

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
)
BUILDING MATERIALS HOLDING	) Case No. 09-12074 (KJC)
CORPORATION, <i>et al.</i> ,)
	) Jointly Administered
Debtors.)
	) Cure Objection Deadline:
	) December 3, 2009, 4:00 p.m. (ET)
	) Hearing Date:
	) December 10, 2009, 11:00 a.m. (ET)
)

**OBJECTION OF CONTRACTING PARTY SOUTHWEST
MANAGEMENT, INC. TO CURE AMOUNTS SUBMITTED BY DEBTORS
WITH RESPECT TO ASSUMPTION OF PURCHASE AND SALE
AGREEMENT BETWEEN CERTAIN DEBTORS AS BUYERS AND
SOUTHWEST MANAGEMENT, INC. ET AL AS SELLERS**

[Declarations Of David I. Sunkin And Steven R. Campbell Filed Concurrently]

Introduction

1. In July, 2005, pursuant to a Purchase and Sale Agreement (the "APA") between debtors C Construction, Inc. and SelectBuild Construction, Inc., formerly known as BMC Construction, Inc. as buyers (collectively, "Debtors"), and Southwest Management, Inc. and certain other entities as sellers (collectively, the "Seller Parties"), the Seller Parties sold their businesses (the "Business") to Debtor.¹ In addition to the purchase and sale of the Business, the APA sets forth additional material provisions that are integral to the APA. Among other things:

¹The Business consisted of providing trenching services; composition forming and finishing of rapid rate concrete; engineering, forming and stressing post-tension steel; and insulation of residential waste, water and gas plumbing systems for homes and other buildings.

a. The Seller Parties and Debtors incurred indemnification obligations to each other (APA, § 13); and

b. Debtor C Construction, Inc. as lessee entered into four long term leases of four separate parcels of real property (the "Real Property") owned by entities of certain of the Seller Parties (APA, § § 19.9 and 22.13 (h)). The leases are exhibits to the APA. As set forth in the APA, the Real Property was related to the Business.

2. After the parties consummated the purchase and sale of the Business under the APA, the parties continued to perform the executory provisions of the APA. On June 16, 2009, Debtors and their affiliates (collectively, the "Debtor Parties") filed bankruptcy. Shortly thereafter, the Debtor Parties rejected all four of the leases that it entered into under the APA. Southwest's sister entities, lessors under the leases (the "Lessors"), have filed proofs of claim in these bankruptcies for rejection damages that aggregate \$1,002,439.

3. With respect to the Seller Parties' indemnity obligations to the Debtors under § 13.1(a) of the APA, the Seller Parties agreed that while there was a \$600,000.00 deductible for an indemnifiable claim, the Seller Parties would cover defense and liability costs in excess of \$300,000.00 if the total loss (including defense and liability costs) exceeded \$600,000.00, with the Debtors being responsible for the first \$300,000 of expenses.

4. In May, 2006, after the parties entered into the APA, National Union Fire Insurance Company ("National Union") filed a lawsuit against certain of the Seller Parties. National Union alleged that certain of the Seller Parties failed to pay certain additional worker's compensation premiums on insurance provided by National Union prior to the closing of the APA (the "National Union Litigation"). While Debtors had assumed liability for the National

Union Litigation in the APA,² pursuant to their indemnity obligations under the APA, the Seller Parties accepted Debtors' tender of defense, and advanced defense (and ultimately settlement) costs with respect to the National Union Litigation in an amount exceeding \$600,000.00.

5. As set forth in the Declaration of David I. Sunkin, Debtors participated in the National Union Litigation and the Seller Parties kept Debtors informed of the National Union Litigation and settlement discussions in a manner that exceeded the Seller Parties' obligations under the APA. While the Seller Parties paid over \$600,000 in connection with the National Union Litigation, under the terms of the APA, the Seller Parties were obligated only to pay amounts in excess of \$300,000. That is, the Seller Parties were not responsible for the first \$300,000 of the amount the Seller Parties paid. On that basis, the Seller Parties rightfully demanded reimbursement from Debtors. Debtor failed to reimburse the \$300,000.00 to the Seller Parties.

6. On November 24, 2009, the Debtor Parties provided Southwest's counsel with the Cure Notice related to the APA, indicating that (i) Debtor wishes to assume the APA, and (ii) the cure amount is zero.³ While Southwest is amenable to Debtors assuming the APA, Southwest

² Because the National Union Litigation arose out of and related to the operation of the Business and the Purchased Assets as defined in the APA, the National Union Litigation was an Assumed Liability under Section 3.3(b) of the APA. The National Union Litigation was not an Excluded Liability under Section 3.3(c) of the APA. The Seller Parties' indemnification obligation arose from their alleged breach of a representation contained in the APA.

³ The Cure Notice references a purchase agreement with C Construction, Inc. and a purchase agreement with Selectbuild Construction, Inc. Southwest is aware of only one purchase agreement (to which both Debtors are parties) – the APA. To the extent that there is an agreement other than the APA, unless and until the Debtor Parties provide Southwest with more information regarding that second agreement and a copy thereof, it is premature to respond to the Cure Notice and Southwest objects to the assumption thereof.

disagrees with Debtors' calculation of the proposed cure amount and objects thereto. Rather, the following defaults exist under the APA, and to assume the APA, Debtors must cure the following defaults:

a. Pursuant to § 13.1(a) of the APA, Debtors are required to reimburse Southwest the first \$300,000, plus pre-petition interest thereon from the Seller Parties' demand for payment on or about September 13, 2007, as allowed by law, of the over \$600,000 that the Seller Parties advanced in connection with the National Union Litigation; and

b. Under applicable law, the four leases that the Debtor Parties rejected are not severable from the APA, and Debtors must pay all damages suffered by the Lessors as a result of the rejection of the leases in the amount of \$631,085.95.⁴

7. Based on the foregoing, the amount that Debtors must pay to cure and assume the APA is \$931,085.95. Southwest respectfully requests that this Court condition Debtors' assumption of the APA on Debtors' payment of the foregoing cure amount.

Debtors Must Pay The First \$300,000 That The Seller Parties Advanced In The National Union Litigation

8. The indemnification provisions of the APA were heavily negotiated and are a material part of the APA (Sunkin Decl., ¶3). The Seller Parties and the Debtor Parties agreed

⁴ While the Lessors' proofs of claim aggregate over \$1 million, the difference of approximately \$338,000 constitutes future rent under one lease for which a new tenant has been located (Claim filed by SRC Spencer, LLC). On a second claim (claim 2350 filed by SRC Oates, LLC), the Debtor Parties have objected to a portion thereof based upon the cap under Bankruptcy Code Section 502(b)(6). However, that code section applies only if a debtor is not curing defaults under a lease. If Debtors wish to assume the APA, the cap under Bankruptcy Code Section 502(b)(6) does not apply at all and Debtors therefore are required to pay as cure costs all amounts owed under the leases.

that while the deductible would be \$600,000, to the extent that ultimate exposure on a claim (including defense and liability costs) exceeded \$600,000, the Seller Parties would cover all amounts in excess of \$300,000, with the Debtor Parties covering the first \$300,000 (APA, § 13.1(a)). The parties' agreement in this regard is reflected in the plain language of § 13.1(a) of the APA. Nevertheless, Southwest Management reserves the right to present evidence of representations made during the negotiation of the APA should production of such evidence become necessary.

9. As set forth in the Sunkin Declaration (§§ 4-6), the Seller Parties participated with the Debtors in the National Union Litigation and the Debtors knew what was occurring in the National Union Litigation and settlement discussions related thereto. Debtors made strategic decisions in the National Union Litigation at various times, and the Seller Parties kept the Debtors informed at all times. Before Seller Parties settled the National Union Litigation with National Union, the Seller Parties provided the Debtors with a copy of the Proposed Settlement Agreement. The parties settled the litigation for \$550,000. Defense costs exceeded \$50,000, bringing the total amount incurred and paid by the Seller Parties to over \$600,000. Pursuant to Section 13.1(a) and the definition of Expenses in the APA, defense costs are to be included in determining whether the \$600,000 threshold is met. The Seller Parties advanced the entire settlement amount and paid all defense costs, thereby entitling Southwest to reimbursement of \$300,000 from Debtors. Debtors' failure to reimburse the Seller Parties, despite demand for reimbursement, is a default under the APA, and Debtors must cure that default if they wish to assume the APA.

Since The Rejected Leases Are Integral To The APA, Debtors Must Cure The Defaults Thereunder To Assume The APA

10. The four real property leases that debtor C Construction, Inc. entered into with the Lessors and that debtor SelectBuild Construction, Inc. (formerly BMC Construction, Inc.) guarantied, were an integral and material part of the APA. Pursuant to Section 19.9 of the APA, delivery of the four executed leases was a required condition to the Seller Parties' obligation to close the transactions contemplated by the APA. The leases were highly negotiated by the parties, and the amount due thereunder aggregated \$71,100 per month (\$853,200 annually) on a triple net basis with annual increases. This aggregated millions of dollars over the term of the leases. Moreover, the Seller Parties performed capital improvements to the Real Property for the Debtor Parties' benefit. Without the leases, the Seller Parties would not have entered into, and consummated the transactions under, the APA at the purchase price thereunder (Campbell Decl., ¶ 4). Rather, the Seller Parties would have required a much higher purchase price (Campbell Decl., ¶ 4).

11. The rent under the leases is a significant amount of money and therefore material to the transactions contemplated by and set forth in the APA. The leases are an integral component of the APA. Debtors' actions in rejecting the leases and seeking to assume the APA is equivalent to Debtor picking and choosing various aspects of the agreement that it likes, yet disavowing the aspects it does not like. This is prohibited by the Bankruptcy Code.

12. Under applicable law and Section 22.13(h) of the APA, the leases, as exhibits to the APA, "constitute material terms of the Agreement and are incorporated fully into the terms of the Agreement." The leases are part of the APA and are not severable therefrom. The leases and

the APA are one overall transaction. Pursuant to Section 22.10 of the APA, the APA is governed by California law. In determining whether a contract is severable from the main agreement, three factors a court applying California law will consider are: (1) whether the nature and purpose of the obligations are different; (2) whether the consideration for the obligations is separate and distinct; and (3) whether obligations of the parties are inter-related. In re Pollock, 139 B.R. 938 (9th Cir. BAP 1992). Also relevant is whether there is substantial certainty that none of the agreements would have been executed without the others. Matter of Steen, 509 F.2d 1398, 1402 (9th Cir. 1975), citing Parker v. Commissioner, 166 F.2d 364, 367 (9th Cir. 1948).

13. Applying these factors indicates that the leases are not severable from the APA. First, as noted above, at the purchase price set forth in the APA, the Seller Parties would not have consummated the transaction on the terms contained in the APA without the leases. Second, the obligations of the parties are inter-related. C Construction, Inc. is both the lessee under the leases and a buyer of the Business under the APA. SelectBuild Construction, Inc. (formerly BMC Construction, Inc.) is both a guarantor of the leases and a buyer of the Business under the APA. All of the leases are related to the Business. Third, for the same reasons, the nature and purpose of the obligations under the leases and the APA are similar. Debtors effectively acquired a going concern. They are interrelated insofar as the Real Property is related to the Business. Fourth, while the leases contain rent independent of the purchase price, as noted above, the Seller Parties would not have consummated the transactions under the APA at the purchase price therein or provided capital improvements to the Real Property without the new leases. Thus, the Seller Parties viewed the overall consideration to include both the purchase price and the rent under the leases.

14. Other courts have applied the following additional factors in determining whether agreements are severable:

- (1) the language of the documents to determine interrelationship; and
- (2) whether the documents were negotiated, drafted, executed and delivered contemporaneously by the same parties, for the same purpose, and in the course of the same transaction.

In Re Atlantic Computer Systems, Inc., 173 B.R. 844, 850-51 (S.D.N.Y. 1994); In Re Karfakis, 162 B.R. 719, 724 (E.D. Pa. 1993); In Re Braniff, Inc., 118 B.R. 819, 844 (Bankr. M.D. Fla. 1990) (a separate lease commitment, partial assignment, and purchase agreement concerning 26 aircraft constituted one unified executory contract assumable by the debtor); In Re Ritchey, 84 B.R. 474, 479 (Bankr. N.D. Ohio 1988).

15. Each of these additional factors weighs in favor of finding that the leases are not severable from the APA. The language of the APA clearly states that the leases and the APA are interrelated. Section 19.9 of the APA provides that the leases are a required condition precedent to the closing of the APA and the overall transaction. As stated above, pursuant to Section 22.13(h) of the APA, "All Schedules and Exhibits to this Agreement constitute material terms of this Agreement and are incorporated fully into the terms of this Agreement." The leases are exhibits to the APA.

16. Second, the parties negotiated, drafted, executed and delivered the leases contemporaneously with the APA. The leases and the APA formed one integrated transaction.

Therefore, the leases are not severable from the APA, and the leases and the APA are one overall agreement.

Conclusion

17. The Seller Parties do not oppose Debtors' assumption of the APA so long as Debtors cure the defaults thereunder, as required by the Bankruptcy Code. Contrary to the Debtor Parties' Cure Notice, the cure amounts are \$931,085.95, plus pre-petition interest as allowed by law. Based thereon, Southwest respectfully requests that the Court determine that the cure amounts under the APA are \$931,085.95, plus pre-petition interest as allowed by law, and condition Debtors' assumption of the APA on the payment to Southwest of those cure costs.

Dated: December 2, 2009
Wilmington, Delaware

GIBBONS PC

/s/ William R. Firth, III (DE No. 4356)

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Attorneys for Contracting Party Southwest Management, Inc.

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**DECLARATION OF STEVEN R. CAMPBELL IN SUPPORT OF SOUTHWEST
MANAGEMENT, INC.'S OBJECTION TO CURE AMOUNTS SUBMITTED BY
DEBTORS WITH RESPECT TO ASSUMPTION OF PURCHASE AND SALE
AGREEMENT BETWEEN CERTAIN DEBTORS AS BUYERS AND
SOUTHWEST MANAGEMENT, INC. ET AL AS SELLERS**

I, Steven R. Campbell, say that:

1. At the time of the events described herein, I was an officer of Southwest Management, Inc. ("Southwest"). I have personal knowledge of the facts stated in this declaration, or knowledge based upon my examination of the documents described herein, and if called as a witness, I could and would testify competently thereto under oath.

2. In July 2005, Southwest and certain other entities as sellers (collectively, the "Seller Parties") entered into a Purchase and Sale Agreement ("APA") with debtors C Construction, Inc. and SelectBuild Construction, Inc., formerly known as BMC Construction, Inc. (collectively, "Debtors") as buyers. I negotiated the material business


terms of and signed the APA as an officer of each of the Seller Parties. A true and correct copy of the APA (without exhibits and schedules except for the four leases and related guaranties described further below) is attached hereto as Exhibit A.

3. Under the terms of the APA, the Seller Parties sold their businesses as defined in the APA (the "Business") to Debtors. Under the terms, and as an integral part, of the APA, debtor C Construction, Inc. as lessee negotiated and entered into four long term leases of four separate parcels of real property (the "Real Property") owned by entities of certain of the Seller Parties. In fact, the leases are exhibits to the APA and the execution and delivery of the leases and guaranties thereof was a condition to the closing of the transactions contemplated by the APA. Under the terms of the APA, debtor SelectBuild Construction, Inc. (formerly BMC Construction, Inc.) guarantied C Construction's obligations under the leases. As stated in the APA, the Real Property was related to the Business.

4. The Seller Parties agreed on the purchase price set forth in the APA based materially upon C Construction, Inc.'s entry into the four leases. The Seller Parties would not have agreed to the purchase price in the APA without the four leases. The Seller Parties would have required a much higher purchase price, given that the leases were slated to generate millions of dollars in income over a 4 or 5 year period and provided for certain capital improvements to the Real Property.

The foregoing statements made by me are true. I understand that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Executed this 2 day of December, 2009, at Las Vegas, Nevada.



Steven R. Campbell

INDUSTRIAL REAL ESTATE LEASE

BY AND BETWEEN

SRC SPENCER, LLC
a Nevada limited liability company

"LANDLORD"

AND

C CONSTRUCTION, INC.
a Delaware corporation

"TENANT"

"Spencer Street Facility"

TABLE OF CONTENTS

1.	Terms and Definitions.....	1
2.	Premises	3
3.	Term.....	3
4.	Possession.....	3
5.	Basic Rent.....	4
6.	Additional Rent.....	4
7.	Security Deposit.....	6
8.	Us	6
9.	Payments and Notices.....	7
10.	Brokers	8
11.	Holding Over	8
12.	Taxes on Tenant's Property.....	8
13.	Condition of Premise	8
14.	Alterations.....	8
15.	Condition, Repair, Replacement and Maintenance of the Premises.....	11
16.	Liens.....	12
17.	Entry by Landlord	12
18.	Utilities.....	13
19.	Indemnification	13
20.	Hazardous Materials.....	14
21.	Insurance.....	17
22.	Damage or Destruction.....	19
23.	Eminent Domain.....	21
24.	Bankruptcy.....	21
25.	Defaults and Remedies.....	22
26.	Assignment and Subletting	23
27.	Quiet Enjoyment.....	25
28.	Subordination.....	25
29.	Estoppel Certificate.....	25
30.	Rules and Regulations.....	26
31.	Choice of Law.....	26
32.	Successors and Assigns.....	26
33.	Surrender of Premises	26
34.	Professional Fees.....	26
35.	Performance by Tenant.....	27
36.	Mortgage and Senior Lessor Protection.....	27
37.	Definition of Landlord.....	27
38.	Waiver.....	27
39.	Identification of Tenant.....	28
40.	Parking and Transportation.....	28
41.	Terms and Headings	28
42.	Examination of Lease	28
43.	Time	28
44.	Prior Agreement; Amendments	28
45.	Severability	29

46.	Recording.....	29
47.	Limitation on Liability.....	29
48.	Riders	29
49.	Signs.....	29
50.	Modification for Lender.....	29
51.	Accord and Satisfaction	29
52.	Financial Statements	30
53.	Tenant as Corporation.....	30
54.	No Partnership or Joint Venture	30
55.	Confidentiality	31
56.	Waiver of Jury Trial.....	31

LIST OF EXHIBITS/RIDERS

Exhibit/Rider

- "A" Legal Description of Premises
- "B" Sample Form of Notice of Lease Term Dates
- "C" Sample Form of Tenant Estoppel Certificate
- Rider No. 1 – Option to Renew Lease
- Rider No. 2 – Guaranty
- Rider No. 3 – Work Letter
 - Exhibit R-3A To Work Letter – Final Plans

INDUSTRIAL REAL ESTATE LEASE

THIS INDUSTRIAL REAL ESTATE LEASE (the "Lease") is made as of the 31st day of August, 2005, by and between Landlord and Tenant.

WITNESSETH:

1. Terms and Definitions.

For the purposes of this Lease, the following terms shall have the following definitions and meanings:

(a) **Landlord:** SRC Spencer, LLC, a Nevada limited liability company

(b) **Landlord's Address:**
7912 West Sahara,
Las Vegas, NV 89117
Attn: Mr. Steve Campbell

(c) **Tenant:** C Construction, Inc., a Delaware corporation.

(d) **Tenant's Address:**
5201 S. Polaris Avenue
Las Vegas, NV 89118
Attn: Chief Financial Officer

Copy to:

BMHC
720 Park Blvd., Suite 200
Boise, ID 83712
Attn: Paul S. Street, Senior Vice President,
Chief Administrative Officer, General Counsel
and Corporate Secretary

(e) **Premises Address:** 6767 Spencer Street, Las Vegas, NV 89119.

(f) **Premises:** Those certain premises defined in Subparagraph 2(a) herein
below.

(g) **Term:** Four (4) years, with one (1) option to extend for one (1) additional
year.

(h) **Commencement Date:** The earlier of the following dates:

(i) The date upon which the Tenant takes possession of or commences the operation of its business in the Premises;

(ii) The date the Work (as defined in Rider No. 3 attached hereto) is substantially completed in accordance with Paragraph 4 below, but not later than January 31, 2006.

(i) **Basic Rent:** Twenty Five Thousand Five Hundred and no/100 Dollars (\$25,500.00) per month, subject to increase as hereinafter provided.

(j) **Permitted Use:** Office and related warehouse operations.

(k) **Intentionally Omitted**

(l) **Intentionally Omitted**

(m) **Exhibits:** "A" through "C" inclusive, which Exhibits are attached to this Lease and are incorporated herein by this reference.

(n) **Initial Security Deposit:** "Initial Security Deposit" shall mean the sum equal to the first month's rent.

(o) **Guarantor.** BMC Construction, Inc., a Delaware corporation

(p) **Riders:** Rider No. 1 - Option to Renew, Rider No. 2 - Guarantee, and Rider No. 3 – Work Letter, which Riders are attached to this Lease.

2. **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the parcel of real property legally described on Exhibit "A", and all improvements from time to time located thereon (the "**Premises**"). The parties hereto agree that said letting and hiring is upon and subject to the terms, covenants and conditions herein set forth and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants and conditions by it to be kept and performed and that this Lease is made upon the condition of such performance.

3. **Term.** The Term of this Lease shall be for the period designated in Subparagraph 1(g) commencing on the Commencement Date, and ending on the expiration of such period, unless such Term shall be sooner terminated or extended as hereinafter provided. The Commencement Date and the date upon which the Term of this Lease shall end shall be determined in accordance with the provisions of Subparagraph 1(h) and said dates will be specified in Landlord's Notice of Lease Term Dates ("**Notice**") in the form of Exhibit "B" attached hereto, and shall be served upon Tenant as provided in Paragraph 9, after Landlord delivers or tenders possession of the Premises to Tenant. The Notice shall be binding upon Tenant unless Tenant objects to the Notice in writing, served upon Landlord as provided for in Paragraph 9 hereof, within five (5) days of Tenant's receipt of the Notice.

4. **Possession.**

(a) Landlord will be deemed to have delivered possession of the Premises to Tenant on the Commencement Date, as it may be adjusted pursuant to Subparagraph 4(c) below or Rider No. 3 of this Lease. Landlord will construct or install in the Premises the Work (as that term is defined in Rider No. 3) to be constructed or installed by Landlord according to Rider No. 3. If no Rider No. 3 is attached to this Lease, Landlord will be deemed to have delivered to Tenant possession of the Premises in its "as is" condition as of the Commencement Date. Tenant acknowledges that neither Landlord nor its agents or employees have made any representations or warranties as to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purpose, nor has Landlord or its agents or employees agreed to undertake any alterations or construct any tenant improvements to the Premises except as expressly provided in this Lease and Rider No. 3.

(b) If, by the date specified in Subparagraph 1(h)(ii), the Premises have not been substantially completed (as defined below) due to "Force Majeure Delays" (as defined below) or any cause other than Landlord's default, Landlord shall have no liability, and the obligations of this Lease (including, without limitation, the obligation to pay Rent), provided that commencement of Tenant's rent obligations shall be delayed one day for each day of such delays. For purposes of this Paragraph 4, "Force Majeure Delays" shall mean and refer to a period of delay or delays encountered by Landlord affecting the Work because of delays due to excess time in obtaining governmental permits or approvals beyond the time period normally required to obtain such permits or approvals for similar space in the geographical area in which the Premises are located; fire, earthquake or other acts of God; acts of the public enemy; riot; insurrection; public unrest; governmental regulations of the sales of materials or supplies or the transportation thereof; strikes or boycotts; shortages of material or labor or any cause beyond the reasonable control of Landlord.

(c) If, however, the Premises are not substantially completed by the date specified in Subparagraph 1(h)(ii) due to default on the part of Landlord or Force Majeure Delays, then as Tenant's sole remedy for the delay in Tenant's occupancy of the Premises, the date for commencement of Tenant's rent obligations following the Commencement Date shall be delayed for the period of delay in substantial completion of the Premises resulting therefrom. The Premises shall be deemed "substantially completed" when (i) Landlord has provided reasonable access to the Premises to Tenant, (ii) Landlord has completed the Work (as defined in Rider No. 3) other than details of construction which do not materially interfere with Tenant's use of the Premises, and (iii) Landlord has obtained a permanent or temporary certificate of occupancy for the Premises (or its equivalent).

5. **Basic Rent.**

(a) Tenant agrees to pay Landlord as Basic Rent for the Premises the Basic Rent designated in Subparagraph 1(j) in advance on the first day of each and every calendar month during the Term, except that the first full month's Basic Rent shall be paid upon the execution hereof. In the event the Term of this Lease commences or ends on a day other than the first day of a calendar month, then the Basic Rent for such periods shall be prorated in the proportion that the number of days this Lease is in effect during such periods bears to thirty (30), and such rental shall be paid at the commencement of such periods. In addition to said Basic Rent, Tenant agrees to pay the Additional Rent (as hereinafter defined) as and when hereinafter provided in this Lease. Said Basic Rent shall be paid to Landlord, without any prior demand therefor and without any deduction or offset whatsoever, in lawful money of the United States of America, which shall be legal tender at the time of payment, at the address of Landlord designated in Subparagraph 1(b) or to such other person or at such other place as Landlord may from time to time designate in writing.

(b) The Basic Rent shall be increased on the first day of the thirteenth (13th) month of the Term and on each annual anniversary thereof during the Term (the "Adjustment Month") by an amount equal to three percent (3%) of the Basic Rent in effect immediately prior to a respective Adjustment Month. Landlord shall notify Tenant of each increase by delivering a written statement setting forth the new amount of the Basic Rent. Tenant shall pay the new Basic Rent from its effective date until the next periodic increase.

6. **Additional Rent.**

(a) In addition to paying the Basic Rent as provided in Article 5 of this Lease, Tenant shall pay Real Property Taxes (as hereinafter defined) for the Premises as hereinafter provided. Such payments by Tenant, together with any and all other amounts payable by Tenant pursuant to the terms of this Lease, including, without limitation, payments for repairs, are hereinafter collectively referred to as the "**Additional Rent**". and the Basic Rent and the Additional Rent are sometimes herein collectively referred to as "**Rent**." Without limitation on any other obligations of Tenant which survive the expiration of the Term, the obligations of Tenant to pay Additional Rent which accrues during the Term shall survive the expiration of the Term. Landlord and Tenant acknowledge that it is their intent and agreement that this Lease be a "**TRIPLE NET**" lease and that as such, the provisions contained in this Lease are intended to pass on to Tenant or reimburse Landlord for all costs and expenses associated with this Lease

and the Premises, and Tenant's operation therefrom. To the extent such costs and expenses payable by Tenant cannot be charged directly to, and paid by, Tenant, such costs and expenses shall initially be paid by Landlord and thereafter be reimbursed by Tenant.

(b) Tenant shall pay, directly to the taxing authority as and when due all Real Property Taxes applicable to the Premises and payable during the period beginning on the Commencement Date and continuing thereafter throughout the Term (including extensions). Landlord shall be responsible for the payment of any installment of Real Property Taxes applicable to the Premises coming due prior to the Commencement Date. Tenant shall, upon Landlord's request, furnish Landlord with satisfactory evidence of payment of Real Property Taxes which are the responsibility of Tenant hereunder. If Tenant shall fail to pay any Real Property Taxes as and when due, Landlord may pay such Real Property Taxes on behalf of Tenant, and Tenant shall reimburse Landlord for the total amount thereof including penalties and interest charged by the taxing authority due to Tenant's failure to make timely payment, immediately upon demand.

(c) As used herein, the term "**Real Property Taxes**" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, charge, penalty, tax or similar imposition imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof. as against any legal or equitable interest of Landlord in the Premises. including, but not limited to, the following:

(i) any tax on Landlord's "night" to rent or "night" to other 'income from the Premises or as against Landlord's business of leasing the Premises;

(ii) any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of Real Property Taxes, recognizing that Real Property Taxes shall also include any governmental or private assessments or contributions towards a governmental or private cost/sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies, and it is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies and charges be included within the definition of Real Property Taxes for the purposes of this Lease, including, without limitation, those calculated to increase tax increments to governmental agencies or to pay for such services as fire protection, street, sidewalk and road maintenance, refuse removal or other governmental services -which may have been formerly provided without charge to property owners or occupants;

(iii) any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises or the Rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the State, city or federal government, or any political subdivision thereof, with respect to the receipt of such Rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof;

(iv) any assessment, tax, fee, levy or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; or

(v) any assessment, fee, levy or charge by any governmental agency related to any transportation plan, fund or system instituted within the geographic area of which the Premises are a part.

Notwithstanding any provision of this Paragraph 6(e) expressed or implied to the contrary, Real Property Taxes shall not include Landlord's federal or state income, franchise, inheritance or estate taxes.

7. **Security Deposit.**

Upon execution of this Lease, Tenant shall deposit with Landlord a cash security deposit (the "**Security Deposit**") in the amount of the Initial Security Deposit. The Security Deposit shall be held by Landlord without liability for interest and as security- for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of damages caused by Tenant in case of default by Tenant. Landlord may commingle the Security Deposit With Landlord's other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearage of Rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant. If Landlord transfers its interest in the Premises during the Term of this Lease (including extensions), Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit to Tenant. Each time the Basic Rent is increased, Tenant shall, on or before the date that the first increased Basic Rent payment is due, deposit additional funds with Landlord sufficient to increase the Security Deposit to an amount which bears the same relationship to the adjusted Basic Rent as the Initial Security Deposit bore to the initial Basic Rent.

8. **Use.** Tenant shall use the Premises for the use specified in Subparagraph 1(k), and shall not use or permit the Premises to be used for any other purpose. Tenant shall not use or occupy the Premises in violation of such Rules and Regulations as Landlord may from time to time reasonably adopt for the safety, care and cleanliness of the Premises or of any recorded covenants, conditions and restrictions ("**CC&Rs**") affecting the Premises or of any law or of the Certificate of Occupancy issued for the Premises including, without limitation, the Americans With Disabilities Act, 104 Stat. 327, 42 United States Code § 12101, et. seq., as amended from time to time (the "**ADA**"), and shall, upon five (5) days written notice from Landlord, discontinue any use of the Premises which is in violation of any CC&Rs or is declared by any governmental authority having jurisdiction to be a violation of any law or of said Certificate of Occupancy. Tenant shall make such repairs or alterations to the Premises as may be required to comply with the ADA during the Term, and as a condition to effective vacation of the Premises. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof

or exterior walls of the Premises. Tenant shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or with respect to the use or occupation thereof. Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Premises and/or property located therein and shall comply with all rules, orders, regulations and requirements of the any applicable fire rating bureau or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord as Additional Rent for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Paragraph 8. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises and shall keep the Premises in first class repair and appearance. Tenant shall not place a load upon the Premises exceeding the average pounds of live load per square foot of floor area specified for the Premises by Landlord's architect, with the partitions to be considered part of the live load. Landlord reserves the right to prescribe the weight and position of all safes, files and heavy equipment which Tenant desires to place in the Premises so as to distribute properly the weight thereof.

9. **Payments and Notices.**

(a) All Rents and other sums payable by Tenant to Landlord hereunder shall be paid to Landlord at the address designated by Landlord in Subparagraph 1(b) above or at such other places as Landlord may hereafter designate in writing. Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery or by mail, and if given by mail shall be deemed sufficiently given if sent by registered or certified mail addressed to Tenant at the address designated in Subparagraph 1(d) or to Landlord at both of the addressees designated in Subparagraph 1(b). Either party may by written notice to the other specify a different address for notice purposes. If more than one person or entity constitutes the "Tenant" under this Lease, service of any notice upon any one of said person or entities shall be deemed as service upon all of said persons or entities.

(b) Tenant acknowledges that the late payment by Tenant to Landlord of any sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any monthly installment of Basic Rent is not received by Landlord by the date when due, or if Tenant fails to pay any other sum of money due hereunder and such failure continues for ten (10) days after notice thereof by Landlord, Tenant shall pay to Landlord, as Additional Rent, the sum of five percent (5%) of the overdue amount as a late charge. Such overdue amount shall also bear interest, as Additional Rent, at fifteen percent (15%) per annum calculated, as appropriate, from the date either (a) the monthly installment of Basic Rent is due, or (b) of receipt of said notice, until the date of payment to Landlord. Landlord's acceptance of any late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or any law now or hereafter in effect. If the interest rate

specified in this Lease is higher than the maximum rate permitted by applicable law, such interest rate is hereby reduced to such maximum interest rate permitted by applicable law.

10. **Brokers.** Tenant represents and warrants to Landlord, that no broker, leasing agent or finder has been engaged by it in connection with any of the transactions contemplated by this Lease, or to its knowledge is in anyway connected with any of such transactions. In the event of any claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Lease, Tenant shall indemnify, save harmless and defend Landlord from and against such claims.

11. **Holding Over.** If Tenant holds over after the expiration or earlier termination of the Term hereof without the express, written consent of Landlord, Tenant shall become a tenant at sufferance only, at a rental rate equal to two hundred percent (200%) of the Basic Rent which would be applicable to the Premises upon the date of such expiration, and otherwise subject to the terms, covenants and conditions herein specified, so far as applicable. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a holdover hereunder or result in a renewal. The foregoing provisions of this Paragraph 11 are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration or earlier termination of this Lease despite demand to do so by Landlord; Tenant shall indemnify and hold Landlord harmless from all loss or liability, including without limitation, any claim made by any succeeding tenant founded on or resulting from such failure to surrender.

12. **Taxes on Tenant's Property.** Tenant shall be liable for and shall pay at least ten (10) days before delinquency, taxes levied against any personal property or trade fixtures placed by Tenant in or about the Premises. If an such taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property or if the assessed value of the Premises is increased by the inclusion therein of a value placed upon such personal property or trade fixtures of Tenant and if Landlord, after written notice to Tenant, pays the taxes based upon such increased assessments which Landlord shall have the right to do regardless of the validity thereof, but only under proper protest if requested by Tenant, Tenant shall upon demand repay to Landlord the taxes levied against Landlord, or the proportion of such taxes resulting from such increase in the assessment, provided that in any such event, at Tenant's sole cost and expense, Tenant shall have the right, in the name of Landlord and with Landlord's full cooperation, to bring suit in any court of competent jurisdiction to recover the amount of any such taxes so paid under protest, any amount so recovered to belong to Tenant.

13. **Condition of Premises.** Tenant acknowledges that neither Landlord nor its agents or employees have made any representations or warranties as to the compliance or lack of compliance of the Premises with applicable laws.

14. **Alterations.**

(a) Tenant may, at any time and from time to time during the Term of this Lease but subject to Landlord's approval pursuant to Subparagraph 14(b), at its sole cost and expense, make alterations, additions, installations, substitutions, improvements and decorations (hereinafter collectively called ("**Changes**") in and to the Premises, excluding structural changes,

on the following conditions, and providing such Changes will not result in a violation of or require a change in the Certificate of Occupant (or its equivalent) applicable to the Premises:

(i) The outside appearance, character or use of the Premises shall not be affected, and no Changes shall weaken or impair the structural strength or, in the sole opinion of Landlord, lessen the value of the Premises or create the potential for unusual expenses to be incurred upon the removal of Changes and the restoration of the Premises upon the termination of this Lease.

(ii) The proper functioning of any of the mechanical, electrical, sanitary and other service systems or installations of the Premises ("**Service Facilities**") shall not be adversely affected and there shall be no construction which might interfere with Landlord's free access to the Service Facilities.

(iii) In performing the work involved in making such Changes, Tenant shall be bound by and observe all of the conditions and covenants contained in this Paragraph 14.

(iv) All work shall be done at such times and in such manner as Landlord from time to time may reasonably designate.

(v) Tenant shall not be permitted to install and make part of the Premises any materials, fixtures or articles which are subject to liens, conditional sales contracts or chattel mortgages.

(vi) At the date upon which the Term of this Lease shall end, or the date of any earlier termination of this Lease, Tenant shall on Landlord's written request restore the Premises to their condition prior to the making of any Changes permitted by this Paragraph 14, reasonable wear and tear excepted.

(b) Before proceeding with any Change (exclusive of Changes to items constituting Tenant's personal property), Tenant shall submit to Landlord, for Landlord's written approval, plans and specifications, including any applicable mechanical, electrical and plumbing drawings, for the work to be done. Landlord's approval shall not be unreasonably withheld. If Landlord shall disapprove of any of Tenant's plans, Tenant shall be advised of the reasons for such disapproval. In any event, Tenant agrees to pay to Landlord, as Additional Rent, the reasonable cost of Landlord's third party consultants for review of such plans and specifications, immediately upon receipt of invoices either from Landlord or such consultants. Landlord's approval of the plans and specifications shall create no responsibility or liability on the part of landlord for their completeness, design sufficiency, or compliance with applicable laws or regulations. Any Change for which approval has been received shall be performed strictly in accordance with the approved plans and specifications, and no amendments or additions to such plans and specifications shall be made without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Following construction of the work, Tenant shall prepare or cause to be prepared, at Tenant's expense, a "record set" of as-built plans reflecting the actual construction of the work.

(c) After Landlord's written approval has been sent to Tenant, Tenant shall enter into an agreement for the performance of the work to be done pursuant to this Paragraph 14

with a contractor reasonably approved by Landlord. However, the general contractor shall be required to retain Landlord's subcontractors for any HVAC, electrical and/or fire/life safety work. All costs and expenses incurred in Changes shall be paid by Tenant within seven (7) days after each billing by any such contractor or contractors. Tenant's contractors shall obtain on behalf of Tenant and at Tenant's sole cost and expense, (i) all necessary governmental permits and certificates for the commencement and prosecution of Tenant's Changes and for final approval thereof upon completion, and (ii) a completion and lien indemnity bond, or other surety, satisfactory to Landlord, for the Changes. In the event Tenant shall request any changes in the work to be performed after the submission of the plans referred to in this Paragraph 14, such changes shall be subject to the same approvals and notices as the Changes initially submitted by Tenant.

(d) All Changes and the performance thereof shall at all times comply with (i) all laws, rules, orders, ordinances, directions, regulations and requirements of all governmental authorities, agencies, offices, departments, bureaus and boards having jurisdiction thereof, (ii) all rules, orders, directions, regulations and requirements of any applicable fire rating bureau, or of any similar insurance body or bodies, and (iii) all rules and regulations of Landlord, and Tenant shall cause Changes to be performed in compliance therewith and in good and first class workmanlike manner, using materials and equipment at least equal in quality to the original installations of the Premises. Changes shall be performed in such manner as not to delay or impose any additional expense upon Landlord in construction, maintenance or operation of the Premises, and shall be performed by contractors or mechanics approved by Landlord pursuant to this Paragraph 14, who shall coordinate their work in cooperation with any other work being performed by Landlord with respect to the Premises. Throughout the performance of Changes, Tenant, at its expense, shall carry, or cause to be carried, worker's compensation insurance in statutory limits, and general liability insurance for any occurrence in or about the Premises, of which Landlord and its managing agent shall be named as additional parties insured, in such limits as Landlord may reasonably prescribe. Such policies shall comply with Paragraph 21(b) hereof.

(e) Tenant further covenants and agrees that any mechanic's lien filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to Tenant, will be discharged by Tenant, by bond or otherwise, within ten (10) days after the filing thereof, at the cost and expense of Tenant. All alterations, decorations, additions or improvements upon the Premises, by either party, including (without limiting the generality of the foregoing) all wallcovering, built-in cabinet work, paneling and the like, shall, unless Landlord elects otherwise, become the property of Landlord, and shall remain upon, and be surrendered with the Premises, as a part thereof, at the end of the Term hereof, except that Landlord may by written notice to Tenant, given at least thirty (30) days prior to the end of the Term, require Tenant to remove all partitions, counters, railings and the like installed by Tenant, and Tenant shall repair any damage to the Premises arising from such removal or, at Landlord's option, shall pay to the Landlord all of Landlord's costs of such removal and repair.

(f) All articles of personal property and all business and trade fixtures, machinery and equipment, furniture and movable partitions owned by Tenant or installed by Tenant at its expense in the Premises shall be and remain the property of Tenant and may be removed by Tenant at any time during the lease Term provided Tenant is not in default

hereunder, and provided further that Tenant shall repair any damage caused by such removal. If Tenant shall fail to remove all of its effects from said Premises upon termination of this Lease for any cause whatsoever, Landlord may, at its option, remove the same in any manner that Landlord shall choose, and store said effects without liability to Tenant for loss thereof, and Tenant agrees to pay Landlord upon demand any and all expenses incurred in such removal, including court costs and attorney's fees and storage charges on such effects for any length of time that the same shall be in Landlord's possession or Landlord may, at its option, without notice, sell said effects, or any of the same, at private sale and without legal process, for such price as Landlord may obtain and apply the proceeds of such sale to any amounts due under this Lease from Tenant to Landlord and to the expense incident to the removal and sale of said effects.

(g) Nothing contained in this Paragraph 14 shall be deemed to relieve Tenant of any duty, obligation or liability with respect to making any repair, replacement or improvement or complying with any laws, order or requirement of any government or other authority and nothing contained in this Paragraph 14 shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever, for the care, supervision or repair of the Premises or any part thereof other than as otherwise provided in this Lease.

15. **Condition, Repair, Replacement and Maintenance of the Premises.**

(a) Condition of the Premises. Tenant acknowledges examining the Premises prior to the commencement of the Lease Term and that Tenant is fully familiar with the condition of the Premises. Tenant enters into the Lease without any representations or warranties on the part of Landlord, express or implied, as to the condition of the Premises, including, but not limited to, the cost of operations and the condition of its fixtures, improvements and systems.

(b) Tenant's Obligations.

(i) Tenant's Maintenance. Tenant shall, at Tenant's own expense, maintain, keep in good condition, repair and make replacements, foreseen and unforeseen, ordinary and extraordinary, structural and non-structural, to the exterior of the building on the Premises (including, but not limited to, the roof, roof system, windows and doors) and interior of the building on the Premises (including, but not limited to, the plumbing system, the sprinkler system, if any, the heating system, the air conditioning system if any, the electric system and any other system of the building on the Premises), and the driveways, parking areas, shrubbery and lawn on the Premises, and at the expiration or other sooner termination of the Lease Term, deliver them up in good order and condition and broom clean.

(ii) Damage Caused by Tenant. Notwithstanding any contrary provisions set forth in this Lease, any damage to the Premises, including, but not limited to, the building or its systems, or the improvements, caused by Tenant or a "Tenant Representative" (as defined below), shall be promptly repaired or replaced to its former condition by Tenant, as required by Landlord, at Tenant's own expense. The term "Tenant Representative" shall mean any shareholder, officer, director, member, partner, employee, agent, licensee, assignee, sublessee or invitee of Tenant, or any third party other than Landlord.

(iii) Tenant to Keep Premises Clean. In addition to the foregoing, and not in limitation of it, Tenant shall also, at Tenant's own expense, undertake all replacement of all plate glass and light bulbs, fluorescent tubes and ballasts, and decorating, redecorating and cleaning of the interior of the Premises, and shall keep and maintain the Premises in a clean condition, free from debris, trash refuse, snow and ice.

(iv) Tenant's Negative Covenants. Tenant shall not injure, deface, permit waste nor otherwise harm any part of the Premises, permit any nuisance at the Premises, permit the emission of any objectionable noise or odor from the Premises, place a load on the floor on the Premises exceeding the floor load per square foot the floor was designed to carry, or install, operate or maintain any electrical equipment in the Premises that shall not bear an underwriters approval.

(v) Maintenance/Service Contract. Tenant shall, at Tenant's own expense, enter into a maintenance/service contract with a maintenance contractor, which shall provide for regularly scheduled servicing of all hot water, heating, ventilation and air conditioning systems and equipment in the Premises. The maintenance contractor and the maintenance/service contract shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld. The maintenance/service contract shall include, without limitation, all servicing suggested by the manufacturer, within the operations/maintenance manual pertaining to such system and/or equipment, and shall be effective (and a copy thereof delivered to Landlord) no later than thirty (30) days after the commencement date of this Lease.

16. Liens. Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against the real property of which the Premises form a part nor against the Tenant's leasehold interest in the Premises. Landlord shall have the right at all reasonable times to post and keep posted on the Premises any notices which it deems necessary for protection from such liens. If any such liens are filed and are not discharged by Tenant by bond or otherwise within ten (10) days after the filing thereof, Landlord may, without waiving its rights and remedies based on such breach of Tenant and without releasing Tenant from any of its obligations, cause such liens to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Tenant shall pay to Landlord at once, upon notice by Landlord, any sum paid by Landlord to remove such liens, together with interest at fifteen percent (15%) per annum from the date of such payment by Landlord. If the interest rate specified in this Lease is higher than the maximum rate permitted by applicable law, such interest rate is hereby reduced to such maximum interest rate permitted by applicable law.

17. Entry by Landlord. Landlord reserves and shall at any and all times have the right to enter the Premises to inspect the same, to supply any service to be provided by Landlord to Tenant hereunder, to submit said Premises to prospective purchasers or, during the last twelve (12) months of the Term of this Lease, to prospective tenants, to post notices of nonresponsibility, or to repair the Premises, all without being deemed guilty of any eviction of Tenant and without abatement of rent, and may, in order to carry out such purposes, erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, provided that the business of Tenant shall be interfered with as little as is reasonably practicable. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet

enjoyment of the Premises, and any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safe, and Landlord shall have the means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof, and any damages caused on account thereof shall be paid by Tenant. It is understood and agreed that no provision of this Lease shall be construed as obligating Landlord to perform any repairs, alterations or decoration except as otherwise expressly agreed herein to be performed by Landlord. Landlord shall attempt in the exercise of its rights under this Paragraph 17 to minimize any disturbance of Tenant's use and possession of the Premises and to provide as much notice to Tenant as may be reasonably possible prior to any such exercise of Landlord's rights under this Paragraph 17.

18. **Utilities.**

(a) **Utilities.** During the Term, Tenant shall provide in the Premises at its own expense, water, gas, electricity, sewer, and other necessary utilities and services, and Tenant shall make payment directly to the entities providing such utilities and services.

(b) **Interruption of Utilities.** Tenant agrees that Landlord shall not be liable for damages, by abatement of rent or otherwise, for failure, delay, diminution or interruption of any utilities or services for any reason, and such failure, delay, diminution or interruption shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for any injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to any such failure, delay, diminution or interruption of such utilities or services.

19. **Indemnification.** To the fullest extent permitted by law Tenant hereby agrees to defend, indemnify and hold Landlord harmless against and from any and all claims arising from Tenant's use of the Premises or the conduct of its business or from any activity, work, or thing done, permitted or suffered by Tenant, its agents, contractors, employees or invitees in or about the Premises or elsewhere, and hereby agrees to further indemnify and hold harmless Landlord against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act, neglect, fault or omission of Tenant, or of its agents, employees or invitees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in or about such claim or any action or proceeding brought thereon. In case any action or proceeding may be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord hereby agrees to defend the same at Tenant's expense by counsel approved in writing by Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause whatsoever including, without limitation, loss of or damage to any property by theft or otherwise, any injury or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or

rain which may leak from any part of the Premises or from the pipes, appliances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other patent or latent cause whatsoever.

20. **Hazardous Materials.**

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment, or the Premises; (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products or by-products thereof. Tenant shall not engage in any activity in or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Landlord and compliance in a timely manner (at Tenant's sole cost and expense) with all Applicable Requirements (as hereinafter defined). "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Premises or neighboring properties. In addition, Landlord may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Tenant upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit.

(b) **Duty to Inform Landlord.** Tenant shall obtain Landlord's written consent, which consent shall be granted or withheld in Landlord's sole discretion, to the manufacturing, processing, distribution, using, producing, treating, storing (above or below ground level), disposing of, or allowing to be present, of any other Hazardous Substance in or about the Premises except for those previously approved in writing by Landlord. In connection with each such consent requested by Tenant, Tenant shall submit to Landlord a description, including the composition, quantity and all other information requested by Landlord concerning the proposed presence of any Hazardous Substance. Landlord's consent to the presence of any Hazardous Substance may be deemed given only by inclusion of a description of the composition and quantity of the proposed Hazardous Substance on Landlord's written consent to the request. Landlord's consent to the presence of any Hazardous Substance at any time during the Term or renewal thereof shall not waive the requirement of obtaining Landlord's consent to the subsequent presence of any other, or increased quantities of, any Hazardous Substance in or

about the Premises. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Landlord, Tenant shall immediately give Landlord written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance including but not limited to all such documents as may be involved in any Reportable Use involving the Premises. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system). If any Hazardous Substance is present in or about the Premises, Landlord shall have the right upon reasonable notice to Tenant to engage a consultant to inspect the Premises and to review Tenant's use of Hazardous Substances and all of Tenant's practices with respect to such Hazardous Substances. Tenant shall cooperate in all respects with such inspections and reviews. All costs of such consultants shall be reimbursed to Landlord within fifteen (15) days of written demand by Landlord.

(c) **Indemnification.** Tenant shall indemnify, protect, defend and hold Landlord, its agents, employees, lenders and ground lessor, if any, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Tenant or by anyone under Tenant's control. Tenant's obligations hereunder shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing at the time of such agreement. Tenant's indemnity obligations as provided herein shall include, without in any way limiting the foregoing:

(i) All costs, expenses and attorneys' fees incurred or sustained by any party in making any investigation on account of any claim, demand, loss, liability, cost, charge, suit, order, judgment or adjudication, in prosecuting or defending any action brought in connection therewith, in obtaining or seeking to obtain a release therefrom and in enforcing any of the agreements herein contained;

(ii) Liability for clean up costs, fines, damages or penalties incurred pursuant to the provisions of any Applicable Requirements;

(iii) Liability for costs and expenses of abatement, correction or clean-up, fires, damages, response costs or penalties which arise from the provisions of any Applicable Requirements; and

(iv) Liability for personal injury or Premises damage arising under any statutory or common-law tort theory, including, without limitation, damages assessed for the

maintenance of a public or private nuisance, or for the carrying on of an abnormally dangerous activity, and response costs.

(d) **Tenant's Compliance with Requirements.** Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Requirements," which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Landlord's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill, or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Tenant shall, within five (5) days after receipt of Landlord's written request, provide Landlord with copies of all documents and information, including but not limited to permits, registrations, manifests, applications, reports and certificates, evidencing Tenant's compliance with any Applicable Requirements specified by Landlord, and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation; warning, complaint or report pertaining to or involving failure by Tenant or the Premises to comply with any Applicable Requirements. Tenant shall provide Landlord annually on each anniversary date of the Commencement Date a written certification, also signed by the manager of operations of Tenant at the Premises, certifying that:

(i) Tenant's business has been conducted in full compliance with the Applicable Requirements;

(ii) All Hazardous Substances (if any) related to Tenant's business have been disclosed to Landlord or in said certificate:

(iii) The method and frequency of off- site disposal of Hazardous Substances from the Premises, as described in the certificate, comply with the Applicable Requirements.

(e) **Inspection; Compliance with Law.** Landlord, Landlord's agents, employees, contractors and designated representatives, and any mortgagees, shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Requirements, and Landlord shall be entitled to employ experts and/or consultants in connection therewith to advise Landlord with respect to Tenant's activities, including but not limited to Tenant's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a default of this Lease by Tenant or a violation of Applicable Requirements or a contamination, caused or contributed to by Tenant, is found to exist or to be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination. In such case, Tenant shall upon request reimburse Landlord or Landlord's mortgagee, as the case may be, for the costs and expenses of such inspections.

(f) **Exit Assessment.** If Landlord has reason to believe that Tenant has caused, permitted or suffered the release of any Hazardous Substances at the Premises in violation of applicable laws, then Landlord may require that Tenant prepare an exit environmental assessment of the Premises in compliance with ASTM Standard E1527-00 (the "**Exit Assessment**"), which shall not include any subsurface testing unless warranted by the results of such assessment, in order to establish the environmental condition of the Premises upon the expiration or earlier termination of this Lease as a condition to Tenant's effective vacation of the Premises. The Exit Assessment shall be requested, if at all, not later than 90 days prior to the expiration date of this Lease (as such date may be extended) and shall be conducted not earlier than thirty (30) days prior to Tenant's vacation of the Premises. In the event the Exit Assessment reveals any environmental contamination of the Premises, then Tenant shall promptly remediate or remove such contamination in its entirety, which obligation of Tenant shall survive the expiration or termination of this Lease. Tenant shall maintain the results of the Exit Assessment in strict confidence and shall not, without Landlord's prior written consent which may be withheld in its sole discretion, disclose the results thereof, or any portion thereof to any third party, excepting Tenant's directors, officers, employees, representatives and consultants on a need-to-know basis, unless and only to the extent that Tenant is compelled under applicable law to disclose all or any portion of such assessment results. The Exit Assessment shall name the Landlord as an additional addressee and client for purposes of Landlord's ability to rely on the results thereof and a copy shall be delivered to Landlord concurrently with the delivery of the Exit Assessment to Tenant.

21. **Insurance.**

(a) Tenant at its sole cost and expense shall, during the entire Term hereof, obtain, maintain and keep in full force and effect, the following insurance:

(i) Property insurance including fire, extended coverage, vandalism, malicious mischief and all risks coverage upon property of every description and kind owned by Tenant and located in the Premises or for which Tenant is legally liable or installed by or on behalf of Tenant including, without limitation, leasehold improvements, alterations, furniture, fixtures and any other personal property, in an amount not less than one hundred percent (100%) of the full replacement cost thereof

(ii) A policy of Comprehensive Liability insurance coverage to include personal injury, broad form property damage, premises/operations, owner's protective coverage, blanket contractual liability, products and completed operations liability and owned/non-owned auto liability, in limits not less than Five Million Dollars (\$5,000,000) inclusive. Such policy shall name Landlord, Landlord's managing agent and Landlord's mortgagees as additional insureds and shall contain the following provision:

"Such insurance as afforded by this policy for the benefit of Landlord shall be primary as respects any claims, losses or liabilities arising out of the use of the Premises by the Tenant or by Tenant's operation and any insurance carried by Landlord shall be excess and non-contributing. "

(iii) Loss of income and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises as a result of such perils.

(iv) Any other form or forms of insurance as Tenant or Landlord or the mortgagees of Landlord may reasonably require from time to time in form in amounts and for insurance risks against which a prudent tenant would protect itself.

(b) All policies shall be taken out with insurers acceptable to Landlord and in form satisfactory from time to time to Landlord. Tenant agrees that certificates of insurance on the Landlord's standard form, or, if required by Landlord or the mortgagees of Landlord, certified copies of each such insurance policy, will be delivered to Landlord as soon as practicable after the placing of the required insurance, but in no event later than ten (10) days after Tenant takes possession of all or any part of the Premises, including possession taken under Paragraph 4 hereof. All policies shall contain an undertaking by the insurers to notify Landlord and the mortgagees of Landlord in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation, or other termination thereof.

(c) In the event of damage to or destruction of the Premises entitling Landlord to terminate this Lease pursuant to Paragraph 22 hereof, Tenant will immediately pay to Landlord all of Tenant's insurance proceeds relating to leasehold improvements and alterations (but not to Tenant's trade fixtures, equipment, furniture or other personal property) in the Improvements.

(d) Landlord covenants and agrees that throughout the Term, it will insure the Premises (excluding any property with respect to which Tenant is obligated to insure pursuant to the provisions of Subparagraph 21(a) above) against damage by fire and standard extended coverage perils and public liability insurance in such reasonable amounts with such reasonable deductibles as would be carried by a prudent owner of a similar building in the Las Vegas, Nevada office/warehouse space market. Landlord may, but shall not be obligated to, take out and carry any other form or forms of insurance as it or the mortgagees of Landlord may reasonably determine advisable. Tenant shall reimburse Landlord upon demand for the cost of all insurance maintained by Landlord as required or permitted by this subparagraph. Notwithstanding any contribution by Tenant to the cost of insurance premiums with respect to the Premises, as provided herein, Tenant acknowledges that it has no right to receive any proceeds from any such insurance policies carried by Landlord, although Landlord shall use such proceeds in the repair and reconstruction of the Premises unless Landlord elects to terminate this Lease pursuant to Paragraph 22. Landlord will not carry insurance of any kind on Tenant's furniture or furnishings or on any equipment of Tenant under this Lease, and Landlord shall not be obligated to repair any damage thereto or replace the same.

(e) Tenant shall promptly comply with all reasonable requirements of the insurance authority or of any insurer now or hereafter in effect relating to the Premises.

(f) If any insurance policy carried by Landlord, as provided by Subparagraph 21(d) above, shall be canceled or cancellation shall be threatened or the coverage thereunder

reduced or threatened to be reduced, in any way by reason of the use or occupation of the Premises or any part thereof by Tenant or by any assignee or sub-tenant of Tenant or by anyone permitted by Tenant to be upon the Premises and, if Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation or reduction of coverage within forty-eight (48) hours after notice thereof. Landlord may, at its option enter upon the Premises and attempt to remedy such condition and Tenant shall forthwith pay the cost thereof to Landlord as Additional Rent. Landlord shall not be liable for any damage or injury caused to any property of Tenant or of others located in the Premises as a result of such entry. In the event that Landlord shall be unable to remedy such condition, then Landlord shall have all of the remedies provided for in this Lease in the event of a default by Tenant. Notwithstanding the foregoing provisions of this Subparagraph 21(f), if Tenant fails to remedy as aforesaid, Tenant shall be in default of its obligations hereunder and Landlord shall have no obligation to attempt to remedy such default.

(g) Any policy or policies of fire, extended coverage or similar casualty insurance, which either party obtains in connection with the Premises and the insurance required to be obtained by Tenant pursuant to the provisions of Subparagraph 21 (a)(iii) above shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured prior to the occurrence of injury or loss. Landlord and Tenant waive any rights of recovery against the other for injury or loss due to hazards covered by insurance containing such a waiver of subrogation clause or endorsement to the extent of the injury or loss covered thereby.

22. Damage or Destruction.

(a) In the event the Premises are damaged by fire or other perils covered by insurance required to be carried by Landlord under this Lease to an extent not exceeding twenty-five percent (25%) of the full insurable value thereof and if the damage thereto is such that the Premises may be repaired, reconstructed or restored within a period of one hundred eighty (180) days from the date Landlord learns of the necessity for repairs as a result of the damage and said insurance proceeds are available and sufficient to cover the cost of such repairs, Landlord shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect. If such work of repair, reconstruction and restoration is such as to require a period longer than such one hundred eighty (180) day period or exceeds twenty-five percent (25%) of the full insurable value thereof, or if said insurance proceeds will not be sufficient to cover the cost of such repairs; Landlord either may elect to so repair, reconstruct or restore the Premises and this Lease shall continue in full force and effect or Landlord may elect not to repair, reconstruct or restore the Premises and this Lease shall in such event terminate. Under any of the conditions of this Subparagraph 22(a), Landlord shall give written notice to Tenant of its intention within sixty (60) days from the date Landlord learns of the necessity for repairs as a result of the damage. Upon the occurrence of any damage to the Premises, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance for the leasehold improvements and alterations; provided, however, that if the cost of such repair by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as assigned by Tenant, the cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's repair of the damage. In the event Landlord elects not to restore the Premises, this Lease shall be deemed to have terminated as of the date of such destruction.

(b) Upon any termination of this Lease under any of the provisions of this Paragraph 22, the parties shall be released thereby without further obligation to the other from the date possession of the Premises is surrendered to Landlord except for items which have theretofore accrued and are then unpaid.

(c) In the event of repair, reconstruction and restoration by Landlord as herein provided, the Basic Rent provided to be paid under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired during the period of such repair, reconstruction or restoration. Tenant shall not be entitled to any compensation or damages for loss in the use of the whole or any part of the Premises and/or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

(d) Tenant shall not be released from any of its obligations under this Lease except to the extent and upon the conditions expressly stated in this Paragraph 22.

(e) In the event that damage is due to any cause other than fire or other peril covered by extended coverage insurance. Landlord may elect to terminate this Lease.

(f) It is hereby understood that if Landlord is obligated to or elects to repair or restore as herein provided. Landlord shall be obligated to make repairs or restoration only of those portions of the Premises (i) which were originally provided at Landlord's expense or (ii) which were required to be insured by Landlord hereunder or (iii) for which Landlord has received insurance proceeds from insurance required to be carried by Tenant hereunder, and the repair and restoration of all other items shall be the obligation of Tenant.

(g) Notwithstanding anything to the contrary contained in this Paragraph 22, Landlord shall not have any obligations whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Paragraph 22 occurs during the last twelve (12) months of the Term of this Lease or any extension hereof

(h) The provisions of this Lease, including this Paragraph 22, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, and any statute or regulation with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises.

(i) Tenant acknowledges that the rights of any lender holding a mortgage or deed of trust against the Premises ("**Secured Lender**") to any insurance proceeds applicable to the Premises shall be superior to the rights of Landlord and Tenant to such proceeds. Landlord agrees to use commercially reasonable efforts to cause the Secured Lender to make such insurance proceeds available to Landlord for reconstruction as contemplated in this Lease. If a Secured Lender will not make such proceeds available for reconstruction, and Landlord is unwilling to provide the sums necessary for reconstruction, then Landlord may elect to terminate this Lease within thirty (30) days following receipt of notice that such sums will not be made available for reconstruction.

23. **Eminent Domain.**

(a) In case the whole of the Premises, or such part thereof as shall substantially interfere with Tenant's use and occupancy thereof, shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, either party- shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to said authority. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking, and Landlord shall be entitled to receive the entire amount of any award without deduction for any estate or interest of Tenant. In the event the amount of property or the type of estate taken shall not substantially interfere with the conduct of Tenant's business, Landlord shall be entitled to the entire amount of the award without deduction for any estate or interest of Tenant, and Landlord at its option may terminate this Lease. If Landlord does not so elect, Landlord shall promptly proceed to restore the Premises to substantially their same condition prior to such partial taking, and a proportionate allowance shall be made to Tenant for the Basic Rent corresponding to the time during which, and to the part of the Premises of which, Tenant shall be so deprived on account of such taking and restoration. Nothing contained in this Paragraph shall be deemed to give Landlord any interest in any award separately made to Tenant for the taking of personal property and trade fixtures belonging to Tenant or for moving costs incurred by Tenant in relocating Tenant's business.

(b) In the event of taking of the Premises or any part thereof for temporary use, (i) this Lease shall be and remain unaffected thereby and rent shall not abate, and (ii) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term, provided that if such taking shall remain in force at the expiration or earlier termination of this Lease, Tenant shall then pay to Landlord a sum equal to the reasonable cost of performing Tenant's obligations under Paragraph 33 with respect to surrender of the Premises and upon such payment shall be excused from such obligations. For purposes of this Subparagraph 23(b), a temporary taking shall be defined as a taking for a period of two hundred seventy (270) days or less.

24. **Bankruptcy.** If Tenant shall file a petition in bankruptcy under federal bankruptcy law as then in effect, or if Tenant is adjudicated a bankrupt in involuntary bankruptcy proceedings and such adjudication shall not have been vacated within thirty (30) days from the date thereof, or if a receiver or trustee be appointed of Tenant's property and the order appointing such receiver or trustee not be set aside or vacated within thirty (30) days after the entry thereof, or if Tenant shall assign Tenant's estate or effects for the benefit of creditors, or if this Lease shall otherwise by operation of law pass to any persons other than Tenant, then and in any such event Landlord may, if Landlord so elects, with or without notice of such election and with or without entry or action by Landlord, forthwith terminate this Lease, and notwithstanding any other provisions of this Lease, Landlord, in addition to any and all rights and remedies allowed by law or equity, shall upon such termination be entitled to recover damages in the amount provided in Subparagraph 25(b) below and neither Tenant nor any person claiming through or under Tenant or by virtue of any statute or order of any court shall be entitled to possession of the Premises but shall forthwith quit and surrender the Premises to Landlord. Nothing herein contained shall limit or prejudice the right of Landlord to prove and obtain as damages by reason of any such termination an amount equal to the maximum allowed by any statute or rule of law

in effect at the time when and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of damages recoverable under the provisions of this Paragraph 24.

25. **Defaults and Remedies.**

(a) The occurrence of any one or more of the following events shall constitute a default hereunder by Tenant:

(i) The vacation or abandonment of the Premises by Tenant. Abandonment is herein defined to include, but is not limited to, any absence by Tenant from the Premises for five (5) days or longer.

(ii) The failure by Tenant to make any payment of Basic Rent as when due or any Additional Rent or any other payment required to be made by Tenant hereunder; as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant provided however, that any such notice shall be in lieu of, and not in addition to, any notice required under applicable law.

(iii) The failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Subparagraph 25(a)(i) or (ii) above, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant; provided, however, that any such notice shall be in lieu of and not in addition to, any notice required under applicable law; provided, further, that if the nature of Tenant's default is such that more than ten (10) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said ten (10) day period and thereafter diligently prosecute such cure to completion, which completion shall occur not later than sixty (60) days from the date of such notice from Landlord.

(iv) (1) The making by Tenant of any general assignment for the benefit of creditors; (2) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); (3) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (4) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within thirty (30) days.

(b) In the event of any such default by Tenant, in addition to any other remedies available to Landlord at law or in equity, including, without limitation, Landlord's right to continue the Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease then Landlord may recover from Tenant:

(i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(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.

