the time of the exercise, and at all times thereafter and prior to the commencement of such Extension, there has not been a materially adverse change in Tenant's financial condition (as compared to Tenant's financial condition on the date of this Lease). Following Tenant's timely and valid exercise of an Option, Landlord shall prepare and Tenant shall execute and deliver to Landlord an amendment to this Lease confirming the term of the Extension and the amount of Base Rent payable by Tenant during such Extension or, at Landlord's sole option, Landlord and Tenant shall execute and deliver a new lease for the Extension based on the standard form of lease agreement then in use by Landlord; and if there is a guarantor of Tenant's obligations under this Lease, Tenant shall cause such guarantor to execute a reaffirmation of its guaranty obligations during the term of such Extension, in a form acceptable to Landlord. If there is more than one Option, a later Option cannot be exercised unless each all prior Option has been validly exercised.

(b) **Personal Options.** The Option(s) are personal to the Tenant named in Section 1.03 of this Lease or any Tenant Affiliate described in Section 9.07 of this Lease. If Tenant subleases any portion of the Property or assigns or otherwise transfers any interest under this Lease to an entity other than a Tenant Affiliate prior to the exercise of an Option (whether with or without Landlord's consent), then such Option and any succeeding Options shall lapse. If Tenant subleases any portion of the Property or assigns or otherwise transfers any interest of Tenant under this Lease to an entity other than a Tenant Affiliate after the exercise of an Option but prior to the commencement of the respective Extension (whether with or without Landlord's consent), then such Option and any succeeding Options shall lapse and the Lease Term shall expire as if such Option were not exercised. If Tenant subleases any portion of the Property or assigns or otherwise transfers any interest of Tenant under this Lease to an entity other than a Tenant Affiliate after the exercise of an Option and after the commencement of the Extension related to such Option, then the term of this Lease shall expire upon the expiration of the Extension during which such sublease or transfer occurred and only the succeeding Options shall lapse. [[Revise if only one Option.]]

(c) **Effect of an Option.** While an Option is in effect, if Tenant chooses not to exercise it but seeks instead to negotiate with Landlord for an extension of the Lease Term without regard to the terms of this Section 2.05,

Tenant acknowledges and agrees that Landlord will only agree to such negotiations if Tenant first waives in writing such Option and any succeeding Options.

(d) Time of Essence. Time is of the essence with respect to Tenant's exercise of the Option(s) granted in this Section 2.05.

(e) Calculation of Rent. The Base Rent during the Extension(s) shall be determined by one or a combination of the following methods [[select and delete others, as needed]]:

Cost of Living Adjustment (Section 2.05(e)(1), below)  
Fair Rental Value Adjustment (Section 2.05(e)(2), below)  
Fixed Adjustment (Section 2.05(e)(3), below)

(1) Cost of Living Adjustment. The Base Rent shall be increased on the first day of the \_\_\_\_\_ month(s) of the \_\_\_\_\_ Extension(s) of the Lease Term (the "Rental Adjustment Date") by reference to the Index defined in Section 3.02 of this Lease or the substitute index described in Section 3.02 of this Lease, as follows: The Base Rent in effect immediately prior to the applicable Rental Adjustment Date (the "Comparison Base Rent") shall be increased by the percentage that the Index has increased from the month in which the payment of the Comparison Base Rent commenced through the month in which the applicable Rental Adjustment Date occurs. In no event shall the Base Rent be reduced by reason of such computation.

(2) Fair Rental Value Adjustment. The Base Rent shall be increased on the first day of the \_\_\_\_\_ month(s) of the \_\_\_\_\_ Extension(s) of the Lease Term (the "FRV Rental Adjustment Date(s)") to the "fair rental value" of the Property, determined in the following manner:

(i) Not later than one hundred (100) days prior to any applicable FRV Rental Adjustment Date, Landlord and Tenant shall meet to negotiate, in good faith, the fair rental value of the Property as of such FRV Rental Adjustment Date. If Landlord and Tenant have not agreed upon the fair rental value of the Property at least ninety (90) days prior to the applicable FRV Rental Adjustment Date, the fair rental value shall be determined by appraisal, using brokers (as provided below).

(ii) If Landlord and Tenant are not able to agree upon the fair rental value of the Property within the prescribed time period, then Landlord and Tenant shall attempt to agree in good faith upon a single broker not later than seventy-five (75) days prior to the applicable FRV Rental Adjustment Date. If Landlord and Tenant are unable to agree upon a single broker within such time period, then Landlord and Tenant shall each appoint one broker, not later than sixty-five (65) days prior to the applicable FRV Rental Adjustment Date. Within (10) days thereafter, the two appointed brokers shall appoint a third broker. If either Landlord or Tenant fails to appoint its broker within the prescribed time period, the single broker appointed shall determine the fair rental value of the Property. If both parties fail to appoint brokers within the prescribed time periods, then the first broker thereafter selected by a party shall determine the fair rental value of the Property. Each party shall bear the cost of its own broker and the parties shall share equally the cost of the single or third broker, if applicable. The brokers used shall have at least ten (10) years' experience in the sales and leasing of commercial/industrial real property in the area in which the Property is located and shall be members of a professional organization such as the Society of Industrial and Office Realtors or its equivalent.

(iii) For the purposes of such appraisal, the term "fair rental value" shall mean the price that a ready and willing tenant would pay, as of the applicable FRV Rental Adjustment Date, as monthly rent to a ready and willing landlord of property comparable to the Property if such property were exposed for lease on the open market for a reasonable period of time and taking into account all of the purposes for which such property may be used. If a single broker is chosen, then such broker shall determine the fair rental value of the Property. Otherwise, the fair rental value of the Property shall be the arithmetic average of the two (2) of the three (3) appraisals which are closest in amount, and the third appraisal shall be disregarded. In no event, however, shall the Base Rent be reduced below the amount of Base Rent paid by Tenant under this Lease immediately prior to the applicable FRV Rental Adjustment Date. Landlord and Tenant shall instruct the broker(s) to complete their determination of the fair rental value not later than thirty (30) days prior to the applicable FRV Rental Adjustment Date. If the fair rental value is not determined prior to the applicable FRV Rental Adjustment Date, then Tenant shall continue to pay to Landlord the Base Rent applicable to the Property immediately prior to such Extension, until the fair rental value is determined.

When the fair rental value of the Property is determined, Landlord shall deliver notice thereof to Tenant, and Tenant shall pay to Landlord, within ten (10) days after receipt of such notice, the difference between the Base Rent actually paid by Tenant to Landlord and the new Base Rent determined hereunder.

(3) Fixed Adjustment. The Base Rent shall be increased to the following amounts on the following dates: \_\_\_\_\_]]

### ARTICLE THREE BASE RENT

Section 3.01. **Time and Manner of Payment.** Upon Tenant's execution of this Lease, Tenant shall pay Landlord monthly Base Rent in the amount stated in Section 1.10(a) above for the first Lease Month for which Base Rent is payable. On the first day of the next Lease Month for which Base Rent is payable and each Lease Month thereafter, Tenant shall pay Landlord monthly Base Rent in the amount stated in Section 1.10(a) above, in advance, without offset, recoupment, deduction or prior demand. The Base Rent shall be payable at Landlord's address or at such other place as Landlord may designate in writing. The term "Lease Month" shall mean each consecutive calendar month during the Lease Term, with the first Lease Month commencing on the Lease Commencement Date if the Lease Commencement Date is the first day of a calendar month; otherwise the first Lease Month shall commence on the first day of the first calendar month following the Stub Period. If the Lease Commencement Date is a day other than the first day of a calendar month, then (a) the Lease Term shall include the number of months stated (or the number of months included within the number of years stated) in Section 1.05 above, plus the partial month in which the Lease Commencement Date falls (the "Stub Period"), and (b) the Base Rent and Additional Rent for the Stub Period shall be prorated based on the number of days in such calendar month and payable on the Lease Commencement Date.

[[OPTIONAL --

Section 3.02. **Cost of Living Increases.** At the rental adjustment intervals described in Sections 1.10 or 2.05(d)] of this Lease, the Base Rent shall be increased in accordance with the increase in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (all items for the geographical Statistical Area in which the Property is located on the basis of 1982-1984 = 100) (the "Index") as follows:

(a) The Base Rent (the "Comparison Base Rent") in effect immediately before each applicable rental adjustment date (each a "Rental Adjustment Date") shall be increased by the percentage that the Index has increased from the date (the "Comparison Date") on which payment of the Comparison Base Rent began through the month in which the applicable Rental Adjustment Date occurs. The Base Rent shall not be reduced by reason of such computation. Landlord shall notify Tenant of each increase by a written statement which shall include the Index for the applicable Comparison Date, the Index for the applicable Rental Adjustment Date, the percentage increase between those two Indices, and the new Base Rent. [[Notwithstanding the foregoing, the above-referenced percentage increase shall be subject to a minimum of \_\_\_\_% and a maximum of \_\_\_\_% increase.]]

(b) Tenant shall pay the new Base Rent from the applicable Rental Adjustment Date until the next Rental Adjustment Date. Landlord's notice may be given after the applicable Rental Adjustment Date of the increase, and Tenant shall pay Landlord the accrued rental adjustment for the months elapsed between the effective date of the increase and Landlord's notice of such increase within ten (10) days after Landlord's notice. If the format or components of the Index are materially changed after the Lease Commencement Date, Landlord shall substitute an index which is published by the Bureau of Labor Statistics or similar agency and which is most nearly equivalent to the Index in effect on the Lease Commencement Date. The substitute index shall be used to calculate the increase in the Base Rent unless Tenant objects to such index in writing within fifteen (15) days after receipt of Landlord's notice. If Tenant objects, Landlord and Tenant shall submit the selection of the substitute index for binding arbitration in accordance with the rules and regulations of the American Arbitration Association at its office closest to the Property. The costs of arbitration shall be borne equally by Landlord and Tenant.

(c) Notwithstanding any language to the contrary in this Section 3.02, the period of time between the Comparison Date and the applicable Rental Adjustment Date will never be shorter than the rental adjustment intervals stated in Section 1.10 above [[or in Section 2.05(d)(1) above, if applicable.]] For example, if the rental adjustment intervals in Section 1.10 are twelve (12) months, then the Comparison Date will be a date not less than twelve (12) full months prior to the applicable Rental Adjustment Date.]]

Section 3.03. **Security Deposit; Increases.**

(a) Upon Tenant's execution of this Lease, Tenant shall deposit with Landlord a cash Security Deposit in the amount set forth in Section 1.07 above. Landlord may apply all or part of the Security Deposit to any unpaid rent or other charges due from Tenant or to cure any other defaults of Tenant. If Landlord uses any part of the Security Deposit, Tenant shall restore the Security Deposit to its full amount within ten (10) days after Landlord's written request. Tenant's failure to do so shall be a material default under this Lease. No interest shall be paid on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit. Landlord shall refund the portion of the Security Deposit to which Tenant is entitled (if any) within sixty (60) days following the date that Tenant surrenders possession of the Property to Landlord in accordance with the terms and conditions of this Lease.

(b) Each time the Base Rent is increased, Tenant shall deposit additional funds with Landlord sufficient to increase the Security Deposit to an amount which bears the same relationship to the adjusted Base Rent as the initial Security Deposit bore to the initial Base Rent.

Section 3.04. **Application of Payments.** Unless otherwise designated by Landlord in its sole discretion, all payments received by Landlord from Tenant shall be applied to the oldest payment obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing or on a check or money order, shall modify this section or have any force or effect.

Section 3.05. **Termination; Advance Payments.** Upon termination of this Lease under Article Seven (Damage or Destruction) of this Lease, or under Article Eight (Condemnation) of this Lease, or any other termination not resulting from Tenant's default, and after Tenant has vacated the Property in the manner required by this Lease, Landlord shall refund or credit to Tenant (or Tenant's successor) any advance rent or other advance payments made by Tenant to Landlord, and any amounts paid for Real Property Taxes (defined below) and insurance which apply to any time periods after termination of this Lease, and such refund or credit shall be made within sixty (60) days following the date Tenant surrenders possession of the Property to Landlord in accordance with the terms and conditions of this Lease.

**ARTICLE FOUR OTHER CHARGES PAYABLE BY TENANT**

Section 4.01. **Additional Rent.** All charges payable by Tenant to Landlord under this Lease other than Base Rent are called "Additional Rent." Unless this Lease provides otherwise, Tenant shall pay all Additional Rent then due with the next monthly installment of Base Rent. The term "rent" or "Rent" shall mean Base Rent and Additional Rent. Without limitation on other obligations of Tenant that shall survive the expiration or earlier termination of the Lease Term, the obligation of Tenant to pay any accrued but unpaid Rent shall survive the expiration or earlier termination of the Lease Term. The failure of Landlord to timely furnish Tenant the amount of the Rent shall not preclude Landlord from enforcing its rights to collect such Rent.

Section 4.02. **Property Taxes.**

(a) **Real Property Taxes.** Tenant shall pay all Real Property Taxes on the Property (including any fees, taxes or assessments against, or as a result of, any tenant improvements installed on the Property by or for the benefit of Tenant) during the Lease Term. Landlord will bill Tenant monthly in advance for one-twelfth (1/12) of the estimated amount of such Real Property Taxes for the current tax year and Tenant shall pay Landlord the amount of such Real Property Taxes, as Additional Rent. Landlord will pay such Real Property Taxes on or before their due date, provided Tenant has timely made such payments to Landlord. Any penalty caused by Tenant's failure to timely make such payments shall also be Additional Rent owed by Tenant immediately upon demand.

(b) **Definition of Real Property Taxes.** "Real Property Taxes" means: (i) any fee, license fee, license tax, business license fee or business privilege tax, commercial rental tax (including, without limitation, a sales tax on rents paid), levy, charge, assessment, special assessment duty, penalty or tax imposed by any taxing authority against the Property, any improvement thereon, and any leasehold improvement, fixtures, installations, and additions thereto; (ii) any tax on Landlord's right to receive, or the receipt of, rent or income from the Property or against Landlord's business of leasing the Property; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse, water, sewer or other services provided to the Property by any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Property due to a change of ownership, as defined by Applicable Law (defined below), or other transfer of

all or part of Landlord's interest in the Property; (v) any charge or fee replacing any tax previously included within the definition of Real Property Taxes; and (vi) legal and consulting fees, costs and disbursements incurred in connection with proceedings to contest, determine, or reduce Real Property Taxes, Landlord specifically reserving the right, but not the obligation, to contest by appropriate legal proceedings the amount or validity of any Real Property Taxes. "Real Property Taxes" do not, however, include Landlord's federal or state income, franchise, inheritance or estate taxes.

(c) **Joint Assessment; Tenant's Share.** If the Property is not separately assessed, Real Property Taxes for the Property shall be Tenant's Pro Rata Share of the Real Property Taxes for the Project.

(d) **Personal Property Taxes.**

(i) Tenant shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall diligently pursue the separate assessment of such personal property, so that it is taxed separately from the Property.

(ii) If any of Tenant's personal property is taxed with the Property, Tenant shall pay Landlord the taxes for the personal property within fifteen (15) days after Tenant receives a written statement from Landlord for such personal property taxes.

(e) **Use and Occupancy Taxes.** Tenant shall also pay before any penalties or fines are assessed to the appropriate governmental authority any use and occupancy tax in connection with the Property. In the event Landlord is required by law to collect such tax, Tenant shall pay such use and occupancy tax to Landlord as Additional Rent within ten (10) days of demand and Landlord shall remit any amounts so paid to Landlord to the appropriate governmental authority in a timely fashion.

(f) **Rent Tax.** In the event that any governmental authority imposes a tax, charge, assessment or other imposition upon tenants or landlords in general which is based upon the rents payable under this Lease, including any taxes based upon the receipt of rents including gross receipts, sales or value added tax, Tenant shall pay the same before any penalties or fines are assessed to such governmental authority or to Landlord if Landlord is responsible to collect the same, in which case Landlord shall remit the same in a timely manner and, upon request of Tenant, evidence to Tenant such remittance.

**Section 4.03. Utilities.** Tenant shall pay, directly to the appropriate supplier, the cost of all natural gas, heat, light, power, sewer service, telephone, fiber optic, cable or other communications or data delivery services, water, refuse disposal and other utilities and services supplied to the Property. However, if any services or utilities are jointly metered with other property, Landlord shall make a reasonable determination of Tenant's proportionate share of the cost of such utilities and services and Tenant shall pay such share to Landlord with Tenant's next monthly installment of Base Rent, consistent with Section 4.01 above. Tenant acknowledges and agrees that (1) this Lease is entirely separate and distinct from and independent of any and all agreements that Tenant may at any time enter into with any third party for the provision of utility services or any other services, and (2) Landlord has no obligation of any kind concerning the provision of any such services. Landlord shall not be liable for any failure to furnish, stoppage of, or interruption in furnishing any of the services or utilities described in this Section 4.03, when such failure is caused by accident, breakage, repairs, strikes, lockouts, labor disputes, labor disturbances, governmental regulation, civil disturbances, terrorist acts, acts of war, moratorium or other governmental action, or any other cause beyond Landlord's reasonable control, and, in such event, Tenant shall not be entitled to any damages nor shall any failure or interruption abate or suspend Tenant's obligation to pay rent as required under this Lease or constitute or be construed as a constructive or other eviction of Tenant. Further, in the event any governmental authority or public utility promulgates or revises any law, ordinance, rule or regulation, or issues mandatory controls or voluntary controls relating to the use or conservation of energy, water, gas, light or electricity, the reduction of automobile or other emissions, or the provision of any other utility or service, Landlord may take any reasonably appropriate action to comply with such law, ordinance, rule, regulation, mandatory control or voluntary guideline without affecting Tenant's obligations under this Lease. If, at any time during the Lease Term any governmental authority imposes a Carbon Tax (defined below) or similar imposition on Landlord's ownership or operation of the Building or Project, Tenant shall pay its Pro Rata Share of such imposition, as Additional Rent. If, at any time during the Lease Term Landlord incurs any Carbon Offset Costs (defined below), Tenant shall pay its Pro Rata Share of the same, as Additional Rent. As used in this Lease, "**Carbon Tax**" means the aggregate of all taxes, rates, duties, levies, fees, charges, and assessments whatsoever, imposed, assessed, levied, confirmed, rated, or charged against or in respect of the consumption at the Building of electricity, natural gas, propane, or any other fossil fuel used to produce energy, heat, light, or electricity for the Building or any part of it or levied in lieu thereof

and levied against Landlord or the Building by any local, state, or federal government or any agency thereof with jurisdiction. As used in this Lease, “**Carbon Offset Costs**” means the cost of purchasing tradable units, where the purchase of such tradable units is necessary to ensure compliance of the Building with any required target greenhouse gas emission level or energy consumption level as prescribed by Applicable Law. Tenant recognizes that security services, if any, provided by Landlord at the Building are for the protection of Landlord’s property and under no circumstances shall Landlord be responsible for, and Tenant waives any rights with respect to, providing security or other protection for Tenant or its employees, invitees or property in or about the Property or the Building.

**Section 4.04. Insurance Policies.**

(a) **Liability Insurance.** During the Lease Term, Tenant, at Tenant’s sole cost and expense, shall maintain a policy of commercial general liability insurance (or its equivalent) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Property ~~[[and the Limited Common Area]]~~. Tenant shall name Landlord (and any affiliate, lender or property manager of Landlord designated by Landlord) as an additional insured under such policy, and Tenant shall provide Landlord with an appropriate “additional insured” endorsement to Tenant’s liability insurance policy (in a form acceptable to Landlord) not less than ten (10) business days before the early access to or occupancy of the Property by Tenant or any other member of the Tenant Group (defined below). The initial amount of such insurance shall be not less than Three Million Dollars (\$3,000,000.00) per occurrence and shall be subject to periodic increase based upon inflation, increased liability awards, recommendation of Landlord’s professional insurance advisors and other relevant factors. The liability insurance obtained by Tenant under this Section 4.04(a): shall (i) be primary and non-contributing; (ii) contain a “separation of insureds” clause (or equivalent); (iii) contain contractual liability coverage; (iv) provide “occurrence” based coverage; and (v) not have a deductible or self-insured retention amount in excess of Ten Thousand Dollars (\$10,000.00). The amount and coverage of such insurance shall not limit Tenant’s liability nor relieve Tenant of any other obligation under this Lease. Tenant may satisfy its obligations under this Section through the use of a combination of primary and excess or umbrella coverage. Landlord may also obtain commercial general liability insurance in an amount and with coverage determined by Landlord, insuring Landlord against liability arising out of ownership, operation, use or occupancy of the Property. The policy obtained by Landlord shall not be contributory and shall not provide primary insurance.

