IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	**Chapter 11**
BUILDING MATERIALS HOLDING CORPORATION, *et al.*,[1]	)	**Case No. 09-12074 (KJC)**
Reorganized Debtors.	)	**Jointly Administered**

DECLARATION OF PAUL S. STREET IN SUPPORT OF REORGANIZED DEBTORS' MOTION FOR ENTRY OF AN IMPLEMENTATION ORDER WITH RESPECT TO PARAGRAPH 44 OF THE CONFIRMATION ORDER (RELATING TO ROBERT R. THOMAS AND THE RESTATED THOMAS TRUST)

I, Paul S. Street, declare and state as follows:

1. I am over 18 years of age and am competent to make this declaration. I make this declaration based on my personal knowledge and review of applicable documents.

2. I am the Chief Administrative Officer and General Counsel for Building Materials Holding Corporation ("***BMHC***"), one of the reorganized debtors (the "***Debtors***") in these chapter 11 cases (the "***Chapter 11 Cases***"). I am familiar with the Debtors' material day-to-day operations, businesses, financial affairs and books and records. I am authorized to submit this Declaration on behalf of the Debtors in support of the Reorganized Debtors' Motion for Entry of Implementation Order With Respect to Paragraph 44 of Confirmation Order (Relating to Robert R. Thomas and the Restated Thomas Trust) (the "***Motion***"). Mr. Thomas and the

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1 The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

Restated Thomas Trust (the "***Thomas Trust***") are collectively referred to herein as the "***Thomas Parties***."

3. HNR Framing Systems, Inc., which is one of the now reorganized Debtors, has been engaged in the construction business in California since 1964. BMC Construction, Inc., which is another one of the now reorganized Debtors, acquired 100% of the stock of HNR Framing Systems, Inc. pursuant to a Securities Purchase Agreement dated October 17, 2005 (the "***Securities Purchase Agreement***") among BMC Construction, Inc., HNR Framing Systems, Inc., Robert R. Thomas and the Thomas Parties.

4. A true and correct copy of the Securities Purchase Agreement, without exhibits, is annexed hereto as Exhibit A.

5. On or about December 29, 2005, BMC Construction, Inc. changed its name to SelectBuild Construction, Inc.. To minimize confusion, the Motion and this Declaration will refer to that entity as BMC Construction, Inc.

6. FSC Construction, Inc., also one of the now reorganized Debtors, acquired certain other assets pursuant to an Asset Purchase Agreement dated October 17, 2005 (the "***Asset Purchase Agreement***") among FSC Construction, Inc., HNR Framing Systems, Inc., Home Building Components, Inc. and the Thomas Parties.

7. A true and correct copy of the Asset Purchase Agreement, without exhibits, is annexed hereto as Exhibit B.

8. On or about January 1, 2007, FSC Construction, Inc. was merged into HNR Framing Systems, Inc. To minimize confusion, this Motion will refer to that entity as FSC Construction, Inc.

9. The Securities Purchase Agreement and the Asset Purchase Agreement are governed by California law (without regard to conflicts of laws provisions) and are sometimes collectively referred to in the Motion and this Declaration as the "***Acquisition Agreements***."

10. The transactions under the Acquisition Agreements closed on or about October 17, 2005.

11. Gregg Street, LLC, a separate limited liability company affiliated with the Thomas Trust, entered into a Triple Net Commercial Real Estate Lease (the "***Gregg Street Lease***") with HNR Framing Systems, Inc. as of October 1, 2005. Under the Gregg Street Lease, HNR Framing Systems, Inc. leased from Gregg Street LLC certain real property located at 13465 and 13495 Gregg Street in the City of Poway, California.

12. A true and correct copy of the Gregg Street Lease is annexed hereto as Exhibit C.

13. Gregg Street, LLC agreed to several partial terminations of the Gregg Street Lease. First, Gregg Street, LLC, HNR Framing Systems, Inc. and BMHC entered into a Partial Lease Termination Agreement (the "***First Partial Gregg Street Termination***") effective November 9, 2007.

14. A true and correct copy of the First Partial Gregg Street Termination is annexed hereto as Exhibit D.

15. Gregg Street, LLC, HNR Framing Systems, Inc. and BMHC entered into a Partial Lease Termination Agreement (No. 2) (the "***Second Partial Gregg Street Termination***") effective July 15, 2008.

16. A true and correct copy of the Second Partial Gregg Street Termination is annexed hereto as Exhibit E.

17. Effective as of October 1, 2005, another separate limited liability company affiliated with the Thomas Trust, called Ralph Road, LLC, entered into a Triple Net Commercial Real Estate Lease (the "***Ralph Road Lease***") with FSC Construction, Inc. Under the Ralph Road Lease, FSC Construction, Inc. leased from Ralph Road, LLC certain real property located at 340 W. Ralph Road located in the City of Imperial, California.

18. A true and correct copy of the Ralph Road Lease is annexed hereto as Exhibit F.

19. The Ralph Road Lease was also subject to a subsequent partial termination. Ralph Road, LLC, FSC Construction, Inc. and BMHC entered into a Partial Lease Termination Agreement (the "***Partial Ralph Road Termination***") effective February 1, 2009.

20. A true and correct copy of the Partial Ralph Road Termination is annexed hereto as Exhibit G.

21. BMC Construction, Inc, HNR Framing Systems. Inc., Home Building Components, Inc. and Mr. Thomas signed a letter of intent dated June 30, 2005 (the "***Letter of Intent***") with respect to the acquisition of the stock of HNR Framing Systems, Inc. Paragraph 1 of the Letter of Intent specified, in part, "Newco will enter into new leases with Thomas for any properties owned by Thomas and used by Target at fair market value lease rates."

22. A true and correct copy of the Letter of Intent is annexed hereto as Exhibit H.

23. The Court authorized the rejection of the Gregg Street Lease and the Ralph Road Lease by order dated July 16, 2009 [Docket No. 242].

24. On August 31, 2009, Gregg Street, LLC filed a $407,808.86 proof of claim with respect to the rejection of the Gregg Street Lease (the "***Gregg Street Proof of Claim***").

25. A true and correct copy of the Gregg Street Proof of Claim is annexed hereto as Exhibit I.

26. On August 31, 2009, Ralph Road, LLC filed a $418,408.22 proof of claim with respect to the rejection of the Ralph Road Lease (the "***Ralph Road Proof of Claim***").

27. A true and correct copy of the Ralph Road Proof of Claim is annexed hereto as Exhibit J.

28. The Reorganized Debtors have allowed Gregg Street, LLC and Ralph Road, LLC general unsecured claims in the amounts asserted in the Gregg Street Proof of Claim and the Ralph Road Proof of Claim, respectively, and have issued checks to Gregg Street, LLC and Ralph Road, LLC on account of these allowed claims.

29. The Thomas Parties each filed separate proofs of claim for "$400,000.00 according to proof" against SelectBuild Construction, Inc.

30. A true and correct copy of such proof of claim filed by Robert R. Thomas (without Exhibits A and B) is annexed hereto as Exhibit K.

31. The proof of claim filed by the Thomas Trust was disallowed as duplicative of the proof of claim filed by Robert R. Thomas by order dated November 19, 2009 [Docket No. 967].

32. The Securities Purchase Agreement and Asset Purchase Agreement were not rejected during the Chapter 11 Cases and they were not identified on the Rejected Executory Contract and Unexpired Lease List filed on December 16, 2009 [Docket No. 1176].

Accordingly, the Securities Purchase Agreement and Asset Purchase Agreement were to be assumed under the Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended December 14, 2009 (With Technical Modifications) (the "***Plan***").

33. On November 25, 2009, the Thomas Parties filed their Objection by Robert R. Thomas and the Restated Thomas Trust dated April 14, 2009 to Confirmation of Joint Plan of Reorganization As Amended October 22, 2009 [Docket No. 1008] (the "Confirmation Objection").

34. A true and correct copy of the Confirmation Objection is annexed hereto as Exhibit L.

35. To address the Thomas Parties' Confirmation Objection, the Debtors included paragraph 44 in the Order Confirming Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended December 14, 2009 (With Technical Modifications) [Docket No. 1182].

36. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on August 26, 2010.



Paul S. Street

EXHIBIT A

EXECUTION COPY

SECURITIES PURCHASE AGREEMENT

among

BMC CONSTRUCTION, INC.,

(Buyer)

and

HNR FRAMING SYSTEMS, INC.

(Company)

and

RESTATED ROBERT R. THOMAS TRUST DATED APRIL 14, 1999,

(Shareholder)

and

ROBERT R. THOMAS

(Thomas)

Dated as of October 17, 2005

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SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "Agreement"), effective as of October 1, 2005 (the "Effective Date") and executed on October 17, 2005, is made and entered into by and among HnR Framing Systems, Inc., a California corporation (the "Company"), the Restated Robert R. Thomas Trust dated April 14, 1999, the sole shareholder of the Company ("Shareholder"), and Robert R. Thomas, the trustee of Shareholder ("Thomas" and collectively with Shareholder, "Sellers"), and BMC Construction, Inc., a Delaware corporation ("Buyer"), with reference to the following.

RECITALS

A. Shareholder currently owns 100% of the outstanding capital stock of the Company;

B. Pursuant to the terms, and subject to the conditions contained herein, at Closing Shareholder will sell and Buyer will purchase all of the outstanding capital stock of the Company from Shareholder;

C. Sellers and the Company desire that Shareholder sell such equity interests to Buyer;

D. Immediately subsequent to the execution of this Agreement, FSC Construction, Inc., a Delaware corporation ("FSC"), the Company, Home Building Components, Inc., a California corporation ("HBC"), Thomas and Shareholder, the sole shareholder of HBC, are entering into an Asset Purchase Agreement (the "Asset Purchase Agreement"), pursuant to which FSC will acquire certain assets and liabilities of HBC (the "Asset Purchase"), and Buyer, the Company and Sellers acknowledge and agree that the consummation of the transactions contemplated hereby is a condition precedent to the consummation of the Asset Purchase and Buyer, the Company and Sellers acknowledge and agree that the consummation of the transactions contemplated by the Asset Purchase Agreement shall be a condition subsequent to the consummation of the transactions contemplated hereby; and

E. Buyer, the Company 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

All capitalized terms defined in the introductory paragraph, recitals or elsewhere in this Agreement shall have the meanings ascribed thereto. 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 the Company, (ii) to the Company or Sellers 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 the Company, (iii) with respect to any recapitalization or restructuring concerning the Company or (iv) with respect to any other transaction substantially similar to any of the foregoing.

"After-Tax Amount" means an amount equal to the aggregate after-tax proceeds received by Shareholder as payment of the Purchase Price under this Agreement, calculated assuming a tax rate for Shareholder of thirty percent (30%).

"Business" means the business of providing integrated framing services, roof and floor truss design and manufacturing and management services for production framing operations, as presently conducted by the Company and HBC.

"Business Day" means any day, not a Saturday or Sunday, on which banks in the State of California are required to be open.

"Buyer Related Party" means any Person who, directly or indirectly, controls or is controlled by, or is under common control with Buyer (including the Company after the Closing).

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

"Closing" means the exchange of closing documents, the transfer of the Purchased Stock and the payment of the Purchase Price (less the Reserve) to Shareholder 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.

"Company Capital Stock" means the shares of common stock of the Company and all securities, options, warrants, rights and interests exercisable, convertible or exchangeable therefor.

"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 et seq. and 1375 et seq., or (iii) construction which is based on design documents containing errors, omissions, or otherwise falling below the applicable standard of care.

"Construction Defect Liabilities" means Liabilities or obligations relating to or arising out of a Construction Defect with respect to products sold or services performed by the Company 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.

"Contracts" means each contract, agreement, commitment purchase order, or other instrument of any kind, whether written or oral, of the Company. All Contracts that (i) involve obligations (contingent or otherwise) of, or payments to the Company in excess of $50,000 or (ii) have provisions restricting or affecting the development, manufacture or distribution of the Company's products or services are listed on ***Exhibit 1*** attached hereto.

"Debt" means all non-current liabilities plus the current portion of any long-term liabilities of the Company that are required to be reflected on the Company's balance sheet under GAAP, including the present value of long term non real estate operating leases. Net deferred tax liabilities in excess of $3,836,300 shall be included in the definition of Debt. Any liabilities that are required to be reflected on the Company's balance sheet under GAAP related to insurance obligations or income taxes payable will be treated as Debt and excluded from Non-Cash Net Working Capital (defined below).

"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.*, 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 the Company. All Equipment is listed or 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 the Company 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 the Company within the meaning of Section 414(c) of the Code, or a member of an affiliated service group with the Company within the meaning of Section 414(m) or (o) of the Code.

"Existing Shareholder Leases" means those leases of real property pursuant to which the Company leases real property owned by the Shareholder or any Related Party. All Existing Shareholder Leases are listed on ***Exhibit 3*** attached hereto;

"Expenses" means any and all out-of-pocket 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 financial statements of the Company, together with any schedules and notes thereto, which are dated as of March 31, 2004 and March 31, 2005, for the respective 12-month periods then ended, copies of which have been delivered to and received by Buyer.

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

"Governmental Authority" means any foreign, domestic, federal, territorial, state, regional 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 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.

"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, licensed by or owned by the Company, and all processes, inventions, trade secrets, trade names, customer lists, customer contacts and relationships, computer programs, formulae, know how and other intangible personal property used, licensed or owned by the Company, and all right, title and interest therein and thereto, including without limitation, the name "HnR Framing" and derivations

thereof, and the internet domain name www.hnrframing.com. All Intangible Personal Property is listed on ***Exhibit 4*** attached hereto.

"Interim Financial Statements" means the unaudited financial statements of the Company together with all schedules and notes thereto, which are dated as of August 31, 2005 and for the 5-month period then-ended, copies of which have been delivered to Buyer.

"Inventory" means any materials owned by the Company as of the Closing Date.

"IRS" means the Internal Revenue Service.

"Key Employees" means Thomas, Ryan Holmes and Ray Richmond.

"Key Employee Employment, Confidentiality, and Noncompetition Agreements" means the agreements to be entered into between each Key Employee, the Company and Buyer at the Closing, substantially in the forms delivered to the Key Employees.

"Knowledge of the Company or Sellers" means, as to a particular matter the actual knowledge of Shareholder, any of the Key Employees or Patty Freeman.

"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 the Company, 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, prospects or results of operations of the Company.

"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 Company.

"New Shareholder Leases" means those leases of real property to be executed and delivered at the Closing by Buyer, the Company and Shareholder or a Related Party pursuant to which the Company will lease the real property owned by Shareholder or any Related Party which is presently leased by the Company under the Existing Shareholder Leases, in substantially the form attached hereto as ***Exhibit 5***;

"Non-Cash Net Working Capital" means an amount equal to (i) the current assets of the Company, consisting of Trade Accounts Receivable, other receivables, Inventory, costs and estimated earnings in excess of billings and prepaid expenses that are transferable, but excluding

cash, less (ii) the current Liabilities of the Company, consisting of Trade Accounts Payable, billings in excess of costs, insurance accruals (and other accrued expenses), 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 of the Company. All Permits are listed on ***Exhibit 6*** 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 securing executory obligations under any lease that constitutes a "capital lease" under GAAP, (g) any and all requirements of Law including those affecting the real property assets relating to zoning and land use, (h) any customary utility company rights, easements and franchises which do not materially detract from the value of or materially impair the existing use of the property affected by such lien or imperfections, and (i) the other liens, if any, set forth on Section 8.1 of the Disclosure Schedule.

"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 the Company's leases of personal property. All Personal Property Leases are listed on ***Exhibit 7*** attached hereto.

"Purchase Price" means (i) $33,346,161, (ii) minus Debt, calculated as set forth on ***Exhibit 8*** 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 3.2 and Section 6, (iv) plus any Contingent Consideration payable pursuant to Section 6.5, if any.

"Purchased Stock" means all of the Company Capital Stock owned by Shareholder.

"Real Property Leases" means the Company's leases of real property other than the Existing Shareholder Leases. All Real Property Leases are listed on ***Exhibit 9*** attached hereto.

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

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

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

"Tax" (and, with correlative meaning, "Taxes") means any (i) federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, capital stock, social security, unemployment, disability, payroll, license, employee or other withholding, or other tax, of any kind whatsoever, including any interest, penalties or additions to tax or additional amounts in respect of the foregoing; (ii) liability of the Company for the payment of any amounts of the type described in the foregoing clause (i) arising as a result of being (or ceasing to be) a member of any consolidated, affiliated or combined group; and (iii) liability of the Company for the payment of any amounts of the type described in the foregoing clause (i) as a result of any express or implied obligation to indemnify or otherwise assume or succeed to the liability of any other Person.

"Tax Returns" means returns, declarations, reports, claims for refund, information returns or other documents (including any related or supporting schedules, statements or information) filed or required to be filed in connection with the determination, assessment or collection of any Taxes of any party or the administration of any laws, regulations or administrative requirements relating to any Taxes.

"Trade Accounts Payable" means the obligations of the Company to make payment to third parties for goods and services furnished to the Company in the ordinary course of business incurred prior to the Effective Date.

"Trade Accounts Receivable" means all obligations to make payment to the Company, including obligations owed but not yet due, as of the Closing by all third-party purchasers of goods and services from the Company which purchases occurred in the ordinary course of business prior to the Effective Date.

2. PURCHASE AND SALE

2.1 Purchase and Sale. Pursuant to the terms, and subject to the conditions contained herein, at Closing Shareholder shall sell and convey to Buyer the Purchased Stock, representing 100% of the outstanding equity ownership interests in the Company for the Purchase Price.

3. PURCHASE PRICE

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

3.2 Certain Expenses.

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

or immediately prior to the Closing (except with respect to the Taxes described in subsection (iii) below which shall be paid by Sellers when due in accordance with the Code):

(i) the fees and expenses of any person (including without limitation, The JIAN Group) retained by the Company or Sellers or any of their respective Related Parties for brokerage, financial advisory or investment banking services or services as a finder rendered to the Company or Sellers in connection with the proposed sale of the Purchased Stock, including without limitation, the transactions contemplated by this Agreement and the Asset Purchase Agreement;

(ii) the fees and expenses of legal counsel, auditors and accountants retained or employed by the Company or Sellers or any of their respective Related Parties for services rendered to the Company or Sellers or any of their respective Related Parties solely in connection with the transactions contemplated by this Agreement and the Asset Purchase Agreement; and

(iii) any income, capital gains, sales, transfer, documentary, stamp or other Tax incurred by the Sellers as a result of the consummation of the transactions contemplated by this Agreement, except as contemplated by Section 3.2(c) (all of the foregoing set forth in this Section 3.2(a)(i)-(iii), the "Transaction Expenses").

(b) If Buyer shall pay any Transaction Expense or the Company shall pay any Transaction Expense post-Closing, the sum of all such payments shall be deducted from the Purchase Price. 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 from the Reserve or paid promptly by Sellers to Buyer upon demand.

(c) Buyer shall pay all documentary stamp or transfer Taxes or other similar charges of Shareholder arising in connection with the sale of the Purchased Stock 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 the Sales Tax (the "Buyer Sales Tax Liability") 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, and Sellers shall fully cooperate with Buyer in such settlement or defense. Buyer shall pay to Shareholder upon demand any Sales Tax for which Buyer is responsible hereunder that it fails to pay.

4. TERMS OF PAYMENT

4.1 Payment Due at Closing. At Closing, Buyer shall pay to Shareholder the Purchase Price for the Purchased Stock 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 Shareholder 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 Stock 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) subject to the limitations in Section 13 (including the application of the Threshold Amount), any losses incurred as a result of any breach of any of the representations and warranties of the Company and Sellers set forth in Section 8; and (ii) payment of any amounts, not in dispute, owing by Sellers to Buyer at the end of the Post Closing Adjustment Period. Interest shall accrue on the Reserve at the prime rate as announced by Wells Fargo Bank and shall be added to the Reserve. Any interest earned on the Reserve account shall be distributed proportionally to Shareholder 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, Buyer shall pay to Shareholder the net amount of the Reserve within five (5) 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 Shareholder to Buyer in immediately available funds within five (5) 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. Buyer's recovery for (i) and (ii) above shall not be limited to the amount of the Reserve.

5. EFFECTIVE DATE NET ASSET ADJUSTMENT

5.1 Estimated Net Asset Adjustment. The Purchase Price will be subject to adjustment on the Closing Date based on a good faith estimate, using the same accounting methods, policies, practices and procedures, with consistent classifications and estimation methodologies (collectively, "Methodologies") as used by the Company in the preparation of the Financial Statements, of the amount by which the Net Assets of the Company (the "Net Assets Estimate") as of the Effective Date is greater than or less than $12,704,033 (the "March 31 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 March 31 Net Assets Average, then the difference shall be added to the Purchase Price; and, if the Net Assets Estimate is less than the March 31 Net Assets Average, then the difference shall be subtracted from the Purchase Price. For purposes of the estimation of the Net Assets of the Company pursuant to this Section 5.1: (i) all Transaction Expenses shall be treated as a pre-Effective Date liability of the Company, unless satisfied by Sellers or the Company prior to the Effective Date and (ii) all calculations shall be made without giving effect to the Asset Purchase.

5.2 Effective Date Estimate. The Company, Sellers and Buyer shall cooperate in good faith to discuss and determine the Effective Date estimate set forth in Section 5.1 no later than two days prior to the Closing Date. The Company and Sellers shall provide to Buyer any documentation reasonably requested by Buyer that may assist in making or confirming such estimate.

6. POST CLOSING ADJUSTMENT; CONTINGENT CONSIDERATION

6.1 Post Closing Adjustment. Prior to the termination of the Post Closing Adjustment Period, Buyer shall prepare a balance sheet of the Company as of the Effective Date for the purpose of determining the actual Net Assets of the Company as of the Effective Date (the "Actual Effective Date Net Assets"). The Actual Effective Date Net Assets (i) shall be prepared using the same Methodologies as were used in the preparation of the Financial Statements, (ii) will use the same methods to include Transaction Expenses and exclude the effects of the Asset Purchase 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 ninety (90) days after the Closing Date, Buyer shall submit to Sellers a statement of the Actual Effective Date Net Assets and all requested adjustments to be made to the Purchase Price. Sellers shall have thirty (30) days after receipt of such list of requested adjustments to object in writing to any of the adjustments to Buyer. Any requested adjustments that are not objected to during such thirty (30) day period shall be deemed to be agreed to by Sellers. Buyer and Sellers agree to negotiate and attempt to resolve in good faith any requested adjustments to which objections have been raised during the period of thirty (30) days following receipt of objections. Each party shall provide the other party and its representatives with reasonable access (without material disruption to the Company) to books and records and relevant personnel during the preparation of the Actual Effective Date Net Assets balance sheet and the resolution of any disputes that may arise under this Section 6.1. Any requested adjustments to the Purchase Price that Sellers have objected to and not resolved during the thirty (30) day period following the objection shall be settled in accordance with the CPA Procedure (as defined below in Section 6.4). If the amount of (a) the Actual Effective 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 ten (10) Business Days by Buyer to Shareholder. If the amount of (y) the Actual Effective 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 ten (10) Business Days by Sellers to Buyer or, at Buyer's discretion, subtracted 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 Effective Date Net Assets, all Trade Accounts Receivable that are booked by the Company as of the Effective Date but that are more than ninety (90) days past due as of the ninetieth (90th) day following the Effective Date shall be treated as though written off prior to the Effective Date and shall be irrevocably assigned to Shareholder as provided in Section 15.1 of this Agreement. 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 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.

6.4 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 (each individually a "Party Accountant" and, collectively, the "Party Accountants"). The Party Accountants will only consider those items and amounts set forth on the Actual Effective Date Net Assets balance sheet 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 Party Accountants cannot agree on the disputed requested adjustments within twenty five (25) Business Days of the submission to them of the disputed items, the Party Accountant designated by Buyer or the Company and the Party Accountant designated by Shareholder shall mutually appoint a third certified public accountant, who shall be employed by an independent (not having provided tax or audit services to any of Sellers, Company, Buyer or any Buyer Related Party for the twenty four (24) month period prior to the date hereof) accounting firm of national reputation ("CPA") who shall be instructed based solely on the evidence presented by the accountants to determine the appropriate adjustment. The CPA shall within thirty (30) days after such appointment, determine and report to the parties the CPA's determination as to each requested adjustment disputed by Shareholder, and such determination and report shall be final, binding and conclusive on the parties hereto. The fees and expenses of the CPA shall be allocated among the Company and Shareholder as follows: (x) Shareholder's share of such fees and disbursements shall be in the same proportion that the aggregate amount of such disputed requested adjustments so submitted by the Shareholder to the CPA bears to the total amount of such disputed requested adjustments so submitted by the Shareholder to the CPA; and (y) the Company will be responsible for the balance of the CPA's fees not paid by Shareholder pursuant to clause (x) above. Each party hereto shall bear the costs of its respective Party Accountant used in any CPA Procedure initiated under this Agreement. In the event the Party Accountants are unable to mutually agree upon a CPA, the resolution of the disputed requested adjustments shall be resolved as set forth in Section 22.8. 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.

6.5 Contingent Consideration.

(a) Buyer shall make payments of additional consideration (the "Contingent Consideration") to Shareholder (or any successor entity consistent with the provisions of Section 6.5(c) below), if the Business achieves the Contingent Consideration Milestones, as set forth and further described on ***Exhibit 10*** attached hereto, and subject to the conditions set forth on such Exhibit.

(b) The parties acknowledge and agree that the Business' achievement of certain earnings targets are material factors in determining the valuation of the Business by Buyer. The Contingent Consideration payable pursuant to this Section 6.5 does not constitute payment for services, but rather constitutes part of the Purchase Price payable by Buyer in connection with the transactions contemplated by this Agreement and shall be treated as such for all purposes, including Tax purposes.

(c) Shareholder may not sell, exchange, transfer or otherwise dispose of its right to receive any portion of the Contingent Consideration, other than by laws of descent and distribution or succession; provided, however, that Shareholder may transfer its right to receive any portion of the Contingent Consideration to an entity directly controlled by Shareholder primarily for investment, Tax or estate planning purposes, or to Shareholder's beneficiaries so long as, prior to the effectiveness of any such transfer, such transferee executes and delivers to Buyer an agreement in form and substance acceptable to Buyer in which such transferee agrees to be bound by all terms of this Agreement.

(d) Buyer shall deliver a notice to Sellers (a "Contingent Consideration Notice") within 30 days of each anniversary of Closing during the Contingent Consideration Period (as defined in ***Exhibit 10***) specifying (i) the gross amount of Contingent Consideration due and payable at such time (including supporting detail) and (ii) if applicable, any Offset thereto. After the expiration of all periods for objection and dispute resolution set forth in subsection (e) below, Buyer shall pay and distribute to Shareholder the Contingent Consideration due. Notwithstanding any other provision of this Section 6.5, Buyer shall be entitled to set off and not pay to Shareholder amounts otherwise payable to Shareholder pursuant to this Section 6.5, against Liabilities and Expenses for which Buyer is entitled to indemnification under Section 13 (an "Offset").

(e) Sellers shall have twenty (20) Business Days after receipt of a Contingent Consideration Notice to object in writing to Buyer's calculation of the gross amount of Contingent Consideration due and payable (disputes with respect to Offsets shall be settled in accordance with the procedures set forth in Section 13.3). All items and amounts related to any Contingent Consideration that is not specifically objected to during such twenty (20) Business Day period shall be deemed to be agreed to by Sellers. Buyer and Sellers agree to negotiate and attempt to resolve in good faith any dispute with respect to the Contingent Consideration to which objections have been raised during the period of twenty (20) Business Days following receipt of objections. Each party shall provide the other party and its representatives with reasonable access (without material disruption to the Company) to books and records and relevant personnel during the preparation of the Contingent Consideration Notice and the underlying financial statements of the Business and the resolution of any disputes that may arise under this Section 6.5. Any adjustments to the gross Contingent Consideration that Sellers have objected to and not resolved during the twenty (20) Business Day period following the objection shall be referred to the Party Accountants of the Company on the one hand and of Shareholder on the other hand to resolve; provided that such Party Accountants shall only be empowered to resolve amounts in dispute with respect to the calculation of the gross Contingent Consideration payable to the Company, and any dispute with respect to an Offset shall be settled in accordance with the procedures set forth in Section 13.3. If the Party Accountants cannot agree on the calculation of the gross Contingent Consideration within thirty (30) Business Days of the submission to them of the disputed items, then the Party Accountants shall employ the CPA Procedure set forth in Section 6.4 to determine the appropriate calculation of the gross Contingent Consideration. 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. The Company shall deliver to Buyer, as ***Exhibit 1***, a schedule setting forth all Contracts that (i) involve obligations (contingent or otherwise) of, or payments to the Company in excess of $50,000 or (ii) have provisions restricting or affecting the development, manufacture or distribution of the Company's products or services, which shall include, as applicable: the name of parties; contact person and information, location of project, amount of work completed and paid under the Contract, amount of work to be completed under the Contract and total Contract price.

7.2 Existing Shareholder Leases. All Existing Shareholder Leases shall be terminated as of the Closing Date. At and effective on the Closing, Buyer, the Company and Shareholder agree to execute and deliver the New Shareholder Leases.

8. REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND SELLERS

The Company and Sellers hereby jointly and severally represent to Buyer, except as specifically disclosed in the disclosure schedules delivered to Buyer herewith (the "Disclosure Schedule"), 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; Title to Property and Assets. The Company 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 assets and properties owned, leased or operated by it, and is qualified to do business in the State of California and in every other jurisdiction in which the conduct of its business requires it to qualify. The Company and Sellers have all requisite power and authority to enter into this Agreement and each other agreement contemplated hereby and to carry out the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and Sellers, and assuming the due authorization and execution of this Agreement by Buyer, is the valid, binding obligation of the Company and Sellers enforceable against the Company and Sellers 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. Except as set forth in Section 8.1 of the Disclosure Schedule, the Company owns its property and assets free and clear of all liens, mortgages, pledges, security interests, restrictions, prior assignments, encumbrances, options or claims of any kind or nature whatsoever (collectively, "Liens"), except for Permitted Encumbrances, which Permitted Encumbrances are set forth on the Disclosure Schedule. Shareholder is not a business trust that is classified as a corporation under the Code for federal income tax purposes.

8.2 Ownership of Purchased Stock; Delivery. Shareholder is the lawful owner of the Purchased Stock, free and clear of any Liens. At the Closing, upon payment by Buyer of the

Purchase Price at the Closing and upon the delivery of the certificates for the Purchased Stock by Shareholder duly endorsed or accompanied by stock powers for transfer, Buyer will acquire good and marketable title to all of the Purchased Stock, free and clear of all Liens.

8.3 Capitalization. All outstanding shares of Company Capital Stock are owned by Shareholder. The Purchased Stock is validly issued, fully paid and non-assessable, has been issued in compliance with all applicable securities Laws and without violating any contractual obligation. There is no outstanding subscription, option, warrant, call, right or other agreement or commitment, orally or in writing, obligating the Company to issue, sell, deliver, transfer, redeem, repurchase or otherwise acquire any security or other evidence of any ownership interest in the Company. There are no agreements or understandings in effect with respect to voting, registration, redemption, repurchase, sale of transfer of any of the Purchased Stock.

8.4 Tax Matters. Except as set forth in Section 8.4 of the Disclosure Schedule, the Company has timely filed all Tax Returns and will file all Tax Returns required to be filed on or before the Closing Date. All such Tax Returns were, or will be, true, complete and correct in all respects and none of such Tax Returns contain a disclosure statement under Section 6662 of the Code (or any predecessor provision or comparable provision of state, local or foreign law). The Company has not entered into any "reportable transactions" as defined in Section 6111 of the Code. The Company has at all times complied with applicable laws pertaining to Taxes, including, without limitation, all applicable laws relating to record retention. The Company has paid or will have paid all Taxes shown to be due on Tax Returns filed by it on or before the Closing Date. There are no liens for Taxes upon any of the Company's assets, except liens for current Taxes not yet due or delinquent. Except as set forth in Section 8.4 of the Disclosure Schedule, the Company 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 the Company is in effect. All deficiencies asserted or assessments made against the Company as a result of any examinations by any taxing authority have been fully paid. The Company has not received notice that it is or may be subject to Tax in a jurisdiction in which it has not filed, or does not currently file, Tax returns. The Company is not a party to or bound by any tax indemnity, tax sharing or tax allocation agreement. The Company has withheld for its employees any and all applicable Taxes for all pertinent periods in compliance with the Tax withholding provisions of all applicable Laws. The Company has delivered to Buyer and Buyer has received true copies of every Tax return of the Company for the years ended December 31 of 2002, 2003 and 2004.

8.5 Compliance with Laws, Licenses and Permits. The Company is 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 Authority. The Company has received and maintains, as current, all material Permits and licenses required to conduct its business as presently conducted and as contemplated to be conducted, and all such Permits are set forth on ***Exhibit 6*** attached hereto. Each Permit is valid and in full force and effect and none of such Permits will be terminated or become terminable or impaired as a result of the transactions contemplated hereby or by the Asset Purchase Agreement. Except as set forth in

Section 8.5 of the Disclosure Schedule, none of Sellers have received any notice of any asserted present or past failure by the Company to comply with any such Laws.

8.6 Financial Statements. The Company has delivered to Buyer and Buyer has received the Company Financial Statements. Except as set forth in Section 8.6 of the Disclosure Schedule, the Financial Statements: (i) have been prepared in accordance with the books and records of the Company, (ii) have been prepared in accordance with the Company's normal practices (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 the Company, at and for the fiscal periods then indicated. The Interim Financial Statements: (i) have been prepared in accordance with the books and records of the Company, (ii) have been prepared in accordance with the Company'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 the Company, at and for the fiscal periods indicated therein, subject to normal year-end adjustments.

8.7 Absence of Certain Changes. Except as set forth in Section 8.7 of the Disclosure Schedule, since the date of the Interim Financial Statements, the Company has conducted its 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 the Company that has had or that may be reasonably expected to have, either alone or together, a Material Adverse Effect on the Company;

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

(c) any (i) payments by the Company 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 assets of the Company;

(d) any waiver, amendment, termination or cancellation of any Contract or any relinquishment of any material rights thereunder by the Company, 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 the Company in its historical accounting policies, except any such change required by a change in GAAP;

(f) any declaration, setting aside or payment of any dividend or other contribution or payment (whether in cash, stock or property) with respect to the Company Capital Stock, or any redemption or other acquisition of the Company Capital Stock;

(g) any issuance or commitment to issue any Company Capital Stock;

(h) any amendment of any rights of the outstanding Company Capital Stock; or

(i) any (i) capital expenditure commitment by the Company 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 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 assets of the Company except in the ordinary course of business consistent with past practice or as contemplated by the Asset Purchase Agreement.

8.8 Legal Proceedings. Except as set forth in Section 8.8 of the Disclosure Schedule, there are no lawsuits, assertion of claims, charges, hearings, or arbitrations pending or, to the Knowledge of the Company or Sellers, threatened against or involving the Company or the Sellers (as it relates to their role in the Business), or that seek to prevent or enjoin, alter or delay the transactions contemplated by this Agreement.

8.9 Contracts and Leases. The Contracts listed at ***Exhibit 1*** represent each Contract to which the Company is a party or by which it is bound. The Personal Property Leases and Real Property Leases listed at ***Exhibits 7*** and ***9***, respectively (the "Leases") represent each Personal Property Lease and Real Property Lease to which the Company is a party. Except as set forth in Section 8.9 of the Disclosure Schedule, each such Contract and Lease is a legal, valid and binding obligation of the Company and, to the Knowledge of the Company or Sellers, each other person who is a party thereto, and is in full force and effect. The Company has provided Buyer and Buyer has received complete and accurate copies of each of the Contracts and Leases. There are no Contracts except as reflected on ***Exhibit 1***. The Leases are current and no past due amounts are owing. There has not occurred any material default under any Contract or Lease on the part of the Company or, to the Knowledge of the Company or Sellers, 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 Lease.

8.10 Agreement Not In Breach of Other Instruments. The execution, delivery and performance of this Agreement by the Company and Sellers and the consummation of the transactions contemplated hereby will not result in a breach of (i) 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, Lease or any other material agreement, indenture or other instrument to which the Company or Sellers are a party or by which the Company or Sellers are bound, (ii) the articles of incorporation or bylaws of the Company, or (iii) any judgment, decree, order or award of any Governmental Authority. Buyer has received complete and correct copies of the Company's articles of incorporation, minute books, bylaws and other organizational documents. The execution and delivery by each of the Company and Sellers of this Agreement and each agreement contemplated by this Agreement, and the performance by each of Company and Sellers of their 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.

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

8.12 Equipment. A complete and accurate list of the Equipment utilized in the Company's operation of its business is attached as ***Exhibit 2***. Except as set forth in Section 8.12 of the Disclosure Schedule, the Company 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.

8.13 Trade Accounts Payable. All Trade Accounts Payable incurred by the Company prior to the date hereof and prior to the Closing Date were incurred in the ordinary course of business. The amount of the Trade Accounts Payable reflected in the Interim Financial Statements is true and correct. The amount of the Trade Accounts Payable estimated by the Company as of the Closing Date as part of the Net Assets Estimate represents the Company's best efforts good faith estimate of such figure.

8.14 Labor Matters. Except as set forth in Section 8.14 of the Disclosure Schedule, there are no material disputes, employee grievances or other disciplinary actions pending or, to the Knowledge of the Company or Sellers, threatened involving any of the present or former employees of the Company. There is no labor strike, dispute, slowdown or stoppage pending or, to the Knowledge of the Company or Sellers, threatened against or affecting the Company, and the Company has not experienced any work stoppage or labor difficulty within the past twelve (12) months. The Company has no agreement, arrangement or commitment to create any additional plan or arrangement or to modify or amend any existing employee benefit plan of the Company. The Company is not a party to any organized labor contracts nor does the Company have any liability to any organized labor pension plan. To the Knowledge of the Company and Sellers, no executive or key employee of the Company has any plans to terminate employment with the Company. The Company has complied with all federal and state labor and employment laws, including without limitation, provisions thereof relating to wages, hours, equal employment opportunity, health and safety, immigration, collective bargaining, the Americans with Disabilities Act and the payment of social security and other Taxes. All employees of the Company are either (i) United States citizens, or (ii) non-United States citizens with valid permanent residency status or a valid right to work in the United States. The Company has withheld and reported all amounts required by law to be withheld and reported with respect to wages, salaries and other payments to employees. To the Knowledge of the Company, all individuals who are or were performing consulting or other services for the Company are or were correctly classified as either "independent contractors" or "employees" as the case may be.

8.15 Employee Benefit Plans.

(a) Schedule 8.15 of the Disclosure Schedule sets forth a list of each "employee benefit plan" (as defined in Section 3(3) of ERISA and all other employment, retention, change-in-control, consulting, bonus, stock option, stock purchase, restricted stock, incentive, deferred compensation, retiree medical or life insurance, supplemental retirement, severance or other benefit plans, programs, policies, arrangements or agreements of any kind

(whether written or oral), that are maintained, contributed to, sponsored by, or entered into by the Company or any of its subsidiaries for the benefit of any current or former employee, consultant, officer or director of the Company or any of its subsidiaries, or with respect to which the Company or any of its subsidiaries has any liability (collectively, the "Employee Plans"). The Company has provided to Buyer and Buyer has received a true and complete copy of (i) the plan documents, trust agreements, and insurance or annuity contracts or other funding vehicle with respect to each Employee Plan (or a written description of any unwritten Employee Plan), (ii) the current summary plan description, if any, with respect to each Employee Plan (or a written description of any unwritten Employee Plan), (iii) the most recent annual report on Form 5500 filed with the IRS for each Employee Plan for which such report is required, and (iv) the most recent determination letter or opinion letter from the IRS with respect to any Employee Plan that is intended to be qualified under Section 401(a) of the Code or the standardized prototype plan on which such Employee Plan is based.

(b) Each Employee Plan has been maintained, operated and administered in all material respects in accordance with its terms and the requirements of ERISA, the Code and other applicable Law. There have been no non-exempt prohibited transactions (within the meaning of Section 406 of ERISA and Section 4975 of the Code) with respect to any Employee Plan, and no fiduciary of any Employee Plan has any liability for breach of fiduciary duty or any other failure to act or comply in connection with any Employee Plan. No Action or other claim (other than claims for benefits in the ordinary course) by any Governmental Authority is pending or, to the Knowledge of the Company or Sellers, threatened with respect to any Employee Plan.

(c) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a determination or opinion letter from the IRS that it is so qualified and, to the Knowledge of the Company and Sellers, no fact or event has occurred since the date of such letter or letters from the IRS that would reasonably be expected to adversely affect the qualified status of any such Employee Plan.

(d) None of the Employee Plans, and no "employee benefit plans" (as defined in Section 3(3) of ERISA) currently or formerly maintained, sponsored or contributed to by the Company or any of its subsidiaries or any entity that would be treated as a single employer with the Company or any of its subsidiaries under Section 414 of the Code (an "ERISA Affiliate"), is a multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA) or is subject to Title IV or Section 302 of ERISA or Section 412 of the Code. None of the Company, any of its subsidiaries or its ERISA Affiliates has any liability or potential liability under Title IV of ERISA.

(e) No Employee Plan provides health or life insurance or other welfare-type benefits for current or future retired or terminated employees, officers, directors or independent contractors (or any spouse or other dependent thereof), and no ERISA Affiliate has any obligation to provide any such benefits, other than pursuant to Section 4980B of the Code. The Company, each of its subsidiaries, and any ERISA Affiliate have complied and are in compliance, in each case, in all material respects, with Section 4980B of the Code.

(f) All contributions (including all employer contributions and employee salary reduction contributions) and premium payments that are due have been made within the

time periods prescribed by ERISA and the Code to each Employee Plan and, as of the Closing Date, all contributions and premium payments that are due before the Closing have been made.

(g) No Employee Plan and no other contract, agreement or arrangement to which the Company or any of its subsidiaries is a party could, directly or in combination with other events, result, separately or in the aggregate, in the payment, acceleration or enhancement of any benefit as a result of the transactions contemplated by this Agreement. None of the foregoing will result in the payment of any "excess parachute payments" within the meaning of Section 280G of the Code.

8.16 Brokers and Finders. Except for payments to The JIAN Group, for which Sellers shall be solely responsible, neither the Company nor Sellers 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.

8.17 Environmental Laws. The Company has at all times been operated and is in compliance, in all material respects, with all Environmental Laws. The Company is in compliance with all permits required by all Environmental Laws ("Environmental Permits"), and the Company 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 the Company or Sellers, investigations or inquiries pending against the Company or, to the Knowledge of the Company or Sellers, threatened that are based on or related to any Environmental Matters or the failure of the Company to have any required Environmental Permits. 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 compliance by the Company with Environmental Laws and the requirements of Environmental Permits or (b) result in a judgment against the Company for the violation of any Environmental Law. The Company has not received (x) any notice or other communication that the Company is or may be a potentially responsible person or otherwise liable in connection with any waste disposal site used by the Company for the disposal of any Hazardous Substances, or (y) notice of any failure of the Company to comply with any Environmental Law or the requirements of any Environmental Permit. The Company 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. The Company has not used any waste disposal site, or otherwise disposed of or transported any Hazardous Substances in violation of Environmental Laws. The Company 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 the Company, there has been no release of any Hazardous Substances in violation of Environmental Laws at, on, about, under, or within any assets or properties currently or formerly owned, leased, or controlled by the Company (other than pursuant to and in accordance with Environmental Permits held by the Company). Sellers have made available to Buyer any and all third party environmental reports that are in the possession of or reasonably available to Sellers and the Company regarding Environmental Matters pertaining to the Company.

8.18 No Undisclosed Liabilities. The Company 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 Company 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.

8.19 Competitive Restrictions. The Company is not subject to any Contract or bound in any other way that restricts its ability to conduct its operations in any material respect or engage in any kind of business or sell any kind of product in any market.

8.20 Intangible Personal Property. Each item of Intangible Personal Property is set forth on ***Exhibit 4***. Except as set forth in Section 8.20 of the Disclosure Schedule, the Company owns all Intangible Personal Property free and clear of all Liens and encumbrances and has taken commercially reasonable steps to protect its rights therein. Except as set forth in Section 8.20 of the Disclosure Schedule, the Company 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) infringed, misappropriated or otherwise violated (and the operation of the Company's business as currently conducted does not infringe, misappropriate or otherwise violate) any intellectual property rights of any person. To the Knowledge of the Company or Sellers, no Person has infringed, misappropriated or otherwise violated any of the Company's Intangible Personal Property.

8.21 Insurance. The Company maintains insurance with reputable insurers for its business against all risks normally insured against, and in amounts normally carried by business organizations of similar size engaged in similar lines of business. 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 insurance policies of the Company which are in force are listed on Schedule 8.21 of the Disclosure Schedule, and copies of all such policies have been delivered to and received by Buyer. The Company has complied in all material respects with the provisions of all such insurance policies covering the Company or any of the Company's assets and properties. Except as set forth in Section 8.21 of the Disclosure Schedule, no insurer under any insurance policy has canceled or generally disclaimed liability under any such policy or, to the Knowledge of the Company or Sellers, indicated any intent to do so or not to renew any such policy.

8.22 Subsidiaries. The Company does not own or hold any rights to acquire any shares of any stock or any other security or interest in any other company or entity.

8.23. Disclosure. Except as set forth in Section 8.23 of the Disclosure Schedule, there is no event or circumstance that the Company or Sellers have knowingly failed to disclose to Buyer that would have a material adverse effect on the value of the Company or its business. No representation of or warranty by the Company or Sellers, or any of them, in this Agreement or any document, Schedule or Exhibit attached hereto or delivered prior to or at the Closing pursuant hereto contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements of facts contained therein not misleading.

8.24 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 the Company to Buyer prior to the date hereof (the "Projections") were prepared in good faith by the Company and based on assumptions that were reasonable to the Company and Sellers at the time they were made. All Projections, if any, are set forth on Schedule 8.24 of the Disclosure Schedules.

9. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to the Company and Sellers 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. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware and is qualified or licensed to do business in the State of California.

9.2 Authority. Buyer has full power and authority to execute and perform this Agreement and each other agreement contemplated hereby. Upon execution hereof, this Agreement shall be a valid and legally binding obligation of Buyer, enforceable against Buyer 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 or each agreement contemplated hereby will violate the terms or any provision of Buyer's Certificate of Incorporation or Bylaws or any material note, loan agreement, lease or other material contract or agreement to which Buyer is a party except that the consent of certain lenders of Buyer and its affiliates shall be required to consummate the transactions contemplated hereby.

9.3 Brokers and Finders. Buyer has not agreed to pay, nor 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. The execution and delivery by Buyer of this Agreement and each agreement contemplated by this Agreement, and the performance by Buyer of its obligations hereunder or thereunder, do not and will not (i) violate any provision of applicable Law relating to Buyer; (ii) violate any provision of any order, arbitration award, judgment or decree to which Buyer 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.

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, threatened against Buyer or its affiliates which would reasonably be expected to prevent, hinder or delay the consummation of any of the transactions contemplated by this Agreement or any agreement contemplated by this Agreement; and

(b) There are no lawsuits, assertion of claims, charges, hearings, arbitrations pending or, to the knowledge of Buyer, 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 at Closing, 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 Thomas 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 Thomas, the Company 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 any Projections set forth on Schedule 8.24 to the Disclosure Schedules were prepared for internal planning purposes only and are not representations or warranties of Thomas, the Company or Shareholder, and no assurances can be given that any estimated, forecasted, projected or predicted results will be achieved.

10. NONCOMPETITION AGREEMENTS

10.1 Sellers' Noncompete. Each of the Sellers agrees that for a period of five (5) years following the Closing Date, it or he (as applicable) shall not:

(a) directly or indirectly, as employee, consultant, partner, owner, employer, creditor or otherwise, engage in any aspect of the Business in the State of California (the "Territory"); provided, however that this Section 10.1(a) shall not prohibit a Seller from owning (solely as a passive investor) securities in any publicly-held corporation that may be engaged in the Business in the Territory, but only to the extent Sellers does not own, of record or

beneficially, more than an aggregate of two percent (2%) of the outstanding beneficial ownership of such corporation;

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

(c) directly or indirectly facilitate, encourage, or participate in any way in the solicitation, recruitment or hiring of any employee of Buyer or any Buyer Related Party either for itself or on behalf of any other person, firm, partnership, limited liability company or corporation.

As used in this Section 10, the term "directly or indirectly" includes an investment in any partnership, corporation or other business entity and includes 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 Reasonableness of Restrictions. Sellers acknowledge that compliance with the provisions of Section 10 is reasonable and necessary to protect the value of the Company and the Purchased Stock and Buyer's and its affiliates' legitimate business interests.

10.3 Irreparable Harm and Injunctive Relief. Sellers acknowledge that a breach of Sellers' obligations under Section 10 will result in great, irreparable and continuing harm and damage to the Company and Buyer for which there is no adequate remedy at law. Sellers agree that in the event any of them breach this Agreement, the Company and Buyer 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, jointly and severally against each of the Sellers.

10.4 Extension of Covenants. In the event any of the Sellers 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 such Seller is in violation of such covenants.