As used in Subparagraphs 25(b)(i) and (ii) above, the "worth at the time of award" is computed by allowing interest at fifteen percent (15%), or such lesser amount as may then be the maximum lawful rate, per annum. As used in Subparagraph 25(b)(iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) In the event of any such default by Tenant, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant for such period of time as may be required by applicable law after which time Landlord may dispose of such property in accordance with applicable law. No re-entry or taking possession of the Premises by Landlord pursuant to this Subparagraph 25(c) shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

(d) All rights, options and remedies of Landlord contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by Landlord of any rent or other payments due hereunder or any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The consent or approval of Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant.

26. **Assignment and Subletting.** Tenant shall not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, without first obtaining Landlord's prior written consent, which may be granted or withheld in Landlord's sole and absolute discretion. Any assignment, encumbrance or sublease without Landlord's prior written

consent shall be voidable, at Landlord's election, and shall constitute a default. For purposes hereof, in the event Tenant is a partnership or limited liability company, a withdrawal or change of partners or members, or change of ownership of partners or members, owning more than a fifty percent (50%) interest in the partnership or limited liability company, or if Tenant is a corporation, any transfer of fifth percent (50%) or more of its stock, shall constitute a voluntary assignment and shall be subject to these provisions. A change of partners or members owning less than fifty percent (50%) interest in a partnership or limited liability company, or a transfer of less than fifty percent (50%) of a corporation's stock, may also be deemed to constitute a voluntary assignment subject to these provisions if it results in a change of control of the partnership, limited liability company or corporation. No consent to an assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this Paragraph. Tenant shall notify Landlord in writing of Tenant's intent to assign this Lease, or encumber, or sublease Tenant's interest in the Premises, the name of the proposed assignee or sublessee, information concerning the financial responsibility of the proposed assignee or sublessee and the terms of the proposed assignment or subletting, and Landlord shall, within fifteen (15) days of receipt of such written notice, and additional information requested by Landlord concerning the proposed assignee's or sublessee's financial responsibility, elect one of the following:

- (a) Consent to such proposed assignment, encumbrance or sublease;
- (b) Refuse such consent in its sole discretion; or
- (c) Elect to terminate this Lease in the case of an assignment or a sublease of the entire Premises or in the case of a partial sublease, terminate this Lease as to the portion of the Premises proposed to be sublet.

As a condition for granting its consent to any assignment, encumbrance or sublease, Landlord may require that the assignee or sublessee remit directly to Landlord, on a monthly basis, all monies due to Tenant by said assignee or sublessee. In the event that Landlord shall consent to an assignment or sublease under the provisions of this Paragraph 26, Tenant shall pay Landlord's reasonable processing costs and attorneys' fees incurred in giving such consent. If for any proposed assignment or sublease Tenant receives rent or other consideration, whether cash or any other form whatsoever, either initially or over the term of the assignment or sublease, in excess of the rent called for hereunder, or, in case of the sublease of a portion of the Premises, in excess of such rent fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder are taken into account, Tenant shall pay to Landlord as additional rent hereunder fifty percent (50%) of the excess value of each such payment of rent or other consideration received by Tenant promptly after its receipt. Landlord's waiver or consent to any assignment or subletting shall not relieve Tenant from any obligation under this Lease. If Tenant requests Landlord's consent to any assignment of this Lease or any subletting of all or a portion of the Premises, Landlord shall have the right in its sole discretion, to be exercised by giving written notice to Tenant within thirty (30) days of receipt by Landlord of the financial responsibility information required by this Paragraph 26 to terminate this Lease in the case of an assignment or a sublease of the entire Premises, or in the case of a partial sublease, terminate this Lease as to the portion of the Premises proposed to be sublet, effective as of the date Tenant proposes to assign this Lease or sublet all or a portion of the Premises. Landlord's right to terminate this Lease as to all or a portion of the Premises on assignment or

subletting shall not terminate as a result of Landlord's consent to the assignment of this Lease or the subletting of all or a portion of the Premises, or Landlord's failure to exercise this right with respect to any assignment or subletting.

27. **Quiet Enjoyment.** Landlord covenants and agrees with Tenant that upon Tenant paying the rent required under this Lease and paying all other charges and performing all of the covenants and provisions aforesaid on Tenant's part to be observed and performed under this Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises in accordance with this Lease, free from any person claiming by, through or under Landlord.

28. **Subordination.** Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, and at the election of Landlord or any mortgagee with a lien on the Premises or any ground lessor with respect to the Premises, this Lease shall be subject and subordinate at all times to: (a) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises or the land upon which the Premises are situated or both, (b) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Premises, land, ground leases or underlying leases, or Landlord's interest or estate in any of said items is specified as security, and any CC&Rs (as defined in Paragraph 8) affecting the Premises. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Lease. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall if requested by the ground lessor, mortgagee or beneficiary, as applicable, attorn to and become the Tenant of the successor in interest to Landlord and in such event Tenant's right to possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and all other amounts required to be paid to Landlord pursuant to the terms hereof and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. Tenant hereby waives its rights under any current or fixture law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale. Tenant covenants and agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents evidencing Tenant's agreement to attorn as set forth in this Paragraph 28 and the priority or subordination of this Lease with respect to any such CC&Rs, ground leases or underlying leases or the lien of any such mortgage or deed of trust. Should Tenant fail to sign and return any such documents within ten (10) business days of receipt, Tenant shall be in default hereunder.

29. **Estoppel Certificate.**

(a) Within ten (10) days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord a statement, in a form substantially similar to the form of Exhibit "C" attached hereto, certifying. (i) the Commencement Date of this Lease; (ii) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (iii) the date to which the rental and other sums payable under this Lease have been paid; (iv) the fact that there are no

current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; and (v) such other matters requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Paragraph 29 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises or any interest therein.

(b) Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented in good faith by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one (1) month's rent has been paid in advance. Tenant's failure to deliver said statement to Landlord within ten (10) working days of receipt shall constitute a default under this Lease.

30. **Rules and Regulations.** Tenant shall faithfully observe and comply with all reasonable rules and regulations from time to time put into effect by Landlord as it deems reasonably necessary or appropriate in its sole discretion (the "Rules and Regulations").

31. **Choice of Law.** This Lease shall be governed by and construed pursuant to the laws of the State of Nevada.

32. **Successors and Assigns.** Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

33. **Surrender of Premises.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, operate as an assignment to it of any or all subleases or subtenancies. Upon the expiration or termination of this Lease, Tenant shall peaceably surrender the Premises and all alterations and additions thereto broom-clean, in good order, repair and condition, reasonable wear and tear excepted, and shall comply with the provisions of Subparagraphs 14(g). The delivery of keys to any employee of Landlord or to Landlord's agent or any employee thereof shall not be sufficient to constitute a termination of this Lease or a surrender of the Premises.

34. **Professional Fees.**

(a) In the event that Landlord should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provisions of this Lease, or for any other relief against Tenant hereunder, or should either party bring suit against the other with respect to matters arising from or growing out of this Lease, then all costs and expenses, including without limitation, professional fees such as appraisers', accountants' and attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

(b) Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy hereunder, Tenant shall pay to

Landlord its costs and expenses incurred in such suit including without limitation, professional fees such as appraisers', accountants' and attorneys' fees.

35. **Performance by Tenant.** All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. In the event Tenant shall fail to perform any covenant or agreement to be performed by Tenant under any of the terms of this Lease, including, without limitation, Tenant's obligations under Paragraph 15 hereof. Landlord shall have the right to perform such obligation of Tenant on Tenant's behalf. In such event, Landlord shall be entitled to receive, as Additional Rent, reimbursement of any sums so expended on Tenant's behalf, together with interest at fifteen percent (15%), or such lesser amount as may then be the maximum lawful rate, per annum calculated from the date of expenditure by Landlord to the date of reimbursement by Tenant.

36. **Mortgage and Senior Lessor Protection.** No act or failure to act on the part of Landlord which would entitle Tenant under the terms of this Lease, or by law, to be relieved of Tenant's obligations hereunder or to terminate this Lease, shall result in a release of such obligations or a termination of this Lease unless (a) Tenant has given notice by registered or certified mail to any beneficiary of a deed of trust or mortgage covering the Premises and to the lessor under any master or ground Lease covering the Premises or any interest therein whose identity and address shall have been furnished to Tenant, and (b) Tenant offers such beneficiary, mortgagee or Lessor a reasonable opportunity to cure the default.

37. **Definition of Landlord.** The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of the Premises. In the event of any transfer, assignment or other conveyance or transfers of any such title or interest. Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed and, without further agreement, the transferee of such title or interest shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder, during its ownership of the Premises. Landlord may transfer its interest in the Premises without the consent of Tenant and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

38. **Waiver.** The failure of Landlord to seek redress for violation of, or to insist upon strict performance of, any term covenant or condition of this Lease or the Rules and Regulations shall not be deemed a waiver of such violation or prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of Landlord to insist upon the performance by Tenant in strict accordance with said terms. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the

failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

39. **Identification of Tenant.** Unless the provisions of Paragraph 53 herein below are applicable to this Lease, if more than one entity executes this Lease as Tenant, (a) each of them is jointly and severally liable for the keeping observing and performing of all of the terms, covenants, conditions, provisions and agreement of this Lease to be kept, observed and performed by Tenant, and (b) the term "Tenant" as used in this Lease shall mean and include each of them jointly and severally and the act of or notice from, or notice or refund to, or the signature of any one or more of them, with respect to the tenancy or this Lease, including, but not limited to, any renewal, extension, expiration, termination or modification of this Lease, shall be binding upon each and all of the entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or so given or so received such notice or refund or so signed.

40. **Parking and Transportation.** Tenant shall have the right to use all parking areas located upon the Premises, subject to such parking rules and regulations as Landlord deems reasonably necessary or appropriate for the operation of said parking. Landlord may refuse to permit any person who violates with unreasonable frequency the parking rules and regulations to park in the parking areas, and any violation of the rules shall subject the car to removal. Tenant agrees to use its best efforts to acquaint all employees and visitors with the parking rules and regulations. Landlord shall have no responsibility for damage to cars in the parking areas.

41. **Terms and Headings.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Paragraph headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

42. **Examination of Lease; Counterparts.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for Lease, and it is not effective as a Lease or otherwise until execution by and delivery to both Landlord and Tenant. This Lease may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument

43. **Time.** Time is of the essence with respect to the performance of every provision of this Lease in which time or performance is a factor.

44. **Prior Agreement; Amendments.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not incorporated herein.

45. **Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal in no way affects, impairs or invalidates any other provision hereof. and such other provisions shall remain in full force and effect.

46. **Recording.** Neither Landlord nor Tenant shall record this Lease nor a short form memorandum thereof without the consent of the other and if such recording occurs, it shall be at the sole cost and expense of the party requesting the recording, specifically including any documentary transfer taxes.

47. **Limitation on Liability.** The obligations of Landlord under this Lease do not constitute personal obligations of the individual partners, directors, officers or shareholders of Landlord, and Tenant shall not seek recourse against the individual partners, directors, officers or shareholders of Landlord or any of their personal assets for satisfaction of any liability in respect to this Lease. Any liability of Landlord under this Lease shall be limited to Landlord's interest in the Premises. Tenant hereby acknowledges and agrees that (i) the Basic Rent does not include the cost of any security measures for any portion of the Premises, (ii) that Landlord has no obligation to provide any security measures, and to the extent permitted by law, and such obligation imposed on Landlord by operation of law is waived by Tenant, (iii) Landlord has made no representation to tenant regarding the safety or security of the Premises, (iv) Tenant is solely responsible for providing any security measures and devices that is required to protect Tenant and Tenant's employees, visitors and invitees from criminal or negligent acts of third parties, and (v) any safety and security devices included in the Premises as delivered to Tenant, while intended to deter crime and promote safety, may not in given instances prevent theft or other criminal acts, or protect persons or property against damage, loss or injury. The risk that any safety or security device previously installed at the Premises by or for Landlord may not be effective, or may malfunction or be circumvented, is hereby assumed by Tenant.

48. **Riders.** Clauses, plats, exhibits and riders, if any, affixed to this Lease are a part hereof.

49. **Signs.** Tenant shall not place any sign within any area of the Premises which is visible from outside the Premises without Landlord's prior written consent. Landlord shall have the right to remove any sign which has not been previously approved in writing.

50. **Modification for Lender.** If in connection with obtaining construction, interim or permanent financing for the Premises, the lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder in any way and do not adversely affect the leasehold interest hereby created or Tenant's rights hereunder.

51. **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the

foregoing covenants and agreements shall be applicable to any covenant or agreement whether expressly contained in this Lease or imposed by any statute or at common law.

52. **Financial Statements.** At any time during the Term of this Lease, Tenant shall, upon thirty (30) days prior written notice from Landlord, provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant.

53. **Tenant as Corporation.** If Tenant executes this Lease as a corporation or other business entity, then Tenant and the persons executing this Lease on behalf of Tenant represent and warrant that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on its behalf and that this Lease is binding upon Tenant in accordance with its terms.

54. **No Partnership or Joint Venture.** Nothing in this Lease shall be deemed to constitute Landlord and Tenant as partners or joint venturers. It is the express intent of the parties hereto that their relationship with regard to this Lease be and remain that of landlord and tenant.

[Remainder of Page Intentionally Blank; Signature Page Follows]

55. **Confidentiality**. Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord and Tenant. Tenant agrees that it, its partners, officers, directors, employees, brokers and attorneys, shall not disclose the terms and conditions of this Lease to any other person without the prior written consent of Landlord. It is understood and agreed that damages may be an inadequate remedy for the breach of this provision by Tenant, and Landlord shall have the right to specific performance of this provision and to injunctive relief to prevent its breach or continued breach.

56. **Waiver of Jury Trial**

TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE PARTIES
HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN
CONNECTION WITH THIS LEASE.

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

LANDLORD:

SRC Spencer, LLC,
a Nevada limited liability company

By: _____

Steven R. Campbell, its managing member

TENANT:

C Construction, Inc.,
a Delaware corporation

By: _____

Its: _____

Print Name: _____

55. **Confidentiality**. Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord and Tenant. Tenant agrees that it, its partners, officers, directors, employees, brokers and attorneys, shall not disclose the terms and conditions of this Lease to any other person without the prior written consent of Landlord. It is understood and agreed that damages maybe an inadequate remedy for the breach of this provision by Tenant, and Landlord shall have the right to specific performance of this provision and to injunctive relief to prevent its breach or continued breach.

56. **Waiver of Jury Trial**

TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS LEASE.

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

LANDLORD:

SRC Spencer, LLC,
a Nevada limited liability company

By: _____
Steven R. Campbell, its managing member

TENANT:

C Construction, Inc.,
a Delaware corporation

By: Michael Mahre

Its: President

Print Name: Michael Mahre

EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

Parcel 1:

A portion of Lot 1 of the Merger and Resubdivision of Spencer Airport Plaza III as shown by map in Book 116, Page 81 of Plats, Official Records, situate in the Northwest Quarter (NW¼) of Section 2, township 22 South, Range 61 East, M.D.M., Clark County, Nevada, more particularly described as follows:

Beginning at the most Northwesterly corner of Spencer Airport Plaza III as shown by map thereof; thence South 89°22'11" East, along the Northerly line thereof, 251.35 feet to a boundary line angle point as shown on said map of Spencer Airport Plaza III; thence North 00°20'47" West, along the Westerly line thereof, 15.07 feet; thence North 89°30'43" East, departing said Westerly line, 181.54 feet; thence South 00°29'17" East, 115.96 feet to a point on the Southerly line as shown on said map of Spencer Airport Plaza III; thence North 89°22'11" West, 432.97 feet to a point on the Westerly line as shown on said map of Spencer Airport Plaza III; thence North 00°29'17" West, along the Westerly line thereof, 97.34 feet to the point of beginning.

Parcel 2:

Together with a non-exclusive easement for vehicular and pedestrian ingress and egress over upon and across areas designated as private drive on the Plan as set forth in the Declaration of Covenants, Conditions and Restrictions recorded June 13, 2003 in Book 20030613 as Document No. 01699 and by First Amendment to the Declaration of Covenants, Conditions and Restrictions recorded November 1, 2004 in Book 20041101 as Document no. 01633 of Official Records of Clark County, Nevada.

EXHIBIT "B"

**SAMPLE FORM OF
NOTICE OF LEASE TERM DATES**

TO: _____ Date: _____

Re: Lease dated August 31, 2005 between SRC Spencer, LLC, a Nevada limited liability company ("Landlord"), and C Construction, Inc., a Delaware corporation ("Tenant") concerning Premises located at 6767 Spencer Street, Las Vegas, Nevada 89119.

Gentlemen:

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

1. That the Premises have been accepted herewith by the Tenant as being substantially complete in accordance with the subject Lease.
2. That the Tenant has possession of the subject Premises and acknowledges that under the provisions of the subject Lease, the Term of said Lease commenced as of _____ for a term of four (4) years, ending on _____, with one (1) option to extend for one (1) additional year.
3. That in accordance with the subject Lease, rental commenced to accrue on _____.
4. If the commencement date of the subject Lease is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in said Lease.
5. Rent is due and payable in advance on the first day of each and every month during the term of said Lease. Your rent checks should be made payable to Landlord at Landlord's address for notices set forth in the Lease.

AGREED AND ACCEPTED

LANDLORD:

SRC Spencer, LLC,
a Nevada limited liability company

By: _____
Steven R. Campbell, its managing member

TENANT:

C Construction, Inc.,
a Delaware corporation

By: _____

Its: _____

Print Name: _____

EXHIBIT "C"

SAMPLE FORM OF ESTOPPEL CERTIFICATE

The undersigned, SRC Spencer, LLC ("**Landlord**"), with a mailing address c/o 7912 West Sahara, Las Vegas, NV 89117; Attn: Mr. Steve Campbell; and C Construction, Inc. ("**Tenant**"), hereby certify to _____, a _____ as follows:

1. Attached hereto is a true, correct and complete copy of that certain lease dated August 31, 2005 between Landlord and Tenant (the "**Lease**"), which demises premises located at 6767 Spencer Street, Las Vegas, Nevada 89119. The Lease is now in full force and effect and has not been amended, modified or supplemented, except as set forth in paragraph 4 below.

2. The term of the Lease commenced on _____, 20__.

3. The term of the Lease shall expire on _____, 20__.

4. The Lease has: (Initial one)

() not been amended, modified, supplemented, extended, renewed or assigned.

() been amended, modified, supplemented, extended, renewed or assigned by the following described agreements, copies of which are attached hereto: _____

5. Tenant has accepted and is now in possession of said premises.

6. Tenant and Landlord acknowledge that the Lease will be assigned to _____ and no modification, adjustment, revision or cancellation of the lease or amendments thereto shall be effective unless written consent by _____ is obtained; and that until further notice, payments under the Lease may continue as heretofore.

7. The amount of fixed monthly rent is _____ Dollars (\$_____).

8. The amount of security deposits (if any) is _____ Dollars (\$_____).
No other security deposits have been made.

9. Tenant is paying the full lease rental, which has been paid in full as of the date hereof. No rent under the Lease has been more than thirty (30) days in advance of its due date.

10. All work required to be performed by Landlord under the Lease has been completed.

11. There are no defaults on the part of the Landlord or Tenant under the Lease.

12. Tenant has no defense as to its obligations under the Lease and claims no set-off or counterclaim against Landlord.

13. Tenant has no right to any concession (rental or otherwise) or similar compensation in connection with renting the space it occupies except as provided in the Lease.

All provisions of the Lease and amendments thereto (if any) referred to above are hereby ratified.

The foregoing certification is made with the knowledge that _____ is about to fund a loan to Landlord or purchase the demised premises from Landlord, and that _____ is relying upon the representations herein made in connection with such transaction.

DATED: _____, 20__.

LANDLORD:

SRC Spencer, LLC,
a Nevada limited liability company

TENANT:

C Construction, Inc.,
a Delaware corporation

By: _____
Steven R. Campbell, its managing member

By: _____

Its: _____

Print Name: _____

RIDER NO. 1 - OPTION TO RENEW LEASE

THIS RIDER NO. 1 is attached to and made apart of that certain lease dated August 31, 2005, between SRC SPENCER, LLC, a Nevada limited liability company, as Landlord, and C CONSTRUCTION, INC., a Delaware corporation, as Tenant (the "Lease"). The terms used in this Rider shall have the same definitions as set forth in the Lease. The provisions of this Rider shall prevail over any inconsistent or conflicting provisions of the Lease.

R-1. Option. Provided that Tenant is not in default of this Lease at the time of the exercise of the Option to Renew Lease (as defined below) or at the expiration of the initial Term of this Lease, the Tenant shall have one and only one option to renew and extend this Lease (the "Option to Renew Lease") for one term of one (1) additional year (the "Renewal Term"), upon written notice to the Landlord delivered not less than twelve (12) months before the expiration of the initial Lease Term. Upon the delivery of such notice by Tenant and subject to the conditions set forth in the preceding sentence, this Lease shall be extended without the necessity of the execution of any further instrument or document: provided, however, that each party agrees to execute and deliver such further instruments or documents as the other party may reasonably request to memorialize or acknowledge the exercise of the Option to Renew Lease. The Renewal Term shall commence upon the expiration of the initial Term of this Lease, shall expire upon the first anniversary of such date thereafter, and be upon the same terms, covenants and conditions as provided in this Lease for the initial Term, except that the Base Rent shall be the then prevailing fair market rental rate as of the commencement of the Renewal Term. Tenant shall only be able to exercise the Option to Renew Lease as to all of the Premises.

R-2. Rent. The prevailing fair market rental rate shall be the then going rate for comparable space at in the vicinity of the Premises. Landlord shall notify Tenant of Landlord's good faith determination of prevailing fair market rental no later than one (1) month after Tenant's exercise of the Option to Renew Lease. No later than one (1) month after Landlord notifies Tenant of the prevailing fair market rental, Tenant shall notify Landlord whether Tenant accepts Landlord's determination. If Tenant does not agree, Tenant and Landlord shall proceed pursuant to paragraph R-3 hereof.

R-3. Objection to Landlord's Determination. In the event Tenant timely objects to the fair market rental rate submitted by Landlord, Landlord and Tenant shall attempt in good faith to agree upon such fair market rental rate using their best good faith efforts. If Landlord and Tenant fail to reach agreement on such fair market rental rate within fifteen (15) days following Tenant's notice that Tenant does not accept Landlord's determination of the prevailing fair market rental rate, then each party shall submit a new determination of prevailing fair market rental rate to appraisal in accordance with Paragraph R-5 below.

R-4. Appraisal. Landlord and Tenant shall each appoint one (1) independent appraiser who shall by profession be a real estate broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of commercial properties in the Las Vegas area. The determination of the appraisers shall be limited to solely the issue of whether Landlord's or Tenant's submitted fair market rental rate for the Premises is the closest to the actual fair market rental rate for the Premises as determined by the appraisers, taking into account the requirements of Paragraph R-2 above and this Paragraph R-4 regarding the same.

Such decision shall be based upon the projected prevailing fair market rental rate as of the commencement date of the Renewal Term. Each such appraiser shall be appointed within the fifteen (15) day period after Tenant's notice that Tenant does not accept Landlord's determination.

(i) The two (2) appraisers so appointed shall within fifteen (15) days of the date of appointment of the last appointed appraiser agree upon and appoint a third appraiser who shall be qualified under the same criteria set forth hereinabove for qualifications of the initial two (2) appraisers.

(ii) The three (3) appraisers shall within thirty (30) days of the appointment of the third appraiser reach a decision as to whether the parties shall use Landlord's or Tenant's submitted fair market rental rate, and shall notify Landlord and Tenant thereof.

(iii) The decision of the majority of the three (3) appraisers shall be binding upon Landlord and Tenant. If either Landlord or Tenant fails to appoint an appraiser within the period specified in Paragraph R-4 hereinabove, the appraiser appointed by one of them shall reach a decision based upon the same procedures as set forth above (i.e. by selecting either Landlord's or Tenant's submitted fair market rental rate), and shall notify Landlord and Tenant thereof, and such appraiser's decision shall be binding upon Landlord and Tenant.

(iv) If the two (2) appraisers fail to agree upon and appoint a third appraiser, both appraisers shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association, but based up on the same procedures as set forth above (i.e., by selecting either Landlord's or Tenant's submitted fair market rental rate).

(v) The cost of the appraisal (or arbitration if required pursuant to Paragraph R-5(iv)) shall be paid by the party whose submitted fair market rental rate is not accepted.

R-5. Notwithstanding the fair market rental rate for the Premises, in no event shall the Basic Rent as of the commencement of the Renewal Term be less than the Basic Rent payable by Tenant during the last month of the initial Term of the Lease.

RIDER NO. 2 – GUARANTY OF LEASE

This Guaranty of Lease is made as of this 31st day of August, 2005, by BMC Construction, Inc., a Delaware corporation ("Guarantor"), as a material inducement to and in consideration of the execution by SRC Spencer, LLC ("Landlord") of that certain Industrial Real Estate Lease (the "Lease") of even date herewith between Landlord and C Construction, Inc., a Delaware corporation ("Tenant"), relating to premises located at 6767 Spencer Street, Las Vegas, Nevada 89119. Guarantor hereby covenants and agrees as follows:

(1) Guarantor hereby unconditionally guarantees the performance of, and unconditionally promises to perform, all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder.

(2) In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, amend or modify the Lease in any manner, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.

(3) Guarantor hereby waives and agrees not to assert or take advantage of any and all rights afforded a surety or guarantor under applicable law, including any and all of the following benefits it may otherwise be entitled to under such laws:

Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor;

(b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease;

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease; and

(i) Any and all defenses and rights which Guarantor might otherwise have to exoneration under this Guaranty based on any alteration, modification, compromise, renewal, extension, or assignment of the Lease or any of the Guaranteed Obligations, whether done with or without the knowledge or consent of Guarantor, and Guarantor grants Lessor the right to take any such action relative to the Guaranteed Obligations without the knowledge or consent of Guarantor without in any manner affecting the liability of Guarantor under this Guaranty.

Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of non-payment, and all other notices of any kind, including all notices of the existence, creation, or incurring of new or additional obligations and any notice of acceptance of this Guaranty, which, upon execution by Guarantor, shall immediately be binding on Guarantor.

Guarantor subordinates to Lessor all of Guarantor's rights to participate in any security now or later held by Lessor. Until all obligations hereby guaranteed shall have been fully performed, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease; provided, however, that as long as the Tenant is a wholly-owned subsidiary of Guarantor, the foregoing prohibition shall not be effective with respect to any intra-company debt or capital transfers.

All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant in Landlord.

The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Lease against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

Should any one or more provisions of this Guaranty of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

This Guaranty of Lease shall inure to the benefit of Landlord and its successors and assigns as Landlord under the Lease, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. This Guaranty of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

Upon full performance of all obligations hereby guaranteed, this Guaranty of Lease shall be of no further force or effect.

No provision of this Guaranty of Lease or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

If two (2) or more persons are signing this Guaranty of Lease as Guarantor, then all such persons shall be jointly and severally liable for the obligations of Guarantor hereunder.

This Guaranty of Lease shall be governed by and construed in accordance with the laws of the State of Nevada. In any action brought under or arising out of this Guaranty of Lease, Guarantor hereby consents to the jurisdiction of any competent court within the State of Nevada and hereby consents to service of process by any means authorized by Nevada law.

TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS GUARANTY.

This Guaranty of Lease shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

GUARANTOR:

BMC CONSTRUCTION, INC.

A Delaware corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

RIDER NO. 3 – WORK LETTER

THIS RIDER NO. 3 is attached to and made part of that certain lease dated August 31, 2005 between SRC SPENCER, LLC, a Nevada limited liability company ("Landlord"), and C CONSTRUCTION, INC., a Delaware corporation ("Tenant") (the "Lease"). The terms used in this Rider shall have the same definitions as set forth in the Lease. The provisions of this Rider shall prevail over any inconsistent or conflicting provision of the Lease.

R-1. Description of Improvements. Subject to Paragraph R-6 of this Work Letter, Landlord shall, at Landlord's expense, construct certain improvements on or about the Premises (the "Work") in accordance with those plans and specifications attached hereto as Schedule 1 and incorporated herein by this reference. Tenant hereby approves the plans and specifications attached as Schedule 1.

R-2. Preliminary Plans. The Premises space plans attached to this Rider No. 3 as Exhibit "R-3A" are the final space plans for the Work to be constructed by Landlord in the Premises, and are hereinafter referred to as the "Final Plans."

R-3. Completion of Work and Commencement Date. Landlord and Tenant agree that the Commencement Date shall be the earlier of the dates set forth in Subparagraph 1(h) of the Lease. The Work shall be deemed "substantially completed" in accordance with the definition set forth in Subparagraph 4(c) of the Lease.

R-4. Changes. Landlord's obligation to prepare the Premises for Tenant's occupancy is limited to the completion of the Work set forth in the plans and specifications attached hereto as Schedule 1 or in the Final Plans. Landlord shall not be required to furnish, construct or install any items not shown thereon. If Tenant, however, requests in writing any change, addition or alteration ("Changes") in such plans and specifications or in the construction of the Work, and, if Landlord approves the proposed Changes, Landlord shall notify Tenant of the cost to perform the Changes and Tenant shall pay to Landlord such cost to perform such Changes plus an amount equal to eight percent (8%) of such cost before Landlord shall perform the Changes. Any delay caused by Tenant's request for any Changes or from the construction of any Changes shall not, in any event, delay the Commencement Date, which shall occur on the date it would have occurred but for such Changes. The Work shall be the property of Landlord and shall remain upon and be surrendered with the Premises upon the expiration of the Term.

R-5. Cost of Work. As used herein, cost of the Work shall mean all the costs and charges incurred by Landlord to construct the Work, including, without limitation, (i) the actual contractor costs and charges for material and labor, contractor's profit, overhead and general conditions incurred by Landlord in having the Work constructed in accordance with the Final Plans, (ii) Governmental agency plan check, permit and other fees (including, without limitation, Title 24 fees) and sales and use taxes, (iii) testing and inspection costs, (iv) any paint touch-up or repair work necessary due to Tenant's move into the Premises, (v) architectural and engineering fees, (vi) costs of supervising the Work and (vii) all other costs expended or to be expended by Landlord in the construction of the Work.

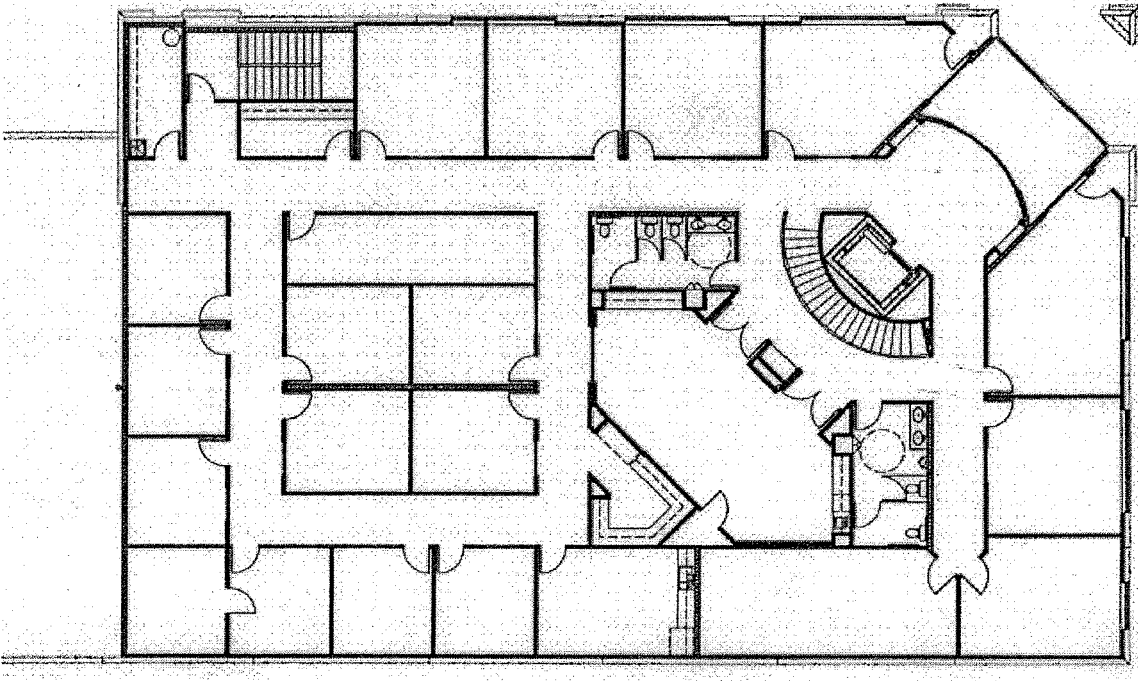
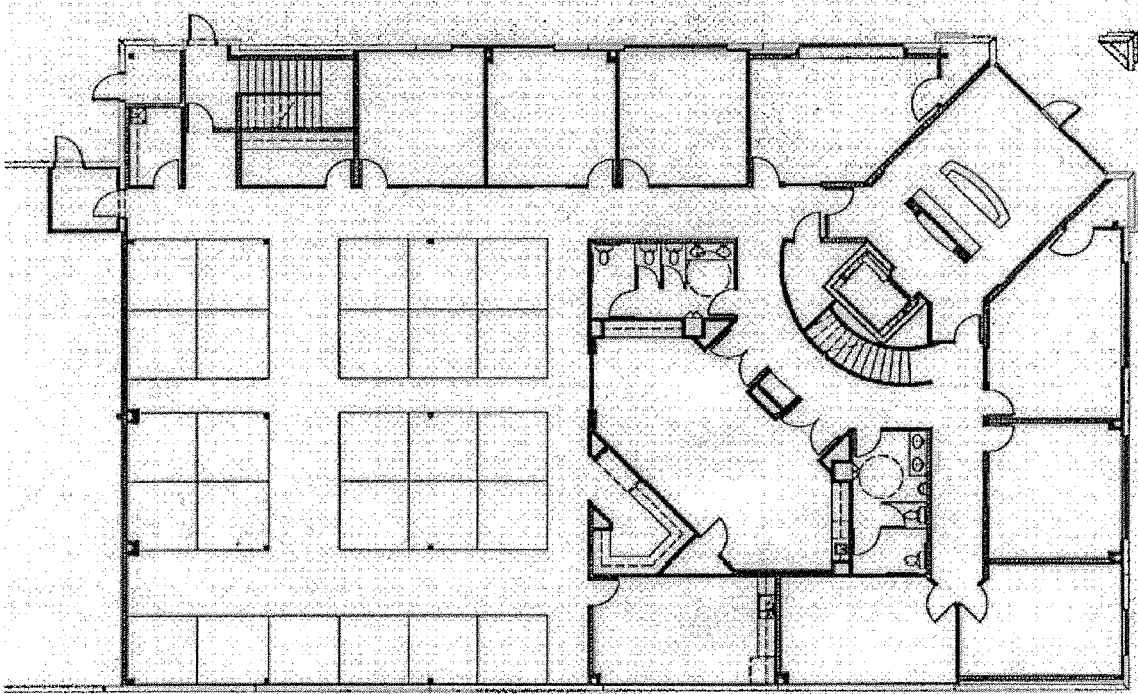
R-6. Allowance for Cost of Work. In the event the cost of the Work being constructed pursuant to the Final Plans exceeds One Million Four Hundred Thousand Dollars (\$1,400,000.00) ("Allowance"), Tenant shall pay to Landlord the cost of the Work in excess of the Allowance (the "Excess Cost") as provided herein. The Excess Cost shall be paid to Landlord in cash prior to the commencement of construction of the Work unless otherwise agreed by the parties.

R-7. Tenant's Representative. Tenant has designated Jim Cleven as its sole representative with respect to the matters set forth in this Rider, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Rider.

R-8. Landlord's Representative. Landlord has designated Dave Vogel as its sole representative with respect to the matters set forth in this Rider, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Rider.

R-9. Other Delays. Any delay in the construction of the Work caused by (i) Tenant's request for materials, finishes or installations other than the standard materials, finishes, or installations provided by Landlord from time to time in its sole discretion, or (ii) any other delay requested or caused by Tenant shall not, in any event, delay the Commencement Date, which shall occur on the date it would have occurred but for the matters set forth in (i) and (ii) above.

Exhibit "R-3A"
FINAL PLANS



PURCHASE AND SALE AGREEMENT

among

C CONSTRUCTION, INC.

(Buyer)

BMC CONSTRUCTION, INC.

(Parent)

and

CAMPBELL CONCRETE OF NEVADA, INC.
CAMPBELL CONCRETE OF CALIFORNIA, INC.,
CAMPBELL CONCRETE OF ARIZONA, INC.,
CAMPBELL CONCRETE, INC.,
CAMPBELL CONCRETE OF NORTHERN CALIFORNIA, INC.,
STERLING TRENCHING, INC.,
SR CAMPBELL PLUMBING OF CALIFORNIA, INC.,
SR CAMPBELL PLUMBING OF NEVADA, INC.,
SRC ENTERPRISES, INC.,
and
SOUTHWEST MANAGEMENT, INC.,

(collectively, Campbell)

and

Steven R. Campbell

(Shareholder)

Dated as of July 29, 2005

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	1
2. PURCHASE AND SALE.....	9
2.1 Purchase and Sale	9
3. PURCHASE PRICE; LIABILITIES	9
3.1 Purchase Price	9
3.2 Allocation of Value.....	9
3.3 Assumption of Certain Liabilities.....	9
3.4 Certain Expenses.....	11
4. TERMS OF PAYMENT.....	12
4.1 Payment Due at Closing.....	12
4.2 Reserve.....	13
5. CLOSING DATE NET ASSETS ADJUSTMENT	13
5.1 Estimated Net Assets Adjustment.....	13
5.2 Net Assets Estimate	14
6. POST CLOSING ADJUSTMENT	14
6.1 Post Closing Adjustment.....	14
6.2 Accounts Receivable.....	14
6.3 Unbilled Retention Amounts	15
6.4 Reporting of Post-Closing Adjustments	15
6.5 CPA Procedure.....	15
7. CONTRACTS AND LEASES	15
7.1 Contracts	15
7.2 Real Property Leases and Personal Property Leases	15
7.3 Existing Shareholder Leases	16
8. REPRESENTATIONS AND WARRANTIES OF CAMPBELL AND SHAREHOLDER.....	16
8.1 Good Standing; Authorization	16
8.2 Ownership of Purchased Assets.....	16
8.3 Tax Matters	16
8.4 Compliance with Laws, Licenses and Permits	17
8.5 Financial Statements	17
8.6 Absence of Certain Changes.....	17
8.7 Legal Proceedings.....	18
8.8 Contracts and Assumed Leases.....	18
8.9 Agreement Not In Breach of Other Instruments.....	19
8.10 Accounts Receivable.....	19

Table of Contents (Continued)

	<u>Page</u>
8.11 Equipment.....	19
8.12 Trade Accounts Payable	19
8.13 Prepaid Expenses	19
8.14 Labor Matters.....	19
8.15 Brokers and Finders	20
8.16 Environmental Laws	20
8.17 No Undisclosed Liabilities.....	20
8.18 Competitive Restrictions.....	21
8.19 Intangible Personal Property.....	21
8.20 Insurance	21
8.21 Projections.....	21
 9. REPRESENTATIONS AND WARRANTIES OF BUYER AND PARENT.....	 21
9.1 Corporate Status.....	21
9.2 Authority	22
9.3 Brokers and Finders	22
9.4 No Violation of Law and Agreements	22
9.5 No Litigation or Regulatory Action.....	22
9.6 Financial Ability	23
9.7 Independent Analysis.....	23
9.8 Relationships with Sellers' Material Customers	23
 10. NONCOMPETITION AGREEMENTS.....	 23
10.1 Campbell Noncompete.....	23
10.2 Shareholder Noncompete.....	24
10.3 Reasonableness of Restrictions.....	25
10.4 Irreparable Harm and Injunctive Relief.....	25
10.5 Extension of Covenants	25
10.6 Judicial Modification	25
 11. EMPLOYEES.....	 25
11.1 Definition	25
11.2 Termination.....	25
11.3 Key Employees; Certain Other Employees	26
11.4 Buyer's Offer of Employment.....	26
11.5 Nonassumption of Certain Obligations Owed Employees	26
 12. FURTHER ASSURANCES	 26
12.1 Further Assurances of Seller.....	26
12.2 Further Assurances of Buyer	26
 13. INDEMNIFICATION.....	 27
13.1 Indemnification by Sellers	27
13.2 Shareholder	28

Table of Contents (Continued)

	<u>Page</u>
13.3 Indemnification by Buyer and Parent	28
13.4 Indemnification Procedure.....	29
13.5 Third Party Claims	29
13.6 Limitations	31
13.7 Mitigation.....	31
13.8 Subrogation	31
13.9 No Offset.....	32
 14. CONDUCT OF OPERATIONS PRIOR TO CLOSING	 32
14.1 Interim Operating Covenants.....	32
14.2 Governmental Approvals.....	34
14.3 Access to Information	34
14.4 Employee Information and Access	34
14.5 Campbell Contractual Consents.....	35
14.6 Additional Insured	36
14.7 Transition	36
14.8 Obligation to Update Exhibits and Schedules	36
14.9 No Solicitation	36
 15. CONDUCT OF BUSINESS FOLLOWING CLOSING	 37
15.1 Collection of Trade Accounts Receivable and Unbilled Retention Amounts	37
15.2 Construction Defect Liabilities and Non-Assignable Insurance Products Claims Handling Procedures.....	38
15.3 Use of Campbell Names	38
15.4 Insurance Proceeds.....	38
15.5 Administrative Support.....	38
15.6 Assignment of Non-Assignable Insurance Products.....	39
 16. CLOSING	 39
16.1 Closing.....	39
16.2 Time is of the Essence	39
 17. CONDITIONS PRECEDENT TO BUYER'S DUTY TO CLOSE	 39
17.1 No Misrepresentation or Breach of Covenants and Warranties.....	39
17.2 Performance of Obligations	39
17.3 Delivery of Closing Documents.....	39
17.4 Litigation.....	39
17.5 Material Adverse Effect.....	39
17.6 Key Employee Employment, Confidentiality, Noncompetition Agreements, Etc.	40
17.7 Shareholder Consulting Agreement.....	40
17.8 New Shareholder Leases.....	40
17.9 HSR Waiting Period	40
17.10 Legal Opinion	40

Table of Contents **(Continued)**

	<u>Page</u>
17.11 Due Diligence	40
17.12 Approval of BMHC Board and Lenders	40
17.13 Certificate.....	40
 18. CONDITIONS PRECEDENT TO CAMPBELL'S AND SHAREHOLDER'S DUTY TO CLOSE	 40
18.1 No Misrepresentation or Breach of Covenants and Warranties.....	40
18.2 Performance of Obligations	41
18.3 Payment of Purchase Price and Delivery of Closing Documents.....	41
18.4 Litigation.....	41
18.5 New Shareholder Leases.....	41
18.6 Shareholder Consulting Agreement.....	41
18.7 HSR Waiting Period	41
18.8 Legal Opinions.....	41
18.9 Substitute Letters of Credit; Captive Insurance	41
18.10 Escrow Agreement.....	41
18.11 Certificate.....	41
 19. ITEMS TO BE DELIVERED AT CLOSING BY CAMPBELL AND SHAREHOLDER.....	 41
19.1 Bill of Sale	41
19.2 Assignment and Assumption Agreements	42
19.3 Certified Resolutions	42
19.4 Automobile Titles	42
19.5 Legal Opinion	42
19.6 UCC Termination Statements.....	42
19.7 Key Employee Employment, Confidentiality and Noncompetition Agreements.....	42
19.8 Shareholder Consulting Agreement.....	42
19.9 New Shareholder Leases.....	42
19.10 Escrow Agreement.....	42
 20. ITEMS TO BE DELIVERED AT CLOSING BY BUYER AND PARENT.....	 42
20.1 Certified Resolutions	42
20.2 New Shareholder Leases.....	42
20.3 Shareholder Consulting Agreement.....	42
20.4 Assignment and Assumption Agreements.....	42
20.5 Charter Documents of Buyer and Parent	43
20.6 Buyer's and Parent's Legal Opinions	43
20.7 Purchase Price.....	43
20.8 Substitute Letters of Credit	43
20.9 Escrow Agreement.....	43
 21. TERMINATION.....	 43
21.1 Grounds for Termination	43

Table of Contents **(Continued)**

	<u>Page</u>
21.2 Effect of Termination.....	44
22. MISCELLANEOUS	46
22.1 No Other Agreements	46
22.2 Waiver.....	46
22.3 Public Announcements	46
22.4 Notices	46
22.5 No Third Party Beneficiary.....	47
22.6 Confidential Information	47
22.7 Assignment	47
22.8 Records after Closing.....	47
22.9 Bulk Sales Laws.....	49
22.10 Choice of Law; Jurisdiction.....	49
22.11 Waiver of Jury Trial.....	49
22.12 Paragraph Headings	49
22.13 Rules of Interpretation	49
22.14 Counterparts.....	50

EXHIBITS

- Exhibit 1— Contracts
 - Exhibit 2— Equipment
 - Exhibit 3— Form of Escrow Agreement
 - Exhibit 4— Shareholder's Licenses
 - Exhibit 5— Automobiles
 - Exhibit 6— Other Contracts and Assets to be Excluded Assets
 - Exhibit 7— Supplier and Vendor Rebates to be Excluded Assets
 - Exhibit 8— Existing Shareholder Leases
 - Exhibit 9— Intangible Personal Property
 - Exhibit 10— Permits
 - Exhibit 11— Personal Property Leases
 - Exhibit 12— Calculation of Present Value of Personal Property Leases
 - Exhibit 13— Real Property Leases
 - Exhibit 14— Shareholder Consulting Agreement
 - Exhibit 15— Allocation of Value
-
- Schedule 8— Disclosure Schedules

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement"), dated as of July 29, 2005, is among Campbell Concrete of Nevada, Inc., a Nevada corporation, Campbell Concrete of California, Inc., a California corporation, Campbell Concrete of Arizona, Inc., an Arizona corporation, Campbell Concrete, Inc., a California corporation, Campbell Concrete of Northern California, Inc., a California corporation, Sterling Trenching, Inc., a Nevada corporation, SR Campbell Plumbing of California, Inc., a California corporation, SR Campbell Plumbing of Nevada, Inc., a Nevada corporation, SRC Enterprises, Inc., a Nevada corporation, and Southwest Management, Inc., a Nevada corporation (each a "Campbell Entity" and collectively, "Campbell" or the "Company"), Steven R. Campbell, the sole shareholder of each Campbell Entity ("Shareholder" and collectively with Campbell, "Sellers"), C Construction, Inc., a Delaware corporation ("Buyer"), and BMC Construction, Inc., a Delaware corporation ("Parent").

RECITALS

A. Buyer has negotiated an agreement with Sellers to acquire certain of the assets of Campbell related to the Business (as defined below), including certain existing contracts, certain intangible assets, fixed assets and non-cash net working capital and Buyer has agreed to assume certain liabilities of the Business;

B. Shareholder desires that Campbell sell certain of Campbell's assets to Buyer;

C. Parent is the parent corporation of Buyer and will benefit from the transactions contemplated by this Agreement and therefore desires that the transactions contemplated by this Agreement be consummated; and

C. Buyer and Sellers wish to document the terms and conditions of the transaction.

AGREEMENT

NOW, THEREFORE, IT IS AGREED among the parties as follows:

1. DEFINITIONS

For purposes of this Agreement, the capitalized terms identified in this Section shall have the following meanings:

"Acquisition Proposal" means any bona fide proposal or offer (i) for a merger, share exchange, consolidation or other business combination concerning Campbell, (ii) to Campbell or Shareholder to acquire in any manner, directly or indirectly, any material part of the assets or 10% or more of the equity securities, as outstanding on the date hereof, of any Campbell Entity, (iii) with respect to any recapitalization or restructuring concerning Campbell or (iv) with respect to any other transaction similar to any of the foregoing; provided, however, that any such proposal or offer relating solely to any Excluded Assets or Excluded Liabilities shall not be deemed an Acquisition Proposal.

"Assignable Insurance Products" means those insurance policies (whether from third parties or through Campbell's captive insurance programs), and Contracts and deposits in Campbell's captive insurance programs related to such policies, in each case that are assignable to Buyer.

"Business" means the business of providing trenching services; composition forming and finishing of rapid rate concrete; engineering, forming and stressing post-tension steel; and installation of residential waste, water and gas plumbing systems for homes and other buildings, all as presently conducted by Campbell.

"Buyer Related Party" means any Person who, directly or indirectly, controls or is controlled by, or is under common control with Buyer or Parent.

"Campbell Financial Statements" means the Financial Statements and the Interim Financial Statements.

"Closing" means the exchange of closing documents, the transfer of the Purchased Assets and the payment of the Purchase Price (less the Reserve) to Campbell by Buyer.

"Closing Date" means the date on which the Closing occurs.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral Agreements" means the Escrow Agreement and the Shareholder Consulting Agreement.

"Construction Defect" means any of the following: (i) performance of services which are not of workmanlike quality in conformance with the requirements of the underlying Contract documents or of applicable building codes, industry and professional standards, and/or manufacturers' recommendations, (ii) violation of any standards set forth in California Civil Code sections 895-897, Nevada Revised Statutes section 40.615 or any similar Arizona Law (if any), or (iii) construction which is based on design documents containing errors, omissions, or otherwise falling below the applicable standard of care; provided, however, that in no event shall "Construction Defect" be deemed to include fraud or willful misconduct in the provision of construction services.

"Continued Plans" means the Campbell employee benefit plans which are specifically described in Schedule 8.14 of the Disclosure Schedule as plans to be continued by Buyer through December 31, 2005 with respect to employees who remain employed by Buyer.

"Contracts" means each contract, agreement, commitment, purchase order, or other instrument of any kind, whether written or oral, related to the operation of the Business, including those that are listed on *Exhibit 1*, which shall be updated as of the Closing Date.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, the Emergency Planning and

Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*, the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. §§ 1251 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 *et seq.*, as in effect from time to time, all rules and regulations promulgated pursuant to any of the above statutes, and any other foreign, federal, state or local law, statute, ordinance, rule or regulation governing Environmental Matters, as in effect from time to time, including any common law cause of action providing any right or remedy relating to Environmental Matters.

"Environmental Matter" means any matter or condition arising out of, relating to, or resulting from pollution, contamination, protection of the environment, human health or safety, health or safety of employees, sanitation, and any matters relating to emissions, discharges, disseminations, releases or threatened releases, of Hazardous Substances into the air (indoor and outdoor), surface water, groundwater, soil, land surface or subsurface, buildings, facilities, real property or fixtures, or otherwise arising out of, relating to, or resulting from the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling, release or threatened release of Hazardous Substances.

"Equipment" means all tools, equipment, rolling stock, office furniture, computers and equipment and other pieces of tangible personal property and fixed assets (and interests in any of the foregoing), including spare parts, supplies, office equipment and products used by Campbell in the Business, including those items described on *Exhibit 2* attached hereto.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any corporation that is a member of a controlled group of corporations with Campbell within the meaning of Section 414(b) of the Code, a trade or business (including a sole proprietorship, partnership, trust, estate or corporation) which is under common control with any Campbell Entity within the meaning of Section 414(c) of the Code, or a member of an affiliated service group with Campbell within the meaning of Section 414(m) or (o) of the Code.

"Escrow Agreement" means that certain Escrow Agreement in the form of *Exhibit 3*.

"Excluded Assets" means the following assets of Sellers:

- (i) all cash, cash equivalents and securities,
- (ii) all notes, drafts, intercompany accounts, and accounts receivable (excluding Trade Accounts Receivable) and other obligations for the payment of money,
- (iii) Shareholder's licenses set forth on *Exhibit 4*,
- (iv) Existing Shareholder Leases and all leasehold improvements located on the real property underlying the Existing Shareholder Leases,

- deposit boxes,
- (v) all bank and other depository accounts, corporate records and safe
 - (vi) all rights under this Agreement and the Purchase Price,
 - (vii) the automobiles listed on *Exhibit 5*,
 - (viii) all employee benefit plans other than the Continued Plans,
 - (ix) all causes of action, claims, demands, set-offs, rights and privileges against third parties that relate to any Excluded Assets or Excluded Liabilities (as defined in Section 3.3(c)),
 - (x) those other contracts or assets of Campbell which are listed on *Exhibit 6* attached hereto,
 - (xi) any and all real property and improvements owned by the Shareholder (whether leased to Campbell or otherwise),
 - (xii) any and all Tax returns, Tax refunds or Tax loss carryforwards and records related to the foregoing of Campbell relating to the Business or the Purchased Assets for any period or portion thereof ending on or prior to the Closing Date (and any such refunds received by Buyers shall be promptly paid over by Buyer to Campbell),
 - (xiii) any and all attorney-client privileged information and/or work product related to the Excluded Assets, Excluded Liabilities or prepared in connection with the transactions contemplated hereby,
 - (xiv) any and all supplier or vendor rebates earned by Campbell through the Closing Date from those parties listed on *Exhibit 7* and that are not reflected on the Campbell Financial Statements,
 - (xv) all assets used primarily in connection with the corporate functions of Campbell (including but not limited to corporate charters, taxpayer and other identification numbers, records, seals, minute books and stock transfer books),
 - (xvi) all personnel files related to (i) former employees of Campbell, and (ii) current employees of Campbell to the extent that the transfer of such files, in the reasonable judgment of Sellers, is likely to violate any applicable Law, and
 - (xvii) the Non-Assignable Insurance Products.

"Existing Shareholder Leases" means those leases of real property pursuant to which Campbell leases real property owned by the Shareholder or his affiliates, which are related to the Business. All Existing Shareholder Leases are listed on *Exhibit 8* attached hereto.

"Expenses" means any and all reasonable expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against hereunder (including, without limitation, court filing fees, court costs,

arbitration fees or costs, witness fees and fees and disbursements of legal counsel, investigators, expert witnesses, accountants and other professionals).

"Financial Statements" means the unaudited combined financial statements of Campbell, together with all schedules and notes thereto, which are dated as of December 31, 2003 and December 31, 2004, for the respective 12-month periods then ended, copies of which have been delivered to Buyer.

"GAAP" means United States generally accepted accounting principles, consistently applied.

"Governmental Authority" means any foreign, domestic, federal, territorial, state or local Governmental Authority, quasi-Governmental Authority, court, commission, board, bureau, agency or instrumentality, or any regulatory, administrative or other department, agency, or any political or other subdivision, department or branch of any of the foregoing.

"Hazardous Substances" means any pollutants, contaminants, toxic or hazardous or extremely hazardous substances, materials, wastes, constituents, compounds, chemicals, natural or man-made elements or forces that are regulated by, or form the basis of liability under, any Environmental Laws.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"Insured Liabilities" means the amount of those claims, demands and Liabilities that are covered by the Non-Assignable Insurance Products, but not including the amounts (i) of any deductible or self-insured retentions associated therewith, or (ii) in excess of such policy limits.

"Intangible Personal Property" means each patent and patent application, copyright, copyright application, trademark, trademark application, service mark, service mark application, trade name and trade name registration (in any such case, whether registered or to be registered in the United States of America or elsewhere) applied for, issued to or owned by Sellers and used in the Business and all processes, inventions, trade secrets, trade names, customer lists, customer contacts and relationships, computer programs, formulae, know how and other intangible personal property owned by Sellers and used in the Business, and all right, title and interest therein and thereto, including without limitation, the names "Campbell Concrete", "Campbell Plumbing", "Sterling Trenching", "SR Campbell Plumbing", "Campbell Companies" and derivations thereof used in the Business, and the internet domain name www.campbellconcrete.com. All Intangible Personal Property is listed on **Exhibit 9** attached hereto.

"Interim Financial Statements" means the internally prepared unaudited combined financial statements of Campbell together with all schedules and notes thereto, which are dated as of June 30, 2005 and for the 6-month period then-ended, copies of which have been delivered to Buyer.

"Inventory" means any materials owned by Campbell and used in the Business as of the Closing Date.

"Key Employees" means James Cleven, Paul Braval, Mike Joseph, Charles Conoway Cockey III and Jack Crocker.

"Key Employee Employment, Confidentiality and Noncompetition Agreements" means the agreements to be entered into between each Key Employee and Buyer at the Closing, in a form mutually acceptable to the parties thereto.

"Knowledge of Sellers" means, as to a particular matter, the actual knowledge of Shareholder, James Cleven, Steven Moscrop, Susan Casterton, Susan Beam, Mike Joseph, Paul Braval, Charles Conoway Cockey, III, Jack Crocker and Laura Stewart (without any duty of inquiry). "Law" means any law, statute, treaty, rule, regulation, ordinance, order, decree, consent decree or similar instrument or determination or award of an arbitrator or a court or any other Governmental Authority.

"Liabilities" means all indebtedness, obligations, penalties and other liabilities (or contingencies that have not yet become liabilities), whether absolute, accrued, matured, contingent (or based upon any contingency), known or unknown, fixed or otherwise, or whether due or to become due, including without limitation, any fines, penalties, judgments, awards or settlements respecting any judicial, administrative, arbitration or other proceedings or any damages, losses, claims or demands with respect to any Law or otherwise.

"Material Adverse Effect" means with reference to a business, any state of facts, change, circumstance, condition, development, event or occurrence that has, or reasonably could be expected to have, a material adverse effect on the assets, financial condition or results of operations of such business, provided, however, that Material Adverse Effect shall exclude any adverse changes or conditions as and to the extent such changes or conditions relate to or result from (i) public or industry knowledge of the transactions contemplated by this Agreement (including but not limited to any action or inaction by the business' vendors) or (ii) general economic conditions or other conditions generally affecting the industry in which the business competes (but shall not exclude any significant or substantial event or series of events that materially and adversely affects general economic conditions or conditions generally affecting the business' industry, such as, and by way of example only, a terrorist attack, major earthquake, widespread collapse of financial institutions, unanticipated and significant increase in mortgage rates, or significant change in laws or regulations, etc.); provided, however, that the fact that, between the date hereof and the Closing Date, Sellers become parties to routine lawsuits or other legal proceedings involving construction defects that arise in the ordinary course of Sellers' business and are of a type and scope consistent with Sellers' recent experience will not be deemed a Material Adverse Effect. Notwithstanding the foregoing, the inclusion by Sellers of an item in the Schedules to this Agreement shall not by itself be deemed to be an acknowledgement by Sellers that such item would have a Material Adverse Effect on any business or further define the meaning of such term for the purposes of this Agreement.

"Material Campbell Customer" means the following material customers of the Business: KB Home, Pulte, Pardee, Lennar, John Laing, Forecast, Centex, DR Horton, Beazer and William Lyon.

"Net Assets" means Non-Cash Net Working Capital, exclusive of the current portion of any long term debt, plus the net book value of all property, plant and equipment of the Business.

"New Shareholder Leases" means those leases of real property to be executed and delivered at the Closing by Buyer and Shareholder pursuant to which Buyer will lease the real property owned by Shareholder or his affiliates which is presently leased by Campbell under the Existing Shareholder Leases, each in a form mutually acceptable to the parties thereto

"Non-Assignable Insurance Products" means those insurance policies (whether from third parties or through Campbell's captive insurance programs), and Contracts and deposits in Campbell's captive insurance programs related to such policies, in each case that are not assignable to Buyer.

"Non-Cash Net Working Capital" means an amount equal to (i) the current assets of Campbell, consisting of Trade Accounts Receivable, Inventory, costs in excess of billings and prepaid expenses that are transferable, less (ii) the current Liabilities of Campbell, consisting of Trade Accounts Payable (excluding accrued vacation to the extent not assumed pursuant to Section 3.3(c)(vii), and accrued payroll and payroll taxes) and billings in excess of costs, determined in accordance with GAAP, provided that any and all intercompany accounts shall not be included.

"Permits" means all federal, state and local licenses, permits and other governmental authorizations relating to the Business. All Permits are listed on *Exhibit 10* attached hereto.

"Permitted Encumbrances" means (a) liens for Taxes and other governmental charges and assessments which are not yet due and payable, (b) statutory liens of landlords and statutory liens of carriers, warehousemen, mechanics and materialmen and other like statutory liens arising in the ordinary course of business for sums not yet due and payable, (c) other liens or imperfections on property which are not material in amount or do not materially detract from the value of or materially impair the existing use of the property affected by such lien or imperfections, (d) liens relating to deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security or to secure the performance of leases, trade contracts or other similar agreements, (e) purchase money liens on personal property acquired in the ordinary course of business, (f) liens specifically identified in the Financial Statements, (g) liens securing executory obligations under any lease that constitutes a "capital lease" under GAAP, (h) any and all requirements of Law including those affecting the real property assets relating to zoning and land use, (i) any utility company rights, easements and franchises, and (j) the other liens, if any, set forth on Section 8.2 of the Disclosure Schedules.

"Person" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"Personal Property Leases" means those leases of personal property, involving the Business. All Personal Property Leases are listed on *Exhibit 11* attached hereto.

"Purchase Price" means (i) \$80,000,000, (ii) minus the present value of all long-term operating Personal Property Leases, calculated as set forth on *Exhibit 12* attached hereto, (iii) plus or minus, as the case may be, any Estimated Net Asset Adjustment (as defined and calculated in Section 5 below), as such figure may be adjusted pursuant to Section 3.4 and

Section 6, and (iv) minus the amount of accrued vacation specifically assumed by Buyer pursuant to Section 11.5.

"Purchased Assets" means the Contracts, Equipment, Intangible Personal Property, Non-Cash Net Working Capital, Permits, Personal Property Leases, Records, Real Property Leases, Unbilled Retention Amounts, Unbilled Services, the Assignable Insurance Products, and all other assets owned by Campbell and used in the Business, all goodwill of the Business and all rights, claims, credits, causes of action or rights of set-off against third parties relating to the foregoing and the Assumed Liabilities, other than Excluded Assets.

"Real Property Leases" means those leases of real property (other than the Existing Shareholder Leases), involving the Business. All Real Property Leases are listed on *Exhibit 13* attached hereto.

"Records" means all customer lists, sales brochures, computer software, books, records, accounts, correspondence, production records, employment records and any confidential information relating to the Business.

"Related Party" means any Person who, prior to the Closing, directly or indirectly, controls or is controlled by, or is under common control with Campbell or Shareholder.

"Reserve" means an amount equal to 10% of the Purchase Price payable at the Closing.

"Shareholder Consulting Agreement" means the agreement to be entered into between Shareholder and Buyer at the Closing, a copy of which is attached hereto as *Exhibit 14*.

"Tax" (and, with correlative meaning, "Taxes") means any federal, state, local or foreign income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer or excise Tax, or any other Tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, imposed by any Governmental Authority.

"Trade Accounts Payable" means the obligations arising out of the Business to make payment to third parties for goods and services furnished to Campbell in the ordinary course of the Business incurred prior to the Closing.

"Trade Accounts Receivable" means all obligations arising out of the Business to make payment to Campbell, including obligations owed but not yet due, as of the Closing by all third-party purchasers of goods and services from Campbell in the ordinary course of the Business prior to the Closing, but excluding any and all Unbilled Retention Amounts and Unbilled Services.

"Unbilled Retention Amounts" means all obligations arising out of the Business owed by all third-party purchasers of goods and services to make payment to Campbell that are unbilled and retained by Campbell until the completion of work for such third party purchasers pursuant to the terms of applicable Contracts.

"Unbilled Services" means all obligations arising out of the Business through the Closing Date owed by all third-party purchasers of goods and services to make payment to Campbell that are not pursuant to a written contract or change order.

2. PURCHASE AND SALE

2.1 Purchase and Sale. At Closing, Campbell agrees to sell and convey to Buyer, and Buyer agrees to purchase and accept from Campbell, the Purchased Assets (and all of Campbell's right, title and interest therein and thereto) for the Purchase Price and Buyer's agreement to assume the Assumed Liabilities, on the covenants, terms and conditions contained herein. The Purchased Assets shall not include the Excluded Assets. To the extent that any of the Purchased Assets are owned by or in the name of Shareholder or any of Shareholder's Related Parties which are not Campbell Entities, Shareholder shall convey all right, title and interest therein to Buyer at the Closing.

3. PURCHASE PRICE; LIABILITIES

3.1 Purchase Price. As consideration for the purchase of the Purchased Assets, Buyer shall pay to Campbell, in the aggregate and in the manner set forth in Section 4 hereof, the Purchase Price.

3.2 Allocation of Value. The parties mutually agree that the allocation for tax purposes of the total of the Purchase Price and the value of Assumed Liabilities among the Purchased Assets shall be as set forth on *Exhibit 15*, and the parties shall file all Tax returns or other Tax reports in a manner that is consistent with such allocation. If such allocation is challenged by a Governmental Authority and a reallocation is required, each party hereto shall be responsible for its own additional Tax Liabilities arising from such reallocation, if any.

3.3 Assumption of Certain Liabilities.

(a) Upon the terms and subject to the conditions set forth herein, at the Closing Buyer shall assume and agree to thereafter pay when due and discharge and indemnify each of Sellers harmless with respect to the Assumed Liabilities (as defined below).

(b) For all purposes of and under this Agreement, the term "Assumed Liabilities" shall mean, refer to and include all Liabilities of Sellers arising out of or relating to the operation of the Business and/or the Purchased Assets, including, without limitation, the Assumed Leases (as defined below), letters of credit, bank overdrafts, accounts payable and any Liabilities or obligations relating to or arising out of a Construction Defect with respect to products sold or services performed by Campbell on or prior to the Closing Date, including but not limited to liabilities or obligations set forth in California Civil Code Sections 895 et. seq. and 1375 et. seq., Arizona Statutes Sections 12-361 et. seq. and 33-2001 et. seq., or Nevada Revised Statutes Sections 40.645 et. seq. and 40.668 et. seq. (the "Construction Defect Liabilities"), whether arising before or after the Closing Date, known or unknown, contingent or mature, but excluding the Excluded Liabilities (as defined below).