(b) **Property and Rental Income Insurance.** During the Lease Term, Landlord shall maintain policies of insurance covering loss of or damage to the Property, the Project and the building improvements owned by Landlord (but expressly excluding any property Tenant is required to insure pursuant to Section 4.04(d)(vi) below) in the full amount of their replacement cost, with such policies providing protection against loss or damage due to fire or other perils covered by the “Causes of Loss—Special Form” policy (or a similar policy containing equivalent coverage) and any other perils which Landlord, Landlord’s lender or ground lessor deems reasonably necessary. Landlord shall have the right to obtain terrorism, flood and earthquake insurance and other forms of insurance as required by any lender holding a security interest in the Property or any ground lessor. Landlord shall also have the right to obtain “green building” endorsements to its property insurance policies to ensure that the property insurance proceeds are sufficient to restore the Property to the condition that may be required to meet the applicable Green Building Standard (defined below). Landlord shall not obtain insurance for Tenant’s fixtures or equipment or building improvements installed by Tenant on the Property. During the Lease Term, Landlord shall also maintain a rental income insurance policy, with loss payable to Landlord, in an amount equal to one year’s Base Rent, plus one year’s estimated recurring Additional Rent. Notwithstanding Section 4.04(d)(iv) below, Tenant shall be liable for the payment of its Pro Rata Share of any deductible amount under Landlord’s insurance policies (which deductible amount shall not exceed \$10,000.00) maintained pursuant to this Section 4.04 (b); provided, however, that if the loss or damage is due to an act or omission of Tenant, then Tenant shall be responsible for payment of the entirety of such deductible amount. Tenant shall not do or permit anything to be done which invalidates any such insurance policies.

(c) **Payment of Premiums.** Tenant shall pay all premiums for the insurance policies described in Sections 4.04(a) above and shall reimburse Landlord for Tenant’s proportionate share of the cost of the insurance policies described in Section 4.04(b) above, except Landlord shall pay all premiums for non-primary commercial general liability insurance which Landlord elects to obtain as provided in Section 4.04(a) above. With respect to the premiums for the insurance policies described in Section 4.04(b) above, Landlord shall bill Tenant monthly in advance for the estimated amount of Tenant’s proportionate share of such premiums, consistent with Section 4.05(e) below, and Tenant shall pay Landlord such amount, as Additional Rent. If insurance policies maintained by Landlord cover improvements on real property other than the Property, Landlord shall deliver to Tenant a statement of the premium applicable to the Building showing in reasonable detail how Tenant’s share of the premium was computed. If the Lease Term expires before the expiration of an insurance policy maintained by Landlord, Tenant shall be liable only for Tenant’s prorated share of the insurance premiums. Subject

to the provisions of Section 2.03 above, prior to the Lease Commencement Date, Tenant shall deliver to Landlord (a) either (i) a certificate of insurance (in form acceptable to Landlord) executed by an authorized officer or agent of the insurance company, certifying that the insurance that Tenant is required to maintain under this Section 4.04 is in full force and effect and containing such other information Landlord reasonably requires, or (ii) copies of the required policies of insurance or other satisfactory evidence (on which Landlord can reasonably rely) that the insurance Tenant is required to maintain under this Section 4.04 is in full force and effect, and (b) any endorsements to Tenant's insurance policies required by this Section 4.04. At least thirty (30) days prior to the expiration of any insurance coverage Tenant is required to maintain under this Section 4.04, Tenant shall deliver to Landlord a certificate of insurance (in form acceptable to Landlord) or other satisfactory evidence (on which Landlord can reasonably rely) verifying the timely renewal of such coverage.

**(d) General Insurance Provisions.**

(i) Any insurance that Tenant is required to maintain under this Lease shall include a provision (by endorsement, if necessary) that requires the insurance carrier to give Landlord and Landlord's lender (if requested) not less than thirty (30) days' written notice prior to any cancellation (whether by Tenant or the insurer) or modification of such coverage, including the cancellation (whether by Tenant or the insurer) or modification of any required endorsements.

(ii) If Tenant fails to deliver to Landlord or Landlord's lender (if requested) any certificate of insurance or endorsement required under this Lease within the prescribed time period or if any such policy is canceled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance for Landlord's sole benefit (but is under no obligation to do so), in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance. If Tenant fails to carry the required insurance, such failure shall automatically be deemed to be a covenant by Tenant to self-insure such required coverage, with a full waiver of subrogation in favor of Landlord (in the case of deemed self-insurance of Tenant's required property insurance); provided, however, that such failure shall remain a breach of this Lease unless cured by Tenant and any such deemed covenant to "self-insure" shall not be construed to grant Tenant the right to self-insure any of its insurance obligations under this Lease.

(iii) Tenant shall maintain all insurance required under this Lease with companies duly authorized to issue insurance policies in the State in which the Property is located and holding a Financial Strength Rating of "A" or better, and a Financial Size Category of "XII" or larger, based on the most recent published ratings of the A.M. Best Company. Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 4.04 may not be available in the future. Tenant acknowledges that the insurance described in this Section 4.04 is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant is unable to obtain and maintain the insurance required under this Lease, Tenant shall nevertheless maintain insurance coverage which is (1) customary and commercially reasonable in the insurance industry for Tenant's type of business, as that coverage may change from time to time, and (2) acceptable to Landlord. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. If Tenant believes that any such insurance coverage is inadequate, Tenant shall obtain any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

(iv) Notwithstanding anything in this Lease to the contrary, Landlord and Tenant each hereby waives any and all rights of recovery against the other, or against the members, managers, officers, employees, agents or representatives of the other (whether such right of recovery arises from a claim based on negligence or otherwise), for loss of or damage to its property or the property of others under its control, if such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage. To the extent required under their respective policies of insurance, Landlord and Tenant shall give notice to the insurance carriers of this mutual waiver of claims and confirm that their respective policies of insurance do not prohibit this waiver and include a corresponding waiver of subrogation by the insurer.

(v) Tenant shall not do or permit to be done any act or thing upon the Property or the Project which would (a) jeopardize or be in conflict with the property insurance policies covering the Project or fixtures or property in the Project; (b) increase the rate of property insurance applicable to the Project to an amount higher than it otherwise would be for general office and warehouse use of the Project; or (c) 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 at the Property.

(vi) Tenant shall, at its sole cost and expense, keep in full force and effect during the Lease Term the following additional coverage: (1) workers' compensation insurance as required by state law; (2) employer's liability insurance, with a limit of not less than Two Million Dollars (\$2,000,000), each accident, not less than Two Million Dollars (\$2,000,000) policy limit, and not less than Two Million Dollars (\$2,000,000) each employee for all persons employed by Tenant who may come onto or occupy the Property; (3) commercial auto liability insurance with a limit of not less than Two Million Dollars (\$2,000,000) aggregate limit for bodily injury and property damage, including owned, non-owned, and hired auto liability coverage for such vehicles driven on and around the Property **[[and the Limited Common Area]]** (if Tenant does not own company vehicles, a letter to that effect from an officer or principal of Tenant, in addition to proof of non-owned and hired auto liability coverage is required); and (4) "Causes of Loss – Special Form" (or a similar policy containing equivalent coverage) property insurance on a replacement cost basis, covering (i) Tenant's personal property, whether owned, leased, or rented, including but not limited to trade fixtures, furniture, and equipment, and (ii) any Tenant's Alterations (defined below). Such property insurance policies of Tenant shall contain an agreed amount endorsement in lieu of a co-insurance clause, and shall be written as primary policies, not contributing with and not supplemental to the property insurance coverage that Landlord is required to carry pursuant to Section 4.04(b) above. Tenant may satisfy its liability insurance obligations under this subsection through the use of a combination of primary and excess or umbrella coverage. Tenant shall be solely responsible for payment of the entirety of any self-insured retention or deductible amount under Tenant's insurance policies.

(vii) If Tenant carries any of the liability insurance required hereunder in the form of a policy covering more than one location, any certificate required hereunder shall make specific reference to the Property. In addition, any such policy shall contain a "per location" or "Designated Location (s) General Aggregate" (or comparable) endorsement assuring that any aggregate limit under such liability policy shall apply separately to the Property and that the insurer thereunder shall provide written notice to Landlord if the available portion of such aggregate is reduced to less than the minimum amounts required under Section 4.04(a) above by either payment of claims or the establishment of reserves for claims (in which case Tenant shall be obligated to take immediate steps to increase the amount of its insurance coverage in order to satisfy the minimum requirements set forth in Section 4.04(a) above).

(viii) Tenant's insurance obligations under this Section 4.04 are separate and independent obligations of Tenant, and are expressly not dependent or conditioned on any other obligations of Tenant under this Lease.

#### Section 4.05. **Common Areas; Use, Maintenance and Costs.**

(a) **Common Areas.** As used in this Lease, "Common Areas" shall mean **[[the Limited Common Area and]]** all areas within the Project which are available for the common use of tenants of the Project and which are not leased or held for the exclusive use of Tenant or other tenants, including, but not limited to, parking areas, driveways, sidewalks, loading areas, access roads, corridors, landscaping and planted areas. Notwithstanding the above, Common Areas may also include a portion of the Project that is reserved for a particular tenant's use (such as for reserved parking or outside storage) but maintained by Landlord with the Common Areas for administrative convenience and efficiency **[[as is the case with Tenant's Limited Common Area]]**. Landlord, from time to time, may change the size, location, nature and use of any of the Common Areas, convert Common Areas into leasable areas, construct additional parking facilities (including parking structures) in the Common Areas, and increase or decrease Common Area land and/or facilities. Such activities and changes are permitted if they do not permanently, materially and adversely affect Tenant's use of the Property **[[and the Limited Common Area]]**.

(b) **Use of Common Areas.** Except as otherwise provided in Section 4.05(a) above, Tenant shall have the nonexclusive right (in common with other tenants and all others to whom Landlord has granted or may grant such rights) to use the Common Areas for the purposes intended, subject to such reasonable rules and regulations as Landlord may establish from time to time. Tenant shall abide by such rules and regulations and shall cause others who use the Common Areas with Tenant's express or implied permission to abide by Landlord's rules and regulations. **[[As provided in Section 1.04 above, Tenant also has the exclusive right to use the Limited Common Area, subject to the terms and conditions set forth in that Section.]]** At any time, Landlord may close any Common Areas to perform any acts in the Common Areas as, in Landlord's judgment, are desirable to improve the Project. Tenant shall not interfere with the rights of Landlord, other tenants or any other person entitled to use the Common Areas. Notwithstanding any language to the contrary in this Lease, Tenant's right to use the Common Areas **[[, including any Limited Common Area,]]** shall automatically terminate upon termination of this Lease or upon termination of Tenant's right to possess the Property.

(c) **Maintenance of Common Areas.** Landlord shall maintain the Common Areas in good order, condition and repair, and shall operate the Project, in Landlord's sole discretion, as a first-class industrial/commercial real property development. Tenant shall pay Tenant's Pro Rata Share (as determined below) of all costs incurred by Landlord for the operation and maintenance of the Common Areas, and other Project costs (the "**Common Area Costs**"). Common Area Costs include, but are not limited to, all costs and expenses for the following: utilities, water and sewage charges; maintenance of signs (other than tenants' signs); maintenance of the ESFR fire system and pump (including testing, monitoring and servicing); maintenance of landscaped areas; association dues; premiums for liability, property damage, fire and other types of casualty insurance on the Common Areas and worker's compensation insurance; all property taxes and assessments levied on or attributable to the Common Areas and all Common Area improvements; all personal property taxes levied on or attributable to personal property used in connection with the Common Areas; straight-line depreciation on personal property owned by Landlord which is consumed in the operation or maintenance of the Common Areas; the cost of improvements made subsequent to the initial development of the Project to comply with the requirements of any law, ordinance, code, rule or regulation, including, without limitation, any "green building" laws; rental or lease payments paid by Landlord for rented or leased personal property used in the operation or maintenance of the Common Areas; fees for required licenses and permits; repairing, resurfacing, repaving, maintaining, painting, lighting, cleaning, snow removal, refuse removal, security and similar items for the Project; the cost of service contracts and maintenance expenses for heating and air conditioning systems, except to the extent undertaken by Tenant pursuant to Section 6.04(a) below; the costs of operating and maintaining any on-site or off-site storm water detention facilities benefiting the Project; the cost of service contracts and maintenance expenses for the roof of the Project; reserves for roof replacement, exterior painting, sealing and restriping and/or resurfacing and repaving of the parking lot, driveways, and other paved areas, and other appropriate reserves; the costs of obtaining, maintaining, managing, reporting, commissioning, and re-commissioning the Building to meet the applicable Green Building Standard; and a reasonable allowance to Landlord for Landlord's supervision and management of the Project and the Common Areas (not to exceed five percent (5%) of the gross rents of the Project for the calendar year). Landlord may cause any or all of such services to be provided by third parties and the cost of such services shall be included in Common Area Costs. Common Area Costs shall not include depreciation of real property which forms part of the Common Areas.

(d) **Landscaped and Paved Areas.** Consistent with Section 4.05(c) above, Landlord shall maintain, as a Common Area Cost, the landscaped and paved areas of the Project. Such maintenance shall include gardening, tree trimming, replacement or repair of landscaping, landscape irrigation systems and similar items. Such maintenance shall also include sweeping and cleaning of asphalt, concrete or other surfaces on the driveway, parking areas, yard areas, loading areas or other paved or covered surfaces. In connection with Landlord's obligations under this Section 4.05(d), Landlord may enter into a contract with a contractor of Landlord's choice to provide some (but not necessarily all) of the maintenance services listed above. Tenant shall pay its Pro Rata Share of the monthly cost of such contract, as part of its share of the monthly Common Area Costs.

(e) **Tenant's Share and Payment.** Tenant shall pay Tenant's Pro Rata Share of all Common Area Costs (prorated for any fractional month) as provided below in this Section 4.05(e). Tenant's "**Pro Rata Share**" shall be calculated by dividing the rentable square foot area of the Property, as set forth in Section 1.04 of this Lease, by the aggregate rentable square foot area of the Building **[[and any other buildings in the Project]]** as of the date on which the computation is made. Tenant's initial Pro Rata Share is set out in Section 1.10(b) above. **[[Notwithstanding the above, Landlord shall have the right, from time-to-time, to equitably allocate some or all of the Common Area Costs among the space occupied by different tenants of the Project (the "Cost Pools"), in which case Tenant's Pro Rata Share will be calculated by dividing the square foot area of the Property by the aggregate square foot area of the Cost Pool. Such Cost Pools may include, but shall not be limited to, the pooling of certain buildings within the Project as to their location with respect to a particular Common Area Cost.]]** Any changes in the Common Area Costs and/or the aggregate area of the Project leased or held for lease during the Lease Term shall be effective on the first day of the month after such change occurs. Landlord may, at Landlord's election, estimate in advance and charge to Tenant with the Common Area Costs the following items of Additional Rent: all Real Property Taxes for which Tenant is liable under Section 4.02 of this Lease, all insurance premiums for which Tenant is liable under Section 4.04 of this Lease, all maintenance under Section 4.05(d) of this Lease, and any other Additional Rent payable by Tenant hereunder. At Landlord's election, such statements of estimated Common Area Costs and other Additional Rent shall be delivered monthly, quarterly or at any other periodic intervals to be designated by Landlord; provided, however, that unless otherwise notified by Landlord, Landlord shall bill Tenant monthly in advance for the estimated Common Area Costs and other Additional Rent and Tenant shall pay Landlord the amount of such costs, as Additional Rent. Landlord may adjust such estimates at any time based upon Landlord's experience and reasonable anticipation of costs. Such adjustments shall be effective as of the next rent payment date after notice to Tenant. Within one hundred twenty (120) days after the end of each calendar year of the Lease Term, Landlord shall deliver to Tenant a statement prepared in accordance with generally accepted accounting principles setting forth, in reasonable detail, the Common Area

Costs and other recurring Additional Rent paid or incurred by Landlord during the preceding calendar year and Tenant's Pro Rata Share of such costs and expenses (the "Annual Statement"). Upon receipt of the Annual Statement, there shall be an adjustment between Landlord and Tenant, with payment to or credit given by Landlord (as the case may be) so that Landlord shall receive the entire amount of Tenant's Pro Rata Share of such costs and expenses for such period. The provisions of this Section 4.05(e) shall survive the expiration or earlier termination of the Lease Term.

**Section 4.06. Late Charges.** Tenant's failure to pay rent promptly may cause Landlord to incur unanticipated costs. The exact amount of such costs is impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by any ground lease, mortgage or trust deed encumbering the Property. Therefore, if Landlord does not receive any rent payment within five (5) days after it becomes due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of the overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment. If Tenant shall be served with a demand for payment of past due rent or any other charge, any payments tendered thereafter to cure any default of Tenant shall be made only by cashier's check, wire transfer, or other immediately available funds.

**Section 4.07. Interest on Past Due Obligations.** In addition to any late charge imposed pursuant to Section 4.06 above, any amount owed by Tenant to Landlord which is not paid within five (5) days after it becomes due shall bear interest at the rate of fifteen percent (15%) per annum from the due date of such amount ("Interest"); provided, however, that no interest shall be payable on any late charges imposed on Tenant under this Lease. The payment of interest on such amounts shall not excuse or cure any default by Tenant under this Lease. If the interest rate specified in this Section 4.07 or any other charge or payment due under this Lease which may be deemed or construed as interest, is higher than the rate permitted by law, such interest rate is hereby decreased to the maximum legal interest rate permitted by law.

## ARTICLE FIVE USE OF PROPERTY

**Section 5.01. Permitted Uses.** Tenant may use the Property only for the Permitted Uses set forth in Section 1.06 above and for no other purpose whatsoever; provided that such Permitted Uses (i) do not create any unusual or atypical wear and tear on the Building or decrease the value of the Property; (ii) do not create any risk of Environmental Damages or Hazardous Material contamination on the Property; (iii) do not create obnoxious (as to a reasonable person) odors or noise; (iv) do not include storage of tires, chemicals (other than those permitted under Section 5.03 below) or explosives or other products made with like materials; and (v) do not involve fabrication or manufacturing, except as expressly permitted in Section 1.06 above.

**Section 5.02. Manner of Use.** Tenant shall not cause or permit the Property to be improved, developed, or used in any way which constitutes a violation of any law, statute, ordinance, or governmental regulation or order, or other governmental requirement now in force or which may hereafter be enacted or promulgated, including, without limitation, any "green building" ordinance, law or regulation (collectively, "Applicable Laws"), or which unreasonably interferes with the rights of other tenants of Landlord, or which constitutes a nuisance or waste. Tenant shall obtain and pay for all permits required for Tenant's occupancy of the Property, and for all business licenses, and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Tenant of the Property, including without limiting to the Occupational Safety and Health Act. Notwithstanding the foregoing, Landlord shall, at Tenant's sole cost and expense, cooperate with Tenant in executing permitting applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain from the applicable governmental authority a High Pile Stock Permit (or comparable permit), if needed. Tenant, at Tenant's sole cost and expense, shall be responsible for the installation of any fire hose valves, draft curtains, smoke venting and any additional fire protection systems (including, without limitation, fire extinguishers) that may be required by the fire department or any governmental agency.

Tenant shall, at its sole cost and expense, promptly comply with any Applicable Laws which relate to (or are triggered by) (i) Tenant's use of the Property, and (ii) any alteration or any tenant improvements made by Tenant or at the request of Tenant. Should any standard or regulation now or hereafter be imposed on Tenant by any federal, state or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards, then Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any Applicable Laws, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall immediately notify Landlord in writing of any water infiltration at the Property.

Section 5.03. **Hazardous Materials.**

5.03.1 **Definitions.**

A. **“Hazardous Material”** means any substance, whether solid, liquid or gaseous in nature:

(i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or

(ii) which is or becomes defined as a “hazardous waste,” “hazardous substance,” pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. section 1801 et seq.), the Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.), the Clean Air Act (42 U.S.C. section 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. section 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. section 651 et seq.), as these laws have been amended or supplemented; or

(iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Nevada or any political subdivision thereof; or

(iv) the presence of which on the Property or the Project causes or threatens to cause a nuisance upon the Property or the Project or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property; or

(v) the presence of which on adjacent properties could constitute a trespass by Tenant; or

(vi) without limitation which contains gasoline, diesel fuel or other petroleum hydrocarbons; or

(vii) without limitation which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or

(viii) without limitation which contains radon gas.

B. **“Environmental Requirements”** means all applicable present and future:

(i) statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items (including, but not limited to those pertaining to reporting, licensing, permitting, investigation and remediation), of all Governmental Agencies; and

(ii) all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation, all requirements pertaining to emissions, discharges, releases, or threatened releases of Hazardous Materials or chemical substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials or chemical substances.