10.5 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 the Company, Buyer (and the Buyer Related Parties, 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 Sellers' right to compete only to the extent necessary to protect the value of the Company, the Purchased Stock and Buyer's and the Buyer Related Parties' 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 Company, the Purchased Stock and Buyer's and Buyer Related Parties' 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 the Company, 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 the Company between the date hereof and the Closing Date, other than the Key Employees.

11.2 Key Employees. Buyer shall cause the Company to offer employment to the Key Employees under the Key Employee Employment, Confidentiality, and Noncompetition Agreements, and immediately prior to Closing the Company shall enter into the Key Employee Employment, Confidentiality and Noncompetition Agreements with the Key Employees.

11.3 Buyer's Offer of Employment. Buyer shall cause the Company to continue the employment of all Employees, excluding Key Employees (whose continued employment shall be governed by the terms and conditions of the Key Employee Employment, Confidentiality and Noncompetition Agreements), following the Closing at wages and salary rates of compensation substantially comparable to those presently offered by the Company. All Employees shall be "at will." Buyer shall include the Employees 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 the Company.

12. FURTHER ASSURANCES

12.1 Further Assurances of Sellers. From time to time after the Closing, Sellers will execute and deliver to the Company, Buyer or any Buyer Related Party such instruments of sale, transfer, conveyance, assignment and delivery, consents, assurances, powers of attorney and other instruments as may be reasonably requested by the Company, Buyer or any Buyer Related Party in order to vest in Buyer all right, title and interest of the Purchased Stock 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, 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 Purchased Stock 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 the Company or Sellers contained in this Agreement or any certificate or other document delivered by or on behalf of the Company or Sellers pursuant hereto, (ii) any pre-Closing breach by the Company or breach by the Sellers of, or pre-Closing failure by the Company or failure by Sellers to perform, any of their covenants or obligations contained in this Agreement or any certificate or other document delivered by or on behalf of the Company or Sellers pursuant hereto, (iii) Liabilities for Taxes of the Company incurred through Closing, or attributable to any period prior to the Closing, in excess of $3,836,300, (iv) any claim or demand under a Company insurance policy which is related to a pre-Closing event or occurrence for which no reserve has been made by the Company in the Interim Financial Statements, (v) the Transaction Expenses, (vi) any Construction Defect Liability caused by the Company prior to the Closing Date and (vii) any claim related to the Company's failure to have paid for an adequate number of seat licenses or permits for off-the-shelf software used by the Company and its employees, consultants and contractors prior to the Closing Date (notwithstanding any disclosure to Buyer); 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, when aggregated with the indemnifiable losses of Buyer and FSC under Section 13.1(a) of the Asset Purchase Agreement, exceeds $250,000) (the "Threshold Amount"), provided, that the aggregate amount required to be paid by Sellers pursuant to Section 13.1(a)(i) shall not exceed the After-Tax Amount.

(b) The indemnification provided for in Section 13.1(a)(i) shall terminate twenty four (24) 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 the Company and Sellers (i) set forth in Sections 8.4 (Tax Matters), 8.15 (Employee Benefit Plans) and 8.17 (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 Stock; Delivery) which shall terminate seven (7) years after the Closing Date; and (iii) set forth in Sections 8.1 (Good Standing; Authorization; Title to Property and Assets) and 8.16 (Brokers and Finders) which shall have no termination date. The indmenification provided for in Section 13.1(a)(vi) shall terminate 60 days following the expiration of the relevant statutory period of limitations applicable to the underlying claim, giving effect to any waiver, mitigation or extension thereof (and no claims shall be made by Buyer under Section 13.1(a)(vi) thereafter). The indemnifiation provided for in Section 13.1(a)(vii) shall terminate twenty four (24) months after the Closing Date (and no claims shall be made by Buyer under Section 13.1(a)(vii) thereafter). The indemnification provided for in Sections 13.1(a)(ii), (iii), (iv) and (v) 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 the Company and Sellers in Section 8.1 (Good Standing; Authorization; Title to Property and Assets), Section 8.2 (Ownership of Purchased Assets) and Section 8.16 (Brokers and Finders); it being understood, however, that in no event shall the Liability of Sellers (including any Seller Related Party or agent, representative, attorney, officer, director, trustee, beneficiary or shareholder of Sellers) for Liabilities and Expenses incurred by the Buyer or any Buyer Related Party 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 Section 13.1(a) above shall not apply to any fraud or intentional misrepresentation by any of Sellers or any pre-Closing fraud or intentional misrepresentation by the Company.

13.2 Indemnification by Buyer.

(a) Subject to the limitations set forth herein, Buyer agrees to indemnify, defend and hold harmless the Shareholder, Thomas and the Shareholder Related Parties (by counsel reasonably satisfactory to Shareholder) from and against any and all Liabilities and Expenses incurred by Shareholder in connection with or arising from: (i) any breach of any warranty or the inaccuracy of any representation of Buyer contained in this Agreement or in any certificate delivered by or on behalf of Buyer pursuant hereto, (ii) any breach by Buyer of, or failure by Buyer to perform, any of its covenants and obligations contained in this Agreement, and (iii) Buyer's operation of the Company after the Closing; provided, however, that Buyer, shall be required to indemnify and hold harmless under clause (i) of this Section 13.2(a) with respect to Liabilities and Expenses incurred by the Shareholder only to the extent that the aggregate amount of such Liabilities and Expenses exceeds, when combined with the indemnifiable losses of HBC, Thomas and Shareholder under Section 13.2(a) of the Asset Purchase Agreement, $250,000), provided that the aggregate amount required to be paid by Buyer pursuant to Section 13.2(a)(i) shall not exceed the After-Tax Amount.

(b) The indemnification provided for in Section 13.3(a)(i) shall terminate twenty four (24) months after the Closing Date (and no claims shall be made by any Sellers under Section 13.3(a)(i) thereafter), except that the indemnification by Buyer shall continue as to the representations and warranties of the Buyer set forth in Section 9.1 (Corporate Status), Section 9.2 (Authority) and Section 9.3 (Brokers and Finders) which shall have no termination date. The indemnification provided for in Sections 13.2(a)(ii) and (iii) shall survive indefinitely.

(c) The foregoing notwithstanding, (i) the $250,000 threshold amount and limitation on liability set forth in Section 13.2(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 (including any Buyer Related Parties or agent, representative, attorney, officer, director, trustee, beneficiary or shareholder of Buyer) for Liabilities and Expenses incurred by Shareholder in connection with any breach of the foregoing representations and warranties exceed the After-Tax Amount, and (ii) the $250,000 threshold amount and limitation on liability set forth in Sections 13.2(a) and 13.6 shall not apply to any fraud or intentional misrepresentation by Buyer.

13.3 Indemnification Procedure.

(a) The party seeking indemnification pursuant to this Section 13 (the "Indemnified Party") shall 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 in accordance with the dispute resolution procedures set forth in Section 22.8. 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.

13.4 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 13.3(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.

(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.

13.5 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.

13.6 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.

13.7 Offset. Buyer shall have the right to offset any amounts that Sellers may be obligated to pay to Buyer under this Agreement only against any amounts that Buyer may be obligated to pay to Sellers under Section 6.5 of this Agreement. Sellers shall have the right to offset any amounts that Buyer may be obligated to pay to Sellers under this Agreement against any amounts that Sellers may be obligated to pay to Buyers under this Agreement.

13.8 Security for Indemnification. As security for the prompt payment and performance of the indemnification obligations of Sellers under Section 13.1(a)(vi) of this Agreement, Shareholder and Thomas shall execute and deliver, or cause Crosthwaite Circle, LLC to executed and deliver, a Deed of Trust With Absolute Assignment of Leases and Rents and Fixture Filing, in favor of and in a form acceptable to Buyer, covering the property located at 12345 Crosthwaite Circle, Poway, California (the "Deed of Trust"); provided, however, that the Deed of Trust shall cover no more than an aggregate $5,000,000 of indemnification obligations under Section 13.1(a)(vi) of this Agreement. The Deed of Trust shall be in force only for so long as Section 13.1(a)(vi) is operable.

14. CONDUCT OF OPERATIONS PRIOR TO CLOSING

14.1 Interim Operating Covenants.

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

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

(i) maintain and use its 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 Company;

(vi) notify Buyer of the commencement of any proceeding by or against the Company or Sellers or any threatened proceeding of which the Company or Sellers become aware that relates to the Company, any of the assets of the Company, the Purchased Stock or the transactions contemplated by this Agreement or the Asset Purchase Agreement or the transactions contemplated hereby or thereby;

(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 suppliers, customers, distributors, licensors, licensees, landlords, trade creditors, agents, and others having business relationships with the Company, with the goal of preserving materially unimpaired the goodwill and ongoing business of the Company 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 the Company;

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

(xi) terminate that certain Administrative Services Agreement, dated on or about April 1, 2004 by and between the Company and HBC, that certain Revolving Line of Credit and Loan Agreement dated January 1, 2005 by and between the Company and HBC, and terminate any and all other agreements, understandings, Contracts, lines of credit, loans, or obligations or arrangements of any kind between the Company and HBC, in each case without additional payment being due thereunder to HBC.

(c) Negative Company Covenants. From the date hereof until Closing, the Company will not, 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 Company's assets to any third party, other than in the ordinary course of business consistent with past practice and as contemplated by this Agreement;

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

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

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

(v) permit the corporate existence of the Company, 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, increase any salaries or benefits payable to any Employee;

(viii) incur any Indebtedness, except Trade Accounts Payable or other Liabilities incurred in the ordinary course of business, and Transaction Expenses;

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

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

(d) Sellers Covenants. Shareholder shall not, and Thomas shall cause Shareholder not to, pledge, encumber, transfer, sell, distribute, or devise Shareholder's interest in the Purchased Stock, or agree to do any of the foregoing, or take any other action that would reasonably be expected to prevent Shareholder or the Company from performing their respective covenants hereunder. Prior to the Closing, Thomas shall terminate that certain Employment Agreement, dated on or about April 1, 2005 by and between the HBC and Thomas (the "Thomas HBC Employment Agreement").

14.2 Governmental Approvals. Buyer, the Company 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 with respect to the transactions contemplated hereby and contemplated by the Asset Purchase Agreement, taken as a whole. Each of the Company, 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 the Company, 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. The Company, 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 the Company, 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 and contemplated by the Asset Purchase Agreement. 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, the Company and Sellers agree to provide to Buyer and Buyer's authorized agents (including attorneys, accountants and auditors) reasonable access to the offices and properties of the Company and the books and records of the Company upon reasonable prior notice, in order to conduct a review of the Company and its assets, Liabilities and business. The Company and Sellers shall, and shall cause the Company'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 advisors 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 Building Materials Holding Corporation ("BMHC") and the JIAN Group dated April 8, 2005, and pursuant to the terms of that certain Nondisclosure Agreement entered into between Buyer, BMHC, the Company and HBC dated as of June 28, 2005 (collectively, the "Confidentiality Agreements"), each of which all parties hereto agree shall be binding upon all parties hereto.

14.4 Employee Information and Access. The Company shall provide to Buyer certain general information concerning the Company's compensation and benefit programs and specific information relating to individual Employees; provided, however, that the Company will not make personnel records available for inspection or copying. The Company shall provide Buyer with reasonable access to the Employees during normal working hours following the date hereof on mutually agreeable dates, to provide information to such employees about Buyer and the terms of their post-Closing employment.

14.5 Transition. Between the date hereof and the Closing Date, the Company and 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 of personal introductions to vendors and customers of the Company.

14.6 Obligation to Update Exhibits and Schedules. The Company and Sellers shall update all Exhibits and Schedules, where appropriate, to be prepared by the Company and 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 Company or Sellers made in this agreement.

14.7 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, the Company and Sellers 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 Company 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. The Company and 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. The Company and 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. During the one hundred eighty (180) day period following the Effective Date, Buyer shall cause the Company to use commercially reasonable efforts in the ordinary course of business and consistent with the Company's past practices to collect the Trade Accounts Receivable. During such 180-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 the Company'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, the Company and Sellers agree that they will not willfully influence account specification pursuant to the preceding sentence. Notwithstanding the foregoing, to the extent any of the Trade Accounts Receivable are aged greater than ninety (90) days and remain uncollected ninety (90) days after the Effective Date, such Trade Accounts Receivable shall be deducted from the calculation of the Company's Actual Effective Date Net Assets, and the Company 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 the Company shall provide Shareholder with all records relating to such uncollected Trade Accounts Receivable and all other available information. The Company shall promptly remit to the Shareholder any amounts subsequently received by the Company with respect to the uncollected Trade Accounts Receivable assigned to Shareholder hereunder. Notwithstanding anything to the contrary contained herein, in no event shall any such uncollected Trade Accounts Receivable which are assigned to Shareholder and later collected by any of the Company, Buyer or Shareholder change the Purchase Price payable by Buyer hereunder.

15.2 Use of the Company Names. Sellers agree that following the Closing they will not utilize any of the trade names, corporate names or, dba names of the Company or HBC or other name that is confusingly similar to such names.

15.3 Payment for Over-Collateralized Insurance. Buyer shall cause the Company to pay to Shareholder all cash amounts which are held as of the Effective Date by insurers of the Company as collateral for incurred but not yet recorded claims, less any amounts that have been seized by such insurers in respect of payment of such claims. Such payment shall be made to Shareholder promptly after the date on which an insurer remits to the Company such cash amounts.

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 12:01 A.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 or waived by Buyer, which waiver shall be deemed to have irrevocably occurred upon the Closing:

17.1 No Misrepresentation or Breach of Covenants and Warranties. The representations and warranties of the Company and 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; except, in each case, for those representations and warranties which refer to facts existing at a specific date. The Company and Sellers shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by the Company and Sellers on or before the Closing Date.

17.2 Performance of Obligations. The Company and Sellers 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. The Company and Sellers shall have tendered delivery to Buyer of all the documents required to be delivered to Buyer by the Company and Sellers 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 Stock or the operation of the Company's business in any material respect, or the Asset Purchase.

17.5 Material Adverse Effect. There shall have been no Material Adverse Effect on the Company subsequent to the date of this Agreement.

17.6 Key Employee Employment, Confidentiality, and Noncompetition Agreements. Each of the Key Employees shall have executed and delivered his respective Key Employee Employment, Confidentiality and Noncompetition Agreement.

17.7 Consents. All governmental and third party consents and approvals (including without limitation, all regulatory approvals and the consent of Buyer's lenders) required to consummate the transactions contemplated hereby and by the Asset Purchase Agreement shall have been obtained.

17.8 New Shareholder Leases. Shareholder and the Company 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 and the Asset Purchase Agreement shall have expired or otherwise been terminated.

17.10 Legal Opinion. Buyer shall have received a legal opinion as to the matters set forth on ***Exhibit 12***, from counsel to the Company.

17.11 Due Diligence. Buyer shall have performed and completed such due diligence on the Company 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.

17.12 Approval of BMHC Board. The Board of Directors of Building Materials Holding Corporation shall have approved this Agreement, the Asset Purchase Agreement and the transactions contemplated hereby and thereby.

17.13 Deed of Trust. Crosthwaite Circle, LLC shall have executed and delivered the Deed of Trust.

17.14 Certificate. The Company and Sellers shall have delivered a certificate to Buyer, dated as of the Closing, certifying that the conditions set forth in Sections 17.1, 17.2, 17.4 and 17.5 have been satisfied.

17.15 Insurance. Neither the consummation of the transactions contemplated by this Agreement, nor the Asset Purchase, shall have caused or shall be reasonably expected to cause a cancellation or reduction in the coverage of the Company's insurance policies.

17.16 Bylaws. The Company's bylaws shall be amended to increase the number of members of the Company's Board of Directors to four (4).

17.17 Board of Directors; Officers. The Company shall have taken all necessary corporate action to appoint Mike Mahre, John Volkman and Robert Garcia to the Company's Board of Directors, who shall together with Thomas initially be the four members of the Company's Board of Directors, effective as of the Closing. The Company shall have take all necessary corporate action to appoint and/or ratify the following corporate officers effective as of the Closing: Thomas shall be the President of the Company, Mark Kailer shall be the Treasurer of the Company and Paul Street shall be the Secretary of the Company, and each other current officer of the Company, if any, shall have delivered a written resignation from each office of the Company held by him or her effective as of the Closing.

18. CONDITIONS PRECEDENT TO THE COMPANY'S AND SELLERS DUTY TO CLOSE

The Company and Sellers 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 Payment of Purchase Price and Delivery of Closing Documents. Buyer shall have paid the Purchase Price to Shareholder (less the Reserve) and Buyer shall have tendered delivery to the Company and Sellers all the documents required to be delivered to the Company and Sellers by Buyer at Closing pursuant to this Agreement.

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

18.3 New Shareholder Leases. Buyer and the Company shall have executed and delivered the New Shareholder Leases.

18.4 Asset Purchase. The Asset Purchase Agreement shall not have been terminated and shall be in full force and effect.

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

19. ITEMS TO BE DELIVERED AT CLOSING BY THE COMPANY AND SELLERS

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

19.1 Certified Resolutions and Corporate Documents. Copies of (i) the resolutions of the Board of Directors and the Shareholder of the Company authorizing the execution and performance of this Agreement, (ii) the Company's current Articles of Incorporation and (iii) the Company's Bylaws, certified by the secretary of the Company;

19.2 Stock Powers. Shareholder shall have delivered stock certificates representing the Purchased Stock, duly endorsed for transfer or accompanied by executed stock powers;

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

19.4 Key Employee Employment, Confidentiality and Noncompetition Agreements. Fully executed Key Employee Employment, Confidentiality and Noncompetition Agreements from each Key Employee;

19.5 New Shareholder Leases. Fully executed New Shareholder Leases from the Company and Shareholder; and

19.6 Deed of Trust. A duly executed Deed of Trust, in a form suitable for recording in the appropriate county recorder's office.

20. ITEMS TO BE DELIVERED AT CLOSING BY BUYER

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

20.1 New Shareholder Leases. Fully Executed New Shareholder Leases from Buyer; and

20.2 Purchase Price. The Purchase Price (less the Reserve) to be paid in accordance with Sections 3.1 and 4.1.

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 the Company if the Closing has not been effected on or prior to the close of business on November 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 the Company and Sellers of any one or more inaccuracies or misrepresentations in or breaches of the representations or warranties made by the Company or 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 Company, 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;

(d) by Buyer at any time upon written notice to the Company and Sellers of the failure by the Company or Sellers to materially perform and satisfy any of the Company's or Sellers' obligations under this Agreement required to be performed and satisfied by the Company or 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;

(e) by the Company 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;

(f) by the Company 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; and/or

(g) by the Company or Buyer if any applicable law shall be enacted or become applicable that makes the transactions contemplated hereby or by the Asset Purchase Agreement 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 or by the Asset Purchase Agreement 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 the Company pursuant to Section 21.1(b), and, if at the time of such termination any of the Company or Sellers shall have received an Acquisition Proposal, whether or not any of the Company or Sellers shall have been in breach of Section 14.7, and within six (6) months after such termination any of the Company or Sellers shall have consummated or entered into an agreement with respect to any Acquisition Proposal, then the Company and Sellers, jointly and severally, shall be obligated to pay to Buyer (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 the Company and 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) The Company and 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 the Company or Sellers fail promptly to pay any amount due to Buyer pursuant to Section 21.2(b), the Company and 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 the Company or Sellers for the Alternative Transaction Payment or the Buyer Termination Expenses. Buyer acknowledges 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 the Company or Sellers, the Company and 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 the Company pursuant to Sections 21.1(e) or 21.1(f), then upon such termination Buyer shall be obligated to reimburse the Company (by wire transfer of immediately available funds), no later than five Business Days after such termination, for 100% of the Expenses incurred by the Company, 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 "Company Termination Expenses"). Buyer acknowledges 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, the Company and Sellers would not enter into this Agreement. Accordingly, if Buyer fails promptly to pay any amount due to the Company pursuant to this Section 21.2(d), Buyer also shall pay any costs and expenses incurred by the Company or Sellers in connection with a legal action to enforce this Agreement that results in a judgment against Buyer for the Company Termination Expenses. The Company and 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, Buyer shall not have any liability or further obligation to the Company or Sellers or their respective Related Parties except for the Company Termination Expenses, which payment is liquidated damages to the Company, 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 Asset Purchase Agreement and all schedules and Exhibits thereto, the Key Employee Employment, Confidentiality and Noncompetition Agreements, the New Shareholder Leases, the Deed of Trust and the Confidentiality Agreements 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 the Company.

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 the Sellers.

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 the Company: (Prior to Closing)	HnR Framing Systems, Inc. 13465 Gregg Street Poway, CA 92064 Attn: Bob Thomas Facsimile: (858) 486-7351
Copies to:	Richard K. Circuit, Esq. Circuit, McKellogg, Kinney & Ross LLP 1205 Prospect Street, #400 La Jolla, CA 92037 Facsimile: (858) 459-0690
To the Sellers	c/o Robert R. Thomas 4097 Via Palo Verde Lago Alpine, CA 91901 Facsimile: (619) 445-5559
Copies to:	Richard K. Circuit, Esq. Circuit, McKellogg, Kinney & Ross LLP 1205 Prospect Street, #400 La Jolla, CA 92037 Facsimile: (858) 459-0690
To Buyer: (or Company after Closing)	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 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 Company 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 *ab initio*.

22.8 Dispute Resolution; Choice of Law; Jurisdiction; Waiver of Jury Trial.

(a) With the exception of disputes arising pursuant to Sections 10 and 22.6, any dispute, controversy or claim arising out of or relating to this Agreement or any transaction contemplated hereby, whether based on contract, tort, statute or other legal or equitable theory (including without limitation, any claim of fraud, misrepresentation or fraudulent inducement or any question of validity or effect of this Agreement including this clause) or the breach or termination thereof ("Dispute"), shall be resolved in accordance with this Section 22.8.

(b) The parties shall first use their reasonable and good faith efforts to settle any Dispute through non-binding mediation to be held in Orange County, California ("Mediation"), prior to initiating binding arbitration as set forth below. Each party shall bear its own costs and expenses of participating in the Mediation, and each party shall bear one-half (1/2) of the fees of the mediator. The mediator shall be selected by the parties' mutual agreement within five (5) days notice by one party to the other requesting mediation ("Notice of Dispute"). If the parties

cannot timely mutually agree upon a mediator, the Southern California Mediation Association shall promptly select the mediator. If for any reason the parties are unable to resolve the Dispute within thirty (30) days following the date of the Notice of Dispute, such Dispute shall be resolved by binding arbitration to be conducted before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration rules and regulations promulgated by AAA as in effect at the time of the arbitration, and as follows:

(i) The arbitration shall be held before a single arbitrator appointed by AAA, in accordance with its rules, who is not an affiliate of any party to such arbitration (or counsel to any party), and does not have any potential for bias or conflict of interest with respect to any of the parties, directly or indirectly, by virtue of any direct or indirect financial interest, family relationship or close friendship.

(ii) Such arbitration shall be held at Orange County, California or such other place that is mutually acceptable to the parties to the Dispute.

(iii) The arbitrator shall have the authority, taking into account the parties' desire that any arbitration proceeding hereunder be reasonably expedited and efficient, to permit the parties to conduct discovery. Any such discovery shall be (A) guided generally by and be no broader than permitted under the United States Federal Rules of Civil Procedure, and (B) subject to the arbitrator and the parties entering into a mutually acceptable confidentiality agreement.

(iv) The arbitrator's decision and award in any such arbitration shall be made and delivered within ninety (90) days of the date on which such arbitration proceedings commenced. The arbitrator shall apply and follow the laws of the State of California.

(v) The arbitrator's decision shall be in writing and shall be as brief as possible and will include the basis for the arbitrator's decision. A record of the arbitration proceeding shall be kept.

(vi) Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(vii) The arbitrator shall award to the single party it deems to have substantially prevailed, all reasonable costs of the arbitration (including, transcripts, room rental fees and fees, expenses of the arbitrator and AAA, and the reasonable legal fees, costs and disbursements of the other party thereto). If court proceedings to stay litigation or compel arbitration are necessary, the non-prevailing party in such proceedings shall pay all reasonable costs, expenses, and attorney's fees incurred in connection with such court proceeding.

(viii) The parties agree to participate in any arbitration in good faith.

(c) This agreement shall be governed by, and 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.

(d) Subject to Section 22.8(a) above, for all purposes of this Agreement and for all purposes of any Dispute relating to the transactions contemplated hereby or for recognition or enforcement of any judgment, the parties hereto submit to the personal jurisdiction of the courts of the State of California and the Federal courts of the United States sitting in Orange County, and any appellate court from any such state or Federal court, and hereby irrevocably and unconditionally agree that all claims with respect to any such Dispute may be heard and determined in such California court or, to the extent permitted by law, in such Federal court. The parties hereto agree that a final judgment in any such claim shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

(e) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any related matter in any California or Federal court located in Orange County and the defense of an inconvenient forum to the maintenance of such claim in any such court.

(f) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ITS, HIS OR HER RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF. EACH OF THE PARTIES HERETO ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND THAT MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF THE OTHER PARTY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. EACH OF THE PARTIES HERETO FURTHER WARRANTS AND REPRESENTS THAT IT, HE OR SHE HAS REVIEWED OR HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH ITS, HIS OR HER RESPECTIVE LEGAL COUNSEL, AND THAT IT, HE OR SHE KNOWINGLY AND VOLUNTARILY WAIVES ITS, HIS OR HER JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

The parties hereto irrevocably consent to service of process by registered United States mail, return receipt requested, as provided in Section 22.4. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

22.9 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.

22.10 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, including the Disclosure Schedule, and Exhibits to this Agreement constitute material terms of this Agreement and are incorporated fully into the terms of this Agreement.

22.11 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 Securities Purchase Agreement on the day and year first written above.

THE COMPANY:

HNR FRAMING SYSTEMS, INC.

By: _____
Name: Robert R. Thomas
Title: President

SHAREHOLDER:

RESTATED ROBERT R. THOMAS TRUST
DATED APRIL 14, 1999

By: _____
Name: Robert R. Thomas
Title: Trustee

THOMAS:

_____
Robert R. Thomas

BUYER:

BMC CONSTRUCTION, INC.

By: _____
Name: Michael Mahre
Title: CEO

EXHIBIT B

EXECUTION COPY

ASSET PURCHASE AGREEMENT

among

FSC CONSTRUCTION, INC.

(Buyer)

and

HNR FRAMING SYSTEMS, INC.

(Parent)

and

HOME BUILDING COMPONENTS, INC.

(Company)

and

RESTATED ROBERT R. THOMAS TRUST DATED APRIL 14, 1999

(Shareholder)

and

ROBERT THOMAS

(Thomas)

Dated as of October 17, 2005

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), effective as of October 1, 2005 (the "Effective Date") and executed on October 17, 2005, is made and entered into by and among Home Building Components, Inc., a California corporation (the "Company"), the Restated Robert R. Thomas Trust Dated April 14, 1999, the sole shareholder of the Company ("Shareholder"), and Robert R. Thomas, the trustee of Shareholder ("Thomas" and collectively with the Company and Shareholder, "Sellers"), FSC Construction, Inc., a Delaware corporation ("Buyer"), and HnR Framing Systems, Inc., a California corporation ("Parent"), with reference to the following.

RECITALS

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

B. Pursuant to the terms, and subject to the conditions contained herein, at Closing Shareholder desires that the Company sell certain of the Company's assets to Buyer;

C. Prior to the execution of this Agreement, Parent, BMC Construction, Inc., a Delaware corporation ("BMCC"), Thomas and Shareholder entered into a Securities Purchase Agreement (the "Securities Purchase Agreement"), and consummated the transactions contemplated thereby pursuant to which BMCC acquired 100% of the capital stock of Parent (the "Stock Purchase"), and the parties hereto acknowledge and agree that the consummation of the transactions contemplated by this Agreement shall be a condition subsequent to the consummation of the transactions contemplated by the Stock Purchase Agreement;

D. Subsequent to the consummation of the Stock Purchase, Parent purchased 100% of the capital stock of Buyer from BMCC, whereby Buyer became a wholly-owned subsidiary of Parent; and

D. Buyer, Parent 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

All capitalized terms defined in the introductory paragraph, recitals or elsewhere in this Agreement shall have the meanings ascribed thereto. 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 the Company, (ii) to the Company 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 the Company, (iii) with respect to any recapitalization or restructuring concerning the Company or (iv) with respect to any other transaction substantially 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.

"After-Tax Amount" means an amount equal to the aggregate after-tax proceeds received by Shareholder as payment of the Purchase Price under this Agreement, including all amounts paid, owed or to be paid), after distribution of the Purchase Price from the Company to Shareholder, calculated assuming a combined, aggregate tax rate for the Company and Shareholder of thirty percent (30%).

"Business" means the business of providing roof and floor truss design and manufacturing and management services for production framing operations, as presently conducted by the Company.

"Business Day" means any day, not a Saturday or Sunday, on which banks in the State of California are required to be open.

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

"Company 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 the Company 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.

"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*** attached hereto.

"Debt" means all non-current liabilities plus the current portion of any long-term liabilities of the Company that are required to be reflected on the Company's balance sheet under GAAP which are assumed by Buyer hereunder, including the present value of long term non real estate operating leases.

"El Centro Facility" shall mean the Company's manufacturing facility including all operating assets of the Company used therewith as set forth on ***Exhibit 2*** (Equipment) attached hereto, located in El Centro, California.

"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.*, 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 the Company in the Business. All Equipment used by the Company in the Business is listed or 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 the Company 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 the Company within the meaning of Section 414(c) of the Code, or a member of an affiliated service group with the Company within the meaning of Section 414(m) or (o) of the Code.

"Excluded Assets" means the following assets of Sellers which assets are expressly excluded from the purchase and sale of assets contemplated by this Agreement and as such are not Purchased Assets:

(i) all cash, cash equivalents and securities,

(ii) all notes, drafts, intercompany accounts and other obligations for the payment of money, including all rights to access or draw upon funds through credit lines or working capital arrangements, if any,

(iii) Existing Shareholder Leases and all leasehold improvements located on the real property underlying the Existing Shareholder Leases,

(iv) all bank and other depository accounts, corporate records and safe deposit boxes,

(v) all rights under this Agreement and the Purchase Price,

(vi) all employee benefit plans,

(vii) 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)),

(viii) those other contracts or assets of the Company which are listed on ***Exhibit 3*** attached hereto,

(x) any and all real property owned by the Shareholder or a Related Party (whether leased to the Company or otherwise),

(xi) any and all Tax returns, Tax refunds, Tax loss carryforwards, Tax identification numbers or other identification numbers of the Company assigned by any Governmental Authority, and records related to the foregoing of the Company 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 Buyer shall be promptly paid over by Buyer to the Company),

(xii) all assets used primarily in connection with the corporate functions of the Company (including but not limited to corporate charters, taxpayer and other identification numbers, records, seals, minute books and stock transfer books), and

(xiii) all collateral deposits with insurers of the Company.

"Existing Shareholder Leases" means those leases of real property pursuant to which the Company leases real property owned by the Shareholder or any Related Party, which are related to the Business. All Existing Shareholder Leases are listed on ***Exhibit 4*** attached hereto;

"Expenses" means any and all out-of-pocket 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 financial statements of the Company, together with any 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 and received by Buyer.

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

"Governmental Authority" means any foreign, domestic, federal, territorial, state, regional 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 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.

"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, licensed by 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 used, licensed or owned by Sellers and used in the Business, and all right, title and interest therein and thereto, including without limitation, the name "Home Building Components" and derivations thereof used in the Business, and any and all internet domain names used in the Business. All Intangible Personal Property is listed on ***Exhibit 5*** attached hereto.

"Interim Financial Statements" means the unaudited financial statements of the Company together with all schedules and notes thereto, which are dated as of August 31, 2005 and for the 8-month period then-ended, copies of which have been delivered to Buyer.

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

"Key Employees" means Thomas, Ryan Holmes and Ray Richmond.

"Knowledge of Sellers" means, as to a particular matter the actual knowledge of Shareholder, the Key Employees and Patty Freeman.

"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 the Company, 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, prospects or results of operations of the Company.

"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 the Shareholder or a Related Party pursuant to which Buyer will lease the real property owned by Shareholder or any Related Party which is presently leased by the Company under the Existing Shareholder Leases, in substantially the form attached hereto as ***Exhibit 6***;

"Non-Cash Net Working Capital" means an amount equal to (i) the current assets of the Company, consisting of Trade Accounts Receivable, other receivables, Inventory and prepaid expenses that are transferable, but excluding cash, less (ii) the current Liabilities of the Company, consisting of Trade Accounts Payable (excluding accrued vacation to the extent not assumed pursuant to Section 3.3(c)(vii), and other accrued expenses), 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 7*** 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 securing executory obligations under any lease that constitutes a "capital lease" under GAAP, (g) any and all requirements of Law including those affecting the real property assets relating to zoning and land use, (h) any customary utility company rights, easements and franchises which do not materially detract from the value of or materially impair the existing use of the property affected by such lien or imperfections, and (i) the other liens, if any, set forth on Section 8.2 of the Disclosure Schedule.

"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 8*** attached hereto.

"Purchase Price" means (i) $24,230,774, plus (ii) the non-cash net book value of the El Centro Facility, (iii) minus Debt, calculated as set forth on ***Exhibit 9*** attached hereto, (iv) 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, insurance policies (to the extent assignable), the deposits, reserves and assets in the Company's captive insurance programs related to insurance policies transferred to Buyer and its captive insurer, and all other assets owned by the Company 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 10*** 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 the Company or the Shareholder.

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

"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 the Company in the ordinary course of the Business incurred prior to the Effective Date.

"Trade Accounts Receivable" means all obligations arising out of the Business to make payment to the Company, including obligations owed but not yet due, as of the Closing by all third-party purchasers of goods and services from the Company which purchases occurred in the ordinary course of the Business prior to the Effective Date.

2. PURCHASE AND SALE

2.1 Purchase and Sale. Pursuant to the terms, and subject to the conditions contained herein, at Closing, the Company agrees to sell and convey to Buyer, and Buyer agrees to purchase and accept from the Company, the Purchased Assets (and all of the Company'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. Notwithstanding any implications to the contrary 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 the Company, 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 the Company, 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 Purchase Price and the value of Assumed Liabilities among the Purchased Assets shall be as set forth on ***Exhibit 11***, 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 and hold harmless each of Sellers with respect to, the Assumed Liabilities (as defined below). All Assumed Liabilities required by GAAP to be reflected on the Company's balance sheet shall be included in the balance sheet of the Company as of the Effective Date for purposes of Section 6.1.

(b) For all purposes of and under this Agreement, the term "Assumed Liabilities" shall mean the following liabilities, but excluding the Excluded Liabilities (as defined below in Section 3.3(c)).

(i) any Trade Accounts Payable of the Company, but only to the extent reflected in the Financial Statements, specifically set forth on Schedule 3.3 or otherwise incurred in the ordinary course of the Business consistent with past practice since December 31, 2005;

(ii) any accrued liabilities of the Company as of the Effective Date, but only to the extent reflected in the Financial Statements, specifically set forth on Schedule 3.3 or otherwise accrued in the ordinary course of the Business consistent with past practice since December 31 2005;

(iii) any accrued expenses of the Company, in respect of accrued payroll, compensation, vacation and benefits expenses as of the Effective Date, but only to the extent reflected in the Financial Statements, specifically set forth on Schedule 3.3 or otherwise accrued in the ordinary course of the Business consistent with past practice since December 31, 2005; and

(iv) any executory liabilities and obligations of the Company as of the Effective Date under any Contract assumed by Buyer, but only to the extent reflected in the Financial Statements, or specifically set forth on Schedule 3.3 or otherwise incurred in the ordinary course of the Business consistent with past practice since December 31, 2005.

(c) Buyer shall not assume, and the term "Assumed Liabilities" shall not mean, refer to or include (and, therefore, the "Excluded Liabilities" shall mean) any Liability not specifically assumed by Buyer pursuant to Section 3.3(b), including without limitation, 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 as contemplated by Section 3.4(c) below);

(ii) Liabilities of Sellers in respect of expenses payable by it 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 the Company for vacation pay earned by the Company employees through the Closing Date, any accrued or other liability of the Company under any employee pension benefit plan, employee welfare benefit plan, multiemployer plan, collective bargaining agreement, or any other plan or agreement with respect to any of the Company'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 the Company 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 the Company as of the Closing Date, but excluding any Liability of the Company under COBRA;

(viii) any Liabilities 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 (except for the Liabilities specifically set forth in Section 3.3(b) above);

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

(x) Liabilities of Sellers arising out of any writ, injunction, lawsuit, claim arbitration, proceeding, citation or notice letter threatened or pending as of the Closing Date, whether or not disclosed to Buyer;

(xi) Liabilities of Sellers related to insurance; and

(xiii) any Liabilities of Sellers that are not expressly 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, the Company or any of their respective Related Parties, all of which shall be borne and timely paid or caused to be paid by the Company or Shareholder as of or immediately prior to the Closing (except with respect to Taxes described in subsection (iii) below which shall be paid by Sellers when due in accordance with the Code):

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

(ii) the fees and expenses of legal counsel, auditors and accountants retained or employed by the Company or Shareholder or any of their respective Related Parties for services rendered to the Company 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 the Stock Purchase;

(iii) any income, capital gains, sales, transfer, documentary, stamp or other Tax incurred by the Sellers as a result of the consummation of the transactions contemplated by this Agreement, except as contemplated by Section 3.2(c) (all of the foregoing set forth in this Section 3.2(a)(i)-(iii), the "Transaction Expenses").

(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. 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 from the Reserve or paid promptly by Sellers to Buyer upon demand.

(c) Buyer shall pay all documentary stamp or transfer Taxes or other similar charges of the Company arising in connection with the sale of the Purchased Assets to the Buyer (the "Sales Tax"). To the extent permitted by law, Buyer, the Company and Sellers shall cooperate fully in minimizing any such Sales Tax. The Company shall prepare and file any and all documents required to pay the Sales Tax (the "Sales Tax Forms"). The Company shall first provide a copy of such documents to Buyer and Parent for their review and approval (which shall not be unreasonably withheld or delayed) and Buyer shall pay the Sales Tax (the "Buyer Sales Tax Liability") 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, and the Company shall fully cooperate with Buyer in such settlement or defense. Buyer shall pay to the Company upon demand any Sales Tax for which Buyer is responsible hereunder that it fails to pay.

(d) All state, county and local ad valorem taxes on real or personal property shall be apportioned between Buyer and Sellers as of 11:59 P.M. on the Effective 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 Effective 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) any Sellers paid prior to the Effective Date in respect of the Business shall be apportioned between Buyer and Sellers as of 11:59 P.M. on the Effective Date computed on the basis of the benefit received by Sellers prior to the Effective Date and the benefit to be received by Buyer subsequent to the Effective 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 Effective 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 Effective Date that were not prorated in accordance with this Section 3.4(d) or which were for expenses incurred by Buyer after the Effective Date, 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 the Company 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 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 Excluded Liabilities that are paid by Buyer or that Buyer determines it wants to pay directly after the Post Closing Adjustment Period, (ii) subject to the limitations in Section 13 (including the application of the Threshold Amount), any losses incurred as a result of any breach of any of the representations and warranties of the Company, Shareholder and Thomas set forth in Section 8; and (iii) payment of any amounts, not in dispute, owing by Sellers to Buyer at the end of the Post Closing Adjustment Period. Interest shall accrue on the Reserve at the prime rate as announced by Wells Fargo Bank and shall be added to the Reserve. Any interest earned on the Reserve account shall be distributed proportionally to the Company 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, Buyer shall pay to the Company the net amount of the Reserve within five (5) 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 within five (5) 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. Buyer's recovery for (i) through (iii) above shall not be limited to the amount of the Reserve.

5. EFFECTIVE DATE NET ASSET ADJUSTMENT

5.1 Estimated Net Asset Adjustment. The Purchase Price will be subject to adjustment on the Closing Date based on a good faith estimate, using the same accounting methods, policies, practices and procedures, with consistent classifications and estimation methodologies (collectively, "Methodologies") as used by the Company in the preparation of the Financial Statements, of the amount by which the Net Assets of the Company (the "Net Assets Estimate") as of the Effective Date is greater than or less than $1,218,633 (the "March 31 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 March 31 Net Assets Average, then the difference shall be added to the Purchase Price; and, if the Net Assets Estimate is less than the March 31 Net Assets Average, then the difference shall be subtracted from the Purchase Price.

5.2 Effective Date Estimate. Shareholder, the Company, and Buyer shall cooperate in good faith to discuss and determine the Effective Date Estimate set forth in Section 5.1 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 estimate.

6. POST CLOSING ADJUSTMENT

6.1 Post Closing Adjustment. Prior to the termination of the Post Closing Adjustment Period, Buyer shall prepare a balance sheet of the Company as of the Effective Date for the

purpose of determining the actual Net Assets of the Company as of the Effective Date (the "Actual Effective Date Net Assets"). The Actual Effective Date Net Assets (i) shall be prepared using the same Methodologies as were used in the preparation of the Financial Statements, (ii) will use the same methods to include Transaction Expenses and exclude the effects of the Asset Purchase 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 ninety (90) days after the Closing Date, Buyer shall submit to Sellers a statement of the Actual Effective Date Net Assets and all requested adjustments to be made to the Purchase Price. Sellers shall have thirty (30) days after receipt of such list of requested adjustments to object in writing to any of the adjustments to Buyer. Any requested adjustments that are not objected to during such thirty (30) day period shall be deemed to be agreed to by Sellers. Buyer and Sellers agree to negotiate and attempt to resolve in good faith any requested adjustments to which objections have been raised during the period of thirty (30) days following receipt of objections. Each party shall provide the other party and its representatives with reasonable access (without material disruption to the Company) to books and records and relevant personnel during the preparation of the Actual Effective Date Net Assets balance sheet and the resolution of any disputes that may arise under this Section 6.1. Any requested adjustments to the Purchase Price that Sellers have objected to and not resolved during the thirty (30) day period following the objection shall be settled in accordance with the CPA Procedure (as defined below in Section 6.4). If the amount of (a) the Actual Effective 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 ten (10) Business Days by Buyer to Shareholder. If the amount of (y) the Actual Effective 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 ten (10) Business Days by Sellers to Buyer or, at Buyer's discretion, subtracted 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 Effective Date Net Assets, all Trade Accounts Receivable that are booked by the Company as of the Effective Date but that are more than ninety (90) days past due as of the ninetieth (90th) day following the Effective Date shall be treated as though written off prior to the Effective Date and shall be irrevocably assigned to Shareholder as provided in Section 15.1. 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 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.

6.4 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 (each individually a "Party Accountant" and, collectively, the "Party Accountants"). The Party Accountants will only consider those items and amounts set forth on the Actual Effective Date Net Assets balance sheet 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 Party Accountants cannot agree on the disputed requested adjustments within twenty five (25) Business Days of the submission to them of the disputed items, the Party Accountant designated by Buyer or the Company and the Party Accountant designated by Shareholder shall mutually appoint a third certified public accountant, who shall be employed by an independent (not having provided tax or audit services to any of Sellers, Company, Buyer or any Buyer Related Party for the twenty four (24) month period prior to the date hereof) accounting firm of national reputation ("CPA") who shall be instructed based solely on the evidence presented by the accountants to determine the appropriate adjustment. The CPA shall within thirty (30) days after such appointment, determine and report to the parties the CPA's determination as to each requested adjustment disputed by Shareholder, and such determination and report shall be final, binding and conclusive on the parties hereto. The fees and expenses of the CPA shall be allocated among the Company and Shareholder as follows: (x) Shareholder's share of such fees and disbursements shall be in the same proportion that the aggregate amount of such disputed requested adjustments so submitted by the Shareholder to the CPA bears to the total amount of such disputed requested adjustments so submitted by the Shareholder to the CPA; and (y) the Company will be responsible for the balance of the CPA's fees not paid by Shareholder pursuant to clause (x) above. Each party hereto shall bear the costs of its respective Party Accountant used in any CPA Procedure initiated under this Agreement. In the event the Party Accountants are unable to mutually agree upon a CPA, the resolution of the disputed requested adjustments shall be resolved as set forth in Section 22.9. 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. The Company shall deliver to Buyer, as ***Exhibit 1***, a schedule setting forth all Contracts that (i) involve obligations (contingent or otherwise) of, or payments to the Company in excess of $50,000 or (ii) have provisions restricting or affecting the development, manufacture or distribution of the Company's products or services, which shall include, as applicable: the name of parties; contact person and information, location of project, amount of work completed and paid under the Contract, amount of work to be completed under the Contract and total Contract price.

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 Effective Date, to the extent that such Leases can be assigned to Buyer. The Company agrees to make lease payments through the Closing Date. Buyer and Sellers agree to cooperate in obtaining consent to the assignment of the Leases to Buyer. To the extent that any of the Leases cannot be assigned, Buyer agrees to sublease from the Company the real property, equipment or other property covered by such Leases for an amount equal to the Company'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 SELLERS

Sellers hereby jointly and severally represent to Buyer and Parent, except as specifically disclosed in the disclosure schedules delivered to Buyer herewith (the "Disclosure Schedule"), 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. The Company 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 State of California and in every other jurisdiction in which the conduct of the Business requires it to qualify. The Company 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 the Company and Shareholder, assuming the due authorization and execution of this Agreement by Buyer, is the valid, binding obligation of the Company and Shareholder enforceable against the Company 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. Shareholder is not a business trust that is classified as a corporation under the Code for federal income tax purposes.

8.2 Ownership of Purchased Assets. The Company is 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, which Permitted Encumbrances are set forth on the Disclosure Schedule (collectively, "Liens"). At the Closing, the Company will transfer to Buyer all of its 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 and continuing the Business in accordance with the Company's historical practices.

8.3 Tax Matters. The Company has timely filed all Tax returns heretofore required to be filed with respect to Taxes imposed on the Business, all such returns were true, complete and correct and the Company 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. Except as set forth in Section 8.3 of the Disclosure Schedules, the Company

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 the Company is in effect. The Company has not received notice that it is or may be subject to Tax in a jurisdiction in which it has not filed, or does not currently file, Tax returns. The Company has withheld for its employees or the employees of the Business any and all applicable Taxes for all pertinent periods in compliance with the Tax withholding provisions of all applicable Laws. The Company has delivered to Buyer and Buyer has received true copies of every Tax return of the Company for the years ended December 31 of 2002, 2003 and 2004.

8.4 Compliance with Laws, Licenses and Permits. The Company 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 Authority, relating to the Business. The Company 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 7*** attached hereto. Each Permit is valid and in full force and effect and none of such Permits will be terminated or become terminable or impaired as a result of the transactions contemplated hereby. Except as set forth in Section 8.4 of the Disclosure Schedules, none of Sellers have received any notice of any asserted present or past failure by the Company to comply with any such Laws.

8.5 Financial Statements. The Company has delivered to Buyer and Buyer has received the Company Financial Statements. Except as set forth in Section 8.5 of the Disclosure Schedules, the Financial Statements: (i) have been prepared in accordance with the books and records of the Company, (ii) have been prepared in accordance with the Company'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 the Company, at and for the fiscal periods then indicated. The Interim Financial Statements: (i) have been prepared in accordance with the books and records of the Company, (ii) have been prepared in accordance with the Company'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 the Company, at and for the fiscal periods indicated therein, subject to normal year-end adjustments.

8.6 Absence of Certain Changes. Except as set forth in Section 8.6 of the Disclosure Schedules, since the date of the Interim Financial Statements, the Company 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 the Company or the Business that has had or that may be reasonably expected to have, either alone or together, a Material Adverse Effect on the Company or the Business;

(b) any change in any liabilities of the Company 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 the Company 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 the Company, 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 the Company in its historical accounting policies, except any such change required by a change in GAAP; or

(f) any (i) capital expenditure commitment by the Company 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. Except as set forth in Section 8.7 of the Disclosure Schedules, there are no lawsuits, assertion of claims, charges, hearings, or arbitrations pending or, to the Knowledge of Sellers, threatened against or involving the Company, the Shareholder (as it relates to its role in the Business), 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 that (i) involve obligations (contingent or otherwise) of, or payments to the Company in excess of $50,000 or (ii) have provisions restricting or affecting the development, manufacture or distribution of the Company's products or services, to which the Company is a party or by which the Purchased Assets are bound. The Personal Property Leases and Real Property Leases listed at ***Exhibits 8*** and ***10***, respectively (the "Assumed Leases") represent each Personal Property Lease and Real Property Lease to which the Company is a party. Each such Contract and Assumed Lease is a legal, valid and binding obligation of the Company and, to the Knowledge of Sellers, each other person who is a party thereto, and is in full force and effect. The Company has provided Buyer and BMCC and Buyer and BMCC have received complete and accurate copies of each of the Contracts and Assumed Leases. There are no material Contracts except as reflected on ***Exhibit 1***. The Assumed Leases are current and no past due amounts are owing. Except as set forth in Section 8.8 of the Disclosure Schedules, there has not occurred any material default under any Contract or Assumed Lease on the part of the Company or, to the Knowledge of Sellers, 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 the Company and Shareholder and the consummation of the transactions contemplated hereby will not result in a breach of (i) 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 the Company or Shareholder are a party or by which the Company or Shareholder, or the Purchased Assets are bound, (ii) the articles of incorporation or bylaws of any the Company, or (iii) any judgment, decree, order or award of any Governmental Authority. 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 Company Financial Statements and estimated by the Company 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 Equipment utilized in the operation of the Business is attached as ***Exhibit 2***. The Company 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 the Company prior to the date hereof and prior to the Closing Date were incurred in the ordinary course of business. The amount of the Trade Accounts Payable reflected in the Interim Financial Statements is true and correct. The amount of the Trade Accounts Payable estimated by the Company as of the Closing Date as part of the Net Assets Estimate represents the Company's best efforts good faith estimate of such figure.