(c) Buyer shall not assume, and the term "Assumed Liabilities" shall not mean, refer to or include (and, therefore, the "Excluded Liabilities" shall mean) the following:

(i) Liabilities for Taxes of Sellers, including without limitation, those arising as a result of the transactions contemplated by this Agreement, other than Buyer's portion of the Sales Tax assumed by Buyer pursuant to Section 3.4(e) and all personal property Taxes of Sellers;

(ii) Liabilities of Sellers in respect of expenses payable by them pursuant to Section 3.4 hereof;

(iii) Liabilities of Sellers not arising out of or relating to the Business or the Purchased Assets;

(iv) any liability of Sellers to any person or entity the existence of which constitutes a breach of any covenant, agreement, representation or warranty of Sellers contained in this Agreement subject to the limitations set forth in Section 13;

(v) intercompany accounts;

(vi) the funded indebtedness and capitalized leases of Sellers including the items listed on Schedule 3.3 (the "Indebtedness"), including any principal, interest or other amount owing in respect of any such Indebtedness;

(vii) except as specifically assumed by Buyer pursuant to Section 11.5, any accrued or other liability of Campbell for vacation pay earned by Campbell employees through the Closing Date, any accrued or other liability of Campbell under any employee pension benefit plan, employee welfare benefit plan (except for claims incurred or premiums due with respect to the period following the Closing Date under the Continued Plans), multiemployer plan, collective bargaining agreement, or any other plan or agreement with respect to any of Campbell's employees, past or present, including any liability under the Worker Adjustment and Retraining Notification Act arising as a consequence of employment losses occurring through the Closing Date, and any liabilities arising under ERISA with respect to any employee benefit plan, as defined in Section 3(3) of ERISA, sponsored by any Campbell Entity or any ERISA Affiliate, including the obligation to comply with Section 4980B of the Code and Part 6 of Title I of ERISA with respect to any group health plan, within the meaning of Section 5000(b)(1) of the Code, sponsored by any Campbell Entity as of the Closing Date, but excluding any Liability of Campbell under COBRA;

(viii) any Liabilities under any Environmental Laws with respect to or arising out of occurrences on or prior to the Closing Date or actions by Sellers on or prior to the Closing Date;

(ix) Liabilities of Sellers as set forth in Section 11.2 hereof;

(x) the Insured Liabilities; and

(xi) any Liabilities of Sellers other than the Assumed Liabilities.

3.4 Certain Expenses.

(a) Buyer shall not pay or be liable for any of the following fees, expenses, Taxes or liabilities incurred by Shareholder, Campbell or any of their respective Related Parties, all of which shall be borne and timely paid or caused to be paid by Campbell or Shareholder:

(i) the fees and expenses, if any, of any person retained by Campbell or Shareholder or any of their respective Related Parties for brokerage, financial advisory or investment banking services or services as a finder rendered to Campbell or Shareholder or any of their respective Related Parties in connection with the proposed sale of the Purchased Assets, including without limitation, the transactions contemplated by this Agreement;

(ii) the fees and expenses of legal counsel, auditors and accountants retained or employed by Campbell or Shareholder or any of their respective Related Parties for services rendered to Campbell or Shareholder or any of their respective Related Parties solely in connection with the proposed sale of the Purchased Assets, including without limitation, the transactions contemplated by this Agreement; and

(iii) any income, capital gains or other Tax incurred by Campbell or Shareholder as a result of the consummation of the transactions contemplated by this Agreement.

(b) If Buyer shall pay any fee, expense, Tax or liability described in Section 3.4(a), the sum of all such payments shall be deducted from the Purchase Price provided Buyer receives Sellers' prior written consent. If any such payment is not deducted from the Purchase Price as provided in the preceding sentence, the amount of such payments not so deducted shall be, at Buyer's election, paid to Buyer from the Reserve or paid promptly by Sellers to Buyer upon demand.

(c) Sellers shall not pay or be liable for any of the following fees, expenses or liabilities incurred by Buyer or any Buyer Related Party, all of which shall be borne and timely paid or caused to be paid by Buyer:

(i) the fees and expenses, if any, of any person retained by Buyer or a Buyer Related Party for brokerage, financial advisory or investment banking services or services as a finder rendered to Buyer or any Buyer Related Party in connection with the proposed purchase of the Purchased Assets, including without limitation, the transactions contemplated by this Agreement; and

(ii) the fees and expenses of legal counsel, auditors and accountants retained or employed by Buyer or any Buyer Related Party for services rendered to Buyer or any Buyer Related Party in connection with the proposed purchase of the Purchased Assets, including without limitation, the transactions contemplated by this Agreement.

(d) If Sellers shall pay any fee, expense or liability described in Section 3.4(c), the sum of all such payments shall be added to the Purchase Price. If any such payment is not added to the Purchase Price as provided in the preceding sentence, the amount of such payments not so added shall be paid promptly by Buyer to Sellers upon demand.

(e) Buyer and Campbell shall each bear fifty percent (50%) of any documentary stamp or transfer Taxes or other similar charges, Taxes or expenses arising in connection with the sale of the Purchased Assets to the Buyer (the "Sales Tax"). To the extent permitted by law, Buyer and Sellers shall cooperate fully in minimizing any such Sales Tax. Sellers shall prepare and file any and all documents required to pay the Sales Tax (the "Sales Tax Forms"). Sellers shall first provide a copy of such documents to Buyer for its review and approval (which shall not be unreasonably withheld or delayed) and Buyer shall pay to Seller Buyer's share of the Sales Tax at the time such documentation is to be filed with the appropriate Taxing authorities and the Sales Taxes are to be paid. To the extent a Taxing authority provides notice to a party of an audit of any Sales Tax, such party shall immediately notify the other parties, and Buyer shall assume responsibility for such audit and shall have complete authority to control, settle or defend any proposed adjustment to the Sales Tax on terms reasonably satisfactory to Sellers, and Sellers shall fully cooperate with Buyer in such settlement or defense. Any failure by Campbell to pay any Sales Tax for which it is responsible hereunder shall cause Buyer to deduct such amount from the Purchase Price, be paid such amount from the Reserve or be paid promptly by Sellers upon demand. Any failure by Buyer to pay any Sales Tax for which it is responsible hereunder shall cause Buyer to add such amount to the Purchase Price or be paid promptly by Buyer to Campbell upon demand.

(f) All state, county and local ad valorem taxes on real property shall be apportioned between Buyer and Sellers as of 11:59 P.M. on the Closing Date, computed on the basis of the fiscal year for which the same are levied and all utility charges, gas charges, electric charges, water charges, water rents and sewer rents, if any, shall be apportioned between Buyer and Sellers as of 11:59 P.M. on the Closing Date, computed on the basis of the most recent meter charges or, in the case of annual charges, on the basis of the established fiscal year. All prepaid expenses (including any rent) of Sellers paid prior to the Closing Date in respect of the Business shall be apportioned between Buyer and Sellers as of 11:59 P.M. on the Closing Date computed on the basis of the benefit received by Sellers prior to the Closing Date and the benefit to be received by Buyer subsequent to the Closing Date with respect to any contract or other matter to which the prepaid expense relates. All prorations shall be made and the Purchase Price shall be adjusted insofar as feasible on the Closing Date, except to the extent such prorations are reflected in the Closing Date estimate described in Section 5.1. During the Post-Closing Adjustment Period (as defined in Section 6.1), Sellers shall advise Buyer and Buyer shall advise Sellers of any actual changes to such prorations, and the Purchase Price shall be increased or decreased, as applicable, at the end of the Post-Closing Adjustment Period. In the event Buyer or Sellers shall receive bills after the Closing Date for expenses incurred prior to the Closing Date that were not prorated in accordance with this Section 3.4(f), then Buyer or Sellers, as the case may be, shall promptly notify the other party as to the amount of the expense subject to proration and the responsible party shall promptly pay its portion of such expense (or, in the event such expense has been paid on behalf of the responsible party, reimburse the other party for its portion of such expenses).

4. TERMS OF PAYMENT

4.1 Payment Due at Closing. At Closing, Buyer shall pay to Campbell the Purchase Price for the Purchased Assets as set forth in Section 3, less the Reserve described in Section 4.2. Such payment shall consist of immediately available funds delivered by wire transfer in

accordance with payment instructions provided by Sellers to Buyer at least two days prior to the Closing.

4.2 Reserve. Sellers agree that Buyer shall withhold the Reserve from the Purchase Price for the Purchased Assets and deposit the Reserve with City National Bank, as escrow agent ("Escrow Agent"), on the terms and conditions of the Escrow Agreement and this Section 4.2 for a period of one hundred and twenty (120) days following Closing ("Post Closing Adjustment Period") as a reserve to be applied to the satisfaction of: (i) any Liabilities of Sellers that are not Assumed Liabilities and are paid by Buyer or that Buyer determines it wants to pay directly after the Post Closing Adjustment Period, provided Buyer has provided Sellers a detailed list at least fifteen (15) days prior to the end of such period with regard to such items and Sellers have not objected in writing thereto within ten (10) days of receipt thereof (and if Sellers so object in writing, Sellers must also indicate in such written instrument that Sellers shall assume responsibility for all such Liabilities) (ii) subject to the limitations in Section 13, any Liabilities and Expenses for which Buyer is entitled to be indemnified pursuant to Section 13.1(a)(i), (ii) or (iii); and (iii) payment of any amounts, not in dispute, owing by Sellers to Buyer at the end of the Post Closing Adjustment Period. Escrow Fees incurred with respect to the escrow shall be borne by Sellers. Interest shall accrue on the Reserve and be added to the Reserve in accordance with the terms of the Escrow Agreement. Any interest earned on the Reserve shall be distributed proportionally to Sellers and Buyer based upon the proportion of the Reserve paid to them. After deducting all amounts owed to Buyer by Sellers from the Reserve, including all interest accrued thereon, Escrow Agent shall pay to Sellers the net amount of the Reserve within three (3) days of the end of the Post Closing Adjustment Period, or such later time as any disputed matters related thereto shall have been resolved between the parties. If Sellers owe Buyer more than the amount of the Reserve, such additional amount shall be paid by Sellers to Buyer in immediately available funds at the end of the Post Closing Adjustment Period. Buyer's recovery for (i) through (iii) above shall not be limited to the amount of the Reserve.

5. CLOSING DATE NET ASSETS ADJUSTMENT

5.1 Estimated Net Assets Adjustment. The Purchase Price will be subject to adjustment on the Closing Date based on a good faith estimate, using the same Methodologies (as defined below) as used by Campbell in the preparation of the Financial Statements, of the amount by which the Net Assets of Campbell (the "Net Assets Estimate") as of the Closing Date is greater than or less than the average month-end Net Assets of Campbell for the twelve months ended June 30, 2005 (the "June 30 Net Assets Average"). This difference will be the "Estimated Net Assets Adjustment" to be applied to the Purchase Price. If the Net Assets Estimate is greater than the June 30 Net Assets Average, then the difference shall be added to the Purchase Price; and if the Net Assets Estimate is less than the June 30 Net Assets Average, then the difference shall be subtracted from the Purchase Price. For purposes of the estimation of the Net Assets (including the June 30 Net Assets Average) of Campbell pursuant to this Section 5.1, (i) Trade Accounts Receivable that are booked by Campbell as of the Closing Date but that are more than ninety (90) days past due as of the Closing Date shall be treated as though written off prior to the Closing Date and (ii) Unbilled Retention Amounts which shall be treated as written off prior to the Closing Date if such Unbilled Retention Amounts are booked by Campbell as of the Closing Date and are more than three hundred sixty-five (365) days old as of the Closing Date.

5.2 Net Assets Estimate. Shareholder, Campbell, and Buyer shall cooperate in good faith to discuss and determine the Net Assets Estimate set forth in Section 5.1 which shall be calculated using the Methodologies no later than two days prior to the Closing Date. Sellers shall provide to Buyer any documentation reasonably requested by Buyer that may assist in making or confirming such estimates.

6. POST CLOSING ADJUSTMENT

6.1 Post Closing Adjustment. Prior to the termination of the Post Closing Adjustment Period (defined below), Buyer shall prepare a balance sheet of Campbell as of the Closing Date for the purpose of determining the actual Net Assets of Campbell as of the Closing Date (the "Actual Closing Date Net Assets"). The Actual Closing Date Net Assets (i) shall be prepared using the same accounting methods, policies, practices and procedures, with consistent classifications and estimation methodologies (collectively, "Methodologies") as were used in the preparation of the Financial Statements, (ii) will use the same method to calculate Trade Accounts Receivable as described in Section 5.1 above and (iii) will not include any changes in assets or liabilities as a result of purchase accounting adjustments arising from the transactions contemplated by or resulting from this Agreement or subsequent changes in accounting policy or procedure. Within one hundred five (105) days after the Closing Date (the "Post Closing Adjustment Period"), Buyer shall submit to Sellers all adjustments (together with supporting detail, including the calculations of the Actual Closing Date Net Assets) to be made to the Purchase Price. Sellers shall have thirty (30) days after receipt of such list of adjustments to object in writing to any of the adjustments to Buyer or to request additional supporting detail. In the event Sellers request additional supporting detail, Sellers shall have a single additional period of seven (7) days after receipt of such additional supporting detail to object in writing to any of the adjustments to Buyer. Any adjustments that are not objected to during such thirty (30) day period (or such longer period, as the case may be) shall be deemed to be agreed to by Sellers. Buyer and Sellers agree to negotiate and attempt to resolve in good faith any adjustments to which objections have been raised during the period of ten (10) days following receipt of objections. Each party shall provide the other party and its representatives with reasonable access (without material disruption to the Business) to books and records and relevant personnel during the preparation of the balance sheet from which the Actual Closing Date Net Assets are derived and the resolution of any disputes that may arise under this Section 6.1. Any adjustments to the Purchase Price that Sellers have objected to and not resolved during the ten (10) day period following the objection shall be settled in accordance with the CPA Procedure (as defined in Section 6.4). If the amount of (a) the Actual Closing Date Net Assets as finally determined is greater than (b) the Net Assets Estimate, then the difference shall be deemed added to the Purchase Price and shall be paid within three (3) business days by Buyer to Sellers. If the amount of (y) the Actual Closing Date Net Assets as finally determined is less than (z) the Net Assets Estimate, then the difference shall be deemed subtracted from the Purchase Price and shall be paid within three (3) business days by Sellers to Buyer or, at Buyer's discretion, paid to Buyer from the Reserve. Any payments shall be made by wire transfer of immediately available funds in accordance with the payment instructions provided by the applicable party. Any uncontested amounts shall be paid promptly.

6.2 Accounts Receivable. For purposes of the calculation of Actual Closing Date Net Assets, all Trade Accounts Receivable that are booked by Campbell as of the Closing Date but

that are more than ninety (90) days past due as of the ninetieth (90th) day following the Closing Date shall be treated as though written off prior to the Closing Date. For all calculations under this Agreement, accounts payable and accrued expenses shall be reviewed and valued in a manner consistent with the preparation of the Financial Statements.

6.3 Unbilled Retention Amounts. All Unbilled Retention Amounts that are booked by Campbell as of the Closing date but that are older than three hundred sixty-five (365) days on the one (1) year anniversary of the Closing (the "One Year Uncollected Retention Amounts") shall be treated as though written off prior to the Closing Date and Sellers shall pay the One Year Uncollected Retention Amounts to Buyer in immediately available cash.

6.4 Reporting of Post-Closing Adjustments. Buyer and Sellers agree to treat any adjustments pursuant to this Section 6 as adjustments to the Purchase Price for federal and state income tax purposes.

6.5 CPA Procedure. In the event the parties cannot agree on the adjustments, they shall refer the matter to their respective outside certified public accountants to resolve. The accountants will only consider those items and amounts set forth on the balance sheet from which the Actual Closing Date Net Assets are derived as to which the parties have disagreed within the time periods and on the terms specified above and must resolve the matter in accordance with the terms and provisions of this Agreement. If the accountants cannot agree on the adjustments within fifteen (15) business days of the submission to them of the disputed items, the accountants shall select a third accountant ("CPA") who shall be instructed based solely on the evidence presented by the accountants to determine the appropriate adjustment. The foregoing dispute resolution procedure is referred to as the "CPA Procedure." The CPA Procedure shall not permit the introduction of different Methodologies for purposes of determining the asset and liability balances from those used in the preparation of the Financial Statements. The CPA shall only select as a resolution the position of either Buyer or Sellers for each item of disagreement or a position between the two, and shall not impose any other resolution.

7. **CONTRACTS AND LEASES**

7.1 Contracts. Concurrently with the execution of this Agreement, Campbell shall deliver to Buyer, as *Exhibit 1*, a schedule setting forth all material Contracts, which shall include, as applicable: the name of parties; location of project and total contract price. Campbell shall deliver an update to *Exhibit 1* not less than 3 days prior to the Closing. The update to the Exhibit shall be in a form reasonably acceptable to Buyer, and Buyer shall have the opportunity to verify the information in the update to the Exhibit prior to the Closing.

7.2 Real Property Leases and Personal Property Leases. Buyer shall assume and perform all Real Property Leases and Personal Property Leases as of the Closing Date, to the extent that such Leases can be assigned to Buyer. Campbell agrees to make lease payments through the Closing Date. Buyer and Sellers agree to cooperate in obtaining consent to the assignment of such Leases to Buyer. To the extent that any of such Leases cannot be assigned, Buyer agrees to sublease from Campbell the real property, equipment or other property covered by such Leases for an amount equal to Campbell's total remaining cost under such Leases.

7.3 Existing Shareholder Leases. All Existing Shareholder Leases shall not be assumed by Buyer and shall be terminated as of the Closing Date. At and effective on the Closing, Buyer and Shareholder agree to execute and deliver the New Shareholder Leases.

8. REPRESENTATIONS AND WARRANTIES OF CAMPBELL AND SHAREHOLDER

Each Campbell Entity and Shareholder hereby jointly and severally represent to Buyer and Parent, except as specifically disclosed in the disclosure schedules delivered to Buyer (the "Disclosure Schedule") herewith, as follows, and the representations contained in this Section or elsewhere in this Agreement shall be deemed to be made on the date hereof and as of the Closing Date, and shall survive the Closing for the applicable periods set forth in Section 13:

8.1 Good Standing; Authorization. Each Campbell Entity is duly organized, validly existing and in good standing under the laws of the state of its incorporation, with full corporate power to carry on its business as it is now and has since its organization been conducted and to own, lease or operate the Purchased Assets owned, leased or operated by it, and is qualified to do business in the States of California and Nevada and in every other jurisdiction in which the conduct of the Business requires it to qualify, except for such failures to qualify or be in good standing in such other jurisdictions which individually or in the aggregate could not have a Material Adverse Effect with respect to the Business. Each Campbell Entity and Shareholder have all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. This Agreement has been duly executed and delivered by each Campbell Entity and Shareholder, assuming the due authorization and execution of this Agreement by Buyer, is the valid, binding obligation of each Campbell Entity and Shareholder enforceable against each Campbell Entity and Shareholder in accordance with its terms, except that (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights, and (ii) the remedies of specific performance and injunctive and other equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings may be brought.

8.2 Ownership of Purchased Assets. Sellers, or any of them, are the lawful owner of each of the Purchased Assets, and the Purchased Assets are free and clear of any liens, mortgages, pledges, security interests, restrictions, prior assignments, encumbrances, options or claims of any kind or nature whatsoever except for Permitted Encumbrances (collectively, "Liens"). At the Closing, Sellers will transfer to Buyer all of their right, title and interest in the Purchased Assets, free and clear of all Liens. The Purchased Assets include all assets, rights and interests used in the Business as currently conducted other than the Excluded Assets. The Business is an operating business and the transfer of the Purchased Assets to Buyer pursuant to this Agreement will enable Buyer to continue to operate the Business in the manner currently conducted immediately after the Closing, subject to Buyer's engaging the necessary personnel, purchasing necessary insurance policies and continuing the Business in accordance with Sellers' historical practices.

8.3 Tax Matters. Sellers have timely filed all material Tax returns heretofore required to be filed with respect to Taxes imposed on the Business, all such returns were true, complete and correct and Campbell has paid or will have paid all Taxes shown to be due on such returns. There are no liens for Taxes upon the Purchased Assets, except liens for current Taxes not yet

due or delinquent. Campbell has made provision, consistent with its past accounting practices, in its Interim Financial Statements for payment of all Taxes, including without limitation, all federal, state and local Taxes, that have been incurred but are not currently due as of the date of the Interim Financial Statements. No extension of a statute of limitations relating to Taxes with respect to Campbell is in effect. No Campbell Entity has received notice that it is or may be subject to Tax in a jurisdiction in which such entity has not filed, or does not currently file, Tax returns. Each Campbell Entity has withheld for its employees or the employees of the Business any applicable Taxes for all pertinent periods in compliance with the Tax withholding provisions of all applicable Laws. Campbell has delivered to Buyer true copies of every Tax return of each Campbell Entity for the years ended December 31 of 2002, 2003 and 2004.

8.4 Compliance with Laws, Licenses and Permits. To the Knowledge of Sellers, Campbell and Shareholder are not in violation of (i) any applicable order, judgment, injunction, award or decree, or (ii) any Law, statute, ordinance, regulation or other requirement of any governmental entity, relating to the Business. To the Knowledge of Sellers, Campbell and Shareholder have received and maintain, as current, all material Permits and licenses required to conduct the Business, and all such Permits are set forth on *Exhibit 10*. Each Permit is valid and in full force and effect, and to the Knowledge of Sellers, none of such Permits will be terminated or become terminable or impaired as a result of the transactions contemplated hereby. None of Sellers have received any written notice of any asserted present or past failure by Campbell to comply with any such Laws or, to the Knowledge of Sellers, any oral notice. Sellers have properly and timely remitted to the applicable Governmental Authority any and all unclaimed property as required pursuant to applicable law, and the Financial Statements reflect all Liabilities related to any such unclaimed property.

8.5 Financial Statements. Campbell has delivered to Buyer the Campbell Financial Statements. The Financial Statements: (i) have been prepared in accordance with the books and records of Campbell, (ii) have been prepared in accordance with Campbell's normal practices for the Business (which practices are in accordance with GAAP) consistently applied, and (iii) present fairly, in all material respects, the financial position and the results of operations of Campbell, at and for the fiscal periods then indicated. The Interim Financial Statements: (i) have been prepared in accordance with the books and records of Campbell, (ii) have been prepared in accordance with Campbell's normal practices for the financial statements for periods other than at year-end (which practices are in accordance with GAAP, except for the absence of footnotes and statement of cash flows, as required by GAAP) consistently applied, and (iii) present fairly, in all material respects, the financial position and the results of operations of Campbell, at and for the fiscal periods indicated therein, subject to normal year-end adjustments.

8.6 Absence of Certain Changes. Since the date of the Interim Financial Statements, Campbell has conducted the Business in the ordinary course consistent with past practice, and there has not been:

(a) any event, occurrence, state of circumstances or facts or change in respect of Campbell or the Business that has had or that may be reasonably expected to have, either alone or together, a Material Adverse Effect on Campbell or the Business;

(b) any change in any liabilities of Campbell that has had, or that may be reasonably expected to have, a Material Adverse Effect on the Business or the Purchased Assets;

(c) any (i) payments by Campbell in satisfaction of any liabilities, other than in the ordinary course of business consistent with past practice or (ii) creation, assumption or sufferance of (whether by action or omission) the existence of any lien on any of the Purchased Assets;

(d) any waiver, amendment, termination or cancellation of any Contract or any relinquishment of any material rights thereunder by Campbell, other than, in each such case, actions taken in the ordinary course of business consistent with past practice that are not material with respect to any such Contract;

(e) any change by Campbell in its historical accounting policies, except any such change required by a change in GAAP; or

(f) any (i) capital expenditure commitment by Campbell individually in excess of \$100,000 or in excess of \$250,000 in the aggregate for additions to property, plant, equipment or intangible capital assets comprising Purchased Assets likely to occur, in whole or in part, after the Closing Date or (ii) sale, assignment, transfer, lease or other disposition of or agreement to sell, assign, transfer, lease or otherwise dispose of any Purchased Asset except in the ordinary course of Business.

8.7 Legal Proceedings. To the Knowledge of Sellers (which Knowledge shall include, without limitation, the results of a public records search by a third party vendor within thirty (30) days of the Closing Date), there are no lawsuits, assertion of claims, charges, hearings, or arbitrations pending, threatened against or involving Campbell, Shareholder, the Business or the Purchased Assets, or that seek to prevent or enjoin, alter or delay the transactions contemplated by this Agreement.

8.8 Contracts and Assumed Leases. The Contracts listed at *Exhibit 1* represent each Contract to which Campbell is a party or by which the Purchased Assets are bound other than an agreement, arrangement or Contract involving aggregate payments of less than \$10,000, or having a remaining term of less than twelve (12) months and cancelable by the Company (and by Buyer following the Closing) upon no more than sixty (60) days notice. The Personal Property Leases and Real Property Leases listed at *Exhibits 11* and *13* respectively (the "Assumed Leases") represent each Personal Property Lease and Real Property Lease to which Campbell is a party. Each such Contract and Assumed Lease is a legal, valid and binding obligation of Campbell and, to Sellers' knowledge, each other person who is a party thereto, and is in full force and effect. Campbell has made available to Buyer complete and accurate copies of each of the Contracts and Assumed Leases. Except as disclosed on Schedule 8.8, there are no agreements or arrangements not reflected in the written contracts, other than an agreement or arrangement involving payments of less than \$10,000, or having a remaining term of less than twelve (12) months and cancelable by the Company (and by Buyer following the Closing) upon no more than sixty (60) days notice. The Assumed Leases are current and no past due amounts are owing. To the Knowledge of Sellers, there has not occurred any material default under any Contract or Assumed Lease on the part of Campbell or on the part of the other parties thereto, and no event has occurred which, with the giving of notice or the lapse of time, or both, would constitute any default under any Contract or Assumed Lease.

8.9 Agreement Not In Breach of Other Instruments. The execution, delivery and performance of this Agreement by each Campbell Entity and Shareholder and the consummation of the transactions contemplated hereby will not result in a breach of (i) to the Knowledge of Sellers, any of the terms and provisions of, or constitute a default under, or conflict with, or give rise to any right of consent, termination, cancellation, modification or acceleration of, or a loss of any benefit under any Contract, Assumed Lease or any other material agreement, indenture or other instrument to which Campbell or Shareholder are a party or by which Campbell or Shareholder, or the Purchased Assets are bound, (ii) the articles of incorporation or bylaws of any Campbell Entity, or (iii) any judgment, decree, order or award of any court, governmental body or arbitrator, or any Law, rule or regulation applicable to Campbell or Shareholder which breach would not materially adversely affect the Business. The execution and delivery by each of Sellers of this Agreement and each agreement contemplated by this Agreement, and the performance by each of Sellers of its respective obligations hereunder or thereunder, do not and will not require a registration, filing, application, notice, consent, approval, order, qualification or waiver with, to or from any Government Authority, except as required under the HSR Act.

8.10 Accounts Receivable. All Trade Accounts Receivable shown on the Campbell Financial Statements and estimated by Campbell as of the Closing Date represent bona fide transactions made in the ordinary course of the Business.

8.11 Equipment. A complete and accurate list of the material Equipment currently utilized in the operation of the Business is attached as **Exhibit 2**. Campbell has free and clear title to the Equipment. The Equipment is in good operating condition and repair and is adequate for the uses to which it is put, and none of such Equipment is in need of replacement, maintenance or repair except for routine replacement, maintenance or repair.

8.12 Trade Accounts Payable. All Trade Accounts Payable incurred by Campbell prior to the date hereof and prior to the Closing Date were incurred in the ordinary course of business and the amount of the Trade Accounts Payable reflected in the Interim Financial Statements and estimated by Campbell as of the Closing Date is true and correct.

8.13 Prepaid Expenses. All prepaid expenses transferred to Buyer are true and correct.

8.14 Labor Matters. To the Knowledge of Sellers, there are no material disputes, employee grievances or other disciplinary actions pending or threatened involving any of the present or former employees of the Business. To the Knowledge of Sellers there is no labor strike, dispute, slowdown or stoppage pending or threatened against or affecting the Business likely to result in a Material Adverse Effect on the Business, and the Business has not experienced any work stoppage or material labor difficulty within the past twelve (12) months. Campbell has no material agreement, arrangement or commitment to create any additional plan or arrangement or to modify or amend any existing employee benefit plan of the Business other than as may be necessary for Buyer's continuation of the Continued Plans pursuant hereto. Neither Shareholder nor Campbell is a party to any organized labor contracts nor does Campbell have any liability to any organized labor pension plan.

Campbell has made available to Buyer true, correct and complete copies of all written employee benefit plans, all contracts related thereto, and the most recently available annual report, summary plan descriptions, IRS Form 5500s (or 5500 Cs or 5500 Rs) and favorable

determination letters for such employee benefit plans of the Business. All employee benefit plans of Campbell are set forth on Section 8.14 of the Disclosure Schedule, including specific identification of the Continued Plans.

8.15 Brokers and Finders. Neither Campbell nor Shareholder have agreed to pay, or have taken any action that will result in any third party becoming obligated to pay or be entitled to receive, any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby.

8.16 Environmental Laws. To the Knowledge of Sellers, Campbell has at all times been operated and is in compliance, in all material respects, with all Environmental Laws. To the Knowledge of Sellers, Campbell is in compliance with all permits required by all Environmental Laws ("Environmental Permits"), and the Business has made all required filings for issuance or renewal of such Environmental Permits. There are no claims, notices, civil, criminal or administrative actions, suits, hearings, proceedings or to the Knowledge of Sellers, investigations or inquiries pending against Campbell or, to the Knowledge of Sellers, threatened that are based on or related to any Environmental Matters or the failure of Campbell to have any required Environmental Permits. To the Knowledge of Sellers, there are no past or present conditions, events, circumstances, facts, activities, practices, incidents, actions, omissions or plans that would: (a) interfere with or prevent continued material compliance by Campbell with Environmental Laws and the requirements of Environmental Permits or (b) result in a judgment against Campbell for the violation of any Environmental Law. Sellers have not received (x) any notice or other communication that Campbell is or may be a potentially responsible person or otherwise liable in connection with any waste disposal site used by the Business for the disposal of any Hazardous Substances, or (y) notice of any material failure of the Business to comply with any Environmental Law or the requirements of any Environmental Permit. Campbell has not been at any time requested or required by any Governmental Authority having jurisdiction under any Environmental Laws to perform any investigative or remedial activity or other action in connection with any Environmental Matter in respect of the Business. To the Knowledge of Sellers, the Business has not used any waste disposal site, or otherwise disposed of or transported any Hazardous Substances in violation of Environmental Laws. To the Knowledge of Sellers, Campbell has not arranged for the transportation of any Hazardous Substances to any place or location, in violation of any Environmental Laws. During the period of ownership, lease or control by Campbell, to the Knowledge of Sellers, there has been no release of any Hazardous Substances in violation of Environmental Laws at, on, under, or within any assets or properties currently or formerly owned, leased, or controlled by Campbell (other than pursuant to and in accordance with Environmental Permits held by Campbell). Sellers have made available to Buyer any and all third party environmental reports that are in the possession of or reasonably available to Sellers regarding Environmental Matters pertaining to the Business.

8.17 No Undisclosed Liabilities. To the Knowledge of Sellers, the Business does not have any Liabilities or obligations of a nature required by GAAP to be reflected on or disclosed in the footnotes to a balance sheet of the Business except for (i) Liabilities disclosed, reflected or reserved against in the Interim Financial Statements, (ii) Liabilities incurred after the date of this Agreement in the ordinary course of business, (iii) the matters disclosed in or arising out of matters set forth on the Disclosure Schedule or which are the subject of other representations and

warranties set forth herein, and (iv) Liabilities and obligations incurred in connection with this Agreement and the transactions contemplated hereby.

8.18 Competitive Restrictions. Neither Campbell, the Shareholder nor the Business is subject to any Contract or is bound in any other way that restricts its ability to conduct its or his operations in any material respect or engage in any kind of business or sell any kind of product in any market.

8.19 Intangible Personal Property. Each item of material Intangible Personal Property is set forth on *Exhibit 9*. Campbell owns all Intangible Personal Property free and clear of all encumbrances and has taken commercially reasonable steps to protect its rights therein. Campbell has not (i) received written notice of any infringement by it of the rights of any Person with respect to such Person's intellectual property, or (ii) to the Knowledge of Sellers, infringed, misappropriated or otherwise violated (and the operation of the Business as currently conducted does not infringe, misappropriate or otherwise violate) any intellectual property rights of any person. To the Knowledge of Sellers, no Person has infringed, misappropriated or otherwise violated any of Campbell's Intangible Personal Property.

8.20 Insurance. Campbell maintains insurance with reputable insurers for the Business against all risks normally insured against. All such insurance policies are in full force and effect and are valid, outstanding and enforceable, and all premiums due thereon have been paid in full. All such insurance policies are listed on Section 8.20 of the Disclosure Schedule, and copies of all such policies have been made available to Buyer. Prior to the Closing, Section 8.20 of the Disclosure Schedule shall be updated to specifically identify the Assignable Insurance Products and the Non-Assignable Insurance Products. Campbell has complied in all material respects with the provisions of all such insurance policies covering Campbell or any of Campbell's assets and properties. No insurer under any insurance policy has canceled or generally disclaimed liability under any such policy or, to the Knowledge of Sellers, indicated any intent to do so or not to renew any such policy. To the Knowledge of Sellers, the consummation of the transactions contemplated by this Agreement will not cause a cancellation or reduction in the coverage of such policies.

8.21 Projections. All written cost estimates, written forecasts, written projections, written business plans or other written projections or written forward-looking information that may have been prepared and provided by Campbell to Buyer prior to the date hereof (the "Projections") were prepared in good faith by the officers of Campbell and based on assumptions that were reasonable to such officers at the time they were made.

9. REPRESENTATIONS AND WARRANTIES OF BUYER AND PARENT

Buyer and Parent hereby jointly and severally represent and warrant to Campbell and Shareholder as follows, and the warranties and representations contained in this Section or elsewhere in this Agreement shall be deemed to be made on the date hereof and as of the Closing Date, and shall survive the Closing for the applicable periods set forth in Section 13:

9.1 Corporate Status. Each of Buyer and Parent is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware and, prior to

Closing, is qualified or licensed to do business in the State of California and Buyer is further qualified or licensed to do business in Nevada and Arizona.

9.2 Authority. Each of Buyer and Parent has full power and authority to execute and perform this Agreement. Upon execution hereof, this Agreement shall be a valid and legally binding obligation of Buyer and Parent, enforceable against Buyer and Parent in accordance with its terms, except that (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights, and (ii) the remedies of specific performance and injunctive and other equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings may be brought. Neither the execution nor the performance of this Agreement will violate the terms or any provision of Buyer's or Parent's Certificate of Incorporation or Bylaws or any material note, loan agreement, lease or other material contract or agreement to which Buyer or Parent is a party except that the consent of certain lenders of Parent and its affiliates shall be required to consummate the transactions contemplated hereby.

9.3 Brokers and Finders. Neither Buyer nor Parent has agreed to pay, or has taken any action that will result in any third party becoming obligated to pay or be entitled to receive, any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby.

9.4 No Violation of Law and Agreements. The execution and delivery by Buyer and Parent of this Agreement and each agreement contemplated by this Agreement, and the performance by Buyer and Parent of their respective obligations hereunder or thereunder, do not and will not:

- (a) violate any provision of the charter or bylaws of Buyer or Parent;
- (b) (i) violate any provision of applicable Law relating to Buyer or Parent; (ii) violate any provision of any order, arbitration award, judgment or decree to which Buyer or Parent is subject; or (iii) except as required under the HSR Act, require a registration, filing, application, notice, consent, approval, order, qualification or waiver with, to or from any Government Authority; or
- (c) to the knowledge of Buyer and Parent, (i) require a consent, approval or waiver from, or notice to, any party to any material contract to which Buyer or Parent is a party; or (ii) result in a breach of or cause a default under any provision of a contract to which Buyer or Parent is a party.

9.5 No Litigation or Regulatory Action.

(a) There are no lawsuits, assertion of claims, charges, hearings, arbitrations or proceedings pending or, to the knowledge of Buyer or Parent, threatened against Buyer or Parent or its affiliates which would reasonably be expected to prevent, hinder or delay the consummation of any of the transactions contemplated thereby; and

(b) There are no lawsuits, assertion of claims, charges, hearings, arbitrations pending or, to the knowledge of Buyer or Parent, threatened, that question the legality or

propriety of the transactions contemplated by this Agreement or any agreement contemplated by this Agreement.

9.6 Financial Ability. Buyer has, and will have on the Closing Date, the financial ability to consummate the transactions contemplated by this Agreement.

9.7 Independent Analysis.

(a) Buyer has relied solely on the results of its own independent investigation and the representations and warranties of the Sellers set forth in this Agreement and in the Schedules and Exhibits to this Agreement. Such representations and warranties by the Sellers constitute the sole and exclusive representations and warranties of the Sellers to Buyer in connection with the transactions contemplated hereby, and Buyer acknowledges and agrees that the Sellers are not making any representation or warranty whatsoever, express or implied, beyond those expressly given in this Agreement, any ancillary agreement contemplated hereby or in a Schedule or Exhibit to this Agreement.

(b) Without limiting the foregoing, Buyer acknowledges that neither Campbell nor the Shareholder has made any representation or warranty, express or implied, as to the accuracy or completeness of any memoranda, charts, summaries, presentations or schedules (excluding Schedules to this Agreement) heretofore made available by Campbell or the Shareholder to Buyer or any other information which is not made in this Agreement or in a Schedule or Exhibit to this Agreement. Buyer further acknowledges and agrees that the Projections were prepared for internal planning purposes only and are not representations or warranties of Campbell or Shareholder, and no assurances can be given that any estimated, forecasted, projected or predicted results will be achieved.

9.8 Relationships with Sellers' Material Customers. To the knowledge of Buyer and Parent, (i) there are no outstanding material disputes between Buyer and/or its affiliates with any Material Campbell Customers in the Territory, (ii) none of the Material Campbell Customers have expressly stated to Buyer that such Material Campbell Customer would not do business with Buyer and/or its affiliates in the Territory and (iii) none of such Material Campbell Customers have expressly stated they would withhold their consent to the assignment to Buyer of any contracts with Campbell.

10. NONCOMPETITION AGREEMENTS

10.1 Campbell Noncompete. Each Campbell Entity agrees that for a period of five (5) years following the Closing Date, it shall not:

(a) directly or indirectly, as owner, employer, creditor or otherwise, engage in any aspect of the Business in the States of California, Nevada or Arizona (the "Territory");

(b) directly or indirectly, solicit, divert, take away, or attempt to solicit, divert or take away, any of the customers of Buyer or Parent, or the business or patronage of any such customers, either for itself or on behalf of any other person, firm, partnership, limited liability company or corporation within Buyer's market or Parent's market; provided, however, that this

Section 10.1(b) shall not prohibit such entity from soliciting such customers with respect to business that is non-competitive with Buyer's or Parent's business;

(c) directly or indirectly facilitate, encourage, or participate in any way in the solicitation or recruitment of any employee of Buyer or Parent either for itself or on behalf of any other person, firm, partnership, limited liability company or corporation; provided, however, that general advertising by or on behalf of a business that is non-competitive with Buyer's or Parent's business shall not be considered solicitation or recruitment for purposes hereof; and

(d) Campbell shall not, directly or indirectly, hire James Cleven or any Campbell General Manager until one (1) year after such individual's employment with Buyer or Parent has terminated.

As used in this Section 10, the term "directly or indirectly" includes an investment in any partnership, corporation or other business entity and includes, without limitation, the solicitation of any employee of Buyer on behalf of itself or any other person for employment in a business that is competitive with the Business.

10.2 Shareholder Noncompete. Shareholder will not during the term of the Shareholder Consulting Agreement and for a period of two (2) years following expiration of the term of that Agreement or the termination of employment for any reason:

(a) directly or indirectly, as owner, employer, creditor, employee, partner, member, consultant, advisor or otherwise, engage in any aspect of the Business in the Territory; provided, however that Shareholder may engage, directly or indirectly, in the business of designing and installing residential patios (the "Permitted Activity");

(b) directly or indirectly, solicit, divert, take away, or attempt to solicit, divert or take away, any of the customers of Buyer or Parent, or the business or patronage of any such customers, either for himself or on behalf of any other person, firm, partnership, limited liability company or corporation within Buyer's market or Parent's market; provided, however, that this Section 10.1(b) shall not prohibit Shareholder from soliciting such customers with respect to business that is non-competitive with Buyer's or Parent's business with respect to the Permitted Activity;

(c) directly or indirectly facilitate, encourage, or participate in any way in the solicitation or recruitment of any employee of Buyer or Parent either for himself or on behalf of any other person, firm, partnership, limited liability company or corporation; provided, however, that general advertising by or on behalf of a business that is non-competitive with Buyer's or Parent's business shall not be considered solicitation or recruitment for purposes hereof; and

(d) Shareholder shall not, directly or indirectly, hire James Cleven or any Campbell General Manager until one (1) year after such individual's employment with Buyer or Parent has terminated.

The noncompetition agreement of Shareholder set forth in this Section 10.2 is in addition to the Shareholder Consulting Agreement to be delivered by Shareholder at the Closing.

10.3 Reasonableness of Restrictions. Shareholder and Campbell acknowledge that compliance with the provisions of Section 10 is reasonable and necessary to protect the value of the Purchased Assets and Buyer's and its affiliates' legitimate business interests.

10.4 Irreparable Harm and Injunctive Relief. Shareholder and Campbell acknowledge that a breach of their obligations under Section 10 will result in great, irreparable and continuing harm and damage to Buyer for which there is no adequate remedy at law. Shareholder and Campbell agree that in the event Shareholder or Campbell breaches this Agreement, Buyer and Parent shall be entitled to seek, from any court of competent jurisdiction, preliminary and permanent injunctive relief to enforce the terms of this Agreement, in addition to any and all monetary damages allowed by law, against Shareholder and Campbell.

10.5 Extension of Covenants. In the event Shareholder or Campbell violates any one or more of the covenants contained in Section 10, the term of each such covenant so violated shall be automatically extended for a period equal to the period during which Shareholder or Campbell is in violation of such covenants.

10.6 Judicial Modification. The non-competition provisions of this Agreement shall be deemed to consist of a series of separate covenants, one for each line of business carried on by Buyer (and its affiliates, as applicable) and each county included within the Territory. The parties expressly agree that the character, duration and geographical scope of such provisions are reasonable in light of the circumstances as they exist on the date upon which this Agreement has been executed. The parties have attempted to limit Campbell's and Shareholder's right to compete only to the extent necessary to protect the value of the Purchased Assets and Buyer's and its affiliates goodwill and business interests related thereto. The parties recognize, however, that reasonable people may differ in making such a determination. Consequently, the parties hereby agree that a court having jurisdiction over the enforcement of this Agreement shall exercise its power and authority to reform the covenants under Section 10 to the extent necessary to cause the limitations contained therein as to time, geographic area and scope of activity to be restrained to be reasonable and to impose a restraint that is not greater than necessary to protect the value of the Purchased Assets and Buyer's and its affiliates goodwill and business interests related thereto.

11. EMPLOYEES

11.1 Definition. Sellers have furnished to Buyer a list as of the date hereof of all persons regularly employed on either a part-time or full-time basis by Campbell in connection with the Business, including their current wages and salary rates. The term "Employees" shall mean all persons included on such list, including employees on leave of absence, as well as those persons who become regularly employed by Campbell between the date hereof and the Closing Date.

11.2 Termination. On the Closing Date, Campbell shall terminate all Employees then employed by the Business. With respect to terminated Employees and any persons who terminated employment, including by notice of termination prior to Closing, Campbell shall be solely responsible for payment, when and if due, of all salaries, wages, bonuses, vacation (subject to Section 11.5) and other obligations (excluding COBRA Liabilities), if any, owed to Employees or past employees of the Business as of the Closing Date.

11.3 Key Employees; Certain Other Employees. Buyer shall offer employment to the Key Employees under the Key Employee Employment, Confidentiality and Noncompetition Agreements which shall provide, among other things, minimum terms of employment and minimum base salaries. Buyer shall offer to Susan Casterton and Steven Moscrop employment under transition and retention agreements in a form to be mutually agreed to by the parties thereto (each, a "Transition and Retention Agreement").

11.4 Buyer's Offer of Employment. Buyer shall offer employment to all terminated Employees, excluding Key Employees, effective immediately following the Closing (except for Shareholder, whose consulting relationship shall be as described in the Shareholder Consulting Agreement) at wages and salary rates of compensation (inclusive of Campbell's bonus or other incentive pay programs through at least December 31, 2005), and with benefits, in each case substantially comparable to those presently offered by Campbell. All offers of employment shall be "at will." Buyer shall include the Employees who accept offers of employment from Buyer in Buyer's employment benefit plans; including group health plan, in accordance with the terms of such plans following the Closing Date, giving each Employee credit for his/her time of employment with Campbell; provided that Buyer shall continue, through December 31, 2005, the Continued Plans for covered employees who remain employed by Buyer.

11.5 Nonassumption of Certain Obligations Owed Employees. Buyer assumes no responsibility whatsoever for obligations and/or benefits owed, on or before, or with respect to the period on or before, the Closing Date, by Shareholder, Campbell or the Business to their current or former employees pursuant to Section 3.3(c)(vii), Section 11.2 or otherwise. Notwithstanding the foregoing, Buyer agrees, subject to applicable Law and Buyer's receipt of any required consent of employees (such employee consent shall be solicited by Buyer), to assume accrued vacation payable by Campbell to its employees through the Closing Date, and the amount of any such accrued vacation payable assumed by Buyer shall be deducted from the Purchase Price.

12. FURTHER ASSURANCES

12.1 Further Assurances of Sellers. From time to time after the Closing (as hereinafter defined), Campbell and Shareholder will execute and deliver to Buyer such instruments of sale, transfer, conveyance, assignment and delivery, consents, assurances, powers of attorney and other instruments as may be reasonably requested by Buyer in order to vest in Buyer all right, title and interest of Campbell and Shareholder, and each of them, in and to the Purchased Assets and otherwise in order to carry out the purpose and intent of this Agreement.

12.2 Further Assurances of Buyer. From time to time after the Closing (as hereinafter defined), Buyer will execute and deliver to Sellers such instruments of sale, transfer, conveyance, assignment and assumption, consents, assurances, novation, releases, powers of attorney and other instruments as may be reasonably requested by Sellers in order to vest in Buyer all right, title and interest of Buyer, in and to the Assumed Liabilities and release Sellers therefrom, and otherwise in order to carry out the purpose and intent of this Agreement.

13. INDEMNIFICATION

13.1 Indemnification by Sellers.

(a) Subject to the limitations set forth herein, Sellers agree, jointly and severally, to indemnify, defend and hold harmless Buyer and the Buyer Related Parties (by counsel reasonably satisfactory to Buyer) from and against any and all Liabilities and Expenses incurred by Buyer and the Buyer Related Parties in connection with or arising from: (i) any breach of any warranty or the inaccuracy of any representation of Sellers contained in this Agreement, the Collateral Agreements or any certificate or other document delivered by or on behalf of Sellers pursuant hereto or thereto, (ii) any breach by Sellers of, or failure by Sellers to perform, any of its covenants or obligations contained in this Agreement, the Collateral Agreements or any certificate or other document delivered by or on behalf of Sellers pursuant hereto or thereto, (iii) any failure to pay any Excluded Liability, and (iv) any failure to pay the One Year Uncollected Retention Amounts; provided, however, that Sellers, except as described in Section 13.1(c), shall be required to indemnify and hold harmless under clause (i) of this Section 13.1(a) with respect to Liabilities and Expenses incurred by Buyer only to the extent that the aggregate amount of such Liabilities and Expenses exceeds Six Hundred Thousand Dollars (\$600,000) (the "Threshold Amount"), provided, that if the Liabilities and Expenses exceed the Threshold Amount, Buyer and the Buyer Related Parties shall be entitled to indemnification for all Liabilities and Expenses in excess of Three Hundred Thousand Dollars (\$300,000), and provided, further, that the aggregate amount required to be paid by Sellers pursuant to Section 13.1(a)(i) shall not exceed twenty percent (20%) of the Purchase Price.

(b) The indemnification provided for in Section 13.1(a)(i) shall terminate eighteen (18) months after the Closing Date (and no claims shall be made by Buyer under Section 13.1(a)(i) thereafter), except that the indemnification by Sellers shall continue as to the representations and warranties of Sellers (i) set forth in Sections 8.3 (Tax Matters), 8.14 (Labor Matters) and 8.16 (Environmental Laws), which shall survive until the expiration of the relevant statutory period of limitations applicable to the underlying claim, giving effect to any waiver, mitigation or extension thereof; (ii) set forth in Section 8.2 (Ownership of Purchased Assets) which shall terminate seven (7) years after the Closing Date; and (iii) set forth in Sections 8.1 (Good Standing; Authorization) and 8.15 (Brokers and Finders) which shall have no termination date. The indemnification provided for in Sections 13.1(a)(ii), (iii) and (iv) shall survive indefinitely.

(c) The foregoing notwithstanding, (i) the Threshold Amount and limitation on liability set forth in Section 13.1(a) above shall not apply to any breach of the representations and warranties made by Sellers in Section 8.1 (Good Standing; Authorization), Section 8.2 (Ownership of Purchased Assets) and Section 8.15 (Brokers and Finders); it being understood, however, that in no event shall the Liability of Sellers (including any Affiliate, agent, representative, officer, director, or shareholder of Sellers) for Liabilities and Expenses incurred by the Buyer in connection with any breach of the foregoing representations and warranties exceed the Purchase Price, and (ii) the Threshold Amount and limitation on liability set forth in Sections 13.1(a) and 13.6 shall not apply to any fraud or intentional misrepresentation by any of Sellers.

13.2 Shareholder. Shareholder shall hold harmless and defend Buyer and the Buyer Related Parties (by counsel reasonably satisfactory to Buyer) from and against any Construction Defect Liability and from and against all reasonable and actual losses, damages, claims, Liabilities, Taxes, penalties, costs and Expenses incurred by Buyer and/or the Buyer Related Parties arising out of, related to, or involving, directly or indirectly, Construction Defect Liabilities caused by Campbell prior to the Closing Date or with respect to which Campbell is alleged to have responsibility to the extent in excess of Sellers' insurance coverage, provided that Buyer shall be responsible for any deductible payments or self-insured retention amounts required thereon (it being acknowledged by all parties that if an insurer fails to pay all or any part of a claim as a result of such insurer's financial insolvency, bankruptcy or the like, that no part of the actual losses, damages, claims, Liabilities, Taxes penalties, costs and Expenses incurred by Buyer and/or the Buyer Related Parties shall be deemed to be a 'deductible payment' for purposes of the foregoing proviso). Buyer shall handle any claims for Construction Defect Liabilities in accordance with Section 15.2 of this Agreement. If any insurer assumes responsibility for the defense of such claim for Construction Defect Liabilities and reimburses Buyer for any and all losses, damages, claims, Liabilities, Taxes, penalties, costs and Expenses relating to such Construction Defect Liabilities, then Buyer and the Buyer Related Parties shall not pursue any claim against Shareholder pursuant to this Section 13.2 with respect to such specific Construction Defect Liabilities. Notwithstanding any provisions of this Section 13.2, Shareholder's indemnity obligations pursuant to this Section 13.2 shall not exceed \$5,000,000 in the aggregate and shall terminate ten (10) years after the Closing Date. The Threshold Amount and limitation on liability set forth in Section 13.1(a) above shall not apply to Shareholder's obligations under this Section 13.2.

13.3 Indemnification by Buyer and Parent.

(a) Subject to the limitations set forth herein, Buyer and Parent agree, jointly and severally, to indemnify, defend and hold harmless Campbell and Shareholder (by counsel reasonably satisfactory to Campbell and Shareholder) from and against any and all Liabilities and Expenses incurred by Campbell or Shareholder in connection with or arising from: (i) any breach of any warranty or the inaccuracy of any representation of Buyer or Parent contained in this Agreement, any Collateral Agreement or in any certificate delivered by or on behalf of Buyer or Parent pursuant hereto or thereto, (ii) any breach by Buyer or Parent of, or failure by Buyer or Parent to perform, any of their covenants and obligations contained in this Agreement or any Collateral Agreement, (iii) Buyer's agreement to assume and satisfy the Assumed Liabilities under Section 3.3 of this Agreement, and (iv) Buyer's operation of the Business after the Closing, in the case of clauses (ii) and (iii), subject to the provisions of Section 13.2; provided, however, that Buyer and Parent, except as described in Section 13.3(c), shall be required to indemnify and hold harmless under clause (i) of this Section 13.3(a) with respect to Liabilities and Expenses incurred by Campbell and Shareholder only to the extent that the aggregate amount of such Liabilities and Expenses exceeds the Threshold Amount; provided, that if the Liabilities and Expenses exceed the Threshold Amount, Sellers shall be entitled to indemnification for all Liabilities and Expenses in excess of Three Hundred Thousand Dollars (\$300,000), and provided, further, that the aggregate amount required to be paid by Buyer and Parent pursuant to Section 13.3(a)(i) shall not exceed twenty percent (20%) of the Purchase Price. ✓

(b) The indemnification provided for in Section 13.3(a)(i) shall terminate eighteen (18) months after the Closing Date (and no claims shall be made by any Sellers under Section 13.3(a)(i) thereafter). The indemnification provided for in Sections 13.3(a)(ii), (iii) and (iv) shall survive indefinitely.

(c) The foregoing notwithstanding, (i) the Threshold Amount and limitation on liability set forth in Section 13.3(a) above shall not apply to any breach of the representations and warranties made by Buyer in Section 9.1 (Corporate Status), Section 9.2 (Authority) and Section 9.3 (Brokers and Finders); it being understood, however, that in no event shall the Liability of Buyer and Parent (including any Buyer Related Parties) for Liabilities and Expenses incurred by Campbell or Shareholder in connection with any breach of the foregoing representations and warranties exceed the Purchase Price, and (ii) the Threshold Amount and limitation on liability set forth in Sections 13.3(a) and 13.6 shall not apply to any fraud or intentional misrepresentation by Buyer or Parent.

13.4 Indemnification Procedure.

(a) The party seeking indemnification pursuant to this Section 13 (the "Indemnified Party") with respect to any claim, demand, action, proceeding or other matter for which such party is entitled to seek indemnification hereunder (a "Claim") shall notify the indemnifying party(ies) (the "Indemnitor") of the existence of the Claim, setting forth in reasonable detail the facts and circumstances pertaining thereto and the basis for the indemnified party's right to indemnification (a "Notice of Claim"), which Notice of Claim shall contain the following information to the extent it is reasonably available to the indemnified party: (i) an estimate of the amount then reasonably ascertainable of the alleged losses, damage, claims, liabilities, taxes, penalties, costs or expenses against which the indemnified party is indemnified; (ii) a description, in reasonable detail, of the circumstances giving rise to the alleged loss, expense, or liability; and (iii) a statement identifying each party against whom a Claim is asserted.

(b) After the giving of any Notice of Claim pursuant hereto, the amount of indemnification to which an Indemnified Party shall be entitled under this Section 13 shall be determined: (i) by the written agreement between the Indemnified Party and the Indemnitor; (ii) by a final judgment or decree of any court of competent jurisdiction; or (iii) by any other means to which the Indemnified Party and the Indemnitor shall agree. The judgment or decree of a court shall be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined. The Indemnified Party shall have the burden of proof in establishing the amount of Liabilities and Expenses suffered by it. All amounts due to the Indemnified Party as so finally determined shall be paid by wire transfer within ten (10) calendar days after such final determination.

13.5 Third Party Claims.

(a) If any third party shall notify any Indemnified Party with respect to any matter which may give rise to a Claim for indemnification against the Indemnitor under this Agreement, then the Indemnified Party shall notify the Indemnitor thereof, which notice shall set forth the information required in Section 13.4(a) and be furnished promptly after the Indemnified Party's receipt of notice from the third party; provided, however, that no delay on the part of the

Indemnified Party in notifying any Indemnitor shall relieve the Indemnitor from any liability or obligation hereunder unless (and then solely to the extent) the Indemnitor thereby is materially prejudiced by such failure to give notice. If the Indemnitor notifies the Indemnified Party within twenty (20) days of the Indemnified Party's Notice of a Claim that it will assume the defense thereof:

(i) the Indemnitor shall defend the Indemnified Party against the matter with counsel of its choice reasonably satisfactory to the Indemnified Party;

(ii) the Indemnified Party may retain separate counsel at its sole cost and expense (except that the Indemnitor will be responsible for the fees and expenses of the separate counsel to the extent the Indemnified Party reasonably concludes, based upon advice of counsel, that a conflict of interest exists between the Indemnified Party and Indemnitor such that there may be one or more legal defenses available to the Indemnified Party which are not available to the Indemnitor, or available to the Indemnitor, but the assertion of which would be adverse to the interest of the Indemnified Party);

(iii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the matter without the written consent of the Indemnitor (not to be withheld unreasonably); and

(iv) the Indemnitor will not consent to the entry of any judgment or enter into any settlement which does not include a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto, without the written consent of the Indemnified Party (not to be withheld unreasonably).

(b) If the Indemnitor does not notify the Indemnified Party within twenty (20) days of the Indemnified Party's delivery of a Notice of Claim that it will assume the defense thereof, then the Indemnified Party may defend against, or enter into any settlement with respect to, the matter in any manner it reasonably may deem appropriate, without prejudice to any of its rights hereunder; provided, however, the Indemnified Party (i) must disclose to the Indemnitor any material new or materially changed allegations being asserted against the Indemnified Party, (ii) in the case where a lawsuit has been filed, must provide a copy of such lawsuit and all amended complaints to Indemnitor and (iii) upon request of the Indemnitor, provide a written summary of the status of the Claim to the Indemnitor (all the information provided in (i) or (ii), or in (iii) if such summary discloses a change in the status of the Claim that is materially adverse to Indemnitor, shall be referred to as the "New Facts"). Indemnitor may, within twenty (20) days of the delivery by the Indemnified Party of New Facts, notify the Indemnified Party that it will assume the defense of such Claim and proceed in accordance with Section 13.5(a).

(c) The Indemnified Party shall be entitled to reimbursement for Expenses, included in damages with respect to any Claim (including, without limitation, the cost of defense, preparation and investigation relating to such Claim) as such Expenses are incurred by the Indemnified Party.

13.6 Limitations.

(a) Any indemnity payment hereunder shall be treated for Tax purposes as an adjustment of the Purchase Price to the extent such characterization is proper or permissible under relevant Tax Law, including court decisions, statutes, regulations and administrative promulgations. Buyer is responsible for preparing an amended form 8594 which shall be provided to Sellers no later than thirty (30) days after Sellers provide in writing their consent to such Tax treatment.

(b) In calculating any Liability or Expense there shall be deducted (i) any insurance benefits and proceeds received in respect thereof (and no right of subrogation shall accrue hereunder to any insurer), except that in the case of any Liability or Expense relating to a Construction Defect, only insurance benefits and proceeds from Sellers' insurance carriers (and not Buyer's insurance carriers) shall be deducted; (ii) any indemnification, contribution or other similar payment actually recovered by the Indemnified Party from any third party with respect thereto; and (iii) any Tax benefit or refund actually received or enjoyed by, the applicable Indemnified Party as a result of such Liability or Expense. Any such amounts or benefits received by an Indemnified Party with respect to any indemnity claim after it has received an indemnity payment hereunder shall be promptly paid over to the Indemnitor, but not in excess of the amount paid by the Indemnitor to the Indemnified Party with respect to such claim.

(c) Except for (i) remedies that cannot be waived as a matter of Law, (ii) injunctive and provisional relief, and (iii) claims for Liabilities and Expenses or contribution arising under any Environmental Law, if the Closing occurs, this Section 13 shall be the exclusive remedy for breaches of this Agreement (including any covenant, obligation, representation or warranty contained in this Agreement or in any certificate delivered pursuant to this Agreement) or otherwise in respect of the sale of the Purchased Assets contemplated hereby. With respect to claims for which this Section 13 is the exclusive remedy, Buyer and Sellers hereby waive and release on their own behalf and on behalf of each other applicable Indemnified Party, to the fullest extent permitted under applicable Law, any and all rights, claims and causes of action it or they may have against Sellers or Buyer, as the case may be, arising under or based upon common law or any federal, foreign, state or local Law, rule or regulation. Notwithstanding the foregoing, the provisions of this Section 13.6(c) shall not be applicable to any claims for Liabilities or Expenses arising out of or relating to any fraud or intentional misrepresentation by a party.

(d) No party hereto shall have any liability for any incidental, special, exemplary, multiple, punitive or consequential damages (including loss of profit or revenue) or any equitable equivalent thereof or substitute therefor suffered or incurred by Buyer, Parent or Sellers, as the case may be.

13.7 Mitigation. Each of the parties agrees to take all reasonable steps to mitigate their respective Liabilities and expenses upon and after becoming aware of any event or condition which could reasonably be expected to give rise to any Liabilities and expenses that are indemnifiable hereunder.

13.8 Subrogation. Upon making any payment to the Indemnified Party for any indemnification claim pursuant to this Section 13, the Indemnitor shall be subrogated, to the

extent of such payment, to any rights which the Indemnified Party may have against any third-parties with respect to the subject matter underlying such indemnification claim and the Indemnified Party shall assign any such rights to the Indemnitor.

13.9 No Offset. The obligations hereunder of Sellers, on the one hand, and Buyer and Parent, on the other hand, are independent of the obligations of the other hereunder and shall not be subject to any right of offset, counterclaim or deduction.

14. CONDUCT OF OPERATIONS PRIOR TO CLOSING

14.1 Interim Operating Covenants.

(a) Ordinary Course of Operations. From the date hereof until Closing, Campbell shall, and Shareholder shall cause Campbell to, conduct its operation of the Business in the ordinary course and consistent with its prior practices. Campbell and Shareholder shall immediately notify Buyer of any material change in the customers of the Business or any known intentions by customers of the Business to materially reduce the volume of their business they have historically done with Campbell.

(b) Affirmative Covenants. From the date hereof until Closing, unless otherwise agreed in writing by Buyer (which consent shall not be unreasonably withheld), Campbell shall, and Shareholder shall cause Campbell to:

(i) maintain and use the Purchased Assets in the ordinary course of business consistent with past practice, reasonable wear and tear, damage by fire and other casualty excepted;

(ii) comply in all material respects with all applicable Laws;

(iii) properly and timely file all Tax returns required to be filed and pay the expenses of preparation therefor, and make timely payment of all applicable Taxes when due;

(iv) take all reasonable actions necessary to be in material compliance with all Contracts and to maintain the effectiveness of all Permits;

(v) notify Buyer of any action, event, condition or circumstance, or group of actions, events, conditions or circumstances, that has resulted in, or could reasonably be expected at the time to result in, a Material Adverse Effect on the Business or the Purchased Assets;

(vi) notify Buyer of the commencement of any material proceeding by or against Sellers or any threatened proceeding of which Sellers become aware that relates to the Business, any of the Purchased Assets or the transactions contemplated by this Agreement;

(vii) pay Trade Accounts Payable and pursue collection of Trade Accounts Receivable in the ordinary course of business consistent with past practice;

(viii) use commercially reasonable efforts to maintain the relations and goodwill with the material suppliers, customers, distributors, licensors, licensees, landlords, trade

creditors, agents, and others having business relationships with Sellers relating to the Business, with the goal of preserving materially unimpaired the goodwill and ongoing business of the Business as of the Closing;

(ix) use commercially reasonable efforts to prevent the occurrence of a Construction Defect occurring with respect to products sold or services performed by Campbell; and

(x) maintain Records on a basis consistent with prior practice, except for any change required by a change in GAAP or applicable Law.

(c) Negative Covenants. From the date hereof until Closing, Campbell will not, and Shareholder shall cause Campbell not to, without the prior written consent of Buyer (which consent shall not be unreasonably withheld):

(i) sell, lease, pledge, subject to Liens or otherwise transfer or dispose of any of the Purchased Assets to any third party, other than in the ordinary course of business consistent with past practice;

(ii) enter into any Contract other than in the ordinary course of business consistent with past practices;

(iii) materially amend or modify, other than in the ordinary course of business, or violate the terms of, any of the Contracts to be assumed hereunder;

(iv) propose to conduct the Business in any new markets or conduct any new lines of business;

(v) permit the corporate existence of any Campbell Entity, or the existence of any Permit to be suspended, lapsed, dissolved, revoked or modified in any material respect;

(vi) except as otherwise contemplated by this Agreement, allow any insurance policy to be amended or terminated without replacing such policy with a policy providing at least equal coverage, insuring comparable risks and issued by an insurance company financially comparable to the prior insurance company;

(vii) except for normal salary adjustments consistent with past practice, or changes made pursuant to existing employment agreements or required by applicable Law, increase any salaries or benefits payable to any employee of the Business;

(viii) incur any Indebtedness relating to the Business or any of the Purchased Assets, except Trade Accounts Payable or other Liabilities incurred in the ordinary course of business, and Expenses incurred in connection with the consummation of the transactions contemplated by this Agreement;

(ix) issue or sell or enter into any agreement (written or oral) to issue or sell any equity securities of any Campbell Entity or any securities convertible into equity securities of any Campbell Entity; or

(x) take any other action that would reasonably be expected to prevent Sellers from performing or cause Sellers not to perform Sellers' covenants hereunder.