C. **“Environmental Damages”** means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses (including the expense of investigation and defense of any claim, whether or not such claim is ultimately defeated, or the amount of any good faith settlement or judgment arising from any such claim) of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable (including without limitation reasonable attorneys’ fees and disbursements and consultants’ fees) any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, or beneath the Property or the Project or migrating or threatening to migrate to or from the Property or the Project, or the existence of a violation of Environmental Requirements pertaining to the Property or the Project and the activities thereon, regardless of whether the existence of such Hazardous

Material or the violation of Environmental Requirements arose prior to the present ownership or operation of the Property. Environmental Damages include, without limitation:

(i) damages for personal injury, or injury to property or natural resources occurring upon or off of the Property, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest, penalties and damages arising from claims brought by or on behalf of employees of Tenant (with respect to which Tenant waives any right to raise as a defense against Landlord any immunity to which it may be entitled under any industrial or worker's compensation laws);

(ii) fees, costs or expenses incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of such Environmental Requirements, including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any Governmental Agency or reasonably necessary to make full economic use of the Property and the Project or any other property in a manner consistent with its current use or otherwise expended in connection with such conditions, and including, without limitation, any attorneys' fees, costs and expenses incurred in enforcing the provisions of this Lease or collecting any sums due hereunder;

(iii) liability to any third person or Governmental Agency to indemnify such person or Governmental Agency for costs expended in connection with the items referenced in subsection (ii) above; and

(iv) diminution in the fair market value of the Property or the Project including, without limitation, any reduction in fair market rental value or life expectancy of the Property or the Project or the improvements located thereon or the restriction on the use of or adverse impact on the marketing of the Property or the Project or any portion thereof.

D. "Governmental Agency" means all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states, counties, cities and political subdivisions thereof.

E. The "Tenant Group" means Tenant, Tenant's successors, assignees, guarantors, officers, members, managers, directors, agents, employees, contractors, invitees, permittees or other parties under the supervision or control of Tenant or entering the Property during the Lease Term with the permission or knowledge of Tenant, other than Landlord or Landlord's agents or employees.

#### 5.03.2 Prohibitions.

A. Other than (i) normal quantities of general office and cleaning supplies containing de minimis amounts of Hazardous Material, (ii) those Hazardous Materials that may be contained within vehicles, equipment, and machinery operated at the Property (e.g., fuel in a vehicle's tank) or contained in original packaging from manufacturer and temporarily held by Tenant while in transit, so long as such items are handled by Tenant in strict compliance with all Environmental Requirements, and (iii) except as specified on Exhibit "B" attached hereto, Tenant shall not cause, permit or suffer any Hazardous Material to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Property **[[and the Limited Common Area]]** by the Tenant Group, or any other person without the prior written consent of Landlord. From time to time during the Lease Term, Tenant may request Landlord's approval of Tenant's use of other Hazardous Materials, which approval may be withheld in Landlord's sole discretion. Before the date of Tenant's early access to or occupancy of the Property, Tenant shall provide to Landlord for those Hazardous Materials described on Exhibit "B": (a) a description of handling, storage, use and disposal procedures; and (b) all "community right to know" plans or disclosures and/or emergency response plans which Tenant is required to supply to local Governmental Agencies pursuant to any Environmental Requirements.

B. Tenant shall not cause, permit or suffer the existence or the commission by the Tenant Group, or by any other person, of a violation of any Environmental Requirements upon, about or beneath the Property or the Project.

C. Tenant shall neither create or suffer to exist, nor permit the Tenant Group to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind with respect to the Property or the Project, including without limitation, any lien imposed pursuant to section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. section 9607(l)) or any similar state statute.

D. Except as otherwise expressly allowed by Section 5.03.2(A) above, Tenant shall not install, operate or maintain any above or below grade tank, sump, pit, pond, lagoon or other storage or treatment vessel or device on the Property without Landlord's prior written consent, which may be withheld in Landlord's sole and absolute discretion.

**5.03.3 Indemnity.**

A. Tenant, its successors, assigns and guarantors, agree to indemnify, defend, reimburse and hold harmless:

- (i) Landlord; and
- (ii) any other person who acquires all or a portion of the Property in any manner (including purchase at a foreclosure sale) or who becomes entitled to exercise the rights and remedies of Landlord under this Lease; and
- (iii) the directors, officers, shareholders, employees, partners, members, managers, agents, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees, heirs, devisees, successors, assigns and invitees of Landlord and such persons;

from and against any and all Environmental Damages which exist as a result of the activities or negligence of the Tenant Group or which exist as a result of the breach of any warranty or covenant or the inaccuracy of any representation of Tenant contained in this Lease, or by Tenant's remediation of the Property or the Project or failure to meet its obligations contained in this Section 5.03.

B. The obligations contained in this Section 5.03.3 shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings, even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against such indemnified persons. Landlord, at its sole expense, may employ additional counsel of its choice to associate with counsel representing Tenant.

C. Landlord shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or actions initiated in connection with Tenant's activities. Landlord may also negotiate, defend, approve and appeal any action taken or issued by any applicable governmental authority with regard to contamination of the Property or the Project by a Hazardous Material.

D. The obligations of Tenant in this Section 5.03.3 shall survive the expiration or termination of this Lease.

E. The obligations of Tenant under this Section 5.03.3 shall not be affected by any investigation by or on behalf of Landlord, or by any information which Landlord may have or obtain with respect thereto.

**5.03.4 Obligation to Remediate.** In addition to the obligation of Tenant to indemnify Landlord pursuant to this Lease, Tenant shall, upon approval and demand of Landlord, at its sole cost and expense and using contractors approved by Landlord, promptly take all actions to remediate the Property and the Project which are required by any Governmental Agency, or which are reasonably necessary to mitigate Environmental Damages or to allow full economic use of the Property and the Project, which remediation is necessitated from the presence upon, about or beneath the Property and the Project, at any time during or upon termination of this Lease (whether discovered during or following the Lease Term), of a Hazardous Material or a violation of Environmental Requirements existing as a result of the activities or negligence of the Tenant Group. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property and the Project, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off the Property, which shall be performed in a manner approved by Landlord. Tenant shall take all actions necessary to restore the Property and the Project to the condition existing prior to the introduction of Hazardous Material upon, about or beneath the Property and the Project, notwithstanding any lesser standard of remediation allowable under Applicable Law or governmental policies.

**5.03.5 Right to Inspect.** Landlord shall have the right in its sole and absolute discretion, but not the duty, to enter and conduct an inspection of the Property **[[and the Limited Common Area]]**, including invasive tests, at any reasonable time to determine whether Tenant is complying with the terms of this Lease, including but not limited to the

compliance of the Property **[[and the Limited Common Area]]** and the activities thereon with Environmental Requirements and the existence of Environmental Damages as a result of the condition of the Property **[[and the Limited Common Area]]** or surrounding properties and activities thereon. Landlord shall have the right, but not the duty, to retain any independent professional consultant (the “**Consultant**”) to enter the Property **[[and the Limited Common Area]]** to conduct such an inspection or to review any report prepared by or for Tenant concerning such compliance. The cost of the Consultant shall be paid by Landlord unless such investigation discloses a violation of any Environmental Requirement by the Tenant Group or the existence of a Hazardous Material on the Property **[[and the Limited Common Area]]** or any other property caused by the activities or negligence of the Tenant Group (other than Hazardous Materials used in compliance with all Environmental Requirements and previously approved by Landlord), in which case Tenant shall pay the cost of the Consultant. Tenant hereby grants to Landlord, and the agents, employees, consultants and contractors of Landlord the right to enter the Property **[[and the Limited Common Area]]** to perform such tests on the Property **[[and the Limited Common Area]]** as are reasonably necessary to conduct such reviews and investigations. Landlord shall use commercially reasonable efforts to minimize interference with the business of Tenant.

**5.03.6 Notification.** If Tenant shall become aware of or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, or liability of Tenant for Environmental Damages in connection with the Property or past or present activities of any person thereon, including but not limited to notice or other communication concerning any actual or threatened investigation, inquiry, lawsuit, claim, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction, relating to same, then Tenant shall deliver to Landlord within ten (10) days of the receipt of such notice or communication by Tenant, a written description of said violation, liability, or actual or threatened event or condition, together with copies of any documents evidencing same. Receipt of such notice shall not be deemed to create any obligation on the part of Landlord to defend or otherwise respond to any such notification.

If requested by Landlord, Tenant shall disclose to Landlord the names and amounts of all Hazardous Materials other than general office and cleaning supplies referred to in Section 5.03.2 of this Lease, which were used, generated, treated, handled, stored or disposed of on the Property or which Tenant intends to use, generate, treat, handle, store or dispose of on the Property. The foregoing in no way shall limit the necessity for Tenant obtaining Landlord’s consent pursuant to Section 5.03.2 of this Lease.

**5.03.7 Surrender of Property.** In the ninety (90) days prior to the expiration or termination of the Lease Term, and for up to ninety (90) days after the later to occur of: (i) Tenant’s full surrender to Landlord of exclusive possession of the Property **[[and the Limited Common Area]]**; and (ii) the termination of this Lease, Landlord may have an environmental assessment of the Property **[[and the Limited Common Area]]** performed in accordance with Section 5.03.5 of this Lease. Tenant shall perform, at its sole cost and expense, any clean-up or remedial work recommended by the Consultant which is necessary to remove, mitigate or remediate any Hazardous Materials and/or contamination of the Property or the Project caused by the activities or negligence of the Tenant Group.

**5.03.8 Assignment and Subletting.** In the event this Lease provides that Tenant may assign this Lease or sublet the Property subject to Landlord’s consent and/or certain other conditions, and if the proposed assignee’s or subtenant’s activities in or about the Property involve the use, handling, storage or disposal of any Hazardous Materials other than those used by Tenant and in quantities and processes similar to Tenant’s uses in compliance with this Lease, (i) it shall be reasonable for Landlord to withhold its consent to such assignment or sublease in light of the risk of contamination posed by such activities and/or (ii) Landlord may, in its sole and absolute discretion, impose an additional condition to such assignment or sublease which requires Tenant to reasonably establish that such assignee’s or subtenant’s activities pose no materially greater risk of contamination to the Property than do Tenant’s permitted activities in view of: (a) the quantities, toxicity and other properties of the Hazardous Materials to be used by such assignee or subtenant; (b) the precautions against a release of Hazardous Materials such assignee or subtenant agrees to implement; (c) such assignee’s or subtenant’s financial condition as it relates to its ability to fund a major clean-up; and (d) such assignee’s or subtenant’s policy and historical record respecting its willingness to respond to the clean-up of a release of Hazardous Materials.

**5.03.9 Survival of Hazardous Materials Obligation.** Tenant’s breach of any of its covenants or obligations under this Section 5.03 shall constitute a material default under this Lease. The obligations of Tenant under this Section 5.03 shall survive the expiration or earlier termination of this Lease without any limitation, and shall constitute obligations that are independent and severable from Tenant’s covenants and obligations to pay rent under this Lease.

Section 5.04. **Auctions and Signs.** Tenant shall not conduct or permit any auctions or sheriff's sales at the Property. Subject to Landlord's prior written approval, and provided all signs are in keeping with the quality, design and style of the business park within which the Property is located, Tenant, at its sole cost and expense, may install an identification sign ("**Sign**") at the Property; provided, however, that (i) the size, color, location, materials and design of the Sign shall be subject to Landlord's prior written approval; (ii) the Sign shall comply with all applicable governmental rules and regulations and the Property's covenants, conditions and restrictions; (iii) the Sign shall not be painted directly on the Building or attached or placed on the roof of the Building; and (iv) Tenant's continuing signage right shall be contingent upon Tenant maintaining the Sign in a first-class condition. Tenant shall be responsible for all costs incurred in connection with the design, construction, installation, repair and maintenance of the Sign. Upon the expiration or earlier termination of this Lease, Tenant shall cause the Sign to be removed and shall repair any damage caused by such removal (including, but not limited to, patching and painting), all at Tenant's sole cost and expense. Except for the Sign, no other sign, notice, logos, picture, names or advertisement may be posted or installed at the Property, Building or Project by or on behalf of or at the request of Tenant without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion. Any signs, notices, logos, pictures, names or advertisements which are installed and that have not been separately approved in writing by Landlord, may be removed by Landlord, without notice to Tenant, at Tenant's sole cost and expense.

Section 5.05. **Indemnity.** To the extent permitted by Applicable Law, Tenant shall indemnify, defend, protect and hold harmless Landlord (and Landlord's members, managers, partners, and shareholders, as applicable, and the affiliates, employees, agents, and contractors of Landlord and its members, managers, partners, and shareholders, as applicable) and Landlord's property manager from any and all costs, claims, loss, damage, expense and liability (including without limitation court costs, litigation expenses, and reasonable attorneys' fees) incurred in connection with or arising from: (a) Tenant's use of the Property and the Common Areas **[[including the Limited Common Area]]**, including, but not limited to, those arising from any accident, incident, injury or damage, however and by whomsoever caused (except to the extent of any claim arising out of Landlord's gross negligence or willful misconduct), to any person or property occurring in or about the Property; (b) the conduct of Tenant's business or anything else done or permitted by Tenant to be done in or about the Property; (c) any breach or default in the performance of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; or (e) other acts or omissions of Tenant. As used in this Section, the term "**Tenant**" shall include Tenant's employees, agents, contractors and invitees, if applicable. The provisions of this Section 5.05 shall survive the expiration or earlier termination of this Lease with respect to any claims or liability occurring prior to such expiration or earlier termination, and shall constitute obligations that are independent and severable from Tenant's covenants and obligations to pay rent under this Lease.

Section 5.06. **Landlord's Access.** Landlord reserves the right at all reasonable times and upon reasonable notice to Tenant to enter the Property **[[and the Limited Common Area]]** to (i) inspect it; (ii) show the Property to prospective purchasers, mortgagees or tenants, or to the ground or underlying lessors; (iii) post notices of non-responsibility; (iv) alter, improve or repair the Property; or (v) place "For Sale" and "For Lease" signs on the Property. Notwithstanding anything to the contrary contained in this Section 5.06, Landlord may enter the Property at any time to (A) perform services required of Landlord; (B) take possession due to any breach of this Lease, in the manner provided in this Lease, and consistent with Applicable Law; and (C) perform any covenants of Tenant which Tenant fails to perform. Any such entries shall be without the abatement of Rent and shall include the right to take such reasonable steps as required to accomplish the stated purposes. Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Property, and any other loss occasioned thereby. For each of the above purposes, Landlord may request and Tenant shall provide a key with which to unlock all the doors in the Property. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Property. Any entry into the Property in the manner described above shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Property, or an actual or constructive eviction of Tenant from any portion of the Property.

Section 5.07. **Vehicle Parking.** Tenant shall be entitled to use those spaces in the vehicle parking area located adjacent to the Property **[[within the Limited Common Area]]**, as shown on Exhibit "A" attached hereto, without paying any additional Rent, other than the usual charges pertaining to the operation and maintenance of the Common Areas. Tenant's parking shall not be reserved **[[except with respect to spaces in the Limited Common Area]]** and shall be limited to vehicles no larger than standard size automobiles or pickup utility vehicles. Tenant shall not allow large trucks or other large vehicles to be parked within the Project (other than in designated areas) or on the adjacent public streets; provided, however, that the parking or storing of large trucks and other commercial vehicles is allowed in front of, adjacent and perpendicular to Tenant's dock high loading doors at the Property, so as to be on the concrete apron adjacent to such doors, or in other areas specifically designated by Landlord for such purpose. Temporary parking of large delivery vehicles at the

Project may be permitted by the rules and regulations established by Landlord. Vehicles shall be parked only in striped parking spaces and not in driveways, loading areas or other locations not specifically designated for parking. Handicapped spaces shall only be used by those legally permitted to use them. If Tenant parks more vehicles in the parking area than as permitted above or parks outside the designated parking area shown on Exhibit "A", then such conduct shall be a material breach of this Lease. In addition to Landlord's other remedies under this Lease, Tenant shall pay a daily charge determined by Landlord for each such additional vehicle.

Section 5.08. **Quiet Possession.** If Tenant pays the rent and observes and performs all other terms, covenants and conditions on Tenant's part to be observed and performed under this Lease, Landlord agrees to defend Tenant's right to quiet enjoyment of the Property for the Lease Term against any party claiming by, through or under Landlord, subject to the provisions of this Lease.

## ARTICLE SIX CONDITION OF PROPERTY; MAINTENANCE, REPAIRS AND ALTERATIONS

Section 6.01. **Existing Conditions.** ~~[[Revise if new construction.]]~~ ~~[[Subject to the performance of Landlord's obligations under Article Fourteen below,]]~~ Tenant accepts the Property in its "as-is" condition as of the earlier of Tenant's occupancy of the Property or the Lease Commencement Date, subject to all recorded matters, laws, ordinances, and governmental regulations and orders. Except as expressly provided in this Lease, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representations or warranties, express or implied, whatsoever with respect to the condition of the Property, the Building or any portion of the Project, or any buildings or other improvements on or comprising a part of either of same, nor with respect to the fitness or suitability thereof for any particular use or purpose, and Tenant hereby waives any and all such warranties, express or implied, including specifically but without limitation any warranty or representation of suitability. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition of the Property (or has had the opportunity to do so) and is not relying on any representations of Landlord or any Broker with respect thereto.

Section 6.02. **Exemption of Landlord from Liability.** To the extent permitted by Applicable Law, Landlord shall not be liable for (and Tenant assumes the risk of ) any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Property, whether such damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or rain; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising in or about the Property or upon other portions of the Project, or from other sources or places; (d) criminal acts or entry by unauthorized persons into the Property or the Building; or (e) any act or omission of any other tenant of Landlord. Landlord shall not be liable for any such damage or injury even though the cause of or the means of repairing such damage or injury are not accessible to Tenant. The provisions of this Section 6.02 shall not, however, exempt Landlord from liability to the extent of Landlord's gross negligence or willful misconduct, and are subject to Section 4.04(d)(iv) above.

### Section 6.03. Landlord's Obligations.

(a) Except as provided in Article Seven (Damage or Destruction) and Article Eight (Condemnation), Landlord shall keep the following in good order, condition and repair (subject to ordinary wear and tear), including replacement, as needed: (i) structural portions of the foundations, exterior walls and roof (including the roof membrane) of the Property (including painting the exterior surface of the exterior walls of the Property as often as is necessary, in Landlord's reasonable judgment), and (ii) all Common Systems. Consistent with the provisions of Section 6.04(a) below, Landlord may elect to maintain a preventive maintenance service contract for the Property's heating and air conditioning systems. Landlord shall not be obligated to maintain or repair (or replace) the floor, windows, skylights, doors, plate glass or the interior surfaces of exterior walls. Landlord shall make repairs required under this Section 6.03 within a reasonable time after receipt of written notice from Tenant of the need for such repairs. Landlord's obligations under this Section 6.03(a) are in addition to those contained in Section 4.05 above.

(b) Except for the structural portions of (i) the foundations, (ii) the exterior walls, and (iii) the roof of the Property, which shall remain Landlord's responsibility, Tenant shall pay or reimburse Landlord for all costs Landlord incurs under Section 6.03(a) above as Common Area Costs, as provided in Section 4.05 of this Lease. Tenant waives the benefit of any statute in effect now or in the future which might give Tenant the right to make repairs at Landlord's expense or to terminate this Lease due to Landlord's failure to keep the Property in good order, condition and repair.