8.13 Labor Matters. There are no material disputes, employee grievances or other disciplinary actions pending or, to the Knowledge of Sellers, threatened involving any of the present or former employees of the Business. There is no labor strike, dispute, slowdown or stoppage pending or, to the Knowledge of Sellers, threatened against or affecting the Business, and the Business has not experienced any work stoppage or labor difficulty within the past twelve (12) months. The Company has no agreement, arrangement or commitment to create any additional plan or arrangement or to modify or amend any existing employee benefit plan of the Business. Neither Shareholder nor the Company is a party to any organized labor contracts nor does the Company have any liability to any organized labor pension plan.

The Company 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 employees of the Business are either (i) United States citizens, or (ii) non- United States citizens with valid permanent residency status or a valid right to work in the United States.

8.14 Brokers and Finders. Except for payments to The JIAN Group, for which Shareholder or the Company shall be solely responsible, neither the Company 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.

8.15 Environmental Laws. The Company has at all times been operated and is in compliance, in all material respects, with all Environmental Laws. The Company 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 the Company or, to the Knowledge of Sellers, threatened that are based on or related to any Environmental Matters or the failure of the Company to have any required Environmental Permits. 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 compliance by the Company with Environmental Laws and the requirements of Environmental Permits or (b) result in a judgment against the Company for the violation of any Environmental Law. The Company has not received (x) any notice or other communication that the Company 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 failure of the Business to comply with any Environmental Law or the requirements of any Environmental Permit. The Company 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. The Business has not used any waste disposal site, or otherwise disposed of or transported any Hazardous Substances in violation of Environmental Laws. The Company 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 the Company, there has been no release of any Hazardous Substances in violation of Environmental Laws at, on, about, under, or within any assets or properties currently or formerly owned, leased, or controlled by the Company (other than pursuant to and in accordance with Environmental Permits held by the Company). 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.

8.16 No Undisclosed Liabilities. 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.

8.17 Competitive Restrictions. Neither the Company, 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.

8.18 Intangible Personal Property. Each item of Intangible Personal Property is set forth on ***Exhibit 5***. Except as set forth in Section 8.18 of the Disclosure Schedules, the Company owns all Intangible Personal Property free and clear of all encumbrances and has taken commercially reasonable steps to protect its rights therein. Except as set forth in Section 8.18 of the Disclosure Schedules, the Company 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) 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 the Company's Intangible Personal Property.

8.19 Insurance. The Company maintains insurance with reputable insurers for its business against all risks normally insured against, and in amounts normally carried by business organizations of similar size engaged in similar lines of business. 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 insurance policies of the Company which are in force are listed on Schedule 8.21 of the Disclosure Schedule, and copies of all such policies have been delivered to and received by Buyer. The Company has complied in all material respects with the provisions of all such insurance policies covering the Company or any of the Company's assets and properties. Except as set forth in Section 8.19 of the Disclosure Schedules, no insurer under any insurance policy has canceled or generally disclaimed liability under any such policy or, to the Knowledge of the Company or Sellers, indicated any intent to do so or not to renew any such policy.

8.20 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 the Company to Buyer prior to the date hereof (the "Projections") were prepared in good faith by the officers of the Company and based on assumptions that were reasonable to such officers at the time they were made. All Projections, if any, are set forth on Schedule 8.20 of the Disclosure Schedules.

8.21. Disclosure. Except as set forth in Section 8.21 of the Disclosure Schedules, there is no event or circumstance that Sellers have knowingly failed to disclose to Buyer, Parent or BMCC and that would have a material adverse effect on the value of the Purchased Assets or the Business. No representation of or warranty by Sellers, or either of them, in this Agreement or any document, Schedule or Exhibit attached hereto or delivered prior to or at the Closing pursuant hereto contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements of facts contained therein not misleading.

9. REPRESENTATIONS AND WARRANTIES OF BUYER AND PARENT

Buyer and Parent hereby jointly and severally represent and warrant to the Company 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 Financial Ability. Buyer has, and will have at the Closing, the financial ability to consummate the transactions contemplated by this Agreement.

9.2 Corporate Status. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware and is qualified or licensed to do business in the State of California.

9.3 Authority. Buyer has full power and authority to execute and perform this Agreement and each other agreement contemplated hereby. Upon execution hereof, this Agreement shall be a valid and legally binding obligation of Buyer, enforceable against Buyer 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 or each agreement contemplated hereby will violate the terms or any provision of Buyer's Certificate of Incorporation or Bylaws or any material note, loan agreement, lease or other material contract or agreement to which Buyer is a party except that the consent of certain lenders of Buyer and its affiliates shall be required to consummate the transactions contemplated hereby.

9.4 Brokers and Finders. Buyer has not agreed to pay, nor 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.

9.5 No Violation of Law. The execution and delivery by Buyer of this Agreement and each agreement contemplated by this Agreement, and the performance by Buyer of its obligations hereunder or thereunder, do not and will not (i) violate any provision of applicable Law relating to Buyer; (ii) violate any provision of any order, arbitration award, judgment or decree to which Buyer 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.

9.6 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, threatened against Buyer or its affiliates which would reasonably be expected to prevent, hinder or delay the consummation of any of the transactions contemplated by this Agreement or any agreement contemplated by this Agreement; and

(b) There are no lawsuits, assertion of claims, charges, hearings, arbitrations pending or, to the knowledge of Buyer, threatened, that question the legality or propriety of the transactions contemplated by this Agreement or any agreement 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 or 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 Thomas 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 Thomas, the Company 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 any Projections set forth on Schedule 8.24 to the Disclosure Schedules were prepared for internal planning purposes only and are not representations or warranties of Thomas, the Company or Shareholder, and no assurances can be given that any estimated, forecasted, projected or predicted results will be achieved.

10. NONCOMPETITION AGREEMENTS

10.1 Sellers' Noncompete. Each of the Sellers agrees that for a period of five (5) years following the Closing Date, it or he (as applicable) shall not:

(a) directly or indirectly, as employee, consultant, partner, owner, employer, creditor or otherwise, engage in any aspect of the Business in the State of California (the "Territory"); provided, however that this Section 10.1(a) shall not prohibit a Seller from owning (solely as a passive investor) securities in any publicly-held corporation that may be engaged in the Business in the Territory, but only to the extent Sellers do not own, of record or beneficially, more than an aggregate of two percent (2%) of the outstanding beneficial ownership of such corporation;

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

(c) directly or indirectly facilitate, encourage, or participate in any way in the solicitation, recruitment or hiring of any employee of Buyer or any Buyer Related Party either for itself or on behalf of any other person, firm, partnership, limited liability company or corporation.

As used in this Section 10, the term "directly or indirectly" includes an investment in any partnership, corporation or other business entity and includes 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 Reasonableness of Restrictions. Sellers 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.

10.3 Irreparable Harm and Injunctive Relief. Sellers acknowledge that a breach of Sellers' 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. Sellers agree that in the event any of them breach this Agreement, Buyer and BMCC 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, jointly and severally against each of the Sellers.

10.4 Extension of Covenants. In the event any of the Sellers 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 such Seller is in violation of such covenants.

10.5 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 the Buyer Related Parties, 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 Sellers' right to compete only to the extent necessary to protect the value of the Purchased Assets and Buyer's and the Buyer Related Parties' 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 Buyer Related Parties' 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 the Company 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 the Company between the date hereof and the Closing Date, other than the Key Employees.

11.2 Termination. On the Closing Date, the Company 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, the Company shall be solely responsible for payment, when and if due, of all salaries, wages, bonuses, vacation (subject to Section 11.5), COBRA liabilities and other obligations, if any, owed to Employees or past employees of the Business as of the Effective Date.

11.3 Key Employees. Buyer shall offer employment to the Key Employees under the Key Employee Employment, Confidentiality, Noncompetition Agreements.

11.4 Buyer's Offer of Employment. Buyer shall offer employment to all terminated Employees, excluding Key Employees, effective immediately following the Closing at wages and salary rates of compensation substantially comparable to those presently offered by the Company. 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 the Company.

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 Effective Date, by Shareholder, the Company or the Business to its 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 the Company to its employees through the Effective Date, and the amount of any such accrued vacation payable assumed by Buyer shall be deducted from the Purchase Price.

11.6 Workers' Compensation. The Company assumes all responsibility for liability arising from workers' compensation claims by Employees, both medical and disability, which have been filed on or prior to the Closing Date or which arose out of incidents that occurred on or prior to the Effective Date. Buyer shall be responsible for all claims for Employees which arise out of, or are based upon, incidents which occur subsequent to the Effective Date.

12. FURTHER ASSURANCES

12.1 Further Assurances of Sellers. From time to time after the Closing (as hereinafter defined), the Company and Shareholder will execute and deliver to Buyer or any Buyer Related Party such instruments of sale, transfer, conveyance, assignment and delivery, consents, assurances, powers of attorney and other instruments as may be reasonably requested by Buyer or any Buyer Related Party in order to vest in Buyer all right, title and interest of the Company 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, Parent and the Buyer Related Parties (by counsel reasonably satisfactory to Buyer) from and against any and all Liabilities and Expenses incurred by Buyer, Parent 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 or any certificate or other document delivered by or on behalf of Sellers pursuant hereto, (ii) any breach by Sellers of, or failure by Sellers to perform, any of its covenants or obligations contained in this Agreement or any certificate or other document delivered by or on behalf of Sellers pursuant hereto, and (iii) any failure to pay any Excluded Liability; 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, when aggregated with the indemnifiable losses of BMCC under Section 13.1(a) of the Securities Purchase Agreement, exceeds $250,000) (the "Threshold Amount"), provided, that the aggregate amount required to be paid by Sellers pursuant to Section 13.1(a)(i) shall not exceed the After-Tax Amount.

(b) The indemnification provided for in Section 13.1(a)(i) shall terminate twenty four (24) 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) and (iii) 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 Seller Related Party or agent, representative, attorney, 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 Section 13.1(a) above shall not apply to any fraud or intentional misrepresentation by any of Sellers.

13.2 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 the Company, Thomas and Shareholder (by counsel reasonably satisfactory to the Company and Shareholder) from and against any and all Liabilities and Expenses incurred by the Company 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 or in any certificate delivered by or on behalf of Buyer or Parent pursuant hereto, (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, (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; provided, however, that Buyer and Parent , shall be required to indemnify and hold harmless under clause (i) of this Section 13.2(a) with respect to Liabilities and Expenses incurred by the Company and Shareholder only to the extent that the aggregate amount of such Liabilities and Expenses, when combined with the indemnifiable losses of Thomas and Shareholder under Section 13.2(a) of the Securities Purchase Agreement, exceeds $250,000; provided, that the aggregate amount required to be paid by Buyer or Parent pursuant to Section 13.2(a)(i) shall not exceed the After-Tax Amount.

(b) The indemnification provided for in Section 13.3(a)(i) shall terminate twenty four (24) months after the Closing Date (and no claims shall be made by any Sellers under Section 13.3(a)(i) thereafter), except that indemnification by Buyer and Parent shall continue as to the representations and warranties of Buyer and Parent set forth in Section 9.2 (Corporate Status), Section 9.3 (Authority) and Section 9.4 (Brokers and Finders) which shall have no termination date. The indemnification provided for in Sections 13.2(a)(ii), (iii) and (iv) shall survive indefinitely.

(c) The foregoing notwithstanding, (i) the $250,000 threshold amount and limitation on liability set forth in Section 13.2(a) above shall not apply to any breach of the representations and warranties made by Buyer and Parent in Section 9.2 (Corporate Status), Section 9.3 (Authority) and Section 9.4 (Brokers and Finders); it being understood, however, that in no event shall the Liability of Buyer or Parent (including any Buyer Related Parties or agent, representative, attorney, officer, director, trustee, beneficiary or shareholder of Buyer or Parent) for Liabilities and Expenses incurred by Shareholder or the Company in connection with any breach of the foregoing representations and warranties exceed the After-Tax Amount, and (ii) the $250,000 threshold amount and limitation on liability set forth in Sections 13.2(a) and 13.6 shall not apply to any fraud or intentional misrepresentation by Buyer or Parent.

13.3 Indemnification Procedure.

(a) The party seeking indemnification pursuant to this Section 13 (the "Indemnified Party") shall 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 in accordance with the dispute resolution procedures set forth in Section 22.9. 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.

13.4 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 13.3(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.

(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.

13.5 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.

13.6 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.

14. CONDUCT OF OPERATIONS PRIOR TO CLOSING

14.1 Interim Operating Covenants.

(a) Ordinary Course of Operations. From the date hereof until Closing, the Company shall conduct its operation of the Business in the ordinary course and substantially consistent with its prior practices. The Company 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 the Company.

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

(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 proceeding by or against Sellers or any threatened proceeding of which Sellers becomes aware that relates to the Business, any of the Purchased Assets or the transactions contemplated by this Agreement or the Securities Purchase Agreement or the transactions contemplated hereby or thereby;

(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 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 the Company; 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, the Company will not, 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 practice;

(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 the Company, 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, 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 the Company or any securities convertible into equity securities of the Company; 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. BMCC, Parent 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 with respect to the transactions contemplated hereby and contemplated by the Securities Purchase Agreement, taken as a whole. Each of Buyer, Parent and Sellers shall, as promptly as practicable, substantially comply with any request for additional information and documents pursuant to the HSR Act. Each of Buyer, Parent 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. Parent, 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 Parent, 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 and contemplated by the Securities Purchase Agreement. All fees associated with filings under the HSR Act pursuant to this Section 14.2 shall be borne by BMCC.

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 the Company and the books and records of the Company upon reasonable prior notice, in order to conduct a review of the Purchased Assets, the Assumed Liabilities, the Assumed Leases and the Business. Sellers shall, and shall cause the Company'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 advisors 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 Building Materials Holding Corporation ("BMHC") and the JIAN Group

dated April 8, 2005, and pursuant to the terms of that certain Nondisclosure Agreement entered into between BMCC, BMHC, Parent and the Company dated as of June 28, 2005 (collectively, the "Confidentiality Agreements"), each of which all parties hereto agree shall be binding upon all parties hereto.

14.4 Employee Information and Access. Sellers shall provide to Buyer certain general information concerning the Company'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 Seller will not make personnel records available for inspection or copying. Seller 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 from Buyer and to provide information to such employees about Buyer.

14.5 Company Contractual Consents.

(a) The Company shall use commercially reasonable efforts to obtain all 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.

(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 the Company to Buyer of all right, title and interest of the Company in and to, and all obligations and Liabilities of the Company under, such Contracts and Assumed Leases, and Buyer shall be deemed the Company's agent for purpose of completing, fulfilling and discharging all Liabilities of the Company from and after the Closing Date under any such Contract or Assumed Lease.

(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 the Company or Buyer under any such Contract or Assumed Lease, or would not assign all of the rights of the Company 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 the Company 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 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.

(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. The Company shall use commercially reasonable efforts to assign to Parent and Buyer, and have each of Parent and Buyer named as an additional insured parties under, each of the insurance policies of the Company set forth at Section 8.20 of the Disclosure Schedule, effective as of the Closing Date, and the Company, 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 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.

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, the Company 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. During the one hundred eighty (180) day period following the Effective Date, Buyer shall use commercially reasonable efforts in the ordinary course of business and consistent with the Company's past practices to collect the Trade Accounts Receivable. During such 180-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 willfully influence account specification pursuant to the preceding sentence. Notwithstanding the foregoing, to the extent any of the Trade Accounts Receivable are aged greater than ninety (90) days and remain uncollected ninety (90) days after the Effective Date, such Trade Accounts Receivable, excluding those Trade Accounts Receivable previously written off under Section 6.2, shall be deducted from the calculation of the Company's Actual Effective Date Net Assets, and Buyer shall irrevocably assign such uncollected Trade Accounts Receivable to the Company free and clear of all liens and encumbrances. Thereafter, the Company may use any means reasonably necessary to collect the uncollected Trade Accounts Receivable and Buyer shall provide the Company with all records relating to such uncollected Trade Accounts Receivable and all other available information. Buyer shall promptly remit to the Company Shareholder any amounts subsequently received by Buyer with respect to the uncollected Trade Accounts Receivable assigned to the Company hereunder. Notwithstanding anything to the contrary contained herein, in no event shall any such uncollected Trade Accounts Receivable which are assigned to the Company and later collected by any of the Company, Buyer or Parent change the Purchase Price payable by Buyer hereunder.

15.2 Use of the Company Names. Sellers agree that following the Closing they will not utilize any of the trade names, corporate names or, dba names of the Company or other name that is confusingly similar to such names.

15.3 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 the Company, immediately upon payment thereof, any insurance proceeds received by Buyer or its Related Parties which relate to an Excluded Asset or an Excluded Liability.

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 12:01 A.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 or waived by Buyer and Parent, which waiver shall be deemed to have irrevocably occurred upon the Closing:

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; except, in each case, for those representations and warranties which refer to facts existing at a specific date. Sellers shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Sellers on or before the Closing Date.

17.2 Performance of Obligations. The Sellers 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. The Sellers shall have tendered delivery to Buyer of all the documents required to be delivered to Buyer by the Sellers 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. There shall have been no Material Adverse Effect on the Business or the Purchased Assets subsequent to the date of this Agreement.

17.6 Consents. All governmental and third party consents and approvals (including without limitation, all regulatory approvals and the consent of BMCC's lenders) required to consummate the transactions contemplated hereby and by the Securities Purchase Agreement shall have been obtained.

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

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

17.9 Legal Opinion. Buyer shall have received a legal opinion as to the matters set forth on ***Exhibit 12***, from counsel to the Company.

17.10 Due Diligence. BMCC shall have performed and completed such due diligence on the Company 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.

17.11 Approval of BMHC Board. The Board of Directors of Building Materials Holding Corporation shall have approved this Agreement, the Securities Purchase Agreement and the transactions contemplated hereby and thereby.

17.12 Closing of Stock Purchase. The consummation of the transactions contemplated by the Securities Purchase Agreement shall have occurred.

17.13 Certificate. The Sellers shall have delivered a certificate to Buyer and Parent, dated as of the Closing, certifying that the conditions set forth in Sections 17.1, 17.2, 17.4 and 17.5 have been satisfied.

18. CONDITIONS PRECEDENT TO THE COMPANY'S AND SHAREHOLDER'S DUTY TO CLOSE

The Company 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 Payment of Purchase Price and Delivery of Closing Documents. Buyer shall have paid the Purchase Price to the Company (less the Reserve) and Buyer shall have tendered delivery to the Company and Shareholder all the documents required to be delivered to the Company and Shareholder by Buyer and Parent at Closing pursuant to this Agreement.

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

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

18.4 Closing of Stock Purchase. The consummation of the transactions contemplated by the Securities Purchase Agreement shall have occurred.

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

19. ITEMS TO BE DELIVERED AT CLOSING BY THE COMPANY AND SHAREHOLDER

At Closing, the Sellers 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 the Shareholder and the Company under which the Company assigns, and Buyer assumes and agrees to fully and faithfully perform, the Contracts, Personal Property Leases and Real Property Leases;

19.3 Certified Resolution. Copy of the resolutions of the Board of Directors and the Shareholder of the Company authorizing the execution and performance of this Agreement, certified by the secretary of the Company;

19.4 Automobile Titles. 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; and

19.7 New Shareholder Leases. Fully executed New Shareholder Leases from the Shareholder.

20. ITEMS TO BE DELIVERED AT CLOSING BY BUYER

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

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

20.2 Assignment and Assumption Agreements. Agreements duly executed by Buyer and Sellers, providing, among other things, for the assignment of the Assumed Liabilities 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; and

20.3 Purchase Price. The Purchase Price (less the Reserve) to be paid in accordance with Sections 3.1 and 4.1.

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) automatically and without further action of the parties hereto, upon the termination of the Securities Purchase Agreement;

(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; and/or

(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.

21.2 Effect of Termination. If this Agreement is terminated pursuant to Section 21.1, 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. Nothing contained in this Section 21.2 shall relieve any party of liability for breach of any covenant contained in this Agreement that occurred prior to the date of termination of this Agreement. 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.

22. MISCELLANEOUS

22.1 No Other Agreements. This Agreement and all schedules and Exhibits hereto, the Securities Purchase Agreement and all schedules and Exhibits thereto, and the Key Employee Employment, Confidentiality and Noncompetition Agreements, the Deed of Trust, the New Shareholder Leases and the Confidentiality Agreements 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 each of Buyer, Parent, the Company, and Shareholder and by Thomas.

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 each of Buyer, Parent, the Company, and Shareholder and by Thomas.

22.3 Public Announcements. No public announcements of this Agreement shall be made unless BMCC, 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 any of the Sellers:	c/o Robert R. Thomas 4097 Via Palo Verde Lago Alpine, CA 91901 Facsimile: (619) 445-5559
Copies to:	Richard K. Circuit, Esq. Circuit, McKellogg, Kinney & Ross LLP 1205 Prospect Street, #400 La Jolla, CA 92037 Facsimile: (858) 459-0690
To Buyer and BMCC:	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 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 *ab initio*.

22.8 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.

22.9 Dispute Resolution; Choice of Law; Jurisdiction; Waiver of Jury Trial.

(a) With the exception of disputes arising pursuant to Sections 10 and 22.6, any dispute, controversy or claim arising out of or relating to this Agreement or any transaction contemplated hereby, whether based on contract, tort, statute or other legal or equitable theory (including without limitation, any claim of fraud, misrepresentation or fraudulent inducement or any question of validity or effect of this Agreement including this clause) or the breach or termination thereof ("Dispute"), shall be resolved in accordance with this Section 22.9.

(b) The parties shall first use their reasonable and good faith efforts to settle any Dispute through non-binding mediation to be held in Orange County, California ("Mediation"), prior to initiating binding arbitration as set forth below. Each party shall bear its own costs and expenses of participating in the Mediation, and each party shall bear one-half (1/2) of the fees of the mediator. The mediator shall be selected by the parties' mutual agreement within five (5) days notice by one party to the other requesting mediation ("Notice of Dispute"). If the parties cannot timely mutually agree upon a mediator, the Southern California Mediation Association shall promptly select the mediator. If for any reason the parties are unable to resolve the Dispute within thirty (30) days following the date of the Notice of Dispute, such Dispute shall be resolved by binding arbitration to be conducted before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration rules and regulations promulgated by AAA as in effect at the time of the arbitration, and as follows:

(i) The arbitration shall be held before a single arbitrator appointed by AAA, in accordance with its rules, who is not an affiliate of any party to such arbitration (or counsel to any party), and does not have any potential for bias or conflict of interest with respect to any of the parties, directly or indirectly, by virtue of any direct or indirect financial interest, family relationship or close friendship.

(ii) Such arbitration shall be held at Orange County, California or such other place that is mutually acceptable to the parties to the Dispute.

(iii) The arbitrator shall have the authority, taking into account the parties' desire that any arbitration proceeding hereunder be reasonably expedited and efficient, to permit the parties to conduct discovery. Any such discovery shall be (A) guided generally by and be no broader than permitted under the United States Federal Rules of Civil Procedure, and (B) subject to the arbitrator and the parties entering into a mutually acceptable confidentiality agreement.

(iv) The arbitrator's decision and award in any such arbitration shall be made and delivered within ninety (90) days of the date on which such arbitration proceedings commenced. The arbitrator shall apply and follow the laws of the State of California.

(v) The arbitrator's decision shall be in writing and shall be as brief as possible and will include the basis for the arbitrator's decision. A record of the arbitration proceeding shall be kept.

(vi) Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(vii) The arbitrator shall award to the single party it deems to have substantially prevailed, all reasonable costs of the arbitration (including, transcripts, room rental fees and fees, expenses of the arbitrator and AAA, and the reasonable legal fees, costs and disbursements of the other party thereto). If court proceedings to stay litigation or compel arbitration are necessary, the non-prevailing party in such proceedings shall pay all reasonable costs, expenses, and attorney's fees incurred in connection with such court proceeding.

(viii) The parties agree to participate in any arbitration in good faith.

(c) This agreement shall be governed by, and 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.

(d) Subject to Section 22.9(a) above, for all purposes of this Agreement and for all purposes of any Dispute relating to the transactions contemplated hereby or for recognition or enforcement of any judgment, the parties hereto submit to the personal jurisdiction of the courts of the State of California and the Federal courts of the United States sitting in Orange County, and any appellate court from any such state or Federal court, and hereby irrevocably and unconditionally agree that all claims with respect to any such Dispute may be heard and determined in such California court or, to the extent permitted by law, in such Federal court. The parties hereto agree that a final judgment in any such claim shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

(e) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to

the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any related matter in any California or Federal court located in Orange County and the defense of an inconvenient forum to the maintenance of such claim in any such court.

(f) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ITS, HIS OR HER RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF. EACH OF THE PARTIES HERETO ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND THAT MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF THE OTHER PARTY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. EACH OF THE PARTIES HERETO FURTHER WARRANTS AND REPRESENTS THAT IT, HE OR SHE HAS REVIEWED OR HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH ITS, HIS OR HER RESPECTIVE LEGAL COUNSEL, AND THAT IT, HE OR SHE KNOWINGLY AND VOLUNTARILY WAIVES ITS, HIS OR HER JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

The parties hereto irrevocably consent to service of process by registered United States mail, return receipt requested, as provided in Section 22.4. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

22.10 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.

22.11 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, including the Disclosure Schedule, and Exhibits to this Agreement constitute material terms of this Agreement and are incorporated fully into the terms of this Agreement.

22.12 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 Asset Purchase Agreement on the day and year first written above.

THE COMPANY:

HOME BUILDING COMPONENTS, INC.

By: _____
Name: Robert R. Thomas
Title: President

SHAREHOLDER:

RESTATED ROBERT R. THOMAS TRUST
DATED APRIL 14, 1999

By: _____
Name: Robert R. Thomas
Title: Trustee

THOMAS:

_____
Robert R. Thomas

PARENT:

HNR FRAMING SYSTEMS, INC.

By: _____
Name: Robert R. Thomas
Title: President

BUYER:

FSC CONSTRUCTION, INC.

By: _____
Name: Michael Mahre
Title: President

EXHIBIT C

TRIPLE NET COMMERCIAL REAL ESTATE LEASE

This Triple Net Commercial Real Estate Lease ("Lease") is hereby made and entered into by and between Gregg Street, LLC, a California limited liability company ("Lessor"), and HNR Framing Systems, Inc., a California corporation ("Lessee" or "Buyer") (Lessor and Lessee sometimes collectively referred to herein below as the "Parties"), as of this 1st day of October, 2005 ("Effective Date") with reference to the following facts:

RECITALS

A. **WHEREAS** pursuant to (i) that certain Securities Purchase Agreement ("SPA") dated as of the date even herewith between Lessee, Robert R. Thomas, Trustee of the Restated Robert R. Thomas Trust dated April 14, 1999 ("Shareholder"), and BMHC, Inc., a Delaware corporation ("BMHC"), Shareholder has agreed to sell to BMHC and BMHC has agreed to purchase from Shareholder, all of the issued and outstanding capital stock in Lessee at the price and upon the terms and conditions as are contained in the SPA; and (ii) that certain Asset Purchase Agreement ("APA") dated as of the date even herewith between Lessee and Home Building Components, Inc., a California corporation ("HBC"), HBC has agreed to sell to Buyer and Buyer has agreed to purchase from HBC, the assets and liabilities as described in the APA, at the price and subject to the terms and conditions set forth therein; and

B. **WHEREAS** pursuant to the APA Lessor and Lessee have agreed to enter into a Lease whereby Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the Premises as set forth more fully hereinafter.

THEREFORE, in consideration for all obligations, responsibilities and other consideration hereby acknowledged, the Parties agree as follows:

1. Premises. For purposes of this Lease, Premises shall mean that certain real property, including any improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 13465 & 13495 Gregg Street, located in the City of Poway, County of San Diego, State of California, and generally described as the shop/warehouse space & building(s) situated thereon ("Building"), and unimproved and improved real property ("Land") described in Exhibit A to this Lease and made a part hereof.

1.1 The Premises shall be used only for roofing truss, floor, and wall framing manufacturing operations, including without limtation any receiving, shipping and general office/administrative operations associated therewith, and related uses consistent with applicable law.

1.2 Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental and upon all the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating rental, is an approximation, which the Parties agree is reasonable and the rental based thereon is not subject to revision whether or not the actual size is more or less.

2. Term Five (5) years and Zero (0) months ("Term") commencing as of the Effective Date ("Commencement Date") and ending Five (5) years from the first day of the first month following the Effective Date unless extended by operation of Paragraph 31 or otherwise earlier terminated only as specifically provided herein ("Expiration Date").

3. Rent

3.1 Rent shall be Sixty Seven Thousand Dollars ($67,000) per month ("Base Rent"), due on the first (1st) day of each month commencing on the Commencement Date, provided that Lessee shall have until the fifth (5th) day of each month during the Term in which to make payment to Lessor without penalty. During the Term, unless modified in writing by the Parties and except as modified by operation of Paragraph 3.1 below, the Base Rent then in effect shall be increased by three percent (3%) on the annual anniversary of the Commencement Date every Lease Year (as it is defined herein). For purposes of this Lease, the term "Lease Year" means a one (1) year period commencing with the Commencement Date. Notwithstanding anything to the contrary contained herein this Lease, in the event Lessee excercises an Option (as defined herein) during the Term, the Base Rent for the first year of any such Option exercised shall be established as follows:

3.1.1 The Base Rent payable for renewal of the Term through exercise of the first Option shall be the greater of (a) the Fair Market Rental Value (as defined herein) as of the last day of the fifth anniversary of the Commencement Date; and (b) one hundred three percent (103%) of the Base Rent in effect as of the fifth Lease Year. For purposes of this Lease, Fair Market Rental Value shall mean, with respect to Premises, the fair market monthly rental value that would be obtained in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor, in either case under no compulsion to lease, and neither of which is related to Lessor or Lessee for the lease of Premises on the terms set forth herein this Lease, assuming that the Premises are in a condition and repair required to be maintained by the terms of this Lease.

3.1.2 The Base Rent payable for renewal of the Term through exercise of the second Option shall be the greater of (a) the Fair Market Rental Value (as defined herein) as of the last day of the tenth anniversary of the Commencement Date; and (b) one hundred three percent (103%) of the Base Rent in effect as of the tenth Lease Year.

3.2 All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit (as defined herein)) are deemed to be rent, which shall include but not be limited to Base Rent ("Rent").

3.3 Lessee shall cause payment of Rent to be received by Lessor in United States currency, without any offset or deduction (except as specifically permitted in this Lease), on or before the date on which is due. Rent for any period during the term hereof which is for less than one (1) full calendar month shall be pro rated based upon the actual number of days of said month. Payment of rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor' endorsement of any check so stating.

4. Use.

4.1 Lessee shall use and occupy the Premises according to the use set forth in Paragraph 1.1 herein, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners or occupants of, or causes damage to neighboring properties. Lessee shall not make any improvements or modifications to the Premises without Lessor's written approval, such approval not to be unreasonably withheld.

4.2

4.2.1 The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, 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 Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance at Lessee's expense with all Applicable Requirements. For purposes of this Lease, Applicable Requirements shall mean compliance with all applicable governmental laws, ordinances and regulations. For purposes of this Lease, "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/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration of termination) of protective modifications (such as concrete encasements).

4.2.2 If Lessee 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 consent to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

4.2.3 Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or Lessee's agents, employees, or contractors.

4.2.4 Lessee shall indemnify, defend and hold Lessor, its agents, employees, and lenders harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or Lessee's agents, employees, contractors, or invitees (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered

into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

4.3 Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the reasonable requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Commencement Date. Lessee shall, within ten (10) days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with Applicable Requirements as specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements.

4.4 Lessor and its consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times upon reasonable prior notice to Lessee, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements or the inspection is requested or ordered by governmental authority with respect to the activities of Lessee or its agents, employees, contractors, or invitees on or about the Premises. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspections, so long as such inspection is reasonably related to the violation or contamination resulting from the activities of Lessee or its agents, employees, or contractors on or about the Premises.

5. Maintenance and Repairs

5.1 Subject to the provisions of this Lease and during the Term, Lessee shall, at Lessee's sole expense, keep and maintain the Premises, utility installations, and alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accesible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of ventilating Premises) including, but not limited to, all equipment or facilities, such as plumbing, heating, ventilating, air-conditioning, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform regular maintenance practices. Lessee's obligations shall include restorations and replacements as necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity.

5.2 Lessee, at its sole expense, shall maintain in good order and repair and perform regular maintenance on (in accordance with commercially reasonable management practices and applicable warranty requirements) the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguisher systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, (vi) driveways, (vii) parking lots, and (viii) basic utility feed to the perimeter of the Building (collectively "Basic Elements").

5.3 Lessee shall not be required to perform any repairs or maintenance to the Premises necessitated by reason of the negligence of Lessor or by reason of the failure of Lessor to perform obligations of this Lease.

5.4 Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and services thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Lessee shall repair any damage occasioned by the installation, maintenance or removal of its personal property and equipment. The failure by Lessee to timely vacate Premises pursuant this Paragraph without the express written consent of Lessor shall constitute a holdover.

5.5 Except as specifically set forth herein,, it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be those of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

6. Insurance

6.1 Except for Lessor's gross negligence, and to the extent permitted by law, Lessee waives any claims it may have against Lessor or its officers, managers, employees or agents for business interruption or damage to property sustained by Lessee as the result of any act or omission of Lessor.

6.2 Lessee shall maintain insurance as follows, with such other terms, coverages and insurers, as Lessor shall reasonably require from time to time:

6.2.1 Commercial General Liability Insurance, with (a) Contractual Liability including the indemnification provisions contained in this Lease, (b) a severability of interest endorsement, (c) limits of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence and not less than Two Million Dollars ($2,000,000) in the aggregate for bodily injury, sickness or death, and property damage, and umbrella coverage of not less than Five Million Dollars ($5,000,000).

6.2.2 Property Insurance against "All Risks" of physical loss covering the replacement cost of all improvements, fixtures and personal property. Lessee waives all rights of subrogation, and Lessee's property insurance shall include a waiver of subrogation in favor of Lessor.

6.2.3 Lessee's insurance shall be primary and not contributory to that carried by Lessor, its agents, or Lessor's Lender, if any. Lessor shall be named as an additional insured as respects insurance required of the Lessee in this Paragraph 6. The company or companies writing any insurance that Lessee is required to maintain under this Lease, as well as the form of such insurance, shall be licensed to do business in the state in which the Premises are located. Such insurance companies shall have an A.M. Best rating of A or better.

7. Indemnity

7.1 Except for Lessor's negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground Lessor, partners and Lenders, from and against any and all claims, and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified. Subject to any limitations set forth in this Lease, Lessor shall indemnify, protect, defend, and hold harmless Lessee and its officers, directors, shareholders, and agents from and against any and all claims, damages, liens, judgments, penalties, attorneys and consultants' fees, expenses, and/or liabilities to the extent arising out of, involving, or in connection with the gross negligence or willful misconduct of Lessor. If any action is brought against Lessee by reason of any of the foregoing matters, Lessor shall upon notice defend the same at Lessor's expense by counsel reasonably satisfactory to Lessee, and Lessee shall cooperate with Lessor in such defense. Lessee need not have first paid any such claim in order to be defended or indemnified.

7.2 Except to the extent of Lessor's gross negligence or willful misconduct and subject to the its specific obligations hereunder, Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Promises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, or from other sources or places.

8. Damage or Destruction.

8.1 Definitions.

8.1.1 "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned alterations and utility installations and trade fixtures, which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within sixty (60) days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

8.1.2 "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Lessee owned alterations and utility installations and trade fixtures, which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction.

8.1.3 "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee owned alterations and utility installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 6 above related to the Premises.

8.1.4 "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

8.1.5 "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 5 in, on, or under the Premises.

8.2 If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense and subject to all application of all applicable insurance proceeds, repair such damage (but not Lessee's Trade Fixtures or Lessee owned alterations and utility installations) as soon as reasonably possible and this Lease shall continue in full force and effect. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to affect such repair, the Lessor shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within available days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or have this Lease terminate thirty (30) days thereafter. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 8.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

8.3 If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense) Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective sixty (60) days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within ten (10) days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs, as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

8.4 Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate sixty (60) days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee and is not covered by insurance, Lessor shall have the right to recover Lessor's damages to the extent not covered by insurance) from Lessee, except as provided in Paragraph 7.

8.5 If at any time during the last six (6) months of this Lease there is Premises Partial Damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessee or Lessor may terminate this Lease effective sixty (60) days following the date of occurrence of such damage by

giving written termination notice to the other party within thirty (30) days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is ten days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished. Notwithstanding anything in this section to the contrary, if Lessee elects to exercise its option to extend the Lease and the loss is an Insured Loss, Lessee shall not be obligated to contribute funds for repair or rebuilding in excess of he amount Lessee is obligated to contribute funds for repair or rebuilding in excess of the amount Lessee is obligated to contribute under Paragraph 8.2.

8.6 Abatement of Rent; Lessee's Remedies.

8.6.1 In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation of or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein. Any repair or restoration which Lessor is required to make under this Lease shall be accomplished with due diligence.

8.6.2 If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within one hundred twenty (120) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within thirty (30) days thereafter, this Lease shall terminate as of the date specified in said notice and Lessee may exercise any available rights or remedies. If the repair or restoration is commenced within said thirty (30) days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

8.7 Upon termination of this Lease pursuant to Paragraph 5 or Paragraph 8, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be used by Lessor pursuant to the terms of this Lease.

8.8 Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

8.9 The provisions of Paragraphs 8.2 and 8.3 to the contrary notwithstanding, in the event Lessor fails to substantially complete restoration of damage or destruction of the Premises which Lessor is

required or elects to perform pursuant to said paragraphs within one hundred eighty (180) days after commencement of such restoration or repairs, upon prior written notice, the Lessee may terminate this Lease, provided, however. that if Lessor substantially completes the restoration within ninety (90) days after receipt of such notice, this Lease shall not terminate and shall continue in full force and effect.

9. Real Property Taxes.

9.1 As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary, erxtraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed or resulting from action by any governmental entity, or imposed as a result of any change of assessment or increase of tax, fee, levy imposed as a result of a change in ownership of the Premises.

9.2 Lessee shall pay the Real Property Taxes applicable to the Premises during the term of this Lease. Subject to Paragraph 9.2(b), all such payments shall be made prior to any delinquency date. Upon Lessor's request, Lessee shall promptly furnished Lessor with satisfactory evidence that such taxes have been paid. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect, and Lessor shall reimburse Lessee for any overpayment. If Lessee shall fail to pay any required Real Property Taxes, Lessor shall have the right to pay the same, and Lessee shall reimburse Lessor therefor upon demand.

9.3 In the event Lessee incurs a late charge on any Rent payment, Lessor may, at Lessor's option,, estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee, either: (i) in a lump sum amount equal to the installment due, at least ten (10) days prior to the applicable delinquency date, or (ii) monthly in advance with the payment of the Base Rent. If Lessor elects to require payment monthly in advance, the monthly payment shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. All monies paid to Lessor under this Paragraph may be intermingled with other monies of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any balance of funds paid to Lessor under the provisions of this Paragraph may, at the option of Lessor, be treated as a Security Deposit.

9.4 Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee owned alterations, utility installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause such property to be assessed and billed separately from the real property of Lessor. If any of Lessee's aid personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement.

10. Utilities Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon.

11. Assignment and Subletting

11.1 Lessee shall not voluntarily nor by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld.

11.2 Permitted Transfers. Notwithstanding anything to the contrary above Lessee shall have the right, without the consent of Lessor, but upon not less than 15 days' prior notice to Lessor, to assign this Lease or sublet the Premises (i) to any parent, subsidiary or affiliate corporation or entity, or (ii) to any corporation resulting from the consolidation or merger of Lessee into or within any other entity, or (iii) to any firm, entity or corporation acquiring in one contemporaneous transaction all or substantially all of the stock or assets of Lessee or the division of Lessee occupying the Premises. Any transfer pursuant to (i), (ii) or (iii) above shall be subject to the following conditions: that any such assignment, sublease or transfer shall be subject to all of the terms, covenants and conditions of this Lease; any assignee shall expressly assume for the benefit of Lessor the obligations of Lessee under the Lease by a document reasonably satisfactory to Lessor; and Lessee shall provide to Lessor copies of documents sufficient to verify that the transfer qualifies under this paragraph. No such transfer shall release Lessee from liability. As used herein, the expression "affiliate corporation or entity" means a business entity, corporate or otherwise, that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Lessee. The word "control" means the right and power, direct or indirect, to direct or cause the direction of the management and policies of a person or business entity, corporation or otherwise, through ownership of more than fifty percent (50%) of the voting stock (or other relevant ownership interests) of the entity in question.

11.3 Terms and Conditions Applicable to Assignment and Subletting.

11.3.1 Regardless of Lessor's consent, any assignment or subletting shall not: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease; (ii) release Lessee of any obligations hereunder; or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

11.3.2 Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

11.3.3 Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

11.3.4 In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

11.3.5 Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.

11.3.6 Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

11.4 The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

11.4.1 In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

11.4.2 Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

11.4.3 No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld.

11.4.4 Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

12. Default; Breach; Remedies.

12.1 A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or duties under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period.

12.1.1 The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 7 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism, which continues for twenty (20) or more days after written notice from Lessor.

12.1.2 The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens

life or property, where such failure continues for a period of three (3) business days following written notice to Lessee.

12.1.3 The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) any document requested under Paragraph 39 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice to Lessee.

12.1.4 A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, other than those described in Paragraph 12, where such Default continues for a period of thirty (30) days after written notice; provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

12.1.5 The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph 12.1.5 is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

12.2 If Lessee fails to perform any of its affirmative duties or obligations, within ten (10) days after written notice or as it is required by Paragraph 12.1.4 above after notice from Lessor and within the cure period provided for in said paragraph, Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

12.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (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 the Lessee proves could have been reasonably avoided; (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 the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to

in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the San Francisco Federal Reserve Bank plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 11. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any party thereof in a separate suit. If a notice and grace period required under paragraph 12.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 12.1. In such case, the applicable grace period required by Paragraph 12.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitled Lessor to the remedies provided for in this Lease and/or by said statute;

12.2.2 Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession; or

12.2.3 Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnify provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

12.4 Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within seven (7) days after such amount shall be due more than once in any six (6) month period then, Lessee shall pay to Lessor a late charge equal to seven percent (7%) of each such overdue amount in any month such amounts remain unpaid. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default of Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

12.5 Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time, for non-emergency matters, shall in no event be less than thirty (30) days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

13. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of any building portion of the Premises, or more than twenty-five percent (25%) of the land area portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All alterations and utility installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such condemnation.

14. Brokers' Fee. There is no Brokers' Fee to be paid by either Party in conjunction with this Lease transaction. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder in connection with this Lease, and that no one is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, and/or attorneys' fees reasonably incurred with respect thereto.

15. Estoppel Certificates.

15.1 Each Party (as "Responding Party") shall within fourteen (14) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party an Estoppel Certificate plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

15.2 If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such ten day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if lessor is the Requesting Party, not more than one month's Rent has been paid in advance. Prospective purchasers and encumbrancers may relay upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

15.3 If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, or if Lessee should be in default of the Lease, upon five (5) days prior written notice, Lessee shall deliver to any potential lender or purchaser designated by Lessor, or to Lessor in the event of a default, such financial statements as may be reasonably required by such lender or purchaser, including, but not limited to, Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender

or purchaser in confidence and shall be used only for the purposes herein set forth. Notwithstanding the foregoing, if Lessee is a publicly traded corporation subject to ongoing periodic SEC financial reporting requirements, Lessee may provide Lessor copies of the SEC financial filings in lieu of such financial statements.

16. Definition of Lessor. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the premises. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined. Notwithstanding the above, and subject to the provisions of Paragraph 18 below, the original Lessor under this Lease, and all subsequent holders of the Lessor's interest in this Lease shall remain liable and responsible with regard to the potential duties and liabilities of Lessor pertaining to Hazardous Substances as outlined in Paragraph 5 above.

17. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provisions hereof.

18. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

19. No Prior or Other Agreements. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding other than the Agreement referenced herein shall be effective as of the Effective Date.

20 Notices.

20.1 All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 20. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. A copy of all notices to Lessee shall be sent to: Paul Street, General Counsel, BMHC, 720 Park Blvd., Suite 200, Boise, ID 83712-7714, Facsimile: (208) 331-4477. A copy of all notices to Lessor shall be sent to: Richard K. Circuit, Esq., Circuit, McKellogg, Kinney & Ross, LLP, 1205 Prospect Street, #400, La Jolla, CA 92037, facsimile (858) 459-0690. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the premises shall constitute Lessee's address for notice. A copy of all notices to lessor (or Lessee) shall be concurrently transmitted to such party or parties at such addresses as Lessor (or Lessee) may from time to time hereafter designate in writing.

20.2 Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is show, the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed

delivered upon telephone confirmation of receipt, provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

21. Waivers. No waiver by Lessor or Lessee of the Default or Breach of any term, covenant or condition hereof, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach of the same or of any other term, covenant or condition hereof. The acceptance of Rent by lessor shall not be a waiver of any Default or Breach by lessee. Any payment by lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by lessor at or before the time of deposit of such payment.

22. Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to one hundred fifty percent (150%) of the Base Rent applicable during the month immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

23. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

24. Covenants and Conditions. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa.

25. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and shall be governed by the laws of the State of California.

26. Subordination; Attornment; Non-Disturbance.

26.1 This Lease and any Option granted hereby shall be subject and subordinate to any mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lessor's Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

26.2 Subject to the non-disturbance provisions of Paragraph 26.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership fo the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; or (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor.

26.3 With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance

agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof (beyond any applicable cure period) and attorns to the record owner of the Premises. Further, within thirty (30) days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said thirty (30) days, then Lessee or Lessor may terminate this Lease without liability to either party by giving written notice of termination within ten (10) days of any such thirty (30) day period.

26.4 Except as provided in Paragraph 26.3, the agreements contained in this Paragraph 26 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-disturbance Agreement provided for herein.

27. Attorneys' Fees. If any Party brings an action or proceeding involving the Premises to enforce the terms hereof or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment.

28. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times and upon reasonable prior notice to Lessee, for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary. All such activities shall be without abatement of rent or liability to Lessee. Lessor may at any time place on the Premises any "For Sale" signs and Lessor may during the last six (6) months of the term hereof place on the Premises any ordinary "For Lease" signs provided that such signs do not unreasonably interfere with Lessee's operation of the Premises.

29. Signs. Lessee shall not place any sign upon the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld. All signs must comply with all Applicable Requirements. Notwithstanding the foregoing, and subject to Applicable Requirements, Lessee shall have the right to maintain or install signs on the Building and a monument sign near the main entrance to the Premises. The size, location and general appearance of such signs shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld. Lessee shall pay all costs in connection with the fabrication, installation, permitting, maintenance and removal of such signs.

30. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

31. Options.

31.1 Lessee is granted the right to extend the Term of this Lease for two (2) periods of five (5) years each (each an "Option"). The right to extend must be exercised, if at all, by written notice delivered to Lessor not less than one hundred eighty (180) days before the Expiration Date of the Term which is then in effect. Lessee's failure to timely exercise an extension right shall automatically void all subsequent extension rights.

31.2 Each Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

31.3 Effect of Default on Options.

31.3.1 Lessee shall have no right to exercise the Option if at any time within one year prior to the date on which Lessee desires to exercise such Option, Lessee has been in Default under the Lease.

31.3.2 The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of this Paragraph 31.

31.3.3 The Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term, (i) Lessee fails to pay Rent for a period of thirty (30) days after notice from Lessor (ii) Lessor gives to Lessee two (2) or more notices of separate Default during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits any Breach of this Lease.

32. Reservations. Lessor reserves to itself the right, from time to time, to grant or obtain, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easement, rights, dedications, maps and restrictions do not unreasonably interfere with the use and quiet enjoyment of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

33. Amendments. This Lease may be modified or amended only in writing, signed by the Parties to be bound, obligated or affected by such modification or amendment.

34. Schedules & Exhibits. All schedules and exhibits attached hereto are incorporated into and made a part of this Lease.