14.2 Governmental Approvals. Buyer and Sellers have filed with the United States Federal Trade Commission (the "FTC") and the United States Department of Justice (the "DOJ") the notification and report form pursuant to the HSR Act, if required for the transactions contemplated hereby. Each of Sellers and Buyer shall, as promptly as practicable, substantially comply with any request for additional information and documents pursuant to the HSR Act. Each of Buyer and Sellers shall inform the other promptly of any communication made by or on behalf of such party to, or received from, the FTC or the DOJ and shall furnish to the other such information and assistance as the other may reasonably request in connection with such party's preparation of any filing, submission or other act that is necessary or advisable under the HSR Act. Sellers and Buyer shall keep each other timely apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC or the DOJ, and shall comply promptly with any such inquiry or request. Each of Sellers and Buyer shall use commercially reasonable efforts to promptly obtain any clearance under the HSR Act required for the consummation of the transactions contemplated hereby. All fees associated with filings under the HSR Act pursuant to this Section 14.2 shall be borne by Buyer.

14.3 Access to Information. Between the date hereof and the Closing, Sellers agree to provide to Buyer and Buyer's authorized agents (including attorneys, accountants and auditors) reasonable access to the offices and properties of Campbell and the Records of Campbell upon reasonable prior notice, in order to conduct a review of the Purchased Assets, the Assumed Liabilities, the Assumed Leases and the Business. In no event, however, shall Buyer or its representatives visit Campbell's facilities or job sites or contact Campbell's suppliers, customers, employees or other business relations without the prior specific written (which may be via email) approval of James Cleven in each instance. Sellers shall, and shall cause Campbell's employees, agents and representatives to, reasonably cooperate with such examination. Each of the parties will hold, and will cause each of such party's consultants and advisers to hold, in confidence all documents and information furnished to such consultants and advisers by or on behalf of another party to this Agreement in connection with the transactions contemplated by this Agreement pursuant to the terms of that certain Confidentiality Agreement entered into between Parent and Campbell dated November 16, 2004 (the "2004 NDA") or that certain Confidentiality Agreement dated July 14, 2005 (the "2005 NDA"), whichever is applicable. The parties hereto agree that the 2004 NDA and the 2005 NDA shall be binding upon Buyer and Shareholder.

14.4 Employee Information and Access. Sellers shall provide to Buyer certain general information concerning Campbell's compensation and benefit programs and specific information relating to individual Business employees, subject to any such employee's proper consent, solely for the purpose of Buyer formulating offers to such employees; provided, however, that Sellers will not make personnel records available for inspection or copying prior to the Closing. Sellers shall provide Buyer with reasonable access to the Business employees during normal working hours following the date hereof on mutually agreeable dates, to deliver offers of employment and to provide information to such employees about Buyer.

14.5 Campbell Contractual Consents.

(a) Campbell shall, with the reasonable assistance of Buyer, use commercially reasonable efforts (subject to Section 14.5(d)) to obtain all material contractual consents to the assignment of the Contracts and/or Assumed Leases in form and substance that will not impair the rights or increase the liabilities to be assumed by Buyer under the Contracts to which such contractual consents relate. Between the date hereof and the Closing, Buyer and Sellers shall consult with each other regarding Campbell's customers, vendors and distributors to consider whether Buyer's relationship, or lack of relationship, with any of such customers, vendors or distributors may materially interfere with the assignment of the Contracts.

(b) In the event that any contractual consents or assignments of any of the Contracts or Assumed Leases, or any right or benefit arising thereunder or resulting therefrom, are not obtained prior to the Closing Date, then as of the Closing, this Agreement, to the extent permitted by Law, shall constitute full and equitable assignment by Campbell to Buyer of all right, title and interest of Campbell in and to, and all obligations and Liabilities of Campbell under, such Contracts and Assumed Leases, and Buyer shall be deemed Campbell's agent for purpose of completing, fulfilling and discharging all Liabilities of Campbell from and after the Closing Date under any such Contract or Assumed Lease. The parties shall take all necessary steps and actions to provide Buyer with the benefits of such Contracts or Assumed Leases, and to relieve Campbell of the performance and other obligations thereunder, including entry into subcontracts for the performance thereof. Buyer agrees to pay, perform and discharge, and indemnify Sellers against and hold Sellers harmless from, all obligations and Liabilities of Sellers or Buyer relating to such performance or failure to perform under such Contracts or Assumed Leases.

(c) In the event that Sellers are unable to make the equitable assignment described in Section 14.5(b), or if such attempted assignment would give rise to any right of termination, or would otherwise adversely affect the rights of Campbell or Buyer under any such Contract or Assumed Lease, or would not assign all of the rights of Campbell thereunder at the Closing, Sellers and Buyer shall continue to cooperate and use all reasonable efforts to provide Buyer with all such rights and to relieve Sellers of all such obligations thereunder. To the extent that any such consents and waivers are not obtained, or until the impediments to such assignment are resolved, Sellers shall use all reasonable commercial efforts to (i) provide to Buyer, at the request of Buyer, the benefits of any such Contract or Assumed Lease to the extent related to the Business and to relieve Sellers of all such obligations thereunder, (ii) cooperate in any lawful arrangement designed to provide such benefits to Buyer and to relieve Sellers of all such obligations thereunder and (iii) enforce, at the request of and for the account of Buyer, any rights of Campbell arising from any such Contract or Assumed Lease against any third party (including any Governmental Authority), including the right to elect to terminate in accordance with the terms thereof upon the advice of Buyer. To the extent that Buyer is provided the benefits of any Contract or Assumed Lease referred to herein (whether from Sellers or otherwise), Buyer shall perform at the direction of Sellers and for the benefit of any third party (including any Governmental Authority), and shall assume the liabilities and obligations of Sellers thereunder or in connection therewith. Buyer agrees to pay, perform, discharge and indemnify Sellers against and hold Sellers harmless from, all liabilities and obligations of Sellers relating to such performance or failure to perform. In the event of a failure of such indemnity, Sellers shall cease

to be obligated under this Agreement in respect of the Contract or Assumed Lease which is the subject of such failure.

(d) Except as otherwise specifically provided in this Agreement, the obligations of the parties under this Section 14.5 shall not include any requirement of Sellers or Buyer to expend money or incur any financial or other obligation (other than normal legal and professional fees, transaction costs or filing fees not otherwise required to be incurred by the other party), commence or participate in any litigation or offer or grant any accommodation (financial or otherwise) to any third party.

14.6 Additional Insured. Sellers shall use commercially reasonable efforts to assign to Parent and Buyer, and have each of Parent and Buyer named as additional insured parties under, each of the insurance policies of Campbell set forth at Section 8.20 of the Disclosure Schedule, effective as of the Closing Date, and Campbell, Buyer and Parent shall execute all documents necessary to effect the foregoing.

14.7 Transition. Between the date hereof and the Closing Date, Sellers shall provide, without cost to Buyer, subject to availability and upon reasonable notice, assistance to Buyer in connection with all reasonably requested transition matters arising under the transactions contemplated by this Agreement, including arrangement (at a mutually agreeable time) of personal introductions to vendors and customers of the Business.

14.8 Obligation to Update Exhibits and Schedules. Sellers shall update all Exhibits and Schedules, where appropriate, to be prepared by Sellers hereunder, prior to the Closing Date; provided, that any such update or supplement shall not cure any breach of any representation or warranty of the Sellers made in this Agreement (and Sellers shall, for all purposes of this Agreement, therefore, be in breach of any representation or warranty with respect to any previously undisclosed information required to be disclosed in order that such representation or warranty be true and correct as of the date hereof) unless, and to the extent that, (a) such update or supplement contains or discloses facts or information which arose after the date hereof, or (b) such update or supplement contains or discloses facts or information which arose prior to the date hereof but of which Sellers first acquired Knowledge after the date hereof; provided that an update or supplement provided under this subsection (b) shall not cure a breach of a representation or warranty of the Sellers that is not qualified by Sellers' Knowledge. If the information disclosed in any such update or supplement would constitute a Material Adverse Effect on the Business, then Buyer shall have the right to either accept the update and proceed with the Closing or to terminate this Agreement in accordance with the provisions of Section 21, and to the extent that such update or supplement cured a breach of any representation or warranty of the Sellers pursuant to the foregoing sentence, neither Buyer nor any Buyer Related Party would be eligible to make any Claim for indemnification under Section 13.1(a)(i) with respect to the information so disclosed.

14.9 No Solicitation. From and after the date hereof, and until the earlier of the Closing or the termination of this Agreement pursuant to Section 21 hereof (the "Non-Solicitation Period"), except as expressly contemplated by this Agreement, each Campbell Entity and Shareholder shall not, directly or indirectly, and none of their respective directors, officers, agents or representatives shall, directly or indirectly (a) initiate, solicit, seek, support or encourage any action that constitutes or is reasonably likely to lead to an Acquisition Proposal;

(b) provide information with respect to the Business to any Person relating to, or otherwise cooperate with, facilitate or encourage any effort or attempt by any Person or entity with regard to any Acquisition Proposal; or (c) enter into any agreement with respect to any Acquisition Proposal. Sellers shall notify Buyer promptly, but in any event within two (2) business days, if any Acquisition Proposal, or any inquiry or other contact with any Person with respect thereto, is made during the Non-Solicitation Period. Any such notice to Buyer shall indicate in reasonable detail the identity of the Person making such Acquisition Proposal, inquiry or other contact and the terms and conditions of such Acquisition Proposal, inquiry or other contact. Sellers agree that any such discussions or negotiations in progress with any other Person as of the date hereof will be suspended or terminated during the Non-Solicitation Period.

15. CONDUCT OF BUSINESS FOLLOWING CLOSING

15.1 Collection of Trade Accounts Receivable and Unbilled Retention Amounts.

(a) During the ninety (90) day period following the Closing, Buyer shall use commercially reasonable efforts in the ordinary course of business and consistent with Campbell's past practices to collect the Trade Accounts Receivable. During such 90-day period, Buyer shall (i) provide Sellers with periodic collection reports every thirty (30) days and provide Sellers with reasonable access to all other available records, documents and information relating to Trade Accounts Receivable, and the opportunity to monitor and assist Buyer's efforts to collect the Trade Accounts Receivable and (ii) apply all payments received from customers on and after the Closing Date to the respective customer's oldest accounts first, unless a debtor indicates the specific account it is paying in which event payment shall be applied to that account. Buyer and Sellers agree that they will not influence account specification pursuant to the preceding sentence. To the extent any of the Trade Accounts Receivable are aged greater than ninety (90) days and remain uncollected ninety (90) days after the Closing, such Trade Accounts Receivable shall be deducted from the calculation of Campbell's Actual Closing Date Net Assets and Buyer shall irrevocably assign such uncollected Trade Accounts Receivable to Shareholder free and clear of all liens and encumbrances. Thereafter, Shareholder may use any means reasonably necessary to collect the uncollected Trade Accounts Receivable and Buyer shall provide Shareholder with all records relating to such uncollected Trade Accounts Receivable and all other available information. Buyer shall promptly remit to Shareholder any amounts subsequently received by Buyer with respect to the uncollected Trade Accounts Receivable assigned to Sellers hereunder.

(b) During the one (1) year period following the Closing, Buyer shall use commercially reasonable efforts in the ordinary course of business and consistent with Campbell's past practices to collect the Unbilled Retention Amounts. During such one (1)-year period, Buyer shall (i) provide Sellers with periodic collection reports every thirty (30) days and provide Sellers with reasonable access to all other available records, documents and information relating to Unbilled Retention Amounts, and the opportunity to monitor and assist Buyer's efforts to collect the Unbilled Retention Amounts and (ii) apply all payments received from customers on and after the Closing Date to the respective customer's oldest accounts first, unless a debtor indicates the specific account it is paying in which event payment shall be applied to that account. Buyer and Sellers agree that they will not influence account specification pursuant to the preceding sentence. Provided Sellers have paid to Buyer the One Year Uncollected Retention Amounts as set forth in Section 6.3, Buyer shall irrevocably assign such One Year

Uncollected Retention Amounts to Shareholder free and clear of all liens and encumbrances. Thereafter, Shareholder may use any means reasonably necessary to collect the One Year Uncollected Retention Amounts and Buyer shall provide Shareholder with all records relating to such Unbilled Retention Amounts and all other available information. Buyer shall promptly remit to Shareholder any amounts subsequently received by Buyer with respect to the One Year Uncollected Retention Amounts assigned to Sellers hereunder.

15.2 Construction Defect Liabilities and Non-Assignable Insurance Products Claims Handling Procedures. Following the Closing, Buyer and Parent, on behalf of the Sellers, agree to manage, in a commercially reasonable manner, all aspects of any and all claims (i) for Construction Defect Liabilities made against Campbell and (ii) under the Non-Assignable Insurance Products. Such claims are to be handled consistent with the claims handling procedures used by Parent in administering its own similar third party claims. Buyer shall provide Sellers with copies of all regularly generated written status reports of Buyer or Parent with respect to such claims, which reports shall be generated not less frequently than quarterly. Sellers shall have the right to review all such claims tendered pursuant to this Section and such other information as Sellers may reasonably request from time to time. Without limiting the generality of the foregoing, Buyer shall provide Sellers with reasonable access to records and correspondences related to all such claims for Construction Defect Liabilities or under the Non-Assignable Insurance Products.

15.3 Use of Campbell Names. Sellers agree that following the Closing they will not utilize any of the trade names, corporate names or, dba names of any Campbell Entity or other name that is confusingly similar to such names outside of any use thereof by Buyer or Parent (the "Campbell Names"), other than (i) in connection with any insurer under any of the Non-Assignable Insurance Products or Assignable Insurance Products, and (ii) commencing on the fifth anniversary of the Closing Date, Shareholder may use the names "Campbell Companies" and "Campbell Concrete" except for the purpose of engaging in any aspect of the Business. Buyer and Parent agree that they will not so utilize the Campbell Names following the third anniversary of the Closing.

15.4 Insurance Proceeds. Following the Closing, Sellers covenant to use reasonable efforts to diligently pursue the collection of any insurance proceeds under all applicable insurance policies of Sellers with respect to any claim related to a Purchased Asset or Assumed Liability. Sellers shall forward to Buyer, immediately upon payment thereof, any insurance proceeds received by Sellers which relate to a Purchased Asset or an Assumed Liability. Buyer shall forward to Campbell, immediately upon payment thereof, any insurance proceeds received by Buyer or a Buyer Related Party which relate to an Excluded Asset or an Excluded Liability.

15.5 Administrative Support. Following the Closing, Buyer, on behalf of Sellers and at Sellers' direction, shall manage the process of the wind down of Campbell in a reasonable manner and shall provide Sellers with such assistance and any information with respect thereto as Campbell may reasonably request, which shall include, without limitation, payroll, insurance and tax assistance. As may be reasonably requested by Buyer in order for Buyer to manage the wind down process, Sellers shall cooperate with and assist Buyer and shall execute any documentation and provide any information required or advisable in connection with the wind down activities.

15.6 Assignment of Non-Assignable Insurance Products. Following the Closing, Shareholder, Campbell, Buyer and Parent shall use commercially reasonable efforts to obtain consent to the assignment to Buyer of the Non-Assignable Insurance Products. If the consent to the assignment to Buyer of a Non-Assignable Insurance Product is obtained following the Closing, then such Non-Assignable Insurance Product shall be deemed automatically assigned to Buyer upon the receipt of such consent, and, from and after the date of such assignment such Non-Assignable Insurance Product shall be deemed to be an Assignable Insurance Product for all purposes under this Agreement.

16. CLOSING

16.1 Closing. Closing shall occur on the second business day following the satisfaction or waiver of all conditions precedent set forth below in Sections 17 and 18, in San Francisco, California, or at such other time or place as the parties may agree upon. For purposes herein, the Closing shall be deemed to occur at 11:59 P.M. on the Closing Date.

16.2 Time is of the Essence. Time is of the essence for the Closing of this transaction.

17. CONDITIONS PRECEDENT TO BUYER'S DUTY TO CLOSE

Buyer shall have no duty to close unless and until each and every one of the following conditions precedent have been fully and completely satisfied:

17.1 No Misrepresentation or Breach of Covenants and Warranties. The representations and warranties of Sellers made in this Agreement (i) that are qualified by materiality or Material Adverse Effect shall be true and correct as of the date hereof and on and as of the Closing Date, as though made on the Closing Date, (ii) that are not qualified by materiality or Material Adverse Effect shall be true and correct in all material respects as of the date hereof and on and as of the Closing Date, as though made on the Closing Date; provided, in each case, (x) except for those representations and warranties which refer to facts existing at a specific date, and (y) except as specifically contemplated by this Agreement.

17.2 Performance of Obligations. Campbell and Shareholder shall have substantially performed or tendered performance of each and every one of their obligations hereunder which by their terms are capable of being performed before Closing.

17.3 Delivery of Closing Documents. Campbell and Shareholder shall have tendered delivery to Buyer of all the documents required to be delivered to Buyer by Campbell and Shareholder prior to or at Closing pursuant to this Agreement.

17.4 Litigation. No lawsuit, administrative proceedings or other legal action shall have been filed which seeks to restrain or enjoin the acquisition of the Purchased Assets or the operation of the Business in any material respect.

17.5 Material Adverse Effect. Except as disclosed to Buyer in this Agreement or on an Exhibit or a Schedule hereto (subject to the provisions of Section 14.8 regarding updates or supplements to the Schedules and Exhibits), there shall have been no Material Adverse Effect on the Business or the Purchased Assets subsequent to the date of this Agreement.

17.6 Key Employee Employment, Confidentiality and Noncompetition Agreements, Etc. Each of the Key Employees shall have executed and delivered a Key Employee Employment, Confidentiality and Noncompetition Agreement, and each of Susan Casterton and Steven Moscrop shall have executed and delivered a Transition and Retention Agreement.

17.7 Shareholder Consulting Agreement. The Shareholder shall have executed and delivered the Shareholder Consulting Agreement.

17.8 New Shareholder Leases. The Shareholder shall have executed and delivered the New Shareholder Leases.

17.9 HSR Waiting Period. The waiting period, if any, under the HSR Act applicable to the transactions contemplated by this Agreement shall have expired or otherwise been terminated.

17.10 Legal Opinion. Buyer shall have received a legal opinion from counsel to Campbell, in a form reasonably acceptable to Buyer.

17.11 Due Diligence. Prior to August 23, 2005, Buyer shall have performed and completed such due diligence on Campbell and the Business as it should reasonably deem appropriate, including, without limitation, business, contractual and financial reviews and audit, customer inquiries, review of employee matters, inspections, and environmental assessments to its satisfaction. On and after August 23, 2005, Buyer shall have no right to terminate this Agreement as a result of its due diligence investigation.

17.12 Approval of BMHC Board and Lenders. The Board of Directors of Building Materials Holding Corporation, and certain lenders of Building Materials Holding Corporation from whom consent is required to consummate the transactions contemplated hereby, shall have approved this Agreement and the transactions contemplated hereby.

17.13 Certificate. Campbell and Shareholder shall have delivered a certificate, dated as of the Closing, signed by an authorized officer of each Campbell Entity, certifying that the conditions set forth in Sections 17.1, 17.2, 17.4 and 17.5 have been satisfied.

18. CONDITIONS PRECEDENT TO CAMPBELL'S AND SHAREHOLDER'S DUTY TO CLOSE

Campbell and Shareholder shall have no duty to close this transaction unless and until each and every one of the following conditions precedent have been fully and completely satisfied:

18.1 No Misrepresentation or Breach of Covenants and Warranties. The representations and warranties of Buyer and Parent made in this Agreement (i) that are qualified by materiality or Material Adverse Effect shall be true and correct as of the date hereof and on and as of the Closing Date, as though made on the Closing Date, (ii) that are not qualified by materiality or Material Adverse Effect shall be true and correct in all material respects as of the date hereof and on and as of the Closing Date, as though made on the Closing Date; provided, in

each case, (x) except for those representations and warranties which refer to facts existing at a specific date, and (y) except as specifically contemplated by this Agreement.

18.2 Performance of Obligations. Buyer and Parent shall have substantially performed or tendered substantial performance of each and every one of their obligations hereunder which by their terms is capable of being performed before Closing.

18.3 Payment of Purchase Price and Delivery of Closing Documents. Buyer shall have paid the Purchase Price to Sellers and paid the Reserve to the Escrow Agent and Buyer shall have tendered delivery to Campbell and Shareholder all the documents required to be delivered to Campbell and Shareholder by Buyer and Parent at Closing pursuant to this Agreement.

18.4 Litigation. No lawsuit, administrative proceedings or other legal action shall be pending or threatened against Campbell which seeks to restrain or enjoin Campbell's sale, or Buyer's acquisition of, the Purchased Assets.

18.5 New Shareholder Leases. Buyer shall have executed and delivered the New Shareholder Leases.

18.6 Shareholder Consulting Agreement. The Buyer shall have executed and delivered the Shareholder Consulting Agreement.

18.7 HSR Waiting Period. The waiting period under the HSR Act applicable to the transactions contemplated by this Agreement shall have expired or otherwise been terminated.

18.8 Legal Opinions. Sellers shall have received legal opinions from in-house counsel and outside counsel to Buyer and Parent, in a form reasonably acceptable to Sellers.

18.9 Substitute Letters of Credit; Captive Insurance. Buyer shall have posted substitute letters of credit, in an acceptable form, in favor of the beneficiaries for whom Campbell has existing letters of credit for purposes of the Assignable Insurance Products, and the deposits related to the Assignable Insurance Products in Campbell's captive insurance company shall have been transferred to Buyer's captive insurance company.

18.10 Escrow Agreement. Sellers shall have received a fully executed Escrow Agreement.

18.11 Certificate. Buyer and Parent shall have delivered a certificate, dated as of the Closing, and signed by an authorized officer of each of Buyer and Parent, certifying that the conditions set forth in Sections 18.1, 18.2, and 18.4 have been satisfied.

19. ITEMS TO BE DELIVERED AT CLOSING BY CAMPBELL AND SHAREHOLDER

At Closing, Campbell and Shareholder shall, unless waived by Buyer, deliver the following items to Buyer:

19.1 Bill of Sale. A duly executed warranty bill of sale (in a form reasonably acceptable to Buyer) conveying the Purchased Assets to Buyer;

19.2 Assignment and Assumption Agreements. Agreements (in a form reasonably acceptable to Sellers) duly executed by each of the Shareholder and Campbell under which Campbell assigns, and Buyer assumes and agrees to fully and faithfully perform, the Contracts, Personal Property Leases and Real Property Leases;

19.3 Certified Resolutions. A copy of the resolutions of the Board of Directors and the shareholders of each Campbell Entity authorizing the execution and performance of this Agreement, certified by the secretary of Campbell;

19.4 Automobile Titles. Campbell shall have delivered to Buyer duly executed titles to the vehicles and other rolling stock included in the Equipment;

19.5 Legal Opinion. The legal opinion described in Section 17.10;

19.6 UCC Termination Statements. All Uniform Commercial Code termination or release statements necessary to transfer the Purchased Assets free and clear of all Liens;

19.7 Key Employee Employment, Confidentiality and Noncompetition Agreements, Etc. A fully executed Key Employee Employment, Confidentiality and Noncompetition Agreement from each Key Employee, and a fully executed Transition and Retention Agreement from each of Susan Casterton and Steven Moscrop;

19.8 Shareholder Consulting Agreement. Fully executed Shareholder Consulting Agreement from the Shareholder;

19.9 New Shareholder Leases. Fully executed New Shareholder Leases from the Shareholder; and

19.10 Escrow Agreement. A fully executed Escrow Agreement from Sellers.

20. ITEMS TO BE DELIVERED AT CLOSING BY BUYER AND PARENT

At Closing, Buyer shall, unless waived by Sellers, deliver the following items to Sellers:

20.1 Certified Resolutions. A copy of the resolutions of the Board of Directors of Buyer and Parent authorizing the execution and performance of this Agreement, certified by the secretary of Buyer and Parent, respectively;

20.2 New Shareholder Leases. Fully Executed New Shareholder Leases from Buyer;

20.3 Shareholder Consulting Agreement. Fully executed Shareholder Consulting Agreement from Buyer;

20.4 Assignment and Assumption Agreements. Agreements duly executed by Buyer and Sellers, providing, among other things, for the assignment of the Assumed Liabilities of Sellers to Buyer and the assumption of same by Buyer, executed by a duly authorized officer of Buyer, and all other instruments and certificates of assumption, novation and release as Sellers may reasonably request in order to effectively make Buyer responsible for all Assumed Liabilities and release Sellers therefrom to the fullest extent permitted under applicable law;

20.5 Charter Documents of Buyer and Parent. (a) A copy of Buyer's and Parent's Certificate of Incorporation certified as of a recent date by the Secretary of State of Delaware; and (b) a certificate of good standing of Buyer and Parent issued as of a recent date by the Secretary of State of Delaware;

20.6 Buyer's and Parent's Legal Opinions. Buyer shall deliver the legal opinions described in Section 18.8;

20.7 Purchase Price. The Purchase Price (less the Reserve) to be paid in accordance with Section 3.1;

20.8 Substitute Letters of Credit. The substitute letters of credit described in Section 18.9 shall be posted; and

20.9 Escrow Agreement. A fully executed Escrow Agreement from Buyer.

21. TERMINATION

21.1 Grounds for Termination. This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written agreement of all of the parties;
- (b) by Buyer or Sellers if the Closing has not been effected on or prior to the close of business on September 30, 2005; provided, however, that the right to terminate this Agreement pursuant to this Section 21.1(b) shall not be available to any party whose willful failure to fulfill any of such party's obligations contained in this Agreement has been the cause of, or resulted in, the failure of the Closing to have occurred on or prior to the aforesaid date;
- (c) by Buyer at any time upon written notice to Sellers of any one or more inaccuracies or misrepresentations in or breaches of the representations or warranties made by Sellers contained herein that have had, or if not cured prior to the Closing could be reasonably expected to have, a Material Adverse Effect on the Business, the Purchased Assets or the Assumed Liabilities, considering in the aggregate all such inaccuracies, misrepresentations and breaches which are specified in such notice; provided, however, that a termination pursuant to this Section 21.1(c) shall become effective ten (10) business days after such notice is given and only if Sellers have not cured such inaccuracies, misrepresentations and breaches so specified in such notice within such ten (10) business day period; provided, further, that, if such breach is curable within 30 days from notice to Sellers through the exercise of Sellers' commercially reasonable efforts, Buyer may not terminate this Agreement under this Section 21.1(c) until the expiration of such period without such breach having been cured (but in no event shall the preceding proviso be deemed to extend the date set forth in Section 21.1(b));
- (d) by Buyer at any time upon written notice to Sellers of the failure by Sellers to materially perform and satisfy any of Sellers' obligations under this Agreement required to be performed and satisfied by Sellers on or prior to the Closing; provided, however, that a termination pursuant to this Section 21.1(d) shall become effective ten (10) business days after such notice is given and only if Sellers have not cured the failures so specified in such

notice within such ten (10) business day period; provided that there shall be no cure period for any material breach of Section 14.9; provided, further, that, if such breach is curable within 30 days from notice to Sellers through the exercise of Sellers' commercially reasonable efforts, Buyer may not terminate this Agreement under this Section 21.1(d) until the expiration of such period without such breach having been cured (but in no event shall the preceding proviso be deemed to extend the date set forth in Section 21.1(b));

(e) by Sellers at any time upon written notice to Buyer of any one or more inaccuracies or misrepresentations in or breaches of the representations or warranties made by Buyer herein that have had or, if not cured prior to the Closing could be reasonably expected to have, a Material Adverse Effect on Buyer's ability to consummate the transactions contemplated by this Agreement, considering in the aggregate all such inaccuracies, misrepresentations and breaches which are specified in such notice; provided, however, that a termination pursuant to this Section 21.1(e) shall become effective ten (10) business days after such notice is given and only if Buyer has not cured such inaccuracies, misrepresentations and breaches so specified in such notice within such ten (10) business day period; provided, further, that, if such breach is curable within 30 days from notice to Buyer through the exercise of Buyer's commercially reasonable efforts, Sellers may not terminate this Agreement under this Section 21.1(e) until the expiration of such period without such breach having been cured (but in no event shall the preceding proviso be deemed to extend the date set forth in Section 21.1(b));

(f) by Sellers at any time upon written notice to Buyer of Buyer's material failure to perform and satisfy any of Buyer's obligations under this Agreement required to be performed and satisfied by Buyer on or prior to the Closing; provided, however, that a termination pursuant to this Section 21.1(f) shall become effective ten (10) business days after such notice is given and only if Buyer has not cured the failures so specified in such notice within such ten (10) business day period; provided, further, that, if such breach is curable within 30 days from notice to Buyer through the exercise of Buyer's commercially reasonable efforts, Sellers may not terminate this Agreement under this Section 21.1(f) until the expiration of such period without such breach having been cured (but in no event shall the preceding proviso be deemed to extend the date set forth in Section 21.1(b)); and/or

(g) by Sellers or Buyer if any applicable law shall be enacted or become applicable that makes the transactions contemplated hereby or the consummation of the Closing illegal or otherwise prohibited, or if any judgment, injunction, order or decree enjoining any party from consummating the transactions contemplated hereby is entered, and such judgment, injunction, order or decree shall become final and nonappealable; provided, however, that the right to terminate this Agreement pursuant to this Section 21.1(g) shall not be available to any party who has failed to fulfill any of such party's obligations contained in Section 14.2 of this Agreement.

21.2 Effect of Termination.

(a) Limit of Liability. If this Agreement is terminated pursuant to Section 21.1(a)-(g), all obligations of the parties hereunder shall terminate without liability of any Party to any other Party, except as provided in this Section 21.2 and Section 22.6. The representations and warranties made herein shall not survive beyond a termination of this Agreement and no party shall have any liability for breach of any representation or warranty

upon a termination of this Agreement prior to the Closing, except as provided in this Section 21.2.

(b) Alternative Transaction Payment and Buyer Termination Expenses. If, prior to the Closing, this Agreement is terminated by the mutual written agreement of all of the parties pursuant to Section 21.1(a), by Buyer pursuant to Section 21.1(b), 21.1(c) or 21.1(d) or by Sellers pursuant to Section 21.1(b), and, if at the time of such termination any of the Sellers shall have received an Acquisition Proposal, whether or not any of Sellers shall have been in breach of Section 14.9, and within six (6) months after such termination any of the Sellers shall have consummated or entered into an agreement with respect to any Acquisition Proposal, then Sellers, jointly and severally, shall be obligated to pay to Parent (by wire transfer of immediately available funds), concurrently with the consummation of such transaction, a total amount equal to \$1,000,000, plus 100% of the Expenses incurred by Buyer or the Buyer Related Parties in connection with this Agreement and all related agreements and the transactions contemplated hereby and thereby, up to a maximum amount of \$100,000 (the "Alternative Transaction Payment"). If this Agreement is terminated by Buyer pursuant to Sections 21.1(c) or 21.1(d) and the foregoing sentence is not applicable and the Alternative Transaction Payment is not payable, then upon such termination Sellers, jointly and severally, shall also be obligated to reimburse Parent (by wire transfer of immediately available funds), no later than five business days after such termination, for 100% of the Expenses incurred by Buyer or the Buyer Related Parties in connection with this Agreement and all related agreements and the transactions contemplated thereby, up to a maximum amount of \$100,000 (the "Buyer Termination Expenses").

(c) Sellers acknowledge that the agreements in Section 21.2(b) are an integral part of the transactions contemplated by this Agreement and that, without these agreements, Buyer would not enter into this Agreement. Accordingly, if Campbell or Shareholder fail promptly to pay any amount due to Parent pursuant to Section 21.2(b), Sellers also shall pay any and all Expenses incurred by Buyer or a Buyer Related Party in connection with a legal action to enforce this Agreement that results in a judgment against any of Sellers for the Alternative Transaction Payment or the Buyer Termination Expenses. Buyer and Parent acknowledge and agrees that, except for (i) any willful breaches of any of the agreements or other provisions of this Agreement prior to the termination hereof, (ii) breaches of obligations of confidentiality under this Agreement, or (iii) fraud by any of Sellers, Sellers shall not have any liability or further obligation to Buyer or the Buyer Related Parties except for the Alternative Transaction Payment or Buyer Termination Expenses (as applicable), which payment is liquidated damages to Buyer and the Buyer Related Parties, and such parties shall not be entitled to any monetary damages or injunctive relief (including specific performance) as a result of such termination, or any indemnification under Section 13.

(d) If this Agreement is terminated by Sellers pursuant to Sections 21.1(e) or 21.1(f), then upon such termination Buyer and Parent, jointly and severally, shall be obligated to reimburse Campbell (by wire transfer of immediately available funds), no later than five business days after such termination, for 100% of the Expenses incurred by Sellers or their Related Parties in connection with this Agreement and all related agreements and the transactions contemplated thereby, up to a maximum amount of \$100,000 (the "Sellers Termination Expenses"). Buyer and Parent acknowledge that the agreements in this Section 21.2(d) are an integral part of the transactions contemplated by this Agreement and that, without these agreements, Sellers would

not enter into this Agreement. Accordingly, if Buyer or Parent fails promptly to pay any amount due to Campbell pursuant to this Section 21.2(d), Sellers also shall pay any costs and expenses incurred by Sellers in connection with a legal action to enforce this Agreement that results in a judgment against Buyer for the Seller Termination Expenses. Sellers acknowledge and agree that, except for (i) any willful breaches of any of the agreements or other provisions of this Agreement prior to the termination hereof, (ii) breaches of obligations of confidentiality under this Agreement, or (iii) fraud by Buyer or Parent, Buyer and Parent shall not have any liability or further obligation to Sellers or their respective Related Parties except for the Seller Termination Expenses, which payment is liquidated damages to Sellers, and such parties shall not be entitled to any monetary damages or injunctive relief (including specific performance) as a result of such termination, or any indemnification under Section 13.

22. MISCELLANEOUS

22.1 No Other Agreements. This Agreement and all schedules and Exhibits hereto, the Escrow Agreement, the Key Employee Employment, Confidentiality and Noncompetition Agreements, the Shareholder Consulting Agreement, the New Shareholder Leases, the 2004 NDA and the 2005 NDA constitute the entire agreement between the parties with respect to its subject matter. All prior and contemporaneous negotiations, proposals and agreements between the parties are included in, and superseded by, this Agreement. Any changes to this Agreement must be agreed to in writing signed by an authorized representative of Buyer and an authorized representative of Campbell.

22.2 Waiver. Either Buyer or Sellers may waive the performance of any obligation owed to it by another party hereunder for the satisfaction of any condition precedent to the waiving party's duty to perform any of its covenants, including its obligations to close. Any such waiver shall be valid only if contained in writing signed by an authorized representative of Buyer and an authorized representative of Campbell.

22.3 Public Announcements. No public announcements of this Agreement shall be made unless Buyer and Sellers have mutually agreed on the timing, distribution and contents of such announcements, except as may be required by applicable securities laws or regulations or the requirements of any securities exchange or market.

22.4 Notices. All notices, requests, demands and other communications called for or contemplated hereunder shall be in writing and shall be deemed to have been duly given when delivered to the party to whom addressed or when received by a party if sent by telecopy (or 3 days after mailing if sent by registered or certified mail, return receipt requested, prepaid and addressed) at the following addresses, or at such other addresses as the parties may designate by written notice in the manner aforesaid:

To Campbell and Shareholder: Steven R. Campbell
9435 W Tropicana #102-230
Las Vegas, Nevada 89147

Copies to: Lawrence M. Braun, Esq.
Sheppard Mullin, Richter & Hampton LLP
333 S. Hope St., 48th Floor
Los Angeles, CA 90071
Facsimile: (213) 443-2814

To Buyer and Parent: c/o Building Materials Holding Corporation
720 Park Boulevard, Suite 200
Boise, ID 83712-7714
Attn: Paul Street, Senior VP and General Counsel

Copies to: Gregory T. Davidson
Gibson, Dunn & Crutcher LLP
1881 Page Mill Road
Palo Alto, CA 94304
Facsimile: (650) 849-5333

22.5 No Third Party Beneficiary. Nothing contained herein shall create or give rise to any third-party beneficiary rights for any individual as a result of the terms and provisions of this Agreement.

22.6 Confidential Information. The parties agree that all information acquired from the other in connection with the negotiation, execution and consummation of this Agreement is confidential and shall not be disclosed to any other party (other than attorneys, accountants and agents of the party) without the written consent of the other; provided that following the Closing Buyer may disclose information relating to the Business as it may deem necessary or advisable. Notwithstanding anything herein to the contrary, any party to this Agreement (and their employees, representatives, or other agents) may disclose to any and all persons, without limitation of any kind, the Tax treatment and Tax structure of the transactions contemplated by this Agreement (the "Transactions") and all materials of any kind (including opinions or other Tax analyses) that are provided to it relating to such Tax treatment and Tax structure; provided, however, that this sentence shall not permit any disclosure that otherwise is prohibited by this Agreement (i) until the earlier of (x) the date of the public announcement of discussion relating to the Transactions, and (v) the date of the public announcement of the Transactions; or (ii) if such disclosure would result in a violation of federal or state securities laws; or (iii) to the extent not related to the Tax aspects of the transaction. Moreover, nothing in this Agreement shall be construed to limit in any way any party's ability to consult any Tax advisor regarding the Tax treatment or Tax structure of the Transactions.

22.7 Assignment. The parties shall not assign this Agreement without the prior written consent of the other parties. Any attempt to assign this Agreement without prior written consent shall be void.

22.8 Records after Closing.

(a) Access. For a period of ten (10) years after the Closing Date and to the extent of claims pending so long as claims are still pending, Sellers and their representatives shall have reasonable access to all of the books and records of the Business (including any books and records relating to Taxes and Tax Returns of the Business), to the extent that such access

may reasonably be required by Sellers in connection with matters relating to or affected by the operations of the Business prior to the Closing Date, including Excluded Liabilities and/or Excluded Assets, the preparation of Sellers' financial reports or Tax returns, any Tax audits, the defense or prosecution of litigation (including arbitration or mediation), and any other reasonable need of Sellers to consult such books and records. Such access shall be afforded by Buyer upon receipt of reasonable advance notice and during normal business hours in a manner so as to not unreasonably interfere with the conduct of the Business. Sellers shall be exclusively responsible for any costs or expenses incurred by them pursuant to this Section 22.8(a). If any such books or records, or any other documents relating to the Business prior to the Closing Date which Sellers have the right to have access to pursuant to this Section 22.8(a) are produced by Buyer to an actual or potentially adverse party (e.g., in litigation or in connection with a government investigation), Buyer shall endeavor to make all such books, records and/or documents produced available for inspection and copying by Sellers concurrently with the production of such books, records and/or documents. In addition, if Buyer shall desire to dispose of any of such books or records prior to the expiration of such ten (10) year period, Buyer shall, prior to such disposition, give Sellers a reasonable opportunity, at Sellers' expense, to segregate and remove such books and records as Sellers may select. Buyer shall provide Sellers with reasonable assistance, at Sellers' actual expense, by providing employees to act as witnesses and preparing documents, reports and other information requested by Sellers in support of the activities described in this Section 22.8(a).

(b) Retention. Buyer agrees that Sellers may retain (i) copies of all materials made available to Buyer in the course of its investigation of the Business, together with a copy of all documents referred to in such materials, (ii) all books and records prepared in connection with the transactions contemplated by this Agreement, including bids received from others and information relating to such bids, (iii) copies of any books and records which may be relevant in connection with the defense of (A) the matters referred to in Section 13 or (B) disputes or proceedings arising under the transactions contemplated by this Agreement, with Governmental Authorities or with other third Persons, and (iv) all financial information and all other accounting books and records prepared or used in connection with the preparation of financial statements of Sellers. Any such information retained by Sellers shall be subject to the provisions of Section 22.6.

(c) Tax Audits. Buyer and Sellers shall provide reasonable assistance to each other with any tax audits or other administrative or judicial proceedings involving the Business at no cost to the other. Neither party shall, without the prior written consent of the other, unless required by applicable law, initiate any contact or voluntarily enter into any agreement with, or volunteer any information to, any taxing authorities with regard to Tax Returns or declarations of the other party. A change by either party in the method of tax reporting or the contents of Tax Returns shall not be considered a voluntary disclosure of information regarding Tax Returns or declarations of the other party.

(d) Tax Return Information. Buyer and Sellers shall furnish, at no cost to the other, such data relating to the Purchased Assets as the other party may reasonably require to prepare Tax Returns. Such data shall be made available to support the allocation made under this Agreement; provided, however, that if additional data is reasonably required by Sellers or Buyer for preparation of Tax returns or tax examinations, such additional information (including

reproduction of tax assessments and records) shall be furnished, at no cost within a reasonable time after requested in writing.

22.9 Bulk Sales Laws. The parties hereby waive compliance with the bulk sales laws of any state in which the Purchased Assets are located or in which operations relating to the Business are conducted.

22.10 Choice of Law; Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY, AND ANY DISPUTES OR CONTROVERSIES RELATED HERETO, SHALL BE INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS THAT WOULD APPLY THE LAWS OF ANY OTHER JURISDICTION. IN THE EVENT OF ANY LEGAL ACTION TO ENFORCE THE TERMS OF THIS AGREEMENT, THE LEGAL ACTION SHALL BE CONDUCTED ONLY IN LOS ANGELES COUNTY, CALIFORNIA. EACH PARTY HEREBY IRREVOCABLY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF AND VENUE IN COURTS OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, OR, IF IT HAS OR CAN ACQUIRE JURISDICTION, IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, IN ANY ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT. IN ANY LEGAL ACTION PURSUANT TO THIS AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES AND COSTS.

22.11 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

22.12 Paragraph Headings. The Section and Section paragraph headings contained herein are for convenience only and shall have no substantive bearing on the interpretation of this Agreement.

22.13 Rules of Interpretation. The following rules of interpretation shall apply to this Agreement, the Exhibits hereto, and any certificates, reports or other documents or instruments made or delivered pursuant to or in connection with this Agreement, unless otherwise expressly provided herein or therein, and unless the context hereof or thereof clearly requires otherwise:

(a) A reference to any document or agreement shall include such document or agreement as amended, modified or supplemented from time to time in accordance with its terms, and if a term is said to have the meaning assigned to such term in another document or agreement and the meaning of such terms therein is amended, modified or supplemented, then the meaning of such term herein shall be deemed automatically amended, modified or supplemented in a like manner.

(b) References to the plural include the singular, the singular the plural and the part the whole.


- (c) The words "include," "includes," and "including" are not limiting.
- (d) A reference to any law includes any amendment or modification to such law which is in effect on the relevant date.
- (e) A reference to any person or entity includes its successors, heirs and permitted assigns.
- (f) Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for purposes of this Agreement or any Exhibit hereto or certificate, report or other document or instrument made or delivered pursuant to or in connection with this Agreement, such determination or computation shall be done in accordance with GAAP at the time in effect, to the extent applicable, except where such principles are inconsistent with the express requirements hereof or of such exhibit, certificate, report, document or instrument.
- (g) The words "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- (h) All Schedules and Exhibits to this Agreement constitute material terms of this Agreement and are incorporated fully into the terms of this Agreement. All information disclosed in a Schedule or Exhibit shall be deemed disclosed under and incorporated into any other Schedule or Exhibit to which it is expressly cross-referenced and to the extent a matter in such Schedule or Exhibit is disclosed in such a way as to make its relevance readily apparent.

22.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, but which shall together constitute but one agreement.


The parties have executed this Purchase and Sale Agreement on the day and year first written above.

CAMPBELL:


CAMPBELL CONCRETE OF NEVADA, INC.

By: 
Name: Steven R. Campbell
Title: Pres.


CAMPBELL CONCRETE OF CALIFORNIA, INC.

By: 
Name: Steven R. Campbell
Title: Pres.


CAMPBELL CONCRETE OF ARIZONA, INC.

By: 
Name: Steven R. Campbell
Title: Pres.


CAMPBELL CONCRETE, INC.

By: 
Name: Steven R. Campbell
Title: Pres.

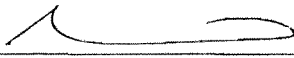
CAMPBELL CONCRETE OF NORTHERN
CALIFORNIA, INC.

By: 
Name: Steven R. Campbell
Title: Pres.

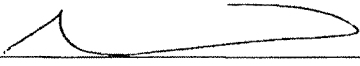
STERLING TRENCHING, INC.

By: 
Name: Steven R. Campbell
Title: Pres.


SR CAMPBELL PLUMBING OF CALIFORNIA,
INC.

By: 
Name: Steven R. Campbell
Title: Pres.


SR CAMPBELL PLUMBING OF NEVADA, INC.

By: 
Name: Steven R. Campbell
Title: Pres.


SRC ENTERPRISES, INC.

By: 
Name: Steven R. Campbell
Title: Pres.

SOUTHWEST MANAGEMENT, INC.

By: 
Name: Steven R. Campbell
Title: Pres.

SHAREHOLDER:


Steven R. Campbell

BUYER:

C CONSTRUCTION, INC.

By: Michael Mahre
Name: Michael Mahre
Title: President

PARENT:

BMC CONSTRUCTION, INC.

By: Michael Mahre
Name: Michael Mahre
Title: CEO

INDUSTRIAL REAL ESTATE LEASE

BY AND BETWEEN

SRC POLARIS, LLC
a Nevada limited liability company

"LANDLORD"

AND

C CONSTRUCTION, INC.
a Delaware corporation

"TENANT"

"Polaris Facility"

TABLE OF CONTENTS

1.	Terms and Definitions.....	1
2.	Premises	2
3.	Term	2
4.	Possession.	2
5.	Basic Rent	3
6.	Additional Rent	3
7.	Security Deposit.....	4
8.	Us	5
9.	Payments and Notices.	6
10.	Brokers.....	6
11.	Holding Over	6
12.	Taxes on Tenant's Property	7
13.	Condition of Premise	7
14.	Alterations.....	7
15.	Condition, Repair, Replacement and Maintenance of the Premises.....	10
16.	Liens.....	11
17.	Entry by Landlord	11
18.	Utilities.....	12
19.	Indemnification	12
20.	Hazardous Materials.	12
21.	Insurance.	16
22.	Damage or Destruction.	18
23.	Eminent Domain.	19
24.	Bankruptcy	20

25.	Defaults and Remedies	20
26.	Assignment and Subletting	22
27.	Quiet Enjoyment	23
28.	Subordination	24
29.	Estoppel Certificate	24
30.	Rules and Regulations	25
31.	Choice of Law	25
32.	Successors and Assigns	25
33.	Surrender of Premises	25
34.	Professional Fees	25
35.	Performance by Tenant	25
36.	Mortgage and Senior Lessor Protection	26
37.	Definition of Landlord	26
38.	Waiver	26
39.	Identification of Tenant	26
40.	Parking and Transportation	27
41.	Terms and Headings	27
42.	Examination of Lease	27
43.	Time	27
44.	Prior Agreement; Amendments	27
45.	Severability	27
46.	Recording	27
47.	Limitation on Liability	27
48.	Riders	28
49.	Signs	28

50.	Modification for Lender.....	28
51.	Accord and Satisfaction	28
52.	Financial Statements	28
53.	Tenant as Corporation.....	29
54.	No Partnership or Joint Venture	29
55.	Confidentiality	29
56.	Waiver of Jury Trial.....	29

LIST OF EXHIBITS/RIDERS

Exhibit/Rider

"A" Legal Description of Premises

"B" Sample Form of Notice of Lease Term Dates

"C" Sample Form of Tenant Estoppel Certificate

Rider No. 1 – Option to Renew Lease

Rider No. 2 – Guaranty

INDUSTRIAL REAL ESTATE LEASE

THIS INDUSTRIAL REAL ESTATE LEASE (the "Lease") is made as of the 31st day of August, 2005, by and between Landlord and Tenant.

WITNESSETH:

1. Terms and Definitions.

For the purposes of this Lease, the following terms shall have the following definitions and meanings:

(a) **Landlord:** SRC Polaris, LLC, a Nevada limited liability company

(b) **Landlord's Address:**

7912 West Sahara,
Las Vegas, NV 89117
Attn: Mr. Steve Campbell

(c) **Tenant:** C Construction, Inc., a Delaware corporation.

(d) **Tenant's Address:**

5201 S. Polaris Avenue
Las Vegas, NV 89118
Attn: Chief Financial Officer

Copy to:

BMHC
720 Park Blvd., Suite 200
Boise, ID 83712
Attn: Paul S. Street, Senior Vice President,
Chief Administrative Officer, General Counsel
and Corporate Secretary

(e) **Premises Address:** 5201 S. Polaris, Las Vegas, NV 89118.

(f) **Premises:** Those certain premises defined in Subparagraph 2(a) herein
below.

(g) **Term:** Four (4) years, with one (1) option to extend for one (1) additional
year.

(h) **Commencement Date:** September 1, 2005.

(i) **Basic Rent:** Nineteen Thousand and no/100 Dollars (\$19,000.00) per month, subject to increase as hereinafter provided.

(j) **Permitted Use:** Office, storage yard, mechanical shop and related warehouse operations.

(k) **Intentionally Omitted**

(l) **Intentionally Omitted**

(m) **Exhibits:** "A" through "D" inclusive, which Exhibits are attached to this Lease and are incorporated herein by this reference.

(n) **Initial Security Deposit:** "Initial Security Deposit" shall mean the sum equal to the first month's rent.

(o) **Guarantor.** BMC Construction, Inc., a Delaware corporation

(p) **Riders:** Rider No. 1 - Option to Renew and Rider No. 2 - Guarantee, which Riders are attached to this Lease.

2. **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the parcel of real property legally described on Exhibit "A" attached hereto, and all improvements from time to time located thereon (the "**Premises**"). The parties hereto agree that said letting and hiring is upon and subject to the terms, covenants and conditions herein set forth and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants and conditions by it to be kept and performed and that this Lease is made upon the condition of such performance.

3. **Term.** The Term of this Lease shall be for the period designated in Subparagraph 1(g) commencing on the Commencement Date, and ending on the expiration of such period, unless such Term shall be sooner terminated or extended as hereinafter provided. The Commencement Date and the date upon which the Term of this Lease shall end shall be determined in accordance with the provisions of Subparagraph 1(h) and said dates will be specified in Landlord's Notice of Lease Term Dates ("**Notice**"), in the form of Exhibit "C" attached hereto, and shall be served upon Tenant as provided in Paragraph 9, after Landlord delivers or tenders possession of the Premises to Tenant. The Notice shall be binding upon Tenant unless Tenant objects to the Notice in writing, served upon Landlord as provided for in Paragraph 9 hereof, within five (5) days of Tenant's receipt of the Notice.

4. **Possession.** Landlord will be deemed to have delivered to Tenant possession of the Premises in its "as is" condition as of the Commencement Date. Tenant agrees that in the event of the inability of Landlord to deliver possession of the Premises to Tenant on the fixed date component of the Commencement Date, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom.

5. **Basic Rent.**

(a) Tenant agrees to pay Landlord as Basic Rent for the Premises the Basic Rent designated in Subparagraph 1(j) in advance on the first day of each and every calendar month during the Term, except that the first full month's Basic Rent shall be paid upon the execution hereof. In the event the Term of this Lease commences or ends on a day other than the first day of a calendar month, then the Basic Rent for such periods shall be prorated in the proportion that the number of days this Lease is in effect during such periods bears to thirty (30), and such rental shall be paid at the commencement of such periods. In addition to said Basic Rent, Tenant agrees to pay the Additional Rent (as hereinafter defined) as and when hereinafter provided in this Lease. Said Basic Rent shall be paid to Landlord, without any prior demand therefor and without any deduction or offset whatsoever, in lawful money of the United States of America, which shall be legal tender at the time of payment, at the address of Landlord designated in Subparagraph 1(b) or to such other person or at such other place as Landlord may from time to time designate in writing.

(b) The Basic Rent shall be increased on the first day of the thirteenth (13th) month of the Term and on each annual anniversary thereof during the Term (the "Adjustment Month") by an amount equal to three percent (3%) of the Basic Rent in effect immediately prior to a respective Adjustment Month. Landlord shall notify Tenant of each increase by delivering a written statement setting forth the new amount of the Basic Rent. Tenant shall pay the new Basic Rent from its effective date until the next periodic increase.

6. **Additional Rent.**

(a) In addition to paying the Basic Rent as provided in Article 5 of this Lease, Tenant shall pay Real Property Taxes (as hereinafter defined) for the Premises as hereinafter provided. Such payments by Tenant, together with any and all other amounts payable by Tenant pursuant to the terms of this Lease, including, without limitation, payments for repairs, are hereinafter collectively referred to as the "**Additional Rent**". and the Basic Rent and the Additional Rent are sometimes herein collectively referred to as "**Rent**." Without limitation on any other obligations of Tenant which survive the expiration of the Term, the obligations of Tenant to pay Additional Rent which accrues during the Term shall survive the expiration of the Term. Landlord and Tenant acknowledge that it is their intent and agreement that this Lease be a "**TRIPLE NET**" lease and that as such, the provisions contained in this Lease are intended to pass on to Tenant or reimburse Landlord for all costs and expenses associated with this Lease and the Premises, and Tenant's operation therefrom. To the extent such costs and expenses payable by Tenant cannot be charged directly to, and paid by, Tenant, such costs and expenses shall initially be paid by Landlord and thereafter be reimbursed by Tenant.

(b) Tenant shall pay, directly to the taxing authority as and when due all Real Property Taxes applicable to the Premises and payable during the period beginning on the Commencement Date and continuing thereafter throughout the Term (including extensions). Landlord shall be responsible for the payment of any installment of Real Property Taxes applicable to the Premises coming due prior to the Commencement Date. Tenant shall, upon Landlord's request, furnish Landlord with satisfactory evidence of payment of Real Property Taxes which are the responsibility of Tenant hereunder. If Tenant shall fail to pay any Real

Property Taxes as and when due, Landlord may pay such Real Property Taxes on behalf of Tenant, and Tenant shall reimburse Landlord for the total amount thereof including penalties and interest charged by the taxing authority due to Tenant's failure to make timely payment, immediately upon demand.

(c) As used herein, the term "**Real Property Taxes**" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, charge, penalty, tax or similar imposition imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof. as against any legal or equitable interest of Landlord in the Premises. including, but not limited to, the following:

(i) any tax on Landlord's "right" to rent or "right" to other income from the Premises or as against Landlord's business of leasing the Premises;

(ii) any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of Real Property Taxes, recognizing that Real Property Taxes shall also include any governmental or private assessments or contributions towards a governmental or private cost/sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies, and it is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies and charges be included within the definition of Real Property Taxes for the purposes of this Lease, including, without limitation, those calculated to increase tax increments to governmental agencies or to pay for such services as fire protection, street, sidewalk and road maintenance, refuse removal or other governmental services -which may have been formerly provided without charge to property owners or occupants;

(iii) any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises or the Rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the State, city or federal government, or any political subdivision thereof, with respect to the receipt of such Rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof;

(iv) any assessment, tax, fee, levy or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; or

(v) any assessment, fee, levy or charge by any governmental agency related to any transportation plan, fund or system instituted within the geographic area of which the Premises are a part.

Notwithstanding any provision of this Paragraph 6(e) expressed or implied to the contrary, Real Property Taxes shall not include Landlord's federal or state income, franchise, inheritance or estate taxes.

7. Security Deposit.

. Upon execution of this Lease, Tenant shall deposit with Landlord a cash security deposit (the "**Security Deposit**") in the amount of the Initial Security Deposit. The Security Deposit shall be held by Landlord without liability for interest and as security- for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of damages caused by Tenant in case of default by Tenant. Landlord may commingle the Security Deposit With Landlord's other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearage of Rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant. If Landlord transfers its interest in the Premises during the Term of this Lease (including extensions), Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit to Tenant. Each time the Basic Rent is increased, Tenant shall, on or before the date that the first increased Basic Rent payment is due, deposit additional funds with Landlord sufficient to increase the Security Deposit to an amount which bears the same relationship to the adjusted Basic Rent as the Initial Security Deposit bore to the initial Basic Rent.

8. Use. Tenant shall use the Premises for the use specified in Subparagraph 1(k), and shall not use or permit the Premises to be used for any other purpose. Tenant shall not use or occupy the Premises in violation of such Rules and Regulations as Landlord may from time to time reasonably adopt for the safety, care and cleanliness of the Premises or of any recorded covenants, conditions and restrictions ("**CC&Rs**") affecting the Premises or of any law or of the Certificate of Occupancy issued for the Premises including, without limitation, the Americans With Disabilities Act, 104 Stat. 327, 42 United States Code § 12101, et. seq., as amended from time to time (the "**ADA**"), and shall, upon five (5) days written notice from Landlord, discontinue any use of the Premises which is in violation of any CC&Rs or is declared by any governmental authority having jurisdiction to be a violation of any law or of said Certificate of Occupancy. Tenant shall make such repairs or alterations to the Premises as may be required to comply with the ADA during the Term, and as a condition to effective vacation of the Premises. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Premises. Tenant shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or with respect to the use or occupation thereof. Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Premises and/or property located therein and shall comply with all rules, orders, regulations and requirements of the any applicable fire rating bureau or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord as Additional Rent for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Paragraph 8. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises and shall keep the Premises in first class repair and appearance. Tenant shall not place a load upon the Premises exceeding the average

pounds of live load per square foot of floor area specified for the Premises by Landlord's architect, with the partitions to be considered part of the live load. Landlord reserves the right to prescribe the weight and position of all safes, files and heavy equipment which Tenant desires to place in the Premises so as to distribute properly the weight thereof.

9. **Payments and Notices.**

(a) All Rents and other sums payable by Tenant to Landlord hereunder shall be paid to Landlord at the address designated by Landlord in Subparagraph 1(b) above or at such other places as Landlord may hereafter designate in writing. Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery or by mail, and if given by mail shall be deemed sufficiently given if sent by registered or certified mail addressed to Tenant at the address designated in Subparagraph 1(d) or to Landlord at both of the addressees designated in Subparagraph 1(b). Either party may by written notice to the other specify a different address for notice purposes. If more than one person or entity constitutes the "Tenant" under this Lease, service of any notice upon any one of said person or entities shall be deemed as service upon all of said persons or entities.

(b) Tenant acknowledges that the late payment by Tenant to Landlord of any sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any monthly installment of Basic Rent is not received by Landlord by the date when due, or if Tenant fails to pay any other sum of money due hereunder and such failure continues for ten (10) days after notice thereof by Landlord, Tenant shall pay to Landlord, as Additional Rent, the sum of five percent (5%) of the overdue amount as a late charge. Such overdue amount shall also bear interest, as Additional Rent, at fifteen percent (15%) per annum calculated, as appropriate, from the date either (a) the monthly installment of Basic Rent is due, or (b) of receipt of said notice, until the date of payment to Landlord. Landlord's acceptance of any late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or any law now or hereafter in effect. If the interest rate specified in this Lease is higher than the maximum rate permitted by applicable law, such interest rate is hereby reduced to such maximum interest rate permitted by applicable law.

10. **Brokers.** Tenant represents and warrants to Landlord, that no broker, leasing agent or finder has been engaged by it in connection with any of the transactions contemplated by this Lease, or to its knowledge is in anyway connected with any of such transactions. In the event of any claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Lease, Tenant shall indemnify, save harmless and defend Landlord from and against such claims.

11. **Holding Over.** If Tenant holds over after the expiration or earlier termination of the Term hereof without the express, written consent of Landlord, Tenant shall become a tenant at sufferance only, at a rental rate equal to two hundred percent (200%) of the Basic Rent which would be applicable to the Premises upon the date of such expiration, and otherwise subject to

the terms, covenants and conditions herein specified, so far as applicable. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a holdover hereunder or result in a renewal. The foregoing provisions of this Paragraph 11 are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration or earlier termination of this Lease despite demand to do so by Landlord; Tenant shall indemnify and hold Landlord harmless from all loss or liability, including without limitation, any claim made by any succeeding tenant founded on or resulting from such failure to surrender.

12. **Taxes on Tenant's Property.** Tenant shall be liable for and shall pay at least ten (10) days before delinquency, taxes levied against any personal property or trade fixtures placed by Tenant in or about the Premises. If an such taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property or if the assessed value of the Premises is increased by the inclusion therein of a value placed upon such personal property or trade fixtures of Tenant and if Landlord, after written notice to Tenant, pays the taxes based upon such increased assessments which Landlord shall have the right to do regardless of the validity thereof, but only under proper protest if requested by Tenant, Tenant shall upon demand repay to Landlord the taxes levied against Landlord, or the proportion of such taxes resulting from such increase in the assessment, provided that in any such event, at Tenant's sole cost and expense, Tenant shall have the right, in the name of Landlord and with Landlord's full cooperation, to bring suit in any court of competent jurisdiction to recover the amount of any such taxes so paid under protest, any amount so recovered to belong to Tenant.

13. **Condition of Premises**

Tenant acknowledges that neither Landlord nor its agents or employees have made any representations or warranties as to the compliance or lack of compliance of the Premises with applicable laws.

14. **Alterations.**

(a) Tenant may, at any time and from time to time during the Term of this Lease but subject to Landlord's approval pursuant to Subparagraph 14(b), at its sole cost and expense, make alterations, additions, installations, substitutions, improvements and decorations (hereinafter collectively called ("**Changes**") in and to the Premises, excluding structural changes, on the following conditions, and providing such Changes will not result in a violation of or require a change in the Certificate of Occupant (or its equivalent) applicable to the Premises:

(i) The outside appearance, character or use of the Premises shall not be affected, and no Changes shall weaken or impair the structural strength or, in the sole opinion of Landlord, lessen the value of the Premises or create the potential for unusual expenses to be incurred upon the removal of Changes and the restoration of the Premises upon the termination of this Lease.

(ii) The proper functioning of any of the mechanical, electrical, sanitary and other service systems or installations of the Premises ("**Service Facilities**") shall not

be adversely affected and there shall be no construction which might interfere with Landlord's free access to the Service Facilities.

(iii) In performing the work involved in making such Changes, Tenant shall be bound by and observe all of the conditions and covenants contained in this Paragraph 14.

(iv) All work shall be done at such times and in such manner as Landlord from time to time may reasonably designate.

(v) Tenant shall not be permitted to install and make part of the Premises any materials, fixtures or articles which are subject to liens, conditional sales contracts or chattel mortgages.

(vi) At the date upon which the Term of this Lease shall end, or the date of any earlier termination of this Lease, Tenant shall on Landlord's written request restore the Premises to their condition prior to the making of any Changes permitted by this Paragraph 14, reasonable wear and tear excepted.

(b) Before proceeding with any Change (exclusive of Changes to items constituting Tenant's personal property), Tenant shall submit to Landlord, for Landlord's written approval, plans and specifications, including any applicable mechanical, electrical and plumbing drawings, for the work to be done. Landlord's approval shall not be unreasonably withheld. If Landlord shall disapprove of any of Tenant's plans, Tenant shall be advised of the reasons for such disapproval. In any event, Tenant agrees to pay to Landlord, as Additional Rent, the reasonable cost of Landlord's third party consultants for review of such plans and specifications, immediately upon receipt of invoices either from Landlord or such consultants. Landlord's approval of the plans and specifications shall create no responsibility or liability on the part of landlord for their completeness, design sufficiency, or compliance with applicable laws or regulations. Any Change for which approval has been received shall be performed strictly in accordance with the approved plans and specifications, and no amendments or additions to such plans and specifications shall be made without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Following construction of the work, Tenant shall prepare or cause to be prepared, at Tenant's expense, a "record set" of as-built plans reflecting the actual construction of the work.

(c) After Landlord's written approval has been sent to Tenant, Tenant shall enter into an agreement for the performance of the work to be done pursuant to this Paragraph 14 with a contractor reasonably approved by Landlord. However, the general contractor shall be required to retain Landlord's subcontractors for any HVAC, electrical and/or fire/life safety work. All costs and expenses incurred in Changes shall be paid by Tenant within seven (7) days after each billing by any such contractor or contractors. Tenant's contractors shall obtain on behalf of Tenant and at Tenant's sole cost and expense, (1) all necessary governmental permits and certificates for the commencement and prosecution of Tenant's Changes and for final approval thereof upon completion, and (ii) a completion and lien indemnity bond, or other surety, satisfactory to Landlord, for the Changes. In the event Tenant shall request any changes in the work to be performed after the submission of the plans referred to in this Paragraph 14,

such changes shall be subject to the same approvals and notices as the Changes initially submitted by Tenant.