Section 6.04. **Tenant's Obligations.**

(a) Except as provided in Section 4.05 (c) above with respect to Landlord's obligations for the performance of certain work at the Property that is the subject of Common Area Costs, Section 6.03 (Landlord's Obligations) above, Article Seven (Damage or Destruction) below, and Article Eight (Condemnation) below, Tenant, at Tenant's sole cost and expense, shall keep all portions of the Property (including structural, nonstructural, interior, exterior, systems and equipment) in good order, condition and repair. If any portion of the Property or any system or equipment in the Property that Tenant is obligated to repair cannot be fully repaired or restored (in Landlord's judgment), Tenant shall promptly replace (subject to Landlord's right to undertake such responsibility) such portion of the Property or system or equipment in the Property. The cost of such replacement shall be amortized (using a rate of interest reasonably determined by Landlord) over the useful life as reasonably determined by Landlord, and Tenant shall only be liable for that portion of the cost which is applicable to the remaining Lease Term (as it may be extended) (the "Useful Life Allocation"), and if the full replacement cost is initially borne by Tenant, Landlord shall reimburse Tenant or provide Tenant with a credit against future Additional Rent obligations in an amount equal to Landlord's share of such total cost. Tenant shall maintain a preventive maintenance service contract providing for the regular inspection and maintenance of the Property's heating and air conditioning systems (the "HVAC Systems") by a licensed heating and air conditioning contractor, unless Landlord is obligated to maintain all or a portion of such equipment pursuant to Section 6.03(a) above, or unless Landlord makes the election described in the next succeeding sentence. Landlord shall have the right, upon written notice to Tenant, to undertake the responsibility for preventive maintenance of all or a portion of the HVAC Systems at Tenant's expense, the cost of which shall be paid by Tenant as Additional Rent. Notwithstanding any language to the contrary in this Section 6.04(a), Tenant shall pay the full cost of such repair or replacement of the HVAC Systems and is not entitled to the benefit of the Useful Life Allocation if Tenant has failed to obtain and maintain the preventive maintenance contracts for the HVAC Systems, as required above (and assuming Landlord has not elected to do so). If any part of the Property or the Project is damaged by any act or omission of Tenant (such as damage to the floor slab caused by overloading), Tenant shall pay Landlord the cost of repairing or replacing such damaged property, whether or not Landlord would otherwise be obligated to pay the cost of maintaining or repairing such property and without the benefit of the Useful Life Allocation. It is the intention of Landlord and Tenant that, at all times during the Lease Term, Tenant shall maintain the Property in an attractive, first-class and fully operative condition. Without limiting the generality of the provisions contained above in this Section 6.04(a), Tenant agrees to pay to Landlord the cost to repair any damage caused by the transportation and storage of its products in, on, or about the Property, including, but not limited to any damage to the Property's concrete floor slab, adjoining concrete ramps, adjoining concrete truck apron, and adjoining concrete or asphalt parking and access areas due to the use of forklifts or other equipment or vehicles hauling Tenant's products or otherwise. Tenant's payment obligation described in the immediately preceding sentence shall include the cost of replacement of any damaged areas of the Property or the Project, if repair is impracticable, so as to restore such areas to the condition existing prior to such damage and in such event Tenant shall not be entitled to the benefit of the Useful Life Allocation.

(b) Tenant shall fulfill all of Tenant's obligations under this Section 6.04 at Tenant's sole cost and expense, except as otherwise expressly provided in this Section 6.04. If Tenant fails to maintain, repair or replace the Property as required by this Section 6.04, Landlord may (but without any obligation to do so), upon ten (10) days' prior notice to Tenant (except that no notice shall be required in the case of an emergency), enter the Property and perform such maintenance or repair (including replacement, as needed) on behalf of Tenant. In such case, Tenant shall reimburse Landlord on demand for all costs incurred in performing such maintenance, repair or replacement, plus an administration fee equal to fifteen percent (15%) of such amount.

Section 6.05. **Alterations, Additions, and Improvements.**

(a) Tenant shall not make any alterations, additions, or improvements to the Property ("Tenant's Alterations") without Landlord's prior written consent, except that no consent shall be required for non-structural interior alterations that (i) do not exceed Twenty-five Thousand Dollars (\$25,000.00) in cost; (ii) are not visible from the outside of the Building; and (iii) do not alter or penetrate the floor slab or the roof membrane. Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord. Tenant shall promptly remove any Tenant's Alterations constructed in violation of this Section 6.05(a) upon Landlord's written request. All Tenant's Alterations shall be performed in a good and workmanlike manner, in conformity with all Applicable Laws, and all contractors and subcontractors shall be approved by Landlord. Upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials. Notwithstanding anything to the contrary in this Section, Tenant must obtain Landlord's prior written consent for any Tenant's Alterations that will (or may) be visible from the outside of the Building. Landlord shall have the right, in its sole

discretion, to determine the location of any such visible Tenant's Alterations and require the screening of such items at Tenant's sole cost and expense.

(b) Tenant shall pay when due all claims for labor and material furnished to the Property or alleged to have been furnished to or for Tenant at or for use of the Property. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work on the Property, regardless of whether Landlord's consent to such work is required. Notwithstanding any language to the contrary in this Section 6.05, with respect to any Tenant's Alterations, regardless of whether Landlord's consent to such work is required under the terms of this Lease, Tenant acknowledges that it is required by Nevada law to record a notice of posted security in compliance with the requirements of Nev. Rev. Stat. Chapter 108 (2015) (the "**Posted Security Requirements**"). Concurrently with Landlord's delivery of this Lease to Tenant for execution, Landlord may elect to provide Tenant with a separate written notice of the Posted Security Requirements, which shall include an acknowledgement of Tenant (the "**Notice and Acknowledgement**"). If so provided, Tenant agrees to promptly sign and return the Notice and Acknowledgment to Landlord; provided, however, that Tenant acknowledges and agrees that under no circumstances shall such Notice and Acknowledgement or the terms of this Section 6.05 be construed as Landlord's consent to or approval of any Tenant's Alterations. Landlord may elect to record and post notices of non-responsibility on the Property.

(c) To the extent Landlord's prior consent is required by this Section 6.05, Landlord may condition its consent to any proposed Tenant's Alterations on such requirements as Landlord, in its sole discretion, deems necessary or desirable, including without limitation: (i) Tenant's submission to Landlord, for Landlord's prior written approval, of all plans and specifications relating to Tenant's Alterations; (ii) Landlord's prior written approval of the time or times when Tenant's Alterations are to be made; (iii) Landlord's prior written approval of the contractors and subcontractors performing Tenant's Alterations; (iv) Tenant's written notice of whether Tenant's Alterations include the use or handling of any Hazardous Materials; (v) Tenant's obtaining, for Landlord's benefit and protection, of such insurance as Landlord may reasonably require (in addition to that required under Section 4.04 of this Lease); (vi) Tenant's strict compliance with the requirements of Nev. Rev. Stat. Chapter 108 (2015) or any applicable successor statute; (vii) Tenant's obtaining all applicable permits from the governmental authorities and the furnishing of copies of such permits to Landlord before the commencement of work on the subject Tenant's Alterations; and (viii) Tenant's payment to Landlord of all costs and expenses incurred by Landlord because of Tenant's Alterations, including, but not limited to, costs incurred in reviewing the plans and specifications for, and the progress of, Tenant's Alterations, and costs of engaging outside consultants (whether for structural engineering review or otherwise).

(d) Tenant shall have no power or authority to do any act or make any contract which may create or be the basis for any lien upon the interest of Landlord in the Property or the Project, or any portion thereof. Within ten (10) days following the imposition of any mechanics or other lien or stop notice filed with respect to the Property or the Project, or any portion thereof, based upon any act of Tenant or of anyone claiming by, through or under Tenant, or based upon work performed or materials supplied allegedly for Tenant (an "**Imposition**"), Tenant shall either (a) cause such Imposition to be released of record by payment, or (b) in case of a disputed Imposition, cause the posting of a proper bond (pursuant to Applicable Law under which a court issues an order that discharges the lien) or provide other security satisfactory to Landlord. Provided that the Imposition is timely released or bonded over, Tenant shall have the right to contest the validity of the obligation underlying the Imposition, provided that Tenant shall diligently contest such Imposition and indemnify, defend, and hold Landlord harmless from any and all loss, cost, damage, liability and expense (including attorneys' fees) arising from or related to it. Landlord may require Tenant to pay Landlord's attorneys' fees and costs incurred while participating in such action if Landlord shall decide it is in its best interest to so participate. If Tenant fails to take either action within such ten (10)-day period, Landlord, at its election, may pay and satisfy the Imposition, in which case the sum so paid by Landlord, with interest from the date of payment at the rate set forth in Section 4.07 of this Lease, shall be deemed Additional Rent due and payable by Tenant within ten (10) days after Tenant's receipt of Landlord's payment demand. Nothing in this Lease shall be construed as consent on the part of Landlord to subject the interest and estate of Landlord to liability under any applicable lien law for any reason or purpose whatsoever, it being expressly understood that Landlord's interest and estate shall not be subject to such liability and that no person shall have any right to assert any such lien.

(e) Notwithstanding any language to the contrary in this Section 6.05, if the proposed Tenant's Alterations involve or affect in any way one or more of the structural components of the Building, or relate in any way to life safety matters, including, but not limited to, the Building's or Project's fire suppression system (collectively, the "**Structural and Safety Alterations**"), Landlord's prior written consent will be required, regardless of the cost of the proposed Tenant's Alterations. Moreover, Tenant agrees to use contractors and subcontractors selected by Landlord for the construction of any

and all permitted Structural and Safety Alterations, and for any work involving possible roof penetrations (so as to ensure that any such work is performed properly and does not render any applicable roof warranty void or voidable).

(f) Tenant acknowledges and agrees that any Tenant's Alterations are wholly optional with Tenant and are not being required by Landlord, either as a condition to the effectiveness of this Lease or otherwise.

**Section 6.06. Condition upon Termination.** Upon the termination of this Lease, Tenant shall surrender the Property ~~[[and the Limited Common Area]]~~ to Landlord, broom clean and in the same condition as received (including, without limitation, the removal of all floor striping and the resealing of the floor, but only to the extent such resealing is necessitated by the removal of such floor striping), ordinary wear and tear excepted; provided, however, that (a) "ordinary wear and tear" shall not include any damage or deterioration that would or could have been prevented by good maintenance practice or by Tenant performing all of its obligations under this Lease, and (b) Tenant shall not be obligated to repair any damage which Landlord is required to repair under Section 6.03 above or Article Seven (Damage or Destruction) below. In addition, Landlord may require Tenant to remove any Tenant's Alterations (whether or not made with Landlord's consent) prior to the expiration of this Lease and to restore the Property to its prior condition, all at Tenant's expense. All Tenant's Alterations that Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of this Lease, except that Tenant may remove any of Tenant's machinery, equipment or other personal property that can be removed without material damage to the Property. Tenant shall repair, at Tenant's expense, any damage to the Property caused by the removal of any such machinery, equipment or other personal property (including, without limitation, the complete removal of all studs and bolts that penetrate the floor or walls and filling and patching the holes). In no event, however, shall Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property) without Landlord's prior written consent: any power wiring and power panels; lighting and lighting fixtures; wall coverings; drapes, blinds and other window coverings; carpets and other floor coverings; heaters, air conditioners and any other heating and air conditioning equipment; fencing and security gates; load levelers, dock lights, dock locks and dock seals; and other similar building operating equipment and decorations. Tenant's obligations under this Section 6.06 shall also include its obligations under Section 5.04 with respect to any Sign. If Tenant fails, by the expiration or earlier termination of the Lease Term, to restore the Property to the condition required under this Section 6.06, then Tenant shall pay Landlord on demand an amount equal to the cost of such restoration work, plus an administration fee equal to fifteen percent (15%) of such amount, in addition to any other remedy Landlord may have under this Lease or Applicable Law for such breach. If Tenant fails to surrender the Property to Landlord upon termination of this Lease in the condition required by this Section 6.06, including, without limitation, the completion of any remediation work required under Section 5.03 above, such failure shall constitute a holdover for purposes of Section 2.04 above.

**Section 6.07. Roof Access.** Anything in this Lease to the contrary notwithstanding, Tenant shall not and shall not permit any of its employees, agents, contractors or invitees to enter on or in any way move about on the roof of the Building, for any purposes whatsoever, without the prior written consent of, coordination with, and supervision of Landlord or its selected agents or contractors.

**Section 6.08. Floor Load Limits.** Tenant shall not place a load upon any floor of the Property exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Landlord reserves the right to prescribe the weight and position of all safes, machinery and mechanical equipment in the Building. Such installations shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Landlord's judgment, to absorb and prevent vibration, noise and annoyance to other occupants of the Project.

## ARTICLE SEVEN DAMAGE OR DESTRUCTION

### Section 7.01. Damage or Destruction to the Property.

(a) Tenant shall notify Landlord in writing ("**Damage Notice**") immediately upon the occurrence of any damage to the Property. Subject to the provisions of Section 7.01(c) and Section 7.01(d) below, if the insurance proceeds received by Landlord from the insurance policies described in Section 4.04(b) above are sufficient to pay for the necessary repairs, this Lease shall remain in effect and Landlord shall repair the damage as soon as reasonably possible. Landlord may elect (but is not required) to repair any damage to Tenant's Alterations or to Tenant's fixtures, machinery, equipment, or other personal property (collectively, "**Tenant's Property**"). In the absence of such an election, Tenant shall be solely responsible for the repair, replacement and restoration of Tenant's Alterations and Tenant's Property and shall promptly commence such work and diligently pursue the same to completion, unless this Lease is terminated as provided in this Article Seven.

(b) If the insurance proceeds received by Landlord are not sufficient to pay the entire cost of repair, or if the cause of the damage is not covered by the insurance policies which Landlord maintains under Section 4.04(b) above, Landlord may elect either to: (i) repair the damage as soon as reasonably possible, in which case this Lease shall remain in full force and effect; or (ii) terminate this Lease as of the date the damage occurred. Landlord shall notify Tenant within thirty (30) days after receipt of the Damage Notice whether Landlord elects to repair the damage or terminate this Lease. If Landlord elects to repair the damage and notwithstanding Section 4.04(d)(iv) above, Tenant shall pay to Landlord (i) Tenant's Pro Rata Share of the deductible amount under Landlord's insurance policies (which deductible amount shall not exceed \$10,000.00), and (ii) if the damage is due to an act or omission of Tenant or Tenant's employees, agents, contractors or invitees, the entirety of any such deductible amount. If Landlord elects to terminate this Lease, Tenant may elect to continue this Lease in full force and effect, in which case Tenant shall repair any damage to the Property and the Building in a manner satisfactory to Landlord to restore the Property and Building to the condition generally existing immediately before the damage or destruction. Tenant shall pay the cost of such repairs, except that upon satisfactory completion of such repairs, Landlord shall deliver to Tenant any insurance proceeds received by Landlord (but expressly excluding any proceeds received by Landlord's lender) for the damage repaired by Tenant. Tenant shall give Landlord written notice of such election within ten (10) days after receiving Landlord's termination notice.

(c) If the repairs to the Property are estimated to require more than one hundred eighty (180) days from Landlord's receipt of insurance proceeds and building permits (the "**Repair Period**") to be Substantially Completed, then either Landlord or Tenant shall have the right to terminate this Lease in a manner consistent with this Section 7.01(c). In the event of damage to the Property, Landlord shall have the right to provide Tenant with a written notice, or Tenant shall have the right, at any time after providing Landlord with a Damage Notice pursuant to Section 7.01(a) above, to request in writing that Landlord deliver to Tenant a written notice (in each case, the "**Contractor Certificate**"), certifying to both Landlord and Tenant, in the reasonable opinion of Landlord's contractor, the amount of time required to Substantially Complete the repair of the Property. If, in the Contractor Certificate, the contractor certifies that the repair of the Property will take a period in excess of the Repair Period to be Substantially Completed, then within five (5) days after the delivery of the Contractor Certificate to Tenant, Tenant or Landlord may terminate this Lease by delivering written notice of such termination to the other party within such five (5) day period, and this Lease shall be terminated as of the date of the other party's receipt of such written notice of termination. Notwithstanding the above, Tenant shall not have any right to terminate this Lease under this Section 7.01 if the damage to the Property was caused by the acts or omissions of Tenant or its agents, employees, contractors, or invitees.

(d) If the damage to the Property occurs during the last one hundred eighty (180) days of the Lease Term and such damage will require more than thirty (30) days to Substantially Complete the repair, then either Landlord or Tenant may elect to terminate this Lease as of the date the damage occurred, regardless of the sufficiency of any insurance proceeds. The party electing to terminate this Lease, pursuant to this Section 7.01(d), shall give written notification to the other party of such election within thirty (30) days after Tenant's Damage Notice.

(e) As used in this Section 7.01, "**Substantial Completion**" or "**Substantially Complete**" (or similar phrase) means such work is completed, except for minor items of work (e.g., pick-up work, etc.) that can be completed with only minor interference with Tenant's conduct of business at the Property.

**Section 7.02. Temporary Reduction of Rent.** If the Property is destroyed or damaged and Landlord or Tenant repairs or restores the Property pursuant to the provisions of this Article Seven, any Base Rent and recurring Additional Rent payable during the period of such damage, repair and/or restoration shall be reduced according to the degree, if any, to which Tenant's use of the Property is impaired. However, the reduction shall not exceed the sum of one year's payment of Base Rent, and recurring Additional Rent. Except for such possible reduction in Base Rent and recurring Additional Rent, Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, destruction, repair, or restoration of or to the Property.

**Section 7.03. Waiver.** Tenant waives the protection of any statute, code or judicial decision which may grant to Tenant the right to terminate a lease in the event of the destruction of the Property. Tenant agrees that the provisions of Article Seven above shall govern the rights and obligations of Landlord and Tenant in the event of any destruction of the Property.

## ARTICLE EIGHT CONDEMNATION

If all or any portion of the Property is taken under the power of eminent domain or sold under the threat of that power (all of which are called "**Condemnation**"), this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If more than twenty percent (20%) of the floor area of the Property or such other material portion of either the Property or Common Areas is taken and Tenant cannot reasonably continue to conduct its business at the Property, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If neither Landlord nor Tenant terminates this Lease, this Lease shall remain in effect as to the portion of the Property not taken, except that the Base Rent and Additional Rent shall be reduced in proportion to the reduction in the floor area of the Property. Landlord shall be entitled to receive the entire award or payment in connection therewith, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Lease Term pursuant to the terms of this Lease, and for moving expenses, so long as such claim does not diminish the award available to Landlord, its ground lessor with respect to the real property or its lender, and such claim is payable separately to Tenant. If this Lease is not terminated, Landlord shall repair any damage to the Property caused by the Condemnation, except that Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority. If the severance damages received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to either terminate this Lease or make such repair at Landlord's expense.

## ARTICLE NINE ASSIGNMENT AND SUBLETTING

Section 9.01. **Transfers.** Except as otherwise provided in Section 9.07 below, Tenant shall not, without the prior written consent of Landlord, assign, mortgage, pledge, encumber or otherwise transfer, this Lease or any interest hereunder, permit any assignment or other such foregoing transfer of this Lease or any interest hereunder by operation of law, or sublet the Property or any part thereof (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). To request Landlord's consent to any Transfer requiring such consent under the provisions of this Article Nine, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than forty-five (45) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Property to be transferred (the "**Subject Space**"), (iii) all of the terms of the proposed Transfer and the consideration therefor, including a calculation of the "Transfer Premium," as that term is defined in Section 9.03 below, in connection with such Transfer, the name and address of the proposed Transferee, and a copy of all existing and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer or the agreements incidental or related to such Transfer, and (iv) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, and any other information required by Landlord, which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space, and such other information as Landlord may reasonably require. Any Transfer requiring but made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a material default by Tenant under this Lease. Whether or not Landlord shall grant consent, Tenant shall pay Landlord's review and processing fees, as well as any reasonable legal fees incurred by Landlord in connection with such review, within thirty (30) days after written request by Landlord.

Section 9.02. **Landlord's Consent.** Landlord shall not unreasonably withhold its consent to any proposed Transfer involving an assignment or subletting of the Subject Space to the Transferee on the terms specified in the Transfer Notice. The parties hereby agree that it shall be reasonable under this Lease and under any Applicable Law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply, without limitation as to other reasonable grounds for withholding consent:

- 9.02.1 The Transferee's character or reputation is significantly less prestigious than that of Tenant;
- 9.02.2 The Transferee's business or use of the Subject Space is not permitted under this Lease;
- 9.02.3 The Transferee is 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;

9.02.4 The proposed Transfer would cause Landlord to be in violation of another lease or agreement to which Landlord is a party;

9.02.5 The terms of the proposed Transfer will allow the Transferee to exercise a right of renewal, right of expansion, right of first offer, or other similar right held by Tenant (or will allow the Transferee to occupy space leased by Tenant pursuant to any such right);

9.02.6 A default of Tenant under this Lease is then pending;

9.02.7 Landlord or its leasing agent has received a proposal from or made a proposal to the proposed Transferee to lease space in the Project within six (6) months prior to Tenant's Transfer Notice; or

9.02.8 The proposed Transferee or an Affiliate of the proposed Transferee is already a tenant in the Project.

If Landlord consents to any Transfer pursuant to the terms of this Section 9.02 (and does not exercise any recapture rights Landlord may have under Section 9.04 of this Lease), Tenant may within one hundred eighty (180) days after Landlord's consent, but not later than the expiration of such 180-day period, enter into such Transfer of the Property or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section 9.01 of this Lease.