35. Security Deposit. Lessee shall deposit with Lessor on the date of this Lease, security for the performance of all of its obligations pursuant to this Lease, the amount equal to monthly Base Rent then in effect ("Security Deposit"). If Lessee Defaults under this Lease, Lessor may use any part of the Security Deposit to make any defaulted payment, to pay for Lessor's cure of any defaulted obligation, or to compensate Lessor for any loss or damage resulting from any Default. To the extent any portion of the deposit is used, Lessee shall within ten business (10) days after demand from Lessor restore the Security Deposit to its full amount. Lessor may keep the Security Deposit in its general funds and shall not be required to pay interest to Lessee on the deposit amount. If Lessee shall perform all of its obligations under this Lease and return the Premises to Lessor at the end of the Term as provided herein, Lessor shall return the remaining Security Deposit



Commonwealth Land Title Company
750 "B" Street
Suite 2350
San Diego, CA 92101
Phone: (619) 233-3000

Circuit, McKellog, Kiney & Ross, LLP
12005 Prospect Street
Suite 400
La Jolla, CA 92037

Attn: **Laura Leszt**

Our File No: 03204598 - 609 - 611L
Senior Commercial Title Officer: Katherine I. Leicht
(kleicht@landam.com)
Phone: (619) 230-6346
Fax: (619) 233-3846

Your Reference No: Robert Thomas

Property Address: 13465 & 13495 Gregg Street, Poway, California

PRELIMINARY REPORT

Dated as of October 25, 2004 at 7:30 a.m.

In response to the above referenced application for a policy of title insurance, Commonwealth Land Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusion from the coverage of said Policy or Policies are set forth in Exhibit B attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit B of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.
It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

File No: 03204598

SCHEDULE A

The form of policy of title insurance contemplated by this report is:

CLTA Standard Owners

ALTA Loan 1992

The estate or interest in the land hereinafter described or referred to covered by this report is:

A FEE

Title to said estate or interest at the date hereof is vested in:

Robert R. Thomas and Jane L. Thomas, Trustees of The Robert R. Thomas and Jane L. Thomas Declaration of Trust dated May 14, 1999,
Subject to Item No. 19 of Schedule B

The land referred to herein is situated in the County of San Diego, State of California, and is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

File No: 03204598

EXHIBIT "A"

All that certain real property situated in the County of San Diego, State of California, described as follows:

Parcel A:

All of Parcel 1 of Parcel Map No. 18019 as filed in the Office of the County Recorder of San Diego County, April 24, 1998 as File No. 1998-0236683 of Official Records, and all of Parcel C of Certificate of Compliance for Boundary Adjustment 99-06, filed in the Office of the County Recorder of San Diego County, May 10, 1999 as File No. 1999-0315333 of Official Records, all in the City of Poway, County of San Diego, State of California, being more particularly described as follows:

Beginning at the Northwest corner of said Parcel 1, said point being the South right of way line of Gregg Street as shown on said Parcel Map No. 18019;

Thence along said right of way line South 87° 40' 02" East, 372.07;

Thence leaving said right of way line, South 02° 45' 50" West, 285.51 feet to a point on the Southerly line of said Parcel C;

Thence Westerly along said Southerly line, North 87° 14' 07" West, 190.17 feet to the Southwest corner of said Parcel C;

Thence Northerly along the Westerly line of said Parcel C, North 02° 45' 53" East, 154.62 feet to the Southeast corner of said Parcel 1;

Thence Westerly along the Southerly line of said Parcel 1, North 87° 14' 07" West, 176.01 feet to the Southwest corner of said Parcel 1;

Thence Northerly along the Westerly line of said Parcel 1, North 00° 07' 57" East, 128.22 feet to the point of beginning.

Parcel B:

All of Parcel A and Parcel B of Certificate of Compliance for Boundary Adjustment 99-06, in the City of Poway, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, May 10, 1999 as Instrument No. 1999-0315333 of Official Records, being more particularly described as follows:

Beginning at the Southeast corner of said Parcel B;

Thence Westerly along the Southerly line of said Parcel B, North 87° 14' 07" West, 196.31 feet;

Thence leaving said Southerly line, North 02° 45' 50" East, 285.51 feet to a point on the Northerly line of said Parcel A, said point being on the Southerly right of way line of Gregg Street as shown on said Parcel Map No. 18019 and Map No. 12853;

Thence Easterly along said right of way line, South 87° 40' 02" East, 166.60 feet to the beginning of a tangent 29.50 foot radius curve, concave Southwesterly;

Thence Southeasterly along said curve through a central angle of 90° 25' 55", 46.56 feet to a point on the West right of way line of Paine Street, as shown on Map No. 12853 as filed in the Office of the County Recorder of San Diego County, August 19, 1991 as File No. 91-423951 of Official Records;

Thence Southerly along said right of way line South 02° 45' 53" West, 257.26 feet to the point of beginning.

EXHIBIT D

PARTIAL LEASE TERMINATION AGREEMENT

This Partial Lease Termination Agreement ("Agreement") effective November 9, 2007, is made by and among Gregg Street, LLC, a California limited liability company ("Gregg"), H.N.R. Framing Systems Inc., a California corporation ("HNR"), and Building Materials Holding Corporation, a Delaware corporation ("BMHC") and is made with reference to the following facts:

A. On or about October 1, 2005, Gregg entered into that certain Triple Net Commercial Real Estate Lease ("Lease") with HNR for the premises commonly described as 13465 and 13495 Gregg Street, Poway, California ("Premises"). A copy of the Lease is attached hereto as Exhibit A.

B. HNR and BMHC desire to terminate the Lease with respect to certain portions of the Premises comprising approximately 28,000 square feet of Building "A" as more particularly described on Exhibit B to this Agreement ("Surrendered Premises") and abandon said Surrendered Premises effective upon the Commencement Date of the New Lease.

C. Gregg desires to enter into a new lease of the Surrendered Premises with Complete Office of California, Inc. ("COC") commencing January 1, 2008 ("Commencement Date") and ending five (5) years thereafter ("New Lease"). A copy of the New Lease is attached hereto as Exhibit C.

NOW THEREFORE, the parties agree as follows:

1. Consent. Upon execution of the Agreement and upon the occupation of the Surrendered Premises by COC on the Commencement Date pursuant to the terms of the New Lease, Gregg shall thereupon consent to termination of the Lease with respect to and the abandonment of the Surrendered Premises by HNR and BMHC.

2. Indemnification. The term of the Lease expires on October 31, 2010. If COC, during the period the term of the New Lease, fails to make lease payments to Gregg, BMHC and HNR agree to indemnify Gregg for any lease payment losses for the remaining term of the Lease based on the terms set forth in the New Lease including the monetary triple net obligations. Gregg, upon demand for such payment, agrees to permit BMHC or its assigns to re-occupy the Surrendered Premises for the period of time it makes such indemnity payments to Gregg under the terms of the Lease.

3. Base Rent Deficit Payments. On or before the first day of each month during the remaining term of the Lease, HNR shall pay to Gregg the amounts set forth on Schedule 1 to this Agreement, which amounts represent the estimated aggregate difference in the Base Rent payment required of HNR in the Lease and the aggregate Base Rent payment required by Paragraph 1.6(a) in the New Lease for the period commencing on the Commencement Date and ending September 30, 2010 ("Base Rent Deficit").

4. Other Costs. Upon notice and demand from Gregg, HNR hereby acknowledges that HNR remains liable under the Lease for, and shall reimburse Gregg for, the following costs of the Lease which are not part of the Surrendered Premises:

4.1 13465 Gregg Street:

4.1.1 15.16% of the Monthly Assessment for Spectrum Property Management;

4.1.2 15.16% of Real Property Taxes; and

4.1.3 15.16% of Commercial General Liability Insurance premiums.

4.2 13495 Gregg Street:

4.2.1 100% of the Monthly Assessment for Spectrum Property Management;

4.2.2 100% of Real Property Taxes; and

4.2.3 100% of Commercial General Liability Insurance premiums.

5. Brokers' Fees. HNR shall pay to Voit Commercial Brokers and Burnham Real Estate, for the period beginning on January 1, 2008 and ending September 30, 2010, brokers' fees in the amounts and at the dates as more particularly described in Paragraph 1.9(b) of the New Lease.

6. Tenant Improvements. HNR shall reimburse Gregg for the following expenses associated with completing the tenant improvements required to be performed by Gregg pursuant to Paragraph 57 of the New Lease.

6.1 Upon Signing the Agreement, For Expenses Actually Paid.

Vendor	Amount Paid	Purpose
Corky's Welding	$6,189.00	Dock railing
Automatic Door Specialists	574.76	AK1 digital pad
Bill Havens Painting	9,445.00	Prep, patch and paint
Bill Havens Painting	935.00	Loading dock walls & railings

Vendor	Amount Paid	Purpose
CRL Incorporated	2,725.00	Electrical work – warehouse lighting
CRL Incorporated	2,348.00	Electrical work – parking lot lights
A.O. Reed	712.00	Replace AC unit
	$22,428.76	

6.2 Upon notice and demand for future expenses which will be incurred by Gregg in connection with the following ("Future Expenses"):

6.2.1 Design, permit, contract and construct two (2) new truck loading docks and related demolition. The construction contracts will be put out to bid. The low bid shall be selected by Gregg and HNR.

6.2.2 Grind and rebuild dock walls in the event the "float" does not hold up if a defect occurs during the term of the Lease.

6.3 In connection with the performance of Future Expenses work, Gregg may use the low bid of a concrete company selected on the basis of competitive bids.

6.4 HNR acknowledges and agrees to remove the wood wall (which separates the warehouse) prior to the expiration of the Lease.

7. Binding Effect. This Agreement shall be binding on the parties, their personal representatives, successors and assigns and shall be governed by the laws of the State of California.

8. Mediation then Arbitration

8.1 In the event of a dispute or default under this Agreement, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall first be submitted to non-binding mediation ("Mediation") prior to initiating arbitration as set forth below in Paragraph 8.2. Each party shall bear its own costs and expenses of participating in the Mediation, and each party shall bear one-half (1/2) of the fees of the mediator. The mediator shall be selected by the parties' mutual agreement within ten (10) days notice by one party to the other requesting mediation ("Notice of Dispute"). If the parties cannot timely mutually agree upon a mediator, the American Arbitration Association, San Diego, California, shall promptly select the mediator. The parties agree that time is of the essence and that they will

each, in good faith, seek to conclude the mediation process within sixty (60) days following the Notice of Dispute.

8.2 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, which shall not have been satisfactorily resolved first according to Paragraph 8.1 above, shall be settled by arbitration at San Diego, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

9. Attorneys' Fees. If any party brings an arbitration or other proceeding to enforce the terms of this Agreement, the prevailing party in any such proceeding shall be entitled to reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GREGG STREET, LLC

By: _____
Robert R. Thomas, Member

BUILDING MATERIALS HOLDING CORPORATION
A Delaware Corporation

By: _____

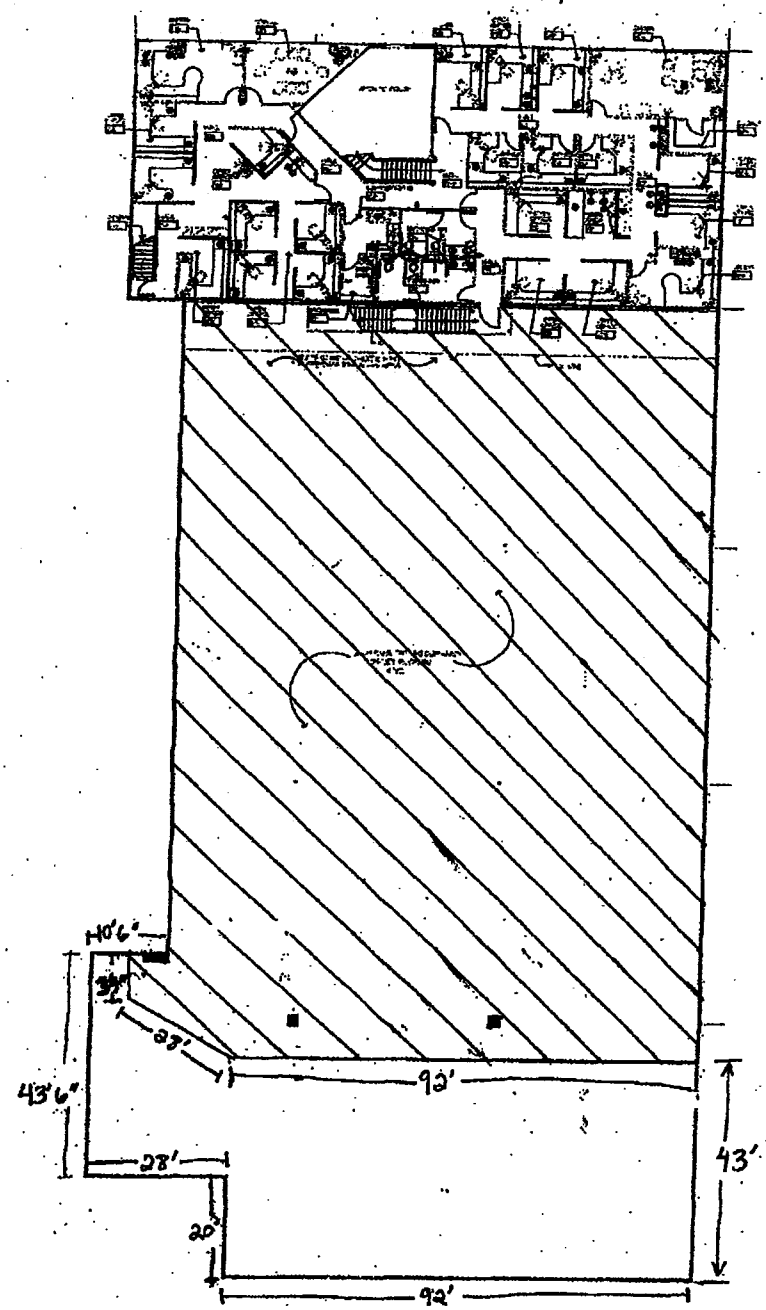
H.N.R. FRAMING SYSTEMS INC.
A California Corporation

By: _____

SCHEDULE 1
RENT DEFICIT PAYMENTS

	Price/sq ft	Totals rents owed To Gregg	Rents due from Complete Office	Rent Differential
Jan-08	1.247	71,080	23,800	47,280
Feb-08	1.247	71,080	23,800	47,280
Mar-08	1.247	71,080	11,900	59,180
Apr-08	1.247	71,080	23,800	47,280
May-08	1.247	71,080	23,800	47,280
Jun-08	1.247	71,080	23,800	47,280
Jul-08	1.247	71,080	23,800	47,280
Aug-08	1.247	71,080	23,800	47,280
Sep-08	1.247	71,080	23,800	47,280
Oct-08	1.284	73,212	23,800	49,412
Nov-08	1.284	73,212	23,800	49,412
Dec-08	1.284	73,212	23,800	49,412
Jan-09	1.284	73,212	24,633	48,579
Feb-09	1.284	73,212	24,633	48,579
Mar-09	1.284	73,212	12,317	60,896
Apr-09	1.284	73,212	24,633	48,579
May-09	1.284	73,212	24,633	48,579
Jun-09	1.284	73,212	24,633	48,579
Jul-09	1.284	73,212	24,633	48,579
Aug-09	1.284	73,212	24,633	48,579
Sep-09	1.284	73,212	24,633	48,579
Oct-09	1.323	75,409	24,633	50,776
Nov-09	1.323	75,409	24,633	50,776
Dec-09	1.323	75,409	24,633	50,776
Jan-10	1.323	75,409	25,495	49,914
Feb-10	1.323	75,409	25,495	49,914
Mar-10	1.323	75,409	25,495	49,914
Apr-10	1.323	75,409	25,495	49,914
May-10	1.323	75,409	25,495	49,914
Jun-10	1.323	75,409	25,495	49,914
Jul-10	1.323	75,409	25,495	49,914
Aug-10	1.323	75,409	25,495	49,914
Sep-10	1.323	75,409	25,495	49,914
Totals		**2,423,174**	**786,436**	**1,636,738**

EXHIBIT "B"



Building "A"
Shaded area is the "Surrendered Premises"

TRIPLE NET COMMERCIAL REAL ESTATE LEASE

This Triple Net Commercial Real Estate Lease ("Lease") is hereby made and entered into by and between Gregg Street, LLC, a California limited liability company ("Lessor"), and HNR Framing Systems, Inc., a California corporation ("Lessee" or "Buyer") (Lessor and Lessee sometimes collectively referred to herein below as the "Parties"), as of this 1st day of October, 2005 ("Effective Date") with reference to the following facts:

RECITALS

A. **WHEREAS** pursuant to (i) that certain Securities Purchase Agreement ("SPA") dated as of the date even herewith between Lessee, Robert R. Thomas, Trustee of the Restated Robert R. Thomas Trust dated April 14, 1999 ("Shareholder"), and BMHC, Inc., a Delaware corporation ("BMHC"), Shareholder has agreed to sell to BMHC and BMHC has agreed to purchase from Shareholder, all of the issued and outstanding capital stock in Lessee at the price and upon the terms and conditions as are contained in the SPA; and (ii) that certain Asset Purchase Agreement ("APA") dated as of the date even herewith between Lessee and Home Building Components, Inc., a California corporation ("HBC"), HBC has agreed to sell to Buyer and Buyer has agreed to purchase from HBC, the assets and liabilities as described in the APA, at the price and subject to the terms and conditions set forth therein; and

B. **WHEREAS** pursuant to the APA Lessor and Lessee have agreed to enter into a Lease whereby Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the Premises as set forth more fully hereinafter.

THEREFORE, in consideration for all obligations, responsibilities and other consideration hereby acknowledged, the Parties agree as follows:

1. Premises. For purposes of this Lease, Premises shall mean that certain real property, including any improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 13465 & 13495 Gregg Street, located in the City of Poway, County of San Diego, State of California, and generally described as the shop/warehouse space & building(s) situated thereon ("Building"), and unimproved and improved real property ("Land") described in Exhibit A to this Lease and made a part hereof.

1.1 The Premises shall be used only for roofing truss, floor, and wall framing manufacturing operations, including without limtation any receiving, shipping and general office/administrative operations associated therewith, and related uses consistent with applicable law.

1.2 Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental and upon all the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating rental, is an approximation, which the Parties agree is reasonable and the rental based thereon is not subject to revision whether or not the actual size is more or less.

2. Term Five (5) years and Zero (0) months ("Term") commencing as of the Effective Date ("Commencement Date") and ending Five (5) years from the first day of the first month following the Effective Date unless extended by operation of Paragraph 31 or otherwise earlier terminated only as specifically provided herein ("Expiration Date").

3. Rent

3.1 Rent shall be Sixty Seven Thousand Dollars ($67,000) per month ("Base Rent"), due on the first (1st) day of each month commencing on the Commencement Date, provided that Lessee shall have until the fifth (5th) day of each month during the Term in which to make payment to Lessor without penalty. During the Term, unless modified in writing by the Parties and except as modified by operation of Paragraph 3.1 below, the Base Rent then in effect shall be increased by three percent (3%) on the annual anniversary of the Commencement Date every Lease Year (as it is defined herein). For purposes of this Lease, the term "Lease Year" means a one (1) year period commencing with the Commencement Date. Notwithstanding anything to the contrary contained herein this Lease, in the event Lessee excercises an Option (as defined herein) during the Term, the Base Rent for the first year of any such Option exercised shall be established as follows:

3.1.1 The Base Rent payable for renewal of the Term through exercise of the first Option shall be the greater of (a) the Fair Market Rental Value (as defined herein) as of the last day of the fifth anniversary of the Commencement Date; and (b) one hundred three percent (103%) of the Base Rent in effect as of the fifth Lease Year. For purposes of this Lease, Fair Market Rental Value shall mean, with respect to Premises, the fair market monthly rental value that would be obtained in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor, in either case under no compulsion to lease, and neither of which is related to Lessor or Lessee for the lease of Premises on the terms set forth herein this Lease, assuming that the Premises are in a condition and repair required to be maintained by the terms of this Lease.

3.1.2 The Base Rent payable for renewal of the Term through exercise of the second Option shall be the greater of (a) the Fair Market Rental Value (as defined herein) as of the last day of the tenth anniversary of the Commencement Date; and (b) one hundred three percent (103%) of the Base Rent in effect as of the tenth Lease Year.

3.2 All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit (as defined herein)) are deemed to be rent, which shall include but not be limited to Base Rent ("Rent").

3.3 Lessee shall cause payment of Rent to be received by Lessor in United States currency, without any offset or deduction (except as specifically permitted in this Lease), on or before the date on which is due. Rent for any period during the term hereof which is for less than one (1) full calendar month shall be pro rated based upon the actual number of days of said month. Payment of rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor' endorsement of any check so stating.

4. Use.

4.1 Lessee shall use and occupy the Premises according to the use set forth in Paragraph 1.1 herein, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners or occupants of, or causes damage to neighboring properties. Lessee shall not make any improvements or modifications to the Premises without Lessor's written approval, such approval not to be unreasonably withheld.

4.2

4.2.1 The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, 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 Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance at Lessee's expense with all Applicable Requirements. For purposes of this Lease, Applicable Requirements shall mean compliance with all applicable governmental laws, ordinances and regulations. For purposes of this Lease, "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/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration of termination) of protective modifications (such as concrete encasements).

4.2.2 If Lessee 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 consent to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

4.2.3 Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or Lessee's agents, employees, or contractors.

4.2.4 Lessee shall indemnify, defend and hold Lessor, its agents, employees, and lenders harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or Lessee's agents, employees, contractors, or invitees (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered

into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

4.3 Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the reasonable requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Commencement Date. Lessee shall, within ten (10) days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with Applicable Requirements as specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements.

4.4 Lessor and its consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times upon reasonable prior notice to Lessee, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements or the inspection is requested or ordered by governmental authority with respect to the activities of Lessee or its agents, employees, contractors, or invitees on or about the Premises. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspections, so long as such inspection is reasonably related to the violation or contamination resulting from the activities of Lessee or its agents, employees, or contractors on or about the Premises.

5. Maintenance and Repairs

5.1 Subject to the provisions of this Lease and during the Term, Lessee shall, at Lessee's sole expense, keep and maintain the Premises, utility installations, and alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accesible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of ventilating Premises) including, but not limited to, all equipment or facilities, such as plumbing, heating, ventilating, air-conditioning, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform regular maintenance practices. Lessee's obligations shall include restorations and replacements as necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity.

5.2 Lessee, at its sole expense, shall maintain in good order and repair and perform regular maintenance on (in accordance with commercially reasonable management practices and applicable warranty requirements) the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguisher systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, (vi) driveways, (vii) parking lots, and (viii) basic utility feed to the perimeter of the Building (collectively "Basic Elements").

5.3 Lessee shall not be required to perform any repairs or maintenance to the Premises necessitated by reason of the negligence of Lessor or by reason of the failure of Lessor to perform obligations of this Lease.

5.4 Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and services thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Lessee shall repair any damage occasioned by the installation, maintenance or removal of its personal property and equipment. The failure by Lessee to timely vacate Premises pursuant this Paragraph without the express written consent of Lessor shall constitute a holdover.

5.5 Except as specifically set forth herein,, it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be those of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

6. Insurance

6.1 Except for Lessor's gross negligence, and to the extent permitted by law, Lessee waives any claims it may have against Lessor or its officers, managers, employees or agents for business interruption or damage to property sustained by Lessee as the result of any act or omission of Lessor.

6.2 Lessee shall maintain insurance as follows, with such other terms, coverages and insurers, as Lessor shall reasonably require from time to time:

6.2.1 Commercial General Liability Insurance, with (a) Contractual Liability including the indemnification provisions contained in this Lease, (b) a severability of interest endorsement, (c) limits of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence and not less than Two Million Dollars ($2,000,000) in the aggregate for bodily injury, sickness or death, and property damage, and umbrella coverage of not less than Five Million Dollars ($5,000,000).

6.2.2 Property Insurance against "All Risks" of physical loss covering the replacement cost of all improvements, fixtures and personal property. Lessee waives all rights of subrogation, and Lessee's property insurance shall include a waiver of subrogation in favor of Lessor.

6.2.3 Lessee's insurance shall be primary and not contributory to that carried by Lessor, its agents, or Lessor's Lender, if any. Lessor shall be named as an additional insured as respects insurance required of the Lessee in this Paragraph 6. The company or companies writing any insurance that Lessee is required to maintain under this Lease, as well as the form of such insurance, shall be licensed to do business in the state in which the Premises are located. Such insurance companies shall have an A.M. Best rating of A or better.

7. Indemnity

7.1 Except for Lessor's negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground Lessor, partners and Lenders, from and against any and all claims, and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified. Subject to any limitations set forth in this Lease, Lessor shall indemnify, protect, defend, and hold harmless Lessee and its officers, directors, shareholders, and agents from and against any and all claims, damages, liens, judgments, penalties, attorneys and consultants' fees, expenses, and/or liabilities to the extent arising out of, involving, or in connection with the gross negligence or willful misconduct of Lessor. If any action is brought against Lessee by reason of any of the foregoing matters, Lessor shall upon notice defend the same at Lessor's expense by counsel reasonably satisfactory to Lessee, and Lessee shall cooperate with Lessor in such defense. Lessee need not have first paid any such claim in order to be defended or indemnified.

7.2 Except to the extent of Lessor's gross negligence or willful misconduct and subject to the its specific obligations hereunder, Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Promises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, or from other sources or places.

8. Damage or Destruction.

8.1 Definitions.

8.1.1 "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned alterations and utility installations and trade fixtures, which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within sixty (60) days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

8.1.2 "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Lessee owned alterations and utility installations and trade fixtures, which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction.

8.1.3 "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee owned alterations and utility installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 6 above related to the Premises.

8.1.4 "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

8.1.5 "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 5 in, on, or under the Premises.

8.2 If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense and subject to all application of all applicable insurance proceeds, repair such damage (but not Lessee's Trade Fixtures or Lessee owned alterations and utility installations) as soon as reasonably possible and this Lease shall continue in full force and effect. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to affect such repair, the Lessor shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within available days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or have this Lease terminate thirty (30) days thereafter. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 8.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

8.3 If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense) Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective sixty (60) days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within ten (10) days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs, as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

8.4 Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate sixty (60) days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee and is not covered by insurance, Lessor shall have the right to recover Lessor's damages to the extent not covered by insurance) from Lessee, except as provided in Paragraph 7.

8.5 If at any time during the last six (6) months of this Lease there is Premises Partial Damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessee or Lessor may terminate this Lease effective sixty (60) days following the date of occurrence of such damage by

giving written termination notice to the other party within thirty (30) days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is ten days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished. Notwithstanding anything in this section to the contrary, if Lessee elects to exercise its option to extend the Lease and the loss is an Insured Loss, Lessee shall not be obligated to contribute funds for repair or rebuilding in excess of he amount Lessee is obligated to contribute funds for repair or rebuilding in excess of the amount Lessee is obligated to contribute under Paragraph 8.2.

8.6 Abatement of Rent; Lessee's Remedies.

8.6.1 In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation of or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein. Any repair or restoration which Lessor is required to make under this Lease shall be accomplished with due diligence.

8.6.2 If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within one hundred twenty (120) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within thirty (30) days thereafter, this Lease shall terminate as of the date specified in said notice and Lessee may exercise any available rights or remedies. If the repair or restoration is commenced within said thirty (30) days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

8.7 Upon termination of this Lease pursuant to Paragraph 5 or Paragraph 8, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be used by Lessor pursuant to the terms of this Lease.

8.8 Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

8.9 The provisions of Paragraphs 8.2 and 8.3 to the contrary notwithstanding, in the event Lessor fails to substantially complete restoration of damage or destruction of the Premises which Lessor is

required or elects to perform pursuant to said paragraphs within one hundred eighty (180) days after commencement of such restoration or repairs, upon prior written notice, the Lessee may terminate this Lease, provided, however. that if Lessor substantially completes the restoration within ninety (90) days after receipt of such notice, this Lease shall not terminate and shall continue in full force and effect.

9. Real Property Taxes.

9.1 As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary, erxtraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed or resulting from action by any governmental entity, or imposed as a result of any change of assessment or increase of tax, fee, levy imposed as a result of a change in ownership of the Premises.

9.2 Lessee shall pay the Real Property Taxes applicable to the Premises during the term of this Lease. Subject to Paragraph 9.2(b), all such payments shall be made prior to any delinquency date. Upon Lessor's request, Lessee shall promptly furnished Lessor with satisfactory evidence that such taxes have been paid. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect, and Lessor shall reimburse Lessee for any overpayment. If Lessee shall fail to pay any required Real Property Taxes, Lessor shall have the right to pay the same, and Lessee shall reimburse Lessor therefor upon demand.

9.3 In the event Lessee incurs a late charge on any Rent payment, Lessor may, at Lessor's option,, estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee, either: (i) in a lump sum amount equal to the installment due, at least ten (10) days prior to the applicable delinquency date, or (ii) monthly in advance with the payment of the Base Rent. If Lessor elects to require payment monthly in advance, the monthly payment shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. All monies paid to Lessor under this Paragraph may be intermingled with other monies of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any balance of funds paid to Lessor under the provisions of this Paragraph may, at the option of Lessor, be treated as a Security Deposit.

9.4 Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee owned alterations, utility installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause such property to be assessed and billed separately from the real property of Lessor. If any of Lessee's aid personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement.

10. Utilities Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon.

11. Assignment and Subletting

11.1 Lessee shall not voluntarily nor by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld.

11.2 Permitted Transfers. Notwithstanding anything to the contrary above Lessee shall have the right, without the consent of Lessor, but upon not less than 15 days' prior notice to Lessor, to assign this Lease or sublet the Premises (i) to any parent, subsidiary or affiliate corporation or entity, or (ii) to any corporation resulting from the consolidation or merger of Lessee into or within any other entity, or (iii) to any firm, entity or corporation acquiring in one contemporaneous transaction all or substantially all of the stock or assets of Lessee or the division of Lessee occupying the Premises. Any transfer pursuant to (i), (ii) or (iii) above shall be subject to the following conditions: that any such assignment, sublease or transfer shall be subject to all of the terms, covenants and conditions of this Lease; any assignee shall expressly assume for the benefit of Lessor the obligations of Lessee under the Lease by a document reasonably satisfactory to Lessor; and Lessee shall provide to Lessor copies of documents sufficient to verify that the transfer qualifies under this paragraph. No such transfer shall release Lessee from liability. As used herein, the expression "affiliate corporation or entity" means a business entity, corporate or otherwise, that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Lessee. The word "control" means the right and power, direct or indirect, to direct or cause the direction of the management and policies of a person or business entity, corporation or otherwise, through ownership of more than fifty percent (50%) of the voting stock (or other relevant ownership interests) of the entity in question.

11.3 Terms and Conditions Applicable to Assignment and Subletting.

11.3.1 Regardless of Lessor's consent, any assignment or subletting shall not: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease; (ii) release Lessee of any obligations hereunder; or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

11.3.2 Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

11.3.3 Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

11.3.4 In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

11.3.5 Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.

11.3.6 Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

11.4 The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

11.4.1 In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

11.4.2 Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

11.4.3 No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld.

11.4.4 Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

12. Default; Breach; Remedies.

12.1 A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or duties under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period.

12.1.1 The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 7 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism, which continues for twenty (20) or more days after written notice from Lessor.

12.1.2 The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens

life or property, where such failure continues for a period of three (3) business days following written notice to Lessee.

12.1.3 The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) any document requested under Paragraph 39 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice to Lessee.

12.1.4 A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, other than those described in Paragraph 12, where such Default continues for a period of thirty (30) days after written notice; provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

12.1.5 The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph 12.1.5 is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

12.2 If Lessee fails to perform any of its affirmative duties or obligations, within ten (10) days after written notice or as it is required by Paragraph 12.1.4 above after notice from Lessor and within the cure period provided for in said paragraph, Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

12.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (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 the Lessee proves could have been reasonably avoided; (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 the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to

in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the San Francisco Federal Reserve Bank plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 11. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any party thereof in a separate suit. If a notice and grace period required under paragraph 12.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 12.1. In such case, the applicable grace period required by Paragraph 12.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitled Lessor to the remedies provided for in this Lease and/or by said statute;

12.2.2 Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession; or

12.2.3 Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnify provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

12.4 Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within seven (7) days after such amount shall be due more than once in any six (6) month period then, Lessee shall pay to Lessor a late charge equal to seven percent (7%) of each such overdue amount in any month such amounts remain unpaid. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default of Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

12.5 Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time, for non-emergency matters, shall in no event be less than thirty (30) days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

13. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of any building portion of the Premises, or more than twenty-five percent (25%) of the land area portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All alterations and utility installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such condemnation.

14. Brokers' Fee. There is no Brokers' Fee to be paid by either Party in conjunction with this Lease transaction. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder in connection with this Lease, and that no one is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, and/or attorneys' fees reasonably incurred with respect thereto.

15. Estoppel Certificates.

15.1 Each Party (as "Responding Party") shall within fourteen (14) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party an Estoppel Certificate plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

15.2 If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such ten day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if lessor is the Requesting Party, not more than one month's Rent has been paid in advance. Prospective purchasers and encumbrancers may relay upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

15.3 If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, or if Lessee should be in default of the Lease, upon five (5) days prior written notice, Lessee shall deliver to any potential lender or purchaser designated by Lessor, or to Lessor in the event of a default, such financial statements as may be reasonably required by such lender or purchaser, including, but not limited to, Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender

or purchaser in confidence and shall be used only for the purposes herein set forth. Notwithstanding the foregoing, if Lessee is a publicly traded corporation subject to ongoing periodic SEC financial reporting requirements, Lessee may provide Lessor copies of the SEC financial filings in lieu of such financial statements.

16. Definition of Lessor. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the premises. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined. Notwithstanding the above, and subject to the provisions of Paragraph 18 below, the original Lessor under this Lease, and all subsequent holders of the Lessor's interest in this Lease shall remain liable and responsible with regard to the potential duties and liabilities of Lessor pertaining to Hazardous Substances as outlined in Paragraph 5 above.

17. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provisions hereof.

18. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

19. No Prior or Other Agreements. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding other than the Agreement referenced herein shall be effective as of the Effective Date.

20 Notices.

20.1 All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 20. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. A copy of all notices to Lessee shall be sent to: Paul Street, General Counsel, BMHC, 720 Park Blvd., Suite 200, Boise, ID 83712-7714, Facsimile: (208) 331-4477. A copy of all notices to Lessor shall be sent to: Richard K. Circuit, Esq., Circuit, McKellogg, Kinney & Ross, LLP, 1205 Prospect Street, #400, La Jolla, CA 92037, facsimile (858) 459-0690. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the premises shall constitute Lessee's address for notice. A copy of all notices to lessor (or Lessee) shall be concurrently transmitted to such party or parties at such addresses as Lessor (or Lessee) may from time to time hereafter designate in writing.

20.2 Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is show, the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed

delivered upon telephone confirmation of receipt, provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

21. Waivers. No waiver by Lessor or Lessee of the Default or Breach of any term, covenant or condition hereof, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach of the same or of any other term, covenant or condition hereof. The acceptance of Rent by lessor shall not be a waiver of any Default or Breach by lessee. Any payment by lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by lessor at or before the time of deposit of such payment.

22. Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to one hundred fifty percent (150%) of the Base Rent applicable during the month immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

23. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

24. Covenants and Conditions. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa.

25. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and shall be governed by the laws of the State of California.

26. Subordination; Attornment; Non-Disturbance.

26.1 This Lease and any Option granted hereby shall be subject and subordinate to any mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lessor's Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

26.2 Subject to the non-disturbance provisions of Paragraph 26.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership fo the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; or (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor.

26.3 With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance

agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof (beyond any applicable cure period) and attorns to the record owner of the Premises. Further, within thirty (30) days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said thirty (30) days, then Lessee or Lessor may terminate this Lease without liability to either party by giving written notice of termination within ten (10) days of any such thirty (30) day period.

26.4 Except as provided in Paragraph 26.3, the agreements contained in this Paragraph 26 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-disturbance Agreement provided for herein.

27. Attorneys' Fees. If any Party brings an action or proceeding involving the Premises to enforce the terms hereof or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment.

28. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times and upon reasonable prior notice to Lessee, for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary. All such activities shall be without abatement of rent or liability to Lessee. Lessor may at any time place on the Premises any "For Sale" signs and Lessor may during the last six (6) months of the term hereof place on the Premises any ordinary "For Lease" signs provided that such signs do not unreasonably interfere with Lessee's operation of the Premises.

29. Signs. Lessee shall not place any sign upon the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld. All signs must comply with all Applicable Requirements. Notwithstanding the foregoing, and subject to Applicable Requirements, Lessee shall have the right to maintain or install signs on the Building and a monument sign near the main entrance to the Premises. The size, location and general appearance of such signs shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld. Lessee shall pay all costs in connection with the fabrication, installation, permitting, maintenance and removal of such signs.

30. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

31. Options.

31.1 Lessee is granted the right to extend the Term of this Lease for two (2) periods of five (5) years each (each an "Option"). The right to extend must be exercised, if at all, by written notice delivered to Lessor not less than one hundred eighty (180) days before the Expiration Date of the Term which is then in effect. Lessee's failure to timely exercise an extension right shall automatically void all subsequent extension rights.

31.2 Each Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

31.3 Effect of Default on Options.

31.3.1 Lessee shall have no right to exercise the Option if at any time within one year prior to the date on which Lessee desires to exercise such Option, Lessee has been in Default under the Lease.

31.3.2 The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of this Paragraph 31.

31.3.3 The Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term, (i) Lessee fails to pay Rent for a period of thirty (30) days after notice from Lessor (ii) Lessor gives to Lessee two (2) or more notices of separate Default during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits any Breach of this Lease.

32. Reservations. Lessor reserves to itself the right, from time to time, to grant or obtain, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easement, rights, dedications, maps and restrictions do not unreasonably interfere with the use and quiet enjoyment of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

33. Amendments. This Lease may be modified or amended only in writing, signed by the Parties to be bound, obligated or affected by such modification or amendment.

34. Schedules & Exhibits. All schedules and exhibits attached hereto are incorporated into and made a part of this Lease.

35. Security Deposit. Lessee shall deposit with Lessor on the date of this Lease, security for the performance of all of its obligations pursuant to this Lease, the amount equal to monthly Base Rent then in effect ("Security Deposit"). If Lessee Defaults under this Lease, Lessor may use any part of the Security Deposit to make any defaulted payment, to pay for Lessor's cure of any defaulted obligation, or to compensate Lessor for any loss or damage resulting from any Default. To the extent any portion of the deposit is used, Lessee shall within ten business (10) days after demand from Lessor restore the Security Deposit to its full amount. Lessor may keep the Security Deposit in its general funds and shall not be required to pay interest to Lessee on the deposit amount. If Lessee shall perform all of its obligations under this Lease and return the Premises to Lessor at the end of the Term as provided herein, Lessor shall return the remaining Security Deposit

to Lessee not later than thirty (30) days after the delivery of possession of the Premises to Lessor. The Security Deposit shall not serve as an advance payment of Rent or a measure of Lessor's damages for any Default under this Lease. Lessee waives the provision of California Civil Code Section 1950.7, and all other provisions of law now in force or that become in force after the date of execution of this Lease, that provide that Lessor may claim from a Security Deposit only those sums reasonably necessary to remedy any defaults in the payment of Rent, to repair damage caused by Lessee, or to clean the Premises. Lessor and Lessee agree that Lessor, in addition, may claim those sums reasonably necessary to compensate Lessor for any other foreseeable or unforeseeable loss or damage caused by the acts or omission of Lessee or Lessee's officers, agents, employees, independent contractors, or invitees. Notwithstanding anything to the contrary contained herein this Lease, Lessee shall not be required to deliver the Security Deposit to Lessor for so long as Lessor remains Crosthwaite Circle, LLC, a California limited liability company ("Crosthwaite"), or affiliate of Crosthwaite ("Affiliate"), and Lessee shall deliver Security Deposit to Lessee within seven (7) days of the date on whch Crosthwaite or Affiliate shall cease to be Lessor hereunder.

36. Force Majeure. Neither Lessor nor Lessee shall be in default under this Lease to the extent they are unable to perform any of their respective obligations on account of any strike or labor problem, energy shortage, governmental pre-emption or prescription, flood, earthquake, national emergency, or any other cause of any kind beyond the reasonable control of the affected party ("Force Majeure"); provided, however, that Lessee's payment of Rent shall not be withheld or delayed by Force Majeure.

The parties hereto have executed this Lease at the place specified above their respective signatures.

"LESSOR"
GREGG STREET, LLC,
Califrnia limited liability company

By:_____
Signature

_____
Print Name & Title

"LESSEE"
HNR FRAMING SYSTEMS, INC.,
a California corporation

By: _____
Signature

_____
Print Name & Title

The parties hereto have executed this Lease at the place specified above their respective signatures.

"LESSOR"
GREGG STREET, LLC,
California limited liability company

Name: Robert R. Thomas
Title: Managing Member

"LESSEE"
HNR FRAMING SYSTEMS, INC.,
a California corporation

Name: Robert R. Thomas
Title: President

LandAmerica Commonwealth

Commonwealth Land Title Company
750 "B" Street
Suite 2350
San Diego, CA 92101
Phone: (619) 233-3000

Circuit, McKellog, Kiney & Ross, LLP
12005 Prospect Street
Suite 400
La Jolla, CA 92037

Attn: **Laura Leszt**

Our File No: 03204598 - 609 - 611L
Senior Commercial Title Officer: Katherine I. Leicht
(kleicht@landam.com)
Phone: (619) 230-6346
Fax: (619) 233-3846

Your Reference No: Robert Thomas

Property Address: 13465 & 13495 Gregg Street, Poway, California

PRELIMINARY REPORT

Dated as of October 25, 2004 at 7:30 a.m.

In response to the above referenced application for a policy of title insurance, Commonwealth Land Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusion from the coverage of said Policy or Policies are set forth in Exhibit B attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit B of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.
It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

File No: 03204598

SCHEDULE A

The form of policy of title insurance contemplated by this report is:

CLTA Standard Owners

ALTA Loan 1992

The estate or interest in the land hereinafter described or referred to covered by this report is:

A FEE

Title to said estate or interest at the date hereof is vested in:

Robert R. Thomas and Jane L. Thomas, Trustees of The Robert R. Thomas and Jane L. Thomas Declaration of Trust dated May 14, 1999,
Subject to Item No. 19 of Schedule B

The land referred to herein is situated in the County of San Diego, State of California, and is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

File No: 03204598

EXHIBIT "A"

All that certain real property situated in the County of San Diego, State of California, described as follows:

Parcel A:

All of Parcel 1 of Parcel Map No. 18019 as filed in the Office of the County Recorder of San Diego County, April 24, 1998 as File No. 1998-0236683 of Official Records, and all of Parcel C of Certificate of Compliance for Boundary Adjustment 99-06, filed in the Office of the County Recorder of San Diego County, May 10, 1999 as File No. 1999-0315333 of Official Records, all in the City of Poway, County of San Diego, State of California, being more particularly described as follows:

Beginning at the Northwest corner of said Parcel 1, said point being the South right of way line of Gregg Street as shown on said Parcel Map No. 18019;

Thence along said right of way line South 87° 40' 02" East, 372.07;

Thence leaving said right of way line, South 02° 45' 50" West, 285.51 feet to a point on the Southerly line of said Parcel C;

Thence Westerly along said Southerly line, North 87° 14' 07" West, 190.17 feet to the Southwest corner of said Parcel C;

Thence Northerly along the Westerly line of said Parcel C, North 02° 45' 53" East, 154.62 feet to the Southeast corner of said Parcel 1;

Thence Westerly along the Southerly line of said Parcel 1, North 87° 14' 07" West, 176.01 feet to the Southwest corner of said Parcel 1;

Thence Northerly along the Westerly line of said Parcel 1, North 00° 07' 57" East, 128.22 feet to the point of beginning.

Parcel B:

All of Parcel A and Parcel B of Certificate of Compliance for Boundary Adjustment 99-06, in the City of Poway, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, May 10, 1999 as Instrument No. 1999-0315333 of Official Records, being more particularly described as follows:

Beginning at the Southeast corner of said Parcel B;

Thence Westerly along the Southerly line of said Parcel B, North 87° 14' 07" West, 196.31 feet;

Thence leaving said Southerly line, North 02° 45' 50" East, 285.51 feet to a point on the Northerly line of said Parcel A, said point being on the Southerly right of way line of Gregg Street as shown on said Parcel Map No. 18019 and Map No. 12853;

Thence Easterly along said right of way line, South 87° 40' 02" East, 166.60 feet to the beginning of a tangent 29.50 foot radius curve, concave Southwesterly;

Thence Southeasterly along said curve through a central angle of 90° 25' 55", 46.56 feet to a point on the West right of way line of Paine Street, as shown on Map No. 12853 as filed in the Office of the County Recorder of San Diego County, August 19, 1991 as File No. 91-423951 of Official Records;

Thence Southerly along said right of way line South 02° 45' 53" West, 257.26 feet to the point of beginning.

EXHIBIT E

PARTIAL LEASE TERMINATION AGREEMENT
(NO. 2)

This Partial Lease Termination Agreement No. 2 ("Agreement") effective July 15, 2008, is made by and among Gregg Street, LLC, a California limited liability company ("Gregg"), H.N.R. Framing Systems Inc., a California corporation ("HNR"), and Building Materials Holding Corporation, a Delaware corporation ("BMHC") and is made with reference to the following facts:

A. On or about October 1, 2005, Gregg entered into that certain Triple Net Commercial Real Estate Lease ("Lease") with HNR for the premises commonly described as 13465 and 13495 Gregg Street, Poway, California ("Premises"). A copy of the Lease is attached hereto as Exhibit A.

B. On or about November 9, 2007, Gregg entered into that certain Partial Lease Termination Agreement with HNR and BMHC. A copy of the Partial Lease Termination Agreement is attached hereto as Exhibit B ("Partial Lease Termination Agreement No. 1").

C. HNR and BMHC now desire to terminate the Lease with respect to certain portions of the Premises comprising approximately 24,000 square feet of Building "B", located at 13495 Gregg Street, San Diego County, California, as more particularly described as SUBJECT PREMISES on Exhibit C to this Agreement ("Additional Surrendered Premises") and abandon said Additional Surrendered Premises effective upon the Commencement Date of the New Lease.

D. Gregg desires to enter into a new lease of the Additional Surrendered Premises with Sunstar Spa Covers, Inc., a Massachusetts corporation, and Softub, Inc., a California corporation, and its affiliates ("collectively "Sunstar"), commencing October 1, 2008 ("Commencement Date") and ending on February 28, 2014 ("New Lease"). A copy of the New Lease is attached hereto as Exhibit D.

NOW THEREFORE, the parties agree as follows:

1. Consent. Upon execution of the Agreement and upon the occupation of the Additional Surrendered Premises by SUNSTAR on the Commencement Date pursuant to the terms of the New Lease, Gregg shall thereupon consent to termination of the Lease with respect to and the abandonment of the Additional Surrendered Premises by HNR and BMHC.

2. Indemnification. The term of the Lease expires on October 31, 2010. If Sunstar, during the period the term of the Lease, fails to make lease payments (and meet other obligations arising under Paragraphs 5, 6, 7, 8, 9 and 10 of the Lease) to Gregg, BMHC and HNR agree to indemnify Gregg for any lease payment losses (and other obligation arising under Paragraphs 5, 6, 7, 8, 9 and 10 of the Lease) for the remaining term of the Lease based on the terms set forth in the Lease. Gregg, upon demand for such payment, agrees to permit BMHC or its assigns to re-occupy the Additional Surrendered Premises for the period of time it makes such indemnity payments to Gregg under the terms of the Lease.

3. Base Rent Deficit Payments. On or before the first day of each month during the remaining term of the Lease, HNR shall pay to Gregg the amounts set forth on Schedule 1 to this Agreement, which amounts represent the estimated aggregate difference in the Base Rent payment required of HNR in the Lease and the aggregate Base Rent payment required by Paragraph 1.6(a) in the New Lease for the period commencing on the Commencement Date and ending September 30, 2010 ("Base Rent Deficit").

4. Other Costs. Upon notice and demand from Gregg, HNR hereby acknowledges that HNR remains liable under the Lease for, and shall reimburse Gregg for, the following costs of the Lease which are not part of the Additional Surrendered Premises:

4.1 13465 Gregg Street:

4.1.1 15.16% of the Monthly Assessment for Spectrum Property Management;

4.1.2 15.16% of Real Property Taxes; and

4.1.3 15.16% of Commercial General Liability Insurance premiums.

4.2 Paragraph 4.2 of the Partial Lease Termination Agreement No. 1 is hereby deleted.

5. Brokers' Fees. HNR shall pay to Cushman & Wakefield of San Diego and Grubb & Ellis/BRE, prorated for the period beginning on October 1, 2008 and ending September 30, 2010, the brokers' fees as more particularly described in Paragraph 1.9(b) of the New Lease.