(d) All Changes and the performance thereof shall at all times comply with (i) all laws, rules, orders, ordinances, directions, regulations and requirements of all governmental authorities, agencies, offices, departments, bureaus and boards having jurisdiction thereof, (ii) all rules, orders, directions, regulations and requirements of any applicable fire rating bureau, or of any similar insurance body or bodies, and (iii) all rules and regulations of Landlord, and Tenant shall cause Changes to be performed in compliance therewith and in good and first class workmanlike manner, using materials and equipment at least equal in quality to the original installations of the Premises. Changes shall be performed in such manner as not to delay or impose any additional expense upon Landlord in construction, maintenance or operation of the Premises, and shall be performed by contractors or mechanics approved by Landlord pursuant to this Paragraph 14, who shall coordinate their work in cooperation with any other work being performed by Landlord with respect to the Premises. Throughout the performance of Changes, Tenant, at its expense, shall carry, or cause to be carried, worker's compensation insurance in statutory limits, and general liability insurance for any occurrence in or about the Premises, of which Landlord and its managing agent shall be named as additional parties insured, in such limits as Landlord may reasonably prescribe. Such policies shall comply with Paragraph 21(b) hereof.

(e) Tenant further covenants and agrees that any mechanic's lien filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to Tenant, will be discharged by Tenant, by bond or otherwise, within ten (10) days after the filing thereof, at the cost and expense of Tenant. All alterations, decorations, additions or improvements upon the Premises, by either party, including (without limiting the generality of the foregoing) all wallcovering, built-in cabinet work, paneling and the like, shall, unless Landlord elects otherwise, become the property of Landlord, and shall remain upon, and be surrendered with the Premises, as a part thereof, at the end of the Term hereof, except that Landlord may by written notice to Tenant, given at least thirty (30) days prior to the end of the Term, require Tenant to remove all partitions, counters, railings and the like installed by Tenant, and Tenant shall repair any damage to the Premises arising from such removal or, at Landlord's option, shall pay to the Landlord all of Landlord's costs of such removal and repair.

(f) All articles of personal property and all business and trade fixtures, machinery and equipment, furniture and movable partitions owned by Tenant or installed by Tenant at its expense in the Premises shall be and remain the property of Tenant and may be removed by Tenant at any time during the lease Term provided Tenant is not in default hereunder, and provided further that Tenant shall repair any damage caused by such removal. If Tenant shall fail to remove all of its effects from said Premises upon termination of this Lease for any cause whatsoever, Landlord may, at its option, remove the same in any manner that Landlord shall choose, and store said effects without liability to Tenant for loss thereof, and Tenant agrees to pay Landlord upon demand any and all expenses incurred in such removal, including court costs and attorney's fees and storage charges on such effects for any length of time that the same shall be in Landlord's possession or Landlord may, at its option, without notice, sell said effects, or any of the same, at private sale and without legal process, for such price as Landlord may obtain and apply the proceeds of such sale to any amounts due under this

Lease from Tenant to Landlord and to the expense incident to the removal and sale of said effects.

(g) Nothing contained in this Paragraph 14 shall be deemed to relieve Tenant of any duty, obligation or liability with respect to making any repair, replacement or improvement or complying with any laws, order or requirement of any government or other authority and nothing contained in this Paragraph 14 shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever, for the care, supervision or repair of the Premises or any part thereof other than as otherwise provided in this Lease.

15. **Condition, Repair, Replacement and Maintenance of the Premises.**

(a) **Condition of the Premises.** Tenant acknowledges examining the Premises prior to the commencement of the Lease Term and that Tenant is fully familiar with the condition of the Premises. Tenant enters into the Lease without any representations or warranties on the part of Landlord, express or implied, as to the condition of the Premises, including, but not limited to, the cost of operations and the condition of its fixtures, improvements and systems.

(b) **Tenant's Obligations.**

(i) **Tenant's Maintenance.** Tenant shall, at Tenant's own expense, maintain, keep in good condition, repair and make replacements, foreseen and unforeseen, ordinary and extraordinary, structural and non-structural, to the exterior of the building on the Premises (including, but not limited to, the roof, roof system, windows and doors) and interior of the building on the Premises (including, but not limited to, the plumbing system, the sprinkler system, if any, the heating system, the air conditioning system if any, the electric system and any other system of the building on the Premises), and the driveways, parking areas, shrubbery and lawn on the Premises, and at the expiration or other sooner termination of the Lease Term, deliver them up in good order and condition and broom clean.

(ii) **Damage Caused by Tenant.** Notwithstanding any contrary provisions set forth in this Lease, any damage to the Premises, including, but not limited to, the building or its systems, or the improvements, caused by Tenant or a "Tenant Representative" (as defined below), shall be promptly repaired or replaced to its former condition by Tenant, as required by Landlord, at Tenant's own expense. The term "Tenant Representative" shall mean any shareholder, officer, director, member, partner, employee, agent, licensee, assignee, sublessee or invitee of Tenant, or any third party other than Landlord.

(iii) **Tenant to Keep Premises Clean.** In addition to the foregoing, and not in limitation of it, Tenant shall also, at Tenant's own expense, undertake all replacement of all plate glass and light bulbs, fluorescent tubes and ballasts, and decorating, redecorating and cleaning of the interior of the Premises, and shall keep and maintain the Premises in a clean condition, free from debris, trash refuse, snow and ice.

(iv) **Tenant's Negative Covenants.** Tenant shall not injure, deface, permit waste nor otherwise harm any part of the Premises, permit any nuisance at the Premises, permit the emission of any objectionable noise or odor from the Premises, place a load on the floor on the Premises exceeding the floor load per square foot the floor was designed to carry, or

install, operate or maintain any electrical equipment in the Premises that shall not bear an underwriters approval.

(v) Maintenance/Service Contract. Tenant shall, at Tenant's own expense, enter into a maintenance/service contract with a maintenance contractor, which shall provide for regularly scheduled servicing of all hot water, heating, ventilation and air conditioning systems and equipment in the Premises. The maintenance contractor and the maintenance/service contract shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld. The maintenance/service contract shall include, without limitation, all servicing suggested by the manufacturer, within the operations/maintenance manual pertaining to such system and/or equipment, and shall be effective (and a copy thereof delivered to Landlord) no later than thirty (30) days after the commencement date of this Lease.

16. Liens. Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against the real property of which the Premises form a part nor against the Tenant's leasehold interest in the Premises. Landlord shall have the right at all reasonable times to post and keep posted on the Premises any notices which it deems necessary for protection from such liens. If any such liens are filed and are not discharged by Tenant by bond or otherwise within ten (10) days after the filing thereof, Landlord may, without waiving its rights and remedies based on such breach of Tenant and without releasing Tenant from any of its obligations, cause such liens to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Tenant shall pay to Landlord at once, upon notice by Landlord, any sum paid by Landlord to remove such liens, together with interest at fifteen percent (15%) per annum from the date of such payment by Landlord. If the interest rate specified in this Lease is higher than the maximum rate permitted by applicable law, such interest rate is hereby reduced to such maximum interest rate permitted by applicable law.

17. Entry by Landlord. Landlord reserves and shall at any and all times have the right to enter the Premises to inspect the same, to supply any service to be provided by Landlord to Tenant hereunder, to submit said Premises to prospective purchasers or, during the last twelve (12) months of the Term of this Lease, to prospective tenants, to post notices of nonresponsibility, or to repair the Premises, all without being deemed guilty of any eviction of Tenant and without abatement of rent, and may, in order to carry out such purposes, erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, provided that the business of Tenant shall be interfered with as little as is reasonably practicable. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safe, and Landlord shall have the means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof, and any damages caused on account thereof shall be paid by Tenant. It is understood and agreed that no provision of this Lease shall be construed as obligating Landlord to perform any repairs, alterations or decoration except as otherwise expressly agreed herein to

be performed by Landlord. Landlord shall attempt in the exercise of its rights under this Paragraph 17 to minimize any disturbance of Tenant's use and possession of the Premises and to provide as much notice to Tenant as may be reasonably possible prior to any such exercise of Landlord's rights under this Paragraph 17.

18. **Utilities.**

(a) **Utilities.** During the Term, Tenant shall provide in the Premises at its own expense, water, gas, electricity, sewer, and other necessary utilities and services, and Tenant shall make payment directly to the entities providing such utilities and services.

(b) **Interruption of Utilities.** Tenant agrees that Landlord shall not be liable for damages, by abatement of rent or otherwise, for failure, delay, diminution or interruption of any utilities or services for any reason, and such failure, delay, diminution or interruption shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for any injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to any such failure, delay, diminution or interruption of such utilities or services.

19. **Indemnification.** To the fullest extent permitted by law Tenant hereby agrees to defend, indemnify and hold Landlord harmless against and from any and all claims arising from Tenant's use of the Premises or the conduct of its business or from any activity, work, or thing done, permitted or suffered by Tenant, its agents, contractors, employees or invitees in or about the Premises or elsewhere, and hereby agrees to further indemnify and hold harmless Landlord against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act, neglect, fault or omission of Tenant, or of its agents, employees or invitees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in or about such claim or any action or proceeding brought thereon. In case any action or proceeding may be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord hereby agrees to defend the same at Tenant's expense by counsel approved in writing by Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause whatsoever including, without limitation, loss of or damage to any property by theft or otherwise, any injury or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or from the pipes, appliances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other patent or latent cause whatsoever.

20. **Hazardous Materials.**

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials

expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment, or the Premises; (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products or by-products thereof. Tenant shall not engage in any activity in or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Landlord and compliance in a timely manner (at Tenant's sole cost and expense) with all Applicable Requirements (as hereinafter defined). "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Premises or neighboring properties. In addition, Landlord may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Tenant upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit.

(b) **Duty to Inform Landlord.** Tenant shall obtain Landlord's written consent, which consent shall be granted or withheld in Landlord's sole discretion, to the manufacturing, processing, distribution, using, producing, treating, storing (above or below ground level), disposing of, or allowing to be present, of any other Hazardous Substance in or about the Premises except for those previously approved in writing by Landlord. In connection with each such consent requested by Tenant, Tenant shall submit to Landlord a description, including the composition, quantity and all other information requested by Landlord concerning the proposed presence of any Hazardous Substance. Landlord's consent to the presence of any Hazardous Substance may be deemed given only by inclusion of a description of the composition and quantity of the proposed Hazardous Substance on Landlord's written consent to the request. Landlord's consent to the presence of any Hazardous Substance at any time during the Term or renewal thereof shall not waive the requirement of obtaining Landlord's consent to the subsequent presence of any other, or increased quantities of, any Hazardous Substance in or about the Premises. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Landlord, Tenant shall immediately give Landlord written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance including but not limited to all such documents as may be involved in any Reportable Use involving the Premises. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system). If any Hazardous Substance is

present in or about the Premises, Landlord shall have the right upon reasonable notice to Tenant to engage a consultant to inspect the Premises and to review Tenant's use of Hazardous Substances and all of Tenant's practices with respect to such Hazardous Substances. Tenant shall cooperate in all respects with such inspections and reviews. All costs of such consultants shall be reimbursed to Landlord within fifteen (15) days of written demand by Landlord.

(c) **Indemnification.** Tenant shall indemnify, protect, defend and hold Landlord, its agents, employees, lenders and ground lessor, if any, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Tenant or by anyone under Tenant's control. Tenant's obligations hereunder shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing at the time of such agreement. Tenant's indemnity obligations as provided herein shall include, without in any way limiting the foregoing:

(i) All costs, expenses and attorneys' fees incurred or sustained by any party in making any investigation on account of any claim, demand, loss, liability, cost, charge, suit, order, judgment or adjudication, in prosecuting or defending any action brought in connection therewith, in obtaining or seeking to obtain a release therefrom and in enforcing any of the agreements herein contained;

(ii) Liability for clean up costs, fines, damages or penalties incurred pursuant to the provisions of any Applicable Requirements;

(iii) Liability for costs and expenses of abatement, correction or clean-up, fires, damages, response costs or penalties which arise from the provisions of any Applicable Requirements; and

(iv) Liability for personal injury or Premises damage arising under any statutory or common-law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance, or for the carrying on of an abnormally dangerous activity, and response costs.

(d) **Tenant's Compliance with Requirements.** Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Requirements," which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Landlord's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation,

manufacture, production, installation, maintenance, removal, transportation, storage, spill, or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Tenant shall, within five (5) days after receipt of Landlord's written request, provide Landlord with copies of all documents and information, including but not limited to permits, registrations, manifests, applications, reports and certificates, evidencing Tenant's compliance with any Applicable Requirements specified by Landlord, and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation; warning, complaint or report pertaining to or involving failure by Tenant or the Premises to comply with any Applicable Requirements. Tenant shall provide Landlord annually on each anniversary date of the Commencement Date a written certification, also signed by the manager of operations of Tenant at the Premises, certifying that:

(i) Tenant's business has been conducted in full compliance with the Applicable Requirements;

(ii) All Hazardous Substances (if any) related to Tenant's business have been disclosed to Landlord or in said certificate:

(iii) The method and frequency of off- site disposal of Hazardous Substances from the Premises, as described in the certificate, comply with the Applicable Requirements.

(e) **Inspection; Compliance with Law.** Landlord, Landlord's agents, employees, contractors and designated representatives, and any mortgagees, shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Requirements, and Landlord shall be entitled to employ experts and/or consultants in connection therewith to advise Landlord with respect to Tenant's activities, including but not limited to Tenant's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a default of this Lease by Tenant or a violation of Applicable Requirements or a contamination, caused or contributed to by Tenant, is found to exist or to be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination. In such case, Tenant shall upon request reimburse Landlord or Landlord's mortgagee, as the case may be, for the costs and expenses of such inspections.

(f) **Baseline and Exit Assessment.** Landlord has provided, or will provide to Tenant, prior to the Commencement Date, a Phase One Environmental Assessment of the Premises, (the "**Baseline Assessment**"), prepared in compliance with ASTM Standard E1527-00, which shall not include any subsurface testing unless warranted by the results of such assessment. The Baseline Assessment shall establish the environmental condition of the Premises upon the Commencement Date, and shall be deemed approved by Tenant as of the Commencement Date, subject to Landlord's separate agreement to assume responsibility for the remediation or removal of existing Hazardous Substances as disclosed in the Baseline Assessment as required by applicable laws. Tenant shall conduct an exit environmental assessment substantially the same in scope as the Baseline Assessment (the "**Exit Assessment**")

prior to the expiration or earlier termination of this Lease as a condition to Tenant's effective vacation of the Premises. The Exit Assessment shall be conducted not earlier than thirty (30) days prior to Tenant's vacation of the Premises. In the event the Exit Assessment reveals contamination not described in the Baseline Assessment, then Tenant shall promptly remediate or remove such contamination in its entirety, which obligation of Tenant shall survive the expiration or termination of this Lease. Tenant shall maintain the results of the Baseline Assessment and the Exit Assessment in strict confidence and shall not, without Landlord's prior written consent which may be withheld in its sole discretion, disclose the results thereof, or any portion thereof to any third part,, excepting Tenant's directors, officers, employees, representatives and consultants on a need-to-know basis, unless and only to the extent that Tenant is compelled under applicable law to disclose all or any portion of such assessment results. The Exit Assessment shall name the Landlord as an additional addressee and client for purposes of Landlord's ability to rely on the results thereof and a copy shall be delivered to Landlord concurrently with the delivery of the Exit Assessment to Tenant.

21. **Insurance.**

(a) Tenant at its sole cost and expense shall, during the entire Term hereof, obtain, maintain and keep in full force and effect, the following insurance:

(i) Property insurance including fire, extended coverage, vandalism, malicious mischief and all risks coverage upon property of every description and kind owned by Tenant and located in the Premises or for which Tenant is legally liable or installed by or on behalf of Tenant including, without limitation, leasehold improvements, alterations, furniture, fixtures and any other personal property, in an amount not less than one hundred percent (100%) of the full replacement cost thereof

(ii) A policy of Comprehensive Liability insurance coverage to include personal injury, broad form property damage, premises/operations, owner's protective coverage, blanket contractual liability, products and completed operations liability and owned/non-owned auto liability, in limits not less than Five Million Dollars (\$5,000,000) inclusive. Such policy shall name Landlord, Landlord's managing agent and Landlord's mortgagees as additional insureds and shall contain the following provision:

"Such insurance as afforded by this policy for the benefit of Landlord shall be primary as respects any claims, losses or liabilities arising out of the use of the Premises by the Tenant or by Tenant's operation and any insurance carried by Landlord shall be excess and non-contributing. "

(iii) Loss of income and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises as a result of such perils.

(iv) Any other form or forms of insurance as Tenant or Landlord or the mortgagees of Landlord may reasonably require from time to time in form in amounts and for insurance risks against which a prudent tenant would protect itself.

(b) All policies shall be taken out with insurers acceptable to Landlord and in form satisfactory from time to time to Landlord. Tenant agrees that certificates of insurance on the Landlord's standard form, or, if required by Landlord or the mortgagees of Landlord, certified copies of each such insurance policy, will be delivered to Landlord as soon as practicable after the placing of the required insurance, but in no event later than ten (10) days after Tenant takes possession of all or any part of the Premises, including possession taken under Paragraph 4 hereof. All policies shall contain an undertaking by the insurers to notify Landlord and the mortgagees of Landlord in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation, or other termination thereof.

(c) In the event of damage to or destruction of the Premises entitling Landlord to terminate this Lease pursuant to Paragraph 22 hereof; Tenant will immediately pay to Landlord all of Tenant's insurance proceeds relating to leasehold improvements and alterations (but not to Tenant's trade fixtures, equipment, furniture or other personal property) in the Improvements.

(d) Landlord covenants and agrees that throughout the Term, it will insure the Premises (excluding any property with respect to which Tenant is obligated to insure pursuant to the provisions of Subparagraph 21(a) above) against damage by fire and standard extended coverage perils and public liability insurance in such reasonable amounts with such reasonable deductibles as would be carried by a prudent owner of a similar building in the Las Vegas, Nevada office/warehouse space market. Landlord may, but shall not be obligated to, take out and carry any other form or forms of insurance as it or the mortgagees of Landlord may reasonably determine advisable. Tenant shall reimburse Landlord upon demand for the cost of all insurance maintained by Landlord as required or permitted by this subparagraph. Notwithstanding any contribution by Tenant to the cost of insurance premiums with respect to the Premises, as provided herein, Tenant acknowledges that it has no right to receive any proceeds from any such insurance policies carried by Landlord, although Landlord shall use such proceeds in the repair and reconstruction of the Premises unless Landlord elects to terminate this Lease pursuant to Paragraph 22. Landlord will not carry insurance of any kind on Tenant's furniture or furnishings or on any equipment of Tenant under this Lease, and Landlord shall not be obligated to repair any damage thereto or replace the same.

(e) Tenant shall promptly comply with all reasonable requirements of the insurance authority or of any insurer now or hereafter in effect relating to the Premises.

(f) If any insurance policy carried by Landlord, as provided by Subparagraph 21(d) above, shall be canceled or cancellation shall be threatened or the coverage thereunder reduced or threatened to be reduced, in any way by reason of the use or occupation of the Premises or any part thereof by Tenant or by any assignee or sub-tenant of Tenant or by anyone permitted by Tenant to be upon the Premises and, if Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation or reduction of coverage within forty-eight (48) hours after notice thereof. Landlord may, at its option enter upon the Premises and attempt to remedy such condition and Tenant shall forthwith pay the cost thereof to Landlord as Additional Rent. Landlord shall not be liable for any damage or injury caused to any property of Tenant or of others located in the Premises as a result of such entry. In the event that Landlord shall be unable to remedy such condition, then Landlord shall have all of the remedies provided for in

this Lease in the event of a default by Tenant. Notwithstanding the foregoing provisions of this Subparagraph 21(f), if Tenant fails to remedy as aforesaid, Tenant shall be in default of its obligations hereunder and Landlord shall have no obligation to attempt to remedy such default.

(g) Any policy or policies of fire, extended coverage or similar casualty insurance, which either party obtains in connection with the Premises and the insurance required to be obtained by Tenant pursuant to the provisions of Subparagraph 21 (a)(iii) above shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured prior to the occurrence of injury or loss. Landlord and Tenant waive any rights of recovery against the other for injury or loss due to hazards covered by insurance containing such a waiver of subrogation clause or endorsement to the extent of the injury or loss covered thereby.

22. **Damage or Destruction.**

(a) In the event the Premises are damaged by fire or other perils covered by insurance required to be carried by Landlord under this Lease to an extent not exceeding twenty-five percent (25%) of the full insurable value thereof and if the damage thereto is such that the Premises may be repaired, reconstructed or restored within a period of one hundred eighty (180) days from the date Landlord learns of the necessity for repairs as a result of the damage and said insurance proceeds are available and sufficient to cover the cost of such repairs, Landlord shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect. If such work of repair, reconstruction and restoration is such as to require a period longer than such one hundred eighty (180) day period or exceeds twenty-five percent (25%) of the full insurable value thereof, or if said insurance proceeds will not be sufficient to cover the cost of such repairs; Landlord either may elect to so repair, reconstruct or restore the Premises and this Lease shall continue in full force and effect or Landlord may elect not to repair, reconstruct or restore the Premises and this Lease shall in such event terminate. Under any of the conditions of this Subparagraph 22(a), Landlord shall give written notice to Tenant of its intention within sixty (60) days from the date Landlord learns of the necessity for repairs as a result of the damage. Upon the occurrence of any damage to the Premises, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance for the leasehold improvements and alterations; provided, however, that if the cost of such repair by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as assigned by Tenant, the cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's repair of the damage. In the event Landlord elects not to restore the Premises, this Lease shall be deemed to have terminated as of the date of such destruction.

(b) Upon any termination of this Lease under any of the provisions of this Paragraph 22, the parties shall be released thereby without further obligation to the other from the date possession of the Premises is surrendered to Landlord except for items which have theretofore accrued and are then unpaid.

(c) In the event of repair, reconstruction and restoration by Landlord as herein provided, the Basic Rent provided to be paid under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired during the period of such

repair, reconstruction or restoration. Tenant shall not be entitled to any compensation or damages for loss in the use of the whole or any part of the Premises and/or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

(d) Tenant shall not be released from any of its obligations under this Lease except to the extent and upon the conditions expressly stated in this Paragraph 22.

(e) In the event that damage is due to any cause other than fire or other peril covered by extended coverage insurance. Landlord may elect to terminate this Lease.

(f) It is hereby understood that if Landlord is obligated to or elects to repair or restore as herein provided. Landlord shall be obligated to make repairs or restoration only of those portions of the Premises (i) which were originally provided at Landlord's expense or (ii) which were required to be insured by Landlord hereunder or (iii) for which Landlord has received insurance proceeds from insurance required to be carried by Tenant hereunder, and the repair and restoration of all other items shall be the obligation of Tenant.

(g) Notwithstanding anything to the contrary contained in this Paragraph 22, Landlord shall not have any obligations whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Paragraph 22 occurs during the last twelve (12) months of the Term of this Lease or any extension hereof

(h) The provisions of this Lease, including this Paragraph 22, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, and any statute or regulation with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises.

(i) Tenant acknowledges that the rights of any lender holding a mortgage or deed of trust against the Premises ("Secured Lender") to any insurance proceeds applicable to the Premises shall be superior to the rights of Landlord and Tenant to such proceeds. Landlord agrees to use commercially reasonable efforts to cause the Secured Lender to make such insurance proceeds available to Landlord for reconstruction as contemplated in this Lease. If a Secured Lender will not make such proceeds available for reconstruction, and Landlord is unwilling to provide the sums necessary for reconstruction, then Landlord may elect to terminate this Lease within thirty (30) days following receipt of notice that such sums will not be made available for reconstruction.

23. Eminent Domain.

(a) In case the whole of the Premises, or such part thereof as shall substantially interfere with Tenant's use and occupancy thereof, shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking. either party- shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to said authority. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking, and Landlord shall be entitled to receive the entire amount

of any award without deduction for any estate or interest of Tenant. In the event the amount of property or the type of estate taken shall not substantially interfere with the conduct of Tenant's business, Landlord shall be entitled to the entire amount of the award without deduction for any estate or interest of Tenant, and Landlord at its option may terminate this Lease. If Landlord does not so elect, Landlord shall promptly proceed to restore the Premises to substantially their same condition prior to such partial taking, and a proportionate allowance shall be made to Tenant for the Basic Rent corresponding to the time during which, and to the part of the Premises of which, Tenant shall be so deprived on account of such taking and restoration. Nothing contained in this Paragraph shall be deemed to give Landlord any interest in any award separately made to Tenant for the taking of personal property and trade fixtures belonging to Tenant or for moving costs incurred by Tenant in relocating Tenant's business.

(b) In the event of taking of the Premises or any part thereof for temporary use, (i) this Lease shall be and remain unaffected thereby and rent shall not abate, and (ii) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term, provided that if such taking shall remain in force at the expiration or earlier termination of this Lease, Tenant shall then pay to Landlord a sum equal to the reasonable cost of performing Tenant's obligations under Paragraph 33 with respect to surrender of the Premises and upon such payment shall be excused from such obligations. For purposes of this Subparagraph 23(b), a temporary taking shall be defined as a taking for a period of two hundred seventy (270) days or less.

24. **Bankruptcy.** If Tenant shall file a petition in bankruptcy under federal bankruptcy law as then in effect, or if Tenant is adjudicated a bankrupt in involuntary bankruptcy proceedings and such adjudication shall not have been vacated within thirty (30) days from the date thereof, or if a receiver or trustee be appointed of Tenant's property and the order appointing such receiver or trustee not be set aside or vacated within thirty (30) days after the entry thereof, or if Tenant shall assign Tenant's estate or effects for the benefit of creditors, or if this Lease shall otherwise by operation of law pass to any persons other than Tenant, then and in any such event Landlord may, if Landlord so elects, with or without notice of such election and with or without entry or action by Landlord, forthwith terminate this Lease, and notwithstanding any other provisions of this Lease, Landlord, in addition to any and all rights and remedies allowed by law or equity, shall upon such termination be entitled to recover damages in the amount provided in Subparagraph 25(b) below and neither Tenant nor any person claiming through or under Tenant or by virtue of any statute or order of any court shall be entitled to possession of the Premises but shall forthwith quit and surrender the Premises to Landlord. Nothing herein contained shall limit or prejudice the right of Landlord to prove and obtain as damages by reason of any such termination an amount equal to the maximum allowed by any statute or rule of law in effect at the time when and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of damages recoverable under the provisions of this Paragraph 24.

25. **Defaults and Remedies.**

(a) The occurrence of any one or more of the following events shall constitute a default hereunder by Tenant:

(i) The vacation or abandonment of the Premises by Tenant. Abandonment is herein defined to include, but is not limited to, any absence by Tenant from the Premises for five (5) days or longer.

(ii) The failure by Tenant to make any payment of Basic Rent as when due or any Additional Rent or any other payment required to be made by Tenant hereunder; as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant provided however, that any such notice shall be in lieu of, and not in addition to, any notice required under applicable law.

(iii) The failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Subparagraph 25(a)(i) or (ii) above, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant; provided, however, that any such notice shall be in lieu of and not in addition to, any notice required under applicable law; provided, further, that if the nature of Tenant's default is such that more than ten (10) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said ten (10) day period and thereafter diligently prosecute such cure to completion, which completion shall occur not later than sixty (60) days from the date of such notice from Landlord.

(iv) (1) The making by Tenant of any general assignment for the benefit of creditors; (2) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); (3) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (4) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within thirty (30) days.

(b) In the event of any such default by Tenant, in addition to any other remedies available to Landlord at law or in equity, including, without limitation, Landlord's right to continue the Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease then Landlord may recover from Tenant:

(i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(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.

As used in Subparagraphs 25(b)(i) and (ii) above, the "worth at the time of award" is computed by allowing interest at fifteen percent (15%), or such lesser amount as may then be the maximum lawful rate, per annum. As used in Subparagraph 25(b)(iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) In the event of any such default by Tenant, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant for such period of time as may be required by applicable law after which time Landlord may dispose of such property in accordance with applicable law. No re-entry or taking possession of the Premises by Landlord pursuant to this Subparagraph 25(c) shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

(d) All rights, options and remedies of Landlord contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by Landlord of any rent or other payments due hereunder or any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The consent or approval of Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant.

26. **Assignment and Subletting.** Tenant shall not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, without first obtaining Landlord's prior written consent, which may be granted or withheld in Landlord's sole and absolute discretion. Any assignment, encumbrance or sublease without Landlord's prior written consent shall be voidable, at Landlord's election, and shall constitute a default. For purposes hereof, in the event Tenant is a partnership or limited liability company, a withdrawal or change of partners or members, or change of ownership of partners or members, owning more than a fifty percent (50%) interest in the partnership or limited liability company, or if Tenant is a corporation, any transfer of fifth percent (50%) or more of its stock, shall constitute a voluntary assignment and shall be subject to these provisions. A change of partners or members owning less than fifty, percent (50%) interest in a partnership or limited liability company, or a transfer

of less than fifty percent (50%) of a corporation's stock, may also be deemed to constitute a voluntary assignment subject to these provisions if it results in a change of control of the partnership, limited liability company or corporation. No consent to an assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this Paragraph. Tenant shall notify Landlord in writing of Tenant's intent to assign this Lease, or encumber, or sublease Tenant's interest in the Premises, the name of the proposed assignee or sublessee, information concerning the financial responsibility of the proposed assignee or sublessee and the terms of the proposed assignment or subletting, and Landlord shall, within fifteen (15) days of receipt of such written notice, and additional information requested by Landlord concerning the proposed assignee's or sublessee's financial responsibility, elect one of the following:

- (a) Consent to such proposed assignment, encumbrance or sublease;
- (b) Refuse such consent in its sole discretion; or
- (c) Elect to terminate this Lease in the case of an assignment or a sublease of the entire Premises or in the case of a partial sublease, terminate this Lease as to the portion of the Premises proposed to be sublet.

As a condition for granting its consent to any assignment, encumbrance or sublease, Landlord may require that the assignee or sublessee remit directly to Landlord, on a monthly basis, all monies due to Tenant by said assignee or sublessee. In the event that Landlord shall consent to an assignment or sublease under the provisions of this Paragraph 26, Tenant shall pay Landlord's reasonable processing costs and attorneys' fees incurred in giving such consent. If for any proposed assignment or sublease Tenant receives rent or other consideration, whether cash or any other form whatsoever, either initially or over the term of the assignment or sublease, in excess of the rent called for hereunder, or, in case of the sublease of a portion of the Premises, in excess of such rent fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder are taken into account, Tenant shall pay to Landlord as additional rent hereunder fifty percent (50%) of the excess value of each such payment of rent or other consideration received by Tenant promptly after its receipt. Landlord's waiver or consent to any assignment or subletting shall not relieve Tenant from any obligation under this Lease. If Tenant requests Landlord's consent to any assignment of this Lease or any subletting of all or a portion of the Premises, Landlord shall have the right in its sole discretion, to be exercised by giving written notice to Tenant within thirty (30) days of receipt by Landlord of the financial responsibility information required by this Paragraph 26 to terminate this Lease in the case of an assignment or a sublease of the entire Premises, or in the case of a partial sublease, terminate this Lease as to the portion of the Premises proposed to be sublet, effective as of the date Tenant proposes to assign this Lease or sublet all or a portion of the Premises. Landlord's right to terminate this Lease as to all or a portion of the Premises on assignment or subletting shall not terminate as a result of Landlord's consent to the assignment of this Lease or the subletting of all or a portion of the Premises, or Landlord's failure to exercise this right with respect to any assignment or subletting.

27. **Quiet Enjoyment.** Landlord covenants and agrees with Tenant that upon Tenant paying the rent required under this Lease and paying all other charges and performing all of the covenants and provisions aforesaid on Tenant's part to be observed and performed under this

Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises in accordance with this Lease, free from any person claiming by, through or under Landlord.

28. **Subordination.** Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, and at the election of Landlord or any mortgagee with a lien on the Premises or any ground lessor with respect to the Premises, this Lease shall be subject and subordinate at all times to: (a) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises or the land upon which the Premises are situated or both, (b) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Premises, land, ground leases or underlying leases, or Landlord's interest or estate in any of said items is specified as security, and any CC&Rs (as defined in Paragraph 8) affecting the Premises. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Lease. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall if requested by the ground lessor, mortgagee or beneficiary, as applicable, attorn to and become the Tenant of the successor in interest to Landlord and in such event Tenant's right to possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and all other amounts required to be paid to Landlord pursuant to the terms hereof and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. Tenant hereby waives its rights under any current or fixture law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale. Tenant covenants and agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents evidencing Tenant's agreement to attorn as set forth in this Paragraph 28 and the priority or subordination of this Lease with respect to any such CC&Rs, ground leases or underlying leases or the lien of any such mortgage or deed of trust. Should Tenant fail to sign and return any such documents within ten (10) business days of receipt, Tenant shall be in default hereunder.

29. **Estoppel Certificate.**

(a) Within ten (10) days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord a statement, in a form substantially similar to the form of Exhibit "D" attached hereto, certifying. (i) the Commencement Date of this Lease; (ii) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (iii) the date to which the rental and other sums payable under this Lease have been paid; (iv) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; and (v) such other matters requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Paragraph 29 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises or any interest therein.

(b) Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except

as may be represented in good faith by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one (1) month's rent has been paid in advance. Tenant's failure to deliver said statement to Landlord within ten (10) working days of receipt shall constitute a default under this Lease.

30. **Rules and Regulations.** Tenant shall faithfully observe and comply with all reasonable rules and regulations from time to time put into effect by Landlord as it deems reasonably necessary or appropriate in its sole discretion (the "Rules and Regulations").

31. **Choice of Law.** This Lease shall be governed by and construed pursuant to the laws of the State of Nevada.

32. **Successors and Assigns.** Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

33. **Surrender of Premises.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, operate as an assignment to it of any or all subleases or subtenancies. Upon the expiration or termination of this Lease, Tenant shall peaceably surrender the Premises and all alterations and additions thereto broom-clean, in good order, repair and condition, reasonable wear and tear excepted, and shall comply with the provisions of Subparagraphs 14(g). The delivery of keys to any employee of Landlord or to Landlord's agent or any employee thereof shall not be sufficient to constitute a termination of this Lease or a surrender of the Premises.

34. **Professional Fees.**

(a) In the event that Landlord should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provisions of this Lease, or for any other relief against Tenant hereunder, or should either party bring suit against the other with respect to matters arising from or growing out of this Lease, then all costs and expenses, including without limitation, professional fees such as appraisers', accountants' and attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

(b) Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy hereunder, Tenant shall pay to Landlord its costs and expenses incurred in such suit including without limitation, professional fees such as appraisers', accountants' and attorneys' fees.

35. **Performance by Tenant.** All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. In the event Tenant shall fail to perform any covenant or agreement to be performed by Tenant under any of the terms of this Lease, including, without limitation, Tenant's obligations under Paragraph 15 hereof. Landlord shall

have the right to perform such obligation of Tenant on Tenant's behalf. In such event, Landlord shall be entitled to receive, as Additional Rent, reimbursement of any sums so expended on Tenant's behalf, together with interest at fifteen percent (15%), or such lesser amount as may then be the maximum lawful rate, per annum calculated from the date of expenditure by Landlord to the date of reimbursement by Tenant.

36. **Mortgage and Senior Lessor Protection.** No act or failure to act on the part of Landlord which would entitle Tenant under the terms of this Lease, or by law, to be relieved of Tenant's obligations hereunder or to terminate this Lease, shall result in a release of such obligations or a termination of this Lease unless (a) Tenant has given notice by registered or certified mail to any beneficiary of a deed of trust or mortgage covering the Premises and to the lessor under any master or ground Lease covering the Premises or any interest therein whose identity and address shall have been furnished to Tenant, and (b) Tenant offers such beneficiary, mortgagee or Lessor a reasonable opportunity to cure the default.

37. **Definition of Landlord.** The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of the Premises. In the event of any transfer, assignment or other conveyance or transfers of any such title or interest. Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed and, without further agreement, the transferee of such title or interest shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder, during its ownership of the Premises. Landlord may transfer its interest in the Premises without the consent of Tenant and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

38. **Waiver.** The failure of Landlord to seek redress for violation of, or to insist upon strict performance of, any term covenant or condition of this Lease or the Rules and Regulations shall not be deemed a waiver of such violation or prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of Landlord to insist upon the performance by Tenant in strict accordance with said terms. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

39. **Identification of Tenant.** Unless the provisions of Paragraph 53 herein below are applicable to this Lease, if more than one entity executes this Lease as Tenant, (a) each of them is jointly and severally liable for the keeping observing and performing of all of the terms, covenants, conditions, provisions and agreement of this Lease to be kept, observed and performed by Tenant, and (b) the term "Tenant" as used in this Lease shall mean and include each of them jointly and severally and the act of or notice from, or notice or refund to, or the

signature of any one or more of them, with respect to the tenancy or this Lease, including, but not limited to, any renewal, extension, expiration, termination or modification of this Lease, shall be binding upon each and all of the entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or so given or so received such notice or refund or so signed.

40. **Parking and Transportation.** Tenant shall have the right to use all parking areas located upon the Premises, subject to such parking rules and regulations as Landlord deems reasonably necessary or appropriate for the operation of said parking. Landlord may refuse to permit any person who violates with unreasonable frequency the parking rules and regulations to park in the parking areas, and any violation of the rules shall subject the car to removal. Tenant agrees to use its best efforts to acquaint all employees and visitors with the parking rules and regulations. Landlord shall have no responsibility for damage to cars in the parking areas.

41. **Terms and Headings.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Paragraph headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

42. **Examination of Lease; Counterparts.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for Lease, and it is not effective as a Lease or otherwise until execution by and delivery to both Landlord and Tenant. This Lease may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument

43. **Time.** Time is of the essence with respect to the performance of every provision of this Lease in which time or performance is a factor.

44. **Prior Agreement; Amendments.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not incorporated herein.

45. **Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal in no way affects, impairs or invalidates any other provision hereof. and such other provisions shall remain in full force and effect.

46. **Recording.** Neither Landlord nor Tenant shall record this Lease nor a short form memorandum thereof without the consent of the other and if such recording occurs, it shall be at the sole cost and expense of the party requesting the recording, specifically including any documentary transfer taxes.

47. **Limitation on Liability.** The obligations of Landlord under this Lease do not constitute personal obligations of the individual partners, directors, officers or shareholders of

Landlord, and Tenant shall not seek recourse against the individual partners, directors, officers or shareholders of Landlord or any of their personal assets for satisfaction of any liability in respect to this Lease. Any liability of Landlord under this Lease shall be limited to Landlord's interest in the Premises. Tenant hereby acknowledges and agrees that (i) the Basic Rent does not include the cost of any security measures for any portion of the Premises, (ii) that Landlord has no obligation to provide any security measures, and to the extent permitted by law, and such obligation imposed on Landlord by operation of law is waived by Tenant, (iii) Landlord has made no representation to tenant regarding the safety or security of the Premises, (iv) Tenant is solely responsible for providing any security measures and devices that is required to protect Tenant and Tenant's employees, visitors and invitees from criminal or negligent acts of third parties, and (v) any safety and security devices included in the Premises as delivered to Tenant, while intended to deter crime and promote safety, may not in given instances prevent theft or other criminal acts, or protect persons or property against damage, loss or injury. The risk that any safety or security device previously installed at the Premises by or for Landlord may not be effective, or may malfunction or be circumvented, is hereby assumed by Tenant.

48. **Riders.** Clauses, plats, exhibits and riders, if any, affixed to this Lease are a part hereof.

49. **Signs.** Tenant shall not place any sign within any area of the Premises which is visible from outside the Premises without Landlord's prior written consent. Landlord shall have the right to remove any sign which has not been previously approved in writing.

50. **Modification for Lender.** If in connection with obtaining construction, interim or permanent financing for the Premises, the lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder in any way and do not adversely affect the leasehold interest hereby created or Tenant's rights hereunder.

51. **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement whether expressly contained in this Lease or imposed by any statute or at common law.

52. **Financial Statements.** At any time during the Term of this Lease, Tenant shall, upon thirty (30) days prior written notice from Landlord, provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant.

53. **Tenant as Corporation.** If Tenant executes this Lease as a corporation or other business entity, then Tenant and the persons executing this Lease on behalf of Tenant represent and warrant that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on its behalf and that this Lease is binding upon Tenant in accordance with its terms.

54. **No Partnership or Joint Venture.** Nothing in this Lease shall be deemed to constitute Landlord and Tenant as partners or joint venturers. It is the express intent of the parties hereto that their relationship with regard to this Lease be and remain that of landlord and tenant.

55. **Confidentiality.** Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord and Tenant. Tenant agrees that it, its partners, officers, directors, employees, brokers and attorneys, shall not disclose the terms and conditions of this Lease to any other person without the prior written consent of Landlord. It is understood and agreed that damages may be an inadequate remedy for the breach of this provision by Tenant, and Landlord shall have the right to specific performance of this provision and to injunctive relief to prevent its breach or continued breach.

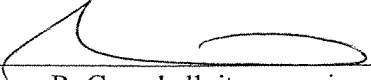
56. **Waiver of Jury Trial**

TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE PARTIES
HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN
CONNECTION WITH THIS LEASE.

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

LANDLORD:

SRC Polaris, LLC,
a Nevada limited liability company

By: 
Steven R. Campbell, its managing member

TENANT:

C Construction, Inc.,
a Delaware corporation

By: _____

Its: _____

Print Name: _____

53. **Tenant as Corporation.** If Tenant executes this Lease as a corporation or other business entity, then Tenant and the persons executing this Lease on behalf of Tenant represent and warrant that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on its behalf and that this Lease is binding upon Tenant in accordance with its terms.

54. **No Partnership or Joint Venture.** Nothing in this Lease shall be deemed to constitute Landlord and Tenant as partners or joint venturers. It is the express intent of the parties hereto that their relationship with regard to this Lease be and remain that of landlord and tenant.

55. **Confidentiality.** Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord and Tenant. Tenant agrees that it, its partners, officers, directors, employees, brokers and attorneys, shall not disclose the terms and conditions of this Lease to any other person without the prior written consent of Landlord. It is understood and agreed that damages may be an inadequate remedy for the breach of this provision by Tenant, and Landlord shall have the right to specific performance of this provision and to injunctive relief to prevent its breach or continued breach.

56. **Waiver of Jury Trial**

TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS LEASE.

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

LANDLORD:

SRC Polaris, LLC,
a Nevada limited liability company

By: _____
Steven R. Campbell, its managing member

TENANT:

C Construction, Inc.,
a Delaware corporation

By: Michael Mahre

Its: President

Print Name: Michael Mahre

EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

THAT PORTION OF THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 29, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.M., DESCRIBED AS FOLLOWS:

Parcel One (1) and Parcel Two (2) as shown by map thereof in File 85 of Parcel Maps, page 6, in the Office of the County Recorder of Clark County, Nevada.

EXHIBIT "B"

**SAMPLE FORM OF
NOTICE OF LEASE TERM DATES**

TO: _____ Date: _____

Re: Lease dated August 31, 2005 between SRC Polaris, LLC, a Nevada limited liability company ("Landlord"), and C Construction, Inc., a Delaware corporation ("Tenant") concerning Premises located at 5201 S. Polaris, Las Vegas, NV 89118.

Gentlemen:

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

1. That the Premises have been accepted herewith by the Tenant as being substantially complete in accordance with the subject Lease.
2. That the Tenant has possession of the subject Premises and acknowledges that under the provisions of the subject Lease, the Term of said Lease commenced as of September 1, 2005, for a term of four (4) years, ending on August 31, 2009, with one (1) option to extend for one (1) additional year, ending on August 31, 2010.
3. That in accordance with the subject Lease, rental commenced to accrue on September 1, 2005.
4. If the commencement date of the subject Lease is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in said Lease.
5. Rent is due and payable in advance on the first day of each and every month during the term of said Lease. Your rent checks should be made payable to Landlord at Landlord's address for notices set forth in the Lease.

AGREED AND ACCEPTED

LANDLORD:

SRC Polaris, LLC,
a Nevada limited liability company

By: _____
Steven R. Campbell, its managing member

TENANT:

C Construction, Inc.,
a Delaware corporation

By: _____

Its: _____

Print Name: _____

EXHIBIT "C"

SAMPLE FORM OF ESTOPPEL CERTIFICATE

The undersigned, SRC Polaris, LLC ("**Landlord**"), with a mailing address c/o 7912 West Sahara, Las Vegas, NV 89117; Attn: Mr. Steve Campbell; and C Construction, Inc. ("**Tenant**"), hereby certify to _____, a _____ as follows:

1. Attached hereto is a true, correct and complete copy of that certain lease dated August 31, 2005 between Landlord and Tenant (the "**Lease**"), which demises premises located at 5201 S. Polaris, Las Vegas, NV 89118. The Lease is now in full force and effect and has not been amended, modified or supplemented, except as set forth in paragraph 4 below.

2. The term of the Lease commenced on September 1, 2005.

3. The term of the Lease shall expire on August, 31, 2009.

4. The Lease has: (Initial one)

() not been amended, modified, supplemented, extended, renewed or assigned.

() been amended, modified, supplemented, extended, renewed or assigned by the following described agreements, copies of which are attached hereto: _____

5. Tenant has accepted and is now in possession of said premises.

6. Tenant and Landlord acknowledge that the Lease will be assigned to _____ and no modification, adjustment, revision or cancellation of the lease or amendments thereto shall be effective unless written consent by _____ is obtained; and that until further notice, payments under the Lease may continue as heretofore.

7. The amount of fixed monthly rent is _____ Dollars (\$_____).

8. The amount of security deposits (if any) is _____ Dollars (\$_____).
No other security deposits have been made.

9. Tenant is paying the full lease rental, which has been paid in full as of the date hereof. No rent under the Lease has been more than thirty (30) days in advance of its due date.

10. All work required to be performed by Landlord under the Lease has been completed.

11. There are no defaults on the part of the Landlord or Tenant under the Lease.

12. Tenant has no defense as to its obligations under the Lease and claims no set-off or counterclaim against Landlord.

13. Tenant has no right to any concession (rental or otherwise) or similar compensation in connection with renting the space it occupies except as provided in the Lease.

All provisions of the Lease and amendments thereto (if any) referred to above are hereby ratified.

The foregoing certification is made with the knowledge that _____ is about to fund a loan to Landlord or purchase the demised premises from Landlord, and that _____ is relying upon the representations herein made in connection with such transaction.

DATED: _____, 20__.

LANDLORD:

SRC Polaris, LLC,
a Nevada limited liability company

TENANT:

C Construction, Inc.,
a Delaware corporation

By: _____
Steven R. Campbell, its managing member

By: _____

Its: _____

Print Name: _____

RIDER NO. 1 - OPTION TO RENEW LEASE

THIS RIDER NO. 1 is attached to and made apart of that certain lease dated August 31, 2005, between SRC POLARIS, LLC, a Nevada limited liability company, as Landlord, and C CONSTRUCTION, INC., a Delaware corporation, as Tenant (the "Lease"). The terms used in this Rider shall have the same definitions as set forth in the Lease. The provisions of this Rider shall prevail over any inconsistent or conflicting provisions of the Lease.

R-1. Option. Provided that Tenant is not in default of this Lease at the time of the exercise of the Option to Renew Lease (as defined below) or at the expiration of the initial Term of this Lease, the Tenant shall have one and only one option to renew and extend this Lease (the "Option to Renew Lease") for one term of one (1) additional year (the "Renewal Term"), upon written notice to the Landlord delivered not less than twelve (12) months before the expiration of the initial Lease Term. Upon the delivery of such notice by Tenant and subject to the conditions set forth in the preceding sentence, this Lease shall be extended without the necessity of the execution of any further instrument or document: provided, however, that each party agrees to execute and deliver such further instruments or documents as the other party may reasonably request to memorialize or acknowledge the exercise of the Option to Renew Lease. The Renewal Term shall commence upon the expiration of the initial Term of this Lease, shall expire upon the first anniversary of such date thereafter, and be upon the same terms, covenants and conditions as provided in this Lease for the initial Term, except that the Base Rent shall be the then prevailing fair market rental rate as of the commencement of the Renewal Term. Tenant shall only be able to exercise the Option to Renew Lease as to all of the Premises.

R-2. Rent. The prevailing fair market rental rate shall be the then going rate for comparable space at in the vicinity of the Premises. Landlord shall notify Tenant of Landlord's good faith determination of prevailing fair market rental no later than one (1) month after Tenant's exercise of the Option to Renew Lease. No later than one (1) month after Landlord notifies Tenant of the prevailing fair market rental, Tenant shall notify Landlord whether Tenant accepts Landlord's determination. If Tenant does not agree, Tenant and Landlord shall proceed pursuant to paragraph R-3 hereof.

R-3. Objection to Landlord's Determination. In the event Tenant timely objects to the fair market rental rate submitted by Landlord, Landlord and Tenant shall attempt in good faith to agree upon such fair market rental rate using their best good faith efforts. If Landlord and Tenant fail to reach agreement on such fair market rental rate within fifteen (15) days following Tenant's notice that Tenant does not accept Landlord's determination of the prevailing fair market rental rate, then each party shall submit a new determination of prevailing fair market rental rate to appraisal in accordance with Paragraph R-5 below.

R-4. Appraisal. Landlord and Tenant shall each appoint one (1) independent appraiser who shall by profession be a real estate broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of commercial properties in the Las Vegas area. The determination of the appraisers shall be limited to solely the issue of whether Landlord's or Tenant's submitted fair market rental rate for the Premises is the closest to the actual fair market rental rate for the Premises as determined by the appraisers, taking into account the requirements of Paragraph R-2 above and this Paragraph R-4 regarding the same.

Such decision shall be based upon the projected prevailing fair market rental rate as of the commencement date of the Renewal Term. Each such appraiser shall be appointed within the fifteen (15) day period after Tenant's notice that Tenant does not accept Landlord's determination.

(i) The two (2) appraisers so appointed shall within fifteen (15) days of the date of appointment of the last appointed appraiser agree upon and appoint a third appraiser who shall be qualified under the same criteria set forth hereinabove for qualifications of the initial two (2) appraisers.

(ii) The three (3) appraisers shall within thirty (30) days of the appointment of the third appraiser reach a decision as to whether the parties shall use Landlord's or Tenant's submitted fair market rental rate, and shall notify Landlord and Tenant thereof.

(iii) The decision of the majority of the three (3) appraisers shall be binding upon Landlord and Tenant. If either Landlord or Tenant fails to appoint an appraiser within the period specified in Paragraph R-4 hereinabove, the appraiser appointed by one of them shall reach a decision based upon the same procedures as set forth above (i.e. by selecting either Landlord's or Tenant's submitted fair market rental rate), and shall notify Landlord and Tenant thereof, and such appraiser's decision shall be binding upon Landlord and Tenant.

(iv) If the two (2) appraisers fail to agree upon and appoint a third appraiser, both appraisers shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association, but based up on the same procedures as set forth above (i.e., by selecting either Landlord's or Tenant's submitted fair market rental rate).

(v) The cost of the appraisal (or arbitration if required pursuant to Paragraph R-5(iv)) shall be paid by the party whose submitted fair market rental rate is not accepted.

R-5. Notwithstanding the fair market rental rate for the Premises, in no event shall the Basic Rent as of the commencement of the Renewal Term be less than the Basic Rent payable by Tenant during the last month of the initial Term of the Lease.

RIDER NO. 2 – GUARANTY OF LEASE

This Guaranty of Lease is made as of this 31st day of August, 2005, by BMC Construction, Inc., a Delaware corporation ("Guarantor"), as a material inducement to and in consideration of the execution by SRC Polaris, LLC ("Landlord") of that certain Industrial Real Estate Lease (the "Lease") of even date herewith between Landlord and C Construction, Inc., a Delaware corporation ("Tenant"), relating to premises located at 5201 S. Polaris, Las Vegas, NV 89118. Guarantor hereby covenants and agrees as follows:

(1) Guarantor hereby unconditionally guarantees the performance of, and unconditionally promises to perform, all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder.

(2) In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, amend or modify the Lease in any manner, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.

(3) Guarantor hereby waives and agrees not to assert or take advantage of any and all rights afforded a surety or guarantor under applicable law, including any and all of the following benefits it may otherwise be entitled to under such laws:

Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor;

(b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease;

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease; and

(i) Any and all defenses and rights which Guarantor might otherwise have to exoneration under this Guaranty based on any alteration, modification, compromise, renewal, extension, or assignment of the Lease or any of the Guaranteed Obligations, whether done with or without the knowledge or consent of Guarantor, and Guarantor grants Lessor the right to take any such action relative to the Guaranteed Obligations without the knowledge or consent of Guarantor without in any manner affecting the liability of Guarantor under this Guaranty.

Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of non-payment, and all other notices of any kind, including all notices of the existence, creation, or incurring of new or additional obligations and any notice of acceptance of this Guaranty, which, upon execution by Guarantor, shall immediately be binding on Guarantor.

Guarantor subordinates to Lessor all of Guarantor's rights to participate in any security now or later held by Lessor. Until all obligations hereby guaranteed shall have been fully performed, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease; provided, however, that as long as the Tenant is a wholly-owned subsidiary of Guarantor, the foregoing prohibition shall not be effective with respect to any intra-company debt or capital transfers.

All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant in Landlord.

The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Lease against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

Should any one or more provisions of this Guaranty of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

This Guaranty of Lease shall inure to the benefit of Landlord and its successors and assigns as Landlord under the Lease, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. This Guaranty of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

Upon full performance of all obligations hereby guaranteed, this Guaranty of Lease shall be of no further force or effect.

No provision of this Guaranty of Lease or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

If two (2) or more persons are signing this Guaranty of Lease as Guarantor, then all such persons shall be jointly and severally liable for the obligations of Guarantor hereunder.

This Guaranty of Lease shall be governed by and construed in accordance with the laws of the State of Nevada. In any action brought under or arising out of this Guaranty of Lease, Guarantor hereby consents to the jurisdiction of any competent court within the State of Nevada and hereby consents to service of process by any means authorized by Nevada law.

TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS GUARANTY.

This Guaranty of Lease shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

GUARANTOR:

BMC CONSTRUCTION, INC.
A Delaware corporation

By:_____

Name:_____

Title:_____

By:_____

Name:_____

Title:_____

GUARANTY OF LEASE

This Guaranty of Lease is made as of this 31st day of August, 2005, by BMC Construction, Inc., a Delaware corporation ("Guarantor"), as a material inducement to and in consideration of the execution by SRC Polaris, LLC ("Landlord") of that certain Industrial Real Estate Lease (the "Lease") of even date herewith between Landlord and C Construction, Inc., a Delaware corporation ("Tenant"), relating to premises located at 5201 S. Polaris, Las Vegas, NV 89118. Guarantor hereby covenants and agrees as follows:

(1) Guarantor hereby unconditionally guarantees the performance of, and unconditionally promises to perform, all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder.

(2) In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, amend or modify the Lease in any manner, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.

(3) Guarantor hereby waives and agrees not to assert or take advantage of any and all rights afforded a surety or guarantor under applicable law, including any and all of the following benefits it may otherwise be entitled to under such laws:

Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor;

(b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease;

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease; and

(i) Any and all defenses and rights which Guarantor might otherwise have to exoneration under this Guaranty based on any alteration, modification, compromise, renewal, extension, or assignment of the Lease or any of the Guaranteed Obligations, whether done with or without the knowledge or consent of Guarantor, and Guarantor grants Lessor the right to take any such action relative to the Guaranteed Obligations without the knowledge or consent of Guarantor without in any manner affecting the liability of Guarantor under this Guaranty.

Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of non-payment, and all other notices of any kind, including all notices of the existence, creation, or incurring of new or additional obligations and any notice of acceptance of this Guaranty, which, upon execution by Guarantor, shall immediately be binding on Guarantor.

Guarantor subordinates to Lessor all of Guarantor's rights to participate in any security now or later held by Lessor. Until all obligations hereby guaranteed shall have been fully performed, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease; provided, however, that as long as the Tenant is a wholly-owned subsidiary of Guarantor, the foregoing prohibition shall not be effective with respect to any intra-company debt or capital transfers.

All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant in Landlord.

The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Lease against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

Should any one or more provisions of this Guaranty of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

This Guaranty of Lease shall inure to the benefit of Landlord and its successors and assigns as Landlord under the Lease, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. This Guaranty of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

Upon full performance of all obligations hereby guaranteed, this Guaranty of Lease shall be of no further force or effect.

No provision of this Guaranty of Lease or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

If two (2) or more persons are signing this Guaranty of Lease as Guarantor, then all such persons shall be jointly and severally liable for the obligations of Guarantor hereunder.

This Guaranty of Lease shall be governed by and construed in accordance with the laws of the State of Nevada. In any action brought under or arising out of this Guaranty of Lease, Guarantor hereby consents to the jurisdiction of any competent court within the State of Nevada and hereby consents to service of process by any means authorized by Nevada law.

TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS GUARANTY.

This Guaranty of Lease shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

GUARANTOR:

BMC CONSTRUCTION, INC.
a Delaware corporation

By: Michael Mahre

Name: Michael Mahre

Title: CEO

By: _____

Name: _____

Title: _____

GUARANTY OF LEASE

This Guaranty of Lease is made as of this 31st day of August, 2005, by BMC Construction, Inc., a Delaware corporation ("Guarantor"), as a material inducement to and in consideration of the execution by SRC Spencer, LLC ("Landlord") of that certain Industrial Real Estate Lease (the "Lease") of even date herewith between Landlord and C Construction, Inc., a Delaware corporation ("Tenant"), relating to premises located at 6767 Spencer Street, Las Vegas, Nevada 89119. Guarantor hereby covenants and agrees as follows:

(1) Guarantor hereby unconditionally guarantees the performance of, and unconditionally promises to perform, all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder.

(2) In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, amend or modify the Lease in any manner, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.

(3) Guarantor hereby waives and agrees not to assert or take advantage of any and all rights afforded a surety or guarantor under applicable law, including any and all of the following benefits it may otherwise be entitled to under such laws:

Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor;

(b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease;

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease; and

(i) Any and all defenses and rights which Guarantor might otherwise have to exoneration under this Guaranty based on any alteration, modification, compromise, renewal, extension, or assignment of the Lease or any of the Guaranteed Obligations, whether done with or without the knowledge or consent of Guarantor, and Guarantor grants Lessor the right to take any such action relative to the Guaranteed Obligations without the knowledge or consent of Guarantor without in any manner affecting the liability of Guarantor under this Guaranty.

Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of non-payment, and all other notices of any kind, including all notices of the existence, creation, or incurring of new or additional obligations and any notice of acceptance of this Guaranty, which, upon execution by Guarantor, shall immediately be binding on Guarantor.

Guarantor subordinates to Lessor all of Guarantor's rights to participate in any security now or later held by Lessor. Until all obligations hereby guaranteed shall have been fully performed, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease; provided, however, that as long as the Tenant is a wholly-owned subsidiary of Guarantor, the foregoing prohibition shall not be effective with respect to any intra-company debt or capital transfers.

All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant in Landlord.

The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Lease against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

Should any one or more provisions of this Guaranty of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

- This Guaranty of Lease shall inure to the benefit of Landlord and its successors and assigns as Landlord under the Lease, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. This Guaranty of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

Upon full performance of all obligations hereby guaranteed, this Guaranty of Lease shall be of no further force or effect.

No provision of this Guaranty of Lease or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

If two (2) or more persons are signing this Guaranty of Lease as Guarantor, then all such persons shall be jointly and severally liable for the obligations of Guarantor hereunder.

This Guaranty of Lease shall be governed by and construed in accordance with the laws of the State of Nevada. In any action brought under or arising out of this Guaranty of Lease, Guarantor hereby consents to the jurisdiction of any competent court within the State of Nevada and hereby consents to service of process by any means authorized by Nevada law.

TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS GUARANTY.

This Guaranty of Lease shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

GUARANTOR:

BMC CONSTRUCTION, INC.

A Delaware corporation

By: Michael Mahre

Name: Michael Mahre

Title: CEO

By: _____

Name: _____

Title: _____

INDUSTRIAL REAL ESTATE LEASE

BY AND BETWEEN

**SRC PELLISIER, LLC,
a Nevada limited liability company**

AS

"LANDLORD"

AND

**C CONSTRUCTION, INC.
a Delaware corporation**

AS

"TENANT"

"COLTON, CA FACILITY"

TABLE OF CONTENTS

	<u>Page</u>
1. Terms and Definitions.....	1
2. Premises	2
3. Term.....	2
4. Possession	2
5. Basic Rent	2
6. Additional Rent.....	3
7. Security Deposit; Guaranty.....	4
8. Use	5
9. Payments and Notices	6
10. Brokers	7
11. Holding Over	7
12. Taxes on Tenant's Property	7
13. Condition of Premises.....	7
14. Alterations.....	7
15. Condition, Repair, Replacement and Maintenance of the Premises	10
16. Liens.....	12
17. Entry by Landlord	12
18. Utilities.....	13
19. Indemnification	13
20. Hazardous Materials	14
21. Insurance	17
22. Damage or Destruction	20
23. Eminent Domain	21
24. Bankruptcy	22
25. Defaults and Remedies	23
26. Assignment and Subletting	25
27. Quiet Enjoyment	26
28. Subordination.....	27
29. Estoppel Certificate.....	27
30. Rules and Regulations.....	28
31. Choice of Law	28
32. Successors and Assigns.....	28
33. Surrender of Premises	28
34. Professional Fees	28
35. Performance by Tenant	29
36. Mortgage and Senior Lessor Protection.....	29
37. Definition of Landlord	29
38. Waiver.....	29
39. Identification of Tenant.....	30
40. Parking and Transportation.....	30
41. Terms and Headings.....	30
42. Examination of Lease.....	30

43.	Time	30
44.	Prior Agreement; Amendments	30
45.	Severability	31
46.	Recording.....	31
47.	Limitation on Liability	31
48.	Riders	31
49.	Signs.....	31
50.	Modification for Lender.....	31
51.	Accord and Satisfaction	31
52.	Financial Statements	32
53.	Tenant as Corporation.....	32
54.	No Partnership or Joint Venture	32
55.	Confidentiality	32
56.	Waiver of Jury Trial.....	33

LIST OF EXHIBITS/RIDERS

Exhibit/Rider

- "A" Legal Description of Premises
- "B" Premises Depiction
- "C" Sample Form of Notice of Lease
- "C" Sample Form of Tenant Estoppel Certificate
- Rider No. 1 – Option to Renew
- Rider No. 2 – Guaranty

INDUSTRIAL REAL ESTATE LEASE

THIS INDUSTRIAL REAL ESTATE LEASE (the "**Lease**") is made as of the 31st day of August, 2005, by and between Landlord and Tenant.

WITNESSETH:

1. **Terms and Definitions.** For the purposes of this Lease, the following terms shall have the following definitions and meanings:

(a) **Landlord:** SRC Pellisier, LLC, a Nevada limited liability company.

(b) **Landlord's Address:**

7912 West Sahara,
Las Vegas, NV 89117
Attn: Mr. Steve Campbell

(c) **Tenant:** C Construction, Inc., a Delaware corporation.

(d) **Tenant's Address:**

5201 S. Polaris Avenue
Las Vegas, NV 89118
Attn: Chief Financial Officer

Copy to:

BMHC
720 Park Blvd., Suite 200
Boise, ID 83712
Attn: Paul S. Street, Senior Vice President,
Chief Administrative Officer, General Counsel
and Corporate Secretary

(e) **Premises Address:** 1640 W. Pellisier, Colton, California 92324

(f) **Premises:** Those certain premises defined in Subparagraph 2(a)
hereinbelow.

(g) **Term:** Four (4) years, with one (1) option to extend for one (1) year.

(h) **Commencement Date:** September 1, 2005.

(i) **Basic Rent:** Thirteen Thousand and no/100 Dollars (\$13,000.00) per month, subject to increase as hereinafter provided.

(j) **Permitted Use:** Office and Storage Yard.

(k) **Intentionally Omitted.**

(l) **Intentionally Omitted.**

(m) **Exhibits:** "A" through "D" inclusive, which Exhibits are attached to this Lease and are incorporated herein by this reference.

(n) **Initial Security Deposit:** "Initial Security Deposit" shall mean the sum of Thirteen Thousand Dollars \$13,000.00).

(o) **Riders:** Rider No. 1 - Option to Renew and Rider No. 2 - Guarantee, which Riders are attached to this Lease.

2. **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the parcel of real property legally described on Exhibit "A" attached hereto, and consisting of this certain buildings identified on the site plan attached as Exhibit "B" as buildings A, F, B & H (the "Buildings"), and all improvements from time to time located in the Buildings (collectively, the "Premises"). The parties hereto agree that said letting and hiring is upon and subject to the terms, covenants and conditions herein set forth and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants and conditions by it to be kept and performed and that this Lease is made upon the condition of such performance.

3. **Term.** The Term of this Lease shall be for the period designated in Subparagraph 1(g) commencing on the Commencement Date, and ending on the expiration of such period, unless such Term shall be sooner terminated or extended as hereinafter provided. The Commencement Date and the date upon which the Term of this Lease shall end shall be determined in accordance with the provisions of Subparagraph 1(h) and said dates will be specified in Landlord's Notice of Lease Term Dates ("**Notice**"), in the form of Exhibit "C" attached hereto, and shall be served upon Tenant as provided in Paragraph 9, after Landlord delivers or tenders possession of the Premises to Tenant. The Notice shall be binding upon Tenant unless Tenant objects to the Notice in writing, served upon Landlord as provided for in Paragraph 9 hereof, within five (5) days of Tenant's receipt of the Notice.