**Section 9.03. Transfer Premium.** In the event of a Transfer requiring Landlord's consent, if Landlord consents to such a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay to Landlord fifty percent (50%) of any "**Transfer Premium**," as that term is defined in this Section 9.03, received by Tenant from such Transferee. "Transfer Premium" shall mean all rent, additional rent or other consideration payable by such Transferee in excess of the Base Rent and Additional Rent payable by Tenant under this Lease on a per rentable square foot basis if less than all of the Property is transferred. "Transfer Premium" shall also include, but not be limited to, key money and bonus money paid by Transferee to Tenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Tenant to Transferee or for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to Transferee in connection with such Transfer.

**Section 9.04. Landlord's Option as to Subject Space.** Notwithstanding anything to the contrary contained in this Article Nine, Landlord shall have the option, by giving written notice to Tenant within thirty (30) days after receipt of any Transfer Notice pertaining to an assignment or subletting, to recapture the Subject Space. Such recapture notice shall cancel and terminate this Lease with respect to the Subject Space as of the effective date of the proposed Transfer until the last day of the term of the Transfer as set forth in the Transfer Notice. In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Property, the Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Property, and this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of the same. In the event of a recapture, Landlord may, if it elects, enter into a new lease covering the Subject Space with the intended Transferee on such terms as Landlord and such person or entity may agree or enter into a new lease covering the Subject Space with any other person or entity; in such event, Tenant shall not be entitled to any portion of the Transfer Premium, if any, which Landlord may realize on account of such termination and reletting.

**Section 9.05. Effect of Transfer.** If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, (iv) Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium Tenant has derived and shall derive from such Transfer, and (v) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of Tenant's obligations under this Lease from liability under this Lease. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, Tenant shall, within thirty (30) days after demand, pay the deficiency and

Landlord's costs of such audit, and if understated by more than ten percent (10%), Landlord shall have the right to cancel this Lease upon thirty (30) days' notice to Tenant.

Section 9.06. **Additional Transfers.** For purposes of this Lease, the term "**Transfer**" shall also include: (i) if Tenant is a partnership, the cumulative withdrawal or change, voluntary, involuntary or by operation of law, of twenty-five percent (25%) or more of the partners, or the cumulative transfer of twenty-five percent (25%) or more of partnership interests, within a twelve (12)-month period, or the dissolution of the partnership without immediate reconstitution thereof; (ii) if Tenant is a closely held corporation (i.e., whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Tenant, (B) the sale or other transfer of more than an aggregate of twenty-five percent (25%) of the voting shares of Tenant (other than to immediate family members by reason of gift or death), within a twelve (12)-month period, or (C) the sale, mortgage, hypothecation or pledge of more than an aggregate of twenty-five percent (25%) of the value of the unencumbered assets of Tenant within a twelve (12) month period; and (iii) if Tenant is a limited liability company, any cumulative transfer of more than twenty-five percent (25%) of the membership interests. In addition to those types of Transfers specified above in this Article Nine, (i) any change to the form of tenant entity or any use of the Property by an individual or entity other than Tenant, whether pursuant to a license or concession, or otherwise, and (ii) any reduction of twenty-five percent (25%) or more in the tangible net worth of Tenant resulting from a transaction or series of transactions (whether merger, sale, acquisition, financing, leverage buyout, spin-off, or otherwise), whether or not a formal assignment or hypothecation of this Lease or of Tenant's assets occurs, shall be deemed a Transfer requiring Landlord's consent. As used in this Lease, "tangible net worth" means the sum of all of Tenant's assets, less liabilities and intangible assets, as determined by the use of generally accepted accounting principles, and the reduction of Tenant's tangible net worth shall be measured based on Tenant's tangible net worth as represented to Landlord as of the time of execution of this Lease. Notwithstanding any language to the contrary in this Article Nine, Landlord may, in its sole discretion, withhold its consent to any proposed assignment of Tenant's leasehold interest in the Property to a lender as security, whether such proposed assignment is in the form of a leasehold deed of trust, leasehold mortgage, or otherwise.

Section 9.07. **Tenant Affiliate.** Notwithstanding anything to the contrary contained in Section 9.01 of this Lease, a Transfer of all or a portion of the Property to an affiliate of Tenant (an entity which is controlled by, controls, or is under common control with, Tenant) (a "**Tenant Affiliate**"), shall not be deemed a Transfer under Article Nine for which (a) consent is required, or (b) any Transfer Premium is payable, provided that: (i) Tenant immediately notifies Landlord of any such Transfer; (ii) promptly supplies Landlord with any documents or information requested by Landlord regarding such Transfer; (iii) if requested by Landlord, have an affiliate of the Tenant Affiliate guarantee this Lease using Landlord's standard guaranty form; (iv) if such Transfer is an assignment, Tenant Affiliate assumes in writing all of Tenant's obligations under this Lease; and (v) such Transfer is not a subterfuge by Tenant to avoid its obligations under this Lease or the Transfer restrictions set forth in this Article Nine. "**Control**," as used herein, shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity.

Section 9.08. **No Merger.** No merger shall result from Tenant's sublease of the Property under this Article Nine, Tenant's surrender of this Lease or the termination of this Lease in any other manner. In any such event, Landlord may terminate any or all subtenancies or succeed to the interest of Tenant as sublandlord under any or all subtenancies.

Section 9.09. **Tenant's Indemnity.** If Landlord shall withhold its consent to any proposed Transfer requiring Landlord's consent, or if Landlord shall exercise its recapture right in Section 9.04 above, Tenant shall indemnify, defend, and hold harmless Landlord (and Landlord's members, managers, partners, and shareholders, as applicable, and the affiliates, employees, agents, and contractors of Landlord and its members, managers, partners, and shareholders, as applicable) from and against any and all losses, liabilities, damages, costs and expenses (including attorneys' fees) resulting from any claims that may be made against Landlord by the proposed Transferee or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed Transfer.

## ARTICLE TEN            DEFAULTS; REMEDIES

Section 10.01. **Covenants and Conditions.** Tenant's performance of each of Tenant's obligations under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Property is conditioned upon such performance. Time is of the essence in the performance of all covenants and conditions.

Section 10.02. **Defaults.** Tenant shall be in material default under this Lease (an “Event of Default”):

(a) If Tenant abandons the Property or if Tenant’s vacation of the Property results in the cancellation or modification of any insurance described in Section 4.04 above;

(b) If Tenant fails to pay rent or any other charge when due;

(c) If Tenant fails to perform any of Tenant’s non-monetary obligations under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more than thirty (30) days are required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the thirty (30) day period and thereafter diligently pursues its completion. However, Landlord shall not be required to give such notice if Tenant’s failure to perform constitutes a non-curable breach of this Lease. The notice required by this subsection (c) is (i) intended to satisfy any and all notice requirements imposed by law on Landlord and is not in addition to any such requirement, and (ii) not intended to extend the time for Tenant’s performance if a shorter period of time for performance is expressly provided in this Lease.

(d) (i) If Tenant makes a general assignment or general arrangement for the benefit of creditors; (ii) if a bankruptcy petition is filed by or against Tenant and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant’s assets located at the Property or of Tenant’s interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant’s assets located at the Property or of Tenant’s interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subsection (d) is not a default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession) and such trustee or Tenant transfers Tenant’s interest hereunder, then Landlord shall receive, as Additional Rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the rent payable by Tenant under this Lease.

(e) If any guarantor of this Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant’s obligations under this Lease. Unless otherwise expressly provided, no guaranty of this Lease is revocable.

(f) If Tenant fails to deliver an instrument or certificate within the time provided in Section 11.01 or Section 11.02 below, respectively.

(g) If an unauthorized Transfer occurs, as set forth in Article Nine above.

Section 10.03. **Remedies.** On the occurrence of any Event of Default, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

(a) Terminate Tenant’s right to possession of the Property by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Property to Landlord. If Tenant shall be served with a demand for the payment of past due rent or any other charge, any payments rendered thereafter to cure any default by Tenant shall be made only by cashier’s check, wire transfer, or other immediately available funds. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant’s default, including (i) the worth at the time of the award of the unpaid Base Rent, Additional Rent and other charges which Landlord had earned at the time of the termination; (ii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Landlord would have earned after termination until the time of the award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Tenant would have paid for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant’s failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses Landlord incurs in maintaining or preserving the Property after such default, the cost of recovering possession of the Property, expenses of reletting, including necessary renovation or alteration of the Property, Landlord’s reasonable attorneys’ fees incurred in connection therewith, and any real estate commission paid or payable. As used in subparts (i) and (ii) above, the “worth at the time of the award” is computed by

allowing interest on unpaid amounts at the rate of fifteen percent (15%) per annum, or such lesser amount as may then be the maximum lawful rate. As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%). If Tenant has abandoned the Property, Landlord shall have the option of (i) retaking possession of the Property and recovering from Tenant the amount specified in this Section 10.03(a), and/or (ii) proceeding under Section 10.03(b) below;

(b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Property. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due; or

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Property is located, including, without limitation, those remedies available pursuant to Nev. Rev. Stat. Chapter 118C (2015).

**Section 10.04. Termination.** If Landlord elects to terminate this Lease as a result of an Event of Default, Tenant shall be liable to Landlord for all damages resulting therefrom, which shall include, without limitation, all costs, expenses and fees, including reasonable attorneys' fees that Landlord incurs in connection with the filing, commencing, pursuing and/or defending of any action in any bankruptcy court or other court with respect to this Lease; the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant; or the pursuing of any action with respect to Landlord's right to possession of the Property. All such damages suffered (apart from Base Rent and other Rent payable hereunder) shall constitute pecuniary damages that must be reimbursed to Landlord prior to assumption of this Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding. Notwithstanding any language to the contrary in this Lease, Tenant acknowledges and agrees that Landlord may prevent Tenant from entering the Property pursuant to Nev. Rev. Stat. Section 118C.200 (2015), provided that the Event of Default is, in whole or in part, based on Tenant's delinquency in paying Rent, and such Landlord action, without more, does not constitute a termination of this Lease by Landlord.

**Section 10.05. Cumulative Remedies.** Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy available at law, in equity, or otherwise.

**Section 10.06. Surrender.** No act or thing done by Landlord or its agents during the Lease Term shall be deemed an acceptance of a surrender of the Property, and no agreement to accept a surrender of the Property shall be valid unless made in writing and signed by Landlord.

**Section 10.07. Removal of Tenant's Property.** All furniture, equipment, and other personal property of Tenant left unattended at the Property upon the vacation or abandonment thereof following an uncured Event by Default by Tenant or upon the termination of this Lease for any cause whatsoever shall be treated and disposed of pursuant to Nev. Rev. Stat. Section 118C.230 (2015). Landlord, upon presentation of evidence of a third party's claim of ownership or security interest in any such property, may turn over such property to the third party claimant without any liability to Tenant.

**Section 10.08. Punitive and Consequential Damages.** Notwithstanding anything to the contrary contained in this Lease, nothing in this Lease shall impose any obligations on Tenant or Landlord to be responsible or liable for, and each hereby releases the other from all liability for, punitive, exemplary, or consequential damages, other than those consequential damages incurred by Landlord in connection with (a) the holdover of the Property by Tenant after the expiration or earlier termination of this Lease, (b) the contamination of the Property or the Project or any other property resulting from the presence or use of Hazardous Materials caused or permitted by the Tenant Group, or (c) any repair, physical construction or improvement work performed by or on behalf of Tenant in the Property.

**Section 10.09. Landlord's Lien.** In addition to any statutory or common law lien protecting Landlord's interests, in consideration of the mutual benefits arising under this Lease, Tenant hereby grants to Landlord a lien and security interest in all of Tenant's property now or hereafter placed in or on the Property to secure payment of all Base Rent and Additional Rent that become due under this Lease. The provisions of this section constitute a security agreement under the Uniform Commercial Code of the State where the Property is located (the "Code") so that Landlord has and may enforce a security interest on all of Tenant's inventory, fixtures, machinery, equipment, accessions, furnishings, and other such property now or hereafter placed in or on the Property and all proceeds therefrom (the "Collateral"), and such property shall not be removed from the Property without the prior written consent of Landlord until all arrearages in Base Rent and Additional Rent have been paid and Tenant has complied with all other provisions of this Lease. Consistent with the terms of the Code, Tenant authorizes Landlord to file a financing statement describing the Collateral. Upon the occurrence of an Event of

Default identified in Section 10.02 of this Lease, Landlord may, in addition to all other remedies provided by law or under this Lease, without notice or demand except as provided below, exercise the rights afforded to a secured party under the Code. To the extent the Code requires Landlord to give to Tenant notice of any act or event and such notice cannot be validly waived before a default occurs, then five (5) days prior written notice thereof shall be reasonable notice of the act or event.

**Section 10.10. Repayment of "Free" Rent.** If this Lease provides for a postponement of any monthly rental payments, a period of "free" rent or other rent concession, such postponed rent or "free" rent is called the "**Abated Rent.**" Tenant shall be credited with having paid all of the Abated Rent on the expiration of this Lease Term only if Tenant has fully, faithfully, and punctually performed all of Tenant's obligations hereunder, including the payment of all rent (other than the Abated Rent) and all other monetary obligations and the surrender of the Property in the physical condition required by this Lease. Tenant acknowledges that its right to receive credit for the Abated Rent is absolutely conditioned upon Tenant's full, faithful and punctual performance of its obligations under this Lease. If Tenant defaults and does not cure within any applicable grace period, the Abated Rent shall immediately become due and payable in full and this Lease shall be enforced as if there were no such rent abatement or other rent concession. In such case Abated Rent shall be calculated based on the full initial rent payable under this Lease.

**Section 10.11. Repayment of Tenant Improvement Allowance.** If Landlord agrees, pursuant to the terms and provisions of this Lease, to provide Tenant with a Tenant Improvement Allowance, then Tenant agrees to immediately pay Landlord the unamortized amount of such Tenant Improvement Allowance (based on straight-line amortization over the initial Lease Term) in the event this Lease is terminated or there is an Event of Default under Section 10.02 of this Lease. The provisions of this Section 10.11 shall not in any way limit or abrogate the remedies available to Landlord elsewhere in this Lease on account of a default by Tenant.

## **ARTICLE ELEVEN PROTECTION OF LENDERS**

**Section 11.01. Subordination.** This Lease is subject and subordinate to all present and future ground or underlying leases of the Project or the Property, and to the lien of any mortgages or deeds of trust, now or hereafter in force against the Project or the Property, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or deeds of trust unless the holders of such mortgages or deeds of trust, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto. This clause shall be self-operative and no further instrument of subordination shall be required to make the interest of any lessor under any ground or underlying lease or holder of any mortgage, deed of trust or security deed superior to the interest of Tenant hereunder. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or deed of trust, or if any ground or underlying lease is terminated, to attend, without any deductions or set-offs whatsoever, to the purchaser upon any such foreclosure sale, or to the lessor of such ground or underlying lease, as the case may be, if so requested by such purchaser or lessor, and to recognize such purchaser or lessor as the landlord under this Lease, provided such lienholder or purchaser or ground lessor shall agree to accept this Lease and not disturb Tenant's occupancy, under the terms and conditions of this Lease, so long as Tenant timely pays the rent and observes and performs all of the terms, covenants and conditions of this Lease to be observed and performed by Tenant. Landlord's interest herein may be assigned as security at any time to any lienholder. Tenant shall, within ten (10) days of request by Landlord, execute such further instruments or assurances in the form as is then required by Landlord's lender to evidence or confirm the subordination or superiority of this Lease to any such mortgages, deeds of trust, ground leases or underlying leases. Tenant hereby irrevocably authorizes Landlord to execute and deliver in the name of Tenant any such instrument or instruments if Tenant fails to do so, provided that such authorization shall in no way relieve Tenant from the obligation of executing such instruments of subordination or superiority. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any foreclosure proceeding or sale.

### **Section 11.02. Estoppel Certificates.**

(a) Upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a written statement, in the form as is then required by Landlord's lender or any prospective purchaser, certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been cancelled or terminated; (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (iv) that Landlord is not in default under this Lease (or, if Landlord is claimed to be in default, stating why); and (v) such other representations or information with respect to Tenant or this Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Property may require. Tenant shall deliver

such statement to Landlord within ten (10) days after Landlord's request. Landlord may give any such statement by Tenant to any prospective purchaser or encumbrancer of the Property. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.

(b) If Tenant does not deliver such statement to Landlord within such ten (10)-day period, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been canceled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's Base Rent or other charges have been paid in advance; and (iv) that Landlord is not in default under this Lease. In such event, Tenant shall be estopped from denying the truth of such facts.

Section 11.03. **Tenant's Financial Condition.** Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord such financial statements, as Landlord reasonably requires, to verify the net worth of Tenant or any assignee, subtenant, or guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by such lender to facilitate the financing or refinancing of the Property. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease.

## ARTICLE TWELVE LEGAL COSTS

Section 12.01. **Legal Proceedings.** If Tenant or Landlord shall be in breach or default under this Lease, such party (the "**Defaulting Party**") shall reimburse the other party (the "**Non-defaulting Party**") upon demand for any costs or expenses that the Non-defaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. The losing party in such action shall pay such attorneys' fees and costs. To the extent permitted by Applicable Law, Landlord and Tenant waive the protection of any statute, code or judicial decision that may limit the amount of attorneys' fees otherwise recoverable by either party under the terms of this Lease. Tenant shall also indemnify Landlord against and hold harmless Landlord (and Landlord's members, managers, partners, and shareholders, as applicable, and the affiliates, employees, agents, and contractors of Landlord and its members, managers, partners, and shareholders, as applicable) from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action (a) instituted by Tenant against any third party, or by any third party against Tenant, or by or against any person holding any interest under or using the Property by license of or agreement with Tenant (a "**Tenant Licensee**"); (b) for foreclosure of any lien for labor or material furnished to or for Tenant or such Tenant Licensee; (c) otherwise arising out of or resulting from any act or transaction of Tenant or such Tenant Licensee; or (d) necessary to protect Landlord's interest under this Lease in a bankruptcy case, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs Landlord incurs in any such claim or action. Without limitation on other obligations of Tenant that shall survive the expiration or earlier termination of the Lease Term, the obligations of Tenant contained in this Section 12.01 shall survive the expiration or earlier termination of this Lease.

Section 12.02. **Landlord's Consent.** Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with (a) Tenant's request for Landlord's consent under Article Nine (Assignment and Subletting) of this Lease, or in connection with any other act which Tenant proposes to do and which requires Landlord's consent, or (b) any other Landlord action requested by Tenant.

## ARTICLE THIRTEEN BROKERS

Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease, excepting only the real estate broker(s) or agent(s) named in Section 1.09 above (the "**Broker(s)**"). Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent, other than the Broker(s). Landlord hereby discloses

to Tenant that Landlord's Broker is acting in this transaction as the agent of Landlord exclusively, and Tenant hereby consents to Landlord's Broker acting in such capacity. It is hereby acknowledged that Majestic Realty Co., identified in Section 1.09 above as Landlord's Broker, and Rodman C. Martin, are acting as both principal (that is, they have an interest in the Landlord entity) and broker in this lease transaction.

#### ARTICLE FOURTEEN TENANT IMPROVEMENTS

Section 14.01. **[[For Tenant Build]] Tenant Improvements.** Tenant shall design, engineer and construct certain improvements pursuant to the terms of the Tenant Work Letter attached as Exhibit "D" to this Lease (the "**Tenant Work Letter**"). The improvements to be constructed by Tenant are those described and defined as the "Tenant Improvements" in the Tenant Work Letter (the "**Tenant Improvements**"). The failure of Tenant to take possession of or to occupy the Property shall not relieve Tenant of its obligations arising on the Lease Commencement Date or delay the payment of Rent by Tenant. Subject to the terms of Section 2.03 above and the Tenant Work Letter, Tenant may take possession of the Property following full execution and delivery of this Lease for the purpose of constructing the Tenant Improvements, provided that Tenant does hereby agree to indemnify, defend, and hold harmless Landlord (and Landlord's affiliates, contractors, subcontractors, suppliers, agents, and employees, and their affiliates) from any loss or damage to Tenant's personal property, and all liability, loss, or damage arising from any injury to the Project or the property of Landlord, its contractors, subcontractors, or suppliers, and any death or personal injury to any person or persons arising out of such early access. Any such early access shall also be subject to Tenant providing Landlord with satisfactory evidence of payment arrangements with respect to any installations permitted under the terms of this Lease.

**[[For Landlord Build]] Tenant Improvements.** Landlord shall design, engineer and construct certain improvements pursuant to the terms of the Work Letter attached as Exhibit "D" to this Lease (the "**Work Letter**"). The improvements to be constructed by Landlord are those described and defined as the "Tenant Improvements" in the Work Letter (the "**Tenant Improvements**"). The Tenant Improvements shall be the property of Landlord and shall remain upon and be surrendered with the Property upon the expiration or earlier termination of the Lease Term, subject to the terms of Section 6.06 of this Lease.