6. Tenant Improvements. Upon notice and demand, HNR shall reimburse Gregg for the following estimated expenses associated with completing the tenant improvements required to be performed by Gregg pursuant to Paragraph 56 of the New Lease:

Vendor	Estimated Expenses	Purpose
Bill Havens Painting	$15,044.00	Prep, patch and paint interior and exterior
Thomas Acoustics, Inc.	450.00	Replace damaged ceiling tiles
Howards Carpets	1,080.00	Replace carpet in conference room (prorated share)
Cleaning	500.00	Cleaning
Warehouse Clean-up and Repair	2,500.00	Warehouse Clean-up and Repair

7. Binding Effect. This Agreement shall be binding on the parties, their personal representatives, successors and assigns and shall be governed by the laws of the State of California.

8. Mediation then Arbitration

8.1 In the event of a dispute or default under this Agreement, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall first be submitted to non-binding mediation ("Mediation") prior to initiating arbitration as set forth below in Paragraph 8.2. Each party shall bear its own costs and expenses of participating in the Mediation, and each party shall bear one-half (1/2) of the fees of the mediator. The mediator shall be selected by the parties' mutual agreement within ten (10) days notice by one party to the other requesting mediation ("Notice of Dispute"). If the parties cannot timely mutually agree upon a mediator, the American Arbitration Association, San Diego, California, shall promptly select the mediator. The parties agree that time is of the essence and that they will each, in good faith, seek to conclude the mediation process within sixty (60) days following the Notice of Dispute.

8.2 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, which shall not have been satisfactorily resolved first according to Paragraph 8.1 above, shall be settled by arbitration at San Diego, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

9. Attorneys' Fees. If any party brings an arbitration or other proceeding to enforce the terms of this Agreement, the prevailing party in any such proceeding shall be entitled to reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GREGG STREET, LLC

By: _____
Robert R. Thomas, Member

BUILDING MATERIALS HOLDING CORPORATION
A Delaware Corporation

By: _____
SVP

H.N.R. FRAMING SYSTEMS INC.
A California Corporation

By: _____
SVP

Schedule 1
Rent Defecit Payments

sq feet	Price Sq Ft	13495 Gregg only 24,000 Total Rents Owed to Gregg St	Due from Sun Star	Due from BMHC
October-08	1.284	30,816	21,120	9,696
November-08	1.284	30,816	10,560	20,256
December-08	1.284	30,816	10,560	20,256
January-09	1.284	30,816	10,560	20,256
February-09	1.284	30,816	10,560	20,256
March-09	1.284	30,816	10,560	20,256
April-09	1.284	30,816	10,560	20,256
May-09	1.284	30,816	10,560	20,256
June-09	1.284	30,816	10,560	20,256
July-09	1.284	30,816	10,560	20,256
August-09	1.284	30,816	10,560	20,256
September-09	1.284	30,816	21,120	9,696
October-09	1.323	31,752	21,859	9,893
November-09	1.323	31,752	21,859	9,893
December-09	1.323	31,752	21,859	9,893
January-10	1.323	31,752	21,859	9,893
February-10	1.323	31,752	21,859	9,893
March-10	1.323	31,752	21,859	9,893
April-10	1.323	31,752	21,859	9,893
May-10	1.323	31,752	21,859	9,893
June-10	1.323	31,752	21,859	9,893
July-10	1.323	31,752	21,859	9,893
August-10	1.323	31,752	21,859	9,893
September-10	1.323	31,752	21,859	9,893
		2,423,174	410,148	340,668

TRIPLE NET COMMERCIAL REAL ESTATE LEASE

This Triple Net Commercial Real Estate Lease ("Lease") is hereby made and entered into by and between Gregg Street, LLC, a California limited liability company ("Lessor"), and HNR Framing Systems, Inc., a California corporation ("Lessee" or "Buyer") (Lessor and Lessee sometimes collectively referred to herein below as the "Parties"), as of this 1st day of October, 2005 ("Effective Date") with reference to the following facts:

RECITALS

A. **WHEREAS** pursuant to (i) that certain Securities Purchase Agreement ("SPA") dated as of the date even herewith between Lessee, Robert R. Thomas, Trustee of the Restated Robert R. Thomas Trust dated April 14, 1999 ("Shareholder"), and BMHC, Inc., a Delaware corporation ("BMHC"), Shareholder has agreed to sell to BMHC and BMHC has agreed to purchase from Shareholder, all of the issued and outstanding capital stock in Lessee at the price and upon the terms and conditions as are contained in the SPA; and (ii) that certain Asset Purchase Agreement ("APA") dated as of the date even herewith between Lessee and Home Building Components, Inc., a California corporation ("HBC"), HBC has agreed to sell to Buyer and Buyer has agreed to purchase from HBC, the assets and liabilities as described in the APA, at the price and subject to the terms and conditions set forth therein; and

B. **WHEREAS** pursuant to the APA Lessor and Lessee have agreed to enter into a Lease whereby Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the Premises as set forth more fully hereinafter.

THEREFORE, in consideration for all obligations, responsibilities and other consideration hereby acknowledged, the Parties agree as follows:

1. Premises. For purposes of this Lease, Premises shall mean that certain real property, including any improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 13465 & 13495 Gregg Street, located in the City of Poway, County of San Diego, State of California, and generally described as the shop/warehouse space & building(s) situated thereon ("Building"), and unimproved and improved real property ("Land") described in Exhibit A to this Lease and made a part hereof.

1.1 The Premises shall be used only for roofing truss, floor, and wall framing manufacturing operations, including without limtation any receiving, shipping and general office/administrative operations associated therewith, and related uses consistent with applicable law.

1.2 Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental and upon all the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating rental, is an approximation, which the Parties agree is reasonable and the rental based thereon is not subject to revision whether or not the actual size is more or less.

2. Term Five (5) years and Zero (0) months ("Term") commencing as of the Effective Date ("Commencement Date") and ending Five (5) years from the first day of the first month following the Effective Date unless extended by operation of Paragraph 31 or otherwise earlier terminated only as specifically provided herein ("Expiration Date").

EX. A

3. Rent

3.1 Rent shall be Sixty Seven Thousand Dollars ($67,000) per month ("Base Rent"), due on the first (1st) day of each month commencing on the Commencement Date, provided that Lessee shall have until the fifth (5th) day of each month during the Term in which to make payment to Lessor without penalty. During the Term, unless modified in writing by the Parties and except as modified by operation of Paragraph 3.1 below, the Base Rent then in effect shall be increased by three percent (3%) on the annual anniversary of the Commencement Date every Lease Year (as it is defined herein). For purposes of this Lease, the term "Lease Year" means a one (1) year period commencing with the Commencement Date. Notwithstanding anything to the contrary contained herein this Lease, in the event Lessee excercises an Option (as defined herein) during the Term, the Base Rent for the first year of any such Option exercised shall be established as follows:

3.1.1 The Base Rent payable for renewal of the Term through exercise of the first Option shall be the greater of (a) the Fair Market Rental Value (as defined herein) as of the last day of the fifth anniversary of the Commencement Date; and (b) one hundred three percent (103%) of the Base Rent in effect as of the fifth Lease Year. For purposes of this Lease, Fair Market Rental Value shall mean, with respect to Premises, the fair market monthly rental value that would be obtained in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor, in either case under no compulsion to lease, and neither of which is related to Lessor or Lessee for the lease of Premises on the terms set forth herein this Lease, assuming that the Premises are in a condition and repair required to be maintained by the terms of this Lease.

3.1.2 The Base Rent payable for renewal of the Term through exercise of the second Option shall be the greater of (a) the Fair Market Rental Value (as defined herein) as of the last day of the tenth anniversary of the Commencement Date; and (b) one hundred three percent (103%) of the Base Rent in effect as of the tenth Lease Year.

3.2 All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit (as defined herein)) are deemed to be rent, which shall include but not be limited to Base Rent ("Rent").

3.3 Lessee shall cause payment of Rent to be received by Lessor in United States currency, without any offset or deduction (except as specifically permitted in this Lease), on or before the date on which is due. Rent for any period during the term hereof which is for less than one (1) full calendar month shall be pro rated based upon the actual number of days of said month. Payment of rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor' endorsement of any check so stating.

4. Use.

4.1 Lessee shall use and occupy the Premises according to the use set forth in Paragraph 1.1 herein, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners or occupants of, or causes damage to neighboring properties. Lessee shall not make any improvements or modifications to the Premises without Lessor's written approval, such approval not to be unreasonably withheld.

4.2

4.2.1 The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, 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 Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance at Lessee's expense with all Applicable Requirements. For purposes of this Lease, Applicable Requirements shall mean compliance with all applicable governmental laws, ordinances and regulations. For purposes of this Lease, "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/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration of termination) of protective modifications (such as concrete encasements).

4.2.2 If Lessee 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 consent to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

4.2.3 Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or Lessee's agents, employees, or contractors.

4.2.4 Lessee shall indemnify, defend and hold Lessor, its agents, employees, and lenders harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or Lessee's agents, employees, contractors, or invitees (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered

into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

4.3 Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the reasonable requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Commencement Date. Lessee shall, within ten (10) days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with Applicable Requirements as specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements.

4.4 Lessor and its consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times upon reasonable prior notice to Lessee, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements or the inspection is requested or ordered by governmental authority with respect to the activities of Lessee or its agents, employees, contractors, or invitees on or about the Premises. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspections, so long as such inspection is reasonably related to the violation or contamination resulting from the activities of Lessee or its agents, employees, or contractors on or about the Premises.

5. Maintenance and Repairs

5.1 Subject to the provisions of this Lease and during the Term, Lessee shall, at Lessee's sole expense, keep and maintain the Premises, utility installations, and alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accesible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of ventilating Premises) including, but not limited to, all equipment or facilities, such as plumbing, heating, ventilating, air-conditioning, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform regular maintenance practices. Lessee's obligations shall include restorations and replacements as necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity.

5.2 Lessee, at its sole expense, shall maintain in good order and repair and perform regular maintenance on (in accordance with commercially reasonable management practices and applicable warranty requirements) the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguisher systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, (vi) driveways, (vii) parking lots, and (viii) basic utility feed to the perimeter of the Building (collectively "Basic Elements").

5.3 Lessee shall not be required to perform any repairs or maintenance to the Premises necessitated by reason of the negligence of Lessor or by reason of the failure of Lessor to perform obligations of this Lease.

5.4 Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and services thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Lessee shall repair any damage occasioned by the installation, maintenance or removal of its personal property and equipment. The failure by Lessee to timely vacate Premises pursuant this Paragraph without the express written consent of Lessor shall constitute a holdover.

5.5 Except as specifically set forth herein,, it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be those of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

6. Insurance

6.1 Except for Lessor's gross negligence, and to the extent permitted by law, Lessee waives any claims it may have against Lessor or its officers, managers, employees or agents for business interruption or damage to property sustained by Lessee as the result of any act or omission of Lessor.

6.2 Lessee shall maintain insurance as follows, with such other terms, coverages and insurers, as Lessor shall reasonably require from time to time:

6.2.1 Commercial General Liability Insurance, with (a) Contractual Liability including the indemnification provisions contained in this Lease, (b) a severability of interest endorsement, (c) limits of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence and not less than Two Million Dollars ($2,000,000) in the aggregate for bodily injury, sickness or death, and property damage, and umbrella coverage of not less than Five Million Dollars ($5,000,000).

6.2.2 Property Insurance against "All Risks" of physical loss covering the replacement cost of all improvements, fixtures and personal property. Lessee waives all rights of subrogation, and Lessee's property insurance shall include a waiver of subrogation in favor of Lessor.

6.2.3 Lessee's insurance shall be primary and not contributory to that carried by Lessor, its agents, or Lessor's Lender, if any. Lessor shall be named as an additional insured as respects insurance required of the Lessee in this Paragraph 6. The company or companies writing any insurance that Lessee is required to maintain under this Lease, as well as the form of such insurance, shall be licensed to do business in the state in which the Premises are located. Such insurance companies shall have an A.M. Best rating of A or better.

7. Indemnity

7.1 Except for Lessor's negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground Lessor, partners and Lenders, from and against any and all claims, and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified. Subject to any limitations set forth in this Lease, Lessor shall indemnify, protect, defend, and hold harmless Lessee and its officers, directors, shareholders, and agents from and against any and all claims, damages, liens, judgments, penalties, attorneys and consultants' fees, expenses, and/or liabilities to the extent arising out of, involving, or in connection with the gross negligence or willful misconduct of Lessor. If any action is brought against Lessee by reason of any of the foregoing matters, Lessor shall upon notice defend the same at Lessor's expense by counsel reasonably satisfactory to Lessee, and Lessee shall cooperate with Lessor in such defense. Lessee need not have first paid any such claim in order to be defended or indemnified.

7.2 Except to the extent of Lessor's gross negligence or willful misconduct and subject to the its specific obligations hereunder, Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Promises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, or from other sources or places.

8. Damage or Destruction.

8.1 Definitions.

8.1.1 "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned alterations and utility installations and trade fixtures, which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within sixty (60) days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

8.1.2 "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Lessee owned alterations and utility installations and trade fixtures, which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction.

8.1.3 "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee owned alterations and utility installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 6 above related to the Premises.

8.1.4 "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

8.1.5 "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 5 in, on, or under the Premises.

8.2 If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense and subject to all application of all applicable insurance proceeds, repair such damage (but not Lessee's Trade Fixtures or Lessee owned alterations and utility installations) as soon as reasonably possible and this Lease shall continue in full force and effect. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to affect such repair, the Lessor shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within available days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or have this Lease terminate thirty (30) days thereafter. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 8.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

8.3 If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense) Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective sixty (60) days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within ten (10) days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs, as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

8.4 Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate sixty (60) days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee and is not covered by insurance, Lessor shall have the right to recover Lessor's damages to the extent not covered by insurance) from Lessee, except as provided in Paragraph 7.

8.5 If at any time during the last six (6) months of this Lease there is Premises Partial Damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessee or Lessor may terminate this Lease effective sixty (60) days following the date of occurrence of such damage by

giving written termination notice to the other party within thirty (30) days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is ten days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished. Notwithstanding anything in this section to the contrary, if Lessee elects to exercise its option to extend the Lease and the loss is an Insured Loss, Lessee shall not be obligated to contribute funds for repair or rebuilding in excess of he amount Lessee is obligated to contribute funds for repair or rebuilding in excess of the amount Lessee is obligated to contribute under Paragraph 8.2.

8.6 Abatement of Rent; Lessee's Remedies.

8.6.1 In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation of or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein. Any repair or restoration which Lessor is required to make under this Lease shall be accomplished with due diligence.

8.6.2 If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within one hundred twenty (120) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within thirty (30) days thereafter, this Lease shall terminate as of the date specified in said notice and Lessee may exercise any available rights or remedies. If the repair or restoration is commenced within said thirty (30) days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

8.7 Upon termination of this Lease pursuant to Paragraph 5 or Paragraph 8, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be used by Lessor pursuant to the terms of this Lease.

8.8 Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

8.9 The provisions of Paragraphs 8.2 and 8.3 to the contrary notwithstanding, in the event Lessor fails to substantially complete restoration of damage or destruction of the Premises which Lessor is

required or elects to perform pursuant to said paragraphs within one hundred eighty (180) days after commencement of such restoration or repairs, upon prior written notice, the Lessee may terminate this Lease, provided, however. that if Lessor substantially completes the restoration within ninety (90) days after receipt of such notice, this Lease shall not terminate and shall continue in full force and effect.

9. Real Property Taxes.

9.1 As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary, erxtraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed or resulting from action by any governmental entity, or imposed as a result of any change of assessment or increase of tax, fee, levy imposed as a result of a change in ownership of the Premises.

9.2 Lessee shall pay the Real Property Taxes applicable to the Premises during the term of this Lease. Subject to Paragraph 9.2(b), all such payments shall be made prior to any delinquency date. Upon Lessor's request, Lessee shall promptly furnished Lessor with satisfactory evidence that such taxes have been paid. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect, and Lessor shall reimburse Lessee for any overpayment. If Lessee shall fail to pay any required Real Property Taxes, Lessor shall have the right to pay the same, and Lessee shall reimburse Lessor therefor upon demand.

9.3 In the event Lessee incurs a late charge on any Rent payment, Lessor may, at Lessor's option,, estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee, either: (i) in a lump sum amount equal to the installment due, at least ten (10) days prior to the applicable delinquency date, or (ii) monthly in advance with the payment of the Base Rent. If Lessor elects to require payment monthly in advance, the monthly payment shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. All monies paid to Lessor under this Paragraph may be intermingled with other monies of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any balance of funds paid to Lessor under the provisions of this Paragraph may, at the option of Lessor, be treated as a Security Deposit.

9.4 Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee owned alterations, utility installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause such property to be assessed and billed separately from the real property of Lessor. If any of Lessee's aid personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement.

10. Utilities Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon.

11. Assignment and Subletting.

11.1 Lessee shall not voluntarily nor by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld.

11.2 Permitted Transfers. Notwithstanding anything to the contrary above Lessee shall have the right, without the consent of Lessor, but upon not less than 15 days' prior notice to Lessor, to assign this Lease or sublet the Premises (i) to any parent, subsidiary or affiliate corporation or entity, or (ii) to any corporation resulting from the consolidation or merger of Lessee into or within any other entity, or (iii) to any firm, entity or corporation acquiring in one contemporaneous transaction all or substantially all of the stock or assets of Lessee or the division of Lessee occupying the Premises. Any transfer pursuant to (i), (ii) or (iii) above shall be subject to the following conditions: that any such assignment, sublease or transfer shall be subject to all of the terms, covenants and conditions of this Lease; any assignee shall expressly assume for the benefit of Lessor the obligations of Lessee under the Lease by a document reasonably satisfactory to Lessor; and Lessee shall provide to Lessor copies of documents sufficient to verify that the transfer qualifies under this paragraph. No such transfer shall release Lessee from liability. As used herein, the expression "affiliate corporation or entity" means a business entity, corporate or otherwise, that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Lessee. The word "control" means the right and power, direct or indirect, to direct or cause the direction of the management and policies of a person or business entity, corporation or otherwise, through ownership of more than fifty percent (50%) of the voting stock (or other relevant ownership interests) of the entity in question.

11.3 Terms and Conditions Applicable to Assignment and Subletting.

11.3.1 Regardless of Lessor's consent, any assignment or subletting shall not: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease; (ii) release Lessee of any obligations hereunder; or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

11.3.2 Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

11.3.3 Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

11.3.4 In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

11.3.5 Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.

11.3.6 Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

11.4 The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

11.4.1 In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

11.4.2 Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

11.4.3 No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld.

11.4.4 Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

12. Default; Breach; Remedies.

12.1 A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or duties under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period.

12.1.1 The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 7 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism, which continues for twenty (20) or more days after written notice from Lessor.

12.1.2 The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens

life or property, where such failure continues for a period of three (3) business days following written notice to Lessee.

12.1.3 The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) any document requested under Paragraph 39 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice to Lessee.

12.1.4 A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, other than those described in Paragraph 12, where such Default continues for a period of thirty (30) days after written notice; provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

12.1.5 The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph 12.1.5 is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

12.2 If Lessee fails to perform any of its affirmative duties or obligations, within ten (10) days after written notice or as it is required by Paragraph 12.1.4 above after notice from Lessor and within the cure period provided for in said paragraph, Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

12.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (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 the Lessee proves could have been reasonably avoided; (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 the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to

in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the San Francisco Federal Reserve Bank plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 11. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any party thereof in a separate suit. If a notice and grace period required under paragraph 12.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 12.1. In such case, the applicable grace period required by Paragraph 12.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitled Lessor to the remedies provided for in this Lease and/or by said statute;

12.2.2 Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession; or

12.2.3 Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnify provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

12.4 Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within seven (7) days after such amount shall be due more than once in any six (6) month period then, Lessee shall pay to Lessor a late charge equal to seven percent (7%) of each such overdue amount in any month such amounts remain unpaid. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default of Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

12.5 Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time, for non-emergency matters, shall in no event be less than thirty (30) days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

13. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of any building portion of the Premises, or more than twenty-five percent (25%) of the land area portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All alterations and utility installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such condemnation.

14. Brokers' Fee. There is no Brokers' Fee to be paid by either Party in conjunction with this Lease transaction. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder in connection with this Lease, and that no one is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, and/or attorneys' fees reasonably incurred with respect thereto.

15. Estoppel Certificates.

15.1 Each Party (as "Responding Party") shall within fourteen (14) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party an Estoppel Certificate plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

15.2 If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such ten day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if lessor is the Requesting Party, not more than one month's Rent has been paid in advance. Prospective purchasers and encumbrancers may relay upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

15.3 If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, or if Lessee should be in default of the Lease, upon five (5) days prior written notice, Lessee shall deliver to any potential lender or purchaser designated by Lessor, or to Lessor in the event of a default, such financial statements as may be reasonably required by such lender or purchaser, including, but not limited to, Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender

or purchaser in confidence and shall be used only for the purposes herein set forth. Notwithstanding the foregoing, if Lessee is a publicly traded corporation subject to ongoing periodic SEC financial reporting requirements, Lessee may provide Lessor copies of the SEC financial filings in lieu of such financial statements.

16. Definition of Lessor. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the premises. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined. Notwithstanding the above, and subject to the provisions of Paragraph 18 below, the original Lessor under this Lease, and all subsequent holders of the Lessor's interest in this Lease shall remain liable and responsible with regard to the potential duties and liabilities of Lessor pertaining to Hazardous Substances as outlined in Paragraph 5 above.

17. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provisions hereof.

18. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

19. No Prior or Other Agreements. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding other than the Agreement referenced herein shall be effective as of the Effective Date.

20 Notices.

20.1 All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 20. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. A copy of all notices to Lessee shall be sent to: Paul Street, General Counsel, BMHC, 720 Park Blvd., Suite 200, Boise, ID 83712-7714, Facsimile: (208) 331-4477. A copy of all notices to Lessor shall be sent to: Richard K. Circuit, Esq., Circuit, McKellogg, Kinney & Ross, LLP, 1205 Prospect Street, #400, La Jolla, CA 92037, facsimile (858) 459-0690. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the premises shall constitute Lessee's address for notice. A copy of all notices to lessor (or Lessee) shall be concurrently transmitted to such party or parties at such addresses as Lessor (or Lessee) may from time to time hereafter designate in writing.

20.2 Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is show, the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed

delivered upon telephone confirmation of receipt, provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

21. Waivers. No waiver by Lessor or Lessee of the Default or Breach of any term, covenant or condition hereof, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach of the same or of any other term, covenant or condition hereof. The acceptance of Rent by lessor shall not be a waiver of any Default or Breach by lessee. Any payment by lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by lessor at or before the time of deposit of such payment.

22. Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to one hundred fifty percent (150%) of the Base Rent applicable during the month immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

23. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

24. Covenants and Conditions. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa.

25. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and shall be governed by the laws of the State of California.

26. Subordination; Attornment; Non-Disturbance.

26.1 This Lease and any Option granted hereby shall be subject and subordinate to any mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lessor's Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

26.2 Subject to the non-disturbance provisions of Paragraph 26.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership fo the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; or (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor.

26.3 With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance

agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof (beyond any applicable cure period) and attorns to the record owner of the Premises. Further, within thirty (30) days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said thirty (30) days, then Lessee or Lessor may terminate this Lease without liability to either party by giving written notice of termination within ten (10) days of any such thirty (30) day period.

26.4 Except as provided in Paragraph 26.3, the agreements contained in this Paragraph 26 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-disturbance Agreement provided for herein.

27. Attorneys' Fees. If any Party brings an action or proceeding involving the Premises to enforce the terms hereof or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment.

28. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times and upon reasonable prior notice to Lessee, for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary. All such activities shall be without abatement of rent or liability to Lessee. Lessor may at any time place on the Premises any "For Sale" signs and Lessor may during the last six (6) months of the term hereof place on the Premises any ordinary "For Lease" signs provided that such signs do not unreasonably interfere with Lessee's operation of the Premises.

29. Signs. Lessee shall not place any sign upon the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld. All signs must comply with all Applicable Requirements. Notwithstanding the foregoing, and subject to Applicable Requirements, Lessee shall have the right to maintain or install signs on the Building and a monument sign near the main entrance to the Premises. The size, location and general appearance of such signs shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld. Lessee shall pay all costs in connection with the fabrication, installation, permitting, maintenance and removal of such signs.

30. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

31. Options.

31.1 Lessee is granted the right to extend the Term of this Lease for two (2) periods of five (5) years each (each an "Option"). The right to extend must be exercised, if at all, by written notice delivered to Lessor not less than one hundred eighty (180) days before the Expiration Date of the Term which is then in effect. Lessee's failure to timely exercise an extension right shall automatically void all subsequent extension rights.

31.2 Each Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

31.3 Effect of Default on Options.

31.3.1 Lessee shall have no right to exercise the Option if at any time within one year prior to the date on which Lessee desires to exercise such Option, Lessee has been in Default under the Lease.

31.3.2 The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of this Paragraph 31.

31.3.3 The Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term, (i) Lessee fails to pay Rent for a period of thirty (30) days after notice from Lessor (ii) Lessor gives to Lessee two (2) or more notices of separate Default during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits any Breach of this Lease.

32. Reservations. Lessor reserves to itself the right, from time to time, to grant or obtain, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easement, rights, dedications, maps and restrictions do not unreasonably interfere with the use and quiet enjoyment of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

33. Amendments. This Lease may be modified or amended only in writing, signed by the Parties to be bound, obligated or affected by such modification or amendment.

34. Schedules & Exhibits. All schedules and exhibits attached hereto are incorporated into and made a part of this Lease.

35. Security Deposit. Lessee shall deposit with Lessor on the date of this Lease, security for the performance of all of its obligations pursuant to this Lease, the amount equal to monthly Base Rent then in effect ("Security Deposit"). If Lessee Defaults under this Lease, Lessor may use any part of the Security Deposit to make any defaulted payment, to pay for Lessor's cure of any defaulted obligation, or to compensate Lessor for any loss or damage resulting from any Default. To the extent any portion of the deposit is used, Lessee shall within ten business (10) days after demand from Lessor restore the Security Deposit to its full amount. Lessor may keep the Security Deposit in its general funds and shall not be required to pay interest to Lessee on the deposit amount. If Lessee shall perform all of its obligations under this Lease and return the Premises to Lessor at the end of the Term as provided herein, Lessor shall return the remaining Security Deposit

to Lessee not later than thirty (30) days after the delivery of possession of the Premises to Lessor. The Security Deposit shall not serve as an advance payment of Rent or a measure of Lessor's damages for any Default under this Lease. Lessee waives the provision of California Civil Code Section 1950.7, and all other provisions of law now in force or that become in force after the date of execution of this Lease, that provide that Lessor may claim from a Security Deposit only those sums reasonably necessary to remedy any defaults in the payment of Rent, to repair damage caused by Lessee, or to clean the Premises. Lessor and Lessee agree that Lessor, in addition, may claim those sums reasonably necessary to compensate Lessor for any other foreseeable or unforeseeable loss or damage caused by the acts or omission of Lessee or Lessee's officers, agents, employees, independent contractors, or invitees. Notwithstanding anything to the contrary contained herein this Lease, Lessee shall not be required to deliver the Security Deposit to Lessor for so long as Lessor remains Crosthwaite Circle, LLC, a California limited liability company ("Crosthwaite"), or affiliate of Crosthwaite ("Affiliate"), and Lessee shall deliver Security Deposit to Lessee within seven (7) days of the date on whch Crosthwaite or Affiliate shall cease to be Lessor hereunder.

36. Force Majeure. Neither Lessor nor Lessee shall be in default under this Lease to the extent they are unable to perform any of their respective obligations on account of any strike or labor problem, energy shortage, governmental pre-emption or prescription, flood, earthquake, national emergency, or any other cause of any kind beyond the reasonable control of the affected party ("Force Majeure"); provided, however, that Lessee's payment of Rent shall not be withheld or delayed by Force Majeure.

The parties hereto have executed this Lease at the place specified above their respective signatures.

"LESSOR"
GREGG STREET, LLC,
Califirnia limited liability company

By: _____
Signature

_____
Print Name & Title

"LESSEE"
HNR FRAMING SYSTEMS, INC.,
a California corporation

By: _____
Signature

_____
Print Name & Title

The parties hereto have executed this Lease at the place specified above their respective signatures.

"LESSOR"
GREGG STREET, LLC,
California limited liability company

Name: Robert R. Thomas
Title: Managing Member

"LESSEE"
HNR FRAMING SYSTEMS, INC.,
a California corporation

Name: Robert R. Thomas
Title: President

PARTIAL LEASE TERMINATION AGREEMENT

This Partial Lease Termination Agreement ("Agreement") effective November 9, 2007, is made by and among Gregg Street, LLC, a California limited liability company ("Gregg"), H.N.R. Framing Systems Inc., a California corporation ("HNR"), and Building Materials Holding Corporation, a Delaware corporation ("BMHC") and is made with reference to the following facts:

A. On or about October 1, 2005, Gregg entered into that certain Triple Net Commercial Real Estate Lease ("Lease") with HNR for the premises commonly described as 13465 and 13495 Gregg Street, Poway, California ("Premises"). A copy of the Lease is attached hereto as Exhibit A.

B. HNR and BMHC desire to terminate the Lease with respect to certain portions of the Premises comprising approximately 28,000 square feet of Building "A" as more particularly described on Exhibit B to this Agreement ("Surrendered Premises") and abandon said Surrendered Premises effective upon the Commencement Date of the New Lease.

C. Gregg desires to enter into a new lease of the Surrendered Premises with Complete Office of California, Inc. ("COC") commencing January 1, 2008 ("Commencement Date") and ending five (5) years thereafter ("New Lease"). A copy of the New Lease is attached hereto as Exhibit C.

NOW THEREFORE, the parties agree as follows:

1. Consent. Upon execution of the Agreement and upon the occupation of the Surrendered Premises by COC on the Commencement Date pursuant to the terms of the New Lease, Gregg shall thereupon consent to termination of the Lease with respect to and the abandonment of the Surrendered Premises by HNR and BMHC.

2. Indemnification. The term of the Lease expires on October 31, 2010. If COC, during the period the term of the New Lease, fails to make lease payments to Gregg, BMHC and HNR agree to indemnify Gregg for any lease payment losses for the remaining term of the Lease based on the terms set forth in the New Lease including the monetary triple net obligations. Gregg, upon demand for such payment, agrees to permit BMHC or its assigns to re-occupy the Surrendered Premises for the period of time it makes such indemnity payments to Gregg under the terms of the Lease.

3. Base Rent Deficit Payments. On or before the first day of each month during the remaining term of the Lease, HNR shall pay to Gregg the amounts set forth on Schedule 1 to this Agreement, which amounts represent the estimated aggregate difference in the Base Rent payment required of HNR in the Lease and the aggregate Base Rent payment required by Paragraph 1.6(a) in the New Lease for the period commencing on the Commencement Date and ending September 30, 2010 ("Base Rent Deficit").

Ex B

4. Other Costs. Upon notice and demand from Gregg, HNR hereby acknowledges that HNR remains liable under the Lease for, and shall reimburse Gregg for, the following costs of the Lease which are not part of the Surrendered Premises:

4.1 13465 Gregg Street:

4.1.1 15.16% of the Monthly Assessment for Spectrum Property Management;

4.1.2 15.16% of Real Property Taxes; and

4.1.3 15.16% of Commercial General Liability Insurance premiums.

4.2 13495 Gregg Street:

4.2.1 100% of the Monthly Assessment for Spectrum Property Management;

4.2.2 100% of Real Property Taxes; and

4.2.3 100% of Commercial General Liability Insurance premiums.

5. Brokers' Fees. HNR shall pay to Voit Commercial Brokers and Burnham Real Estate, for the period beginning on January 1, 2008 and ending September 30, 2010, brokers' fees in the amounts and at the dates as more particularly described in Paragraph 1.9(b) of the New Lease.

6. Tenant Improvements. HNR shall reimburse Gregg for the following expenses associated with completing the tenant improvements required to be performed by Gregg pursuant to Paragraph 57 of the New Lease.

6.1 Upon Signing the Agreement, For Expenses Actually Paid.

Vendor	Amount Paid	Purpose
Corky's Welding	$6,189.00	Dock railing
Automatic Door Specialists	574.76	AK1 digital pad
Bill Havens Painting	9,445.00	Prep, patch and paint
Bill Havens Painting	935.00	Loading dock walls & railings

Vendor	Amount Paid	Purpose
CRL Incorporated	2,725.00	Electrical work – warehouse lighting
CRL Incorporated	2,348.00	Electrical work – parking lot lights
A.O. Reed	712.00	Replace AC unit
	$22,428.76	

6.2 Upon notice and demand for future expenses which will be incurred by Gregg in connection with the following ("Future Expenses"):

6.2.1 Design, permit, contract and construct two (2) new truck loading docks and related demolition. The construction contracts will be put out to bid. The low bid shall be selected by Gregg and HNR.

6.2.2 Grind and rebuild dock walls in the event the "float" does not hold up if a defect occurs during the term of the Lease.

6.3 In connection with the performance of Future Expenses work, Gregg may use the low bid of a concrete company selected on the basis of competitive bids.

6.4 HNR acknowledges and agrees to remove the wood wall (which separates the warehouse) prior to the expiration of the Lease.

7. Binding Effect. This Agreement shall be binding on the parties, their personal representatives, successors and assigns and shall be governed by the laws of the State of California.

8. Mediation then Arbitration

8.1 In the event of a dispute or default under this Agreement, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall first be submitted to non-binding mediation ("Mediation") prior to initiating arbitration as set forth below in Paragraph 8.2. Each party shall bear its own costs and expenses of participating in the Mediation, and each party shall bear one-half (1/2) of the fees of the mediator. The mediator shall be selected by the parties' mutual agreement within ten (10) days notice by one party to the other requesting mediation ("Notice of Dispute"). If the parties cannot timely mutually agree upon a mediator, the American Arbitration Association, San Diego, California, shall promptly select the mediator. The parties agree that time is of the essence and that they will

each, in good faith, seek to conclude the mediation process within sixty (60) days following the Notice of Dispute.

8.2 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, which shall not have been satisfactorily resolved first according to Paragraph 8.1 above, shall be settled by arbitration at San Diego, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

9. Attorneys' Fees. If any party brings an arbitration or other proceeding to enforce the terms of this Agreement, the prevailing party in any such proceeding shall be entitled to reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GREGG STREET, LLC

By: _____
Robert R. Thomas, Member

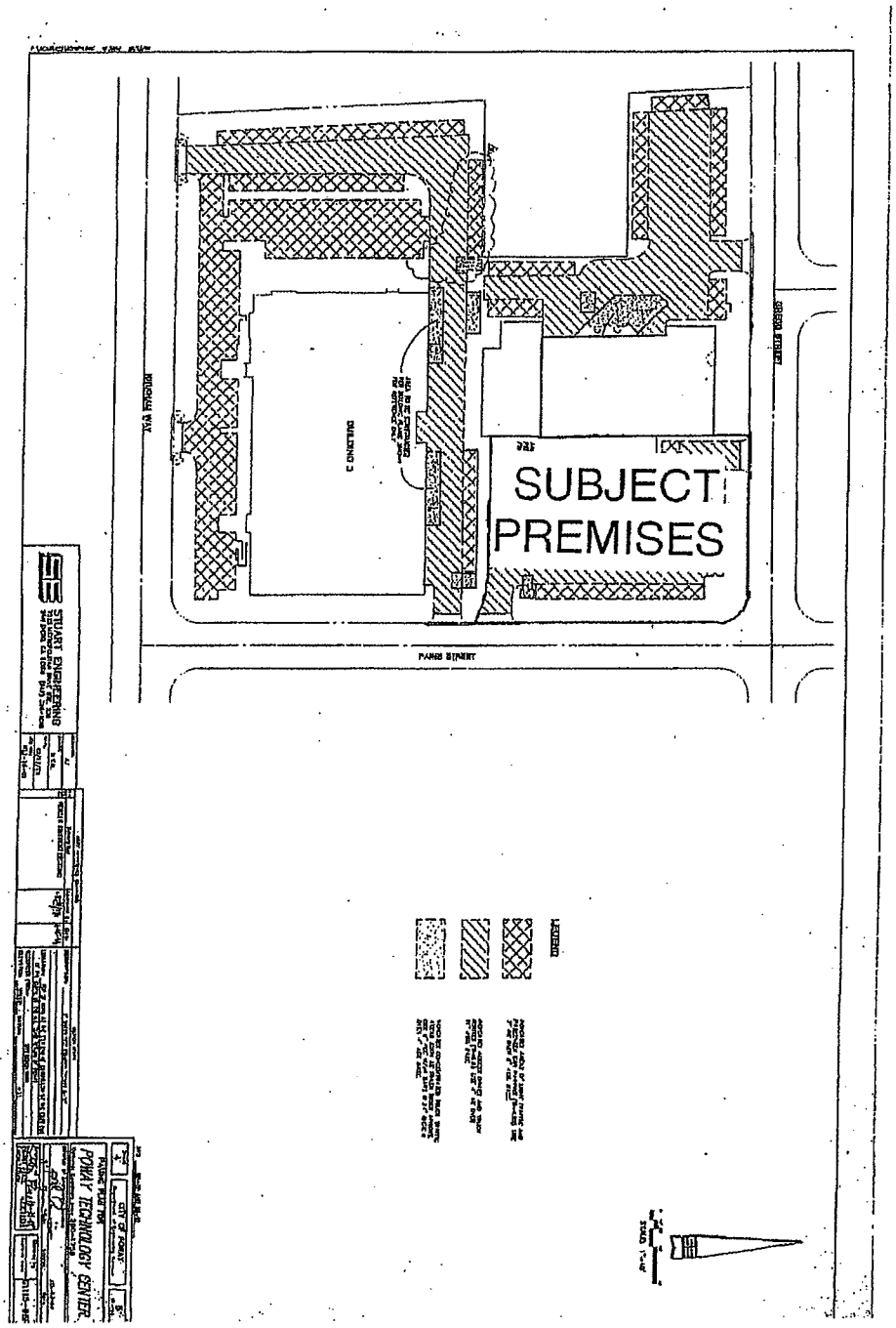
BUILDING MATERIALS HOLDING CORPORATION
A Delaware Corporation

By: _____

H.N.R. FRAMING SYSTEMS INC.
A California Corporation

By: _____
Secretary

EXHIBIT "A"



Ex C

AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- NET
(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. **Basic Provisions ("Basic Provisions").**

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only July 15, 2008, is made by and between Gregg Street, LLC ("Lessor") and Sunstar Spa Covers Inc., a Massachusetts Corp./Softtub Inc., A California Corp. and its affiliates ("Lessee"), (collectively the "Parties," or individually a "Party").

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 13495 Gregg Street, located in the County of San Diego, State of California, and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project) a freestanding industrial property of approx. 24,000 SF located in the Poway market ("Premises"). (See also Paragraph 2)

1.3 **Term:** 5 years and 5 months ("Original Term") commencing October 1, 2008 ("Commencement Date") and ending February 28, 2014 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** *See Addendum dated July 15, 2008 Paragraph 51 ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $21,120.00 per month ("Base Rent"), payable on the 1st day of each month commencing See Addendum Paragraph 52. (See also Paragraph 4)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** $21,120.00 for the period October 1, 2008 though October 31, 2008.

(b) **Security Deposit:** $24,235.00 ("Security Deposit"). (See also Paragraph 5)

(c) **Association Fees:** $N/A for the period N/A

(d) **Other:** $N/A for N/A.

(e) **Total Due Upon Execution of this Lease:** $45,355.00.

1.7 **Agreed Use:** General office, warehousing, manufacturing, and distribution for a hot tub and spa cover company and all related uses. (See also Paragraph 6)

1.8 **Insuring Party:** Lessor is the "Insuring Party" unless otherwise stated herein. (See also Paragraph 8)

1.9 **Real Estate Brokers:** (See also Paragraph 15)

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

☑ Cushman & Wakefield of San Diego, Inc. (C&W) represents Lessor exclusively ("Lessor's Broker");

☑ Grubb & Ellis/BRE represents Lessee exclusively ("Lessee's Broker"); or

☐ _____ represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Broker the fee agreed to in their separate written agreement (or if there is no such agreement, the sum of _____ or 4% to Grub & Ellis/BRE and 1.5% to C&W % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☑ an Addendum consisting of Paragraphs 51 through 58;

☐ a plot plan depicting the Premises;

☐ a current set of the Rules and Regulations;

☐ a Work Letter;

☑ other (specify): Exhibit "A"-Site Plan and Exhibit "B"-Operating Expenses.

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and

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EXD

upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs (**"Start Date"**), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the **"Building"**) shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 60 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances (**"Applicable Requirements"**) that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building (**"Capital Expenditure"**), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date that on which the Base Rent is due, an amount equal to 144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

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3.2 **Early Possession.** If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

4.3 **Association Fees.** In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any product,

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substance, or waste whose presence, use, manufacture, disposal, transportation, or release, 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 Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. **"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/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee 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 Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the such Requirements, without regard to whether such Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's

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compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor"s "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor.

7. **Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations** within their premises.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, and (vi) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term **"Utility Installations"** refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term **"Trade Fixtures"** shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term **"Alterations"** shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. **"Lessee Owned Alterations and/or Utility Installations"** are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee

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shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises, or if applicable, the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. **Insurance; Indemnity.**

8.1 **Payment For Insurance.** Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of $2,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within 10 days following receipt of an invoice.

8.2 **Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "**insured contract**" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 **Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. If Lessor is the Insuring Party, however, Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4 rather than by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable

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Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $1,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an insured Loss.

(b) **Rental Value.** The insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 **Lessee's Property; Business Interruption Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least A-, VI, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.**

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9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises which requires repair, remediation, or restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value Insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful

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way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definition.** As used herein, the term **"Real Property Taxes"** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** In addition to Base Rent, Lessee shall pay to Lessor an amount equal to the Real Property Tax installment due at least 20 days prior to the applicable delinquency date. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such installment shall be prorated. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payments shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sum as is necessary. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

10.3 **Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 **Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, **"assign or assignment"**) or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. **"Net Worth of Lessee"** shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

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f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A "**Default**" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "**Breach**" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data

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sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a **"debtor"** as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (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 the Lessee proves could have been reasonably avoided; (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 the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as **"Inducement Provisions,"** shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 **Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies

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granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

See Addendum ~~15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.9 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.~~

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.8, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the Indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the

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Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term **"Lessor"** as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee

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acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, **"Security Device"**), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as **"Lender"**) shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Devise to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a **"Non-Disturbance Agreement"**) from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend

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the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, **"Prevailing Party"** shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary **"For Sale"** signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this Lease.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted an Option, as defined below, then the following provisions shall apply:

39.1 **Definition. "Option"** shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term

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of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Multiple Buildings.** If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

41. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. **Reservations.** Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" with 6 months shall be deemed to have waived its right to protest such payment.

44. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. **Conflict.** Any conflict between the printed provisions of this Lease and typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **Offer.** Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. **Waiver of Jury Trial.** **THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

49. **Mediation and Arbitration of Disputes.** An Addendum requiring the Mediation and/or the Arbitration of all disputes between the Parties

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49. Dispute Resolution.

(a) Lessor and Lessee agree to mediate in San Diego, California, any dispute or claim arising between them out of this Lease, or any resulting transaction, before resorting to court action. The parties will cooperate with the American Arbitration Association, San Diego, California, and each other in selecting a mediator from the American Arbitration Association panel of neutrals and in promptly scheduling the mediation proceeding. Mediation fees, if any, shall be divided equally among the parties involved. If for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorneys' fees, even if they would others be available to that party in any such action.

(b) Notwithstanding Subparagraph (a) above to the contrary, the following matters are excluded from mediation: (1) An unlawful detainer action; (2) the filing or enforcement of a mechanic's lien; and (3) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.

and/or Brokers arising out of this Lease ; ☐ is not attached to this Lease.

50. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense. Lessor warrants that restrooms are ADA compliant.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at:	Executed at:
On:	On:
By **LESSOR:**	By **LESSEE:**
Gregg Street, LLC	Sunstar Spa Covers Inc., a MA Corp./ Softub Inc., a CA Corp. and its affiliates
By:	By:
Name Printed: Robert R. Thomas	Name Printed: Tom Thornbury
Title:	Title: Chairman and Secretary
By:	By:
Name Printed:	Name Printed: Ed McGarry
Title:	Title: President and CEO
Address:	Address:
Telephone:(619) 520-7777	Telephone:(___)
Facsimile:(___)	Facsimile:(___)
Federal ID No.	Federal ID No.
BROKER:	**BROKER:**
Cushman & Wakefield of San Diego, Inc. (C&W)	Grubb & Ellis/BRE
Attn: Matt Kelly	Attn: Barry Hendler & Mike Erwin
Title: Director	Title:
Address: 4435 Eastgate Mall, Suite 200 San Diego, CA 92121	Address:
Telephone:(858) 558-5647	Telephone:(760) 431-4200
Facsimile:(858) 334-6743	Facsimile:(___)
Federal ID No.	Federal ID No.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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Addendum

Addendum for Lease dated July 15, 2008 by and between Gregg Street, LLC (Landlord) and Sunstar Spa Covers Inc., a Massachusetts Corporation / Softub Inc., a California Corporation and its' affiliates (Tenant) consisting of paragraphs 51 through 58.

51. **Early Possession:** Tenant will be granted early possession to the office area August 1, 2008.

52. **Base Rental NNN Rate and Annual Increases:** The initial Base Monthly Rent shall be $21,120 triple net ($0.88 NNN per square foot per month). Tenant shall pay ½ Base Rent for Months 2 through 11. The Base Monthly NNN Rent schedule is below:

October 1, 2008 – October 31, 2008 =	$21,120.00 NNN per month
November 1, 2008 – August 31, 2009 =	$10,560.00 NNN per month
September 1, 2009 – September 30, 2009 =	$21,120.00 NNN per month
October 1, 2009 – September 30, 2010 =	$21,859.00 NNN per month
October 1, 2010 – September 30, 2011 =	$22,624.00 NNN per month
October 1, 2011 - September 30, 2012 =	$23,416.00 NNN per month
October 1, 2012 – September 30, 2013 =	$24,236.00 NNN per month
October 1, 2013 – February 28, 2014 =	$25,083.00 NNN per month

53. **Option:** Provided Tenant is not in default under the terms and conditions of the existing Lease agreement Tenant shall have one (1) five (5) year option to renew this Lease at the below noted Base Rental schedule. Tenant shall provide Landlord with written notice at least one hundred and eighty (180) days prior to the Expiration Date. If Tenant fails to exercise the option contained in this Paragraph 53 within the manner provided herein, the Lease shall terminate on the Expiration Date.

March 1, 2014 – September 30, 2014 =	$25,083.00 NNN per month
October 1, 2014 – September 30, 2015 =	$25,960.00 NNN per month
October 1, 2015 – September 30, 2016 =	$26,869.00 NNN per month
October 1, 2016 – September 30, 2017 =	$27,810.00 NNN per month
October 1, 2017 – September 30, 2018 =	$28,783.00 NNN per month
October 1, 2018 – February 28, 2019 =	$29,790.00 NNN per month

54. **Triple Net Expense:** Landlord shall provide as an Exhibit "B" to this Lease a document showing all current operating expenses for the Premises including but not necessarily limited to applicable taxes (including property), insurance, common area maintenance fees (including but not necessarily limited to landscaping and Association fees). Tenant will be responsible for Triple Net expenses during all months of the Lease term.

55. **Property Tax Protection:** In the event the Landlord of the Premises sells the property prior to the termination of the Lease, Tenant will not be responsible for any increase in property taxes which may or may not occur as a result of the sale. Additionally property taxes, if any, will be the responsibility of the new Owner/Landlord. However, under this Lease Agreement, Tenant is only responsible for the actual property taxes paid as per Exhibit B, called for under Paragraph 54 of this Addendum. If the sale of the Premises results in a decrease of property taxes owed, Tenant will be responsible for the actual property taxes paid.

56. **Tenant Improvements:** Landlord shall, at Landlords' sole cost, repaint the upstairs and downstairs office areas and professionally clean the carpet. This work shall be completed by August 1, 2008.

57. **Lease Condition:** This Lease is expressly conditioned upon Landlord first formally terminating that certain Lease dated October 1, 2005 for the Premises with HNR Framing Systems, Inc., an affiliate of BMHC, Inc., a Delaware Corporation.

58. **Signage:** Signage on the exterior of the building must be approved by the City of Poway and conform to all City rules and regulations. Such signage does not need Landlord approval.