4. **Possession.** Landlord will be deemed to have delivered to Tenant possession of the Premises in its "as is" condition as of the Commencement Date. Tenant agrees that in the event of the inability of Landlord to deliver possession of the Premises to Tenant on the fixed date component of the Commencement Date, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom.

5. **Basic Rent.**

(a) Tenant agrees to pay Landlord as Basic Rent for the Premises the Basic Rent designated in Subparagraph 1(j) in advance on the first day of each and every calendar month during the Term, except that the first full month's Basic Rent shall be paid upon the execution hereof. In the event the Term of this Lease commences or ends on a day other than the first day of a calendar month, then the Basic Rent for such periods shall be prorated in the proportion that the number of days this Lease is in effect during such periods bears to thirty (30), and such rental shall be paid at

the commencement of such periods. In addition to said Basic Rent, Tenant agrees to pay the Additional Rent (as hereinafter defined) as and when hereinafter provided in this Lease. Said Basic Rent shall be paid to Landlord, without any prior demand therefor and without any deduction or offset whatsoever, in lawful money of the United States of America, which shall be legal tender at the time of payment, at the address of Landlord designated in Subparagraph 1(b) or to such other person or at such other place as Landlord may from time to time designate in writing.

(b) The Basic Rent shall be increased on the first day of the thirteenth (13th) month of the Term and on each annual anniversary thereof during the Term (the "Adjustment Month") by an amount equal to three percent (3%) of the Basic Rent in effect immediately prior to a respective Adjustment Month. Landlord shall notify Tenant of each increase by delivering a written statement setting forth the new amount of the Basic Rent. Tenant shall pay the new Basic Rent from its effective date until the next periodic increase.

6. **Additional Rent.**

(a) In addition to paying the Basic Rent as provided in Article 5 of this Lease, Tenant shall pay Real Property Taxes (as hereinafter defined) for the Premises as hereinafter provided. Such payments by Tenant, together with any and all other amounts payable by Tenant pursuant to the terms of this Lease, including, without limitation, payments for repairs, are hereinafter collectively referred to as the "**Additional Rent**", and the Basic Rent and the Additional Rent are sometimes herein collectively referred to as "**Rent**." Without limitation on any other obligations of Tenant which survive the expiration of the Term, the obligations of Tenant to pay Additional Rent which accrues during the Term shall survive the expiration of the Term. Landlord and Tenant acknowledge that it is their intent and agreement that this Lease be a "**TRIPLE NET**" lease and that as such, the provisions contained in this Lease are intended to pass on to Tenant or reimburse Landlord for all costs and expenses associated with this Lease and the Premises, and Tenant's operation therefrom. To the extent such costs and expenses payable by Tenant cannot be charged directly to, and paid by, Tenant, such costs and expenses shall initially be paid by Landlord and thereafter be reimbursed by Tenant.

(b) Tenant shall pay, directly to the taxing authority as and when due all Real Property Taxes applicable to the Premises and payable during the period beginning on the Commencement Date and continuing thereafter throughout the Term (including extensions). Landlord shall be responsible for the payment of any installment of Real Property Taxes applicable to the Premises coming due prior to the Commencement Date. Tenant shall, upon Landlord's request, furnish Landlord with satisfactory evidence of payment of Real Property Taxes which are the responsibility of Tenant hereunder. If Tenant shall fail to pay any Real Property Taxes as and when due, Landlord may pay such Real Property Taxes on behalf of Tenant, and Tenant shall reimburse Landlord for the total amount thereof including penalties and interest charged by the taxing authority due to Tenant's failure to make timely payment, immediately upon demand.

(c) As used herein, the term "**Real Property Taxes**" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, charge, penalty, tax or similar imposition imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other

improvement or special assessment district thereof, as against any legal or equitable interest of Landlord in the Premises to the extent assessed and/or accruing after the Commencement Date, including, but not limited to, the following:

(i) any tax on Landlord's "right" to rent or "right" to other income from the Premises or as against Landlord's business of leasing the Premises to the extent assessed and/or accruing after the Commencement Date;

(ii) any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of Real Property Taxes, recognizing that Real Property Taxes shall also include any governmental or private assessments or contributions towards a governmental or private cost/sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies to the extent assessed and/or accruing after the Commencement Date, and it is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies and charges be included within the definition of Real Property Taxes for the purposes of this Lease, including, without limitation, those calculated to increase tax increments to governmental agencies or to pay for such services as fire protection, street, sidewalk and road maintenance, refuse removal or other governmental services which may have been formerly provided without charge to property owners or occupants;

(iii) any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises or the Rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the State, city or federal government, or any political subdivision thereof, with respect to the receipt of such Rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof to the extent assessed and/or accruing after the Commencement Date;

(iv) any assessment, tax, fee, levy or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises to the extent assessed and/or accruing after the Commencement Date; or

(v) any assessment, fee, levy or charge by any governmental agency related to any transportation plan, fund or system instituted within the geographic area of which the Premises are a part to the extent assessed and/or accruing after the Commencement Date.

Notwithstanding any provision of this Paragraph 6(c) expressed or implied to the contrary, Real Property Taxes shall not include Landlord's federal or state income, franchise, inheritance or estate taxes.

7. Security Deposit; Guaranty.

(a) Upon execution of this Lease, Tenant shall deposit with Landlord a cash security deposit (the "**Security Deposit**") in the amount of the Initial Security Deposit. The Security Deposit shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of damages

caused by Tenant in case of default by Tenant. Landlord may commingle the Security Deposit with Landlord's other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearage of Rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant. If Landlord transfers its interest in the Premises during the Term of this Lease (including extensions), Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit to Tenant. Each time the Basic Rent is increased, Tenant shall, on or before the date that the first increased Basic Rent payment is due, deposit additional funds with Landlord sufficient to increase the Security Deposit to an amount which bears the same relationship to the adjusted Basic Rent as the Initial Security Deposit bore to the initial Basic Rent. . Notwithstanding anything to the contrary contained herein, Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, or any similar or successor Regulations or other laws now or hereinafter in effect.

(b) The effectiveness of this Lease is conditioned upon the execution of the Guaranty attached hereto as Rider No. 2 by BMC Construction, Inc., a California corporation ("Guarantor"). For as long as the Guaranty remains effective, in the event of any default or breach of Tenant's obligations under this Lease, Landlord may proceed directly against Guarantor without first exhausting Landlord's remedies against Tenant or any security held by Landlord. In addition to all other events of Tenant default hereunder, the parties acknowledge and agree that the Guarantor's guaranty of this Lease comprises part of the material consideration for Landlord's agreement to this Lease, and the following shall also constitute events of default under this Lease: (a) the termination of Guarantor's liability with respect to this Lease other than in accordance with the terms of the Guaranty; (b) Guarantor's becoming insolvent or the subject of a bankruptcy filing; or (c) Guarantor's willful breach of its guaranty obligation. Unless Tenant, within thirty (30) days following written notice by or on behalf of Landlord to Tenant of any of the foregoing events, provides Landlord with an alternative assurance of security reasonably acceptable to Landlord, which, when coupled with the Security Deposit and the then-existing resources of Tenant, equals or exceeds the value of the guaranteed obligations, Landlord may exercise any and all remedies for a Tenant default hereunder without requirement for any additional notice or cure period.

8. Use. Tenant shall use the Premises for the use specified in Subparagraph 1(k), and shall not use or permit the Premises to be used for any other purpose. Tenant shall not use or occupy the Premises in violation of such Rules and Regulations as Landlord may from time to time reasonably adopt for the safety, care and cleanliness of the Premises or of any recorded covenants, conditions and restrictions ("CC&Rs") affecting the Premises or of any law or of the Certificate of Occupancy issued for the Premises including, without limitation, the Americans With Disabilities Act, 104 Stat. 327, 42 United States Code §12101, et. seq., as amended from time to time (the "ADA"), and shall, upon five (5) days written notice from Landlord, discontinue any use of the Premises which is in violation of any CC&Rs or is declared by any governmental authority having jurisdiction to be a violation of any law or of said Certificate of Occupancy. Tenant shall make such repairs or alterations to the Premises as may be required to comply with the ADA during the Term as part of Tenant's maintenance and repair obligations (and subject to the limitations of) Paragraph

15(a) below. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Premises. Tenant shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or with respect to the use or occupation thereof. Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Premises and/or property located therein and shall comply with all rules, orders, regulations and requirements of the any applicable fire rating bureau or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord as Additional Rent for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Paragraph 8. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises and shall keep the Premises in first class repair and appearance. Tenant shall not place a load upon the Premises exceeding the average pounds of live load per square foot of floor area specified for the Premises by Landlord's architect, with the partitions to be considered part of the live load. Landlord reserves the right to prescribe the weight and position of all safes, files and heavy equipment which Tenant desires to place in the Premises so as to distribute properly the weight thereof.

9. Payments and Notices.

(a) All Rents and other sums payable by Tenant to Landlord hereunder shall be paid to Landlord at the address designated by Landlord in Subparagraph 1(b) above or at such other places as Landlord may hereafter designate in writing. Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery or by mail, and if given by mail shall be deemed sufficiently given if sent by registered or certified mail addressed to Tenant at the address designated in Subparagraph 1(d) or to Landlord at both of the addressees designated in Subparagraph 1(b). Either party may by written notice to the other specify a different address for notice purposes. If more than one person or entity constitutes the "Tenant" under this Lease, service of any notice upon any one of said person or entities shall be deemed as service upon all of said persons or entities.

(b) Tenant acknowledges that the late payment by Tenant to Landlord of any sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any monthly installment of Basic Rent is not received by Landlord by the date when due, or if Tenant fails to pay any other sum of money due hereunder and such failure continues for ten (10) days after notice thereof by Landlord, Tenant shall pay to Landlord, as Additional Rent, the sum of five percent (5%) of the overdue amount as a late charge. Such overdue amount shall also bear interest, as Additional Rent, at fifteen percent (15%) per annum calculated, as appropriate, from the date either (a) the monthly installment of Basic Rent is due, or (b) of receipt of said notice, until the date of payment to Landlord. Landlord's acceptance of any late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from

exercising any of the other rights and remedies available to Landlord under this Lease or any law now or hereafter in effect. If the interest rate specified in this Lease is higher than the maximum rate permitted by applicable law, such interest rate is hereby reduced to such maximum interest rate permitted by applicable law.

10. Brokers. Tenant represents and warrants to Landlord, that no broker, leasing agent or finder has been engaged by it in connection with any of the transactions contemplated by this Lease, or to its knowledge is in any way connected with any of such transactions. In the event of any claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Lease, Tenant shall indemnify, save harmless and defend Landlord from and against such claims.

11. Holding Over. If Tenant holds over after the expiration or earlier termination of the Term hereof without the express written consent of Landlord, Tenant shall become a tenant at sufferance only, at a rental rate equal to two hundred percent (200%) of the Basic Rent which would be applicable to the Premises upon the date of such expiration, and otherwise subject to the terms, covenants and conditions herein specified, so far as applicable. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a holdover hereunder or result in a renewal.

The foregoing provisions of this Paragraph 11 are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration or earlier termination of this Lease despite demand to do so by Landlord, Tenant shall indemnify and hold Landlord harmless from all loss or liability, including without limitation, any claim made by any succeeding tenant founded on or resulting from such failure to surrender.

12. Taxes on Tenant's Property. Tenant shall be liable for and shall pay at least ten (10) days before delinquency, taxes levied against any personal property or trade fixtures placed by Tenant in or about the Premises. If any such taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property or if the assessed value of the Premises is increased by the inclusion therein of a value placed upon such personal property or trade fixtures of Tenant and if Landlord, after written notice to Tenant, pays the taxes based upon such increased assessments which Landlord shall have the right to do regardless of the validity thereof, but only under proper protest if requested by Tenant, Tenant shall upon demand repay to Landlord the taxes levied against Landlord, or the proportion of such taxes resulting from such increase in the assessment; provided that in any such event, at Tenant's sole cost and expense, Tenant shall have the right, in the name of Landlord and with Landlord's full cooperation, to bring suit in any court of competent jurisdiction to recover the amount of any such taxes so paid under protest, any amount so recovered to belong to Tenant.

13. Condition of Premises. Tenant acknowledges that neither Landlord nor its agents or employees have made any representations or warranties as to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purposes or the compliance or lack of compliance of the Premises with applicable laws, nor has Landlord or its agents or employees agreed to undertake any alterations or construct any tenant improvements to the Premises.

14. Alterations.

(a) Tenant may, at any time and from time to time during the Term of this Lease but subject to Landlord's approval pursuant to Subparagraph 14(b), at its sole cost and expense, make alterations, additions, installations, substitutions, improvements and decorations (hereinafter collectively called "**Changes**") in and to the Premises, excluding structural changes, on the following conditions, and providing such Changes will not result in a violation of or require a change in the Certificate of Occupancy (or its equivalent) applicable to the Premises:

(i) The outside appearance, character or use of the Premises shall not be affected, and no Changes shall weaken or impair the structural strength or, in the sole opinion of Landlord, lessen the value of the Premises or create the potential for unusual expenses to be incurred upon the removal of Changes and the restoration of the Premises upon the termination of this Lease.

(ii) The proper functioning of any of the mechanical, electrical, sanitary and other service systems or installations of the Premises ("**Service Facilities**") shall not be adversely affected and there shall be no construction which might interfere with Landlord's free access to the Service Facilities.

(iii) In performing the work involved in making such Changes, Tenant shall be bound by and observe all of the conditions and covenants contained in this Paragraph 14.

(iv) All work shall be done at such times and in such manner as Landlord from time to time may reasonably designate.

(v) Tenant shall not be permitted to install and make part of the Premises any materials, fixtures or articles which are subject to liens, conditional sales contracts or chattel mortgages.

(vi) At the date upon which the Term of this Lease shall end, or the date of any earlier termination of this Lease, Tenant shall on Landlord's written request restore the Premises to their condition prior to the making of any Changes permitted by this Paragraph 14, reasonable wear and tear excepted.

(b) Before proceeding with any Change (exclusive of Changes to items constituting Tenant's personal property), Tenant shall submit to Landlord, for Landlord's written approval, plans and specifications, including any applicable mechanical, electrical and plumbing drawings, for the work to be done. Landlord's approval shall not be unreasonably withheld. If Landlord shall disapprove of any of Tenant's plans, Tenant shall be advised of the reasons for such disapproval. In any event, Tenant agrees to pay to Landlord, as Additional Rent, the reasonable cost of Landlord's third party consultants for review of such plans and specifications, immediately upon receipt of invoices either from Landlord or such consultants. Landlord's approval of the plans and specifications shall create no responsibility or liability on the part of landlord for their completeness design sufficiency or compliance with applicable laws or regulations. Any Change for which approval has been received shall be performed strictly in accordance with the approved plans and specifications, and no amendments or additions to such plans and specifications shall be made without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Following construction of the work, Tenant shall prepare or cause to be prepared, at Tenant's expense, a "record set" of as-built plans reflecting the actual construction of the work.

(c) After Landlord's written approval has been sent to Tenant, Tenant shall enter into an agreement for the performance of the work to be done pursuant to this Paragraph 14 with a contractor reasonably approved by Landlord. However, the general contractor shall be required to retain Landlord's subcontractors for any HVAC, electrical and/or fire/life safety work. All costs and expenses incurred in Changes shall be paid by Tenant within seven (7) days after each billing by any such contractor or contractors. Tenant's contractors shall obtain on behalf of Tenant and at Tenant's sole cost and expense, (i) all necessary governmental permits and certificates for the commencement and prosecution of Tenant's Changes and for final approval thereof upon completion, and (ii) a completion and lien indemnity bond, or other surety, satisfactory to Landlord, for the Changes. In the event Tenant shall request any changes in the work to be performed after the submission of the plans referred to in this Paragraph 14, such changes shall be subject to the same approvals and notices as the Changes initially submitted by Tenant.

(d) All Changes and the performance thereof shall at all times comply with (i) all laws, rules, orders, ordinances, directions, regulations and requirements of all governmental authorities, agencies, offices, departments, bureaus and boards having jurisdiction thereof, (ii) all rules, orders, directions, regulations and requirements of any applicable fire rating bureau, or of any similar insurance body or bodies, and (iii) all rules and regulations of Landlord, and Tenant shall cause Changes to be performed in compliance therewith and in good and first class workmanlike manner, using materials and equipment at least equal in quality to the original installations of the Premises. Changes shall be performed in such manner as not to delay or impose any additional expense upon Landlord in construction, maintenance or operation of the Premises, and shall be performed by contractors or mechanics approved by Landlord pursuant to this Paragraph 14, who shall coordinate their work in cooperation with any other work being performed by Landlord with respect to the Premises. Throughout the performance of Changes, Tenant, at its expense, shall carry, or cause to be carried, worker's compensation insurance in statutory limits, and general liability insurance for any occurrence in or about the Premises, of which Landlord and its managing agent shall be named as additional parties insured, in such limits as Landlord may reasonably prescribe. Such policies shall comply with Paragraph 21(b) hereof.

(e) Tenant further covenants and agrees that any mechanic's lien filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to Tenant, will be discharged by Tenant, by bond or otherwise, within ten (10) days after the filing thereof, at the cost and expense of Tenant. All alterations, decorations, additions or improvements upon the Premises, made by either party, including (without limiting the generality of the foregoing) all wall covering, built-in cabinet work, paneling and the like, shall, unless Landlord elects otherwise, become the property of Landlord, and shall remain upon, and be surrendered with the Premises, as a part thereof, at the end of the Term hereof, except that Landlord may by written notice to Tenant, given at least thirty (30) days prior to the end of the Term, require Tenant to remove all partitions, counters, railings and the like installed by Tenant, and Tenant shall repair any damage to the Premises arising from such removal or, at Landlord's option, shall pay to the Landlord all of Landlord's costs of such removal and repair.

(f) All articles of personal property and all business and trade fixtures, machinery and equipment, furniture and movable partitions owned by Tenant or installed by Tenant at its expense in the Premises shall be and remain the property of Tenant and may be removed by Tenant

at any time during the lease Term provided Tenant is not in default hereunder, and provided further that Tenant shall repair any damage caused by such removal. If Tenant shall fail to remove all of its effects from said Premises upon termination of this Lease for any cause whatsoever, Landlord may, at its option, remove the same in any manner that Landlord shall choose, and store said effects without liability to Tenant for loss thereof, and Tenant agrees to pay Landlord upon demand any and all expenses incurred in such removal, including court costs and attorney's fees and storage charges on such effects for any length of time that the same shall be in Landlord's possession or Landlord may, at its option, without notice, sell said effects, or any of the same, at private sale and without legal process, for such price as Landlord may obtain and apply the proceeds of such sale to any amounts due under this Lease from Tenant to Landlord and to the expense incident to the removal and sale of said effects.

(g) Nothing contained in this Paragraph 14 shall be deemed to relieve Tenant of any duty, obligation or liability with respect to making any repair, replacement or improvement or complying with any laws, order or requirement of any government or other authority and nothing contained in this Paragraph 14 shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever, for the care, supervision or repair of the Premises or any part thereof other than as otherwise provided in this Lease.

15. Condition, Repair, Replacement and Maintenance of the Premises.

(a) Condition of the Premises. Tenant acknowledges examining the Premises prior to the commencement of the Lease term, that Tenant is fully familiar with the condition of the Premises and that Tenant accepts the Premises "As-Is." Tenant enters into the Lease without any representations or warranties on the part of Landlord, express or implied, as to the condition of the Premises, including, but not limited to, the cost of operations and the condition of its fixtures, improvements and systems.

(b) Tenant's Obligations.

(i) Tenant's Maintenance. Tenant shall, at Tenant's own expense, maintain, keep in good condition, repair and make any and all replacements, non-structural and structural (except as set forth in Paragraph 15(f) below), to the Premises (including, but not limited to, the roof membrane, interior walls, windows, doors, plumbing system, the sprinkler system, if any, the heating system, the air conditioning system, if any, the electric system and any other system of the building on the Premises) required to maintain the Premises in as good a condition as that in which the Premises are delivered by Landlord, subject to normal wear and tear, and fire and other casualty (the damage from which are subject to the terms and conditions of Paragraph 22 below), and shall maintain the driveways, parking areas, shrubbery and lawn of the Premises in a good and sightly condition, and at the expiration or other sooner termination of the Lease term, deliver the Premises to Landlord in good order and broom clean condition; provided, however, that Landlord and Tenant agree that any capital repairs, replacements or improvements of any Premises improvements required to be maintained by Tenant under this Paragraph 15(a) shall be made by Landlord subject to the following limitations (collectively, "Capital Repair Items"): (a) Tenant shall notify Landlord in writing following Tenant's actual knowledge that any such Capital Repair Items are required for any reason as a condition to Tenant's safe and lawful use and occupancy of the

Premises; (b) if such Capital Repair Items are not attributable to Tenant's failure to perform its maintenance and repair obligations under this Paragraph 15(a), then Landlord shall, within thirty (30) days (or such longer period of time as is reasonable based upon any permitting requirements, time required for the delivery of materials or parts, etc.) commence to perform the work of the Capital Repair Item, and thereafter diligently cause the completion of such work; and (c) the cost of performing the work and acquiring the parts and materials of such Capital Repair Items shall be advanced by Landlord and the cost thereof (along with interest at landlord's institutional cost of funds) shall be amortized over the useful life of the Capital Repair Item, as reasonably determined by Landlord in accordance with generally accepted accounting principals, and the amount of such amortized costs accruing over the Lease Term shall be included as Additional Rent payable by Tenant under this Lease. Capital Repair Costs subject to Landlord's work obligation under this Section 15(a) shall also include any capital improvements or alterations that are required for compliance of the Premises with applicable laws or regulations of governmental authorities relating to the use or occupancy of the Building generally for office/warehouse use and not required for Tenant's specific use or occupancy requirements or any Changes made by Tenant to the Premises. Notwithstanding anything to the contrary in this Lease, if any Capital Repair Items relate to any Tenant Changes or are directly attributable to Tenant's failure to diligently perform its maintenance and repair obligations under this Lease, then Landlord shall not be obligated to perform the work associated with such Capital Repair Items, which shall be performed by Tenant at its sole cost and expense. Similarly, the cost of any Capital Repair Items that are directly attributable to any design or construction defects in the initial construction of the Premises, or to the extent covered by any contractor warranty, shall not be subject to reimbursement as Additional Rent obligations of Tenant under this Lease.

(ii) Damage Caused by Tenant. Notwithstanding any contrary provisions set forth in this Lease, any damage to the Premises, including, but not limited to, the building or its systems, or the improvements, caused by Tenant or a "Tenant Representative" (as defined below), shall be promptly repaired or replaced to its former condition by Tenant, as required by Landlord, at Tenant's own expense. The term "Tenant Representative" shall mean any shareholder, officer, director, member, partner, employee, agent, licensee, assignee, sublessee or invitee of Tenant, or any third party other than Landlord.

(iii) Tenant to Keep Premises Clean. In addition to the foregoing, and not in limitation of it, Tenant shall also, at Tenant's own expense, undertake all replacement of all plate glass and light bulbs, fluorescent tubes and ballasts, and decorating, redecorating and cleaning of the interior of the Premises, and shall keep and maintain the Premises in a clean condition, free from debris, trash, refuse, snow and ice.

(iv) Tenant's Negative Covenants. Tenant shall not injure, deface, permit waste nor otherwise harm any part of the Premises, permit any nuisance at the Premises, permit the emission of any objectionable noise or odor from the Premises, place a load on the floor on the Premises exceeding the floor load per square foot the floor was designed to carry, or install, operate or maintain any electrical equipment in the Premises that shall not bear an underwriters approval.

(v) Maintenance/Service Contract. Tenant shall, at Tenant's own expense, enter into a maintenance/service contract with a maintenance contractor, which shall provide for

regularly scheduled servicing of all hot water, heating, ventilation and air conditioning systems and equipment in the Premises. The maintenance contractor and the maintenance/service contract shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld. The maintenance/service contract shall include, without limitation, all servicing suggested by the manufacturer, within the operations/maintenance manual pertaining to such system and/or equipment, and shall be effective (and a copy thereof delivered to Landlord) no later than thirty (30) days after the commencement date of this Lease.

(vi) Landlord's Maintenance. In addition to Landlord's obligation relating to Capital Repair Items, Landlord shall perform any work necessary to keep the foundations of the Building, the roof structure and the structural walls of the Building in good order, condition and repair, reasonable wear and tear (and casualty covered by Paragraph 22 below) excepted, the costs of which shall not be included in Additional Rent; provided, however, that the cost of repairing any damage to such structural components of the Premises to the extent that such damage is caused by the negligence or intentional misconduct of Tenant or any person under the control of Tenant shall, to the extent not covered by any policy of insurance maintained by Landlord as Additional Rent (including any deductible amount associated therewith), be subject to reimbursement in its entirety to Landlord by Tenant as Additional Rent (and without any amortization thereof).

(vii) No Abatement. Landlord shall not be liable for any injury to or interference with Tenant's business arising from, any repairs, maintenance, alteration or improvement in or to any portion of the Project, including the Premises, or in or to the fixtures, appurtenances and equipment therein. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Code of Civil Procedure, or any similar or successor Regulations or other laws now or hereinafter in effect.

16. Liens. Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against the real property of which the Premises form a part nor against the Tenant's leasehold interest in the Premises. Landlord shall have the right at all reasonable times to post and keep posted on the Premises any notices which it deems necessary for protection from such liens. If any such liens are filed and are not discharged by Tenant by bond or otherwise within ten (10) days after the filing thereof, Landlord may, without waiving its rights and remedies based on such breach of Tenant and without releasing Tenant from any of its obligations, cause such liens to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Tenant shall pay to Landlord at once, upon notice by Landlord, any sum paid by Landlord to remove such liens, together with interest at fifteen percent (15%) per annum from the date of such payment by Landlord. If the interest rate specified in this Lease is higher than the maximum rate permitted by applicable law, such interest rate is hereby reduced to such maximum interest rate permitted by applicable law.

17. Entry by Landlord. Landlord reserves and shall at any and all times have the right to enter the Premises to inspect the same, to supply any service to be provided by Landlord to Tenant hereunder, to submit said Premises to prospective purchasers or, during the last twelve (12) months of the Term of this Lease, to prospective tenants, to post notices of nonresponsibility, or to repair the Premises, all without being deemed guilty of any eviction of Tenant and without abatement of rent, and may, in order to carry out such purposes, erect scaffolding and other necessary structures where

reasonably required by the character of the work to be performed, provided that the business of Tenant shall be interfered with as little as is reasonably practicable. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safe, and Landlord shall have the means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof, and any damages caused on account thereof shall be paid by Tenant. It is understood and agreed that no provision of this Lease shall be construed as obligating Landlord to perform any repairs, alterations or decoration except as otherwise expressly agreed herein to be performed by Landlord. Landlord shall attempt in the exercise of its rights under this Paragraph 17 to minimize any disturbance of Tenant's use and possession of the Premises and to provide as much notice to Tenant as may be reasonably possible prior to any such exercise of Landlord's rights under this Paragraph 17.

18. Utilities.

(a) **Utilities.** During the Term, Tenant shall provide in the Premises at its own expense, water, gas, electricity, sewer, and other necessary utilities and services, and Tenant shall make payment directly to the entities providing such utilities and services.

(b) **Interruption of Utilities.** Tenant agrees that Landlord shall not be liable for damages, by abatement of rent or otherwise, for failure, delay, diminution or interruption of any utilities or services for any reason, and such failure, delay, diminution or interruption shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for any injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to any such failure, delay, diminution or interruption of such utilities or services.

19. Indemnification. To the fullest extent permitted by law Tenant hereby agrees to defend, indemnify and hold Landlord harmless against and from any and all claims arising from Tenant's use of the Premises or the conduct of its business or from any activity, work, or thing done, permitted or suffered by Tenant, its agents, contractors, employees or invitees in or about the Premises or elsewhere, and hereby agrees to further indemnify and hold harmless Landlord against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act, neglect, fault or omission of Tenant, or of its agents, employees or invitees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in or about such claim or any action or proceeding brought thereon. In case any action or proceeding may be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord hereby agrees to defend the same at Tenant's expense by counsel approved in writing by Landlord.

To the fullest extent permitted by law, Landlord hereby agrees to defend, indemnify and hold Tenant and its employees, officers, directors, shareholders, contractors, subcontractors, lenders, invitees, partners, joint venturers, agents, successors, assigns, trustees, administrators, parent entities, subsidiaries and affiliates (collectively, the "Tenant Indemnitees") harmless against and from any and all claims to the extent arising from the active negligence or willful misconduct by Landlord, its agents, contractors, employees or invitees in or about the Premises pursuant to Landlord's performance of any of its maintenance, repair or improvement obligations under this Lease; it being expressly acknowledged and agreed by Tenant that such liability to the Tenant Indemnitees shall not include any claims arising from any damage or injury to person, theft, loss of use of or damage to property or loss of business sustained by Tenant and resulting from the physical condition of the Building or the Premises or any part thereof or any equipment therein or appurtenances thereto (including, without limitation, any damage or injury due to electrocution, electrical surges, or loss of electricity, steam or gas leaks, excessive heat or cold, broken glass, sewage, odors, excessive noise or vibration, mold, dampness, loss due to theft, robbery, assault, battery, murder, flooding or the bursting or leaking of pipes, plumbing fixtures or sprinkler devices). In case any action or proceeding may be brought against Tenant by reason of any such claim covered by the foregoing Tenant indemnity, Landlord upon notice from Tenant hereby agrees to defend the same at Landlord's expense by counsel approved in writing by Tenant. Without limiting the generality of the foregoing, Tenant hereby agrees that its insurance shall be primary source of coverage for any loss or damage to property or injury to persons in, upon or about the Premises from any cause whatsoever, and Tenant therefore waives all claims and rights of recovery against Landlord and Landlord's Indemnitees for any loss or damage to any property of Tenant or injury to persons, which loss, damage or injury is insured against, or required to be insured against, by Tenant pursuant to Paragraph 21 of this Lease, whether or not such loss or damage is due to the fault or negligence of Landlord or any of Landlord's Indemnitees, and regardless of the amount of insurance proceeds collected or collectible under any such insurance policies.

20. Hazardous Materials.

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment, or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products or by-products thereof. Tenant shall not engage in any activity in or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Landlord and compliance in a timely manner (at Tenant's sole cost and expense) with all Applicable Requirements (as hereinafter defined). "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Requirements

require that a notice be given to persons entering or occupying the Premises or neighboring properties. In addition, Landlord may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Tenant upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit.

(b) **Duty to Inform Landlord.** Tenant shall obtain Landlord's written consent, which consent shall be granted or withheld in Landlord's sole discretion, to the manufacturing, processing, distribution, using, producing, treating, storing (above or below ground level), disposing of, or allowing to be present, of any other Hazardous Substance in or about the Premises except for those previously approved in writing by Landlord. In connection with each such consent requested by Tenant, Tenant shall submit to Landlord a description, including the composition, quantity and all other information requested by Landlord concerning the proposed presence of any Hazardous Substance. Landlord's consent to the presence of any Hazardous Substance may be deemed given only by inclusion of a description of the composition and quantity of the proposed Hazardous Substance on Landlord's written consent to the request. Landlord's consent to the presence of any Hazardous Substance at any time during the Term or renewal thereof shall not waive the requirement of obtaining Landlord's consent to the subsequent presence of any other, or increased quantities of, any Hazardous Substance in or about the Premises. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Landlord, Tenant shall immediately give Landlord written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance including but not limited to all such documents as may be involved in any Reportable Use involving the Premises. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system). If any Hazardous Substance is present in or about the Premises, Landlord shall have the right upon reasonable notice to Tenant to engage a consultant to inspect the Premises and to review Tenant's use of Hazardous Substances and all of Tenant's practices with respect to such Hazardous Substances. Tenant shall cooperate in all respects with such inspections and reviews. All costs of such consultants shall be reimbursed to Landlord within fifteen (15) days of written demand by Landlord. *

(c) **Indemnification.** Tenant shall indemnify, protect, defend and hold Landlord, its agents, employees, lenders and ground lessor, if any, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Tenant or by anyone under Tenant's control. Tenant's obligations hereunder shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier

termination of this Lease. No termination, cancellation or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing at the time of such agreement. Tenant's indemnity obligations as provided herein shall include, without in any way limiting the foregoing:

(i) All costs, expenses and attorneys' fees incurred or sustained by any party in making any investigation on account of any claim, demand, loss, liability, cost, charge, suit, order, judgment or adjudication, in prosecuting or defending any action brought in connection therewith, in obtaining or seeking to obtain a release therefrom and in enforcing any of the agreements herein contained;

(ii) Liability for clean-up costs, fines, damages or penalties incurred pursuant to the provisions of any Applicable Requirements;

(iii) Liability for costs and expenses of abatement, correction or clean-up, fines, damages, response costs or penalties which arise from the provisions of any Applicable Requirements; and

(iv) Liability for personal injury or Premises damage arising under any statutory or common-law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance, or for the carrying on of an abnormally dangerous activity, and response costs.

(d) **Tenant's Compliance with Requirements.** Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Requirements," which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Landlord's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill, or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Tenant shall, within five (5) days after receipt of Landlord's written request, provide Landlord with copies of all documents and information, including but not limited to permits, registrations, manifests, applications, reports and certificates, evidencing Tenant's compliance with any Applicable Requirements specified by Landlord, and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant or the Premises to comply with any Applicable Requirements.

(e) **Inspection; Compliance with Law.** Landlord, Landlord's agents, employees, contractors and designated representatives, and any mortgagees, shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease

and all Applicable Requirements, and Landlord shall be entitled to employ experts and/or consultants in connection therewith to advise Landlord with respect to Tenant's activities, including but not limited to Tenant's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a default of this Lease by Tenant or a violation of Applicable Requirements or a contamination, caused or contributed to by Tenant, is found to exist or to be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination. In such case, Tenant shall upon request reimburse Landlord or Landlord's mortgagee, as the case may be, for the costs and expenses of such inspections.

(f) **Landlord Disclosure; Baseline and Exit Assessment.** Landlord hereby notifies Tenant, and Tenant hereby acknowledges that, prior to the leasing of the Premises pursuant to this Lease, Tenant has been notified, pursuant to California Health and Safety Code Section 25359.7 (or any successor statute), that Landlord knows, or has reasonable cause to believe, that certain hazardous substances (as such term is used in such Section 25359.7), such as common cleaning supplies, office supplies, spillage of petroleum products from motor vehicles, and other consumer products, may have come to be located on or beneath the Premises. Landlord has provided a Phase One Environmental Assessment of the Premises, (the "**Baseline Assessment**"), prepared in compliance with ASTM Standard E1527-00. The Baseline Assessment shall establish the environmental condition of the Premises upon the Commencement Date, and shall be deemed approved by Tenant as of the Commencement Date. Tenant shall conduct an exit environmental assessment substantially the same in scope as the Baseline Assessment (the "**Exit Assessment**") prior to the expiration or earlier termination of this Lease as a condition to Tenant's effective vacation of the Premises. The Exit Assessment shall be conducted not earlier than thirty (30) days prior to Tenant's vacation of the Premises. In the event the Exit Assessment reveals contamination not described in the Baseline Assessment, then Tenant shall promptly remediate or remove such contamination in its entirety, which obligation of Tenant shall survive the expiration or termination of this Lease. Tenant shall maintain the results of the Baseline Assessment and the Exit Assessment in strict confidence and shall not, without Landlord's prior written consent, which may be withheld in its sole discretion, disclose the results thereof, or any portion thereof to any third party, excepting Tenant's directors, officers, employees, representatives and consultants on a need-to-know basis, unless and only to the extent that Tenant is compelled under applicable law to disclose all or any portion of such assessment results. The Exit Assessment shall name the Landlord as an additional addressee and client for purposes of Landlord's ability to rely on the results thereof, and a copy shall be delivered to Landlord concurrently with the delivery of the Exit Assessment to Tenant.

21. Insurance.

(a) Tenant at its sole cost and expense shall, during the entire Term hereof, obtain, maintain and keep in full force and effect, the following insurance:

(i) Property insurance including fire, extended coverage, vandalism, malicious mischief and all risks coverage upon property of every description and kind owned by Tenant and located in the Premises or for which Tenant is legally liable or installed by or on behalf of Tenant including, without limitation, leasehold improvements, alterations, furniture, fixtures and

any other personal property, in an amount not less than one hundred percent (100%) of the full replacement cost thereof.

(ii) A policy of Comprehensive Liability Insurance coverage to include personal injury, broad form property damage, premises/operations, owner's protective coverage, blanket contractual liability, products and completed operations liability and owned/non-owned auto liability, in limits not less than Five Million Dollars (\$5,000,000) inclusive. Such policy shall name Landlord, Landlord's managing agent and Landlord's mortgagees as additional insureds and shall contain the following provision:

"Such insurance as afforded by this policy for the benefit of Landlord shall be primary as respects any claims, losses or liabilities arising out of the use of the Premises by the Tenant or by Tenant's operation and any insurance carried by Landlord shall be excess and non-contributing."

(iii) Loss of income and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises as a result of such perils.

(iv) Any other form or forms of insurance as Tenant or Landlord or the mortgagees of Landlord may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would protect itself.

(b) All policies shall be taken out with insurers acceptable to Landlord, who shall be qualified to do business in the State of California and rated A-/VII or better by Best's Insurance Reports and in form satisfactory from time to time to Landlord. Each of Tenant's insurance policies shall be written on an "occurrence" basis and shall have a deductible or deductibles, if any, which do not exceed five thousand dollars (\$5,000) per occurrence. Tenant shall immediately report to Landlord, and promptly thereafter confirm in writing, the occurrence of any injury, loss or damage incurred by Tenant, or Tenant's receipt of notice or knowledge of any claim by a third party or any occurrence that might give rise to such claims. It shall be the responsibility of Tenant not to violate nor knowingly permit to be violated any condition of the policies required by this Lease. Tenant agrees that certificates of insurance on the Landlord's standard form, or, if required by Landlord or the mortgagees of Landlord, certified copies of each such insurance policy, will be delivered to Landlord as soon as practicable after the placing of the required insurance, but in no event later than ten (10) days after Tenant takes possession of all or any part of the Premises, including possession taken under Paragraph 4 hereof. All policies shall contain an undertaking by the insurers to notify Landlord and the mortgagees of Landlord in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation, or other termination thereof. Should Tenant at any time neglect or refuse to provide the insurance required by this Lease, or should such insurance be canceled, Landlord shall have the right, but not the duty, to procure the same and Tenant shall pay the cost thereof as Additional Rent promptly upon Landlord's demand.

(c) In the event of damage to or destruction of the Premises entitling Landlord to terminate this Lease pursuant to Paragraph 22 hereof, Tenant will immediately pay to Landlord all of

Tenant's insurance proceeds relating to leasehold improvements and alterations (but not to Tenant's trade fixtures, equipment, furniture or other personal property) in the Improvements.

(d) Landlord covenants and agrees that throughout the Term, it will insure the Premises (excluding any property with respect to which Tenant is obligated to insure pursuant to the provisions of Subparagraph 21(a) above) against damage by fire and standard extended coverage perils and public liability insurance in such reasonable amounts with such reasonable deductibles as would be carried by a prudent owner of a similar building in the Colton, California commercial real estate market. Landlord may, but shall not be obligated to, take out and carry any other form or forms of insurance as it or the mortgagees of Landlord may reasonably determine advisable. Tenant shall reimburse Landlord upon demand for the cost of all insurance maintained by Landlord as required or permitted by this subparagraph. Notwithstanding any contribution by Tenant to the cost of insurance premiums with respect to the Premises, as provided herein, Tenant acknowledges that it has no right to receive any proceeds from any such insurance policies carried by Landlord, although Landlord shall use such proceeds in the repair and reconstruction of the Premises unless Landlord elects to terminate this Lease pursuant to Paragraph 22. Landlord will not carry insurance of any kind on Tenant's furniture or furnishings or on any equipment of Tenant under this Lease, and Landlord shall not be obligated to repair any damage thereto or replace the same.

(e) Tenant shall promptly comply with all reasonable requirements of the insurance authority or of any insurer now or hereafter in effect relating to the Premises.

(f) If any insurance policy carried by Landlord, as provided by Subparagraph 21(d) above, shall be canceled or cancellation shall be threatened or the coverage thereunder reduced or threatened to be reduced, in any way by reason of the use or occupation of the Premises or any part thereof by Tenant or by any assignee or sub-tenant of Tenant or by anyone permitted by Tenant to be upon the Premises and, if Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation or reduction of coverage within forty-eight (48) hours after notice thereof, Landlord may, at its option enter upon the Premises and attempt to remedy such condition and Tenant shall forthwith pay the cost thereof to Landlord as Additional Rent. Landlord shall not be liable for any damage or injury caused to any property of Tenant or of others located in the Premises as a result of such entry. In the event that Landlord shall be unable to remedy such condition, then Landlord shall have all of the remedies provided for in this Lease in the event of a default by Tenant. Notwithstanding the foregoing provisions of this Subparagraph 21(f), if Tenant fails to remedy as aforesaid, Tenant shall be in default of its obligations hereunder and Landlord shall have no obligation to attempt to remedy such default.

(g) Any policy or policies of fire, extended coverage or similar casualty insurance, which either party obtains in connection with the Premises and the insurance required to be obtained by Tenant pursuant to the provisions of Subparagraph 21(a)(iii) above shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured prior to the occurrence of injury or loss. Landlord and Tenant waive any rights of recovery against the other for injury or loss due to hazards covered by insurance containing such a waiver of subrogation clause or endorsement to the extent of the injury or loss covered thereby.

(h) Notwithstanding anything to the contrary in this Lease, Landlord and Tenant each hereby waives all rights of recovery against the other and the other's agents on account of loss and damage occasioned to the property of such waiving party to the extent only that such loss or damage is required to be insured against under any property insurance policies required by this Lease; provided however, that (i) the foregoing waiver shall not apply to the extent of Tenant's obligations to pay deductibles under any such policies and this Lease, and (ii) if any loss is due to the act, omission or negligence or willful misconduct of Tenant or its agents, employees, contractors, guests or invitees, Tenant's liability insurance shall be primary and shall cover all losses and damages prior to any other insurance hereunder. By this waiver it is the intent of the parties that neither Landlord nor Tenant shall be liable to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage insured against under any property insurance policies required by this Lease, even though such loss or damage might be occasioned by the negligence of such party, its agents, employees, contractors, guests or invitees. The provisions of this Subparagraph 21(h) shall not limit the indemnification provisions elsewhere contained in this Lease.

22. Damage or Destruction.

(a) In the event the Premises are damaged by fire or other perils covered by insurance required to be carried by Landlord under this Lease to an extent not exceeding twenty-five percent (25%) of the full insurable value thereof and if the damage thereto is such that the Premises may be repaired, reconstructed or restored within a period of one hundred eighty (180) days from the date Landlord learns of the necessity for repairs as a result of the damage and said insurance proceeds are available and sufficient to cover the cost of such repairs, Landlord shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect. If such work of repair, reconstruction and restoration is such as to require a period longer than such one hundred eighty (180) day period or exceeds twenty-five percent (25%) of the full insurable value thereof, or if said insurance proceeds will not be sufficient to cover the cost of such repairs, Landlord either may elect to so repair, reconstruct or restore the Premises and this Lease shall continue in full force and effect or Landlord may elect not to repair, reconstruct or restore the Premises and this Lease shall in such event terminate. Under any of the conditions of this Subparagraph 22(a), Landlord shall give written notice to Tenant of its intention within sixty (60) days from the date Landlord learns of the necessity for repairs as a result of the damage. Upon the occurrence of any damage to the Premises, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance for the leasehold improvements and alterations; provided, however, that if the cost of such repair by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as assigned by Tenant, the cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's repair of the damage. In the event Landlord elects not to restore the Premises, this Lease shall be deemed to have terminated as of the date of such destruction.

(b) Upon any termination of this Lease under any of the provisions of this Paragraph 22, the parties shall be released thereby without further obligation to the other from the date possession of the Premises is surrendered to Landlord except for items which have theretofore accrued and are then unpaid.

(c) In the event of repair, reconstruction and restoration by Landlord as herein provided, the Basic Rent provided to be paid under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired during the period of such repair, reconstruction or restoration. Tenant shall not be entitled to any compensation or damages for loss in the use of the whole or any part of the Premises and/or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

(d) Tenant shall not be released from any of its obligations under this Lease except to the extent and upon the conditions expressly stated in this Paragraph 22.

(e) In the event that damage is due to any cause other than fire or other peril covered by extended coverage insurance, Landlord may elect to terminate this Lease.

(f) It is hereby understood that if Landlord is obligated to or elects to repair or restore as herein provided, Landlord shall be obligated to make repairs or restoration only of those portions of the Premises (i) which were originally provided at Landlord's expense or (ii) which were required to be insured by Landlord hereunder or (iii) for which Landlord has received insurance proceeds from insurance required to be carried by Tenant hereunder, and the repair and restoration of all other items shall be the obligation of Tenant.

(g) Notwithstanding anything to the contrary contained in this Paragraph 22, Landlord shall not have any obligations whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Paragraph 22 occurs during the last twelve (12) months of the Term of this Lease or any extension hereof.

(h) The provisions of this Lease, including this Paragraph 22, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, and any statute or regulation with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises. Tenant hereby expressly waives any and all rights under and benefits of Sections 1932(2) and 1933(4) of the California Civil Code, or any similar or successor Regulations or other laws now or hereinafter in effect which relate to the abatement or termination of leases when leased property is damaged or destroyed and agree that such event shall be exclusively governed by the terms of this Lease.

(i) Tenant acknowledges that the rights of any lender holding a mortgage or deed of trust against the Premises ("**Secured Lender**") to any insurance proceeds applicable to the Premises shall be superior to the rights of Landlord and Tenant to such proceeds. Landlord agrees to use commercially reasonable efforts to cause the Secured Lender to make such insurance proceeds available to Landlord for reconstruction as contemplated in this Lease. If a Secured Lender will not make such proceeds available for reconstruction, and Landlord is unwilling to provide the sums necessary for reconstruction, then Landlord may elect to terminate this Lease within thirty (30) days following receipt of notice that such sums will not be made available for reconstruction.

23. Eminent Domain.

(a) In case the whole of the Premises, or such part thereof as shall substantially interfere with Tenant's use and occupancy thereof, shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, either party shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to said authority. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking, and Landlord shall be entitled to receive the entire amount of any award without deduction for any estate or interest of Tenant. In the event the amount of property or the type of estate taken shall not substantially interfere with the conduct of Tenant's business, Landlord shall be entitled to the entire amount of the award without deduction for any estate or interest of Tenant, and Landlord at its option may terminate this Lease. If Landlord does not so elect, Landlord shall promptly proceed to restore the Premises to substantially their same condition prior to such partial taking, and a proportionate allowance shall be made to Tenant for the Basic Rent corresponding to the time during which, and to the part of the Premises of which, Tenant shall be so deprived on account of such taking and restoration. Nothing contained in this Paragraph shall be deemed to give Landlord any interest in any award separately made to Tenant for the taking of personal property and trade fixtures belonging to Tenant or for moving costs incurred by Tenant in relocating Tenant's business.

(b) In the event of taking of the Premises or any part thereof for temporary use, (i) this Lease shall be and remain unaffected thereby and rent shall not abate, and (ii) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term, provided that if such taking shall remain in force at the expiration or earlier termination of this Lease, Tenant shall then pay to Landlord a sum equal to the reasonable cost of performing Tenant's obligations under Paragraph 33 with respect to surrender of the Premises and upon such payment shall be excused from such obligations. For purposes of this Subparagraph 23(b), a temporary taking shall be defined as a taking for a period of two hundred seventy (270) days or less. Landlord and Tenant understand and agree that the provisions of this Paragraph 23 are intended to govern fully the rights and obligations of the parties in the event of a taking of all or any portion of the Premises. Tenant hereby waives any and all rights under and benefits of Section 1265.130 of the California Code of Civil Procedure, or any similar or successor regulations or other laws now or hereinafter in effect.

24. Bankruptcy. If Tenant shall file a petition in bankruptcy under federal bankruptcy law as then in effect, or if Tenant is adjudicated a bankrupt in involuntary bankruptcy proceedings and such adjudication shall not have been vacated within thirty (30) days from the date thereof, or if a receiver or trustee be appointed of Tenant's property and the order appointing such receiver or trustee not be set aside or vacated within thirty (30) days after the entry thereof, or if Tenant shall assign Tenant's estate or effects for the benefit of creditors, or if this Lease shall otherwise by operation of law pass to any persons other than Tenant, then and in any such event Landlord may, if Landlord so elects, with or without notice of such election and with or without entry or action by Landlord, forthwith terminate this Lease, and notwithstanding any other provisions of this Lease, Landlord, in addition to any and all rights and remedies allowed by law or equity, shall upon such termination be entitled to recover damages in the amount provided in Subparagraph 25(b) below and neither Tenant nor any person claiming through or under Tenant or by virtue of any statute or order of any court shall be entitled to possession of the Premises but shall forthwith quit and surrender the Premises to Landlord. Nothing herein contained shall limit or prejudice the right of Landlord to

prove and obtain as damages by reason of any such termination an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of damages recoverable under the provisions of this Paragraph 24.

25. Defaults and Remedies.

(a) The occurrence of any one or more of the following events shall constitute a default hereunder by Tenant:

(i) The vacation or abandonment of the Premises by Tenant. Abandonment is herein defined to include, but is not limited to, any absence by Tenant from the Premises for five (5) days or longer.

(ii) The failure by Tenant to make any payment of Basic Rent as when due or any Additional Rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant; provided however, that any such notice shall be in lieu of, and not in addition to, any notice required under applicable law.

(iii) The failure by Tenant to observe or perform any of the provisions of this Lease to be observed or performed by Tenant, other than as specified in Subparagraph 25(a)(i) or (ii) above, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant; provided, however, that any such notice shall be in lieu of and not in addition to, any notice required under applicable law; provided, further, that if the nature of Tenant's default is such that more than ten (10) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said ten (10) day period and thereafter diligently prosecute such cure to completion, which completion shall occur not later than sixty (60) days from the date of such notice from Landlord.

(iv) (1) The making by Tenant of any general assignment for the benefit of creditors; (2) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); (3) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (4) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within thirty (30) days.

(b) In the event of any such default by Tenant, in addition to any other remedies available to Landlord at law or in equity, including, without limitation, Landlord's right to continue the Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due (subject however to the limitations of California Civil Code §1951.4, which requires that as a condition to exercising such remedy Tenant shall have the right to sublet or assign the Premises subject only to reasonable limitations), Landlord shall have the immediate option to terminate this

Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease then Landlord may recover from Tenant:

(i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(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; plus

(v) at Landlord's election, and subject to the limitations of Section 1951.2 of the California Civil Code, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "rent" as used in this Subparagraph 25(b) shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others including Basic Rent and Additional Rent. As used in Subparagraphs 25(b)(i) and (ii) above, the "worth at the time of award" is computed by allowing interest at fifteen percent (15%), or such lesser amount as may then be the maximum lawful rate, per annum. As used in Subparagraph 25(b)(iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) In the event of any such default by Tenant, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant for such period of time as may be required by applicable law after which time Landlord may dispose of such property in accordance with applicable law. No re-entry or taking possession of the Premises by Landlord pursuant to this Subparagraph 25(c) shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

(d) After repossession of the Premises pursuant to Subparagraph 25(c) above, whether or not this Lease shall have been terminated pursuant to Subparagraph 25(a) above, Landlord may, but shall not be obligated to, relet the Premises or any part thereof to such tenant or tenants for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) for such rent, on such conditions (which may include concessions or free rent) and for such uses as Landlord, in its reasonable discretion, may determine; and Landlord shall collect and receive any rents payable by reason of such reletting. The rents

received on such reletting shall be applied (1) first to the reasonable and actual expenses of such reletting and collection, including reasonably necessary renovation and Alterations of the Leased Premises, reasonable and actual attorneys' fees and any reasonable and actual real estate commissions paid, and (2) thereafter toward payment of all sums due or to become due Landlord hereunder. If the amounts collected by Landlord from such reletting are insufficient to pay all amounts owed by Tenant under this Lease, then Tenant shall be liable for, as damages, the amount of any such deficiency, subject to the limitations of Subparagraph 25(b) above. Landlord shall not, in any event, be required to pay Tenant any sums received by Landlord on a reletting of the Premises in excess of the rents provided in this Lease, but such excess shall reduce any accrued present or future obligations of Tenant hereunder. Landlord's re-entry and reletting of the Premises without termination of this Lease shall not preclude Landlord from subsequently terminating this Lease as set forth above. Landlord may make such alterations to the Premises as Landlord in its reasonable discretion may deem advisable. Tenant agrees to pay Landlord, as Additional Rent, immediately upon demand, all reasonable expenses incurred by Landlord in obtaining possession, in performing such alterations and in reletting the Premises, including reasonable fees and commissions of attorneys, architects, agents and brokers.

(e) In addition to the foregoing remedies, Landlord may exercise any other right or remedy now or hereafter existing at law or in equity. All rights, options and remedies of Landlord contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by Landlord of any rent or other payments due hereunder or any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The consent or approval of Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant.

(f) TENANT HEREBY WAIVES ANY AND ALL RIGHTS CONFERRED BY SECTION 3275 OF THE CIVIL CODE OF CALIFORNIA AND BY SECTIONS 1174 (c) AND 1179 OF THE CODE OF CIVIL PROCEDURE OF CALIFORNIA AND ANY AND ALL OTHER REGULATIONS AND RULES OF LAW FROM TIME TO TIME IN EFFECT DURING THE TERM PROVIDING THAT TENANT SHALL HAVE ANY RIGHT TO REDEEM, REINSTATE OR RESTORE THIS LEASE FOLLOWING ITS TERMINATION BY REASON OF TENANT'S BREACH. TENANT ALSO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE.

26. **Assignment and Subletting.** Tenant shall not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, without first obtaining Landlord's prior written consent, which shall not be unreasonably withheld. Any assignment, encumbrance or sublease without Landlord's prior written consent shall be voidable, at Landlord's election, and shall constitute a default. For purposes hereof, in the event Tenant is a partnership or limited liability company, a withdrawal or change of partners or members, or change of ownership of

partners or members, owning more than a fifty percent (50%) interest in the partnership or limited liability company, or if Tenant is a corporation, any transfer of fifty percent (50%) or more of its stock, shall constitute a voluntary assignment and shall be subject to these provisions. A change of partners or members owning less than fifty percent (50%) interest in a partnership or limited liability company, or a transfer of less than fifty percent (50%) of a corporation's stock, may also be deemed to constitute a voluntary assignment subject to these provisions if it results in a change of control of the partnership, limited liability company or corporation. No consent to an assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this Paragraph. Tenant shall notify Landlord in writing of Tenant's intent to assign this Lease, or encumber, or sublease Tenant's interest in the Premises, the name of the proposed assignee or sublessee, information concerning the financial responsibility of the proposed assignee or sublessee and the terms of the proposed assignment or subletting, and Landlord shall, within fifteen (15) days of receipt of such written notice, and additional information requested by Landlord concerning the proposed assignee's or sublessee's financial responsibility, either consent to such proposed assignment, encumbrance or sublease or reasonably withhold such consent.

As a condition for granting its consent to any assignment, encumbrance or sublease, Landlord may require that the assignee or sublessee remit directly to Landlord, on a monthly basis, all monies due to Tenant by said assignee or sublessee. In the event that Landlord shall consent to an assignment or sublease under the provisions of this Paragraph 26, Tenant shall pay Landlord's reasonable processing costs and attorneys' fees incurred in giving such consent. If for any proposed assignment or sublease Tenant receives rent or other consideration, whether cash or any other form whatsoever, either initially or over the term of the assignment or sublease, in excess of the rent called for hereunder, or, in case of the sublease of a portion of the Premises, in excess of such rent fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder are taken into account, Tenant shall pay to Landlord as additional rent hereunder fifty percent (50%) of the excess value of each such payment of rent or other consideration received by Tenant promptly after its receipt. Landlord's waiver or consent to any assignment or subletting shall not relieve Tenant from any obligation under this Lease. If Tenant requests Landlord's consent to any assignment of this Lease or any subletting of all or a portion of the Premises, Landlord shall have the right in its sole discretion, to be exercised by giving written notice to Tenant within thirty (30) days of receipt by Landlord of the financial responsibility information required by this Paragraph 26 to terminate this Lease in the case of an assignment or a sublease of the entire Premises, or in the case of a partial sublease, terminate this Lease as to the portion of the Premises proposed to be sublet, effective as of the date Tenant proposes to assign this Lease or sublet all or a portion of the Premises. Landlord's right to terminate this Lease as to all or a portion of the Premises on assignment or subletting shall not terminate as a result of Landlord's consent to the assignment of this Lease or the subletting of all or a portion of the Premises, or Landlord's failure to exercise this right with respect to any assignment or subletting.

27. Quiet Enjoyment. Landlord covenants and agrees with Tenant that upon Tenant paying the rent required under this Lease and paying all other charges and performing all of the covenants and provisions aforesaid on Tenant's part to be observed and performed under this Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises in accordance with this Lease, free from any person claiming by, through or under Landlord. Landlord's failure to perform the work of Capital Repair Items (but only if and to the extent that Landlord is responsible

therefor pursuant to the provisions of Paragraph 15(a) above) arising from any demands by any governmental entity to make any repairs, improvements or alterations required for Tenant's occupancy of the Premises shall be deemed a breach of Tenant's quiet enjoyment. In the event of any breach of Tenant's quiet enjoyment of the Premises, Tenant shall, at its discretion, be entitled to terminate this Lease following written notice to Landlord and a reasonable opportunity for Landlord to cure such failure.

28. Subordination. Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, and at the election of Landlord or any mortgagee with a lien on the Premises or any ground lessor with respect to the Premises, this Lease shall be subject and subordinate at all times to: (a) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises or the land upon which the Premises are situated or both, (b) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Premises, land, ground leases or underlying leases, or Landlord's interest or estate in any of said items is specified as security, and (c) any CC&Rs (as defined in Paragraph 8) affecting the Premises. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Lease. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, if requested by the ground lessor, mortgagee or beneficiary, as applicable, attorn to and become the Tenant of the successor in interest to Landlord and in such event Tenant's right to possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and all other amounts required to be paid to Landlord pursuant to the terms hereof and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. Tenant hereby waives its rights under any current or future law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale. Tenant covenants and agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents evidencing Tenant's agreement to attorn as set forth in this Paragraph 28 and the priority or subordination of this Lease with respect to any such CC&Rs, ground leases or underlying leases or the lien of any such mortgage or deed of trust. Should Tenant fail to sign and return any such documents within ten (10) business days of receipt, Tenant shall be in default hereunder.

29. Estoppel Certificate.

(a) Within ten (10) days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord a statement, in a form substantially similar to the form of Exhibit "D" attached hereto, certifying: (i) the Commencement Date of this Lease; (ii) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (iii) the date to which the rental and other sums payable under this Lease have been paid; (iv) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; and (v) such other matters requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Paragraph 29

may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises or any interest therein.

(b) Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented in good faith by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one (1) month's rent has been paid in advance. Tenant's failure to deliver said statement to Landlord within ten (10) working days of receipt shall constitute a default under this Lease.

30. **Rules and Regulations.** Tenant shall faithfully observe and comply with all reasonable rules and regulations from time to time put into effect by Landlord as it deems reasonably necessary or appropriate in its sole discretion (the "**Rules and Regulations**").

31. **Choice of Law.** This Lease shall in all respects be governed and interpreted in accordance with the laws of the State of California. Tenant irrevocably consents to the service of process of any action or proceeding at the address of the Premises, as long as a copy is sent to the address for notice set forth herein contemporaneously with such service. Nothing in this paragraph shall affect the right to serve process in any other manner permitted by law.

32. **Successors and Assigns.** Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

33. **Surrender of Premises.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, operate as an assignment to it of any or all subleases or subtenancies. Upon the expiration or termination of this Lease, Tenant shall peaceably surrender the Premises and all alterations and additions thereto broom-clean, in good order, repair and condition, reasonable wear and tear excepted, and shall comply with the provisions of Subparagraphs 14(g). The delivery of keys to any employee of Landlord or to Landlord's agent or any employee thereof shall not be sufficient to constitute a termination of this Lease or a surrender of the Premises.

34. **Professional Fees.**

(a) In the event that Landlord should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provisions of this Lease, or for any other relief against Tenant hereunder, or should either party bring suit against the other with respect to matters arising from or growing out of this Lease, then all costs and expenses, including without limitation, professional fees such as appraisers', accountants' and attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

(b) Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy hereunder, Tenant shall pay to Landlord its

costs and expenses incurred in such suit, including without limitation, professional fees such as appraisers', accountants' and attorneys' fees.

35. Performance by Tenant.

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. In the event Tenant shall fail to perform any covenant or agreement to be performed by Tenant under any of the terms of this Lease, including, without limitation, Tenant's obligations under Paragraph 15 hereof, Landlord shall have the right to perform such obligation of Tenant on Tenant's behalf. In such event, Landlord shall be entitled to receive, as Additional Rent, reimbursement of any sums so expended on Tenant's behalf, together with interest at fifteen percent (15%), or such lesser amount as may then be the maximum lawful rate, per annum calculated from the date of expenditure by Landlord to the date of reimbursement by Tenant.

36. Mortgage and Senior Lessor Protection. No act or failure to act on the part of Landlord which would entitle Tenant under the terms of this Lease, or by law, to be relieved of Tenant's obligations hereunder or to terminate this Lease, shall result in a release of such obligations or a termination of this Lease unless (a) Tenant has given notice by registered or certified mail to any beneficiary of a deed of trust or mortgage covering the Premises and to the lessor under any master or ground Lease covering the Premises or any interest therein whose identity and address shall have been furnished to Tenant, and (b) Tenant offers such beneficiary, mortgagee or Lessor a reasonable opportunity to cure the default.

37. Definition of Landlord. The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of, the Premises. In the event of any transfer, assignment or other conveyance or transfers of any such title or interest, Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed and, without further agreement, the transferee of such title or interest shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder, during its ownership of the Premises. Landlord may transfer its interest in the Premises without the consent of Tenant and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

38. Waiver. The failure of Landlord to seek redress for violation of, or to insist upon strict performance of, any term, covenant or condition of this Lease or the Rules and Regulations shall not be deemed a waiver of such violation or prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of Landlord to insist upon the performance by Tenant in strict accordance with said terms. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any

term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

39. **Identification of Tenant.** Unless the provisions of Paragraph 53 hereinbelow are applicable to this Lease, if more than one entity executes this Lease as Tenant, (a) each of them is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions, provisions and agreement of this Lease to be kept, observed and performed by Tenant, and (b) the term "Tenant" as used in this Lease shall mean and include each of them jointly and severally and the act of or notice from, or notice or refund to, or the signature of, any one or more of them, with respect to the tenancy or this Lease, including, but not limited to, any renewal, extension, expiration, termination or modification of this Lease, shall be binding upon each and all of the entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or so given or so received such notice or refund or so signed.

40. **Parking and Transportation.** Tenant shall have the right to use all parking spaces included within the Premises, or otherwise associated with the Buildings of the Premises, subject to such parking rules and regulations as Landlord deems reasonably necessary or appropriate for the operation of said parking. Landlord may refuse to permit any person who violates with unreasonable frequency the parking rules and regulations to park in the parking areas, and any violation of the rules shall subject the car to removal. Tenant agrees to use its best efforts to acquaint all employees and visitors with the parking rules and regulations. Landlord shall have no responsibility for damage to cars in the parking areas.

41. **Terms and Headings.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Paragraph headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

42. **Examination of Lease; Counterparts.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for Lease, and it is not effective as a Lease or otherwise until execution by and delivery to both Landlord and Tenant. This Lease may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument.

43. **Time.** Time is of the essence with respect to the performance of every provision of this Lease in which time or performance is a factor.

44. **Prior Agreement; Amendments.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not incorporated herein.

45. **Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal in no way affects, impairs or invalidates any other provision hereof, and such other provisions shall remain in full force and effect.

46. **Recording.** Neither Landlord nor Tenant shall record this Lease nor a short form memorandum thereof without the consent of the other and if such recording occurs, it shall be at the sole cost and expense of the party requesting the recording, specifically including any documentary transfer taxes.

47. **Limitation on Liability.** The obligations of Landlord under this Lease do not constitute personal obligations of the individual partners, directors, officers or shareholders of Landlord, and Tenant shall not seek recourse against the individual partners, directors, officers or shareholders of Landlord or any of their personal assets for satisfaction of any liability in respect to this Lease. Any liability of Landlord under this Lease shall be limited to Landlord's interest in the Premises. Tenant hereby acknowledges and agrees that (i) the Basic Rent does not include the cost of any security measures for any portion of the Premises, (ii) that Landlord has no obligation to provide any security measures, and to the extent permitted by law, and such obligation imposed on Landlord by operation of law is waived by Tenant, (iii) Landlord has made no representation to tenant regarding the safety or security of the Premises, (iv) Tenant is solely responsible for providing any security measures and devices that is required to protect Tenant and Tenant's employees, visitors and invitees from criminal or negligent acts of third parties, and (v) any safety and security devices included in the Premises as delivered to Tenant, while intended to deter crime and promote safety, may not in given instances prevent theft or other criminal acts, or protect persons or property against damage, loss or injury. The risk that any safety or security device previously installed at the Premises by or for Landlord may not be effective, or may malfunction or be circumvented, is hereby assumed by Tenant.