Section 14.02. **No Other Improvements.** Consistent with Section 6.01 of this Lease, except for the Tenant Improvements, and any unfinished "punch list" items, Tenant accepts the Property in its "as is" condition, and Landlord shall have no liability or obligation for making any **[[further]]** alterations or improvements of any kind in or about the Property.

**[[OPTIONAL –**

**Section 14.01 No Tenant Improvements.** Consistent with Section 6.01 of this Lease, Tenant accepts the Property in its "as is" condition, and Landlord shall have no liability or obligation for making any alterations or improvements of any kind in or about the Property.]]

#### ARTICLE FIFTEEN COMMUNICATIONS SERVICES

Section 15.01. **Landlord's Communications Equipment.** Subject to Applicable Law, Landlord reserves to itself and its affiliates the exclusive right to (a) place antennae and related facilities and other equipment for the provision of communications services (the "**Communications Equipment**") on the rooftop or in other portions of the Building, the Project, or on other property owned or controlled by Landlord or an affiliate of Landlord **[[revise if the entire Building is the "Property" and the "Project"]]** designated by Landlord or such affiliate for such use, and (b) enter into license agreements, leases, or other agreements for the use of such areas by commercial and other providers of communications services (the "**Communications Agreements**"). As used in this Article, "**Communications Services**" shall mean the implementation, provision, facilitation and maintenance of voice, data, video or other communication services (or any combination of the foregoing) including, without limitation: (a) the provision and resale of point-to-point telephone communications (including dedicated long distance service), (b) video communications service, (c) 800-number service, (d) telephone credit or debit card service, (e) audio or video conferencing, paging, voice mail and message centers, (f) data transmission service, (g) access to computer "internet" or other networked computer-based communications, (h) satellite or cable television, (i) wideband digital networks, (j) security services, and (k) provision of telephone, video communication or other communication equipment to consumers of such services; whether now existing or subsequently developed and however provided, including, without limitation, wireless transmission and reception of communication signals. Landlord

shall be entitled to any and all fees or other charges payable by any such provider of Communications Services on account of any Communications Agreements.

**Section 15.02. Tenant's Communications Equipment.** Notwithstanding any language to the contrary in this Lease, with Landlord's prior written consent and subject to all applicable provisions of this Lease and Applicable Law, Tenant may, at Tenant's sole cost and expense, install Communications Equipment on the rooftop or in other portions of the Property, but only if such Communications Equipment is solely limited to Tenant's own use in the conduct of its business from the Property ("**Tenant's Communications Equipment**"). Tenant's Communications Equipment shall remain the property of Tenant or its contractor. Tenant shall be solely responsible for all costs and expenses related to the use and maintenance of Tenant's Communications Equipment, and the removal of which upon the expiration or earlier termination of this Lease shall be governed by Section 6.06 of this Lease. Any damage caused by such installation or removal shall be repaired as required in Section 6.06 of this Lease. Landlord agrees to permit Tenant and its contractors reasonable access to the rooftop of the Building and other areas of the Project required to facilitate the installation, use, maintenance, and removal of Tenant's Communications Equipment, so long as other users and occupants of the Building and the Project are not disturbed thereby and Tenant complies with Section 6.07 of this Lease. Tenant shall defend, indemnify and hold harmless Landlord (and Landlord's members, managers, partners, and shareholders, as applicable, and the affiliates, employees, agents, and contractors of Landlord and its members, managers, partners, and shareholders, as applicable) from all expenses, costs, damages, loss, claims or other expenses (including reasonable attorneys' fees) arising out of Tenant's installation, use, maintenance, and removal of Tenant's Communications Equipment. Tenant agrees that the use of Tenant's Communications Equipment shall in no way interfere with the operation and maintenance of the Communications Equipment (including any offsite Communications Equipment which may be the subject of a Communications Agreement), the Project, the Building, or any of the Building's systems. Tenant shall indemnify, defend and hold harmless Landlord (and Landlord's members, managers, partners, and shareholders, as applicable, and the affiliates, employees, agents, and contractors of Landlord and its members, managers, partners, and shareholders, as applicable) from all expenses, costs, damages, losses, claims or other expenses and liabilities arising from any such interference. If such interference occurs, Tenant agrees to suspend use of Tenant's Communications Equipment until the interference has been corrected to the sole satisfaction of Landlord. Tenant shall be responsible for all costs associated with any tests deemed necessary to resolve any and all interference caused by Tenant's Communications Equipment, or any use that is not permitted by this Article. If such interference has not been corrected within twenty (20) days, Landlord may require Tenant to remove those components of Tenant's Communications Equipment causing such interference, or Landlord will enjoin such interference at Tenant's sole cost and expense. All operations by Tenant pursuant to this Article shall be lawful and in compliance with all rules and regulations of the Federal Communications Commission. Consistent with the terms of Section 6.05 of this Lease, (a) Landlord shall have the right, in its sole discretion, to determine the location of any visible Tenant's Communications Equipment and require its screening at Tenant's sole cost and expense, and (b) the installation the Tenant's Communications Equipment is subject to Landlord's prior approval of the final installation plans, provided that such installation plans do not include any roof penetrations. Also, any rooftop installation of Tenant's Communications Equipment shall be commenced and completed in full and strict compliance with the requirement to use a contractor or subcontractor selected by Landlord for any work involving possible roof penetrations, as set forth in Section 6.05 of this Lease, so as to preserve any applicable roof warranty. Regardless of any roof warranty or any repair obligations of Landlord in this Lease, Tenant shall be solely responsible for the (a) repair of any leaks or other damage to the roof membrane resulting from the installation of any Tenant's Communications Equipment, and (b) all expenses, costs, damages, losses, claims or other expenses and liabilities arising from the voiding of any applicable roof warranty resulting from the acts or omissions of Tenant or its agents, employees or contractors. The obligations of Tenant under this Article shall survive the expiration or earlier termination of this Lease.

## **ARTICLE SIXTEEN MISCELLANEOUS PROVISIONS**

**Section 16.01. Non-Discrimination.** Tenant promises, and it is a condition to the continuance of this Lease, that there will be no discrimination against, or segregation of, any person or group of persons on the basis of race, color, religion, creed, age, sex, disability, national origin, ancestry, ethnicity, sexual orientation, marital status, citizenship status, or veteran status in the leasing, subleasing, transferring, occupancy, tenure or use of the Property or any portion thereof.

### **Section 16.02. Landlord's Liability; Certain Duties.**

(a) As used in this Lease, the term "**Landlord**" means only the current owner or owners of the fee title to the Property or the leasehold estate under a ground lease of the Property at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest is relieved of all liability with respect to the obligations of Landlord under this

Lease to be performed on or after the date of transfer. However, each Landlord shall deliver to its transferee all funds that Tenant previously paid if such funds have not yet been applied under the terms of this Lease.

(b) Tenant shall give written notice of any failure by Landlord to perform any of its obligations under this Lease to Landlord and to any ground lessor, mortgagee or beneficiary under any deed of trust encumbering the Property whose name and address have been furnished to Tenant in writing. Landlord shall not be in default under this Lease unless Landlord (or such ground lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is commenced within such thirty (30)-day period and thereafter diligently pursued to completion.

(c) Notwithstanding any term or provision herein to the contrary, the liability of Landlord for the performance of its duties and obligations under this Lease is limited to Landlord's interest in the Property, and neither Landlord nor its partners, members, managers, shareholders, officers or other principals shall have any personal liability under this Lease.

(d) Tenant shall have no right to terminate this Lease based on an uncured default by Landlord in the performance of Landlord's obligations under this Lease; provided, however, that Tenant may seek to recover from Landlord an amount representing appropriate actual, compensatory damages for breach of contract based on any such uncured default of Landlord, but not otherwise. Consistent with Section 10.08 above, in no event shall Tenant be permitted to recover consequential, punitive, or exemplary damages from Landlord based on any such uncured default of Landlord, or otherwise.

(e) With respect to any provision of this Lease which provides (or is held to provide) that Landlord shall not unreasonably withhold any consent or approval, Tenant shall not be entitled to make any claim for, and Tenant hereby expressly waives, any claim for damages, it being acknowledged and agreed that Tenant's sole right and exclusive remedy therefor shall be an action for specific performance.

**Section 16.03. Severability.** A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect, and it is the intention of the parties that there shall be substituted for such provision as is illegal or unenforceable a provision as similar to such provision as may be possible and yet be legal and enforceable.

**Section 16.04. Interpretation.** The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Unless the context clearly requires otherwise, (i) the plural and singular numbers will each be deemed to include the other; (ii) the masculine, feminine, and neuter genders will each be deemed to include the others; (iii) "shall," "will," "must," "agrees," and "covenants" are each mandatory; (iv) "may" is permissive; (v) "or" is not exclusive; and (vi) "includes" and "including" are not limiting. In the event of a dispute between Landlord and Tenant over the interpretation of this Lease, both parties shall be deemed to have been the drafter of this Lease, and any Applicable Law that states that contracts are to be construed against the drafter shall not apply. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Property with Tenant's express or implied permission.

**Section 16.05. Incorporation of Prior Agreements; Modifications.** This Lease is the only agreement between the parties pertaining to the lease of the Property and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void. All attached exhibits are hereby expressly incorporated into this Lease by this reference.

**Section 16.06. Notices.** All notices, demands, statements or communications (collectively, "Notices") given or required to be given by either party to the other hereunder shall be in writing, shall be sent by United States certified or registered mail, postage prepaid, return receipt requested, nationally-recognized commercial overnight courier, or delivered personally (i) to Tenant at the appropriate address set forth in Section 1.03 above, except that upon Tenant's taking possession of the Property, the Property shall be Tenant's address for notice purposes, or (ii) to Landlord at the addresses set forth in Section 1.02 above. Landlord and Tenant shall have the right to change its respective Notice address upon giving Notice to the other party. Any Notice will be deemed given two (2) business days after the date it is mailed as provided in this Section 16.06, or upon the date delivery is made, if delivered by an approved courier (as provided above) or personally delivered. Consistent with the provisions of Section 16.02(b) above, if Tenant is notified of the identity and address of Landlord's

secured lender or ground or underlying lessor, Tenant shall give to such lender or ground or underlying lessor written notice of any default by Landlord under the terms of this Lease by registered or certified mail or by use of a nationally-recognized commercial overnight courier, and such lender or ground or underlying lessor shall be given the same opportunity to cure such default as is provided Landlord under this Lease (unless such cure period is extended pursuant to the terms of any agreement to which Tenant is a party or to which Tenant consents) prior to Tenant's exercising any remedy available to Tenant. Notices required hereunder may be given by either an agent or attorney acting on behalf of Landlord or Tenant.

Section 16.07. **Waivers.** The failure of Landlord to insist upon the strict performance, in any of one or more instances, of any term, covenant or condition of this Lease shall not be deemed to be a waiver by Landlord of such term, covenant or condition. No waiver by Landlord of any breach by Tenant of any term, provision and covenant contained herein shall be deemed or construed to constitute a waiver of any other or subsequent breach by Tenant of any term, provision or covenant contained herein. Landlord's acceptance of the payment of rent (or portions thereof) or any other payments hereunder after the occurrence of and during the continuance of a default (or with knowledge of a breach of any term or provision of this Lease which with the giving of notice and the passage of time, or both, would constitute a default) shall not be construed as a waiver of such default or any other rights or remedies of Landlord, including any right of Landlord to recover the Property. Moreover, Tenant acknowledges and agrees that Landlord's acceptance of a partial rent payment shall not, under any circumstances (whether or not such partial payment is accompanied by a special endorsement or other statement), constitute an accord and satisfaction. Landlord will accept the check (or other payment means) for payment without prejudice to Landlord's right to recover the balance of such rent or to pursue any other remedy available to Landlord. Forbearance by Landlord to enforce one or more of the remedies herein provided upon the occurrence of a default shall not be deemed or construed to constitute a waiver of such default.

Section 16.08. **No Recordation.** Tenant shall not record this Lease or any assignment or security document pertaining to this Lease. Either Landlord or Tenant may require that a "Short Form" or memorandum of this Lease executed by both parties be recorded. The party requiring such recording shall pay all transfer taxes and recording fees.

Section 16.09. **Binding Effect; Choice of Law.** This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant's successor unless the rights or interests of Tenant's successor are acquired in accordance with the terms of this Lease. The laws of the State in which the Property is located shall govern this Lease, without regard to such State's conflicts of law principles. Tenant hereby knowingly, intentionally, and irrevocably agrees that Landlord may bring any action or claim to enforce or interpret the provisions of this Lease in the State and County where the Property is located, and that Tenant irrevocably consents to personal jurisdiction in such State for the purposes of any such action or claim. Nothing in this [Section 16.09](#) shall be deemed to preclude or prevent Landlord from bringing any action or claim to enforce or interpret the provisions of this Lease in any other appropriate place or forum. Tenant further agrees that any action or claim brought by Tenant to enforce or interpret the provisions of this Lease, or otherwise arising out of or related to this Lease or to Tenant's use and occupancy of the Property, regardless of the theory of relief or recovery and regardless of whether third parties are involved in the action, may only be brought in the State and County where the Property is located, unless otherwise agreed in writing by Landlord prior to the commencement of any such action.

**In the interest of obtaining a speedier and less costly adjudication of any dispute, Landlord and Tenant hereby knowingly, intentionally, and irrevocably waive the right to trial by jury in any legal action, proceeding, claim, or counterclaim brought by either of them against the other on all matters arising out of or related to this Lease or the use and occupancy of the Property.**

Section 16.10. **Corporate Authority; Partnership Authority; LLC Authority.** If Tenant is a corporation, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general partner of the partnership, that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership or certificate of limited partnership. If Tenant is a limited liability company (LLC), each person or entity signing this Lease for Tenant represents and warrants that he or it is a manager or member of the LLC, that he or it has full authority to sign for the LLC and that this Lease binds the LLC. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's

managers or members authorizing the execution of this Lease, or other evidence of such authority reasonably acceptable to Landlord.

Section 16.11. **Joint and Several Liability.** All parties signing this Lease as Tenant shall be jointly and severally liable for all obligations of Tenant.

Section 16.12. **Force Majeure.** A "Force Majeure" event shall occur if Landlord or Tenant cannot perform any of its obligations due to events beyond such party's control (except with respect to the obligations imposed with regard to Base Rent, Additional Rent and other charges to be paid by Tenant pursuant to this Lease), and in such cases the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond Landlord's or Tenant's control include, but are not limited to, acts of God, war, civil commotion, terrorist acts, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction, waiting periods for obtaining governmental permits or approvals or inspections, or weather conditions. No express reference in this Lease to a Force Majeure event shall create any inference that the terms of this Section 16.12 do not apply with equal force in the absence of such an express reference.

Section 16.13. **Counterparts.** This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Receipt of facsimile signatures (regardless of the means of transmission, whether by PDF or other format) shall be as binding on the parties as an original signature.

Section 16.14. **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

Section 16.15. **No Warranty.** In executing and delivering this Lease, Tenant has not relied on any representation, including, but not limited to, any representation whatsoever as to the amount of any item comprising Additional Rent or the amount of the Additional Rent in the aggregate or that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis, or any warranty or any statement of Landlord which is not set forth herein or in one or more of the exhibits attached hereto.

Section 16.16. **Waiver of Redemption by Tenant.** Tenant hereby waives, for Tenant and for all those claiming under Tenant, all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Property after any termination of this Lease.

Section 16.17. **Independent Covenants.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant, to the extent permitted by Applicable Law, hereby expressly waives the benefit of any statute or other law to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord.

Section 16.18. **Confidentiality.** Tenant agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord, and that disclosure of the terms hereof could adversely affect Landlord. Tenant shall keep its partners, members, managers, officers, directors, employees, agents, real estate brokers and sales persons and attorneys, as applicable, from disclosing the terms of this Lease to any other person without Landlord's prior written consent, except to any accountants of Tenant in connection with the preparation of Tenant's financial statements or tax returns, to agents or consultants of Tenant in connection with Tenant's performance of its obligations hereunder, to an assignee of this Lease or subtenant of the Property, or to a person to whom disclosure is required in connection with any action brought to enforce this Lease; provided, however, that Tenant shall inform such persons of the confidentiality of the terms of this Lease and shall obtain their agreement to abide by the confidentiality provisions of this Section prior to such disclosure. In the event Tenant is required to disclose this Lease or any terms thereof to governmental agencies pursuant to Applicable Law, Tenant shall, prior to making such disclosure, submit a written request to the applicable authorities that this Lease be exempt from such disclosure requirements and take other actions reasonably necessary to avoid such disclosure. Tenant shall provide Landlord with a copy of such request and all related documents promptly following the submission thereof to the applicable authorities and shall keep Landlord apprised of the status of such request and all responses thereto.

Tenant shall, in any event, provide Landlord with not less than ten (10) days' notice prior to disclosing this Lease or any term thereof to any court or governmental agency. **[[Notwithstanding any language to the contrary in this Section, The Northwestern Mutual Life Insurance Company, a Wisconsin corporation, whose wholly-owned affiliate is a member of Landlord, shall also have the right to disclose the terms of this Lease to the National Association of Insurance Commissioners and to ratings agencies.]]**

Section 16.19. **Revenue and Expense Accounting.** Landlord and Tenant agree that for purposes of Section 467 of the Internal Revenue Code rental income will accrue to Landlord and rental expenses will accrue to Tenant in the amounts and as of the dates rent is payable under this Lease.

Section 16.20. **Tenant's Representations and Warranties.** Tenant warrants and represents to Landlord as follows, each of which is material and being relied upon by Landlord:

(a) Tenant and all persons and entities (i) owning (directly or indirectly) an ownership interest in Tenant, (ii) whom or which are an assignee of Tenant's interest in this Lease; or (iii) whom or which are a guarantor of Tenant's obligations under this Lease: (x) are not, and shall not become, a person or entity with whom Landlord is restricted from doing business under regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated Nationals and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (y) are not, and shall not become, a person or entity with whom Landlord is restricted from doing business under the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder; and (z) are not knowingly engaged in, and shall not knowingly engage in, any dealings or transaction or be otherwise associated with such persons or entities described in clauses (x) or (y), above.

(b) If Tenant is an entity, Tenant is duly organized, validly existing and in good standing under the laws of the State of its organization, and is qualified to do business in the State in which the Property is located, and the persons executing this Lease on behalf of Tenant have the full right and authority to bind Tenant without the consent or approval of any other person or entity. Tenant has full power, capacity, authority and legal right to execute and deliver this Lease and to perform all of its obligations hereunder. This Lease is a legal, valid and binding obligation of Tenant, enforceable in accordance with its terms.

(c) Tenant has not (1) made a general assignment for the benefit of creditors, (2) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (3) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (4) suffered the attachment or other judicial seizure of all or substantially all of its assets, (5) admitted in writing its inability to pay its debts as they come due, or (6) made an offer of settlement, extension or composition to its creditors generally.

Tenant confirms that all of the above representations and warranties are true as of the date of this Lease, and acknowledges and agrees that they (and any other representations and warranties of Tenant contained in this Lease) shall survive the expiration or earlier termination of this Lease.

Section 16.21. **Heirs and Successors.** The covenants and agreements of this Lease shall be binding upon the heirs, legal representatives, successors and permitted assigns of the parties hereto.

Section 16.22. **Tenant's Cooperation.** Tenant acknowledges that the Building is or may be in the future certified/rated pursuant to the U.S. EPA's Energy Star® Portfolio Manager, the Green Building Initiative's Green Globes™ building rating system, or the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED®) building rating system, or operated to meet another standard for high performance buildings adopted by Landlord (collectively, the "**Green Building Standard**"). As and when requested by Landlord during the Lease Term, Tenant shall provide Landlord (in the format requested by Landlord and reasonably necessary or desirable to comply with the requirements of the applicable Green Building Standard or any commissioning or re-commissioning of the Building's systems) with data concerning Tenant's energy consumption, water consumption, and the operation of the Building's systems. Such data may include, without limitation, the operating hours, the number of on-site personnel, the types of equipment used at the Building (including computer equipment, if applicable), and energy use and cost. Landlord shall have no liability to Tenant if, once obtained, any such Green Building Standard rating or certification lapses and is not reinstated by Landlord.

Section 16.23. **Reservations.** Landlord reserves to itself the right to grant, from time to time, without the consent or joinder of Tenant, such easements, rights and dedications that Landlord deems necessary, and to cause the recordation of parcel maps (or equivalent) and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Property by Tenant. Tenant agrees to sign any documents reasonably requested by Landlord to effectuate any such easements, rights, dedications, maps or restrictions.