AGREED & ACCEPTED:

_____ _____

Gregg Street, LLC Date

_____ _____

Sunstar Spa Covers Inc., a Massachusetts Corporation / Softub Inc., a California Corporation and its' affiliates Date

_____ _____

Sunstar Spa Covers Inc., a Massachusetts Corporation / Softub Inc., a California Corporation and its' affiliates Date

EXHIBIT F

TRIPLE NET COMMERCIAL REAL ESTATE LEASE

This Triple Net Commercial Real Estate Lease ("Lease") is hereby made and entered into by and between Ralph Road, LLC, a California limited liability company ("Lessor"), and FSC Construction, Inc., a Delaware corporation ("Lessee" or "Buyer") (Lessor and Lessee sometimes collectively referred to herein below as the "Parties"), as of this 1st day of October, 2005 ("Effective Date") with reference to the following facts:

RECITALS

A. **WHEREAS** pursuant to (i) that certain Securities Purchase Agreement ("SPA") dated as of the date even herewith between Lessee, Robert R. Thomas, Trustee of the Restated Robert R. Thomas Trust dated April 14, 1999 ("Shareholder"), and BMHC, Inc., a Delaware corporation ("BMHC"), Shareholder has agreed to sell to BMHC and BMHC has agreed to purchase from Shareholder, all of the issued and outstanding capital stock in Lessee at the price and upon the terms and conditions as are contained in the SPA; and (ii) that certain Asset Purchase Agreement ("APA") dated as of the date even herewith between Lessee and Home Building Components, Inc., a California corporation ("HBC"), HBC has agreed to sell to Buyer and Buyer has agreed to purchase from HBC, the assets and liabilities as described in the APA, at the price and subject to the terms and conditions set forth therein; and

B. **WHEREAS** pursuant to the APA Lessor and Lessee have agreed to enter into a Lease whereby Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the Premises as set forth more fully hereinafter.

THEREFORE, in consideration for all obligations, responsibilities and other consideration hereby acknowledged, the Parties agree as follows:

1. Premises For purposes of this Lease, Premises shall mean that certain real property, including any improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 340 W. Ralph Road, located in the City of Imperial, County of Imperial, State of California, and generally described as the office building, shop/warehouse spaces & bay structures, ("Building"), and unimproved real property ("Land") described in Exhibit A to this Lease and made a part hereof.

1.1 The Premises shall be used only for roofing truss, floor, and wall framing manufacturing operations, including without limtation any receiving, shipping and general office/administrative operations associated therewith, and related uses consistent with applicable law.

1.2 Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental and upon all the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating rental, is an approximation, which the Parties agree is reasonable and the rental based thereon is not subject to revision whether or not the actual size is more or less.

2. Term Five (5) years and Zero (0) months ("Term") commencing as of the Effective Date ("Commencement Date") and ending Five (5) years from the first day of the first month following the Effective Date unless extended by operation of Paragraph 31 or otherwise earlier terminated only as specifically provided herein ("Expiration Date").

3. Rent

3.1 Rent shall be Twenty-Five Thousand Dollars ($25,00) per month ("Base Rent"), due on the first (1st) day of each month commencing on the Commencement Date, provided that Lessee shall have until the fifth (5th) day of each month during the Term in which to make payment to Lessor without penalty. During the Term, unless modified in writing by the Parties and except as modified by operation of Paragraph 3.1 below, the Base Rent then in effect shall be increased by three percent (3%) on the annual anniversary of the Commencement Date every Lease Year (as it is defined herein). For purposes of this Lease, the term "Lease Year" means a one (1) year period commencing with the Commencement Date. Notwithstanding anything to the contrary contained herein this Lease, in the event Lessee excercises an Option (as defined herein) during the Term, the Base Rent for the first year of any such Option exercised shall be established as follows:

3.1.1 The Base Rent payable for renewal of the Term through exercise of the first Option shall be the greater of (a) the Fair Market Rental Value (as defined herein) as of the last day of the fifth anniversary of the Commencement Date; and (b) one hundred three percent (103%) of the Base Rent in effect as of the fifth Lease Year. For purposes of this Lease, Fair Market Rental Value shall mean, with respect to Premises, the fair market monthly rental value that would be obtained in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor, in either case under no compulsion to lease, and neither of which is related to Lessor or Lessee for the lease of Premises on the terms set forth herein this Lease, assuming that the Premises are in a condition and repair required to be maintained by the terms of this Lease.

3.1.2 The Base Rent payable for renewal of the Term through exercise of the second Option shall be the greater of (a) the Fair Market Rental Value (as defined herein) as of the last day of the tenth anniversary of the Commencement Date; and (b) one hundred three percent (103%) of the Base Rent in effect as of the tenth Lease Year.

3.2 All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit (as defined herein)) are deemed to be rent, which shall include but not be limited to Base Rent ("Rent").

3.3 Lessee shall cause payment of Rent to be received by Lessor in United States currency, without any offset or deduction (except as specifically permitted in this Lease), on or before the date on which is due. Rent for any period during the term hereof which is for less than one (1) full calendar month shall be pro rated based upon the actual number of days of said month. Payment of rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor' endorsement of any check so stating.

4. Use.

4.1 Lessee shall use and occupy the Premises according to the use set forth in Paragraph 1.1 herein, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners or occupants of, or causes damage to neighboring properties. Lessee shall not make any improvements or modifications to the Premises without Lessor's written approval, such approval not to be unreasonably withheld.

4.2

4.2.1 The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, 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 Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance at Lessee's expense with all Applicable Requirements. For purposes of this Lease, Applicable Requirements shall mean compliance with all applicable governmental laws, ordinances and regulations. For purposes of this Lease, "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/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration of termination) of protective modifications (such as concrete encasements).

4.2.2 If Lessee 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 consent to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

4.2.3 Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or Lessee's agents, employees, or contractors.

4.2.4 Lessee shall indemnify, defend and hold Lessor, its agents, employees, and lenders harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or Lessee's agents, employees, contractors, or invitees (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered

into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

4.3 Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the reasonable requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Commencement Date. Lessee shall, within ten (10) days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with Applicable Requirements as specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements.

4.4 Lessor and its consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times upon reasonable prior notice to Lessee, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements or the inspection is requested or ordered by governmental authority with respect to the activities of Lessee or its agents, employees, contractors, or invitees on or about the Premises. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspections, so long as such inspection is reasonably related to the violation or contamination resulting from the activities of Lessee or its agents, employees, or contractors on or about the Premises.

5. Maintenance and Repairs

5.1 Subject to the provisions of this Lease and during the Term, Lessee shall, at Lessee's sole expense, keep and maintain the Premises, utility installations, and alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accesible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of ventilating Premises) including, but not limited to, all equipment or facilities, such as plumbing, heating, ventilating, air-conditioning, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform regular maintenance practices. Lessee's obligations shall include restorations and replacements as necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity.

5.2 Lessee, at its sole expense, shall maintain in good order and repair and perform regular maintenance on (in accordance with commercially reasonable management practices and applicable warranty requirements) the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguisher systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, (vi) driveways, (vii) parking lots, and (viii) basic utility feed to the perimeter of the Building (collectively "Basic Elements").

5.3 Lessee shall not be required to perform any repairs or maintenance to the Premises necessitated by reason of the negligence of Lessor or by reason of the failure of Lessor to perform obligations of this Lease.

5.4 Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and services thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Lessee shall repair any damage occasioned by the installation, maintenance or removal of its personal property and equipment. The failure by Lessee to timely vacate Premises pursuant this Paragraph without the express written consent of Lessor shall constitute a holdover.

5.5 Except as specifically set forth herein,, it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be those of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

6. Insurance

6.1 Except for Lessor's gross negligence, and to the extent permitted by law, Lessee waives any claims it may have against Lessor or its officers, managers, employees or agents for business interruption or damage to property sustained by Lessee as the result of any act or omission of Lessor.

6.2 Lessee shall maintain insurance as follows, with such other terms, coverages and insurers, as Lessor shall reasonably require from time to time:

6.2.1 Commercial General Liability Insurance, with (a) Contractual Liability including the indemnification provisions contained in this Lease, (b) a severability of interest endorsement, (c) limits of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence and not less than Two Million Dollars ($2,000,000) in the aggregate for bodily injury, sickness or death, and property damage, and umbrella coverage of not less than Five Million Dollars ($5,000,000).

6.2.2 Property Insurance against "All Risks" of physical loss covering the replacement cost of all improvements, fixtures and personal property. Lessee waives all rights of subrogation, and Lessee's property insurance shall include a waiver of subrogation in favor of Lessor.

6.2.3 Lessee's insurance shall be primary and not contributory to that carried by Lessor, its agents, or Lessor's Lender, if any. Lessor shall be named as an additional insured as respects insurance required of the Lessee in this Paragraph 6. The company or companies writing any insurance that Lessee is required to maintain under this Lease, as well as the form of such insurance, shall be licensed to do business in the state in which the Premises are located. Such insurance companies shall have an A.M. Best rating of A or better.

7. Indemnity

7.1 Except for Lessor's negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground Lessor, partners and Lenders, from and against any and all claims, and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified. Subject to any limitations set forth in this Lease, Lessor shall indemnify, protect, defend, and hold harmless Lessee and its officers, directors, shareholders, and agents from and against any and all claims, damages, liens, judgments, penalties, attorneys and consultants' fees, expenses, and/or liabilities to the extent arising out of, involving, or in connection with the gross negligence or willful misconduct of Lessor. If any action is brought against Lessee by reason of any of the foregoing matters, Lessor shall upon notice defend the same at Lessor's expense by counsel reasonably satisfactory to Lessee, and Lessee shall cooperate with Lessor in such defense. Lessee need not have first paid any such claim in order to be defended or indemnified.

7.2 Except to the extent of Lessor's gross negligence or willful misconduct and subject to the its specific obligations hereunder, Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Promises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, or from other sources or places.

8. Damage or Destruction.

8.1 Definitions.

8.1.1 "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned alterations and utility installations and trade fixtures, which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within sixty (60) days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

8.1.2 "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Lessee owned alterations and utility installations and trade fixtures, which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction.

8.1.3 "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee owned alterations and utility installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 6 above related to the Premises.

8.1.4 "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

8.1.5 "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 5 in, on, or under the Premises.

8.2 If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense and subject to all application of all applicable insurance proceeds, repair such damage (but not Lessee's Trade Fixtures or Lessee owned alterations and utility installations) as soon as reasonably possible and this Lease shall continue in full force and effect. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to affect such repair, the Lessor shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within available days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or have this Lease terminate thirty (30) days thereafter. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 8.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

8.3 If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense) Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective sixty (60) days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within ten (10) days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs, as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

8.4 Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate sixty (60) days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee and is not covered by insurance, Lessor shall have the right to recover Lessor's damages to the extent not covered by insurance) from Lessee, except as provided in Paragraph 7.

8.5 If at any time during the last six (6) months of this Lease there is Premises Partial Damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessee or Lessor may terminate this Lease effective sixty (60) days following the date of occurrence of such damage by

giving written termination notice to the other party within thirty (30) days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is ten days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished. Notwithstanding anything in this section to the contrary, if Lessee elects to exercise its option to extend the Lease and the loss is an Insured Loss, Lessee shall not be obligated to contribute funds for repair or rebuilding in excess of he amount Lessee is obligated to contribute funds for repair or rebuilding in excess of the amount Lessee is obligated to contribute under Paragraph 8.2.

8.6 Abatement of Rent; Lessee's Remedies.

8.6.1 In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation of or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein. Any repair or restoration which Lessor is required to make under this Lease shall be accomplished with due diligence.

8.6.2 If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within one hundred twenty (120) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within thirty (30) days thereafter, this Lease shall terminate as of the date specified in said notice and Lessee may exercise any available rights or remedies. If the repair or restoration is commenced within said thirty (30) days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

8.7 Upon termination of this Lease pursuant to Paragraph 5 or Paragraph 8, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be used by Lessor pursuant to the terms of this Lease.

8.8 Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

8.9 The provisions of Paragraphs 8.2 and 8.3 to the contrary notwithstanding, in the event Lessor fails to substantially complete restoration of damage or destruction of the Premises which Lessor is

required or elects to perform pursuant to said paragraphs within one hundred eighty (180) days after commencement of such restoration or repairs, upon prior written notice, the Lessee may terminate this Lease, provided, however. that if Lessor substantially completes the restoration within ninety (90) days after receipt of such notice, this Lease shall not terminate and shall continue in full force and effect.

9. Real Property Taxes.

9.1 As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary, erxtraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed or resulting from action by any governmental entity, or imposed as a result of any change of assessment or increase of tax, fee, levy imposed as a result of a change in ownership of the Premises.

9.2 Lessee shall pay the Real Property Taxes applicable to the Premises during the term of this Lease. Subject to Paragraph 9.2(b), all such payments shall be made prior to any delinquency date. Upon Lessor's request, Lessee shall promptly furnished Lessor with satisfactory evidence that such taxes have been paid. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect, and Lessor shall reimburse Lessee for any overpayment. If Lessee shall fail to pay any required Real Property Taxes, Lessor shall have the right to pay the same, and Lessee shall reimburse Lessor therefor upon demand.

9.3 In the event Lessee incurs a late charge on any Rent payment, Lessor may, at Lessor's option, estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee, either: (i) in a lump sum amount equal to the installment due, at least ten (10) days prior to the applicable delinquency date, or (ii) monthly in advance with the payment of the Base Rent. If Lessor elects to require payment monthly in advance, the monthly payment shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. All monies paid to Lessor under this Paragraph may be intermingled with other monies of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any balance of funds paid to Lessor under the provisions of this Paragraph may, at the option of Lessor, be treated as a Security Deposit.

9.4 Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee owned alterations, utility installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause such property to be assessed and billed separately from the real property of Lessor. If any of Lessee's aid personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement.

10. Utilities Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon.

11. Assignment and Subletting

11.1 Lessee shall not voluntarily nor by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld.

11.2 Permitted Transfers. Notwithstanding anything to the contrary above Lessee shall have the right, without the consent of Lessor, but upon not less than 15 days' prior notice to Lessor, to assign this Lease or sublet the Premises (i) to any parent, subsidiary or affiliate corporation or entity, or (ii) to any corporation resulting from the consolidation or merger of Lessee into or within any other entity, or (iii) to any firm, entity or corporation acquiring in one contemporaneous transaction all or substantially all of the stock or assets of Lessee or the division of Lessee occupying the Premises. Any transfer pursuant to (i), (ii) or (iii) above shall be subject to the following conditions: that any such assignment, sublease or transfer shall be subject to all of the terms, covenants and conditions of this Lease; any assignee shall expressly assume for the benefit of Lessor the obligations of Lessee under the Lease by a document reasonably satisfactory to Lessor; and Lessee shall provide to Lessor copies of documents sufficient to verify that the transfer qualifies under this paragraph. No such transfer shall release Lessee from liability. As used herein, the expression "affiliate corporation or entity" means a business entity, corporate or otherwise, that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Lessee. The word "control" means the right and power, direct or indirect, to direct or cause the direction of the management and policies of a person or business entity, corporation or otherwise, through ownership of more than fifty percent (50%) of the voting stock (or other relevant ownership interests) of the entity in question.

11.3 Terms and Conditions Applicable to Assignment and Subletting.

11.3.1 Regardless of Lessor's consent, any assignment or subletting shall not: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease; (ii) release Lessee of any obligations hereunder; or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

11.3.2 Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

11.3.3 Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

11.3.4 In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

11.3.5 Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.

11.3.6 Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

11.4 The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

11.4.1 In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

11.4.2 Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

11.4.3 No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld.

11.4.4 Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

12. Default; Breach; Remedies.

12.1 A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or duties under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period.

12.1.1 The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 7 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism, which continues for twenty (20) or more days after written notice from Lessor.

12.1.2 The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens

life or property, where such failure continues for a period of three (3) business days following written notice to Lessee.

12.1.3 The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) any document requested under Paragraph 39 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice to Lessee.

12.1.4 A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, other than those described in Paragraph 12, where such Default continues for a period of thirty (30) days after written notice; provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

12.1.5 The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph 12.1.5 is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

12.2 If Lessee fails to perform any of its affirmative duties or obligations, within ten (10) days after written notice or as it is required by Paragraph 12.1.4 above after notice from Lessor and within the cure period provided for in said paragraph, Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

12.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (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 the Lessee proves could have been reasonably avoided; (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 the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to

in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the San Francisco Federal Reserve Bank plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 11. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any party thereof in a separate suit. If a notice and grace period required under paragraph 12.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 12.1. In such case, the applicable grace period required by Paragraph 12.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitled Lessor to the remedies provided for in this Lease and/or by said statute;

12.2.2 Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession; or

12.2.3 Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnify provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

12.4 Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within seven (7) days after such amount shall be due more than once in any six (6) month period then, Lessee shall pay to Lessor a late charge equal to seven percent (7%) of each such overdue amount in any month such amounts remain unpaid. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default of Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

12.5 Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time, for non-emergency matters, shall in no event be less than thirty (30) days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

13. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of any building portion of the Premises, or more than twenty-five percent (25%) of the land area portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All alterations and utility installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such condemnation.

14. Brokers' Fee. There is no Brokers' Fee to be paid by either Party in conjunction with this Lease transaction. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder in connection with this Lease, and that no one is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, and/or attorneys' fees reasonably incurred with respect thereto.

15. Estoppel Certificates.

15.1 Each Party (as "Responding Party") shall within fourteen (14) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party an Estoppel Certificate plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

15.2 If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such ten day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if lessor is the Requesting Party, not more than one month's Rent has been paid in advance. Prospective purchasers and encumbrancers may relay upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

15.3 If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, or if Lessee should be in default of the Lease, upon five (5) days prior written notice, Lessee shall deliver to any potential lender or purchaser designated by Lessor, or to Lessor in the event of a default, such financial statements as may be reasonably required by such lender or purchaser, including, but not limited to, Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender

or purchaser in confidence and shall be used only for the purposes herein set forth. Notwithstanding the foregoing, if Lessee is a publicly traded corporation subject to ongoing periodic SEC financial reporting requirements, Lessee may provide Lessor copies of the SEC financial filings in lieu of such financial statements.

16. Definition of Lessor. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the premises. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined. Notwithstanding the above, and subject to the provisions of Paragraph 18 below, the original Lessor under this Lease, and all subsequent holders of the Lessor's interest in this Lease shall remain liable and responsible with regard to the potential duties and liabilities of Lessor pertaining to Hazardous Substances as outlined in Paragraph 5 above.

17. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provisions hereof.

18. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

19. No Prior or Other Agreements. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding other than the Agreement referenced herein shall be effective as of the Effective Date.

20 Notices.

20.1 All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 20. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. A copy of all notices to Lessee shall be sent to: Paul Street, General Counsel, BMHC, 720 Park Blvd., Suite 200, Boise, ID 83712-7714, Facsimile: (208) 331-4477. A copy of all notices to Lessor shall be sent to: Richard K. Circuit, Esq., Circuit, McKellogg, Kinney & Ross, LLP, 1205 Prospect Street, #400, La Jolla, CA 92037, facsimile (858) 459-0690. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the premises shall constitute Lessee's address for notice. A copy of all notices to lessor (or Lessee) shall be concurrently transmitted to such party or parties at such addresses as Lessor (or Lessee) may from time to time hereafter designate in writing.

20.2 Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is show, the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed

delivered upon telephone confirmation of receipt, provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

21. Waivers. No waiver by Lessor or Lessee of the Default or Breach of any term, covenant or condition hereof, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach of the same or of any other term, covenant or condition hereof. The acceptance of Rent by lessor shall not be a waiver of any Default or Breach by lessee. Any payment by lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by lessor at or before the time of deposit of such payment.

22. Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to one hundred fifty percent (150%) of the Base Rent applicable during the month immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

23. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

24. Covenants and Conditions. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa.

25. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and shall be governed by the laws of the State of California.

26. Subordination; Attornment; Non-Disturbance.

26.1 This Lease and any Option granted hereby shall be subject and subordinate to any mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lessor's Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

26.2 Subject to the non-disturbance provisions of Paragraph 26.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership fo the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; or (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor.

26.3 With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance

agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof (beyond any applicable cure period) and attorns to the record owner of the Premises. Further, within thirty (30) days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said thirty (30) days, then Lessee or Lessor may terminate this Lease without liability to either party by giving written notice of termination within ten (10) days of any such thirty (30) day period.

26.4 Except as provided in Paragraph 26.3, the agreements contained in this Paragraph 26 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-disturbance Agreement provided for herein.

27. Attorneys' Fees. If any Party brings an action or proceeding involving the Premises to enforce the terms hereof or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment.

28. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times and upon reasonable prior notice to Lessee, for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary. All such activities shall be without abatement of rent or liability to Lessee. Lessor may at any time place on the Premises any "For Sale" signs and Lessor may during the last six (6) months of the term hereof place on the Premises any ordinary "For Lease" signs provided that such signs do not unreasonably interfere with Lessee's operation of the Premises.

29. Signs. Lessee shall not place any sign upon the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld. All signs must comply with all Applicable Requirements. Notwithstanding the foregoing, and subject to Applicable Requirements, Lessee shall have the right to maintain or install signs on the Building and a monument sign near the main entrance to the Premises. The size, location and general appearance of such signs shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld. Lessee shall pay all costs in connection with the fabrication, installation, permitting, maintenance and removal of such signs.

30. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

31. Options.

31.1 Lessee is granted the right to extend the Term of this Lease for two (2) periods of five (5) years each (each an "Option"). The right to extend must be exercised, if at all, by written notice delivered to Lessor not less than one hundred eighty (180) days before the Expiration Date of the Term which is then in effect. Lessee's failure to timely exercise an extension right shall automatically void all subsequent extension rights.

31.2 Each Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

31.3 Effect of Default on Options.

31.3.1 Lessee shall have no right to exercise the Option if at any time within one year prior to the date on which Lessee desires to exercise such Option, Lessee has been in Default under the Lease.

31.3.2 The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of this Paragraph 31.

31.3.3 The Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term, (i) Lessee fails to pay Rent for a period of thirty (30) days after notice from Lessor (ii) Lessor gives to Lessee two (2) or more notices of separate Default during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits any Breach of this Lease.

32. Reservations. Lessor reserves to itself the right, from time to time, to grant or obtain, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easement, rights, dedications, maps and restrictions do not unreasonably interfere with the use and quiet enjoyment of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

33. Amendments. This Lease may be modified or amended only in writing, signed by the Parties to be bound, obligated or affected by such modification or amendment.

34. Schedules & Exhibits. All schedules and exhibits attached hereto are incorporated into and made a part of this Lease.

35. Security Deposit. Lessee shall deposit with Lessor on the date of this Lease, security for the performance of all of its obligations pursuant to this Lease, the amount equal to monthly Base Rent then in effect ("Security Deposit"). If Lessee Defaults under this Lease, Lessor may use any part of the Security Deposit to make any defaulted payment, to pay for Lessor's cure of any defaulted obligation, or to compensate Lessor for any loss or damage resulting from any Default. To the extent any portion of the deposit is used, Lessee shall within ten business (10) days after demand from Lessor restore the Security Deposit to its full amount. Lessor may keep the Security Deposit in its general funds and shall not be required to pay interest to Lessee on the deposit amount. If Lessee shall perform all of its obligations under this Lease and return the Premises to Lessor at the end of the Term as provided herein, Lessor shall return the remaining Security Deposit

to Lessee not later than thirty (30) days after the delivery of possession of the Premises to Lessor. The Security Deposit shall not serve as an advance payment of Rent or a measure of Lessor's damages for any Default under this Lease. Lessee waives the provision of California Civil Code Section 1950.7, and all other provisions of law now in force or that become in force after the date of execution of this Lease, that provide that Lessor may claim from a Security Deposit only those sums reasonably necessary to remedy any defaults in the payment of Rent, to repair damage caused by Lessee, or to clean the Premises. Lessor and Lessee agree that Lessor, in addition, may claim those sums reasonably necessary to compensate Lessor for any other foreseeable or unforeseeable loss or damage caused by the acts or omission of Lessee or Lessee's officers, agents, employees, independent contractors, or invitees. Notwithstanding anything to the contrary contained herein this Lease, Lessee shall not be required to deliver the Security Deposit to Lessor for so long as Lessor remains Crosthwaite Circle, LLC, a California limited liability company ("Crosthwaite"), or affiliate of Crosthwaite ("Affiliate"), and Lessee shall deliver Security Deposit to Lessee within seven (7) days of the date on whch Crosthwaite or Affiliate shall cease to be Lessor hereunder.

36. Force Majeure. Neither Lessor nor Lessee shall be in default under this Lease to the extent they are unable to perform any of their respective obligations on account of any strike or labor problem, energy shortage, governmental pre-emption or prescription, flood, earthquake, national emergency, or any other cause of any kind beyond the reasonable control of the affected party ("Force Majeure"); provided, however, that Lessee's payment of Rent shall not be withheld or delayed by Force Majeure.

The parties hereto have executed this Lease at the place specified above their respective signatures.

"LESSOR"
RALPH ROAD, LLC, a
Califrnia limited liability company

By:_____
Signature

_____
Print Name & Title

"LESSEE"
FSC CONSTRUCTION, INC.,
a Delaware corporation

By: _____
Signature

_____
Print Name & Title

The parties hereto have executed this Lease at the place specified above their respective signatures.

"LESSOR"
RALPH ROAD, LLC,
California limited liability company

Name: Robert R. Thomas
Title: Managing Member

"LESSEE"
FSC CONSTRUCTION, INC.,
a Delaware corporation

Name: Michael Mahre
Title: President

LandAmerica Commonwealth

Commonwealth Land Title Company
750 "B" Street
Suite 2350
San Diego, CA 92101
Phone: (619) 233-3000

Circuit, McKellogg, Kinney & Ross, LLP
12005 Prospect Street Ste 400
La Jolla, CA 92037

Attn: **Laura Leszt**

Your Reference No: SDN-04-003676

Property Address: 340 W. Ralph Road, Imperial, California

Our File No: 03204600 - 609 - 611L
Senior Commercial Title Officer: Katherine I. Leicht
(kleicht@landam.com)
Phone: (619) 230-6346
Fax: (619) 233-3846

PRELIMINARY REPORT

Dated as of November 2, 2004 at 7:30 a.m.

In response to the above referenced application for a policy of title insurance, Commonwealth Land Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusion from the coverage of said Policy or Policies are set forth in Exhibit B attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit B of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.
It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

File No: 03204600

SCHEDULE A

The form of policy of title insurance contemplated by this report is:

CLTA Standard Owners

The estate or interest in the land hereinafter described or referred to covered by this report is:

A FEE

Title to said estate or interest at the date hereof is vested in:

Robert R. Thomas, Trustee of the Restated Robert R. Thomas Trust dated April 14, 1999

The land referred to herein is situated in the County of Imperial, State of California, and is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

File No: 03204600

EXHIBIT "A"

All that certain real property situated in the County of Imperial, State of California, described as follows:

Parcel A:

The West half of Tract 148, Township 15 South, Range 14 East, San Bernardino Meridian, in the County of IMPERIAL, State of California, according to the United States Government Plat of Resurvey approved December 22, 1908, and filed in the United States Land Office at Los Angeles, California.

Excepting therefrom any portion within the right of way of the Southern Pacific Railroad.

Also excepting therefrom 1/16 interest in all gas, oil, or minerals on, in or under said lands as reserved by General American Life Insurance Company in that certain deed to Fred E. Elg, dated August 13, 1941, and recorded November 19, 1941, in Book 574, page(s) 599, Official Records.

Parcel B:

Tract 144 of Township 15 South, Range 14 East, San Bernardino Meridian, in the County of IMPERIAL, State of California, according to the United States Government Plat of Resurvey approved December 22, 1908 and filed in the United States Land Office at Los Angeles, California.

EXHIBIT G

PARTIAL LEASE TERMINATION AGREEMENT

This Partial Lease Termination Agreement ("Agreement") effective February 1, 2009, is made by and among Ralph Road, LLC, a California limited liability company ("Ralph"), FSC Construction, Inc., a Delaware corporation ("FSC"), and Building Materials Holding Corporation, a Delaware corporation ("BMHC") and is made with reference to the following facts:

A. On or about October 1, 2005, Ralph entered into that certain Triple Net Commercial Real Estate Lease ("Lease") with FSC for the premises commonly described as 340 West Ralph Road, Imperial County, California ("Premises"). A copy of the Lease is attached hereto as Exhibit B.

B. FSC and BMHC desire to terminate the Lease with respect to certain portions of the Premises comprising Sites 1-4, as more particularly described on Exhibit A to this Agreement ("Proposed Mobile Mini Premises") and abandon said Proposed Mobile Mini Premises effective on February 1, 2009.

C. The Premises have certain asphalt damages and the parties dispute when the damages occurred ("Asphalt Damages").

NOW THEREFORE, the parties agree as follows:

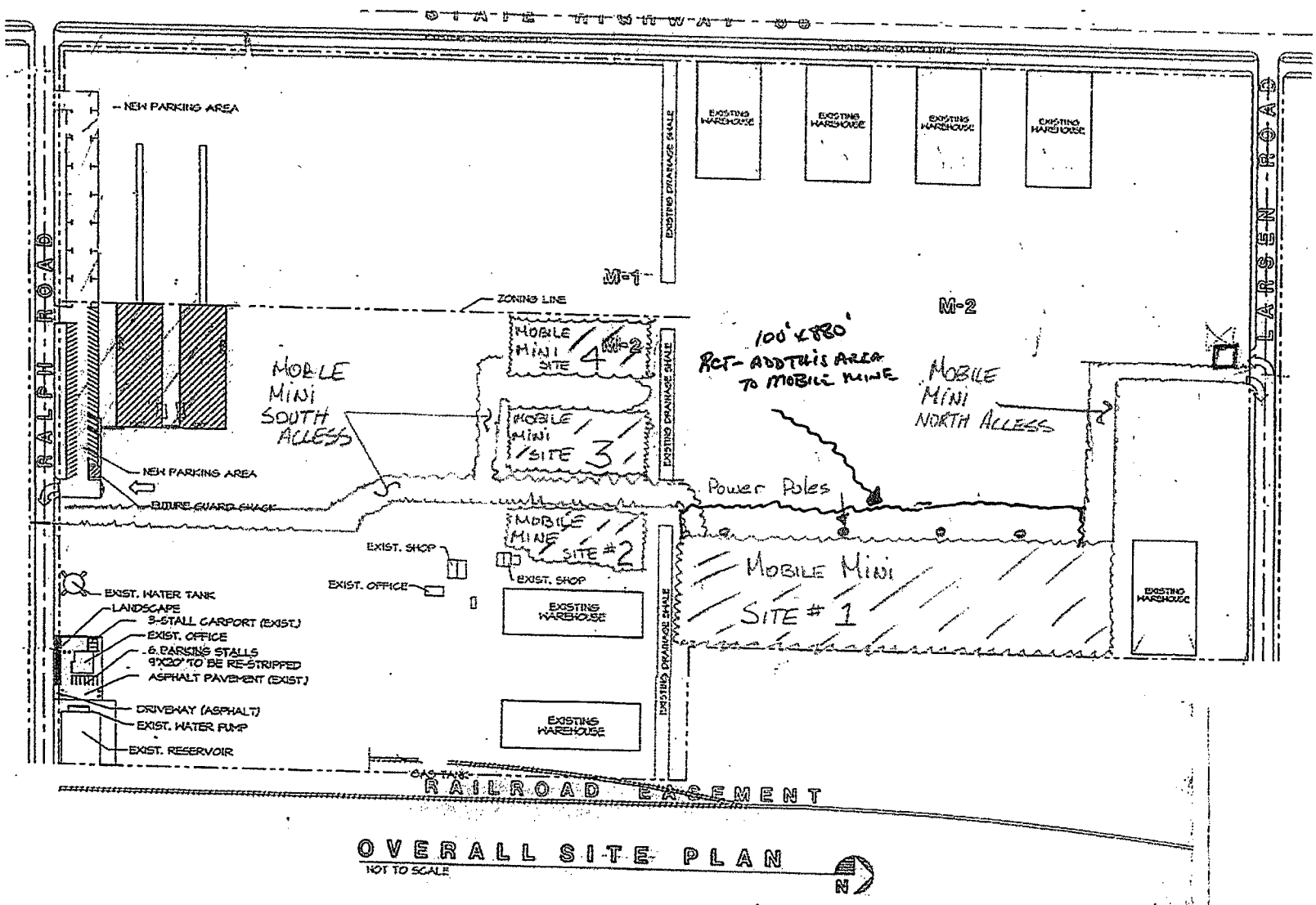
1. Consent. Upon execution of the Agreement and upon the payment of Five Thousand Dollars ($5,000) by Ralph to FSC and BMHC, Ralph shall thereupon consent to termination of the Lease with respect to and the abandonment of the Proposed Mobile Mini Premises by FSC and BMHC.

2. Release and Hold Harmless. As partial consideration of this Agreement, at such time that Mobile Mini actually occupies any of Sites 1-4 referenced above, Ralph does hereby release and hold harmless FSC and BMHC for the Asphalt Damages. Additionally, Ralph does hereby release and hold harmless FSC or BMHC for any damages of the Premises by Mobile Mini and its invitees.

3. Ingress and Egress. BMHC and FSC hereby agree that Mobile Mini and its invitees shall be allowed to access the Proposed Mobile Mini Premises over the Premises as designated on Exhibit A.

4. Binding Effect. This Agreement shall be binding on the parties, their personal representatives, successors and assigns and shall be governed by the laws of the State of California.

5. Mediation then Arbitration



OVERALL SITE PLAN

NOT TO SCALE

N

EXHIBIT A

2-6-09

EXHIBIT H

June 30, 2005

Mr. Bob Thomas
HnR Framing Systems, Inc.
13465 Gregg St.
Poway, CA 92064

Dear Bob:

The purpose of this letter is to describe the key terms of a proposed transaction among you ("Thomas"), BMC Construction, Inc. ("BMC Construction"), a wholly owned subsidiary of Building Materials Holding Corporation ("BMHC"), HnR Framing Systems, Inc.("HnR"), and Home Building Components, Inc. ("HBC" and together with HnR Framing Systems, Inc., "Target"). This letter represents a non-binding indication of interest. The terms and conditions set forth herein are based on financial information as of March 31, 2005 provided by HnR and are subject to a mutually agreeable definitive Purchase and Sale Agreement between the parties that shall include, but is not limited to, the following:

1. TRANSACTION STRUCTURE:

BMC Construction will form a new company ("Newco"), which will purchase 100% of the common stock of HnR and 100% of the non-cash net operating assets of HBC for $52,500,000 in cash, plus any cash balance in HnR or HBC, less any interest bearing debt in HnR or HBC. Interest bearing debt does not include any working capital components, such as payables, accrued expenses or billings in excess of costs. Debt does include the present value of any long-term non-real estate operating lease obligations in HnR or HBC. Non-cash net operating assets generally includes non-cash current assets, property, plant and equipment, and net of non-interest bearing current liabilities such as accounts payable, accrued expenses, and billings in excess of revenues earned. HnR will distribute to Thomas any non-operating assets and liabilities prior to the transaction closing. Newco will assume HnR's net deferred tax liability.

Cash consideration equal to 10% of the purchase price will be withheld by BMC Construction for 120 days to settle any post closing adjustments. The remainder of the consideration will be paid at closing. The holdback funds will be kept in an interest bearing account with the interest payable to Target.

Newco will assume operating leases into which Target has entered or sublease non-transferable equipment leases at Target's cost. Newco will enter into new leases with Thomas for any properties owned by Thomas and used by Target at fair market value lease rates.

RL

Until the time this transaction is closed, Thomas will run its business in a manner consistent with how the business was managed over the last twelve months.

The purchase price is based on the assumption that 60% of the amount paid will be for the purchase of HnR stock.

2. LIABILITIES:

Thomas will indemnify BMC Construction for contingent liabilities associated with activities performed by HnR and HBC prior to the closing or performed by Thomas outside of Newco. The amount of the indemnification will generally not exceed the after tax proceeds from this transaction, including contingent consideration discussed in 7 below. Thomas will provide BMC Construction with a ten-year term $5,000,000 discontinued completed operations insurance policy related to work performed by Target prior to the close, a $5,000,000 letter of credit with specific terms regarding withdrawal provisions, or provide unencumbered real estate lien collateral valued at $5,000,000 or greater. BMC Construction will indemnify Thomas for liabilities associated with construction activities performed by BMC Construction prior to the closing or performed by BMC Construction outside of Newco.

BMC Construction will take over responsibility for all insurance coverage for Newco following the closing. Health insurance carrier and coverage for all employees will not be changed for at least 6 months after the close.

3. CLOSING ADJUSTMENTS:

The purchase price will be subject to a Net Asset adjustment. The adjustment will be made at closing based on a good faith estimate of the amount by which the actual Net Assets of Target at closing exceeds or trails the average month-end Net Asset balance of Target for the twelve months ended March 31, 2005. The difference will produce the Net Asset adjustment to be applied to the purchase price.

Net Assets is equal to non-cash net working capital, exclusive of the current portion of long-term debt, plus the net book value of property, plant and equipment. For purposes of determining the purchase price, accounts receivable that are 90+ days past due as of the close date will be treated as excluded assets as well as account receivable that are 90+ days past due 90 days after the close date. Upon request, any excluded accounts receivable will be assigned to Thomas. Any excluded accounts receivable collected by Newco will be promptly remitted to Thomas.

Within 120 days after closing the Target balance sheet as of the closing date will be verified by BMC Construction and Thomas and any discrepancies between the estimated adjustments taken at closing and the actual adjustments will be reconciled from the purchase price holdback or promptly settled in cash.

4. FINANCING SOURCES:

BMHC will have sufficient liquidity to consummate the transaction outlined herein and have the lending facility to make available additional working capital up to $10,000,000 The transaction will require the approval of BMHC's board of directors and lenders.

5. MANAGEMENT AND REPORTING RELATIONSHIP:

Newco will do business under a name to be determined, consistent with BMC Construction's branding strategy.

Thomas will be the President of Newco, responsible for all ordinary operating decisions. Thomas will report to Robert Garcia and John Volkman, BMC Construction's California Region Co-Managers. Thomas will be a member of the Board of Directors of Newco for the four year contingent consideration period.

BMHC and BMC Construction will provide health care insurance coverage, IT services, legal services and supplementary safety, risk management, and human resource services to Newco at appropriate allocated cost.

6. EMPLOYEES:

Newco will hire all employees of Target at their current salary or wage rate. The employees will be credited with the years of service that they have accumulated with Target. BMHC and BMC Construction will provide career opportunities for those employees of Newco who have the desire and ability to progress in our company, the same as we offer to other employees at BMHC.

Newco will negotiate multi-year employment contracts for Thomas and other key employees. Each employment contract will provide for a minimum term and a minimum base salary in such amounts as the parties shall agree, and such other benefits, as are granted to other employees of BMC Construction holding similar positions. The employment agreements will also include a non-compete and non-solicitation provision with BMC Construction and Newco.

7. CONTINGENT CONSIDERATION:

For the first four years after the Newco's purchase of Target, Thomas will be eligible to receive additional purchase price consideration based on the operating results of Newco. BMHC will not add additional costs and corporate overhead that is inconsistent with what it charges other BMC Construction entities. The additional consideration to be paid to Thomas will be calculated as indicated in Exhibit 1.

The amount of contingent consideration due to Thomas will be paid on an annual basis. The calculation is not cumulative from one year to the next and it will never be a negative number.

8. DUE DILIGENCE AND APPROVALS:

The due diligence process would include customary tax, legal and accounting due diligence as well as reviews of operations and facilities. Upon acceptance of this proposal, we would begin our detailed review of Target and begin drafting a Purchase and Sale Agreement. We would anticipate this process to take no more than 120 days, upon the completion of which the final Purchase and Sale Agreement would be executed.

Newco will be formed as soon as practicable and it will apply for a contractor's license.

Any transaction would be subject to the negotiation and consummation of a mutually agreeable definitive Purchase and Sale Agreement which would include customary representations, warranties and covenants, indemnification for breaches of representations, warranties and covenants, indemnification for taxes and other matters, if any, identified in the due diligence process, and customary closing conditions, including legal opinions, the receipt of all necessary consents and approvals, including governmental, regulatory and bank approvals, consents required under agreements to which Target may be a party, if any, and approval of BMHC's lenders. This transaction may be subject to antitrust review under the Hart-Scott Rodino Antitrust Improvements Act of 1976.

BMC Construction and Target will pay their own transaction expenses.

9. EXCLUSIVE DEALING:

Upon acceptance of this proposal and for a period of 120 days thereafter, Thomas and Target will not enter into any agreement, discussion, or negotiation with, or provide information to, any other potential buyer or solicit or encourage offers from any other potential buyers for Target or its business (by means of a stock or asset sale, merger, consolidation, reorganization or any other transaction). HnR and HBC will be represented for sale or merger only by The JIAN Group. The JIAN Group, nor any other representative, will pursue any other potential buyer during this 120 day exclusive dealing period. Thomas shall be responsible for the payment of any and all amounts owing to The JIAN Group.

Thomas and Target will promptly notify BMHC if it receives an unsolicited offer with respect to the potential acquisition of Target and will provide BMHC in writing with all material terms of such offer. If Target breaches the terms of this Section 9, does not consummate the transactions contemplated by this LOI but instead consummates a transaction involving the sale of Target or its business (by means of a stock or asset sale, merger, consolidation, reorganization or any other transaction), then Target and Thomas shall be obligated to pay to BMHC liquidated damages in the aggregate amount of $1,000,000, in addition to any amounts due under Section 10.

10. BREAK UP FEE;

In the event that Thomas or Target withdraw the offer to sell within 120 days of signing this letter, and BMHC has not withdrawn its offer or materially changed its offer from the terms outlined herein, Target agrees to reimburse BMHC for all out-of-pocket expenses incurred by BMHC related to this transaction that were incurred after signing this LOI. In the event BMHC chooses not to pursue the transaction other than as a result of a material misstatement in the financial or other information previously provided to it or as a result of our assessment of pre-acquisition insurance coverage and outstanding claims, it will reimburse Target for all its expenses related to this transaction that were incurred after signing this LOI. Except as provided in Section 9, in no event will any reimbursement to either party exceed $100,000. All breakup fees referred to in this letter shall be treated as liquidated damages.

11. NON-BINDING OFFER:

This letter constitutes a statement of our mutual intentions with respect to the proposed purchase and sale of the assets of Target, does not contain all matters upon which agreement must be reached in order for the proposed purchase and sale to be consummated and therefore does not constitute a binding commitment with respect to the proposed purchase and sale. A binding commitment with respect to the proposed purchase and sale will result only from the execution and delivery of the definitive purchase agreement, subject to the conditions contained therein. Notwithstanding the above, the provisions of this Section 11, Section 9 (Exclusive Dealing), Section 10 (Break-Up Fee) and Section 12 (Confidentiality) are intended to be legally binding and enforceable obligations of the parties and will continue in full force and effect following the termination or expiration of this letter of intent.

12. CONFIDENTIALITY:

The contents of this proposal letter and any discussion between BMHC and Target, its agents, representatives or employees, regarding this proposal letter are subject to the provisions of that certain Non-Disclosure Agreement between BMHC and Target dated April 8, 2005 attached and shown as Exhibit 2.

If the terms of this indication of interest are agreeable to you, please sign below and return the executed copy to us and we will begin our definitive due diligence and drafting of the purchase and sale agreement. Please do not hesitate to call me if you have any questions.

Sincerely,

Michael Arth

Michael Arth
Vice President - Finance
BMC Construction

Agreed to in principle:

Bob Thomas _____ Date 6-30-05

HnR Framing Systems, Inc. and Home Building Components, Inc.

By: Bob Thomas _____ Date 6-30-05

EXHIBIT I

01005999
BMC0262977186

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM

Name of Debtor (Check Only One)	Case No	Name of Debtor	Case No
☐ Building Materials Holding Corporation	09-12074	☐ TWF Construction, Inc	09-12080
☐ BMC West Corporation	09-12075	☒ H N R. Framing Systems, Inc	09-12081
☐ SelectBuild Construction, Inc	09-12076	☐ SelectBuild Southern California, Inc	09-12082
☐ SelectBuild Northern California, Inc	09-12077	☐ SelectBuild Nevada, Inc	09-12083
☐ Illinois Framing, Inc	09-12078	☐ SelectBuild Arizona, LLC	09-12084
☐ C Construction, Inc	09-12079	☐ SelectBuild Illinois, LLC	09-12085

NOTE *This form should not be used to make a claim for an administrative expense arising after the commencement of the case, except for purposes of asserting an administrative expense under 11 U S C § 503(b)(9) (see Item 6 below) All other requests for payment of an administrative expense should be filed pursuant to 11 U S C § 503*

Your Claim is Scheduled As Follows.

THE GARDEN CITY GROUP, INC. AUG 31 2009

FILED - 02347
USBC-DISTRICT OF DELAWARE
BUILDING MATERIALS HOLDING CORPORATION, ET AL.
09-12074 (KJC)

Name of Creditor (the person or other entity to whom the Debtor owes money or property) GREGG STREET LLC

☐ Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent
c/o Dean T Kirby, Jr
Kirby & McGuinn, A P C
707 Broadway, Suite 1750
San Diego, CA 92101
Telephone number (619) 525-1652
Email Address dkirby@kirbymac com

Court Claim Number _____ (*If known*)

Filed on _____

Name and address where payment should be sent (if different from above)
Gregg Street, LLC
1620 Alpine Blvd , Suite 220
Alpine, CA 91901

Telephone number (619) 722-1226

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars

☐ Check this box if you are the Debtor or trustee in this case

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown Please review the Bar Date Notice to determine whether you must file a proof of claim to preserve your rights. The Bar Date Notice is available online at www bmhcrestructuring.com or upon request at the address on the back of this form.

THIS SPACE IS FOR COURT USE ONLY

1. Amount of Claim as of Date Case Filed $ 407,808 86

If all or part of your claim is secured, complete item 4 below, however, if all of your claim is unsecured, do not complete item 4 If all or part of your claim is entitled to priority, complete item 5 If your claim is asserted pursuant to 11 U S C § 503(b)(9), complete item 6.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim Attach itemized statement of interest or charges

2 Basis for Claim: Lease Rejection
(See instruction #2 on reverse side)

3. Last four digits of any number by which creditor identifies Debtor. _____

3a Debtor may have scheduled account as _____
(See instruction #3a on reverse side)

4. Secured Claim (See instruction #4 on reverse side)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information

Nature of property or right of setoff ☐ Real Estate ☐ Motor Vehicle ☐ Equipment ☐ Other
Describe

Value of Property. $_____ **Annual Interest Rate** ___ %

Amount of arrearage and other charges as of time case filed included in secured claim,

if any. $_____ **Basis for perfection:** _____

Amount of Secured Claim $_____ **Amount Unsecured:** $_____

6. Claim Pursuant to 11 U.S.C. § 503(b)(9)
Indicate the amount of your claim arising from your provision of goods sold to a Debtor in the ordinary course of the Debtor's business in the 20 days before June 16, 2009
Attach documentation supporting such claim. $_____

7 Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim

8. Documents Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages and security agreements You may also attach a summary Attach redacted copies of documents providing evidence of perfection of a security interest You may also attach a summary (*See instruction #8 and definition of "redacted" on reverse side*)

DO NOT SEND ORIGINAL DOCUMENTS ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING

If the documents are not available, please explain in an attachment.