48. **Riders.** Clauses, plats, exhibits and riders, if any, affixed to this Lease are a part hereof.

49. **Signs.** Tenant shall not place any sign within any area of the Premises which is visible from outside the Premises without Landlord's prior written consent. Landlord shall have the right to remove any sign which has not been previously approved in writing.

50. **Modification for Lender.** If in connection with obtaining construction, interim or permanent financing for the Premises, the lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder in any way and do not adversely affect the leasehold interest hereby created or Tenant's rights hereunder.

51. **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the foregoing covenants and agreements

shall be applicable to any covenant or agreement whether expressly contained in this Lease or imposed by any statute or at common law.

52. **Financial Statements.** At any time during the term of this Lease, Tenant shall, upon thirty (30) days prior written notice from Landlord, provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year; provided, however, that such financial statements shall not be disclosed by Landlord to any third party without Tenant's prior written consent, which shall not be unreasonably withheld by Tenant if such disclosure is requested in connection with any sale or financing of the Premises by Landlord. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant.

53. **Tenant as Corporation.** If Tenant executes this Lease as a corporation or other business entity, then Tenant and the persons executing this Lease on behalf of Tenant represent and warrant that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on its behalf and that this Lease is binding upon Tenant in accordance with its terms.

54. **No Partnership or Joint Venture.** Nothing in this Lease shall be deemed to constitute Landlord and Tenant as partners or joint venturers. It is the express intent of the parties hereto that their relationship with regard to this Lease be and remain that of landlord and tenant.

55. **Confidentiality.** Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord and Tenant. Tenant agrees that it, its partners, officers, directors, employees, brokers and attorneys, shall not disclose the terms and conditions of this Lease to any other person without the prior written consent of Landlord. It is understood and agreed that damages may be an inadequate remedy for the breach of this provision by Tenant, and Landlord shall have the right to specific performance of this provision and to injunctive relief to prevent its breach or continued breach.

[Remainder of Page Intentionally Blank; Signature Page Follows]

56. Waiver of Jury Trial. LANDLORD AND TENANT EACH ACKNOWLEDGES THAT IT IS AWARE OF AND HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY, AND EACH PARTY DOES HEREBY EXPRESSLY AND KNOWINGLY WAIVE AND RELEASE ALL SUCH RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER (AND/OR AGAINST ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUBSIDIARY OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

SRC
Landlord's Initials

Tenant's Initials

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

LANDLORD:

SRC Pellisier, LLC,
a Nevada limited liability company

By: [Signature]
Steven R. Campbell, its managing member

TENANT:

C Construction, Inc.,
a Delaware corporation

By: _____

Its: _____

Print Name: _____

56. Waiver of Jury Trial. LANDLORD AND TENANT EACH ACKNOWLEDGES THAT IT IS AWARE OF AND HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY, AND EACH PARTY DOES HEREBY EXPRESSLY AND KNOWINGLY WAIVE AND RELEASE ALL SUCH RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER (AND/OR AGAINST ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUBSIDIARY OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

Landlord's Initials

hgy

Tenant's Initials

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

LANDLORD:

SRC Pellisier, LLC,
a Nevada limited liability company

By: _____
Steven R. Campbell, its managing member

TENANT:

C Construction, Inc.,
a Delaware corporation

By: Michael Mahre

Its: President

Print Name: Michael Mahre

EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

PARCEL 3 OF PARCEL MAP NO. 15356, IN THE CITY OF COLTON, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 194 OF PARCEL MAPS, PAGES 5 THROUGH 6, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B:

PARCEL 2 OF PARCEL MAP NO. 12021, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 146, PAGES 18 AND 19, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B-1:

AN EASEMENT FOR INGRESS AND EGRESS AND UTILITIES OVER THE NORTH 30 FEET OF THE FOLLOWING DESCRIBED LAND:

ALL THAT PORTION OF LOT 46 OF BANDINI DONATION, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3 OF MAPS, PAGE 24, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

EXHIBIT "B"

PREMISES DEPICTION

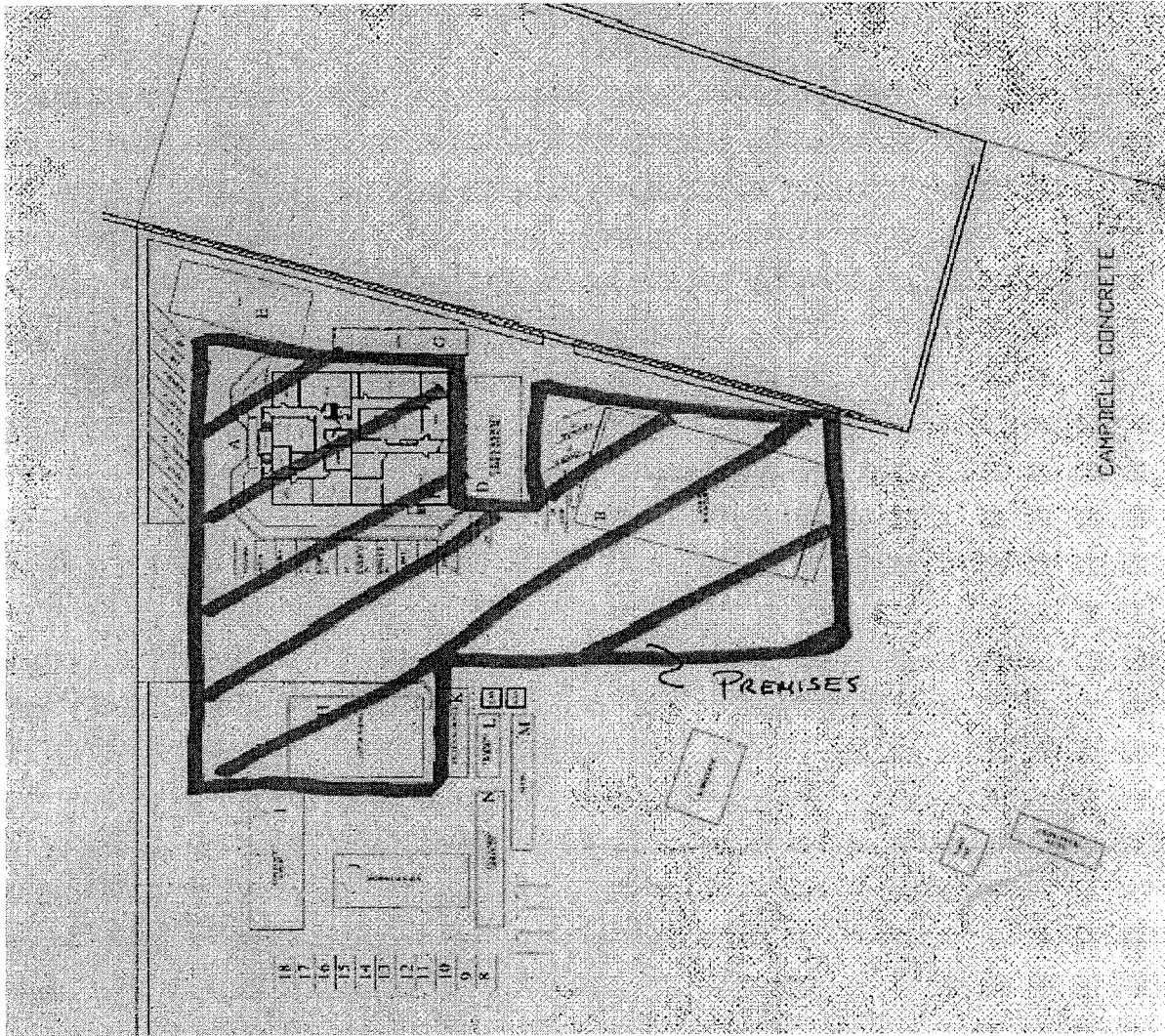


EXHIBIT "C"

**SAMPLE FORM OF
NOTICE OF LEASE TERM DATES**

TO: _____

Date: _____

Re: Lease dated August 31, 2005 between SRC Pellisier, LLC, a Nevada limited liability company ("Landlord") and C Construction, Inc., a Delaware corporation ("Tenant") concerning Premises located at 1640 W. Pellisier, Colton, California 92324.

Gentlemen:

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

1. That the Premises have been accepted herewith by the Tenant as being substantially complete in accordance with the subject Lease.
2. That the Tenant has possession of the subject Premises and acknowledges that under the provisions of the subject Lease, the Term of said Lease shall commence as of September 1, 2005, for a term of four (4) years, ending on August 31, 2009, with one (1) option to extend for an additional one (1) year to August 31, 2010.
3. That in accordance with the subject Lease, rental commenced to accrue on _____.
4. If the commencement date of the subject Lease is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in said Lease.
5. Rent is due and payable in advance on the first day of each and every month during the term of said Lease. Your rent checks should be made payable to Landlord at the Landlord's address for notices set forth in the Lease.

AGREED AND ACCEPTED

LANDORD:

SRC Pellisier, LLC,
a Nevada limited liability company

By: _____
Steven R. Campbell, its managing member

TENANT:

C Corporation, Inc.,
a California corporation

By: _____

Its: _____

Print Name: _____

EXHIBIT "D"

SAMPLE FORM OF ESTOPPEL CERTIFICATE

The undersigned, SRC PELLISIER, LLC ("**Landlord**"), with a mailing address at 7912 West Sahara, Las Vegas, NV 89117; Attn: Mr. Steve Campbell; and C CONSTRUCTION, INC. ("**Tenant**"), hereby certify to _____, a _____ as follows:

1. Attached hereto is a true, correct and complete copy of that certain lease dated August 31, 2005 between Landlord and Tenant (the "Lease"), which demises premises located at 1640 W. Pellisier, Colton, California 92324. The Lease is now in full force and effect and has not been amended, modified or supplemented, except as set forth in paragraph 4 below.

2. The term of the Lease commenced on September 1, 2005.

3. The term of the Lease shall expire on August 31, 2008, unless extended in accordance with the renewal option terms and conditions of the Lease.

4. The Lease has: (Initial one)

☐ not been amended, modified, supplemented, extended, renewed or assigned.

☐ been amended, modified, supplemented, extended, renewed or assigned by the following described agreements, copies of which are attached hereto:

_____.

5. Tenant has accepted and is now in possession of said premises.

6. Tenant and Landlord acknowledge that the Lease will be assigned to _____ and no modification, adjustment, revision or cancellation of the lease or amendments thereto shall be effective unless written consent by _____ is obtained, and that until further notice, payments under the Lease may continue as heretofore.

7. The amount of fixed monthly rent is _____ Dollars (\$_____).

8. The amount of security deposits (if any) is Thirteen Thousand Dollars (\$13,000.00). No other security deposits have been made.

9. Tenant is paying the full lease rental, which has been paid in full as of the date hereof. No rent under the Lease has been more than thirty (30) days in advance of its due date.

10. All work required to be performed by Landlord under the Lease has been completed.

11. There are no defaults on the part of the Landlord or Tenant under the Lease.

12. Tenant has no defense as to its obligations under the Lease and claims no set-off or counterclaim against Landlord.

13. Tenant has no right to any concession (rental or otherwise) or similar compensation in connection with renting the space it occupies except as provided in the Lease.

All provisions of the Lease and amendments thereto (if any) referred to above are hereby ratified.

The foregoing certification is made with the knowledge that _____ is about to fund a loan to Landlord or purchase the demised premises from Landlord, and that _____ is relying upon the representations herein made in connection with such transaction.

DATED: _____, 20____

LANDORD:

SRC Pellisier, LLC,
a Nevada limited liability company

TENANT:

C Corporation, Inc.,
a California corporation

By: _____
Steven R. Campbell, its managing member

By: _____

Its: _____

Print Name: _____

RIDER NO. 1 - OPTION TO RENEW LEASE

THIS RIDER NO. 1 is attached to and made a part of that certain lease dated August 31, 2005, between SRC Pellisier, LLC, a Nevada limited liability company, as Landlord, and C Construction, Inc., a Delaware corporation, as Tenant (the "Lease"). The terms used in this Rider shall have the same definitions as set forth in the Lease. The provisions of this Rider shall prevail over any inconsistent or conflicting provisions of the Lease.

R-1. Option. Provided that Tenant is not in default of this Lease at the time of the exercise of the Option to Renew Lease (as defined below) or at the expiration of the initial term of this Lease, the Tenant shall have one and only one option to renew and extend this Lease (the "Option to Renew Lease") for one term of one (1) year (the "Renewal Term"), upon written notice to the Landlord delivered not less than nine (9) months before the expiration of the initial Lease Term. Upon the delivery of such notice by Tenant and subject to the conditions set forth in the preceding sentence, this Lease shall be extended without the necessity of the execution of any further instrument or document; provided, however, that each party agrees to execute and deliver such further instruments or documents as the other party may reasonably request to memorialize or acknowledge the exercise of the Option to Renew Lease. The Renewal Term shall commence upon the expiration of the initial term of this Lease, shall expire upon the first anniversary of such date, and be upon the same terms, covenants and conditions as provided in this Lease for the initial Lease Term, except that the Base Rent shall be the then prevailing fair market rental rate as of the commencement of the Renewal Term. Tenant shall only be able to exercise the Option to Renew Lease as to all of the Premises.

R-2. Rent. The prevailing fair market rental rate shall be the then going rate for comparable space at in the vicinity of the Premises. Landlord shall notify Tenant of Landlord's good faith determination of prevailing fair market rental no later than one (1) month after Tenant's exercise of the Option to Renew Lease. No later than one (1) month after Landlord notifies Tenant of the prevailing fair market rental, Tenant shall notify Landlord whether Tenant accepts Landlord's determination. If Tenant does not agree, Tenant and Landlord shall proceed pursuant to paragraph R-3 hereof.

R-3. Objection to Landlord's Determination. In the event Tenant timely objects to the fair market rental rate submitted by Landlord, Landlord and Tenant shall attempt in good faith to agree upon such fair market rental rate using their best good faith efforts. If Landlord and Tenant fail to reach agreement on such fair market rental rate within fifteen (15) days following Tenant's notice that Tenant does not accept Landlord's determination of the prevailing fair market rental rate, then each party shall submit a new determination of prevailing fair market rental rate to appraisal in accordance with Paragraph R-5 below.

R-4. Appraisal. Landlord and Tenant shall each appoint one (1) independent appraiser who shall by profession be a real estate broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of commercial properties in the Colton, California area. The determination of the appraisers shall be limited to solely the issue of whether Landlord's or Tenant's submitted fair market rental rate for the Premises is the closest to the actual fair market rental rate for the Premises as determined by the appraisers,

taking into account the requirements of Paragraph R-2 above and this Paragraph R-4 regarding the same. Such decision shall be based upon the projected prevailing fair market rental rate as of the commencement date of the Renewal Term. Each such appraiser shall be appointed within the fifteen (15) day period after Tenant's notice that Tenant does not accept Landlord's determination.

(i) The two (2) appraisers so appointed shall within fifteen (15) days of the date of appointment of the last appointed appraiser agree upon and appoint a third appraiser who shall be qualified under the same criteria set forth hereinabove for qualifications of the initial two (2) appraisers.

(ii) The three (3) appraisers shall within thirty (30) days of the appointment of the third appraiser reach a decision as to whether the parties shall use Landlord's or Tenant's submitted fair market rental rate, and shall notify Landlord and Tenant thereof.

(iii) The decision of the majority of the three (3) appraisers shall be binding upon Landlord and Tenant. If either Landlord or Tenant fails to appoint an appraiser within the time period specified in Paragraph R-4 hereinabove, the appraiser appointed by one of them shall reach a decision based upon the same procedures as set forth above (i.e., by selecting either Landlord's or Tenant's submitted fair market rental rate), and shall notify Landlord and Tenant thereof, and such appraiser's decision shall be binding upon Landlord and Tenant.

(iv) If the two (2) appraisers fail to agree upon and appoint a third appraiser, both appraisers shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association, but based up on the same procedures as set forth above (i.e., by selecting either Landlord's or Tenant's submitted fair market rental rate).

(v) The cost of the appraisal (or arbitration if required pursuant to Paragraph R-5(iv)) shall be paid by the party whose submitted fair market rental rate is not accepted.

R-5. Notwithstanding the fair market rental rate for the Premises, in no event shall the Basic Rent as of the commencement of the Renewal Term be less than the Basic Rent payable by Tenant during the last month of the initial Term of the Lease.

RIDER NO. 2 – GUARANTY OF LEASE

This Guaranty of Lease is made as of this 31st day of August, 2005, by BMC Construction, Inc., a Delaware corporation ("Guarantor"), as a material inducement to and in consideration of the execution by SRC Pellisier, LLC ("Landlord") of that certain Industrial Real Estate Lease (the "Lease") of even date herewith between Landlord and C Construction, Inc., a Delaware corporation ("Tenant"), relating to premises located at 1640 W. Pellisier, Colton, California. Guarantor hereby covenants and agrees as follows:

1. Guarantor hereby unconditionally guarantees the performance of, and unconditionally promises to perform, all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder.

2. In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, amend or modify the Lease in any manner, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.

3. Guarantor hereby waives and agrees not to assert or take advantage of any and all rights afforded a surety or guarantor under applicable law, including all benefits it may otherwise be entitled to under California Civil Code Sections 2787 through 2855, and similar laws, and the following:

(a) Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor;

(b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease;

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease; and

(i) Any and all defenses and rights which Guarantor might otherwise have to exoneration under this Guaranty, including all rights under California Civil Code Section 2819 and similar laws, based on any alteration, modification, compromise, renewal, extension, or assignment of the Lease or any of the Guaranteed Obligations, whether done with or without the knowledge or consent of Guarantor, and Guarantor grants Lessor the right to take any such action relative to the Guaranteed Obligations without the knowledge or consent of Guarantor without in any manner affecting the liability of Guarantor under this Guaranty.

4. Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of non-payment, and all other notices of any kind, including all notices of the existence, creation, or incurring of new or additional obligations and any notice of acceptance of this Guaranty, which, upon execution by Guarantor, shall immediately be binding on Guarantor.

5. Guarantor subordinates to Lessor all of Guarantor's rights to participate in any security now or later held by Lessor. Until all obligations hereby guaranteed shall have been fully performed, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

6. All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease; provided, however, that as long as the Tenant is a wholly-owned

subsidiary of Guarantor, the foregoing prohibition shall not be effective with respect to any intra-company debt or capital transfers.

7. All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant in Landlord.

8. The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

9. Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Lease against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

10. Should any one or more provisions of this Guaranty of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

11. This Guaranty of Lease shall inure to the benefit of Landlord and its successors and assigns as Landlord under the Lease, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. This Guaranty of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

12. Upon full performance of all obligations hereby guaranteed, this Guaranty of Lease shall be of no further force or effect.

13. No provision of this Guaranty of Lease or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

14. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any

individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

15. If two (2) or more persons are signing this Guaranty of Lease as Guarantor, then all such persons shall be jointly and severally liable for the obligations of Guarantor hereunder.

16. This Guaranty of Lease shall be governed by and construed in accordance with the laws of the State of California. In any action brought under or arising out of this Guaranty of Lease, Guarantor hereby consents to the jurisdiction of any competent court within the State of California and hereby consents to service of process by any means authorized by California law.

17. TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS GUARANTY.

This Guaranty of Lease shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

GUARANTOR:

BMC CONSTRUCTION, INC.
a Delaware corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

GUARANTY OF LEASE

This Guaranty of Lease is made as of this 31st day of August, 2005, by BMC Construction, Inc., a Delaware corporation ("Guarantor"), as a material inducement to and in consideration of the execution by SRC Pellisier, LLC ("Landlord") of that certain Industrial Real Estate Lease (the "Lease") of even date herewith between Landlord and C Construction, Inc., a Delaware corporation ("Tenant"), relating to premises located at 1640 W. Pellisier, Colton, California. Guarantor hereby covenants and agrees as follows:

1. Guarantor hereby unconditionally guarantees the performance of, and unconditionally promises to perform, all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder.
2. In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, amend or modify the Lease in any manner, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.
3. Guarantor hereby waives and agrees not to assert or take advantage of any and all rights afforded a surety or guarantor under applicable law, including all benefits it may otherwise be entitled to under California Civil Code Sections 2787 through 2855, and similar laws, and the following:
 - (a) Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor;
 - (b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;
 - (c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;
 - (d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease;

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease; and

(i) Any and all defenses and rights which Guarantor might otherwise have to exoneration under this Guaranty, including all rights under California Civil Code Section 2819 and similar laws, based on any alteration, modification, compromise, renewal, extension, or assignment of the Lease or any of the Guaranteed Obligations, whether done with or without the knowledge or consent of Guarantor, and Guarantor grants Lessor the right to take any such action relative to the Guaranteed Obligations without the knowledge or consent of Guarantor without in any manner affecting the liability of Guarantor under this Guaranty.

4. Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of non-payment, and all other notices of any kind, including all notices of the existence, creation, or incurring of new or additional obligations and any notice of acceptance of this Guaranty, which, upon execution by Guarantor, shall immediately be binding on Guarantor.

5. Guarantor subordinates to Lessor all of Guarantor's rights to participate in any security now or later held by Lessor. Until all obligations hereby guaranteed shall have been fully performed, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

6. All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease; provided, however, that as long as the Tenant is a wholly-owned subsidiary of Guarantor, the foregoing prohibition shall not be effective with respect to any intra-company debt or capital transfers.

7. All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant in Landlord.

8. The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

9. Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Lease against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

10. Should any one or more provisions of this Guaranty of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

11. This Guaranty of Lease shall inure to the benefit of Landlord and its successors and assigns as Landlord under the Lease, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. This Guaranty of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

12. Upon full performance of all obligations hereby guaranteed, this Guaranty of Lease shall be of no further force or effect.

13. No provision of this Guaranty of Lease or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

14. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

15. If two (2) or more persons are signing this Guaranty of Lease as Guarantor, then all such persons shall be jointly and severally liable for the obligations of Guarantor hereunder.

16. This Guaranty of Lease shall be governed by and construed in accordance with the laws of the State of California. In any action brought under or arising out of this Guaranty of Lease, Guarantor hereby consents to the jurisdiction of any competent court within the State of California and hereby consents to service of process by any means authorized by California law.

17. **TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS GUARANTY.**

This Guaranty of Lease shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

GUARANTOR:

BMC CONSTRUCTION, INC.
a Delaware corporation

By: Michael Mahre

Name: Michael Mahre

Title: CEO

By: _____

Name: _____

Title: _____

INDUSTRIAL REAL ESTATE LEASE

BY AND BETWEEN

SRC OATES, LLC
a Nevada limited liability company

AS

"LANDLORD"

AND

C CONSTRUCTION, INC.
a Delaware corporation

AS

"TENANT"

"COACHELLA FACILITY"

TABLE OF CONTENTS

	<u>Page</u>
1. Terms and Definitions.....	1
2. Premises.....	2
3. Term.....	3
4. Early Possession.....	3
5. Basic Rent.....	4
6. Additional Rent.....	4
7. Security Deposit; Guaranty.....	6
8. Use.....	7
9. Payments and Notices.....	7
10. Brokers.....	8
11. Holding Over.....	8
12. Taxes on Tenant's Property.....	8
13. Easements.....	9
14. Alterations.....	9
15. Repair, Replacement and Maintenance of the Premises.....	11
16. Liens.....	13
17. Entry by Landlord.....	14
18. Utilities.....	14
19. Indemnification.....	14
20. Hazardous Materials.....	15
21. Insurance.....	19
22. Damage or Destruction.....	21
23. Eminent Domain.....	23
24. Bankruptcy.....	24
25. Defaults and Remedies.....	24
26. Assignment and Subletting.....	27
27. Quiet Enjoyment.....	28
28. Subordination.....	28
29. Estoppel Certificate.....	29
30. Rules and Regulations.....	29
31. Choice of Law.....	29
32. Successors and Assigns.....	29
33. Surrender of Premises.....	29
34. Professional Fees.....	30
35. Performance by Tenant.....	30
36. Mortgage and Senior Lessor Protection.....	30
37. Definition of Landlord.....	30
38. Waiver.....	31
39. Identification of Tenant.....	31
40. Parking and Transportation.....	31
41. Terms and Headings.....	31

42.	Examination of Lease; Counterparts.....	32
43.	Time.....	32
44.	Prior Agreement; Amendments.....	32
45.	Severability.....	32
46.	Recording.....	32
47.	Limitation on Liability.....	32
48.	Riders.....	33
49.	Signs.....	33
50.	Modification for Lender.....	33
51.	Accord and Satisfaction.....	33
52.	Financial Statements.....	33
53.	Tenant as Corporation.....	33
54.	No Partnership or Joint Venture.....	33
55.	Confidentiality.....	33
56.	Construction of Site Improvements.....	34
57.	Waiver of Jury Trial.....	36

LIST OF EXHIBITS/RIDERS

Exhibit/Rider

- "A" Legal Description of Premises
 - "B" Site Plan
 - "B-1" Schedule of Site Improvement Services
 - "C" Sample Form of Notice of Lease Term Dates
 - "D" Sample Form of Tenant Estoppel Certificate
- Rider No. 1 – Option to Renew
- Rider No. 2 – Guaranty

INDUSTRIAL REAL ESTATE LEASE

THIS INDUSTRIAL REAL ESTATE LEASE (the "Lease") is made as of the 31st day of August, 2005, by and between Landlord and Tenant.

WITNESSETH:

1. Terms and Definitions.

For the purposes of this Lease, the following terms shall have the following definitions and meanings:

(a) **Landlord:** SRC Oates, LLC, a Nevada limited liability company

(b) **Landlord's Address:** 7912 West Sahara,
Las Vegas, NV 89117
Attn: Mr. Steve Campbell

(c) **Tenant:** C Construction, Inc., a Delaware corporation.

(d) **Tenant's Address:**

5201 S. Polaris Avenue
Las Vegas, NV 89118
Attn: Chief Financial Officer

Copy to:

BMHC
720 Park Blvd., Suite 200
Boise, ID 83712
Attn: Paul S. Street, Senior Vice President,
Chief Administrative Officer, General Counsel
and Corporate Secretary

(e) **Premises Location:** Located on Oates Lane, Coachella, California (exact address to be determined upon completion of Site Improvements) with County of Riverside, California assessor parcel number 603-300-011.

(f) **Premises:** Those certain premises defined in Subparagraph 2(a) hereinbelow.

(g) **Term:** four (4) years, with one (1) option to extend for (1) year.

- (h) **Commencement Date:** The earlier of the following two dates:
 - (i) The date upon which the Tenant takes possession of or commences the operation of its business in the Premises; or
 - (ii) Substantial Completion of the Site Improvements.
- (i) **Basic Rent:** Fourteen Thousand Dollars (\$14,000.00) per month, subject to increase as hereinafter provided.
- (j) **Permitted Use:** General office, administration, warehouse, and trailer and equipment storage.
- (k) **Intentionally Omitted.**
- (l) **Intentionally Omitted.**
- (m) **Exhibits:** "A" through "E" inclusive, which Exhibits are attached to this Lease and are incorporated herein by this reference.
- (n) **Initial Security Deposit:** "Initial Security Deposit" shall mean the sum equal to the first month's rent.
- (o) **Guarantor.** BMC Construction, Inc., a Delaware corporation
- (p) **Riders:** Rider No. 1 – Option to Renew and Rider No. 2 – Guaranty of Lease, which Riders are attached to this Lease.

2. Premises.

(a) Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the parcel of real property legally described on Exhibit "A" (the "Site"), and all improvements from time to time located thereon (the "**Premises**"). The Premises shall consist of the Site and those certain improvements to be constructed by Landlord, consisting of utility, landscaping, and access improvements, and graded and paved areas for Tenant's installation of its modular office buildings (the "**Buildings**"), and surrounding fence and gate, all as generally depicted on the site plan attached hereto as Exhibit "B" (the "**Site Plan**"), and as generally described in the Schedule of Site Improvement Services attached hereto as Exhibit "B-1" (the "**Site Improvements**"). Tenant's Buildings shall be installed by Tenant at Tenant's sole cost and expense, and such installation shall not be considered part of the Site Improvements required as a condition to the Commencement Date, except that Tenant will be provided with access to the Premises during the Setup Period (as defined in Paragraph 4(a) below) for the purpose of installing the Buildings and Tenant's other personal property. The parties hereto agree that said letting and hiring is upon and subject to the terms, covenants and conditions herein set forth and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants and conditions by it to be kept and performed and that this Lease is made upon the condition of such performance.

(b) The Site Improvements shall comply with the provisions in Section 56 of this Lease. Landlord agrees to use diligent and reasonable efforts cause the construction of the Site Improvements to be "Substantially Completed" (as such term is defined in Section 56 below) and ready for delivery to Tenant no later than December 31, 2005, as such date may be extended by any force majeure conditions or Tenant Delays described in Section 56 below.

(c) The Site improvements shall be constructed by Landlord in a good and workmanlike manner and in compliance with all applicable governmental laws, ordinances and regulations governing and/or regulating the construction thereof, and all existing restrictions of record for title to the Site. Tenant hereby agrees to accept the Site Improvements in their condition existing as of the Commencement Date subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises and any covenants or restrictions of record and Tenant accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Tenant's business; provided, however, that Landlord has represented that the Site improvements Tenant shall be Substantially Completed in accordance with the terms and conditions of this Lease.

3. **Term.** The Term of this Lease shall be for the period designated in Subparagraph 1(g) commencing on the Commencement Date, and ending on the expiration of such period, unless such Term shall be sooner terminated or extended as hereinafter provided. The Commencement Date and the date upon which the Term of this Lease shall end shall be determined in accordance with the provisions of Subparagraph 1(h) and said dates will be specified in Landlord's Notice of Lease Term Dates ("Notice"), in the form of Exhibit "C" attached hereto, and shall be served upon Tenant as provided in Paragraph 9, after Landlord delivers or tenders possession of the Premises to Tenant. The Notice shall be binding upon Tenant unless Tenant objects to the Notice in writing, served upon Landlord as provided for in Paragraph 9 hereof, within five (5) days of Tenant's receipt of the Notice.**Early Possession.**

(a) Following Landlord's prior written approval and delivery to Landlord of a fully executed Lease and proof of insurance as contemplated in this Lease in a form satisfactory to Landlord, Tenant shall have the right to access the Premises during a set up period commencing as of thirty (30) days prior to the Commencement Date (the "Setup Period"). During the Setup Period, Tenant may use the Premises for setting up Tenant's equipment, cabling and furnishings, so long as such use and Tenant's actions do not interfere with or delay the "Substantial Completion" of the Site Improvements. During the Setup Period, Tenant shall not be required to pay any Base Rent, but Tenant shall pay all other amounts contemplated in this Lease for such period such as Tenant's insurance and repair costs. The Setup Period shall not advance the termination date of the Lease.

(b) Provided that Tenant and its agents do not interfere with Landlord's work in connection with the construction of the Site improvements, Landlord shall allow Tenant access to the Premises up to 30 days prior to the Setup Period for the purposes of measuring, scoping, marking and designing the Premises for the installation of Tenant's equipment, cabling and furnishings, but not for installing any equipment or fixtures in the Premises. Prior to Tenant's entry into the Premises as permitted by the terms of this Subparagraph 4(b), Tenant shall submit a schedule to Landlord, for

Landlord's approval, which schedule shall detail the timing and purpose of Tenant's entry. Tenant shall hold Landlord and the "Landlord Indemnitees" (as defined in Paragraph 19 below) harmless from and indemnify, protect and defend Landlord and the Landlord Indemnitees against any loss or damage to the Premises and against injury to any persons caused by Tenant's actions pursuant to this Section.

5. **Basic Rent.**

(a) Tenant agrees to pay Landlord as Basic Rent for the Premises the Basic Rent designated in Subparagraph 1(j) in advance on the first day of each and every calendar month during the Term, except that the first full month's Basic Rent shall be paid upon the execution hereof. In the event the Term of this Lease commences or ends on a day other than the first day of a calendar month, then the Basic Rent for such periods shall be prorated in the proportion that the number of days this Lease is in effect during such periods bears to thirty (30), and such rental shall be paid at the commencement of such periods. In addition to said Basic Rent, Tenant agrees to pay the Additional Rent (as hereinafter defined) as and when hereinafter provided in this Lease. Said Basic Rent shall be paid to Landlord, without any prior demand therefor and without any deduction or offset whatsoever, in lawful money of the United States of America, which shall be legal tender at the time of payment, at the address of Landlord designated in Subparagraph 1(b) or to such other person or at such other place as Landlord may from time to time designate in writing.

(b) The Basic Rent shall be increased on the first day of the thirteenth (13th) month of the Term and on each annual anniversary thereof during the Term (the "Adjustment Month") by an amount equal to three percent (3%) of the Basic Rent in effect immediately prior to a respective Adjustment Month. Landlord shall notify Tenant of each increase by delivering a written statement setting forth the new amount of the Basic Rent. Tenant shall pay the new Basic Rent from its effective date until the next periodic increase.

6. **Additional Rent.**

(a) In addition to paying the Basic Rent as provided in Article 5 of this Lease, Tenant shall pay Real Property Taxes (as hereinafter defined) for the Premises as hereinafter provided. Such payments by Tenant, together with any and all other amounts payable by Tenant pursuant to the terms of this Lease, including, without limitation, payments for repairs, are hereinafter collectively referred to as the "**Additional Rent**", and the Basic Rent and the Additional Rent are sometimes herein collectively referred to as "**Rent**." Without limitation on any other obligations of Tenant which survive the expiration of the Term, the obligations of Tenant to pay Additional Rent which accrues during the Term shall survive the expiration of the Term. Landlord and Tenant acknowledge that it is their intent and agreement that this Lease be a "**TRIPLE NET**" lease and that as such, the provisions contained in this Lease are intended to pass on to Tenant or reimburse Landlord for all costs and expenses associated with this Lease and the Premises, and Tenant's operation therefrom. To the extent such costs and expenses payable by Tenant cannot be charged directly to, and paid by, Tenant, such costs and expenses shall initially be paid by Landlord and thereafter be reimbursed by Tenant.

(b) Tenant shall pay, directly to the taxing authority as and when due all Real Property Taxes applicable to the Premises and payable during the period beginning on the Commencement Date and continuing thereafter throughout the Term (including extensions). Landlord shall be responsible for the payment of any installment of Real Property Taxes applicable to the Premises coming due prior to the Commencement Date. Tenant shall, upon Landlord's request, furnish Landlord with satisfactory evidence of payment of Real Property Taxes which are the responsibility of Tenant hereunder. If Tenant shall fail to pay any Real Property Taxes as and when due, Landlord may pay such Real Property Taxes on behalf of Tenant, and Tenant shall reimburse Landlord for the total amount thereof including penalties and interest charged by the taxing authority due to Tenant's failure to make timely payment, immediately upon demand.

(c) As used herein, the term "**Real Property Taxes**" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, charge, penalty, tax or similar imposition imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, as against any legal or equitable interest of Landlord in the Premises to the extent assessed and/or accruing after the Commencement Date, including, but not limited to, the following:

(i) any tax on Landlord's "right" to rent or "right" to other income from the Premises or as against Landlord's business of leasing the Premises to the extent assessed and/or accruing after the Commencement Date;

(ii) any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of Real Property Taxes, recognizing that Real Property Taxes shall also include any governmental or private assessments or contributions towards a governmental or private cost/sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies to the extent assessed and/or accruing after the Commencement Date, and it is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies and charges be included within the definition of Real Property Taxes for the purposes of this Lease, including, without limitation, those calculated to increase tax increments to governmental agencies or to pay for such services as fire protection, street, sidewalk and road maintenance, refuse removal or other governmental services which may have been formerly provided without charge to property owners or occupants;

(iii) any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises or the Rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the State, city or federal government, or any political subdivision thereof, with respect to the receipt of such Rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof to the extent assessed and/or accruing after the Commencement Date;

(iv) any assessment, tax, fee, levy or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises to the extent assessed and/or accruing after the Commencement Date; or

(v) any assessment, fee, levy or charge by any governmental agency related to any transportation plan, fund or system instituted within the geographic area of which the Premises are a part to the extent assessed and/or accruing after the Commencement Date.

Notwithstanding any provision of this Paragraph 6(c) expressed or implied to the contrary, Real Property Taxes shall not include Landlord's federal or state income, franchise, inheritance or estate taxes.

7. Security Deposit; Guaranty.

(a) Upon execution of this Lease, Tenant shall deposit with Landlord a cash security deposit (the "**Security Deposit**") in the amount of the Initial Security Deposit. The Security Deposit shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of damages caused by Tenant in case of default by Tenant. Landlord may commingle the Security Deposit with Landlord's other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearage of Rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant. If Landlord transfers its interest in the Premises during the Term of this Lease (including extensions), Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit to Tenant. Each time the Basic Rent is increased, Tenant shall, on or before the date that the first increased Basic Rent payment is due, deposit additional funds with Landlord sufficient to increase the Security Deposit to an amount which bears the same relationship to the adjusted Basic Rent as the Initial Security Deposit bore to the initial Basic Rent. . Notwithstanding anything to the contrary contained herein, Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, or any similar or successor Regulations or other laws now or hereinafter in effect.

(b) The effectiveness of this Lease is conditioned upon the execution of the Guaranty of Lease, in the form attached hereto as Rider No. 2 (the "Guaranty"), by BMC Construction, Inc., a Delaware corporation ("Guarantor"), providing for the guaranty of Tenant's obligations under this Lease. For as long as the Guaranty remains effective, in the event of any default or breach of Tenant's obligations under this Lease, Landlord may proceed directly against Guarantor without first exhausting Landlord's remedies against Tenant or any security held by Landlord. In addition to all other events of Tenant default hereunder, the parties acknowledge and agree that the Guarantor's guaranty of this Lease comprises part of the material consideration for Landlord's agreement to this Lease, and the following shall also constitute events of default under

this Lease: (a) the termination of Guarantor's liability with respect to this Lease other than in accordance with the terms of the Guaranty; (b) Guarantor's becoming insolvent or the subject of a bankruptcy filing; or (c) Guarantor's willful breach of its guaranty obligation. Unless Tenant, within thirty (30) days following written notice by or on behalf of Landlord to Tenant of any of the foregoing events, provides Landlord with an alternative assurance of security reasonably acceptable to Landlord, which, when coupled with the Security Deposit and the then-existing resources of Tenant, equals or exceeds the value of the guaranteed obligations, Landlord may exercise any and all remedies for a Tenant default hereunder without requirement for any additional notice or cure period.

8. **Use.** Tenant shall use the Premises for the use specified in Subparagraph 1(k), and shall not use or permit the Premises to be used for any other purpose. Tenant shall not use or occupy the Premises in violation of such Rules and Regulations as Landlord may from time to time reasonably adopt for the safety, care and cleanliness of the Premises or of any recorded covenants, conditions and restrictions ("CC&Rs") affecting the Premises or of any law or of the Certificate of Occupancy issued for the Premises including, without limitation, the Americans With Disabilities Act, 104 Stat. 327, 42 United States Code §12101, et. seq., as amended from time to time (the "ADA"), and shall, upon five (5) days written notice from Landlord, discontinue any use of the Premises which is in violation of any CC&Rs or is declared by any governmental authority having jurisdiction to be a violation of any law or of said Certificate of Occupancy. Tenant shall make such repairs or alterations to the Premises as may be required to comply with the ADA during the Term as part of Tenant's maintenance and repair obligations (and subject to the limitations of) Paragraph 15(a) below. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Premises. Tenant shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or with respect to the use or occupation thereof. Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Premises and/or property located therein and shall comply with all rules, orders, regulations and requirements of the any applicable fire rating bureau or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord as Additional Rent for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Paragraph 8. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises and shall keep the Premises in first class repair and appearance. **Payments and Notices.**

(a) All Rents and other sums payable by Tenant to Landlord hereunder shall be paid to Landlord at the address designated by Landlord in Subparagraph 1(b) above or at such other places as Landlord may hereafter designate in writing. Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery or by mail, and if given by mail shall be deemed sufficiently given if sent by registered or certified mail addressed to Tenant at the address designated in Subparagraph 1(d) or to Landlord at both of the addressees designated in Subparagraph 1(b). Either party may by written notice to the other specify a different address for notice purposes. If more than one person or entity constitutes the "Tenant" under this Lease, service

of any notice upon any one of said person or entities shall be deemed as service upon all of said persons or entities.

(b) Tenant acknowledges that the late payment by Tenant to Landlord of any sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any monthly installment of Basic Rent is not received by Landlord by the date when due, or if Tenant fails to pay any other sum of money due hereunder and such failure continues for ten (10) days after notice thereof by Landlord, Tenant shall pay to Landlord, as Additional Rent, the sum of five percent (5%) of the overdue amount as a late charge. Such overdue amount shall also bear interest, as Additional Rent, at fifteen percent (15%) per annum calculated, as appropriate, from the date either (a) the monthly installment of Basic Rent is due, or (b) of receipt of said notice, until the date of payment to Landlord. Landlord's acceptance of any late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or any law now or hereafter in effect. If the interest rate specified in this Lease is higher than the maximum rate permitted by applicable law, such interest rate is hereby reduced to such maximum interest rate permitted by applicable law.

10. **Brokers.** Tenant represents and warrants to Landlord, that no broker, leasing agent or finder has been engaged by it in connection with any of the transactions contemplated by this Lease, or to its knowledge is in any way connected with any of such transactions. In the event of any claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Lease, Tenant shall indemnify, save harmless and defend Landlord from and against such claims. **Holding Over.** If Tenant holds over after the expiration or earlier termination of the Term hereof without the express written consent of Landlord, Tenant shall become a tenant at sufferance only, at a rental rate equal to two hundred percent (200%) of the Basic Rent which would be applicable to the Premises upon the date of such expiration, and otherwise subject to the terms, covenants and conditions herein specified, so far as applicable. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a holdover hereunder or result in a renewal. The foregoing provisions of this Paragraph 11 are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration or earlier termination of this Lease despite demand to do so by Landlord, Tenant shall indemnify and hold Landlord harmless from all loss or liability, including without limitation, any claim made by any succeeding tenant founded on or resulting from such failure to surrender. **Taxes on Tenant's Property.** Tenant shall be liable for and shall pay at least ten (10) days before delinquency, taxes levied against any personal property or trade fixtures placed by Tenant in or about the Premises. Tenant shall cause the Buildings to be taxed as Tenant's personal property. If any such taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property or if the assessed value of the Premises is increased by the inclusion therein of a value placed upon such personal property or trade fixtures of Tenant and if Landlord, after written notice to Tenant, pays the taxes based upon such increased assessments which Landlord shall have the right to do regardless of the validity thereof, but only under proper protest if requested

by Tenant, Tenant shall upon demand repay to Landlord the taxes levied against Landlord, or the proportion of such taxes resulting from such increase in the assessment; provided that in any such event, at Tenant's sole cost and expense, Tenant shall have the right, in the name of Landlord and with Landlord's full cooperation, to bring suit in any court of competent jurisdiction to recover the amount of any such taxes so paid under protest, any amount so recovered to belong to Tenant.

13. **Easements.** Landlord reserves the right from time to time to grant such easements, rights and dedications that Landlord deems necessary or desirable and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not materially and adversely affect Tenant's use of the Premises by Tenant. Tenant shall sign any of the aforementioned documents upon request of Landlord; and failure to do so shall constitute a material breach of this Lease.

14. **Alterations.**

(a) Except for the installation of the Buildings, consisting of three (3) 12' x 60' modular buildings and three (3) 24' x 60' modular buildings, which may be installed at Tenant's sole cost and expense on the Site, at any time following the commencement of the Setup Period, without any additional approval by Landlord, Tenant may, at any time and from time to time during the Term of this Lease but subject to Landlord's approval pursuant to Subparagraph 14(b), at its sole cost and expense, make alterations, additions, installations, substitutions, improvements and decorations (hereinafter collectively called "**Changes**") in and to the Premises, excluding structural changes, on the following conditions, and providing such Changes will not result in a violation of or require a change in the Certificate of Occupancy (or its equivalent) applicable to the Premises:

(i) The outside appearance, character or use of the Premises shall not be affected, and no Changes shall weaken or impair the structural strength or, in the sole opinion of Landlord, lessen the value of the Premises or create the potential for unusual expenses to be incurred upon the removal of Changes and the restoration of the Premises upon the termination of this Lease.

(ii) The proper functioning of any of the mechanical, electrical, sanitary and other service systems or installations of the Premises ("Service Facilities") shall not be adversely affected and there shall be no construction which might interfere with Landlord's free access to the Service Facilities.

(iii) In performing the work involved in making such Changes, Tenant shall be bound by and observe all of the conditions and covenants contained in this Paragraph 14.

(iv) All work shall be done at such times and in such manner as Landlord from time to time may reasonably designate.

(v) Tenant shall not be permitted to install and make part of the Premises any materials, fixtures or articles which are subject to liens, conditional sales contracts or chattel mortgages.

(vi) At the date upon which the Term of this Lease shall end, or the date of any earlier termination of this Lease, Tenant shall on Landlord's written request restore the Premises to their condition prior to the making of any Changes permitted by this Paragraph 14, reasonable wear and tear excepted.

(b) Before proceeding with any Change (exclusive of Changes to items constituting Tenant's personal property), Tenant shall submit to Landlord, for Landlord's written approval, plans and specifications, including any applicable mechanical, electrical and plumbing drawings, for the work to be done. Landlord's approval shall not be unreasonably withheld. If Landlord shall disapprove of any of Tenant's plans, Tenant shall be advised of the reasons for such disapproval. In any event, Tenant agrees to pay to Landlord, as Additional Rent, the reasonable cost of Landlord's third party consultants for review of such plans and specifications, immediately upon receipt of invoices either from Landlord or such consultants. Landlord's approval of the plans and specifications shall create no responsibility or liability on the part of landlord for their completeness design sufficiency or compliance with applicable laws or regulations. Any Change for which approval has been received shall be performed strictly in accordance with the approved plans and specifications, and no amendments or additions to such plans and specifications shall be made without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Following construction of the work, Tenant shall prepare or cause to be prepared, at Tenant's expense, a "record set" of as-built plans reflecting the actual construction of the work.

(c) After Landlord's written approval has been sent to Tenant, Tenant shall enter into an agreement for the performance of the work to be done pursuant to this Paragraph 14 with a contractor reasonably approved by Landlord. Tenant's contractors shall obtain on behalf of Tenant and at Tenant's sole cost and expense, (i) all necessary governmental permits and certificates for the commencement and prosecution of Tenant's Changes and for final approval thereof upon completion, and (ii) a completion and lien indemnity bond, or other surety, satisfactory to Landlord, for the Changes. In the event Tenant shall request any changes in the work to be performed after the submission of the plans referred to in this Paragraph 14, such changes shall be subject to the same approvals and notices as the Changes initially submitted by Tenant.

(d) All Changes and the performance thereof shall at all times comply with (i) all laws, rules, orders, ordinances, directions, regulations and requirements of all governmental authorities, agencies, offices, departments, bureaus and boards having jurisdiction thereof, (ii) all rules, orders, directions, regulations and requirements of any applicable fire rating bureau, or of any similar insurance body or bodies, and (iii) all rules and regulations of Landlord, and Tenant shall cause Changes to be performed in compliance therewith and in good and first class workmanlike manner, using materials and equipment at least equal in quality to the original installations of the Premises. Changes shall be performed in such manner as not to delay or impose any additional expense upon Landlord in construction, maintenance or operation of the Premises, and shall be performed by contractors or mechanics approved by Landlord pursuant to this Paragraph 14, who shall coordinate their work in cooperation with any other work being performed by Landlord with respect to the Premises. Throughout the performance of Changes, Tenant, at its expense, shall carry, or cause to be carried, worker's compensation insurance in statutory limits, and general liability insurance for any occurrence in or about the Premises, of which Landlord and its managing agent

shall be named as additional parties insured, in such limits as Landlord may reasonably prescribe. Such policies shall comply with Paragraph 21(b) hereof.

(e) Tenant further covenants and agrees that any mechanic's lien filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to Tenant, will be discharged by Tenant, by bond or otherwise, within ten (10) days after the filing thereof, at the cost and expense of Tenant. All alterations, decorations, additions or improvements upon the Premises, made by either party shall, unless Landlord elects otherwise, become the property of Landlord, and shall remain upon, and be surrendered with the Premises, as a part thereof, at the end of the Term hereof, except that Landlord may by written notice to Tenant, given at least thirty (30) days prior to the end of the Term, require Tenant to remove all partitions, counters, railings and the like installed by Tenant, and Tenant shall repair any damage to the Premises arising from such removal or, at Landlord's option, shall pay to the Landlord all of Landlord's costs of such removal and repair. Notwithstanding the foregoing, the Buildings shall be deemed to be Tenant's personal property and shall be subject to the terms and conditions of Paragraph 14(f) below.

(f) All articles of personal property and all business and trade fixtures, machinery and equipment, furniture and movable partitions owned by Tenant or installed by Tenant at its expense in the Premises shall be and remain the property of Tenant and may be removed by Tenant at any time during the lease Term provided Tenant is not in default hereunder, and provided further that Tenant shall repair any damage caused by such removal. If Tenant shall fail to remove all of its effects from said Premises upon termination of this Lease for any cause whatsoever, Landlord may, at its option, remove the same in any manner that Landlord shall choose, and store said effects without liability to Tenant for loss thereof, and Tenant agrees to pay Landlord upon demand any and all expenses incurred in such removal, including court costs and attorney's fees and storage charges on such effects for any length of time that the same shall be in Landlord's possession or Landlord may, at its option, without notice, sell said effects, or any of the same, at private sale and without legal process, for such price as Landlord may obtain and apply the proceeds of such sale to any amounts due under this Lease from Tenant to Landlord and to the expense incident to the removal and sale of said effects.

(g) Nothing contained in this Paragraph 14 shall be deemed to relieve Tenant of any duty, obligation or liability with respect to making any repair, replacement or improvement or complying with any laws, order or requirement of any government or other authority and nothing contained in this Paragraph 14 shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever, for the care, supervision or repair of the Premises or any part thereof other than as otherwise provided in this Lease.

15. Repair, Replacement and Maintenance of the Premises.

(a) Tenant's Maintenance. Tenant shall, at Tenant's own expense, maintain, keep in good condition, repair and make any and all replacements, non-structural and structural (except as set forth in Paragraph 15(f) below), to the Premises (including, but not limited to, the roof structures, plumbing, sewer, irrigation and electrical system and any other system of the Premises) required to maintain the Premises in as good a condition as that in which the Premises are delivered by Landlord, subject to normal wear and tear, and fire and other casualty (the damage from which are

subject to the terms and conditions of Paragraph 22 below), and shall maintain the driveways, parking areas, shrubbery and lawn of the Premises in a good and sightly condition, and at the expiration or other sooner termination of the Lease term, deliver the Premises to Landlord in good order and broom clean condition; provided, however, that Landlord and Tenant agree that any capital repairs, replacements or improvements of any Premises improvements required to be maintained by Tenant under this Paragraph 15(a) shall be made by Landlord subject to the following limitations (collectively, "Capital Repair Items"): (a) Tenant shall notify Landlord in writing following Tenant's actual knowledge that any such Capital Repair Items are required for any reason as a condition to Tenant's safe and lawful use and occupancy of the Premises; (b) if such Capital Repair Items are not attributable to Tenant's failure to perform its maintenance and repair obligations under this Paragraph 15(a), then Landlord shall, within thirty (30) days (or such longer period of time as is reasonable based upon any permitting requirements, time required for the delivery of materials or parts, etc.) commence to perform the work of the Capital Repair Item, and thereafter diligently cause the completion of such work; and (c) the cost of performing the work and acquiring the parts and materials of such Capital Repair Items shall be advanced by Landlord and the cost thereof (along with interest at landlord's institutional cost of funds) shall be amortized over the useful life of the Capital Repair Item, as reasonably determined by Landlord in accordance with generally accepted accounting principals, and the amount of such amortized costs accruing over the Lease Term shall be included as Additional Rent payable by Tenant under this Lease. Capital Repair Costs subject to Landlord's work obligation under this Section 15(a) shall also include any capital improvements or alterations that are required for compliance of the Premises with applicable laws or regulations of governmental authorities relating to the use or occupancy of the Site and the Buildings generally for office/warehouse use and not required for Tenant's specific use or occupancy requirements or any Changes made by Tenant to the Premises. Notwithstanding anything to the contrary in this Lease, if any Capital Repair Items relate to any Tenant Changes or are directly attributable to Tenant's failure to diligently perform its maintenance and repair obligations under this Lease, then Landlord shall not be obligated to perform the work associated with such Capital Repair Items, which shall be performed by Tenant at its sole cost and expense. Similarly, the cost of any Capital Repair Items that are directly attributable to any design or construction defects in the initial construction of the Premises, or to the extent covered by any contractor warranty, shall not be subject to reimbursement as Additional Rent obligations of Tenant under this Lease.

(b) Damage Caused by Tenant. Notwithstanding any contrary provisions set forth in this Lease, any damage to the Premises caused by Tenant or a "Tenant Representative" (as defined below), shall be promptly repaired or replaced to its former condition by Tenant, as required by Landlord, at Tenant's own expense. The term "Tenant Representative" shall mean any shareholder, officer, director, member, partner, employee, agent, licensee, assignee, sublessee or invitee of Tenant, or any third party other than Landlord.

(c) Tenant to Keep Premises Clean. In addition to the foregoing, and not in limitation of it, Tenant shall also, at Tenant's own expense, undertake all replacement of all plate glass and light bulbs, fluorescent tubes and ballasts, and decorating, redecorating and cleaning of the interior of the Premises, and shall keep and maintain the Premises in a clean condition, free from debris, trash, refuse, snow and ice.

(d) Tenant's Negative Covenants. Tenant shall not injure, deface, permit waste nor otherwise harm any part of the Premises, permit any nuisance at the Premises, permit the emission of any objectionable noise or odor from the Premises, place a load on the floor on the Premises exceeding the floor load per square foot the floor was designed to carry, or install, operate or maintain any electrical equipment in the Premises that shall not bear an underwriters approval.

(e) Maintenance/Service Contract. Tenant shall, at Tenant's own expense, enter into a maintenance/service contract with a maintenance contractor, which shall provide for regularly scheduled servicing of all irrigation and electrical systems and equipment in the Premises. The maintenance contractor and the maintenance/service contract shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld. The maintenance/service contract shall include, without limitation, all servicing suggested by the manufacturer, within the operations/maintenance manual pertaining to such system and/or equipment, and shall be effective (and a copy thereof delivered to Landlord) no later than thirty (30) days after the commencement date of this Lease.

(f) Landlord's Maintenance. In addition to Landlord's obligation relating to Capital Repair Items, Landlord shall perform any work necessary to keep the paved areas of the Site in good order, condition and repair, reasonable wear and tear (and casualty covered by Paragraph 22 below) excepted, the costs of which shall not be included in Additional Rent; provided, however, that the cost of repairing any damage to such component of the Premises to the extent that such damage is caused by the negligence or intentional misconduct Tenant or any person under the control of Tenant shall, to the extent not covered by any policy of insurance maintained by Landlord as Additional Rent (included any deductible amount associated therewith), be subject to reimbursement in their entirety to Landlord by Tenant as Additional Rent (and without any amortization thereof).

(g) No Abatement. Landlord shall not be liable for any injury to or interference with Tenant's business arising from, any repairs, maintenance, alteration or improvement in or to any portion of the Project, including the Premises, or in or to the fixtures, appurtenances and equipment therein. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Code of Civil Procedure, or any similar or successor Regulations or other laws now or hereinafter in effect.

16. Liens. Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against the real property of which the Premises form a part nor against the Tenant's leasehold interest in the Premises. Landlord shall have the right at all reasonable times to post and keep posted on the Premises any notices which it deems necessary for protection from such liens. If any such liens are filed and are not discharged by Tenant by bond or otherwise within ten (10) days after the filing thereof, Landlord may, without waiving its rights and remedies based on such breach of Tenant and without releasing Tenant from any of its obligations, cause such liens to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Tenant shall pay to Landlord at once, upon notice by Landlord, any sum paid by Landlord to remove such liens, together with interest at fifteen percent (15%) per annum from the date of such payment by Landlord. If the interest rate specified in this Lease is higher than the maximum rate permitted by applicable law, such interest rate is hereby reduced to such maximum interest rate permitted by applicable law.

17. **Entry by Landlord.** Landlord reserves and shall at any and all times have the right to enter the Premises to inspect the same, to supply any service to be provided by Landlord to Tenant hereunder, to submit said Premises to prospective purchasers or, during the last twelve (12) months of the Term of this Lease, to prospective tenants, to post notices of nonresponsibility, or to repair the Premises, all without being deemed guilty of any eviction of Tenant and without abatement of rent, and may, in order to carry out such purposes, erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, provided that the business of Tenant shall be interfered with as little as is reasonably practicable. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safe, and Landlord shall have the means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof, and any damages caused on account thereof shall be paid by Tenant. It is understood and agreed that no provision of this Lease shall be construed as obligating Landlord to perform any repairs, alterations or decoration except as otherwise expressly agreed herein to be performed by Landlord. Landlord shall attempt in the exercise of its rights under this Paragraph 17 to minimize any disturbance of Tenant's use and possession of the Premises and to provide as much notice to Tenant as may be reasonably possible prior to any such exercise of Landlord's rights under this Paragraph 17.

18. **Utilities.**

(a) **Utilities.** During the Term, Tenant shall provide in the Premises at its own expense, water, gas, electricity, sewer, and other necessary utilities and services, and Tenant shall make payment directly to the entities providing such utilities and services.

(b) **Interruption of Utilities.** Tenant agrees that Landlord shall not be liable for damages, by abatement of rent or otherwise, for failure, delay, diminution or interruption of any utilities or services for any reason, and such failure, delay, diminution or interruption shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for any injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to any such failure, delay, diminution or interruption of such utilities or services.

19. **Indemnification.**

To the fullest extent permitted by law Tenant hereby agrees to defend, indemnify and hold Landlord and its employees, officers, directors, shareholders, contractors, subcontractors, lenders, invitees, partners, joint venturers, agents, successors, assigns, trustees, administrators, parent entities, subsidiaries and affiliates (collectively, the "Landlord Indemnitees") harmless against and

from any and all claims arising from Tenant's use of the Premises or the conduct of its business or from any activity, work, or thing done, permitted or suffered by Tenant, its agents, contractors, employees or invitees in or about the Premises or elsewhere, and hereby agrees to further indemnify and hold harmless Landlord against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act, neglect, fault or omission of Tenant, or of its agents, employees or invitees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in or about such claim or any action or proceeding brought thereon. In case any action or proceeding may be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord hereby agrees to defend the same at Tenant's expense by counsel approved in writing by Landlord.

To the fullest extent permitted by law, Landlord hereby agrees to defend, indemnify and hold Tenant and its employees, officers, directors, shareholders, contractors, subcontractors, lenders, invitees, partners, joint venturers, agents, successors, assigns, trustees, administrators, parent entities, subsidiaries and affiliates (collectively, the "Tenant Indemnitees") harmless against and from any and all claims to the extent arising from the active negligence or willful misconduct by Landlord, its agents, contractors, employees or invitees in or about the Premises pursuant to Landlord's performance of any of its maintenance, repair or improvement obligations under this Lease; it being expressly acknowledged and agreed by Tenant that such liability to the Tenant Indemnitees shall not include any claims arising from any damage or injury to person, theft, loss of use of or damage to property or loss of business sustained by Tenant and resulting from the physical condition of the Premises or any part thereof or any equipment therein or appurtenances thereto (including, without limitation, any damage or injury due to electrocution, electrical surges, or loss of electricity, steam or gas leaks, excessive heat or cold, broken glass, sewage, odors, excessive noise or vibration, mold, dampness, loss due to theft, robbery, assault, battery, murder, flooding or the bursting or leaking of pipes, plumbing fixtures or sprinkler devices), nor shall such liability relate to any claims by Tenant Indemnitees where Landlord has no actual knowledge of a condition of the Premises requiring action by Landlord pursuant to the terms of this Lease. In case any action or proceeding may be brought against Tenant by reason of any such claim covered by the foregoing Tenant indemnity, Landlord upon notice from Tenant hereby agrees to defend the same at Landlord's expense by counsel approved in writing by Tenant. Without limiting the generality of the foregoing, Tenant hereby agrees that its insurance shall be primary source of coverage for any loss or damage to property or injury to persons in, upon or about the Premises from any cause whatsoever, and Tenant therefore waives all claims and rights of recovery against Landlord and Landlord's Indemnitees for any loss or damage to any property of Tenant or injury to persons, which loss, damage or injury is insured against, or required to be insured against, by Tenant pursuant to Paragraph 21 of this Lease, whether or not such loss or damage is due to the fault or negligence of Landlord or any of Landlord's Indemnitees, and regardless of the amount of insurance proceeds collected or collectible under any such insurance policies.

20. Hazardous Materials.

(a) Reportable Uses Require Consent. The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or

effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment, or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products or by-products thereof. Tenant shall not engage in any activity in or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Landlord and compliance in a timely manner (at Tenant's sole cost and expense) with all Applicable Requirements (as hereinafter defined). "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Premises or neighboring properties. In addition, Landlord may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Tenant upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit.

(b) Duty to Inform Landlord. Tenant shall obtain Landlord's written consent, which consent shall be granted or withheld in Landlord's sole discretion, to the manufacturing, processing, distribution, using, producing, treating, storing (above or below ground level), disposing of, or allowing to be present, of any other Hazardous Substance in or about the Premises except for those previously approved in writing by Landlord. In connection with each such consent requested by Tenant, Tenant shall submit to Landlord a description, including the composition, quantity and all other information requested by Landlord concerning the proposed presence of any Hazardous Substance. Landlord's consent to the presence of any Hazardous Substance may be deemed given only by inclusion of a description of the composition and quantity of the proposed Hazardous Substance on Landlord's written consent to the request. Landlord's consent to the presence of any Hazardous Substance at any time during the Term or renewal thereof shall not waive the requirement of obtaining Landlord's consent to the subsequent presence of any other, or increased quantities of, any Hazardous Substance in or about the Premises. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Landlord, Tenant shall immediately give Landlord written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance including but not limited to all such documents as may be involved in any Reportable Use involving the Premises. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system). If any Hazardous Substance is present in or about the

Premises, Landlord shall have the right upon reasonable notice to Tenant to engage a consultant to inspect the Premises and to review Tenant's use of Hazardous Substances and all of Tenant's practices with respect to such Hazardous Substances. Tenant shall cooperate in all respects with such inspections and reviews. All costs of such consultants shall be reimbursed to Landlord within fifteen (15) days of written demand by Landlord.

(c) Indemnification. Tenant shall indemnify, protect, defend and hold Landlord, its agents, employees, lenders and ground lessor, if any, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Tenant or by anyone under Tenant's control. Tenant's obligations hereunder shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing at the time of such agreement. Tenant's indemnity obligations as provided herein shall include, without in any way limiting the foregoing:

(i) All costs, expenses and attorneys' fees incurred or sustained by any party in making any investigation on account of any claim, demand, loss, liability, cost, charge, suit, order, judgment or adjudication, in prosecuting or defending any action brought in connection therewith, in obtaining or seeking to obtain a release therefrom and in enforcing any of the agreements herein contained;

(ii) Liability for clean-up costs, fines, damages or penalties incurred pursuant to the provisions of any Applicable Requirements;

(iii) Liability for costs and expenses of abatement, correction or clean-up, fines, damages, response costs or penalties which arise from the provisions of any Applicable Requirements; and

(iv) Liability for personal injury or Premises damage arising under any statutory or common-law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance, or for the carrying on of an abnormally dangerous activity, and response costs.

(d) Tenant's Compliance with Requirements. Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Requirements," which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Landlord's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including

soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill, or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Tenant shall, within five (5) days after receipt of Landlord's written request, provide Landlord with copies of all documents and information, including but not limited to permits, registrations, manifests, applications, reports and certificates, evidencing Tenant's compliance with any Applicable Requirements specified by Landlord, and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant or the Premises to comply with any Applicable Requirements.

(e) Inspection; Compliance with Law. Landlord, Landlord's agents, employees, contractors and designated representatives, and any mortgagees, shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Requirements, and Landlord shall be entitled to employ experts and/or consultants in connection therewith to advise Landlord with respect to Tenant's activities, including but not limited to Tenant's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a default of this Lease by Tenant or a violation of Applicable Requirements or a contamination, caused or contributed to by Tenant, is found to exist or to be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination. In such case, Tenant shall upon request reimburse Landlord or Landlord's mortgagee, as the case may be, for the costs and expenses of such inspections.