[[OPTIONAL --

Section 16.\_\_\_\_ **Guaranty of Lease.** Tenant shall deliver to Landlord, concurrently with Tenant's execution and delivery of this Lease, a Guaranty of Lease in the form attached as Exhibit "\_\_\_\_" to this Lease (the "Lease Guaranty"), which shall have been executed by the guarantor(s) identified in Section 1.08 of this Lease. If Tenant fails to so deliver the Lease Guaranty, Landlord may, at its option, terminate this Lease by providing Tenant with written notice of such termination.]]

[[OPTIONAL --

Section 16.\_\_\_\_ **Registration of Food Facility Under Bioterrorism Act.** 21 U.S.C. Section 350c, also known as the FDA Bioterrorism Preparedness and Response Act of 2002, and the regulations promulgated thereunder, 21 CFR Section 1.225, require that an owner, operator, or agent in charge of a domestic facility that is engaged in the manufacturing/processing, packing, or holding of food for consumption in the United States must register the facility with the FDA unless certain exemptions are met which do not apply to Tenant. Tenant hereby agrees that it shall register the Property with the FDA and that Landlord shall have no obligation to do so. Tenant shall provide Landlord with satisfactory evidence that it has registered the Property with the FDA within five (5) business days after the date of this Lease.]]

## ARTICLE SEVENTEEN MASTER LEASE

(a) This Lease is subject and subordinate to the Lease Agreement, dated \_\_\_\_\_ (the "Master Lease"), by and between Landlord, as tenant, and County of Clark, a political subdivision of the State of Nevada ("County"), as landlord (the "Master Landlord"), and to any renewal, amendment or modification thereof, and to any mortgage or other encumbrance to which the Master Lease is subject or subordinate, and to all renewals, modifications, consolidations, replacements and extensions thereof. A copy of the Master Lease is attached as Exhibit "E" to this Lease. Except as specifically modified in this Lease, during the Lease Term Tenant shall be bound by and shall observe all of the terms and conditions to be observed by Landlord under the Master Lease as fully and to the same extent and effect as though Tenant were the lessee thereunder in the place and stead of Landlord. Any event resulting in termination of the Master Lease by its terms or otherwise shall also automatically result in termination of this Lease, except as otherwise provided or contemplated in Section 2.3 (Attornment) of the Master Lease.

(b) Without limiting the generality of (a) above, Tenant expressly agrees to comply with and be bound by any and all covenants, conditions and restrictions or rules, regulations or standards of operation or conduct contemplated under the terms of the Master Lease, and the non-discrimination provisions of Article III of the Master Lease, which are hereby incorporated into this Lease by this reference.

(c) Without limiting the generality of (a) above, Tenant acknowledges and agrees that Landlord's covenant of quiet possession or enjoyment (Section 5.08 of this Lease) is expressly subject to the Master Landlord's rights under the Master Lease, including but not limited to the right to recover the Property (Section 2.20 of the Master Lease), the right to improve or expand McCarran International Airport (Section 3.11 of the Master Lease), and the right to enter and inspect the Property (Section 2.7 of the Master Lease).

(d) Without limiting the generality of (a) above, Tenant acknowledges and agrees that this Lease is subject to the attornment provisions of Section 2.3 of the Master Lease. Pursuant to the provisions of such section of the Master Lease, Section 11.01 of this Lease is supplemented by adding the following thereto:

If by reason of a default on the part of Landlord as ground lessee in the performance of the terms of the Master Lease, the Master Lease and the leasehold estate of Landlord as ground lessee thereunder are terminated by summary proceedings or otherwise in accordance with the terms of the Master Lease, Tenant will attorn to Master Landlord and recognize Master Landlord as landlord under this Lease; provided, however, Master Landlord agrees that so long as Tenant is not in default, Master Landlord agrees



Landlord and Tenant have signed this Lease at the place and on the dates specified adjacent to their signatures below.

Signed on \_\_\_\_\_, 20\_\_  
at \_\_\_\_\_.

LANDLORD:

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Signed on \_\_\_\_\_, 20\_\_  
at \_\_\_\_\_.

TENANT:

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

**DEPICTION OR DESCRIPTION OF THE PROPERTY AND PROJECT**

(Attached)

**EXHIBIT B**

**HAZARDOUS MATERIALS**

[To be attached by Tenant prior to execution, pursuant to Section 5.03.2 of this Lease, and in the absence of such attachment, Tenant acknowledges that Landlord shall not have approved Tenant's introduction of any Hazardous Material to the Property.]

**EXHIBIT C**

**CONFIRMATION OF INITIAL LEASE TERM AND AMENDMENT TO LEASE**

THIS CONFIRMATION OF INITIAL LEASE TERM AND AMENDMENT TO LEASE ("Confirmation") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_ ("Landlord"), and \_\_\_\_\_, a \_\_\_\_\_ ("Tenant"). Landlord and Tenant agree as follows:

Landlord and Tenant have entered into a Standard Industrial Real Estate Lease, dated \_\_\_\_\_, 20\_\_ (the "Lease"), in which Landlord leased to Tenant and Tenant leased from Landlord certain described premises located at \_\_\_\_\_ (the "Property").

Consistent with Sections 2.01 and 2.02 of the Lease, Landlord and Tenant hereby confirm the Lease Commencement Date and the Lease Expiration Date of the initial Lease Term (as defined in the Lease), and amend Section 1.05 of the Lease to conform to such dates. The pertinent dates are as follows:

- a. \_\_\_\_\_, 20\_\_ is the Lease Commencement Date; and
- b. \_\_\_\_\_, 20\_\_ is the Lease Expiration Date.

Tenant confirms that:

- a. It has accepted possession of the Property as provided in the Lease;
- b. The Lease has not been modified, altered, or amended, except as provided in this Confirmation and as follows: \_\_\_\_\_; and
- c. The Lease is in full force and effect.

The provisions of this Confirmation shall inure to the benefit, or bind, as the case may require, Landlord, Tenant, and their respective permitted successors and assigns.

DATED as of the date first written above.

LANDLORD:

TENANT:

\_\_\_\_\_  
a \_\_\_\_\_

\_\_\_\_\_  
a \_\_\_\_\_

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

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

**EXHIBIT D**

**[[TENANT]] WORK LETTER**

(Attached)

**EXHIBIT E**  
**MASTER LEASE**

**(Attached or previously delivered to Tenant)**

**STANDARD INDUSTRIAL REAL ESTATE LEASE**

\_\_\_\_\_,  
a \_\_\_\_\_,

**as Landlord,**

**and**

\_\_\_\_\_,  
a \_\_\_\_\_,

**as Tenant**

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**EXHIBITS**

A	DEPICTION OR DESCRIPTION OF THE PROPERTY AND PROJECT
B	HAZARDOUS MATERIALS
C	CONFIRMATION OF INITIAL LEASE TERM AND AMENDMENT TO LEASE
D	[[TENANT]] WORK LETTER
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TERM

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**Exhibit D  
to  
Lease Agreement**

**FORM OF LICENSE AGREEMENT**

(Attached)

**EXHIBIT D**

**TEMPORARY LICENSE AGREEMENT**

THIS TEMPORARY LICENSE AGREEMENT ("Agreement") is entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Beltway Business Park Warehouse No. 10, LLC, a Nevada limited liability company ("Licensor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Licensee").

RECITALS:

A. Licensor is the lessee of land **[[or owner of the building]]** located in Clark County, Nevada (the "Property"), and Licensee desires to use a portion of such land **[[or building]]** only for **[[specify purpose or purposes]]**, and not otherwise (the "Permitted Use").

B. The portion of the Property to be used for the Permitted Use is that area designated as the "License Area" on the site plan attached as Exhibit "A" to this Agreement **[[, and such additional land located between the License Area and the adjacent public street that is reasonably required for Licensee's access]]** (the "License Area"). The License Area is located within a commercial business park known as the " \_\_\_\_\_ " (the "Project").

C. Licensor is willing to grant Licensee a license for the temporary use of the License Area, as described below, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants contained below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

AGREEMENT:

1. Recitals. The above recitals are an integral part of the agreement and understanding of Licensor and Licensee and are hereby incorporated by reference into this Agreement.

2. Grant of License. Licensor hereby grants to Licensee the right and license to access and occupy the License Area for purpose(s) specifically described above, but not otherwise (the "License"). Licensee's occupancy and use of the License Area shall be subject to reasonable rules and regulations as Licensor may impose from time to time. Licensee's occupancy and use of the License Area shall be at its sole risk, cost and expense, and Licensor shall have no obligation to provide any services with respect to such occupancy and use **[[If Licensor is to provide services, describe here or elsewhere in Agreement]]**. Furthermore, Licensor shall have no responsibility or liability for, and Licensee hereby expressly waives, any and all claims against Licensor for injury to persons or damage to property, regardless of cause. Without limiting the generality of the above waiver, Licensee expressly waives any claim against Licensor for any loss of or damage to any personal property located in the License Area, or any other Licensee property or that of any employee, agent, contractor or invitee of Licensee using the License Area. Licensee shall pay Licensor on demand the cost of repairing or replacing any damage to the License Area caused by an act or omission of Licensee or any of its employees, agents, contractors or invitees. Licensee shall not commit or suffer any waste upon or about the License Area, or any nuisance, or any other act or thing that may disturb the quiet enjoyment of any other occupant in the Project.

3. Term of License. The term of the License granted under this Agreement shall be for \_\_\_\_\_ months, commencing on \_\_\_\_\_, 20\_\_, and expiring on \_\_\_\_\_, 20\_\_, not to

exceed a term of twelve (12) months, unless earlier revoked or terminated as provided below. Upon expiration or earlier revocation of the License, Licensee shall remove all of its personal property from and surrender the License Area to Licensor in the same condition as received. If Licensee fails, by the expiration or earlier termination of the term of the License, to restore the License Area to the condition required under this Section 3, Licensee shall pay Licensor on demand an amount equal to the cost of such restoration work, plus an administrative fee equal to fifteen percent (15%) of such amount. Any personal property of Licensee not removed within two (2) days following such expiration or earlier revocation date shall become property of Licensor, at Licensor's option. Licensee shall reimburse Licensor for and indemnify, defend, and hold harmless Licensor (and Licensor's members, managers, partners, and shareholders, as applicable, and the affiliates, employees, agents, and contractors of Licensor and its members, managers, partners, and shareholders, as applicable) (collectively, the "Licensor Parties") from all losses, liabilities, damages, costs and expenses (including attorneys' fees) resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding occupant or user founded upon such failure to vacate, and any lost profits to Licensor resulting therefrom. If Licensee does not vacate the License Area upon the expiration or earlier revocation of the License and Licensor thereafter accepts a License Fee from Licensee, Licensee's occupancy of the License Area shall be at the sufferance of Licensor, subject to all of the terms of this Agreement, except that the License Fee (as defined below) shall be increased by fifty percent (50%).

4. **License Fee.** In consideration of the License, Licensee shall pay to Licensor a monthly fee (the "License Fee") in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), during the term of the License. The License Fee shall be payable in advance on the first day of the month without offset, deduction or prior demand, at Licensor's address set forth in Section 14 below. Licensee's failure to pay the License Fee promptly may cause Licensor to incur unanticipated costs, the exact amounts of which are impractical or extremely difficult to ascertain. Accordingly, if Licensor does not receive payment within three (3) days after it becomes due, Licensee shall pay Licensor a late charge equal to ten percent (10%) of the overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs Licensor will incur by reason of such late payment. Any amount owed by Licensee to Licensor (excepting the late charge described above) which is not paid when due shall bear interest at the rate of fifteen percent (15%) per annum from the due date until paid in full. If the interest rate specified above is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law. **[[USE IF LICENSEE INSISTS ON CLARIFYING OR MODIFY AS NEEDED: During the term of this Agreement, Licensor, not Licensee, shall be responsible for payment of the real property taxes, property insurance costs, and common area maintenance costs pertaining to the Property. [Subject to Licensee's obligations set forth in Section 3 above and elsewhere in this Agreement, Licensor shall keep all portions of the Property (including structural, non-structural, interior, systems, appurtenances, fixtures, and equipment) in good order, condition, and repair.]]]**

5. **Security Deposit.** Upon execution of this Agreement, Licensee shall deposit with Licensor a cash Security Deposit in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Licensor may apply all or a part of the Security Deposit to any unpaid License Fee or any other unpaid charges due from Licensee or to cure any other defaults of Licensee under this Agreement. No interest shall be paid on the Security Deposit. Licensor shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit. Upon expiration of the License or a termination not resulting from default, and after Licensee has vacated the License Area in the manner required by this Agreement, Licensor shall refund to Licensee the unused portion of the Security Deposit.

6. **Utilities.** Licensee shall pay, directly to the appropriate supplier, the cost of all natural gas, heat, light, power, telephone, fiber optic, cable or other communications or data delivery services, refuse disposal and other utilities and services supplied to the License Area. **[[Licensor shall**

pay the cost of all standard water and sewer service. In the event the water and sewer charges increase by more than ten percent (10%) of Licensor's average charges due to Licensee's use of the License Area, such increases shall be paid by Licensee. Further, the amount paid by Licensor for sewer service shall be based upon the current number of fixtures in the property. If Licensee incurs additional sewer connection fees, such additional costs shall be paid by Licensee.]] However, if any services or utilities are jointly metered with other property, Licensor shall make a reasonable determination of Licensee's proportionate share of the cost of such utilities and services and Licensee shall pay such share to Licensor with Licensee's next monthly installment of the License Fee, consistent with Section 4 above. Licensee acknowledges and agrees that (1) this Agreement is entirely separate and distinct from and independent of any and all agreements that Licensee may at any time enter into with any third party for the provision of utility services or any other services, and (2) Licensor has no obligation of any kind concerning the provision of any such services. Licensor shall not be liable for any failure to furnish, stoppage of, or interruption in furnishing any of the services or utilities described in this Section 6, when such failure is caused by accident, breakage, repairs, strikes, lockouts, labor disputes, labor disturbances, governmental regulation, civil disturbances, terrorist acts, acts of war, moratorium or other governmental action, or any other cause beyond Licensor's reasonable control, and, in such event, Licensee shall not be entitled to any damages nor shall any failure or interruption abate or suspend Licensee's obligation to pay the License Fee as required under this Agreement or constitute or be construed as a constructive or other eviction of Licensee. Further, in the event any governmental authority or public utility promulgates or revises any law, ordinance, rule or regulation, or issues mandatory controls or voluntary controls relating to the use or conservation of energy, water, gas, light or electricity, the reduction of automobile or other emissions, or the provision of any other utility or service, Licensor may take any reasonably appropriate action to comply with such law, ordinance, rule, regulation, mandatory control or voluntary guideline without affecting Licensee's obligations under this Agreement.]

7. **Insurance.** During the Term of the License, Licensee, at Licensee's sole cost and expense, shall maintain a policy of commercial general liability insurance (or its equivalent) insuring Licensee against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the License Area (the "**Liability Policy**"). Licensee shall name Licensor and others reasonably requested by Licensor (such as Licensor's members and the wholly owned affiliates of Licensor's members, Licensor's agents and Licensor's lender) as additional insureds under such policy, and Licensee shall provide Licensor with an appropriate "additional insured" endorsement to Licensee's Liability Policy (in a form acceptable to Licensor) prior to Licensee's occupancy or use of the License Area. The **[[initial]]** amount of such insurance shall be Three Million Dollars (\$3,000,000.00) per occurrence. **[[The limits of the Liability Policy are subject to periodic increases based on inflation, increased liability awards, and the recommendation of Licensor's insurance advisors.]]** The Liability Policy shall (i) be primary and non-contributing with respect to any policy carried by Licensor, (ii) contain a "separation of insureds" condition (or equivalent), (iii) contain contractual liability coverage, (iv) provide "occurrence" based coverage, (v) not have a deductible in excess of Ten Thousand Dollars (\$10,000.00), and (vi) be provided by an insurer duly authorized to issue insurance policies in the State of Nevada and holding a Financial Strength Rating of "A" or better, and a Financial Size Category of "XII" or larger, based on the most recent published ratings of the A.M. Best Company. The Liability Policy shall be procured and maintained at Licensee's sole cost and expense, and shall contain a provision (by endorsement, if needed) that Licensor and Licensee shall be given a minimum of ten (10) days prior written notice by the insurer of cancellation, termination, or material change (including to any endorsements). Licensee shall deliver to Licensor (a) either (i) a certificate of insurance (in form acceptable to Licensor) executed by an authorized officer or agent of the insurance company, certifying that the insurance that Licensee is required to maintain under this Section is in full force and effect, or (ii) copies of the required policies of insurance or other satisfactory evidence (on which Licensor can reasonably rely) that the insurance Licensee is required to maintain under this Section is in full force and effect, and (b) any

endorsements to Licensee's insurance policies required by this Section. At least ten (10) days prior to the expiration of any insurance coverage Licensee is required to maintain under this Section, Licensee shall deliver to Licensor a certificate of insurance (in form acceptable to Licensor) or other satisfactory evidence (on which Licensor can reasonably rely) verifying the timely renewal of such coverage. Licensor shall retain the right, at any time, to review the coverage, form, and amount of the insurance required herein. If, in the opinion of Licensor, the insurance provisions in this Agreement do not provide adequate protection for Licensor and for others, Licensor may require Licensee to obtain additional insurance sufficient in coverage, form, and amount to provide adequate protection.

Licensor shall retain the right, at any time, to review the coverage, form, and amount of the insurance required herein. If, in the opinion of Licensor, the insurance provisions in this Agreement do not provide adequate protection for Licensor and for others, Licensor may require Licensee to obtain additional insurance sufficient in coverage, form, and amount to provide adequate protection. Licensor's requirements shall be reasonable, but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required. The procuring of required insurance coverage shall not be construed to limit Licensee's liability.

8. Indemnification. Licensee shall indemnify, defend and hold harmless Licensor and the other Licensor Parties from any and all loss, costs, damages, expenses and liability (including, without limitation, court costs and attorneys' fees) incurred in connection with or arising in any way from (a) the use of the License Area by Licensee or any of its employees, agents, contractors or invitees, (b) the exercise of Licensee's rights under this Agreement, or (c) any breach by Licensee of the terms hereof, even though any such loss is caused or alleged to be caused, in part, by the negligence or fault of Licensor (other than any such loss arising from the gross negligence or willful misconduct of Licensor). This indemnity provision shall survive termination or expiration of this Agreement. If any proceeding is filed for which indemnity is required hereunder, Licensee agrees, upon request therefor, to defend the indemnified party in such proceeding at its sole cost with counsel satisfactory to the indemnified party or, at the option of Licensor, Licensee shall reimburse the indemnified party for any legal fees, costs, or other expenses incurred by the indemnified party in any such proceeding or action.

Licensee, as a material part of the consideration to Licensor, hereby assumes all risk of damage to property or injury to persons in, or about the License Area from any cause whatsoever (but excepting any cause attributable to Licensor's own negligence and willful misconduct, to the extent of the same). Licensee hereby waives all claims in respect thereof against Licensor. The obligations of Licensee under this Section arising by reason of any occurrence taking place during the License Term shall survive any expiration or earlier termination of this Agreement.

In any provision of this Agreement relating to the conduct, acts or omissions of Licensee, the term "Licensee" shall include Licensee's agents, employees, contractors, invitees, successors or others using the License Area with Licensee's express or implied permission.

9. No Assignment by Licensee. The License is personal to Licensee and shall not be assignable or otherwise transferable by Licensee.

10. Damage or Destruction. If the whole or any material part of the License Area shall be damaged or destroyed, this Agreement and the License and rights granted herein shall terminate with respect to such whole or material part as of the date of such damage or destruction. Licensor shall be entitled to any and all proceeds of insurance payable on account of such damage or destruction, and Licensee shall have no right, title, or interest whatsoever therein.

11. Relocation. Licensor reserves the right to relocate the License Area within a \_\_\_\_\_ radius of the License Area by giving Licensee prior written notice of such intent to relocate. If within thirty (30) days after receipt of such notice, Licensor (or an affiliate of Licensor) and Licensee have not agreed on the location of the relocated License Area, the timing of the relocation, and the allocation of the costs of the relocation, then this Agreement will terminate on that date which is sixty (60) days after Licensee's receipt of such notice. If Licensor (or an affiliate of Licensor) and Licensee do so agree, they will execute an appropriate amendment to this Agreement.

12. Default by Licensee. Notwithstanding any provision contained in this Agreement to the contrary, the parties agree that in the event Licensee defaults in any manner with respect to its obligations under this Agreement, within two (2) days after written notice of such default, Licensor may, at its option, revoke the License granted under this Agreement in the event Licensee has not cured such default.