5 Amount of Claim Entitled to Priority under 11 U.S C § 507(a) If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim

☐ Domestic support obligations under 11 U S C § 507(a)(1)(A) or (a)(1)(B)

☐ Wages, salaries, or commissions (up to $10,950) earned within 180 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier – 11 U S C § 507(a)(4)

☐ Contributions to an employee benefit plan – 11 U S C § 507(a)(5)

☐ Up to $2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U S C § 507 (a)(7)

☐ Taxes or penalties owed to governmental units – 11 U S C § 507 (a)(8)

☐ Other – Specify applicable paragraph of 11 U S C § 507(a)(__) [Note Do not include Section 503(b)(9) Claims here]

Amount entitled to priority

$_____

Date: 8/28/09	**Signature:** The person filing this claim must sign it Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above Attach copy of power of attorney, if any /s/ Dean T Kirby, Jr , Attorney for Creditor	FOR COURT USE ONLY

Penalty for presenting fraudulent claim Fine of up to $500,000 or imprisonment for up to 5 years, or both 18 U S C §§ 152 and 3571
Modified B10 (GCG) (12/08)

08-31-09A11:06 RCVD

KIRBY & McGUINN
A PROFESSIONAL CORPORATION

707 BROADWAY SUITE 1750
SAN DIEGO, CA 92101-4515
HTTP //WWW KIRBYMAC COM

JAMES P CASTRANOVA II
C COLIN COSSIO
JANA LOGAN
MARTIN T MCGUINN
KENNETH C NOORIGIAN
CHERYL EDWARDS TANNENBERG

DEAN T KIRBY, JR
VOICE 619 525-1652
FAX 619 525-1651
E-MAIL DKIRBY@KIRBYMAC COM

August 28, 2009

VIA OVERNIGHT DELIVERY
The Garden City Group
Attn Building Materials Holding Corporation
5151 Blazer Parkway, Suite A
Dublin, OH 43017

Re *In re Building Materials Holding Corporation*
Consolidated Case No 09-12074
United States Bankruptcy Court, District of Delaware

Ladies and Gentlemen

Enclosed are twelve proofs of claim, listed below, which are intended to be filed separately in the cases indicated THERE ARE NO DUPLICATES ENCLOSED, AND NO COPIES TO CONFORM

CREDITOR	DEBTOR	AMOUNT
Robert R Thomas	SelectBuild Construction, Inc Case No 09-12076	$400,000 00
Restated Robert R Thomas Trust	SelectBuild Construction, Inc Case No 09-12076	$400,000 00
Ralph Road, LLC	Building Materials Holding Corporation Case No 09-12074	$418,408 22
Ralph Road, LLC	BMC West Corporation Case No 09-12075	$418,408 22
Ralph Road, LLC	SelectBuild Construction, Inc Case No 09-12076	$418,408 22
Ralph Road, LLC	HNR Framing Systems, Inc Case No 09-12081	$418,408 22

Gregg Street, LLC	Building Materials Holding Corporation Case No 09-12074	$407,808 86
Gregg Street, LLC	BMC West Corporation Case No 09-12075	$407,808 86
Gregg Street, LLC	SelectBuild Construction, Inc Case No 09-12076	$407,808 86
Gregg Street, LLC	HNR Framing Systems, Inc Case No 09-12081	$407,808 86
Crosthwaite Circle, LLC	SelectBuild Construction, Inc Case No 09-12076	Unk (Contingent)
Robert R Thomas	Building Materials Holding Corporation Case No 09-12074	$8,714 02

If you have any questions, please don't hesitate to telephone me personally

Very Truly Yours,

Dean T Kirby, Jr

1	Rent reserved by the lease, without acceleration, for the greater of one year or 15 percent not to exceed three years, of the remaining term of the lease		
	1 1 Lease term excluding unexercised tenant options 60 months		
	1 2 Term Commencement date 10/1/2005		
	1 3 Remaining term from 6/16/2009· 15 months (through 9/30/2009)		
	1 4 Greater of 12 months or 15% of remaining term 12 months		
	1 5 Rent (due 7/1/2009 – 6/30/2010)**	$ 366,968 68	
	1 6 Total Future Rental Damages		$ 366,968 68
2	Unpaid rent due under lease, without acceleration, on *6/16/2009		
	2 1 Rent (due June 1, 2009)	$ 38,168 39	
	2 2 Late charge(s)	2,671 79	
	2 3 Total Unpaid		40,840 18
	3 (Less) Security Deposit Subject to Offset		(none)
	4 Total General Unsecured Claim		$ 407,808 86

* Date shown should be the same on lines 1 3 and 2, and is the earlier of 6/16/2009, the date of filing of the bankruptcy petition, or the date on which the lessor repossessed, or the tenant surrender, the leased property

** See following page for summary of line 1 5 and line 2 0 computation

In addition to amounts shown, the Lease Termination Agreement, a copy of which is attached to this proof of claim, obligates the tenant to indemnify against losses suffered by reason of the failure of substitute tenants to pay rent

Claimant does not waive the alternative dispute resolution provisions contained in the lease, and demands that any dispute relating to this claim be submitted first to mediation and then if necessary to binding arbitration

Claimant is uncertain as to which of the Debtor entities is the successor in interest to the original tenant In an abundance of caution, duplicate claims have been concurrently filed in (i) In re Building Materials Holding Corporation No 09-12074, (ii) In re BMC West Corporation, No 09-12075, (iii) In re SelectBuild Construction, Inc No 09-12076, and (iv) HNR Framing Systems, Inc. NO 09-12081

Schedule 1
Rent Defect Payments

	Price Sq Ft	Total Rents Owed to Gregg St	13465 Gregg Due from Complete Office	13495 Gregg Due from Sun Star	13465 Gregg Mo Assess Spectrum Property	13465 Gregg Property Taxes	13465 Gregg Building Insurance	Due from BMHC	BMHC Payments	Date	BMHC Payments	Date	Bal Due] From BMHC
January-08	1 247	71,080	23,800 00		444 95			47,724 95	71 080 00	1/7/2008	444 95	3/23/2008	-23,800 00
February-08	1 247	71,080	23 800 00		444 95			47,724 95	71 080 00	2/5/2008	444 95	2/13/2008	-47,600 00
March-08	1 247	71,080	11,900 00		444 95			59,624 95	11 580 00	3/5/2008	444 95	4/2/2008	0 00
April-08	1 247	71,080	23,800 00		444 95	17,531 04		65,255 99	47 280 00	4/8/2008	17 976 04	4/8/2008	-0 05
May-08	1 247	71,080	23,800 00		444 95			47,724 95	47 280 00	5/13/2008	444 95	6/2/2008	-0 05
June-08	1 247	71 080	23,800 00		444 95			47 724 95	47 280 00	6/5/2008	444 95	7/16/2008	-0 05
July-08	1 247	71,080	23 800 00		444 95			47 724 95	47,280 00	7/1/2008	444 95	7/16/2008	-0 05
August-08	1 247	71,080	23,800 00		444 95			47 724 95	47,280 00	7/29/2008	444 95	7/29/2008	-0 05
September-08	1 247	71 080	23,800 00		444 95			47,724 95	47 280 00	9/2/2008	444 95	9/3/2008	-0 05
October-08	1 284	73,212	23,800 00	21,120 00	77 00		72 50	28,441 50	49,412 00	9/30/2008	444 95	9/30/2008	-21 415 50
November-08	1 284	73,212	23,800 00	10,560 00	76 89	2,989 30	72 50	41,990 69	49,412 00	11/4/2008	444 95	11/4/2008	-29,281 76
December-08	1 284	73,212	23,800 00	10,560 00	76 89		72 50	39,001 39	9,642 44	11/28/2008	76 89		0 30
January-09	1 284	73 212	24,633 00	10 560 00	76 89		72 50	38 168 39	38,168 39	1/5/2009			0 30
February-09	1 284	73,212	24,633 00	10 560 00	76 89		72 50	38,168 39	38,168 39	2/3/2009			
March-09	1 284	73 212	12 317 00	10,560 00	76 89		72 50	50 484 39	50 484 39	3/3/2009			
April-09	1 284	73,212	24 633 00	10,560 00	76 89	2,989 00	72 50	41,157 39	41,157 39	3/31/2009			
May-09	1 284	73 212	24,633 00	10 560 00	76 89		72 50	38,168 39	38,168 39	5/5/2009			
June-09	1 284	73,212	24,633 00	10,560 00	76 89		72 50	38,168 39					
July-09	1 284	73,212	24,633 00	10,560 00	76 89		72 50	38,168 39					
August-09	1 284	73,212	24,633 00	10,560 00	76 89		72 50	38,168 39					
September-09	1 284	73 212	24,633 00	21,120 00	76 89		72 50	27,608 39					
October-09	1 323	75,409	24,633 00	21 859 00	76 89		72 50	29 066 39					
November-09	1 323	75,409	24,633 00	21,859 00	76 89	2,989 00	72 50	32,055 39					
December-09	1 323	75,409	24,633 00	21 859 00	76 89		72 50	29 066 39					
January-10	1 323	75,409	25 495 00	21,859 00	76 89		72 50	28,204 39					
February-10	1 323	75,409	25,495 00	21,859 00	76 89		72 50	28,204 39					
March-10	1 323	75 409	25,495 00	21,859 00	76 89		72 50	28,204 39					
April-10	1 323	75 409	25,495 00	21,859 00	76 89	2,989 00	72 50	31,193 39					
May-10	1 323	75,409	25,495 00	21,859 00	76 89		72 50	28 204 39					
June-10	1 323	75,409	25,495 00	21,859 00	76 89		72 50	28,204 39					
July-10	1 323	75,409	25,495 00	21,859 00	76 89		72 50	28,204 39					
August-10	1 323	75,409	25,495 00	21 859 00	76 89		72 50	28 204 39					
September-10	1 323	75,409	25,495 00	21,859 00	76 89		72 50	28,204 39					
		2,423,174	786 436	410,148	1,845	11 956	1,740	1,263,666					-122,097

Estimates - will follow up with you if there are any changes

Building Insurance

5738 year total	Complete Office = 84 84%	4,868
	BMHC	870

TRIPLE NET COMMERCIAL REAL ESTATE LEASE

This Triple Net Commercial Real Estate Lease ("Lease") is hereby made and entered into by and between Gregg Street, LLC, a California limited liability company ("Lessor"), and HNR Framing Systems, Inc , a California corporation ("Lessee" or "Buyer") (Lessor and Lessee sometimes collectively referred to herein below as the "Parties"), as of this 1st day of October, 2005 ("Effective Date") with reference to the following facts

RECITALS

A. **WHEREAS** pursuant to (i) that certain Securities Purchase Agreement ("SPA") dated as of the date even herewith between Lessee, Robert R Thomas, Trustee of the Restated Robert R. Thomas Trust dated April 14, 1999 ("Shareholder"), and BMHC, Inc , a Delaware corporation ("BMHC"), Shareholder has agreed to sell to BMHC and BMHC has agreed to purchase from Shareholder, all of the issued and outstanding capital stock in Lessee at the price and upon the terms and conditions as are contained in the SPA, and (ii) that certain Asset Purchase Agreement ("APA") dated as of the date even herewith between Lessee and Home Building Components, Inc , a California corporation ("HBC"), HBC has agreed to sell to Buyer and Buyer has agreed to purchase from HBC, the assets and liabilities as described in the APA, at the price and subject to the terms and conditions set forth therein, and

B. **WHEREAS** pursuant to the APA Lessor and Lessee have agreed to enter into a Lease whereby Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the Premises as set forth more fully hereinafter

THEREFORE, in consideration for all obligations, responsibilities and other consideration hereby acknowledged, the Parties agree as follows

1 Premises For purposes of this Lease, Premises shall mean that certain real property, including any improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 13465 & 13495 Gregg Street, located in the City of Poway, County of San Diego, State of California, and generally described as the shop/warehouse space & building(s) situated thereon ("Building"), and unimproved and improved real property ("Land") described in Exhibit A to this Lease and made a part hereof

1 1 The Premises shall be used only for roofing truss, floor, and wall framing manufacturing operations, including without limitation any receiving, shipping and general office/administrative operations associated therewith, and related uses consistent with applicable law

1 2 Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental and upon all the terms, covenants and conditions set forth in this Lease Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating rental, is an approximation, which the Parties agree is reasonable and the rental based thereon is not subject to revision whether or not the actual size is more or less

2 Term Five (5) years and Zero (0) months ("Term") commencing as of the Effective Date ("Commencement Date") and ending Five (5) years from the first day of the first month following the Effective Date unless extended by operation of Paragraph 31 or otherwise earlier terminated only as specifically provided herein ("Expiration Date")

3 Rent

3 1 Rent shall be Sixty Seven Thousand Dollars ($67,000) per month ("Base Rent"), due on the first (1st) day of each month commencing on the Commencement Date, provided that Lessee shall have until the fifth (5th) day of each month during the Term in which to make payment to Lessor without penalty During the Term, unless modified in writing by the Parties and except as modified by operation of Paragraph 3 1 below, the Base Rent then in effect shall be increased by three percent (3%) on the annual anniversary of the Commencement Date every Lease Year (as it is defined herein) For purposes of this Lease, the term "Lease Year" means a one (1) year period commencing with the Commencement Date Notwithstanding anything to the contrary contained herein this Lease, in the event Lessee excercises an Option (as defined herein) during the Term, the Base Rent for the first year of any such Option exercised shall be established as follows

3 1 1 The Base Rent payable for renewal of the Term through exercise of the first Option shall be the greater of (a) the Fair Market Rental Value (as defined herein) as of the last day of the fifth anniversary of the Commencement Date, and (b) one hundred three percent (103%) of the Base Rent in effect as of the fifth Lease Year For purposes of this Lease, Fair Market Rental Value shall mean, with respect to Premises, the fair market monthly rental value that would be obtained in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor, in either case under no compulsion to lease, and neither of which is related to Lessor or Lessee for the lease of Premises on the terms set forth herein this Lease, assuming that the Premises are in a condition and repair required to be maintained by the terms of this Lease

3 1 2 The Base Rent payable for renewal of the Term through exercise of the second Option shall be the greater of (a) the Fair Market Rental Value (as defined herein) as of the last day of the tenth anniversary of the Commencement Date, and (b) one hundred three percent (103%) of the Base Rent in effect as of the tenth Lease Year

3 2 All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit (as defined herein)) are deemed to be rent, which shall include but not be limited to Base Rent ("Rent")

3 3 Lessee shall cause payment of Rent to be received by Lessor in United States currency, without any offset or deduction (except as specifically permitted in this Lease), on or before the date on which is due Rent for any period during the term hereof which is for less than one (1) full calendar month shall be pro rated based upon the actual number of days of said month Payment of rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor' endorsement of any check so stating

4 Use.

4 1 Lessee shall use and occupy the Premises according to the use set forth in Paragraph 1 1 herein, and for no other purpose Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners or occupants of, or causes damage to neighboring properties Lessee shall not make any improvements or modifications to the Premises without Lessor's written approval, such approval not to be unreasonably withheld

4 2

4 2 1 The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, 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 Lessor to any governmental agency or third party under any applicable statute or common law theory Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance at Lessee's expense with all Applicable Requirements For purposes of this Lease, Applicable Requirements shall mean compliance with all applicable governmental laws, ordinances and regulations For purposes of this Lease, "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/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration of termination) of protective modifications (such as concrete encasements)

4 2 2 If Lessee 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 consent to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance

4 2 3 Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or Lessee's agents, employees, or contractors

4 2 4 Lessee shall indemnify, defend and hold Lessor, its agents, employees, and lenders harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or Lessee's agents, employees, contractors, or invitees (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties) Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or uffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease No termination, cancellation or release agreement entered

into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement

4 3 Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the reasonable requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Commencement Date Lessee shall, within ten (10) days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with Applicable Requirements as specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements

4 4 Lessor and its consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times upon reasonable prior notice to Lessee, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements or the inspection is requested or ordered by governmental authority with respect to the activities of Lessee or its agents, employees, contractors, or invitees on or about the Premises In such case, Lessee shall upon request reimburse Lessor for the cost of such inspections, so long as such inspection is reasonably related to the violation or contamination resulting from the activities of Lessee or its agents, employees, or contractors on or about the Premises

5. Maintenance and Repairs

5 1 Subject to the provisions of this Lease and during the Term, Lessee shall, at Lessee's sole expense, keep and maintain the Premises, utility installations, and alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accesible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of ventilating Premises) including, but not limited to, all equipment or facilities, such as plumbing, heating, ventilating, air-conditioning, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform regular maintenance practices Lessee's obligations shall include restorations and replacements as necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity

5 2 Lessee, at its sole expense, shall maintain in good order and repair and perform regular maintenance on (in accordance with commercially reasonable management practices and applicable warranty requirements) the following equipment and improvements, if any, if and when installed on the Premises (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguisher systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, (vi) driveways, (vii) parking lots, and (viii) basic utility feed to the perimeter of the Building (collectively "Basic Elements")

5.3 Lessee shall not be required to perform any repairs or maintenance to the Premises necessitated by reason of the negligence of Lessor or by reason of the failure of Lessor to perform obligations of this Lease

5.4 Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and services thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice Lessee shall repair any damage occasioned by the installation, maintenance or removal of its personal property and equipment The failure by Lessee to timely vacate Premises pursuant this Paragraph without the express written consent of Lessor shall constitute a holdover

5.5 Except as specifically set forth herein,, it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be those of the Lessee It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease

6 Insurance

6 1 Except for Lessor's gross negligence, and to the extent permitted by law, Lessee waives any claims it may have against Lessor or its officers, managers, employees or agents for business interruption or damage to property sustained by Lessee as the result of any act or omission of Lessor

6 2 Lessee shall maintain insurance as follows, with such other terms, coverages and insurers, as Lessor shall reasonably require from time to time

6 2 1 Commercial General Liability Insurance, with (a) Contractual Liability including the indemnification provisions contained in this Lease, (b) a severability of interest endorsement, (c) limits of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence and not less than Two Million Dollars ($2,000,000) in the aggregate for bodily injury, sickness or death, and property damage, and umbrella coverage of not less than Five Million Dollars ($5,000,000)

6 2 2 Property Insurance against "All Risks" of physical loss covering the replacement cost of all improvements, fixtures and personal property Lessee waives all rights of subrogation, and Lessee's property insurance shall include a waiver of subrogation in favor of Lessor

6 2 3 Lessee's insurance shall be primary and not contributory to that carried by Lessor, its agents, or Lessor's Lender, if any Lessor shall be named as an additional insured as respects insurance required of the Lessee in this Paragraph 6 The company or companies writing any insurance that Lessee is required to maintain under this Lease, as well as the form of such insurance, shall be licensed to do business in the state in which the Premises are located Such insurance companies shall have an A M Best rating of A or better

7 Indemnity

7 1 Except for Lessor's negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground Lessor, partners and Lenders, from and against any and all claims, and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense Lessor need not have first paid any such claim in order to be defended or indemnified Subject to any limitations set forth in this Lease, Lessor shall indemnify, protect, defend, and hold harmless Lessee and its officers, directors, shareholders, and agents from and against any and all claims, damages, liens, judgments, penalties, attorneys and consultants' fees, expenses, and/or liabilities to the extent arising out of, involving, or in connection with the gross negligence or willful misconduct of Lessor If any action is brought against Lessee by reason of any of the foregoing matters, Lessor shall upon notice defend the same at Lessor's expense by counsel reasonably satisfactory to Lessee, and Lessee shall cooperate with Lessor in such defense Lessee need not have first paid any such claim in order to be defended or indemnified

7 2 Except to the extent of Lessor's gross negligence or willful misconduct and subject to the its specific obligations hereunder, Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Promises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, or from other sources or places

8 Damage or Destruction

8 1 Definitions

8 1 1 "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned alterations and utility installations and trade fixtures, which can reasonably be repaired in six (6) months or less from the date of the damage or destruction Lessor shall notify Lessee in writing within sixty (60) days from the date of the damage or destruction as to whether or not the damage is Partial or Total

8 1 2 "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Lessee owned alterations and utility installations and trade fixtures, which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction

8 1 3 "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee owned alterations and utility installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 6 above related to the Premises

8 1 4 "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation

8 1 5 "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 5 in, on, or under the Premises

8 2 If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense and subject to all application of all applicable insurance proceeds, repair such damage (but not Lessee's Trade Fixtures or Lessee owned alterations and utility installations) as soon as reasonably possible and this Lease shall continue in full force and effect Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to affect such repair, the Lessor shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within available days following receipt of written notice of such shortage and request therefor If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or have this Lease terminate thirty (30) days thereafter Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 8 3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party

8 3 If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense) Lessor may either (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage Such termination shall be effective sixty (60) days following the date of such notice In the event Lessor elects to terminate this Lease, Lessee shall have the right within ten (10) days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days after making such commitment In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs, as soon as reasonably possible after the required funds are available If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice

8 4 Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate sixty (60) days following such Destruction If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee and is not covered by insurance, Lessor shall have the right to recover Lessor's damages to the extent not covered by insurance) from Lessee, except as provided in Paragraph 7

8 5 If at any time during the last six (6) months of this Lease there is Premises Partial Damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessee or Lessor may terminate this Lease effective sixty (60) days following the date of occurrence of such damage by

giving written termination notice to the other party within thirty (30) days after the date of occurrence of such damage Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is ten days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished Notwithstanding anything in this section to the contrary, if Lessee elects to exercise its option to extend the Lease and the loss is an Insured Loss, Lessee shall not be obligated to contribute funds for repair or rebuilding in excess of he amount Lessee is obligated to contribute funds for repair or rebuilding in excess of the amount Lessee is obligated to contribute under Paragraph 8 2

8 6 Abatement of Rent, Lessee's Remedies

8 6 1 In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation of or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, emediation, repair or restoration except as provided herein Any repair or restoration which Lessor is required to make under this Lease shall be accomplished with due diligence

8 6 2 If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within one hundred twenty (120) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice If Lessee gives such notice and such repair or restoration is not commenced within thirty (30) days thereafter, this Lease shall terminate as of the date specified in said notice and Lessee may exercise any available rights or remedies If the repair or restoration is commenced within said thirty (30) days, this Lease shall continue in full force and effect "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs

8 7 Upon termination of this Lease pursuant to Paragraph 5 or Paragraph 8, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be used by Lessor pursuant to the terms of this Lease

8 8 Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith

8 9 The provisions of Paragraphs 8 2 and 8 3 to the contrary notwithstanding, in the event Lessor fails to substantially complete restoration of damage or destruction of the Premises which Lessor is

required or elects to perform pursuant to said paragraphs within one hundred eighty (180) days after commencement of such restoration or repairs, upon prior written notice, the Lessee may terminate this Lease, provided, however that if Lessor substantially completes the restoration within ninety (90) days after receipt of such notice, this Lease shall not terminate and shall continue in full force and effect

9 Real Property Taxes

9 1 As used herein, the term "Real Property Taxes" shall include any form of assessment, real estate, general, special, ordinary, extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes), improvement bond, and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed or resulting from action by any governmental entity, or imposed as a result of any change of assessment or increase of tax, fee, levy imposed as a result of a change in ownership of the Premises

9 2 Lessee shall pay the Real Property Taxes applicable to the Premises during the term of this Lease Subject to Paragraph 9 2(b), all such payments shall be made prior to any delinquency date Upon Lessor's request, Lessee shall promptly furnished Lessor with satisfactory evidence that such taxes have been paid If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect, and Lessor shall reimburse Lessee for any overpayment If Lessee shall fail to pay any required Real Property Taxes, Lessor shall have the right to pay the same, and Lessee shall reimburse Lessor therefor upon demand

9 3 In the event Lessee incurs a late charge on any Rent payment, Lessor may, at Lessor's option,, estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee, either (i) in a lump sum amount equal to the installment due, at least ten (10) days prior to the applicable delinquency date, or (ii) monthly in advance with the payment of the Base Rent If Lessor elects to require payment monthly in advance, the monthly payment shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations All monies paid to Lessor under this Paragraph may be intermingled with other monies of Lessor and shall not bear interest In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any balance of funds paid to Lessor under the provisions of this Paragraph may, at the option of Lessor, be treated as a Security Deposit

9 4 Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee owned alterations, utility installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee When possible, Lessee shall cause such property to be assessed and billed separately from the real property of Lessor If any of Lessee's aid personal property shall be assessed with Lessor's real property, Lessee hall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement

10 Utilities Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon

11 Assignment and Subletting

11 1 Lessee shall not voluntarily nor by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld

11 2 Permitted Transfers. Notwithstanding anything to the contrary above Lessee shall have the right, without the consent of Lessor, but upon not less than 15 days' prior notice to Lessor, to assign this Lease or sublet the Premises (i) to any parent, subsidiary or affiliate corporation or entity, or (ii) to any corporation resulting from the consolidation or merger of Lessee into or within any other entity, or (iii) to any firm, entity or corporation acquiring in one contemporaneous transaction all or substantially all of the stock or assets of Lessee or the division of Lessee occupying the Premises Any transfer pursuant to (i), (ii) or (iii) above shall be subject to the following conditions that any such assignment, sublease or transfer shall be subject to all of the terms, covenants and conditions of this Lease, any assignee shall expressly assume for the benefit of Lessor the obligations of Lessee under the Lease by a document reasonably satisfactory to Lessor, and Lessee shall provide to Lessor copies of documents sufficient to verify that the transfer qualifies under this paragraph No such transfer shall release Lessee from liability As used herein, the expression "affiliate corporation or entity" means a business entity, corporate or otherwise, that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Lessee The word "control" means the right and power, direct or indirect, to direct or cause the direction of the management and policies of a person or business entity, corporation or otherwise, through ownership of more than fifty percent (50%) of the voting stock (or other relevant ownership interests) of the entity in question

11 3 Terms and Conditions Applicable to Assignment and Subletting

11 3 1 Regardless of Lessor's consent, any assignment or subletting shall not (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee

11 3 2 Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach

11 3 3 Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting

11 3 4 In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor

11 3 5 Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested

11 3 6 Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing

11 4 The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein

11 4 1 In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease, provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor

11 4 2 Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor

11 4 3 No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld

11 4 4 Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee

12 Default, Breach, Remedies

12 1 A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or duties under this Lease A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period

12 1 1 The abandonment of the Premises, or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 7 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism, which continues for twenty (20) or more days after written notice from Lessor

12 1 2 The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens

life or property, where such failure continues for a period of three (3) business days following written notice to Lessee

12 1 3 The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) any document requested under Paragraph 39 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice to Lessee

12 1 4 A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, other than those described in Paragraph 12, where such Default continues for a period of thirty (30) days after written notice, provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion

12 1 5 The occurrence of any of the following events (i) the making of any general arrangement or assignment for the benefit of creditors, (ii) becoming a "debtor" as defined in 11 U S C §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days, (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days, or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days, provided, however, in the event that any provision of this subparagraph 12 1 5 is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions

12 2 If Lessee fails to perform any of its affirmative duties or obligations, within ten (10) days after written notice or as it is required by Paragraph 12 1 4 above after notice from Lessor and within the cure period provided for in said paragraph, Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefor In the event of a Breach, Lessor may, with or without further notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach

12 2 1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor In such event Lessor shall be entitled to recover from Lessee (i) the unpaid Rent which had been earned at the time of termination, (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 the Lessee proves could have been reasonably avoided, (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 the Lessee proves could be reasonably avoided, and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease The worth at the time of award of the amount referred to

in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the San Francisco Federal Reserve Bank plus one percent (1%) Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 11 If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any party thereof in a separate suit If a notice and grace period required under paragraph 12 1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 12 1 In such case, the applicable grace period required by Paragraph 12 1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitled Lessor to the remedies provided for in this Lease and/or by said statute,

12 2 2 Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession, or

12 2 3 Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnify provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises

12 4 Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender Accordingly, if any Rent shall not be received by Lessor within seven (7) days after such amount shall be due more than once in any six (6) month period then, Lessee shall pay to Lessor a late charge equal to seven percent (7%) of each such overdue amount in any month such amounts remain unpaid The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default of Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance

12 5 Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor For purposes of this Paragraph, a reasonable time, for non-emergency matters, shall in no event be less than thirty (30) days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion

13 Condemnation If the Premises or any portion thereof are taken under the power of eminent omain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs If more than ten percent (10%) of any building portion of the Premises, or more than twenty-five percent (25%) of the land area portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages, provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph All alterations and utility installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such condemnation

14 Brokers' Fee There is no Brokers' Fee to be paid by either Party in conjunction with this Lease transaction Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder in connection with this Lease, and that no one is entitled to any commission or finder's fee in connection herewith Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, and/or attorneys' fees reasonably incurred with respect thereto

15 Estoppel Certificates

15 1 Each Party (as "Responding Party") shall within fourteen (14) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party an Estoppel Certificate plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party

15 2 If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such ten day period, the Requesting Party may execute an Estoppel Certificate stating that (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if lessor is the Requesting Party, not more than one month's Rent has been paid in advance Prospective purchasers and encumbrancers may relay upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate

15 3 If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, or if Lessee should be in default of the Lease, upon five (5) days prior written notice, Lessee shall deliver to any potential lender or purchaser designated by Lessor, or to Lessor in the event of a default, such financial statements as may be reasonably required by such lender or purchaser, including, but not limited to, Lessee's financial statements for the past three (3) years All such financial statements shall be received by Lessor and such lender

or purchaser in confidence and shall be used only for the purposes herein set forth Notwithstanding the foregoing, if Lessee is a publicly traded corporation subject to ongoing periodic SEC financial reporting requirements, Lessee may provide Lessor copies of the SEC financial filings in lieu of such financial statements

16 Definition of Lessor The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the premises In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by lessor Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined Notwithstanding the above, and subject to the provisions of Paragraph 18 below, the original Lessor under this Lease, and all subsequent holders of the Lessor's interest in this Lease shall remain liable and responsible with regard to the potential duties and liabilities of Lessor pertaining to Hazardous Substances as outlined in Paragraph 5 above

17 Severability The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provisions hereof

18 Time of Essence Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease

19 No Prior or Other Agreements This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding other than the Agreement referenced herein shall be effective as of the Effective Date

20 Notices

20 1 All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U S Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 20 The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices A copy of all notices to Lessee shall be sent to Paul Street, General Counsel, BMHC, 720 Park Blvd , Suite 200, Boise, ID 83712-7714, Facsimile (208) 331-4477 A copy of all notices to Lessor shall be sent to Richard K Circuit, Esq , Circuit, McKellogg, Kinney & Ross, LLP, 1205 Prospect Street, #400, La Jolla, CA 92037, facsimile (858) 459-0690 Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the premises shall constitute Lessee's address for notice A copy of all notices to lessor (or Lessee) shall be concurrently transmitted to such party or parties at such addresses as Lessor (or Lessee) may from time to time hereafter designate in writing

20 2 Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is show, the postmark thereon If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier Notices transmitted by facsimile transmission or similar means shall be deemed

delivered upon telephone confirmation of receipt, provided a copy is also delivered via delivery or mail If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day

21 Waivers No waiver by Lessor or Lessee of the Default or Breach of any term, covenant or condition hereof, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach of the same or of any other term, covenant or condition hereof The acceptance of Rent by lessor shall not be a waiver of any Default or Breach by lessee Any payment by lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by lessor at or before the time of deposit of such payment

22 Holdover Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease In the event that Lessee holds over, then the Base Rent shall be increased to one hundred fifty percent (150%) of the Base Rent applicable during the month immediately preceding the expiration or termination Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee

23 Cumulative Remedies No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity

24 Covenants and Conditions All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease Whenever required by the context, the singular shall include the plural and vice versa

25 Binding Effect, Choice of Law This Lease shall be binding upon the parties, their personal representatives, successors and assigns and shall be governed by the laws of the State of California

26 Subordination, Attornment, Non-Disturbance

26 1 This Lease and any Option granted hereby shall be subject and subordinate to any mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lessor's Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof

26 2 Subject to the non-disturbance provisions of Paragraph 26 3, Lessee agrees to attorn to a Lender or any other party who acquires ownership fo the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, or (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor

26 3 With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance

agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof (beyond any applicable cure period) and attorns to the record owner of the Premises Further, within thirty (30) days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises In the event that Lessor is unable to provide the Non-Disturbance Agreement within said thirty (30) days, then Lessee or Lessor may terminate this Lease without liability to either party by giving written notice of termination within ten (10) days of any such thirty (30) day period

26 4 Except as provided in Paragraph 26 3, the agreements contained in this Paragraph 26 shall be effective without the execution of any further documents, provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-disturbance Agreement provided for herein

27 Attorneys' Fees If any Party brings an action or proceeding involving the Premises to enforce the terms hereof or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment

28 Lessor's Access, Showing Premises, Repairs Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times and upon reasonable prior notice to Lessee, for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary All such activities shall be without abatement of rent or liability to Lessee Lessor may at any time place on the Premises any "For Sale" signs and Lessor may during the last six (6) months of the term hereof place on the Premises any ordinary "For Lease" signs provided that such signs do not unreasonably interfere with Lessee's operation of the Premises

29 Signs Lessee shall not place any sign upon the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld All signs must comply with all Applicable Requirements Notwithstanding the foregoing, and subject to Applicable Requirements, Lessee shall have the right to maintain or install signs on the Building and a monument sign near the main entrance to the Premises The size, location and general appearance of such signs shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld Lessee shall pay all costs in connection with the fabrication, installation, permitting, maintenance and removal of such signs

30 Quiet Possession Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof

31 Options

31 1 Lessee is granted the right to extend the Term of this Lease for two (2) periods of five (5) ears each (each an "Option") The right to extend must be exercised, if at all, by written notice delivered to Lessor not less than one hundred eighty (180) days before the Expiration Date of the Term which is then in effect Lessee's failure to timely exercise an extension right shall automatically void all subsequent extension rights

31 2 Each Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting

31 3 Effect of Default on Options

31.3 1 Lessee shall have no right to exercise the Option if at any time within one year prior to the date on which Lessee desires to exercise such Option, Lessee has been in Default under the Lease

31 3 2 The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of this Paragraph 31

31 3 3 The Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term, (i) Lessee fails to pay Rent for a period of thirty (30) days after notice from Lessor (ii) Lessor gives to Lessee two (2) or more notices of separate Default during any twelve (12) month period, whether or not ne Defaults are cured, or (iii) if Lessee commits any Breach of this Lease

32 Reservations Lessor reserves to itself the right, from time to time, to grant or obtain, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easement, rights, dedications, maps and restrictions do not unreasonably interfere with the use and quiet enjoyment of the Premises by Lessee Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions

33 Amendments This Lease may be modified or amended only in writing, signed by the Parties to be bound, obligated or affected by such modification or amendment

34 Schedules & Exhibits All schedules and exhibits attached hereto are incorporated into and made a part of this Lease

35 Security Deposit Lessee shall deposit with Lessor on the date of this Lease, security for the performance of all of its obligations pursuant to this Lease, the amount equal to monthly Base Rent then in effect ("Security Deposit") If Lessee Defaults under this Lease, Lessor may use any part of the Security Deposit to make any defaulted payment, to pay for Lessor's cure of any defaulted obligation, or to compensate Lessor for any loss or damage resulting from any Default To the extent any portion of the deposit is used, Lessee shall within ten business (10) days after demand from Lessor restore the Security Deposit to its full amount Lessor may keep the Security Deposit in its general funds and shall not be required to pay interest to ' essee on the deposit amount If Lessee shall perform all of its obligations under this Lease and return the remises to Lessor at the end of the Term as provided herein, Lessor shall return the remaining Security Deposit

to Lessee not later than thirty (30) days after the delivery of possession of the Premises to Lessor. The Security Deposit shall not serve as an advance payment of Rent or a measure of Lessor's damages for any Default under this Lease Lessee waives the provision of California Civil Code Section 1950 7, and all other provisions of law now in force or that become in force after the date of execution of this Lease, that provide that Lessor may claim from a Security Deposit only those sums reasonably necessary to remedy any defaults in the payment of Rent, to repair damage caused by Lessee, or to clean the Premises Lessor and Lessee agree that Lessor, in addition, may claim those sums reasonably necessary to compensate Lessor for any other foreseeable or unforeseeable loss or damage caused by the acts or omission of Lessee or Lessee's officers, agents, employees, independent contractors, or invitees Notwithstanding anything to the contrary contained herein this Lease, Lessee shall not be required to deliver the Security Deposit to Lessor for so long as Lessor remains Crosthwaite Circle, LLC, a California limited liability company ("Crosthwaite"), or affiliate of Crosthwaite ("Affiliate"), and Lessee shall deliver Security Deposit to Lessee within seven (7) days of the date on which Crosthwaite or Affiliate shall cease to be Lessor hereunder

36 Force Majeure Neither Lessor nor Lessee shall be in default under this Lease to the extent they are unable to perform any of their respective obligations on account of any strike or labor problem, energy shortage, governmental pre-emption or prescription, flood, earthquake, national emergency, or any other cause of any kind beyond the reasonable control of the affected party ("Force Majeure"), provided, however, that Lessee's payment of Rent shall not be withheld or delayed by Force Majeure

The parties hereto have executed this Lease at the place specified above their respective signatures

"LESSOR"
GREGG STREET, LLC,
California limited liability company

By _____
Signature

_____
Print Name & Title

"LESSEE"
HNR FRAMING SYSTEMS, INC ,
a California corporation

By _____
Signature

_____
Print Name & Title

The parties hereto have executed this Lease at the place specified above their respective signatures

"LESSOR"
GREGG STREET, LLC,
California limited liability company

Name Robert R Thomas
Title Managing Member

"LESSEE"
HNR FRAMING SYSTEMS, INC ,
a California corporation

Name Robert R Thomas
Title President



Commonwealth Land Title Company
750 "B" Street
Suite 2350
San Diego, CA 92101
Phone (619) 233-3000

Circuit, McKellog, Kiney & Ross, LLP
12005 Prospect Street
Suite 400
La Jolla, CA 92037

Attn. Laura Leszt

Our File No 03204598 - 609 - 611L
Senior Commercial Title Officer: Katherine I Leicht
(kleicht@landam com)
Phone: (619) 230-6346
Fax (619) 233-3846

Your Reference No. Robert Thomas

Property Address. 13465 & 13495 Gregg Street, Poway, California

PRELIMINARY REPORT

Dated as of October 25, 2004 at 7 30 a m

In response to the above referenced application for a policy of title insurance, Commonwealth Land Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms

The printed Exceptions and Exclusion from the coverage of said Policy or Policies are set forth in Exhibit B attached. Copies of the Policy forms should be read. They are available from the office which issued this report

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit B of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.
It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

File No 03204598

SCHEDULE A

The form of policy of title insurance contemplated by this report is:

CLTA Standard Owners

ALTA Loan 1992

The estate or interest in the land hereinafter described or referred to covered by this report is.

A FEE

Title to said estate or interest at the date hereof is vested in:

Robert R. Thomas and Jane L. Thomas, Trustees of The Robert R. Thomas and Jane L. Thomas Declaration of Trust dated May 14, 1999,
Subject to Item No. 19 of Schedule B

The land referred to herein is situated in the County of San Diego, State of California, and is described as follows.

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

File No. 03204598

EXHIBIT "A"

All that certain real property situated in the County of San Diego, State of California, described as follows.

Parcel A:

All of Parcel 1 of Parcel Map No 18019 as filed in the Office of the County Recorder of San Diego County, April 24, 1998 as File No 1998-0236683 of Official Records, and all of Parcel C of Certificate of Compliance for Boundary Adjustment 99-06, filed in the Office of the County Recorder of San Diego County, May 10, 1999 as File No. 1999-0315333 of Official Records, all in the City of Poway, County of San Diego, State of California, being more particularly described as follows:

Beginning at the Northwest corner of said Parcel 1, said point being the South right of way line of Gregg Street as shown on said Parcel Map No. 18019,

Thence along said right of way line South 87° 40' 02" East, 372 07;

Thence leaving said right of way line, South 02° 45' 50" West, 285 51 feet to a point on the Southerly line of said Parcel C,

Thence Westerly along said Southerly line, North 87° 14' 07" West, 190.17 feet to the Southwest corner of said Parcel C,

Thence Northerly along the Westerly line of said Parcel C, North 02° 45' 53" East, 154.62 feet to the Southeast corner of said Parcel 1,

Thence Westerly along the Southerly line of said Parcel 1, North 87° 14' 07" West, 176.01 feet to the Southwest corner of said Parcel 1;

Thence Northerly along the Westerly line of said Parcel 1, North 00° 07' 57" East, 128 22 feet to the point of beginning

Parcel B.

All of Parcel A and Parcel B of Certificate of Compliance for Boundary Adjustment 99-06, in the City of Poway, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, May 10, 1999 as Instrument No 1999-0315333 of Official Records, being more particularly described as follows

Beginning at the Southeast corner of said Parcel B,

Thence Westerly along the Southerly line of said Parcel B, North 87° 14' 07" West, 196 31 feet,

File No 03204598

Thence leaving said Southerly line, North 02° 45' 50" East, 285.51 feet to a point on the Northerly line of said Parcel A, said point being on the Southerly right of way line of Gregg Street as shown on said Parcel Map No. 18019 and Map No 12853,

Thence Easterly along said right of way line, South 87° 40' 02" East, 166.60 feet to the beginning of a tangent 29 50 foot radius curve, concave Southwesterly;

Thence Southeasterly along said curve through a central angle of 90° 25' 55", 46.56 feet to a point on the West right of way line of Paine Street, as shown on Map No 12853 as filed in the Office of the County Recorder of San Diego County, August 19, 1991 as File No. 91-423951 of Official Records,

Thence Southerly along said right of way line South 02° 45' 53" West, 257.26 feet to the point of beginning

PARTIAL LEASE TERMINATION AGREEMENT

This Partial Lease Termination Agreement ("Agreement") effective November 9, 2007, is made by and among Gregg Street, LLC, a California limited liability company ("Gregg"), H N R Framing Systems Inc, a California corporation ("HNR"), and Building Materials Holding Corporation, a Delaware corporation ("BMHC") and is made with reference to the following facts·

A On or about October 1. 2005, Gregg entered into that certain Triple Net Commercial Real Estate Lease ("Lease") with HNR for the premises commonly described as 13465 and 13495 Gregg Street, Poway, California ("Premises") A copy of the Lease is attached hereto as Exhibit A

B HNR and BMHC desire to terminate the Lease with respect to certain portions of the Premises comprising approximately 28,000 square feet of Building "A" as more particularly described on Exhibit B to this Agreement ("Surrendered Premises") and abandon said Surrendered Premises effective upon the Commencement Date of the New Lease

C Gregg desires to enter into a new lease of the Surrendered Premises with Complete Office of California, Inc ("COC") commencing January 1, 2008 ("Commencement Date") and ending five (5) years thereafter ("New Lease") A copy of the New Lease is attached hereto as Exhibit C

NOW THEREFORE, the parties agree as follows

1 Consent Upon execution of the Agreement and upon the occupation of the Surrendered Premises by COC on the Commencement Date pursuant to the terms of the New Lease, Gregg shall thereupon consent to termination of the Lease with respect to and the abandonment of the Surrendered Premises by HNR and BMHC.

2 Indemnification The term of the Lease expires on October 31, 2010 If COC, during the period the term of the New Lease, fails to make lease payments to Gregg, BMHC and HNR agree to indemnify Gregg for any lease payment losses for the remaining term of the Lease based on the terms set forth in the New Lease including the monetary triple net obligations Gregg, upon demand for such payment, agrees to permit BMHC or its assigns to re-occupy the Surrendered Premises for the period of time it makes such indemnity payments to Gregg under the terms of the Lease

3 Base Rent Deficit Payments On or before the first day of each month during the remaining term of the Lease, HNR shall pay to Gregg the amounts set forth on Schedule 1 to this Agreement, which amounts represent the estimated aggregate difference in the Base Rent payment required of HNR in the Lease and the aggregate Base Rent payment required by Paragraph 1 6(a) in the New Lease for the period commencing on the Commencement Date and ending September 30, 2010 ("Base Rent Deficit")

4 Other Costs Upon notice and demand from Gregg, HNR hereby acknowledges that HNR remains liable under the Lease for, and shall reimburse Gregg for, the following costs of the Lease which are not part of the Surrendered Premises

4 1 13465 Gregg Street

4.1.1 15.16% of the Monthly Assessment for Spectrum Property Management,

4 1 2 15 16% of Real Property Taxes, and

4 1 3 15 16% of Commercial General Liability Insurance premiums

4 2 13495 Gregg Street.

4 2 1 100% of the Monthly Assessment for Spectrum Property Management,

4 2.2 100% of Real Property Taxes, and

4 2 3 100% of Commercial General Liability Insurance premiums

5 Brokers' Fees HNR shall pay to Voit Commercial Brokers and Burnham Real Estate, for the period beginning on January 1, 2008 and ending September 30, 2010, brokers' fees in the amounts and at the dates as more particularly described in Paragraph 1.9(b) of the New Lease

6 Tenant Improvements. HNR shall reimburse Gregg for the following expenses associated with completing the tenant improvements required to be performed by Gregg pursuant to Paragraph 57 of the New Lease.

6.1 Upon Signing the Agreement, For Expenses Actually Paid

Vendor	Amount Paid	Purpose
Corky's Welding	$6,189 00	Dock railing
Automatic Door Specialists	574 76	AK1 digital pad
Bill Havens Painting	9,445 00	Prep. patch and paint
Bill Havens Painting	935 00	Loading dock walls & railings

Vendor	Amount Paid	Purpose
CRL Incorporated	2,725.00	Electrical work – warehouse lighting
CRL Incorporated	2,348.00	Electrical work – parking lot lights
A O Reed	712 00	Replace AC unit
	$22,428 76	

6 2 Upon notice and demand for future expenses which will be incurred by Gregg in connection with the following ("Future Expenses")

6 2 1 Design, permit, contract and construct two (2) new truck loading docks and related demolition The construction contracts will be put out to bid The low bid shall be selected by Gregg and HNR

6 2 2 Grind and rebuild dock walls in the event the "float" does not hold up if a defect occurs during the term of the Lease.

6.3 In connection with the performance of Future Expenses work, Gregg may use the low bid of a concrete company selected on the basis of competitive bids

6.4 HNR acknowledges and agrees to remove the wood wall (which separates the warehouse) prior to the expiration of the Lease

7. Binding Effect This Agreement shall be binding on the parties, their personal representatives, successors and assigns and shall be governed by the laws of the State of California.

8. Mediation then Arbitration

8.1 In the event of a dispute or default under this Agreement, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall first be submitted to non-binding mediation ("Mediation") prior to initiating arbitration as set forth below in Paragraph 8.2. Each party shall bear its own costs and expenses of participating in the Mediation, and each party shall bear one-half (1/2) of the fees of the mediator. The mediator shall be selected by the parties' mutual agreement within ten (10) days notice by one party to the other requesting mediation ("Notice of Dispute") If the parties cannot timely mutually agree upon a mediator, the American Arbitration Association, San Diego, California, shall promptly select the mediator The parties agree that time is of the essence and that they will

each, in good faith, seek to conclude the mediation process within sixty (60) days following the Notice of Dispute

8 2 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof. which shall not have been satisfactorily resolved first according to Paragraph 8 1 above, shall be settled by arbitration at San Diego, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

9 Attorneys' Fees If any party brings an arbitration or other proceeding to enforce the terms of this Agreement, the prevailing party in any such proceeding shall be entitled to reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GREGG STREET, LLC

By: _____
Robert R. Thomas, Member

BUILDING MATERIALS HOLDING CORPORATION
A Delaware Corporation

By _____

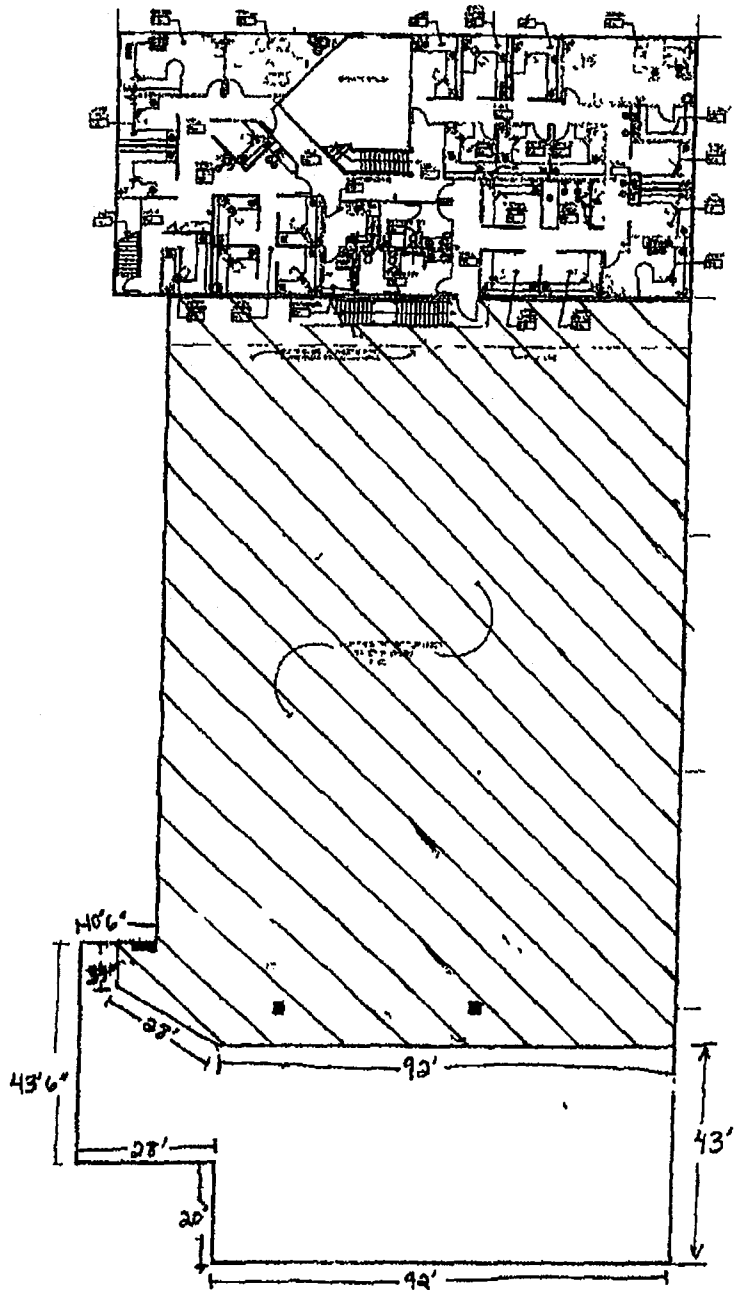
H N R FRAMING SYSTEMS INC
A California Corporation

By _____
Secretary

SCHEDULE 1
RENT DEFICIT PAYMENTS

	Price/sq ft	Totals rents owed To Gregg	Rents due from Complete Office	Rent Differential
Jan-08	1 247	71,080	23,800	47,280
Feb-08	1 247	71,080	23,800	47,280
Mar-08	1 247	71,080	11,900	59,180
Apr-08	1 247	71,080	23,800	47,280
May-08	1 247	71,080	23,800	47,280
Jun-08	1 247	71,080	23,800	47 280
Jul-08	1 247	71,080	23,800	47,280
Aug-08	1 247	71,080	23,800	47,280
Sep-08	1 247	71,080	23,800	47,280
Oct-08	1 284	73,212	23,800	49,412
Nov-08	1 284	73,212	23,800	49,412
Dec-08	1 284	73,212	23,800	49,412
Jan-09	1 284	73,212	24,633	48,579
Feb-09	1 284	73,212	24,633	48,579
Mar-09	1 284	73,212	12,317	60,896
Apr-09	1 284	73,212	24,633	48,579
May-09	1 284	73,212	24,633	48,579
Jun-09	1 284	73,212	24,633	48 579
Jul-09	1 284	73,212	24,633	48,579
Aug-09	1 284	73,212	24,633	48,579
Sep-09	1 284	73,212	24,633	48,579
Oct-09	1 323	75,409	24,633	50,776
Nov-09	1 323	75,409	24,633	50,776
Dec-09	1 323	75,409	24,633	50,776
Jan-10	1 323	75,409	25,495	49,914
Feb-10	1 323	75,409	25,495	49,914
Mar-10	1 323	75,409	25,495	49,914
Apr-10	1 323	75,409	25,495	49,914
May-10	1 323	75,409	25,495	49,914
Jun-10	1 323	75,409	25,495	49,914
Jul-10	1 323	75,409	25,495	49,914
Aug-10	1 323	75,409	25,495	49,914
Sep-10	1 323	75,409	25,495	49,914
Totals		**2,423,174**	**786,436**	**1,636,738**

EXHIBIT "B"



Building "A"
Shaded area is the "Surrendered Premises"

EXHIBIT J

U11U6439
BMC0272011378

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM

Name of Debtor (Check Only One)	Case No	Name of Debtor	Case No
☐Building Materials Holding Corporation	09-12074	☐TWF Construction, Inc	09-12080
☐BMC West Corporation	09-12075	☐H N R. Framing Systems, Inc	09-12081
☒SelectBuild Construction, Inc	09-12076	☐SelectBuild Southern California, Inc	09-12082
☐SelectBuild Northern California, Inc	09-12077	☐SelectBuild Nevada, Inc	09-12083
☐Illinois Framing, Inc	09-12078	☐SelectBuild Arizona, LLC	09-12084
☐C Construction, Inc	09-12079	☐SelectBuild Illinois, LLC	09-12085

NOTE. *This form should not be used to make a claim for an administrative expense arising after the commencement of the case, except for purposes of asserting an administrative expense under 11 U.S.C. § 503(b)(9) (see Item 6 below) All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503*

Name of Creditor (the person or other entity to whom the Debtor owes money or property) RALPH ROAD, LLC

☐ Check this box to indicate that this claim amends a previously filed claim

Name and address where notices should be sent
c/o Dean T Kirby, Jr
Kirby & McGuinn, A P C
707 Broadway, Suite 1750
San Diego, CA 92101
Telephone number (619) 525-1652
Email Address dkirby@kirbymac com

Court Claim Number: _____ (*If known*)

Filed on _____

Name and address where payment should be sent (if different from above)
Ralph Road, LLC
1620 Alpine Blvd , Suite 220
Alpine, CA 91901
Telephone number (619) 722-1226

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars

☐ Check this box if you are the Debtor or trustee in this case

Your Claim is Scheduled As Follows.
SELECTBUILD CONSTRUCTION, INC
Unsecured $418,769 24

THE GARDEN CITY GROUP, INC. AUG 31 2009

FILED - 02342
USBC-DISTRICT OF DELAWARE
BUILDING MATERIALS HOLDING CORPORATION, ET AL
09-12074 (KJC)

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown Please review the Bar Date Notice to determine whether you must file a proof of claim to preserve your rights The Bar Date Notice is available online at www bmhcrestructuring com or upon request at the address on the back of this form.