(f) Landlord Disclosure; Baseline and Exit Assessment. Landlord hereby notifies Tenant, and Tenant hereby acknowledges that, prior to the leasing of the Premises pursuant to this Lease, Tenant has been notified, pursuant to California Health and Safety Code Section 25359.7 (or any successor statute), that Landlord knows, or has reasonable cause to believe, that certain hazardous substances (as such term is used in such Section 25359.7), such as common cleaning supplies, office supplies, spillage of petroleum products from motor vehicles, and other consumer products, may have come to be located on or beneath the Premises. Landlord has provided, or will provide to Tenant, prior to the Commencement Date, a Phase One Environmental Assessment of the Premises, (the "**Baseline Assessment**"), prepared in compliance with ASTM Standard E1527-00, which shall not include any subsurface testing unless warranted by the results of such assessment. The Baseline Assessment shall establish the environmental condition of the Premises upon the Commencement Date, and shall be deemed approved by Tenant as of the Commencement Date. Tenant shall conduct an exit environmental assessment substantially the same in scope as the Baseline Assessment (the "**Exit Assessment**") prior to the expiration or earlier termination of this Lease as a condition to Tenant's effective vacation of the Premises. The Exit Assessment shall be conducted not earlier than thirty (30) days prior to Tenant's vacation of the Premises. In the event the Exit Assessment reveals contamination not described in the Baseline Assessment, then Tenant shall promptly remediate or remove such contamination in its entirety, which obligation of Tenant shall survive the expiration or termination of this Lease. Tenant shall maintain the results of the Baseline Assessment and the Exit Assessment in strict confidence and shall not, without Landlord's prior written consent, which may

be withheld in its sole discretion, disclose the results thereof, or any portion thereof to any third party, excepting Tenant's directors, officers, employees, representatives and consultants on a need-to-know basis, unless and only to the extent that Tenant is compelled under applicable law to disclose all or any portion of such assessment results. The Exit Assessment shall name the Landlord as an additional addressee and client for purposes of Landlord's ability to rely on the results thereof, and a copy shall be delivered to Landlord concurrently with the delivery of the Exit Assessment to Tenant.

21. Insurance.

(a) Tenant at its sole cost and expense shall, during the entire Term hereof, obtain, maintain and keep in full force and effect, the following insurance:

(i) Property insurance including fire, extended coverage, vandalism, malicious mischief and all risks coverage upon property of every description and kind owned by Tenant and located in the Premises or for which Tenant is legally liable or installed by or on behalf of Tenant including, without limitation, leasehold improvements, alterations, furniture, fixtures and any other personal property, in an amount not less than one hundred percent (100%) of the full replacement cost thereof.

(ii) A policy of Comprehensive Liability Insurance coverage to include personal injury, broad form property damage, premises/operations, owner's protective coverage, blanket contractual liability, products and completed operations liability and owned/non-owned auto liability, in limits not less than Five Million Dollars (\$5,000,000) inclusive. Such policy shall name Landlord, Landlord's managing agent and Landlord's mortgagees as additional insureds and shall contain the following provision:

"Such insurance as afforded by this policy for the benefit of Landlord shall be primary as respects any claims, losses or liabilities arising out of the use of the Premises by the Tenant or by Tenant's operation and any insurance carried by Landlord shall be excess and non-contributing."

(iii) Loss of income and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises as a result of such perils.

(iv) Any other form or forms of insurance as Tenant or Landlord or the mortgagees of Landlord may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would protect itself.

(b) All policies shall be taken out with insurers acceptable to Landlord, who shall be qualified to do business in the State of California and rated A-/VII or better by Best's Insurance Reports and in form satisfactory from time to time to Landlord. Each of Tenant's insurance policies shall be written on an "occurrence" basis and shall have a deductible or deductibles, if any, which do not exceed five thousand dollars (\$5,000) per occurrence. Tenant shall immediately report to

Landlord, and promptly thereafter confirm in writing, the occurrence of any injury, loss or damage incurred by Tenant, or Tenant's receipt of notice or knowledge of any claim by a third party or any occurrence that might give rise to such claims. It shall be the responsibility of Tenant not to violate nor knowingly permit to be violated any condition of the policies required by this Lease. Tenant agrees that certificates of insurance on the Landlord's standard form, or, if required by Landlord or the mortgagees of Landlord, certified copies of each such insurance policy, will be delivered to Landlord as soon as practicable after the placing of the required insurance, but in no event later than ten (10) days after Tenant takes possession of all or any part of the Premises, including possession taken under Paragraph 4 hereof. All policies shall contain an undertaking by the insurers to notify Landlord and the mortgagees of Landlord in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation, or other termination thereof. Should Tenant at any time neglect or refuse to provide the insurance required by this Lease, or should such insurance be canceled, Landlord shall have the right, but not the duty, to procure the same and Tenant shall pay the cost thereof as Additional Rent promptly upon Landlord's demand.

(c) In the event of damage to or destruction of the Premises entitling Landlord to terminate this Lease pursuant to Paragraph 22 hereof, Tenant will immediately pay to Landlord all of Tenant's insurance proceeds relating to leasehold improvements and alterations (but not to Tenant's trade fixtures, equipment, furniture or other personal property) in the Improvements.

(d) Landlord covenants and agrees that throughout the Term, it will insure the Premises (excluding any property with respect to which Tenant is obligated to insure pursuant to the provisions of Subparagraph 21(a) above) against damage by fire and standard extended coverage perils and public liability insurance in such reasonable amounts with such reasonable deductibles as would be carried by a prudent owner of a similarly improved property in the Palm Springs/Indio industrial real estate market. Landlord may, but shall not be obligated to, take out and carry any other form or forms of insurance as it or the mortgagees of Landlord may reasonably determine advisable. Tenant shall reimburse Landlord upon demand for the cost of all insurance maintained by Landlord as required or permitted by this subparagraph. Notwithstanding any contribution by Tenant to the cost of insurance premiums with respect to the Premises, as provided herein, Tenant acknowledges that it has no right to receive any proceeds from any such insurance policies carried by Landlord, although Landlord shall use such proceeds in the repair and reconstruction of the Premises unless Landlord elects to terminate this Lease pursuant to Paragraph 22. Landlord will not carry insurance of any kind on Tenant's furniture or furnishings or on any equipment of Tenant under this Lease, and Landlord shall not be obligated to repair any damage thereto or replace the same.

(e) Tenant shall promptly comply with all reasonable requirements of the insurance authority or of any insurer now or hereafter in effect relating to the Premises.

(f) If any insurance policy carried by Landlord, as provided by Subparagraph 21(d) above, shall be canceled or cancellation shall be threatened or the coverage thereunder reduced or threatened to be reduced, in any way by reason of the use or occupation of the Premises or any part thereof by Tenant or by any assignee or sub-tenant of Tenant or by anyone permitted by Tenant to be upon the Premises and, if Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation or reduction of coverage within forty-eight (48) hours after notice thereof, Landlord may, at its option enter upon the Premises and attempt to remedy such condition and

Tenant shall forthwith pay the cost thereof to Landlord as Additional Rent. Landlord shall not be liable for any damage or injury caused to any property of Tenant or of others located in the Premises as a result of such entry. In the event that Landlord shall be unable to remedy such condition, then Landlord shall have all of the remedies provided for in this Lease in the event of a default by Tenant. Notwithstanding the foregoing provisions of this Subparagraph 21(f), if Tenant fails to remedy as aforesaid, Tenant shall be in default of its obligations hereunder and Landlord shall have no obligation to attempt to remedy such default.

(g) Any policy or policies of fire, extended coverage or similar casualty insurance, which either party obtains in connection with the Premises and the insurance required to be obtained by Tenant pursuant to the provisions of Subparagraph 21(a)(iii) above shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured prior to the occurrence of injury or loss. Landlord and Tenant waive any rights of recovery against the other for injury or loss due to hazards covered by insurance containing such a waiver of subrogation clause or endorsement to the extent of the injury or loss covered thereby.

(h) Notwithstanding anything to the contrary in this Lease, Landlord and Tenant each hereby waives all rights of recovery against the other and the other's agents on account of loss and damage occasioned to the property of such waiving party to the extent only that such loss or damage is required to be insured against under any property insurance policies required by this Lease; provided however, that (i) the foregoing waiver shall not apply to the extent of Tenant's obligations to pay deductibles under any such policies and this Lease, and (ii) if any loss is due to the act, omission or negligence or willful misconduct of Tenant or its agents, employees, contractors, guests or invitees, Tenant's liability insurance shall be primary and shall cover all losses and damages prior to any other insurance hereunder. By this waiver it is the intent of the parties that neither Landlord nor Tenant shall be liable to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage insured against under any property insurance policies required by this Lease, even though such loss or damage might be occasioned by the negligence of such party, its agents, employees, contractors, guests or invitees. The provisions of this Subparagraph 21(h) shall not limit the indemnification provisions elsewhere contained in this Lease.

22. Damage or Destruction.

(a) In the event the Premises are damaged by fire or other perils covered by insurance required to be carried by Landlord under this Lease to an extent not exceeding twenty-five percent (25%) of the full insurable value thereof and if the damage thereto is such that the Premises may be repaired, reconstructed or restored within a period of one hundred eighty (180) days from the date Landlord learns of the necessity for repairs as a result of the damage and said insurance proceeds are available and sufficient to cover the cost of such repairs, Landlord shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect. If such work of repair, reconstruction and restoration is such as to require a period longer than such one hundred eighty (180) day period or exceeds twenty-five percent (25%) of the full insurable value thereof, or if said insurance proceeds will not be sufficient to cover the cost of such repairs, Landlord either may elect to so repair, reconstruct or restore the Premises and this Lease shall continue in full force and effect or Landlord may elect not to repair, reconstruct or restore the

Premises and this Lease shall in such event terminate. Under any of the conditions of this Subparagraph 22(a), Landlord shall give written notice to Tenant of its intention within sixty (60) days from the date Landlord learns of the necessity for repairs as a result of the damage. Upon the occurrence of any damage to the Premises, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance for the leasehold improvements and alterations; provided, however, that if the cost of such repair by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as assigned by Tenant, the cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's repair of the damage. In the event Landlord elects not to restore the Premises, this Lease shall be deemed to have terminated as of the date of such destruction.

(b) Upon any termination of this Lease under any of the provisions of this Paragraph 22, the parties shall be released thereby without further obligation to the other from the date possession of the Premises is surrendered to Landlord except for items which have theretofore accrued and are then unpaid.

(c) In the event of repair, reconstruction and restoration by Landlord as herein provided, the Basic Rent provided to be paid under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired during the period of such repair, reconstruction or restoration. Tenant shall not be entitled to any compensation or damages for loss in the use of the whole or any part of the Premises and/or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

(d) Tenant shall not be released from any of its obligations under this Lease except to the extent and upon the conditions expressly stated in this Paragraph 22.

(e) In the event that damage is due to any cause other than fire or other peril covered by extended coverage insurance, Landlord may elect to terminate this Lease.

(f) It is hereby understood that if Landlord is obligated to or elects to repair or restore as herein provided, Landlord shall be obligated to make repairs or restoration only of those portions of the Premises (i) which were originally provided at Landlord's expense or (ii) which were required to be insured by Landlord hereunder or (iii) for which Landlord has received insurance proceeds from insurance required to be carried by Tenant hereunder, and the repair and restoration of all other items shall be the obligation of Tenant.

(g) Notwithstanding anything to the contrary contained in this Paragraph 22, Landlord shall not have any obligations whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Paragraph 22 occurs during the last twelve (12) months of the Term of this Lease or any extension hereof.

(h) The provisions of this Lease, including this Paragraph 22, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, and any statute or regulation with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to

this Lease or any damage or destruction to all or any part of the Premises. Tenant hereby expressly waives any and all rights under and benefits of Sections 1932(2) and 1933(4) of the California Civil Code, or any similar or successor Regulations or other laws now or hereinafter in effect which relate to the abatement or termination of leases when leased property is damaged or destroyed and agree that such event shall be exclusively governed by the terms of this Lease.

(i) Tenant acknowledges that the rights of any lender holding a mortgage or deed of trust against the Premises ("**Secured Lender**") to any insurance proceeds applicable to the Premises shall be superior to the rights of Landlord and Tenant to such proceeds. Landlord agrees to use commercially reasonable efforts to cause the Secured Lender to make such insurance proceeds available to Landlord for reconstruction as contemplated in this Lease. If a Secured Lender will not make such proceeds available for reconstruction, and Landlord is unwilling to provide the sums necessary for reconstruction, then Landlord may elect to terminate this Lease within thirty (30) days following receipt of notice that such sums will not be made available for reconstruction.

23. Eminent Domain.

(a) In case the whole of the Premises, or such part thereof as shall substantially interfere with Tenant's use and occupancy thereof, shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, either party shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to said authority. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking, and Landlord shall be entitled to receive the entire amount of any award without deduction for any estate or interest of Tenant. In the event the amount of property or the type of estate taken shall not substantially interfere with the conduct of Tenant's business, Landlord shall be entitled to the entire amount of the award without deduction for any estate or interest of Tenant, and Landlord at its option may terminate this Lease. If Landlord does not so elect, Landlord shall promptly proceed to restore the Premises to substantially their same condition prior to such partial taking, and a proportionate allowance shall be made to Tenant for the Basic Rent corresponding to the time during which, and to the part of the Premises of which, Tenant shall be so deprived on account of such taking and restoration. Nothing contained in this Paragraph shall be deemed to give Landlord any interest in any award separately made to Tenant for the taking of personal property and trade fixtures belonging to Tenant or for moving costs incurred by Tenant in relocating Tenant's business.

(b) In the event of taking of the Premises or any part thereof for temporary use, (i) this Lease shall be and remain unaffected thereby and rent shall not abate, and (ii) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term, provided that if such taking shall remain in force at the expiration or earlier termination of this Lease, Tenant shall then pay to Landlord a sum equal to the reasonable cost of performing Tenant's obligations under Paragraph 33 with respect to surrender of the Premises and upon such payment shall be excused from such obligations. For purposes of this Subparagraph 23(b), a temporary taking shall be defined as a taking for a period of two hundred seventy (270) days or less. Landlord and Tenant understand and agree that the provisions of this Paragraph 23 are intended to govern fully the rights and obligations of the parties in the event of a taking of all or any portion of the Premises. Tenant hereby waives any and all rights

under and benefits of Section 1265.130 of the California Code of Civil Procedure, or any similar or successor regulations or other laws now or hereinafter in effect.

24. Bankruptcy. If Tenant shall file a petition in bankruptcy under federal bankruptcy law as then in effect, or if Tenant is adjudicated a bankrupt in involuntary bankruptcy proceedings and such adjudication shall not have been vacated within thirty (30) days from the date thereof, or if a receiver or trustee be appointed of Tenant's property and the order appointing such receiver or trustee not be set aside or vacated within thirty (30) days after the entry thereof, or if Tenant shall assign Tenant's estate or effects for the benefit of creditors, or if this Lease shall otherwise by operation of law pass to any persons other than Tenant, then and in any such event Landlord may, if Landlord so elects, with or without notice of such election and with or without entry or action by Landlord, forthwith terminate this Lease, and notwithstanding any other provisions of this Lease, Landlord, in addition to any and all rights and remedies allowed by law or equity, shall upon such termination be entitled to recover damages in the amount provided in Subparagraph 25(b) below and neither Tenant nor any person claiming through or under Tenant or by virtue of any statute or order of any court shall be entitled to possession of the Premises but shall forthwith quit and surrender the Premises to Landlord. Nothing herein contained shall limit or prejudice the right of Landlord to prove and obtain as damages by reason of any such termination an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of damages recoverable under the provisions of this Paragraph 24.**Defaults and Remedies.**

(a) The occurrence of any one or more of the following events shall constitute a default hereunder by Tenant:

(i) The vacation or abandonment of the Premises by Tenant. Abandonment is herein defined to include, but is not limited to, any absence by Tenant from the Premises for five (5) days or longer.

(ii) The failure by Tenant to make any payment of Basic Rent as when due or any Additional Rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant; provided however, that any such notice shall be in lieu of, and not in addition to, any notice required under applicable law.

(iii) The failure by Tenant to observe or perform any of the provisions of this Lease to be observed or performed by Tenant, other than as specified in Subparagraph 25(a)(i) or (ii) above, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant; provided, however, that any such notice shall be in lieu of and not in addition to, any notice required under applicable law; provided, further, that if the nature of Tenant's default is such that more than ten (10) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said ten (10) day period and thereafter diligently prosecute such cure to completion, which completion shall occur not later than sixty (60) days from the date of such notice from Landlord.

(iv) (1) The making by Tenant of any general assignment for the benefit of creditors; (2) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); (3) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (4) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within thirty (30) days.

(b) In the event of any such default by Tenant, in addition to any other remedies available to Landlord at law or in equity, including, without limitation, Landlord's right to continue the Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due (subject however to the limitations of California Civil Code §1951.4, which requires that as a condition to exercising such remedy Tenant shall have the right to sublet or assign the Premises subject only to reasonable limitations), Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease then Landlord may recover from Tenant:

(i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(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; plus

(v) at Landlord's election, and subject to the limitations of Section 1951.2 of the California Civil Code, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "rent" as used in this Subparagraph 25(b) shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others including Basic Rent and Additional Rent. As used in Subparagraphs 25(b)(i) and (ii) above, the "worth at the time of award" is computed by allowing interest at fifteen percent (15%), or such lesser amount as may then be the maximum lawful rate, per annum. As used in Subparagraph 25(b)(iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) In the event of any such default by Tenant, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant for such period of time as may be required by applicable law after which time Landlord may dispose of such property in accordance with applicable law. No re-entry or taking possession of the Premises by Landlord pursuant to this Subparagraph 25(c) shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

(d) After repossession of the Premises pursuant to Subparagraph 25(c) above, whether or not this Lease shall have been terminated pursuant to Subparagraph 25(a) above, Landlord may, but shall not be obligated to, relet the Premises or any part thereof to such tenant or tenants for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) for such rent, on such conditions (which may include concessions or free rent) and for such uses as Landlord, in its reasonable discretion, may determine; and Landlord shall collect and receive any rents payable by reason of such reletting. The rents received on such reletting shall be applied (1) first to the reasonable and actual expenses of such reletting and collection, including reasonably necessary renovation and Alterations of the Leased Premises, reasonable and actual attorneys' fees and any reasonable and actual real estate commissions paid, and (2) thereafter toward payment of all sums due or to become due Landlord hereunder. If the amounts collected by Landlord from such reletting are insufficient to pay all amounts owed by Tenant under this Lease, then Tenant shall be liable for, as damages, the amount of any such deficiency, subject to the limitations of Subparagraph 25(b) above. Landlord shall not, in any event, be required to pay Tenant any sums received by Landlord on a reletting of the Premises in excess of the rents provided in this Lease, but such excess shall reduce any accrued present or future obligations of Tenant hereunder. Landlord's re-entry and reletting of the Premises without termination of this Lease shall not preclude Landlord from subsequently terminating this Lease as set forth above. Landlord may make such alterations to the Premises as Landlord in its reasonable discretion may deem advisable. Tenant agrees to pay Landlord, as Additional Rent, immediately upon demand, all reasonable expenses incurred by Landlord in obtaining possession, in performing such alterations and in reletting the Premises, including reasonable fees and commissions of attorneys, architects, agents and brokers.

(e) In addition to the foregoing remedies, Landlord may exercise any other right or remedy now or hereafter existing at law or in equity. All rights, options and remedies of Landlord contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by Landlord of any rent or other payments due hereunder or any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The consent or approval of Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant.

(f) TENANT HEREBY WAIVES ANY AND ALL RIGHTS CONFERRED BY SECTION 3275 OF THE CIVIL CODE OF CALIFORNIA AND BY SECTIONS 1174 (c) AND 1179 OF THE CODE OF CIVIL PROCEDURE OF CALIFORNIA AND ANY AND ALL OTHER REGULATIONS AND RULES OF LAW FROM TIME TO TIME IN EFFECT DURING THE TERM PROVIDING THAT TENANT SHALL HAVE ANY RIGHT TO REDEEM, REINSTATE OR RESTORE THIS LEASE FOLLOWING ITS TERMINATION BY REASON OF TENANT'S BREACH. TENANT ALSO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE.

26. Assignment and Subletting.

Tenant shall not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, without first obtaining Landlord's prior written consent, which shall not be unreasonably withheld. Any assignment, encumbrance or sublease without Landlord's prior written consent shall be voidable, at Landlord's election, and shall constitute a default. For purposes hereof, in the event Tenant is a partnership or limited liability company, a withdrawal or change of partners or members, or change of ownership of partners or members, owning more than a fifty percent (50%) interest in the partnership or limited liability company, or if Tenant is a corporation, any transfer of fifty percent (50%) or more of its stock, shall constitute a voluntary assignment and shall be subject to these provisions. A change of partners or members owning less than fifty percent (50%) interest in a partnership or limited liability company, or a transfer of less than fifty percent (50%) of a corporation's stock, may also be deemed to constitute a voluntary assignment subject to these provisions if it results in a change of control of the partnership, limited liability company or corporation. No consent to an assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this Paragraph. Tenant shall notify Landlord in writing of Tenant's intent to assign this Lease, or encumber, or sublease Tenant's interest in the Premises, the name of the proposed assignee or sublessee, information concerning the financial responsibility of the proposed assignee or sublessee and the terms of the proposed assignment or subletting, and Landlord shall, within fifteen (15) days of receipt of such written notice, and additional information requested by Landlord concerning the proposed assignee's or sublessee's financial responsibility, either consent to such proposed assignment, encumbrance or sublease or reasonably withhold such consent.

As a condition for granting its consent to any assignment, encumbrance or sublease, Landlord may require that the assignee or sublessee remit directly to Landlord, on a monthly basis, all monies due to Tenant by said assignee or sublessee. In the event that Landlord shall consent to an assignment or sublease under the provisions of this Paragraph 26, Tenant shall pay Landlord's reasonable processing costs and attorneys' fees incurred in giving such consent. If for any proposed assignment or sublease Tenant receives rent or other consideration, whether cash or any other form whatsoever, either initially or over the term of the assignment or sublease, in excess of the rent called for hereunder, or, in case of the sublease of a portion of the Premises, in excess of such rent fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder are taken into account, Tenant shall pay to Landlord as additional rent hereunder fifty

percent (50%) of the excess value of each such payment of rent or other consideration received by Tenant promptly after its receipt. Landlord's waiver or consent to any assignment or subletting shall not relieve Tenant from any obligation under this Lease. If Tenant requests Landlord's consent to any assignment of this Lease or any subletting of all or a portion of the Premises, Landlord shall have the right in its sole discretion, to be exercised by giving written notice to Tenant within thirty (30) days of receipt by Landlord of the financial responsibility information required by this Paragraph 26 to terminate this Lease in the case of an assignment or a sublease of the entire Premises, or in the case of a partial sublease, terminate this Lease as to the portion of the Premises proposed to be sublet, effective as of the date Tenant proposes to assign this Lease or sublet all or a portion of the Premises. Landlord's right to terminate this Lease as to all or a portion of the Premises on assignment or subletting shall not terminate as a result of Landlord's consent to the assignment of this Lease or the subletting of all or a portion of the Premises, or Landlord's failure to exercise this right with respect to any assignment or subletting.

27. **Quiet Enjoyment.** Landlord covenants and agrees with Tenant that upon Tenant paying the rent required under this Lease and paying all other charges and performing all of the covenants and provisions aforesaid on Tenant's part to be observed and performed under this Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises in accordance with this Lease, free from any person claiming by, through or under Landlord. Landlord's failure to perform the work of Capital Repair Items (but only if and to the extent that Landlord is responsible therefor pursuant to the provisions of Paragraph 15(a) above) arising from any demands by any governmental entity to make any repairs, improvements or alterations required for Tenant's occupancy of the Premises shall be deemed a breach of Tenant's quiet enjoyment. In the event of any breach of Tenant's quiet enjoyment of the Premises, Tenant shall, at its discretion, be entitled to terminate this Lease following written notice to Landlord and a reasonable opportunity for Landlord to cure such failure.**Subordination.** Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, and at the election of Landlord or any mortgagee with a lien on the Premises or any ground lessor with respect to the Premises, this Lease shall be subject and subordinate at all times to: (a) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises or the land upon which the Premises are situated or both, (b) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Premises, land, ground leases or underlying leases, or Landlord's interest or estate in any of said items is specified as security, and (c) any CC&Rs (as defined in Paragraph 8) affecting the Premises. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Lease. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, if requested by the ground lessor, mortgagee or beneficiary, as applicable, attorn to and become the Tenant of the successor in interest to Landlord and in such event Tenant's right to possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and all other amounts required to be paid to Landlord pursuant to the terms hereof and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. Tenant hereby waives its rights under any current or future law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such

foreclosure proceeding or sale. Tenant covenants and agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents evidencing Tenant's agreement to attorn as set forth in this Paragraph 28 and the priority or subordination of this Lease with respect to any such CC&Rs, ground leases or underlying leases or the lien of any such mortgage or deed of trust. Should Tenant fail to sign and return any such documents within ten (10) business days of receipt, Tenant shall be in default hereunder.

29. Estoppel Certificate.

(a) Within ten (10) days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord a statement, in a form substantially similar to the form of Exhibit "D" attached hereto, certifying: (i) the Commencement Date of this Lease; (ii) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (iii) the date to which the rental and other sums payable under this Lease have been paid; (iv) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; and (v) such other matters requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Paragraph 29 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises or any interest therein.

(b) Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented in good faith by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one (1) month's rent has been paid in advance. Tenant's failure to deliver said statement to Landlord within ten (10) working days of receipt shall constitute a default under this Lease.

30. Rules and Regulations. Tenant shall faithfully observe and comply with all reasonable rules and regulations from time to time put into effect by Landlord as it deems reasonably necessary or appropriate in its sole discretion (the "Rules and Regulations").

31. Choice of Law. This Lease shall in all respects be governed and interpreted in accordance with the laws of the State of California. Tenant irrevocably consents to the service of process of any action or proceeding at the address of the Premises, as long as a copy is sent to the address for notice set forth herein contemporaneously with such service. Nothing in this paragraph shall affect the right to serve process in any other manner permitted by law.

32. Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

33. Surrender of Premises. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, operate as an assignment to it of any or all subleases or subtenancies. Upon the expiration or termination of

this Lease, Tenant shall peaceably surrender the Premises and all alterations and additions thereto broom-clean, in good order, repair and condition, reasonable wear and tear excepted, and shall comply with the provisions of Subparagraphs 14(g). The delivery of keys to any employee of Landlord or to Landlord's agent or any employee thereof shall not be sufficient to constitute a termination of this Lease or a surrender of the Premises.

34. Professional Fees.

(a) In the event that Landlord should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provisions of this Lease, or for any other relief against Tenant hereunder, or should either party bring suit against the other with respect to matters arising from or growing out of this Lease, then all costs and expenses, including without limitation, professional fees such as appraisers', accountants' and attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

(b) Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy hereunder, Tenant shall pay to Landlord its costs and expenses incurred in such suit, including without limitation, professional fees such as appraisers', accountants' and attorneys' fees.

35. Performance by Tenant. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. In the event Tenant shall fail to perform any covenant or agreement to be performed by Tenant under any of the terms of this Lease, including, without limitation, Tenant's obligations under Paragraph 15 hereof, Landlord shall have the right to perform such obligation of Tenant on Tenant's behalf. In such event, Landlord shall be entitled to receive, as Additional Rent, reimbursement of any sums so expended on Tenant's behalf, together with interest at fifteen percent (15%), or such lesser amount as may then be the maximum lawful rate, per annum calculated from the date of expenditure by Landlord to the date of reimbursement by Tenant.

36. Mortgage and Senior Lessor Protection. No act or failure to act on the part of Landlord which would entitle Tenant under the terms of this Lease, or by law, to be relieved of Tenant's obligations hereunder or to terminate this Lease, shall result in a release of such obligations or a termination of this Lease unless (a) Tenant has given notice by registered or certified mail to any beneficiary of a deed of trust or mortgage covering the Premises and to the lessor under any master or ground Lease covering the Premises or any interest therein whose identity and address shall have been furnished to Tenant, and (b) Tenant offers such beneficiary, mortgagee or Lessor a reasonable opportunity to cure the default.

37. Definition of Landlord. The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of, the Premises. In the event of any transfer, assignment or other conveyance of any such title or interest, Landlord herein named (and in case of any subsequent transfers or conveyances, the then

grantor) shall be automatically freed and released, from and after the date of such transfer, assignment or conveyance, from all liability on the part of Landlord contained in this Lease thereafter accruing and, without further agreement, the transferee of such title or interest shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder, during its ownership of the Premises. Landlord may transfer its interest in the Premises without the consent of Tenant and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

38. **Waiver.** The failure of Landlord to seek redress for violation of, or to insist upon strict performance of, any term, covenant or condition of this Lease or the Rules and Regulations shall not be deemed a waiver of such violation or prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of Landlord to insist upon the performance by Tenant in strict accordance with said terms. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

39. **Identification of Tenant.** Unless the provisions of Paragraph 53 hereinbelow are applicable to this Lease, if more than one entity executes this Lease as Tenant, (a) each of them is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions, provisions and agreement of this Lease to be kept, observed and performed by Tenant, and (b) the term "Tenant" as used in this Lease shall mean and include each of them jointly and severally and the act of or notice from, or notice or refund to, or the signature of, any one or more of them, with respect to the tenancy or this Lease, including, but not limited to, any renewal, extension, expiration, termination or modification of this Lease, shall be binding upon each and all of the entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or so given or so received such notice or refund or so signed.

40. **Parking and Transportation.** Tenant shall have the right to use all parking areas located upon the Premises, subject to such parking rules and regulations as Landlord deems reasonably necessary or appropriate for the operation of said parking. Landlord may refuse to permit any person who violates with unreasonable frequency the parking rules and regulations to park in the parking areas, and any violation of the rules shall subject the car to removal. Tenant agrees to use its best efforts to acquaint all employees and visitors with the parking rules and regulations. Landlord shall have no responsibility for damage to cars in the parking areas.

41. **Terms and Headings.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Paragraph headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

42. **Examination of Lease; Counterparts.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for Lease, and it is not effective as a Lease or otherwise until execution by and delivery to both Landlord and Tenant. This Lease may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument

43. **Time.** Time is of the essence with respect to the performance of every provision of this Lease in which time or performance is a factor.

44. **Prior Agreement; Amendments.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not incorporated herein.

45. **Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal in no way affects, impairs or invalidates any other provision hereof, and such other provisions shall remain in full force and effect.

46. **Recording.** Neither Landlord nor Tenant shall record this Lease nor a short form memorandum thereof without the consent of the other and if such recording occurs, it shall be at the sole cost and expense of the party requesting the recording, specifically including any documentary transfer taxes.

47. **Limitation on Liability.** The obligations of Landlord under this Lease do not constitute personal obligations of the individual partners, directors, officers or shareholders of Landlord, and Tenant shall not seek recourse against the individual partners, directors, officers or shareholders of Landlord or any of their personal assets for satisfaction of any liability in respect to this Lease. Any liability of Landlord under this Lease shall be limited to Landlord's interest in the Premises. Tenant hereby acknowledges and agrees that (i) the Basic Rent does not include the cost of any security measures for any portion of the Premises, (ii) that Landlord has no obligation to provide any security measures, and to the extent permitted by law, and such obligation imposed on Landlord by operation of law is waived by Tenant, (iii) Landlord has made no representation to tenant regarding the safety or security of the Premises, (iv) Tenant is solely responsible for providing any security measures and devices that is required to protect Tenant and Tenant's employees, visitors and invitees from criminal or negligent acts of third parties, and (v) any safety and security devices included in the Premises as delivered to Tenant, while intended to deter crime and promote safety, may not in given instances prevent theft or other criminal acts, or protect persons or property against damage, loss or injury. The risk that any safety or security device previously installed at the Premises by or for Landlord may not be effective, or may malfunction or be circumvented, is hereby assumed by Tenant.

48. **Riders.** Clauses, plats, exhibits and riders, if any, affixed to this Lease are a part hereof.

49. **Signs.** Tenant shall not place any sign within any area of the Premises which is visible from outside the Premises without Landlord's prior written consent. Landlord shall have the right to remove any sign which has not been previously approved in writing.

50. **Modification for Lender.** If in connection with obtaining construction, interim or permanent financing for the Premises, the lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder in any way and do not adversely affect the leasehold interest hereby created or Tenant's rights hereunder.

51. **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement whether expressly contained in this Lease or imposed by any statute or at common law.

52. **Financial Statements.** At any time during the term of this Lease, Guarantor shall, upon thirty (30) days prior written notice from Landlord, provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Guarantor, shall be audited by an independent certified public accountant.

53. **Tenant as Corporation.** If Tenant executes this Lease as a corporation or other business entity, then Tenant and the persons executing this Lease on behalf of Tenant represent and warrant that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on its behalf and that this Lease is binding upon Tenant in accordance with its terms.

54. **No Partnership or Joint Venture.** Nothing in this Lease shall be deemed to constitute Landlord and Tenant as partners or joint venturers. It is the express intent of the parties hereto that their relationship with regard to this Lease be and remain that of landlord and tenant.

55. **Confidentiality.** Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord and Tenant. Tenant agrees that it, its partners, officers, directors, employees, brokers and attorneys, shall not disclose the terms and conditions of this Lease to any other person without the prior written consent of Landlord. It is understood and agreed that damages may be an inadequate remedy for the breach of this provision by Tenant, and Landlord shall have the right to specific performance of this provision and to injunctive relief to prevent its breach or continued breach.

56. Construction of Site Improvements.

(a) In accordance with the delivery requirements of this Lease, Landlord shall construct, at its sole cost, the Site Improvements as depicted on the Site Plan and generally described on Exhibit "B-1" hereto. The Premises shall also include those portions of the Premises which are in existence prior to the construction of the Site Improvements pursuant to this Lease.

(b) Landlord covenants to Tenant that as of the Commencement Date: (a) the Site Improvements shall be constructed in accordance with this Lease; (b) the utility laterals included in the Site Improvements shall be in good working order; and (c) the Site Improvements shall comply with all applicable laws, codes, ordinances and regulations, including the Americans with Disabilities Act. If the foregoing covenants are not true and correct as of the Commencement Date, as Tenant's sole remedy, Landlord shall correct such item(s) at Landlord's own cost and expense within 60 days after Landlord receives notice of such defect from Tenant (provided that any such notice must be delivered to Landlord within the first 60 days following the Commencement Date); provided, however, if by the nature of such correction more than 60 days is required to effect such correction, Landlord shall not be in default hereunder if such correction is commenced within such 60-day period and is diligently pursued to completion.

(c) At any time prior to Substantial Completion of the Site Improvements, Tenant may request modifications thereto, regardless of the stage of construction or approval of those Plans (the "Proposed Change"). Following Landlord's receipt of a written request for changes from Tenant, Landlord shall furnish Tenant with a written proposal for the adjustment to the construction costs resulting from such Proposed Change and an estimate of the change of any time of construction and any extensions of the Anticipated Completion Date which would result from such changes (herein, "Landlord's Proposal"). Upon Landlord's receipt of Tenant's written approval of Landlord's Proposal and readily available funds in the amount of the construction costs associated with such Proposed Change, a written change order (the "Change Order") shall be issued by Landlord setting forth those changes and those changes shall become part of the Site Improvements. The cost budgets and time schedules, regardless of the stage of construction or approval of those budgets or schedules, shall be adjusted to include any and all additional costs and expenses relating to such Change Order.

(d) Any portion of the Site Improvements shall be deemed to be "Substantially Complete" or "Substantial Completion" shall be deemed to occur upon the earlier of the following events:

(i) Tenant accepts in writing and occupies or uses the Premises for the operation of Tenant's business or storage of Tenant's property, except during the Set-Up Period contemplated in Subparagraph 4(a) above; or

(ii) After all of the following events have occurred:

(A) Landlord's contractor shall have substantially completed construction of the Site Improvements in accordance with the Site Plan, and all relevant laws, and Landlord shall have delivered to Tenant a certificate from Landlord's architect to such effect; and

(B) Water, electricity and sewer utilities for the use and operation of the Premises shall be installed to their respective points of connection in the Premises.

Tenant shall have the right, on or before 30 days following the date that the Site Improvements are Substantially Complete, to deliver to Landlord a "punch list" of any items relating to Landlord's construction of the Premises to be completed or corrected by Landlord. Landlord shall exercise reasonable and diligent efforts to cause the punch list items to be completed on or before 60 days from Landlord's receipt of the punch list.

(e) Notwithstanding anything to the contrary contained in this Lease, to the extent that any of the approvals or construction obligations of Landlord under this Lease are delayed due to Change Orders, or any acts or omissions of Tenant or any of its employees, agents, invitees or contractors (a "Tenant Delay"), the Commencement Date shall be accelerated to reflect the Delivery Date that would have been achieved by Landlord but for such the Tenant Delay(s). Tenant has designated Jim Cleven as its sole representative with respect to the construction of the Premises, who shall have full authority and responsibility to act on behalf of the Tenant with respect to such construction; and Landlord has designated Paul Braval as its sole representative with respect to the construction of the Premises, who shall have full authority and responsibility to act on behalf of the Landlord with respect to such construction.

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(f) Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government, terrorist, or criminal actions; civil commotion; fire or other casualty or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the work by that Party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Section shall excuse or delay Tenant's obligation to pay Rent or other charges under this Lease, except as a result of any failure by Landlord to timely deliver the Substantially Completed Premises in accordance with this Lease.

57. Waiver of Jury Trial.

LANDLORD AND TENANT EACH ACKNOWLEDGES THAT IT IS AWARE OF AND HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY, AND EACH PARTY DOES HEREBY EXPRESSLY AND KNOWINGLY WAIVE AND RELEASE ALL SUCH RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER (AND/OR AGAINST ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUBSIDIARY OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

SRC
Landlord's Initials

Tenant's Initials

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

LANDLORD:

TENANT:

SRC Oates, LLC,
a Nevada limited liability company

C Construction, Inc., a Delaware corporation

By: [Signature]

By: _____

Its: Managing Member

Its: _____

Print Name: STEVEN R. CAMPBELL

Print Name: _____

By: _____

Its: _____

Print Name: _____

(f) Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government, terrorist, or criminal actions; civil commotion; fire or other casualty or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the work by that Party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Section shall excuse or delay Tenant's obligation to pay Rent or other charges under this Lease, except as a result of any failure by Landlord to timely deliver the Substantially Completed Premises in accordance with this Lease.

57. Waiver of Jury Trial.

LANDLORD AND TENANT EACH ACKNOWLEDGES THAT IT IS AWARE OF AND HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY, AND EACH PARTY DOES HEREBY EXPRESSLY AND KNOWINGLY WAIVE AND RELEASE ALL SUCH RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER (AND/OR AGAINST ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUBSIDIARY OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

Landlord's Initials



Tenant's Initials

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

LANDLORD:

TENANT:

SRC Oates, LLC,
a Nevada limited liability company

C Construction, Inc., a Delaware corporation

By: _____

By: Michael Mahre

Its: _____

Its: President

Print Name: _____

Print Name: Michael Mahre

By: _____

Its: _____

Print Name: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

PARCEL 2 OF PARCEL MAP NO. 3, AS SHOWN BY MAP ON FILE IN BOOK 5
PAGE(S) 61, OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY,
CALIFORNIA.

EXHIBIT "B" **SITE PLAN**

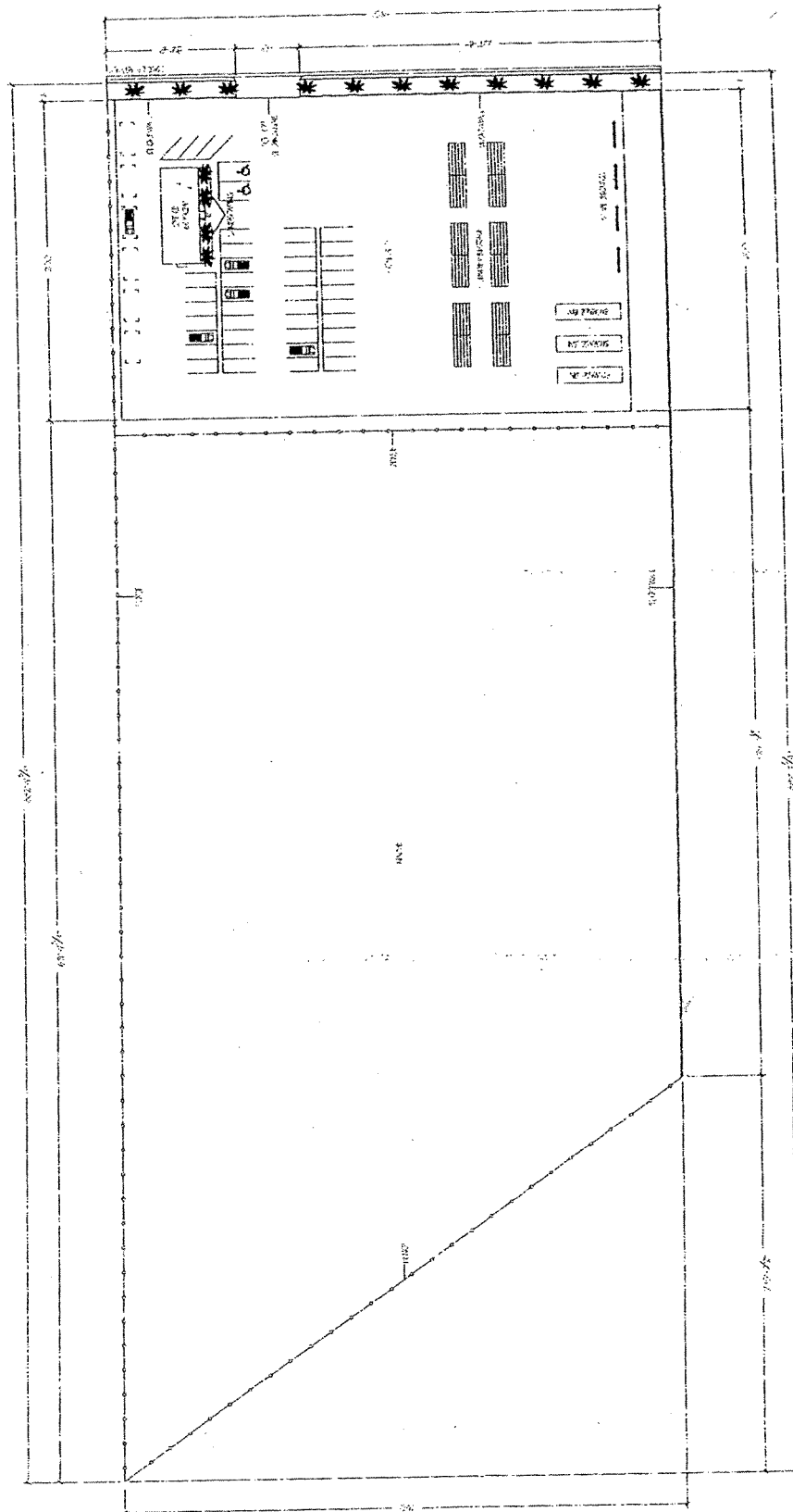


EXHIBIT "B-1"

SITE IMPROVEMENTS SERVICES

Coachella Office/Yard

Engineering		
Design West	ALTA Survey	\$ 7,000.00
Design West	Engineering (Topo, Grading Plan, Site Plan, Elevations, Street Plan, Landscaping Plan, PM 10 Plan)	\$ 22,000.00
Total		\$ 29,000.00

Environmental		
Property Profiles	Phase 1 ESA	\$ 2,000.00
Property Profiles	Initial Environmental Study	\$ 3,000.00
CDA	Phase 2 ESA	\$ 10,000.00
Earth Systems	Geotechnical Investigation	\$ 5,000.00
Total		\$ 20,000.00

Construction		
A. Flores	Clearing and Grubbing	\$ 3,000.00
A. Flores	Grading	\$ 25,000.00
Archuleta Concrete	Curb & Gutter	\$ 7,000.00
EC Construction	Reconstruct Roadway - 7000 SF	\$ 77,000.00
John Simon	Utility Laterals and Connections	\$ 15,000.00
Campbell Concrete	6" Concrete Pavement - 320x190	\$ 110,000.00
Sunflower Landscaping	Landscaping	\$ 12,000.00
Griffiths Fence	6' Chain-Link Fence with Barbed Wire Top	\$ 10,000.00
Adam's Wrought Iron	Wrought Iron Gate - 40 ft	\$ 8,000.00
Muniz Landscaping	6' Block Wall with Barbed Wire Top	\$ 25,000.00
Total		\$ 292,000.00

EXHIBIT "C"

**SAMPLE FORM OF
NOTICE OF LEASE TERM DATES**

TO: _____

Date: _____

Re: Lease dated August 31, 2005 between SRC Oates, LLC, as "Landlord," and C Construction, Inc. a Delaware corporation, as "Tenant," concerning Premises located at _____ Oates Lane, Coachella, California.

Gentlemen:

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

4. That the Premises have been accepted herewith by the Tenant as being substantially complete in accordance with the subject Lease.

5. That the Tenant has possession of the subject Premises and acknowledges that under the provisions of the subject Lease, the Term of said Lease shall commence as of _____ for a term of four (4) years, ending on _____, with one (1) option to extend for one (1) additional year.

6. That in accordance with the subject Lease, rental commenced to accrue on _____.

7. If the commencement date of the subject Lease is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in said Lease.

8. Rent is due and payable in advance on the first day of each and every month during the term of said Lease. Your rent checks should be made payable to _____ at _____.

AGREED AND ACCEPTED

LANDLORD:

TENANT:

SRC Oates, LLC,
a Nevada limited liability company

C Construction, Inc., a Delaware corporation

By: _____

By: _____

Its: _____

Its: _____

Print Name: _____

Print Name: _____

EXHIBIT "D"

SAMPLE FORM OF ESTOPPEL CERTIFICATE

The undersigned, _____, a _____
("Landlord"), with a mailing address c/o _____,
_____, and _____, a _____ corporation
("Tenant"), hereby certify to _____, a
_____ as follows:

1. Attached hereto is a true, correct and complete copy of that certain lease dated _____, 20__ between Landlord and Tenant (the "Lease"), which demises premises located at _____. The Lease is now in full force and effect and has not been amended, modified or supplemented, except as set forth in paragraph 4 below.

2. The term of the Lease commenced on _____, 20__.

3. The term of the Lease shall expire on _____, 20__.

4. The Lease has: (Initial one)

() not been amended, modified, supplemented, extended, renewed or assigned.

() been amended, modified, supplemented, extended, renewed or assigned by the following described agreements, copies of which are attached hereto:

5. Tenant has accepted and is now in possession of said premises.

6. Tenant and Landlord acknowledge that the Lease will be assigned to _____ and no modification, adjustment, revision or cancellation of the lease or amendments thereto shall be effective unless written consent by _____ is obtained, and that until further notice, payments under the Lease may continue as heretofore.

7. The amount of fixed monthly rent is _____ Dollars (\$_____).

8. The amount of security deposits (if any) is _____ Dollars (\$_____). No other security deposits have been made.

9. Tenant is paying the full lease rental, which has been paid in full as of the date hereof. No rent under the Lease has been more than thirty (30) days in advance of its due date.

10. All work required to be performed by Landlord under the Lease has been completed.

11. There are no defaults on the part of the Landlord or Tenant under the Lease.

12. Tenant has no defense as to its obligations under the Lease and claims no set-off or counterclaim against Landlord.

13. Tenant has no right to any concession (rental or otherwise) or similar compensation in connection with renting the space it occupies except as provided in the Lease.

All provisions of the Lease and amendments thereto (if any) referred to above are hereby ratified.

The foregoing certification is made with the knowledge that _____ is about to fund a loan to Landlord or purchase the demised premises from Landlord, and that _____ is relying upon the representations herein made in connection with such transaction.

DATED: _____, 20__

LANDLORD:

SRC Oates, LLC,
a Nevada limited liability company

By: _____

Its: _____

Print Name: _____

TENANT:

C Construction, Inc., a Delaware corporation

By: _____

Its: _____

Print Name: _____

RIDER NO. 1 - OPTION TO RENEW LEASE

THIS RIDER NO. 1 is attached to and made a part of that certain lease dated August 31, 2005, between SRC Oates, LLC, a Nevada limited liability company, as Landlord, and C Construction, Inc., a Delaware corporation, as Tenant (the "Lease"). The terms used in this Rider shall have the same definitions as set forth in the Lease. The provisions of this Rider shall prevail over any inconsistent or conflicting provisions of the Lease.

R-1. Option. Provided that Tenant is not in default of this Lease at the time of the exercise of the Option to Renew Lease (as defined below) or at the expiration of the initial term of this Lease, the Tenant shall have one and only one option to renew and extend this Lease (the "Option to Renew Lease") for one term of one (1) year (the "Renewal Term"), upon written notice to the Landlord delivered not less than nine (9) months before the expiration of the initial Lease Term. Upon the delivery of such notice by Tenant and subject to the conditions set forth in the preceding sentence, this Lease shall be extended without the necessity of the execution of any further instrument or document; provided, however, that each party agrees to execute and deliver such further instruments or documents as the other party may reasonably request to memorialize or acknowledge the exercise of the Option to Renew Lease. The Renewal Term shall commence upon the expiration of the initial term of this Lease, shall expire upon the first anniversary of such date, and be upon the same terms, covenants and conditions as provided in this Lease for the initial Lease Term, except that the Base Rent shall be the then prevailing fair market rental rate as of the commencement of the Renewal Term. Tenant shall only be able to exercise the Option to Renew Lease as to all of the Premises.

R-2. Rent. The prevailing fair market rental rate shall be the then going rate for comparable space at in the vicinity of the Premises. Landlord shall notify Tenant of Landlord's good faith determination of prevailing fair market rental no later than one (1) month after Tenant's exercise of the Option to Renew Lease. No later than one (1) month after Landlord notifies Tenant of the prevailing fair market rental, Tenant shall notify Landlord whether Tenant accepts Landlord's determination. If Tenant does not agree, Tenant and Landlord shall proceed pursuant to paragraph R-3 hereof.

R-3. Objection to Landlord's Determination. In the event Tenant timely objects to the fair market rental rate submitted by Landlord, Landlord and Tenant shall attempt in good faith to agree upon such fair market rental rate using their best good faith efforts. If Landlord and Tenant fail to reach agreement on such fair market rental rate within fifteen (15) days following Tenant's notice that Tenant does not accept Landlord's determination of the prevailing fair market rental rate, then each party shall submit a new determination of prevailing fair market rental rate to appraisal in accordance with Paragraph R-5 below.

R-4. Appraisal. Landlord and Tenant shall each appoint one (1) independent appraiser who shall by profession be a real estate broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of commercial properties in the Palm Desert/Coachella/Indio area. The determination of the appraisers shall be limited to solely the issue of whether Landlord's or Tenant's submitted fair market rental rate for the Premises is the closest to the actual fair market rental rate for the Premises as determined by the appraisers, taking

into account the requirements of Paragraph R-2 above and this Paragraph R-4 regarding the same. Such decision shall be based upon the projected prevailing fair market rental rate as of the commencement date of the Renewal Term. Each such appraiser shall be appointed within the fifteen (15) day period after Tenant's notice that Tenant does not accept Landlord's determination.

(i) The two (2) appraisers so appointed shall within fifteen (15) days of the date of appointment of the last appointed appraiser agree upon and appoint a third appraiser who shall be qualified under the same criteria set forth hereinabove for qualifications of the initial two (2) appraisers.

(ii) The three (3) appraisers shall within thirty (30) days of the appointment of the third appraiser reach a decision as to whether the parties shall use Landlord's or Tenant's submitted fair market rental rate, and shall notify Landlord and Tenant thereof.

(iii) The decision of the majority of the three (3) appraisers shall be binding upon Landlord and Tenant. If either Landlord or Tenant fails to appoint an appraiser within the time period specified in Paragraph R-4 hereinabove, the appraiser appointed by one of them shall reach a decision based upon the same procedures as set forth above (i.e., by selecting either Landlord's or Tenant's submitted fair market rental rate), and shall notify Landlord and Tenant thereof, and such appraiser's decision shall be binding upon Landlord and Tenant.

(iv) If the two (2) appraisers fail to agree upon and appoint a third appraiser, both appraisers shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association, but based up on the same procedures as set forth above (i.e., by selecting either Landlord's or Tenant's submitted fair market rental rate).

(v) The cost of the appraisal (or arbitration if required pursuant to Paragraph R-5(iv)) shall be paid by the party whose submitted fair market rental rate is not accepted.

R-5. Notwithstanding the fair market rental rate for the Premises, in no event shall the Basic Rent as of the commencement of the Renewal Term be less than the Basic Rent payable by Tenant during the last month of the initial Term of the Lease.

RIDER NO. 2 – GUARANTY OF LEASE

This Guaranty of Lease is made as of this 31st day of August, 2005, by BMC Construction, Inc., a Delaware corporation ("Guarantor"), as a material inducement to and in consideration of the execution by SRC Oates, LLC ("Landlord") of that certain Industrial Real Estate Lease (the "Lease") of even date herewith between Landlord and C Construction, Inc., a Delaware corporation ("Tenant"), relating to premises located at Oates Lane, Coachella, California. Guarantor hereby covenants and agrees as follows:

4. Guarantor hereby unconditionally guarantees the performance of, and unconditionally promises to perform, all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder.

5. In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, amend or modify the Lease in any manner, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.

6. Guarantor hereby waives and agrees not to assert or take advantage of any and all rights afforded a surety or guarantor under applicable law, including all benefits it may otherwise be entitled to under California Civil Code Sections 2787 through 2855, and similar laws, and the following:

(a) Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor;

(b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease;

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease; and

(i) Any and all defenses and rights which Guarantor might otherwise have to exoneration under this Guaranty, including all rights under California Civil Code Section 2819 and similar laws, based on any alteration, modification, compromise, renewal, extension, or assignment of the Lease or any of the Guaranteed Obligations, whether done with or without the knowledge or consent of Guarantor, and Guarantor grants Lessor the right to take any such action relative to the Guaranteed Obligations without the knowledge or consent of Guarantor without in any manner affecting the liability of Guarantor under this Guaranty.

4. Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of non-payment, and all other notices of any kind, including all notices of the existence, creation, or incurring of new or additional obligations and any notice of acceptance of this Guaranty, which, upon execution by Guarantor, shall immediately be binding on Guarantor.

5. Guarantor subordinates to Lessor all of Guarantor's rights to participate in any security now or later held by Lessor. Until all obligations hereby guaranteed shall have been fully performed, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

6. All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease; provided, however, that as long as the Tenant is a wholly-owned subsidiary of Guarantor, the foregoing prohibition shall not be effective with respect to any intra-company debt or capital transfers.

7. All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant in Landlord.

8. The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

9. Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Lease against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

10. Should any one or more provisions of this Guaranty of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

11. This Guaranty of Lease shall inure to the benefit of Landlord and its successors and assigns as Landlord under the Lease, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. This Guaranty of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

12. Upon full performance of all obligations hereby guaranteed, this Guaranty of Lease shall be of no further force or effect.

13. No provision of this Guaranty of Lease or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

14. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

15. If two (2) or more persons are signing this Guaranty of Lease as Guarantor, then all such persons shall be jointly and severally liable for the obligations of Guarantor hereunder.

16. This Guaranty of Lease shall be governed by and construed in accordance with the laws of the State of California. In any action brought under or arising out of this Guaranty of Lease, Guarantor hereby consents to the jurisdiction of any competent court within the State of California and hereby consents to service of process by any means authorized by California law.

17. TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS GUARANTY.

This Guaranty of Lease shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

GUARANTOR:

BMC CONSTRUCTION, INC.
a Delaware corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

GUARANTY OF LEASE

This Guaranty of Lease is made as of this 31st day of August, 2005, by BMC Construction, Inc., a Delaware corporation ("Guarantor"), as a material inducement to and in consideration of the execution by SRC Oates, LLC ("Landlord") of that certain Industrial Real Estate Lease (the "Lease") of even date herewith between Landlord and C Construction, Inc., a Delaware corporation ("Tenant"), relating to premises located at _____ Oates Lane, Coachella, California. Guarantor hereby covenants and agrees as follows:

4. Guarantor hereby unconditionally guarantees the performance of, and unconditionally promises to perform, all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder.

5. In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, amend or modify the Lease in any manner, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.

6. Guarantor hereby waives and agrees not to assert or take advantage of any and all rights afforded a surety or guarantor under applicable law, including all benefits it may otherwise be entitled to under California Civil Code Sections 2787 through 2855, and similar laws, and the following:

(a) Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor;

(b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease;

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease; and

(i) Any and all defenses and rights which Guarantor might otherwise have to exoneration under this Guaranty, including all rights under California Civil Code Section 2819 and similar laws, based on any alteration, modification, compromise, renewal, extension, or assignment of the Lease or any of the Guaranteed Obligations, whether done with or without the knowledge or consent of Guarantor, and Guarantor grants Lessor the right to take any such action relative to the Guaranteed Obligations without the knowledge or consent of Guarantor without in any manner affecting the liability of Guarantor under this Guaranty.

4. Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of non-payment, and all other notices of any kind, including all notices of the existence, creation, or incurring of new or additional obligations and any notice of acceptance of this Guaranty, which, upon execution by Guarantor, shall immediately be binding on Guarantor.

5. Guarantor subordinates to Lessor all of Guarantor's rights to participate in any security now or later held by Lessor. Until all obligations hereby guaranteed shall have been fully performed, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

6. All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease; provided, however, that as long as the Tenant is a wholly-owned subsidiary of Guarantor, the foregoing prohibition shall not be effective with respect to any intra-company debt or capital transfers.

7. All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant in Landlord.

8. The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

9. Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Lease against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

10. Should any one or more provisions of this Guaranty of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

11. This Guaranty of Lease shall inure to the benefit of Landlord and its successors and assigns as Landlord under the Lease, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. This Guaranty of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

12. Upon full performance of all obligations hereby guaranteed, this Guaranty of Lease shall be of no further force or effect.

13. No provision of this Guaranty of Lease or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

14. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

15. If two (2) or more persons are signing this Guaranty of Lease as Guarantor, then all such persons shall be jointly and severally liable for the obligations of Guarantor hereunder.

16. This Guaranty of Lease shall be governed by and construed in accordance with the laws of the State of California. In any action brought under or arising out of this Guaranty of Lease, Guarantor hereby consents to the jurisdiction of any competent court within the State of California and hereby consents to service of process by any means authorized by California law.

17. **TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW, THE GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS GUARANTY.**

This Guaranty of Lease shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

GUARANTOR:

BMC CONSTRUCTION, INC.
A Delaware corporation

By: Michael Mahre

Name: Michael Mahre

Title: CEO

By: _____

Name: _____

Title: _____

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	) Chapter 11
)
BUILDING MATERIALS HOLDING	) Case No. 09-12074 (KJC)
CORPORATION, <i>et al.</i> ,)
	) Jointly Administered
Debtors.)
	) Cure Objection Deadline:
	) December 3, 2009, 4:00 p.m. (ET)
	) Hearing Date:
	) December 10, 2009, 11:00 a.m. (ET)
)

**DECLARATION OF DAVID I. SUNKIN IN SUPPORT OF SOUTHWEST
MANAGEMENT, INC.'S OBJECTION TO CURE AMOUNTS SUBMITTED BY
DEBTORS WITH RESPECT TO ASSUMPTION OF PURCHASE AND SALE
AGREEMENT BETWEEN CERTAIN DEBTORS AS BUYERS AND
SOUTHWEST MANAGEMENT, INC. ET AL AS SELLERS**

I, David I. Sunkin, say that:

1. I am an attorney at law licensed to practice in the State of California, and am a partner at Sheppard Mullin Richter & Hampton LLP, counsel herein for Southwest Management, Inc. ("Southwest"). I have personal knowledge of the facts stated in this declaration, or knowledge based upon my examination of the documents described herein, and if called as a witness, I could and would testify competently thereto under oath.

2. In July 2005, Southwest and certain other entities as sellers (collectively, the "Seller Parties") entered into a Purchase and Sale Agreement ("APA") with debtors C Construction, Inc. and SelectBuild Construction, Inc., formerly known as BMC Construction, Inc. (collectively, "Debtors") as buyers. I represented the Seller Parties in the negotiation and drafting of the APA. I participated in numerous communications with Debtors and their counsel and exchanged numerous drafts of the APA and the related ancillary documents called for by the

APA, including the four real property leases discussed in the concurrently filed Declaration of Steven R. Campbell.

3. Like the APA, the leases themselves were highly negotiated. Additionally, the Indemnification provisions of Section 13 of the APA were highly negotiated. For example, with respect to the Seller Parties' indemnification obligations to Debtors set forth in Section 13.1(a), the Seller Parties and Debtors and/or their affiliates (collectively, the "Debtor Parties") agreed in the event that the amount of expenses incurred by the Debtor Parties by an indemnifiable claim exceeded \$600,000, then the Seller Parties would be responsible for all amounts in excess of \$300,000, subject to other limitations set forth in the APA, and the Debtor Parties would remain responsible for the first \$300,000 of expenses. The plain language of Section 13.1(a) of the APA expressly sets forth the parties' agreement in that regard.

4. After the parties entered into the APA, and specifically in May 2006, National Union Fire Insurance Company ("National Union") filed a lawsuit against certain of the Seller Parties. National Union alleged that certain of the Seller Parties failed to pay certain workers' compensation insurance premiums on insurance provided by National Union prior to the closing of the APA (the "Litigation"). In accordance with the terms of the APA, the Debtor Parties received service of the Litigation and tendered defense to the Seller Parties under the APA as an indemnifiable claim. The Seller Parties accepted the tender and provided the defense as required by the APA. While not actually litigating the Litigation, I was intimately involved in decision-making and settlement negotiations and strategy with respect to the Litigation and worked closely with the Debtor Parties, their employees and their counsel ("Litigation Counsel") who

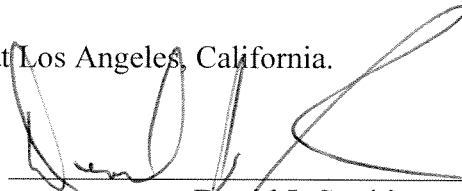
jointly represented the Seller Parties in the Litigation and represented the Debtor Parties in other National Union litigation involving the Debtor Parties (the "Debtor/NU Litigation").

5. While the Seller Parties took over defense of the Litigation as required in the APA, Debtors not only were aware of the negotiations and exposure, but were intimately involved in the process leading up to what ultimately was a settlement of the Litigation. Debtors' Director of Risk Management, Len Baumann (the "Director"), who maintained he had a strong relationship with senior executives at National Union, designed the strategy of defending the Litigation and the Debtor/NU Litigation and attended mediation in October 2006 which was an attempt to settle both the Litigation and the Debtor/NU Litigation. Even though the mediation failed, the Director was still making settlement proposals thereafter to settle globally all matters between the Seller Parties and the Debtor Parties, on the one hand, and National Union, on the other hand. Litigation Counsel also sent emails to Debtors updating Debtors on the status of settlement negotiations. Even after the Seller Parties concluded the settlement of the Litigation was hampered by the issues in the Debtor/NU Litigation and decided to pursue a separate settlement with National Union and communicated this fact to Debtors, Debtors were agreeable to this decision, and Mr. Baumann facilitated conversations between the Seller Parties' representative and the appropriate National Union senior executive. In fact, the Director specifically informed Litigation Counsel and the Seller Parties' representative that the Director did not want to be part of the negotiations with National Union regarding the Litigation. The Seller Parties continued to keep Debtors informed throughout the negotiations. Finally, the Litigation was settled but before the Seller Parties actually executed the Settlement Agreement with National Union, the Seller Parties provided the Director and Debtors' Senior Vice President and General Counsel, Paul Street, with a copy of the proposed Settlement Agreement.

6. The Seller Parties and National Union ultimately settled the Litigation for \$550,000 and the Seller Parties paid such amount to National Union. The Seller Parties incurred well in excess of \$50,000 in defense costs in the Litigation. Thus, the total amount incurred and paid by the Seller Parties exceeded \$600,000. I understand that, despite repeated demands over the past few years, Debtors have failed to reimburse the Seller Parties for the first \$300,000 that Debtors are required to cover under the APA.

The foregoing statements made by me are true. I understand that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Executed this 2nd day of December, 2009, at Los Angeles, California.



David I. Sunkin

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,

Debtors.

Case No.: 09-12074 (KJC)

Chapter 11

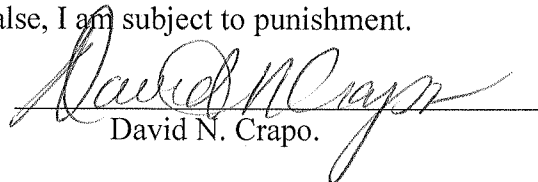
CERTIFICATION OF SERVICE

I, David N. Crapo, hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and am counsel to Gibbons P.C., co-counsel to Southwest Management, Inc., a creditor and party in interest in this case.
2. On December 2, 2009, I caused to be served on the parties identified on the Service List attached hereto by electronic mail (except in the case of the Debtor) and overnight delivery copies of the following papers:
 - a. the Objection of Contracting Party Southwest Management, Inc. to Cure Amounts Submitted by Debtors with Respect to Assumption of Purchase and Sale Agreement between Certain Debtors as Byers and Southwest Management, Inc., et al. as Sellers;
 - b. the supporting Declaration of Steven R. Campbell, together with the consolidated Exhibit A thereto;
 - c. the Supporting Declaration of David I. Sunkin; and
 - d. this Certification of Service.

I certify that the foregoing statements made by me are true. I understand that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: December 2, 2009
Newark, New Jersey


David N. Crapo.

SERVICE LIST

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Seth Mennillo, Esq.

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