13. Exclusive Use. The License granted hereunder is exclusive to Licensee. The rights of access and use set forth in this Agreement are expressly made subject to all of the rules, regulations, conditions, and restrictions applicable, from time to time, to all users and occupants of the Project, including, but not limited to, those contained in that certain **[[list Declaration, if applicable]]**. Notwithstanding the above, Licensor expressly reserves to itself the right to use and enjoy the License Area except when such use and enjoyment materially interferes with the rights and privileges granted to Licensee in this Agreement. Licensee shall also permit Licensor and its employees, contractors, and agents to enter the License Area at any time for the purpose of inspecting or making repairs, alterations, or additions to any portion of the License Area.

14. Notices. Any notice or other communication permitted or required to be delivered hereunder shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, or by nationally recognized commercial overnight courier, addressed as follows:

Licensor: Beltway Business Park Warehouse No. 10, LLC  
c/o Majestic Realty Co.  
13191 Crossroads Parkway North, Sixth Floor  
City of Industry, California 91746  
Attention: Property Management

With a copy of any notice to:

c/o Majestic Realty Co.  
4050 W. Sunset Road, Suite H  
Las Vegas, Nevada 89118  
Attention: Property Manager

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

All notices shall be effective upon receipt. Either party may change its notice address upon written notice to the other party.

15. Compliance With Laws. Licensee shall not do anything nor suffer anything to be done in or about the License Area which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or

promulgated (collectively, "Applicable Laws"). Licensee shall, at its sole cost and expense, promptly comply with any Applicable Laws which relate to (or are triggered by) Licensee's use of the License Area. Should any standard or regulation now or hereafter be imposed on Licensee by any federal, state or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards, then Licensee agrees, at its sole cost and expense, to comply promptly with such standards or regulations. **[Add registration of food facility under bioterrorism act if applicable.]**

16. Toxic Materials. Without limiting the generality of Section 15 above, Licensee shall not create, generate, use, bring, allow, emit, dispose of or permit to be used, brought, emitted or disposed of on, over or under the License Area, or any part thereof or any property adjacent thereto, any toxic or hazardous gaseous, liquid or solid material or waste or any material which is defined as "Hazardous Substances," "Hazardous Materials" or "Toxic Substances" or the like pursuant to any federal, state or local law, rule, regulation or ordinance or which has been determined by any state, federal or local governmental or public authority to be capable of posing a risk of injury to health, safety or property (collectively, the "Toxic Materials"). **[[From time to time during the term of this Agreement, Licensee may request Licensor's approval of Licensee's use of other Toxic Materials, which approval may be withheld in Licensor's sole discretion.]** Licensee, at its sole cost and expense, shall immediately take all steps necessary to effect a clean up of any Toxic Materials in the event of a breach of this Section 16 and to obtain appropriate governmental agency certification of such clean up. Licensee shall indemnify, defend and hold harmless Licensor from any claims, judgments, damages, penalties, fines, expenses or liabilities, arising or in any way relating to the presence, release, or disposal of any Toxic Materials resulting from its activities (or that of its employees, agents, subcontractors, or invitees) on or about the License Area or arising from or related to a breach of this Section 16. Licensee shall not install, operate or maintain any above or below grade tank, sump, pit, pond, lagoon or other storage or treatment vessel or device on or about the License Area without Licensor's prior written consent, which may be withheld in Licensor's sole discretion. The obligations of Licensee under this Section 16 shall survive the expiration or earlier termination of this Agreement without any limitation, and shall constitute obligations that are independent and severable from Licensee's covenants and obligations to pay any other charges under this Agreement.

17. Condition of License Area. Licensee has inspected the License Area and accepts it "as is" with no representation or warranty by Licensor regarding the condition of the License Area or its suitability for Licensee's use. Licensee shall not make any alterations, additions, or improvements to the License Area without Licensor's prior written consent, such consent to be withheld in Licensor's sole and absolute discretion. Any alterations approved by Licensor shall be performed in a good and workmanlike manner, in conformity with all applicable laws, and all contractors and subcontractors shall be approved by Licensor. Anything in this Agreement to the contrary notwithstanding, Licensee shall not and shall not permit any of its employees, agents, contractors or invitees to enter on or in any way move about on the roof of the Property, for any purposes whatsoever, without the prior written consent of, coordination with, and supervision of Licensor or its selected agents or contractors.

18. Floor Load Limits. Licensee shall not place a load upon any floor of the License Area exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Licensor reserves the right to prescribe the weight and position of all safes, machinery and mechanical equipment in the License Area. Such installations shall be placed and maintained by Licensee, at Licensee's expense, in settings sufficient, in Licensor's judgment, to absorb and prevent vibration, noise and annoyance to other occupants of the Property.

19. Licensee's Representations and Warranties. Licensee hereby makes the following representations and warranties, each of which is material and being relied upon by Licensor, is true in all respects as of the date of this Agreement.

a. If Licensee is an entity, Licensee is duly organized, validly existing and in good standing under the laws of the State of its organization, and is qualified to do business in the State in which the Property is located, and the persons executing this Agreement on behalf of Licensee have the full right and authority to execute this Agreement on behalf of Licensee and to bind Licensee without the consent or approval of any other person or entity. Licensee has full power, capacity, authority and legal right to execute and deliver this Agreement and to perform all of its obligations hereunder. This Agreement is a legal, valid and binding obligation of Licensee, enforceable in accordance with its terms.

b. Licensee has not (1) made a general assignment for the benefit of creditors, (2) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (3) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (4) suffered the attachment or other judicial seizure of all or substantially all of its assets, (5) admitted in writing its inability to pay its debts as they come due, or (6) made an offer of settlement, extension or composition to its creditors generally.

c. Licensee and all persons and entities (i) owning (directly or indirectly) an ownership interest in Licensee, (ii) whom or which are a permitted assignee of Licensee's interest in this Agreement (if applicable); or (iii) whom or which are a guarantor of Licensee's obligations under this Agreement (if applicable); (x) are not, and shall not become, a person or entity with whom Licensor is restricted from doing business under regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated Nationals and Blocked Persons list), or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (y) are not, and shall not become, a person or entity with whom Licensor is restricted from doing business under the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, or the regulations or orders thereunder; and (z) are not knowingly engaged in, and shall not knowingly engage in any transaction or be otherwise associated with such persons or entities described in (x) or (y) above.

Each of the representations and warranties set forth above in this Section 19 shall survive the expiration or earlier termination of this Agreement.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, without regard to its conflicts or choice of law principles. Licensee hereby knowingly, intentionally, and irrevocably agrees that Licensor may bring any action or claim to enforce or interpret the provisions of this Agreement in the state and county where the License Area is located, and that Licensee irrevocably consents to personal jurisdiction in such state for the purposes of any such action or claim. Nothing in this Section 20 shall be deemed to preclude or prevent Licensor from bringing any action or claim to enforce or interpret the provisions of this Agreement in any other appropriate place or forum. Licensee further agrees that any action or claim brought by Licensee to enforce or interpret the provisions of this Agreement, or otherwise arising out of or related to this Agreement or to Licensee's use and occupancy of the License Area, regardless of the theory of relief or recovery and regardless of whether third parties are involved in the action, may only be brought in the state and county where the License Area is located, unless otherwise agreed in writing by Licensor prior to the commencement of any such action.

**IN THE INTEREST OF OBTAINING A SPEEDIER AND LESS COSTLY ADJUDICATION OF ANY DISPUTE, LICENSOR AND LICENSEE HEREBY KNOWINGLY, INTENTIONALLY, AND IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM BROUGHT BY EITHER OF**

**THEM AGAINST THE OTHER ON ALL MATTERS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE AND OCCUPANCY OF THE LICENSE AREA.**

21. Counterparts. This Agreement may be executed in multiple originals or counterparts, which may be delivered by electronic means, each of which shall be an original, and when Licensor and Licensee have each signed at least one copy, such copies together shall constitute a fully executed and binding agreement.

22. No Recordation. Licensee shall not record this Agreement or any assignment or security document pertaining to this Agreement.

23. Enforcement. If either party shall seek to enforce or protect its rights under this Agreement, the prevailing party shall be entitled to receive from the other party payment of its costs and expenses, including reasonable attorneys' fees incurred (whether such costs or fees are incurred before or after the commencement of the proceeding), including all fees, costs, and expenses incurred in connection with any case or proceeding under the federal Bankruptcy Code, 11 U.S.C. §§ 101 et seq., or any successor statute. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

24. Subordination.

a. This Agreement is subject and subordinate to all leases (including any ground leases), mortgages, and/or deeds of trust which may now or hereafter affect the License Area, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument or subordination shall be required. In confirmation of such subordination, Licensee shall promptly execute any document Licensor may reasonably request.

b. Without limiting the generality of Section 24.a. above, this Agreement is subject and subordinate to that certain Lease Agreement dated \_\_\_\_\_, 20\_\_ (the "Master Lease"), by and between Licensor, as tenant, and County of Clark, a political subdivision of the State of Nevada ("County"), as landlord (the "Master Landlord"), and to any renewal, amendment or modification thereof, and to any mortgage or other encumbrance to which the Master Lease is subject or subordinate, and to all renewals, modifications, consolidations, replacements and extensions thereof. A copy of the Master Lease is attached as Exhibit "B" to this Agreement. During the License Term the Licensee shall be bound by and shall observe all of the terms and conditions to be observed by Licensor under the Master Lease as fully and to the same extent and effect as though Licensee were the lessee thereunder in the place and stead of Licensor. Any event resulting in termination of the Master Lease by its terms or otherwise shall also automatically result in termination of this Agreement.

c. Without limiting the generality of Section 24.b. above, Licensee expressly agrees to comply with and be bound by any and all covenants, conditions and restrictions or rules, regulations or standards of operation or conduct contemplated under the terms of the Master Lease, including, but not limited to the non-discrimination provisions of Article III of the Master Lease, which are hereby incorporated into this Lease by this reference.

d. Without limiting the generality of Section 24.b. above, Licensee acknowledges and agrees that Licensee's license is expressly subject to the Master Landlord's rights under the Master Lease, including but not limited to the right to recover the Property (Section 2.20 of the Master

Lease), the right to improve or expand McCarran International Airport (Section 3.11 of the Master Lease), and the right to enter and inspect the Property (Section 2.7 of the Master Lease).

e. Without limiting the generality of Section 24.b. above, Licensee further acknowledges and agrees that (i) all Licensee signs must have the prior written approval of the designated representative of Master Landlord (per Section 2.6.2 of the Master Lease), and (ii) Master Landlord must be named as an additional insured on all liability insurance policies maintained by Licensee under the terms of this Agreement (per Section 2.12.2.7.4 of the Master Lease).

f. As required by the terms of Section 2.9 of the Master Lease, should Licensee cause any improvements to be made to the License Area, Licensee shall cause any contract with any contractor, designer, or other person providing work, labor, or materials to the License Area to include the following clause:

Contractor agrees on behalf of itself, its subcontractors, suppliers and consultants and their employees that there is no legal right to file a lien upon Clark County-owned property and will not file a mechanic's lien or otherwise assert any claim against county's real estate or any county's leasehold interest on account of any work done, labor performed or materials furnished under this contract. Contractor agrees to indemnify, defend and hold the county and Licensor harmless from any liens filed upon the county's property and county's leasehold interest and shall promptly take all necessary legal action to ensure the removal of any such lien at contractor's sole cost.

25. Estoppel Certificates. Upon Licensor's written request, Licensee shall execute, acknowledge and deliver to Licensor a written statement, in the form required by Licensor's lender or a prospective purchaser of the Property, certifying information with respect to this Agreement as Licensor may reasonably request. Licensee shall deliver such statement to Licensor within ten (10) days after Licensor's request.

26. Amendments. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, written and oral. This Agreement may be amended only by a writing signed by the party against whom enforcement may be sought. It may not be amended by an oral agreement of the parties. All attached exhibits are hereby expressly incorporated into this Agreement by this reference.

27. Severability. In the event any provision of this Agreement is determined to be invalid or unenforceable, then the remainder of this Agreement shall not be affected thereby, and it is the intention of the parties that there shall be substituted for such provision as is invalid or unenforceable a provision as similar to such provision as may be possible and yet be valid and enforceable.

28. No Waiver. The failure of Licensor (a) to insist upon strict performance by Licensee of any of the conditions, provisions, rules and regulations, and agreements in this Agreement, or (b) to exercise any right or option, shall not be deemed a waiver of any of Licensor's rights or remedies.

29. Binding Effect. The covenants, conditions, and terms of this Agreement shall be binding upon and inure to the benefit of Licensor and Licensee and their respective successors and permitted assigns. Nothing express or implied in this Agreement is intended to or shall be construed to give any party other than the parties to this Agreement or their respective successors and permitted assigns any legal or

equitable right, remedy, or claim in respect of this Agreement, it being the intention of the parties hereto that this Agreement shall be for the sole and exclusive benefit of the parties and their successors and permitted assigns.

30. **[Brokers.** Licensor and Licensee hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Agreement, and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Agreement, excepting only \_\_\_\_\_ (“Licensor’s Broker”) and \_\_\_\_\_ (“Licensee’s Broker”) (collectively, the “Broker(s)”). Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys’ fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party’s dealings with any real estate broker or agent, other than the Broker(s). Licensor hereby discloses to Licensee that Licensor’s Broker is acting in this transaction as the agent of Licensor exclusively, and Licensee hereby consents to Licensor’s Broker acting in such capacity. It is hereby acknowledged that Majestic Realty Co., identified above as Licensor’s Broker, and Rodman C. Martin, are acting as both principal (that is, they have an interest in the Licensor entity) and broker in this transaction. Licensor shall pay the Brokers a commission pursuant to the terms of a separate agreement.]

31. **[[Add guaranty language if applicable.]]**

32. **[[Add if Licensor has any obligations: Certain Notifications. In the event Licensor breaches any of its obligations under this Agreement, the following provisions shall apply:**

a. Licensee shall give written notice of any failure by Licensor to perform any of its obligations under this Agreement to Licensor and to any ground lessor, mortgagee or beneficiary under any deed of trust encumbering the Property whose name and address have been furnished to Licensee in writing. Licensor shall not be in default under this Agreement unless Licensor (or such ground lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Licensee’s notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Licensor shall not be in default if such cure is commenced within such thirty (30)-day period and thereafter diligently pursued to completion.

b. Licensee shall have no right to terminate this Agreement based on an uncured default by Licensor in the performance of Licensor’s obligations under this Agreement; provided, however, that Licensee may seek to recover from Licensor an amount representing appropriate actual, compensatory damages for breach of contract based on any such uncured default of Licensor, but not otherwise. In no event shall Licensee be permitted to recover consequential, punitive, or exemplary damages from Licensor based on any such uncured default of Licensor, or otherwise.]]

33. **NO OPTION OR OFFER.** THE SUBMISSION OF THIS AGREEMENT BY LICENSOR, ITS AGENT OR REPRESENTATIVE FOR EXAMINATION OR EXECUTION BY LICENSEE DOES NOT CONSTITUTE AN OPTION OR OFFER TO ACQUIRE A LICENSE TO USE THE LICENSE AREA UPON THE TERMS AND CONDITIONS CONTAINED HEREIN OR A RESERVATION OF THE LICENSE AREA IN FAVOR OF LICENSEE, IT BEING INTENDED HEREBY THAT THIS AGREEMENT SHALL ONLY BECOME EFFECTIVE UPON THE EXECUTION HEREOF BY LICENSOR AND DELIVERY OF A FULLY EXECUTED AGREEMENT

TO LICENSEE. NEITHER PARTY SHALL HAVE ANY OBLIGATION TO CONTINUE DISCUSSIONS OR NEGOTIATIONS OF THIS AGREEMENT.

*(left intentionally blank – signature page to follow)*

EXECUTED effective as of the date first written above.

LICENSOR:

BELTWAY BUSINESS PARK WAREHOUSE  
NO. 10, LLC, a Nevada limited liability company

By: MAJESTIC BELTWAY  
WAREHOUSE BUILDINGS II, LLC,  
a Delaware limited liability company, its  
Manager

By: MAJESTIC REALTY CO.,  
a California corporation,  
Manager's Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: THOMAS & MACK BELTWAY,  
L.L.C., a Nevada limited liability  
company, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

LICENSEE:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit A  
to  
Temporary License Agreement**

**Site Plan**

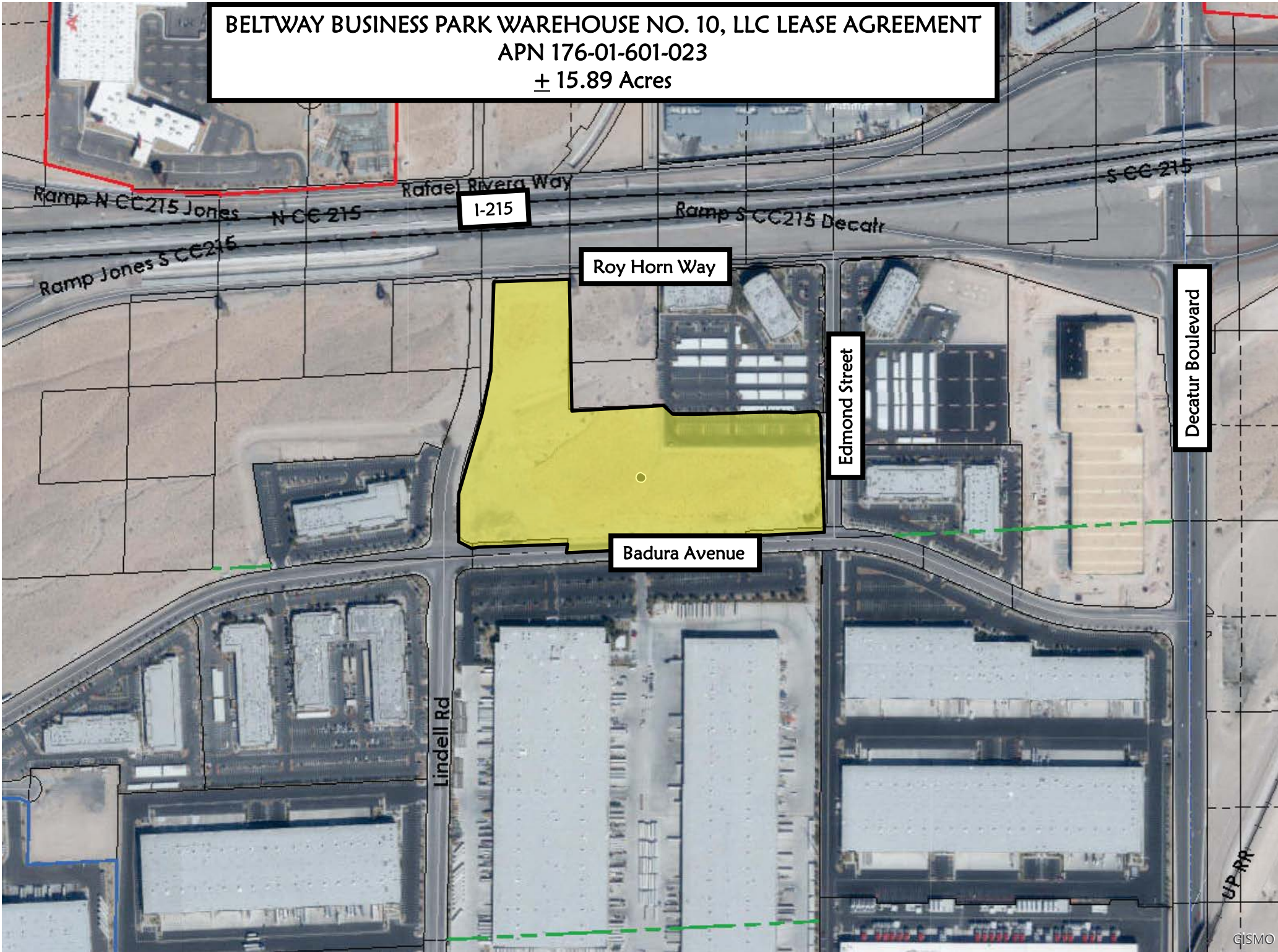
(Attached)

**Exhibit B  
to  
Temporary License Agreement**

**Master Lease**

(Attached or previously delivered to License)

**BELTWAY BUSINESS PARK WAREHOUSE NO. 10, LLC LEASE AGREEMENT**  
**APN 176-01-601-023**  
**± 15.89 Acres**



Ramp N CC215 Jones  
Ramp Jones S CC215

N CC 215

Rafael Rivera Way

I-215

Ramp S CC215 Decatr

S CC 215

Roy Horn Way

Edmond Street

Decatur Boulevard

Badura Avenue

Lindell Rd

UP RR