THIS SPACE IS FOR COURT USE ONLY

1. Amount of Claim as of Date Case Filed $ 418,408.22

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4 If all or part of your claim is entitled to priority, complete item 5 If your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 6.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim Attach itemized statement of interest or charges

2. Basis for Claim: Lease Rejection
(See instruction #2 on reverse side)

3. Last four digits of any number by which creditor identifies Debtor: _____

3a. Debtor may have scheduled account as _____
(See instruction #3a on reverse side)

4. Secured Claim (See instruction #4 on reverse side)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information

Nature of property or right of setoff. ☐ Real Estate ☐ Motor Vehicle ☐ Equipment ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim $_____ **Amount Unsecured** $_____

6 Claim Pursuant to 11 U S C. § 503(b)(9):
Indicate the amount of your claim arising from your provision of goods sold to a Debtor in the ordinary course of the Debtor's business in the 20 days before June 16, 2009
Attach documentation supporting such claim $_____

7. Credits The amount of all payments on this claim has been credited for the purpose of making this proof of claim

8 Documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages and security agreements You may also attach a summary Attach redacted copies of documents providing evidence of perfection of a security interest You may also attach a summary (*See instruction #8 and definition of "redacted" on reverse side*)

DO NOT SEND ORIGINAL DOCUMENTS ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING

If the documents are not available, please explain in an attachment.

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim

☐ Domestic support obligations under 11 U S C § 507(a)(1)(A) or (a)(1)(B)

☐ Wages, salaries, or commissions (up to $10,950) earned within 180 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier – 11 U S C § 507(a)(4)

☐ Contributions to an employee benefit plan – 11 U S C § 507(a)(5)

☐ Up to $2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U S C § 507 (a)(7)

☐ Taxes or penalties owed to governmental units – 11 U S C § 507 (a)(8)

☐ Other – Specify applicable paragraph of 11 U S C § 507(a)(__) [Note Do not include Section 503(b)(9) Claims here]

Amount entitled to priority

$_____

Date: 8/28/09

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above Attach copy of power of attorney, if any

/s/ Dean T Kirby, Jr , Attorney for Creditor

FOR COURT USE ONLY

Penalty for presenting fraudulent claim Fine of up to $500,000 or imprisonment for up to 5 years, or both 18 U S C §§ 152 and 3571
Modified B10 (GCG) (12/08)

08-31-09A11:02 RCVD

KIRBY & McGUINN
A PROFESSIONAL CORPORATION

707 BROADWAY, SUITE 1750
SAN DIEGO, CA 92101-4515
HTTP //WWW KIRBYMAC COM

JAMES P CASTRANOVA II
C COLIN COSSIO
JANA LOGAN
MARTIN T McGUINN
KENNETH C NOORIGIAN
CHERYL EDWARDS TANNENBERG

DEAN T KIRBY JR
VOICE 619 525-1652
FAX 619 525-1651
E-MAIL DKIRBY@KIRBYMAC COM

August 28, 2009

VIA OVERNIGHT DELIVERY
The Garden City Group
Attn Building Materials Holding Corporation
5151 Blazer Parkway, Suite A
Dublin, OH 43017

Re *In re Building Materials Holding Corporation*
Consolidated Case No 09-12074
United States Bankruptcy Court, District of Delaware

Ladies and Gentlemen

Enclosed are twelve proofs of claim, listed below, which are intended to be filed separately in the cases indicated THERE ARE NO DUPLICATES ENCLOSED, AND NO COPIES TO CONFORM

CREDITOR	DEBTOR	AMOUNT
Robert R Thomas	SelectBuild Construction, Inc Case No 09-12076	$400,000 00
Restated Robert R Thomas Trust	SelectBuild Construction, Inc Case No 09-12076	$400,000 00
Ralph Road, LLC	Building Materials Holding Corporation Case No 09-12074	$418,408 22
Ralph Road, LLC	BMC West Corporation Case No 09-12075	$418,408 22
Ralph Road, LLC	SelectBuild Construction, Inc Case No 09-12076	$418,408 22
Ralph Road, LLC	HNR Framing Systems, Inc Case No 09-12081	$418,408 22

Gregg Street, LLC	Building Materials Holding Corporation Case No 09-12074	$407,808 86
Gregg Street, LLC	BMC West Corporation Case No 09-12075	$407,808 86
Gregg Street, LLC	SelectBuild Construction, Inc Case No 09-12076	$407,808 86
Gregg Street, LLC	HNR Framing Systems, Inc Case No 09-12081	$407,808 86
Crosthwaite Circle, LLC	SelectBuild Construction, Inc Case No 09-12076	Unk (Contingent)
Robert R Thomas	Building Materials Holding Corporation Case No 09-12074	$8,714 02

If you have any questions, please don't hesitate to telephone me personally

Very Truly Yours,

Dean T Kirby, Jr

1. Rent reserved by the lease, without acceleration, for the greater of one year or 15 percent not to exceed three years, of the remaining term of the lease			
	1 1 Lease term excluding unexercised tenant options 60 months		
	1 2 Term Commencement date. 10/1/2005		
	1 3 Remaining term from 6/16/2009 15 months (through 9/30/2009)		
	1 4 Greater of 12 months or 15% of remaining term· 12 months		
	1 5 Monthly Rent (due 7/1/2009 – 9/30/2010) $29,384 62 X 3	$ 88,153.86	
	1.6 Monthly Rent (due 10/1/2009- 6/30/2010) $30,266 16 X 9	272,395 44	
	1 7 Property Taxes	26,417 38	
	1 6 Total Future Rental Damages		$ 386,966 68
2 Unpaid rent due under lease, without acceleration, on *6/16/2009			
	2 1 Rent (due June 1, 2009)	$ 29,384.62	
	2 2 Late charge(s)	2,056.92	
	2 3 Total Unpaid		31,441 54
	3 (Less) Security Deposit Subject to Offset		(none)
	4. Total General Unsecured Claim		$ 418,408 22

* Date shown should be the same on lines 1 3 and 2, and is the earlier of 6/16/2009, the date of filing of the bankruptcy petition, or the date on which the lessor repossessed, or the tenant surrender, the leased property

In addition to amounts shown, the Lease Termination Agreement, a copy of which is attached to this proof of claim, obligates the tenant to indemnify against losses suffered by reason of the failure of substitute tenants to pay rent

Claimant does not waive the alternative dispute resolution provisions contained in the lease, and demands that any dispute relating to this claim be submitted first to mediation and then if necessary to binding arbitration

Claimant is uncertain as to which of the Debtor entities is the successor in interest to the original tenant In an abundance of caution, duplicate claims have been concurrently filed in (i) In re Building Materials Holding Corporation No. 09-12074, (ii) In re BMC West Corporation, No. 09-12075, (iii) In re SelectBuild Construction, Inc No 09-12076, and (iv) HNR Framing Systems, Inc NO. 09-12081

TRIPLE NET COMMERCIAL REAL ESTATE LEASE

This Triple Net Commercial Real Estate Lease ("Lease") is hereby made and entered into by and between Ralph Road, LLC, a California limited liability company ("Lessor"), and FSC Construction, Inc , a Delaware corporation ("Lessee" or "Buyer") (Lessor and Lessee sometimes collectively referred to herein below as the "Parties"), as of this 1st day of October, 2005 ("Effective Date") with reference to the following facts

RECITALS

A. **WHEREAS** pursuant to (i) that certain Securities Purchase Agreement ("SPA") dated as of the date even herewith between Lessee, Robert R Thomas, Trustee of the Restated Robert R Thomas Trust dated April 14, 1999 ("Shareholder"), and BMHC, Inc , a Delaware corporation ("BMHC"), Shareholder has agreed to sell to BMHC and BMHC has agreed to purchase from Shareholder, all of the issued and outstanding capital stock in Lessee at the price and upon the terms and conditions as are contained in the SPA, and (ii) that certain Asset Purchase Agreement ("APA") dated as of the date even herewith between Lessee and Home Building Components, Inc , a California corporation ("HBC"), HBC has agreed to sell to Buyer and Buyer has agreed to purchase from HBC, the assets and liabilities as described in the APA, at the price and subject to the terms and conditions set forth therein, and

B. **WHEREAS** pursuant to the APA Lessor and Lessee have agreed to enter into a Lease whereby Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the Premises as set forth more fully hereinafter

THEREFORE, in consideration for all obligations, responsibilities and other consideration hereby acknowledged, the Parties agree as follows

1 Premises For purposes of this Lease, Premises shall mean that certain real property, including any improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 340 W Ralph Road, located in the City of Imperial, County of Imperial, State of California, and generally described as the office building, shop/warehouse spaces & bay structures, ("Building"), and unimproved real property ("Land") described in Exhibit A to this Lease and made a part hereof

1 1 The Premises shall be used only for roofing truss, floor, and wall framing manufacturing operations, including without limitation any receiving, shipping and general office/administrative operations associated therewith, and related uses consistent with applicable law

1 2 Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental and upon all the terms, covenants and conditions set forth in this Lease Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating rental, is an approximation, which the Parties agree is reasonable and the rental based thereon is not subject to revision whether or not the actual size is more or less

2 Term Five (5) years and Zero (0) months ("Term") commencing as of the Effective Date ("Commencement Date") and ending Five (5) years from the first day of the first month following the Effective Date unless extended by operation of Paragraph 31 or otherwise earlier terminated only as specifically provided herein ("Expiration Date")

3 Rent

3 1 Rent shall be Twenty-Five Thousand Dollars ($25,00) per month ("Base Rent"), due on the first (1st) day of each month commencing on the Commencement Date, provided that Lessee shall have until the fifth (5th) day of each month during the Term in which to make payment to Lessor without penalty During the Term, unless modified in writing by the Parties and except as modified by operation of Paragraph 3 1 below, the Base Rent then in effect shall be increased by three percent (3%) on the annual anniversary of the Commencement Date every Lease Year (as it is defined herein) For purposes of this Lease, the term "Lease Year" means a one (1) year period commencing with the Commencement Date Notwithstanding anything to the contrary contained herein this Lease, in the event Lessee excercises an Option (as defined herein) during the Term, the Base Rent for the first year of any such Option exercised shall be established as follows

3 1 1 The Base Rent payable for renewal of the Term through exercise of the first Option shall be the greater of (a) the Fair Market Rental Value (as defined herein) as of the last day of the fifth anniversary of the Commencement Date, and (b) one hundred three percent (103%) of the Base Rent in effect as of the fifth Lease Year For purposes of this Lease, Fair Market Rental Value shall mean, with respect to Premises, the fair market monthly rental value that would be obtained in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor, in either case under no compulsion to lease, and neither of which is related to Lessor or Lessee for the lease of Premises on the terms set forth herein this Lease, assuming that the Premises are in a condition and repair required to be maintained by the terms of this Lease

3 1 2 The Base Rent payable for renewal of the Term through exercise of the second Option shall be the greater of (a) the Fair Market Rental Value (as defined herein) as of the last day of the tenth nniversary of the Commencement Date, and (b) one hundred three percent (103%) of the Base Rent in effect as of the tenth Lease Year

3 2 All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit (as defined herein)) are deemed to be rent, which shall include but not be limited to Base Rent ("Rent")

3 3 Lessee shall cause payment of Rent to be received by Lessor in United States currency, without any offset or deduction (except as specifically permitted in this Lease), on or before the date on which is due Rent for any period during the term hereof which is for less than one (1) full calendar month shall be pro rated based upon the actual number of days of said month Payment of rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor' endorsement of any check so stating

4 Use

4 1 Lessee shall use and occupy the Premises according to the use set forth in Paragraph 1 1 herein, and for no other purpose Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners or occupants of, or causes damage to neighboring properties Lessee shall not make any improvements or modifications to the Premises without Lessor's written approval, such approval not to be unreasonably withheld

4 2

4 2 1 The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, 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 Lessor to any governmental agency or third party under any applicable statute or common law theory Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance at Lessee's expense with all Applicable Requirements For purposes of this Lease, Applicable Requirements shall mean compliance with all applicable governmental laws, ordinances and regulations. For purposes of this Lease, "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/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration of termination) of protective modifications (such as concrete encasements)

4 2 2 If Lessee 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 consent to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance

4 2 3 Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or Lessee's agents, employees, or contractors

4 2 4 Lessee shall indemnify, defend and hold Lessor, its agents, employees, and lenders harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or Lessee's agents, employees, contractors, or invitees (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties) Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease No termination, cancellation or release agreement entered

into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement

4 3 Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the reasonable requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Commencement Date Lessee shall, within ten (10) days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with Applicable Requirements as specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements

4 4 Lessor and its consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times upon reasonable prior notice to Lessee, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements or the inspection is requested or ordered by governmental authority with respect to the activities of Lessee or its agents, employees, contractors, or invitees on or about the Premises In such case, Lessee shall upon request reimburse Lessor for the cost of such inspections, so long as such inspection is reasonably related to the violation or contamination resulting from the activities of Lessee or its agents, employees, or contractors on or about the Premises

5 Maintenance and Repairs

5 1 Subject to the provisions of this Lease and during the Term, Lessee shall, at Lessee's sole expense, keep and maintain the Premises, utility installations, and alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accesible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of ventilating Premises) including, but not limited to, all equipment or facilities, such as plumbing, heating, ventilating, air-conditioning, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform regular maintenance practices Lessee's obligations shall include restorations and replacements as necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity

5 2 Lessee, at its sole expense, shall maintain in good order and repair and perform regular maintenance on (in accordance with commercially reasonable management practices and applicable warranty requirements) the following equipment and improvements, if any, if and when installed on the Premises (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguisher systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, (vi) driveways, (vii) parking lots, and (viii) basic utility feed to the perimeter of the Building (collectively "Basic Elements")

5.3 Lessee shall not be required to perform any repairs or maintenance to the Premises necessitated by reason of the negligence of Lessor or by reason of the failure of Lessor to perform obligations of this Lease

5 4 Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and services thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice Lessee shall repair any damage occasioned by the installation, maintenance or removal of its personal property and equipment The failure by Lessee to timely vacate Premises pursuant this Paragraph without the express written consent of Lessor shall constitute a holdover

5 5 Except as specifically set forth herein,, it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be those of the Lessee It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease

6 Insurance

6 1 Except for Lessor's gross negligence, and to the extent permitted by law, Lessee waives any claims it may have against Lessor or its officers, managers, employees or agents for business nterruption or damage to property sustained by Lessee as the result of any act or omission of Lessor

6 2 Lessee shall maintain insurance as follows, with such other terms, coverages and insurers, as Lessor shall reasonably require from time to time

6 2 1 Commercial General Liability Insurance, with (a) Contractual Liability including the indemnification provisions contained in this Lease, (b) a severability of interest endorsement, (c) limits of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence and not less than Two Million Dollars ($2,000,000) in the aggregate for bodily injury, sickness or death, and property damage, and umbrella coverage of not less than Five Million Dollars ($5,000,000)

6 2 2 Property Insurance against "All Risks" of physical loss covering the replacement cost of all improvements, fixtures and personal property Lessee waives all rights of subrogation, and Lessee's property insurance shall include a waiver of subrogation in favor of Lessor

6 2 3 Lessee's insurance shall be primary and not contributory to that carried by Lessor, its agents, or Lessor's Lender, if any Lessor shall be named as an additional insured as respects insurance required of the Lessee in this Paragraph 6 The company or companies writing any insurance that Lessee is required to maintain under this Lease, as well as the form of such insurance, shall be licensed to do business in the state in which the Premises are located Such insurance companies shall have an A M Best rating of A or better

7 Indemnity

7 1 Except for Lessor's negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground Lessor, partners and Lenders, from and against any and all claims, and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense Lessor need not have first paid any such claim in order to be defended or indemnified Subject to any limitations set forth in this Lease, Lessor shall indemnify, protect, defend, and hold harmless Lessee and its officers, directors, shareholders, and agents from and against any and all claims, damages, liens, judgments, penalties, attorneys and consultants' fees, expenses, and/or liabilities to the extent arising out of, involving, or in connection with the gross negligence or willful misconduct of Lessor If any action is brought against Lessee by reason of any of the foregoing matters, Lessor shall upon notice defend the same at Lessor's expense by counsel reasonably satisfactory to Lessee, and Lessee shall cooperate with Lessor in such defense Lessee need not have first paid any such claim in order to be defended or indemnified

7 2 Except to the extent of Lessor's gross negligence or willful misconduct and subject to the its specific obligations hereunder, Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Promises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, or from other sources or places

8 Damage or Destruction

8 1 Definitions

8 1 1 "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned alterations and utility installations and trade fixtures, which can reasonably be repaired in six (6) months or less from the date of the damage or destruction Lessor shall notify Lessee in writing within sixty (60) days from the date of the damage or destruction as to whether or not the damage is Partial or Total

8 1 2 "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Lessee owned alterations and utility installations and trade fixtures, which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction

8 1 3 "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee owned alterations and utility installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 6 above related to the Premises

8 1 4 "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation

8 1 5 "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 5 in, on, or under the Premises

8 2 If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense and subject to all application of all applicable insurance proceeds, repair such damage (but not Lessee's Trade Fixtures or Lessee owned alterations and utility installations) as soon as reasonably possible and this Lease shall continue in full force and effect Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to affect such repair, the Lessor shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within available days following receipt of written notice of such shortage and request therefor If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or have this Lease terminate thirty (30) days thereafter. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 8 3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party

8 3 If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense) Lessor may either (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage Such termination shall be effective sixty (60) days following the date of such notice In the event Lessor elects to terminate this Lease, Lessee shall have the right within ten (10) days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days after making such commitment In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs, as soon as reasonably possible after the required funds are available If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice

8 4 Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate sixty (60) days following such Destruction If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee and is not covered by insurance, Lessor shall have the right to recover Lessor's damages to the extent not covered by insurance) from Lessee, except as provided in Paragraph 7

8 5 If at any time during the last six (6) months of this Lease there is Premises Partial Damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessee or Lessor may terminate this Lease effective sixty (60) days following the date of occurrence of such damage by

giving written termination notice to the other party within thirty (30) days after the date of occurrence of such damage Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is ten days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished Notwithstanding anything in this section to the contrary, if Lessee elects to exercise its option to extend the Lease and the loss is an Insured Loss, Lessee shall not be obligated to contribute funds for repair or rebuilding in excess of he amount Lessee is obligated to contribute funds for repair or rebuilding in excess of the amount Lessee is obligated to contribute under Paragraph 8 2

8 6 Abatement of Rent, Lessee's Remedies

8 6 1 In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation of or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, emediation, repair or restoration except as provided herein Any repair or restoration which Lessor is required to make under this Lease shall be accomplished with due diligence

8 6 2 If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within one hundred twenty (120) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice If Lessee gives such notice and such repair or restoration is not commenced within thirty (30) days thereafter, this Lease shall terminate as of the date specified in said notice and Lessee may exercise any available rights or remedies If the repair or restoration is commenced within said thirty (30) days, this Lease shall continue in full force and effect "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs

8 7 Upon termination of this Lease pursuant to Paragraph 5 or Paragraph 8, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be used by Lessor pursuant to the terms of this Lease

8 8 Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith

8 9 The provisions of Paragraphs 8 2 and 8 3 to the contrary notwithstanding, in the event Lessor fails to substantially complete restoration of damage or destruction of the Premises which Lessor is

required or elects to perform pursuant to said paragraphs within one hundred eighty (180) days after commencement of such restoration or repairs, upon prior written notice, the Lessee may terminate this Lease, provided, however that if Lessor substantially completes the restoration within ninety (90) days after receipt of such notice, this Lease shall not terminate and shall continue in full force and effect

9 Real Property Taxes

9 1 As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary, exrtraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes), improvement bond, and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed or resulting from action by any governmental entity, or imposed as a result of any change of assessment or increase of tax, fee, levy imposed as a result of a change in ownership of the Premises

9 2 Lessee shall pay the Real Property Taxes applicable to the Premises during the term of this Lease Subject to Paragraph 9 2(b), all such payments shall be made prior to any delinquency date Upon Lessor's request, Lessee shall promptly furnished Lessor with satisfactory evidence that such taxes have been paid If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect, and Lessor shall reimburse Lessee for any overpayment If Lessee shall fail to pay any required Real Property Taxes, Lessor shall have the right to pay the same, and Lessee shall reimburse Lessor therefor upon demand

9 3 In the event Lessee incurs a late charge on any Rent payment, Lessor may, at Lessor's option, estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee, either (i) in a lump sum amount equal to the installment due, at least ten (10) days prior to the applicable delinquency date, or (ii) monthly in advance with the payment of the Base Rent If Lessor elects to require payment monthly in advance, the monthly payment shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations All monies paid to Lessor under this Paragraph may be intermingled with other monies of Lessor and shall not bear interest In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any balance of funds paid to Lessor under the provisions of this Paragraph may, at the option of Lessor, be treated as a Security Deposit

9 4 Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee owned alterations, utility installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee When possible, Lessee shall cause such property to be assessed and billed separately from the real property of Lessor If any of Lessee's aid personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement

10 Utilities Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon

11 Assignment and Subletting

11 1 Lessee shall not voluntarily nor by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld

11 2 Permitted Transfers. Notwithstanding anything to the contrary above Lessee shall have the right, without the consent of Lessor, but upon not less than 15 days' prior notice to Lessor, to assign this Lease or sublet the Premises (i) to any parent, subsidiary or affiliate corporation or entity, or (ii) to any corporation resulting from the consolidation or merger of Lessee into or within any other entity, or (iii) to any firm, entity or corporation acquiring in one contemporaneous transaction all or substantially all of the stock or assets of Lessee or the division of Lessee occupying the Premises Any transfer pursuant to (i), (ii) or (iii) above shall be subject to the following conditions that any such assignment, sublease or transfer shall be subject to all of the terms, covenants and conditions of this Lease, any assignee shall expressly assume for the benefit of Lessor the obligations of Lessee under the Lease by a document reasonably satisfactory to Lessor, and Lessee shall provide to Lessor copies of documents sufficient to verify that the transfer qualifies under this paragraph No such transfer shall release Lessee from liability As used herein, the expression "affiliate corporation or entity" means a business entity, corporate or otherwise, that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Lessee The word "control" means the right and power, direct or indirect, to direct or cause the direction of the management and policies of a person or business entity, corporation or otherwise, through ownership of more than fifty percent (50%) of the voting stock (or other relevant ownership interests) of the entity in question

11 3 Terms and Conditions Applicable to Assignment and Subletting

11 3 1 Regardless of Lessor's consent, any assignment or subletting shall not (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee

11 3 2 Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach

11 3 3 Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting

11 3 4 In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor

11 3 5 Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested

11 3 6 Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing

11 4 The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein

11 4 1 In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease, provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor

11 4 2 Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor

11 4 3 No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld

11 4 4 Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee

12 Default, Breach, Remedies

12 1 A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or duties under this Lease A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period

12 1 1 The abandonment of the Premises, or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 7 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism, which continues for twenty (20) or more days after written notice from Lessor

12 1 2 The failure of Lessee to make any payment of Rent or any Security Deposit equired to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens

life or property, where such failure continues for a period of three (3) business days following written notice to Lessee

12 1 3 The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) any document requested under Paragraph 39 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice to Lessee

12 1 4 A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, other than those described in Paragraph 12, where such Default continues for a period of thirty (30) days after written notice, provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion

12 1 5 The occurrence of any of the following events (i) the making of any general arrangement or assignment for the benefit of creditors, (ii) becoming a "debtor" as defined in 11 U S C §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days, (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days, or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days, provided, however, in the event that any provision of this subparagraph 12 1 5 is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions

12 2 If Lessee fails to perform any of its affirmative duties or obligations, within ten (10) days after written notice or as it is required by Paragraph 12 1 4 above after notice from Lessor and within the cure period provided for in said paragraph, Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefor In the event of a Breach, Lessor may, with or without further notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach

12 2 1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor In such event Lessor shall be entitled to recover from Lessee (i) the unpaid Rent which had been earned at the time of termination, (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 the Lessee proves could have been reasonably avoided, (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 the Lessee proves could be reasonably avoided, and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, easonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease The worth at the time of award of the amount referred to

in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the San Francisco Federal Reserve Bank plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 11 If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any party thereof in a separate suit If a notice and grace period required under paragraph 12.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 12 1 In such case, the applicable grace period required by Paragraph 12 1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitled Lessor to the remedies provided for in this Lease and/or by said statute,

12 2 2 Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession, or

12 2 3 Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnify provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises

12 4 Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender Accordingly, if any Rent shall not be received by Lessor within seven (7) days after such amount shall be due more than once in any six (6) month period then, Lessee shall pay to Lessor a late charge equal to seven percent (7%) of each such overdue amount in any month such amounts remain unpaid The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default of Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance

12 5 Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor For purposes of this Paragraph, a reasonable time, for non-emergency matters, shall in no event be less than thirty (30) days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed, provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion

13 Condemnation If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs If more than ten percent (10%) of any building portion of the Premises, or more than twenty-five percent (25%) of the land area portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages, provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph All alterations and utility installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such condemnation

14 Brokers' Fee There is no Brokers' Fee to be paid by either Party in conjunction with this Lease transaction Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder in connection with this Lease, and that no one is entitled to any commission or finder's fee in connection herewith Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, and/or attorneys' fees reasonably incurred with respect thereto

15 Estoppel Certificates

15 1 Each Party (as "Responding Party") shall within fourteen (14) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party an Estoppel Certificate plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party

15 2 If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such ten day period, the Requesting Party may execute an Estoppel Certificate stating that (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if lessor is the Requesting Party, not more than one month's Rent has been paid in advance Prospective purchasers and encumbrancers may relay upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate

15 3 If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, or if Lessee should be in default of the Lease, upon five (5) days prior written notice, Lessee shall deliver to any potential lender or purchaser designated by Lessor, or to Lessor in the event of a default, such financial statements as nay be reasonably required by such lender or purchaser, including, but not limited to, Lessee's financial statements for the past three (3) years All such financial statements shall be received by Lessor and such lender

or purchaser in confidence and shall be used only for the purposes herein set forth Notwithstanding the foregoing, if Lessee is a publicly traded corporation subject to ongoing periodic SEC financial reporting requirements, Lessee may provide Lessor copies of the SEC financial filings in lieu of such financial statements

16 Definition of Lessor The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the premises In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined Notwithstanding the above, and subject to the provisions of Paragraph 18 below, the original Lessor under this Lease, and all subsequent holders of the Lessor's interest in this Lease shall remain liable and responsible with regard to the potential duties and liabilities of Lessor pertaining to Hazardous Substances as outlined in Paragraph 5 above

17 Severability The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provisions hereof

18 Time of Essence Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease

19 No Prior or Other Agreements This Lease contains all agreements between the Parties with espect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding other than the Agreement referenced herein shall be effective as of the Effective Date

20 Notices

20 1 All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U S Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 20 The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices A copy of all notices to Lessee shall be sent to Paul Street, General Counsel, BMHC, 720 Park Blvd , Suite 200, Boise, ID 83712-7714, Facsimile (208) 331-4477 A copy of all notices to Lessor shall be sent to Richard K Circuit, Esq , Circuit, McKellogg, Kinney & Ross, LLP, 1205 Prospect Street, #400, La Jolla, CA 92037, facsimile (858) 459-0690 Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the premises shall constitute Lessee's address for notice A copy of all notices to lessor (or Lessee) shall be concurrently transmitted to such party or parties at such addresses as Lessor (or Lessee) may from time to time hereafter designate in writing

20 2 Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is show, the postmark thereon If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same o the Postal Service or courier Notices transmitted by facsimile transmission or similar means shall be deemed

delivered upon telephone confirmation of receipt, provided a copy is also delivered via delivery or mail If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day

21 Waivers No waiver by Lessor or Lessee of the Default or Breach of any term, covenant or condition hereof, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach of the same or of any other term, covenant or condition hereof The acceptance of Rent by lessor shall not be a waiver of any Default or Breach by lessee Any payment by lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by lessor at or before the time of deposit of such payment

22 Holdover Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease In the event that Lessee holds over, then the Base Rent shall be increased to one hundred fifty percent (150%) of the Base Rent applicable during the month immediately preceding the expiration or termination Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee

23 Cumulative Remedies No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity

24 Covenants and Conditions All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease Whenever required by the context, the singular shall include the plural and vice versa

25 Binding Effect, Choice of Law This Lease shall be binding upon the parties, their personal representatives, successors and assigns and shall be governed by the laws of the State of California

26 Subordination, Attornment, Non-Disturbance

26 1 This Lease and any Option granted hereby shall be subject and subordinate to any mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lessor's Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof

26 2 Subject to the non-disturbance provisions of Paragraph 26 3, Lessee agrees to attorn to a Lender or any other party who acquires ownership fo the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, or (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor

26 3 With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance

agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof (beyond any applicable cure period) and attorns to the record owner of the Premises Further, within thirty (30) days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises In the event that Lessor is unable to provide the Non-Disturbance Agreement within said thirty (30) days, then Lessee or Lessor may terminate this Lease without liability to either party by giving written notice of termination within ten (10) days of any such thirty (30) day period

26 4 Except as provided in Paragraph 26 3, the agreements contained in this Paragraph 26 shall be effective without the execution of any further documents, provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-disturbance Agreement provided for herein

27 Attorneys' Fees If any Party brings an action or proceeding involving the Premises to enforce the terms hereof or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment

28 Lessor's Access, Showing Premises, Repairs Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times and upon reasonable prior notice to Lessee, for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary All such activities shall be without abatement of rent or liability to Lessee Lessor may at any time place on the Premises any "For Sale" signs and Lessor may during the last six (6) months of the term hereof place on the Premises any ordinary "For Lease" signs provided that such signs do not unreasonably interfere with Lessee's operation of the Premises

29 Signs Lessee shall not place any sign upon the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld All signs must comply with all Applicable Requirements Notwithstanding the foregoing, and subject to Applicable Requirements, Lessee shall have the right to maintain or install signs on the Building and a monument sign near the main entrance to the Premises The size, location and general appearance of such signs shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld Lessee shall pay all costs in connection with the fabrication, installation, permitting, maintenance and removal of such signs

30 Quiet Possession Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof

31 Options

31 1 Lessee is granted the right to extend the Term of this Lease for two (2) periods of five (5) years each (each an "Option") The right to extend must be exercised, if at all, by written notice delivered to Lessor not less than one hundred eighty (180) days before the Expiration Date of the Term which is then in effect Lessee's failure to timely exercise an extension right shall automatically void all subsequent extension rights

31 2 Each Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting

31 3 Effect of Default on Options

31 3 1 Lessee shall have no right to exercise the Option if at any time within one year prior to the date on which Lessee desires to exercise such Option, Lessee has been in Default under the Lease

31 3 2 The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of this Paragraph 31

31 3 3 The Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term, (i) Lessee fails to pay Rent for a period of thirty (30) days after notice from Lessor (ii) Lessor gives to Lessee two (2) or more notices of separate Default during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits any Breach of this Lease

32 Reservations Lessor reserves to itself the right, from time to time, to grant or obtain, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easement, rights, dedications, maps and restrictions do not unreasonably interfere with the use and quiet enjoyment of the Premises by Lessee Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions

33 Amendments This Lease may be modified or amended only in writing, signed by the Parties to be bound, obligated or affected by such modification or amendment

34 Schedules & Exhibits All schedules and exhibits attached hereto are incorporated into and made a part of this Lease

35 Security Deposit Lessee shall deposit with Lessor on the date of this Lease, security for the performance of all of its obligations pursuant to this Lease, the amount equal to monthly Base Rent then in effect ("Security Deposit") If Lessee Defaults under this Lease, Lessor may use any part of the Security Deposit to make any defaulted payment, to pay for Lessor's cure of any defaulted obligation, or to compensate Lessor for any loss or damage resulting from any Default To the extent any portion of the deposit is used, Lessee shall within ten business (10) days after demand from Lessor restore the Security Deposit to its full amount Lessor may keep the Security Deposit in its general funds and shall not be required to pay interest to essee on the deposit amount If Lessee shall perform all of its obligations under this Lease and return the Premises to Lessor at the end of the Term as provided herein, Lessor shall return the remaining Security Deposit

to Lessee not later than thirty (30) days after the delivery of possession of the Premises to Lessor The Security Deposit shall not serve as an advance payment of Rent or a measure of Lessor's damages for any Default under this Lease Lessee waives the provision of California Civil Code Section 1950 7, and all other provisions of law now in force or that become in force after the date of execution of this Lease, that provide that Lessor may claim from a Security Deposit only those sums reasonably necessary to remedy any defaults in the payment of Rent, to repair damage caused by Lessee, or to clean the Premises Lessor and Lessee agree that Lessor, in addition, may claim those sums reasonably necessary to compensate Lessor for any other foreseeable or unforeseeable loss or damage caused by the acts or omission of Lessee or Lessee's officers, agents, employees, independent contractors, or invitees Notwithstanding anything to the contrary contained herein this Lease, Lessee shall not be required to deliver the Security Deposit to Lessor for so long as Lessor remains Crosthwaite Circle, LLC, a California limited liability company ("Crosthwaite"), or affiliate of Crosthwaite ("Affiliate"), and Lessee shall deliver Security Deposit to Lessee within seven (7) days of the date on which Crosthwaite or Affiliate shall cease to be Lessor hereunder

36 Force Majeure Neither Lessor nor Lessee shall be in default under this Lease to the extent they are unable to perform any of their respective obligations on account of any strike or labor problem, energy shortage, governmental pre-emption or prescription, flood, earthquake, national emergency, or any other cause of any kind beyond the reasonable control of the affected party ("Force Majeure"), provided, however, that Lessee's payment of Rent shall not be withheld or delayed by Force Majeure

The parties hereto have executed this Lease at the place specified above their respective signatures

"LESSOR"
RALPH ROAD, LLC, a
California limited liability company

By _____
Signature

_____
Print Name & Title

"LESSEE"
FSC CONSTRUCTION, INC ,
a Delaware corporation

By _____
Signature

_____
Print Name & Title

The parties hereto have executed this Lease at the place specified above their respective signatures

"LESSOR"
RALPH ROAD, LLC,
California limited liability company

Name Robert R Thomas
Title Managing Member

"LESSEE"
FSC CONSTRUCTION, INC ,
a Delaware corporation

Name Michael Mahre
Title President

[Signature Page to Ralph Road Lease]



Commonwealth Land Title Company
750 "B" Street
Suite 2350
San Diego, CA 92101
Phone (619) 233-3000

Circuit, McKellogg, Kinney & Ross, LLP
12005 Prospect Street Ste 400
La Jolla, CA 92037

Attn. **Laura Leszt**

Our File No. 03204600 - 609 - 611L
Senior Commercial Title Officer Katherine I Leicht
(kleicht@landam com)
Phone (619) 230-6346
Fax (619) 233-3846

Your Reference No: SDN-04-003676

Property Address 340 W Ralph Road, Imperial, California

PRELIMINARY REPORT

Dated as of November 2, 2004 at 7 30 a.m

In response to the above referenced application for a policy of title insurance, Commonwealth Land Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms

The printed Exceptions and Exclusion from the coverage of said Policy or Policies are set forth in Exhibit B attached Copies of the Policy forms should be read They are available from the office which issued this report

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit B of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.
It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

File No 03204600

SCHEDULE A

The form of policy of title insurance contemplated by this report is:

CLTA Standard Owners

The estate or interest in the land hereinafter described or referred to covered by this report is:

A FEE

Title to said estate or interest at the date hereof is vested in:

Robert R. Thomas, Trustee of the Restated Robert R. Thomas Trust dated April 14, 1999

The land referred to herein is situated in the County of Imperial, State of California, and is described as follows

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

File No: 03204600

EXHIBIT "A"

All that certain real property situated in the County of Imperial, State of California, described as follows:

Parcel A:

The West half of Tract 148, Township 15 South, Range 14 East, San Bernardino Meridian, in the County of IMPERIAL, State of California, according to the United States Government Plat of Resurvey approved December 22, 1908, and filed in the United States Land Office at Los Angeles, California.

Excepting therefrom any portion within the right of way of the Southern Pacific Railroad.

Also excepting therefrom 1/16 interest in all gas, oil, or minerals on, in or under said lands as reserved by General American Life Insurance Company in that certain deed to Fred E. Elg, dated August 13, 1941, and recorded November 19, 1941, in Book 574, page(s) 599, Official Records.

Parcel B:

Tract 144 of Township 15 South, Range 14 East, San Bernardino Meridian, in the County of IMPERIAL, State of California, according to the United States Government Plat of Resurvey approved December 22, 1908 and filed in the United States Land Office at Los Angeles, California.

PARTIAL LEASE TERMINATION AGREEMENT

This Partial Lease Termination Agreement ("Agreement") effective February 1, 2009, is made by and among Ralph Road, LLC, a California limited liability company ("Ralph"), FSC Construction, Inc, a Delaware corporation ("FSC"), and Building Materials Holding Corporation, a Delaware corporation ("BMHC") and is made with reference to the following facts·

A On or about October 1, 2005, Ralph entered into that certain Triple Net Commercial Real Estate Lease ("Lease") with FSC for the premises commonly described as 340 West Ralph Road, Imperial County, California ("Premises") A copy of the Lease is attached hereto as Exhibit B

B FSC and BMHC desire to terminate the Lease with respect to certain portions of the Premises comprising Sites 1-4, as more particularly described on Exhibit A to this Agreement ("Proposed Mobile Mini Premises") and abandon said Proposed Mobile Mini Premises effective on February 1, 2009

C. The Premises have certain asphalt damages and the parties dispute when the damages occurred ("Asphalt Damages").

NOW THEREFORE, the parties agree as follows

1. Consent Upon execution of the Agreement and upon the payment of Five Thousand Dollars ($5,000) by Ralph to FSC and BMHC, Ralph shall thereupon consent to termination of the Lease with respect to and the abandonment of the Proposed Mobile Mini Premises by FSC and BMHC.

2 Release and Hold Harmless As partial consideration of this Agreement, at such time that Mobile Mini actually occupies any of Sites 1-4 referenced above, Ralph does hereby release and hold harmless FSC and BMHC for the Asphalt Damages Additionally, Ralph does hereby release and hold harmless FSC or BMHC for any damages of the Premises by Mobile Mini and its invitees

3 Ingress and Egress BMHC and FSC hereby agree that Mobile Mini and its invitees shall be allowed to access the Proposed Mobile Mini Premises over the Premises as designated on Exhibit A

4 Binding Effect. This Agreement shall be binding on the parties, their personal representatives, successors and assigns and shall be governed by the laws of the State of California.

5. Mediation then Arbitration

5.1 In the event of a dispute or default under this Agreement, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall first be submitted to non-binding mediation ("Mediation") prior to initiating arbitration as set forth below in Paragraph 4 2. Each party shall bear its own costs and expenses of participating in the Mediation, and each party shall bear one-half (1/2) of the fees of the mediator The mediator shall be selected by the parties' mutual agreement within ten (10) days notice by one party to the other requesting mediation ("Notice of Dispute") If the parties cannot timely mutually agree upon a mediator, the American Arbitration Association, San Diego, California, shall promptly select the mediator. The parties agree that time is of the essence and that they will each, in good faith, seek to conclude the mediation process within sixty (60) days following the Notice of Dispute

5.2 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, which shall not have been satisfactorily resolved first according to Paragraph 4 1 above, shall be settled by arbitration at San Diego, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

6 Attorneys' Fees. If any party brings an arbitration or other proceeding to enforce the terms of this Agreement, the prevailing party in any such proceeding shall be entitled to reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

RALPH ROAD, LLC

By. _____
Robert R. Thomas, Member

BUILDING MATERIALS HOLDING CORPORATION
A Delaware Corporation

By: _____

PAUL S STREET
Sr Vice President, Chief Administrative Officer
General Counsel and Corporate Secretary

FSC CONSTRUCTION, INC
A Delaware Corporation

By. _____

PAUL S STREET
Sr Vice President, Chief Administrative Officer
General Counsel and Corporate Secretary

{GS3563 DOC }

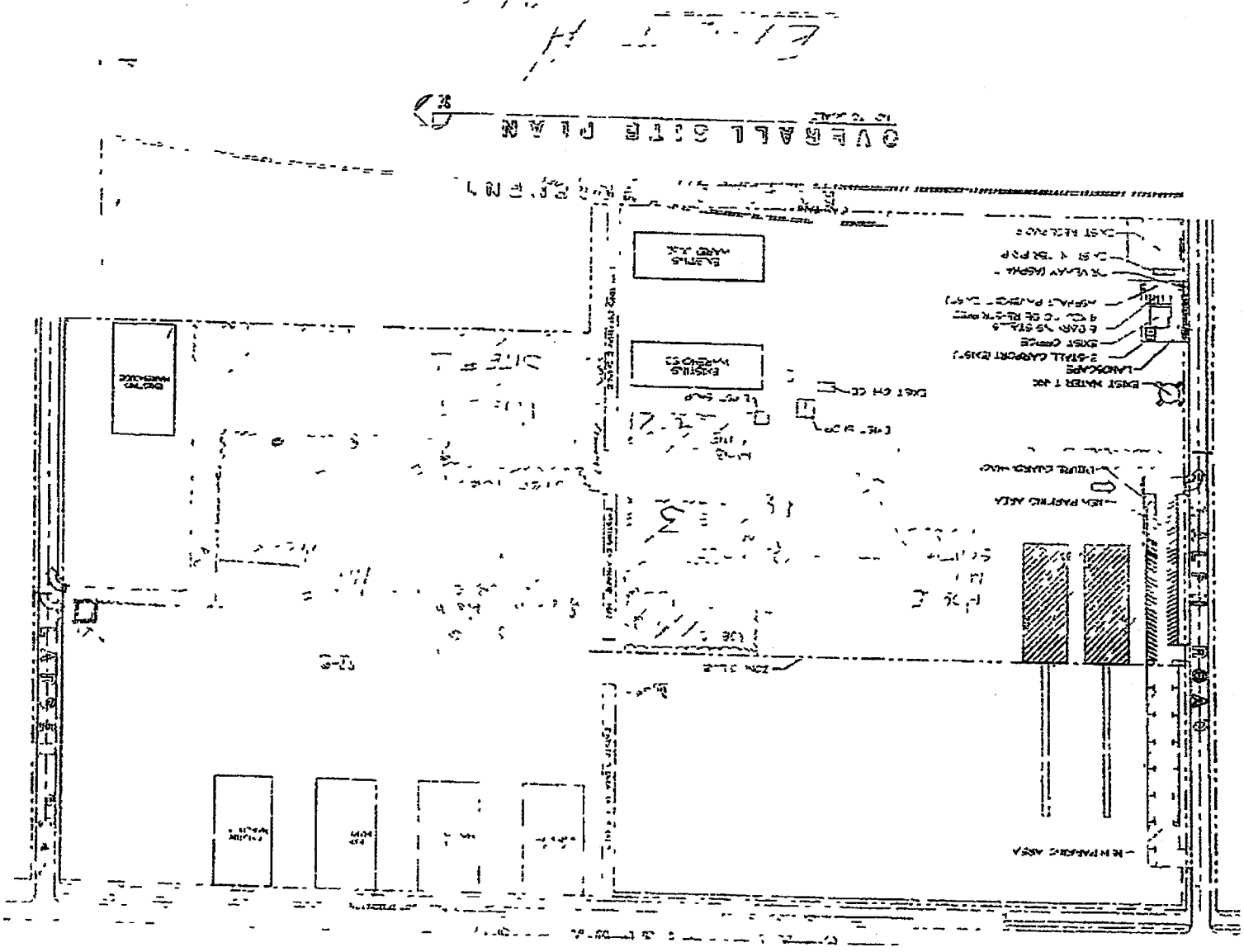


EXHIBIT K

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM

Name of Debtor (Check Only One)	Case No	Name of Debtor	Case No
☐ Building Materials Holding Corporation	09-12074	☐ TWF Construction, Inc	09-12080
☐ BMC West Corporation	09-12075	☐ H N R. Framing Systems, Inc	09-12081
☒ SelectBuild Construction, Inc	09-12076	☐ SelectBuild Southern California, Inc	09-12082
☐ SelectBuild Northern California, Inc	09-12077	☐ SelectBuild Nevada, Inc	09-12083
☐ Illinois Framing, Inc	09-12078	☐ SelectBuild Arizona, LLC	09-12084
☐ C Construction, Inc	09-12079	☐ SelectBuild Illinois, LLC	09-12085

Your Claim is Scheduled As Follows.

THE GARDEN CITY GROUP, INC. AUG 31 2009

FILED - 02338
USBC-DISTRICT OF DELAWARE
BUILDING MATERIALS HOLDING CORPORATION, ET AL.
09-12074 (KJC)

NOTE *This form should not be used to make a claim for an administrative expense arising after the commencement of the case, except for purposes of asserting an administrative expense under 11 U.S.C § 503(b)(9) (see item 6 below) All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503*

Name of Creditor (the person or other entity to whom the Debtor owes money or property) Robert R Thomas

☐ Check this box to indicate that this claim amends a previously filed claim

Court Claim Number _____ (*If known*)

Filed on _____

Name and address where notices should be sent
c/o Dean T Kirby, Jr
Kirby & McGuinn
707 Broadway, Suite 1750
San Diego, CA 92101
Telephone number (619) 525-1652
Email Address dkirby@kirbymac com

Name and address where payment should be sent (if different from above)
Robert R Thomas, Trustee
1620 Alpine Blvd , Suite 220
Alpine, CA 91901
Telephone number (619) 722-1226

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars

☐ Check this box if you are the Debtor or trustee in this case

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown Please review the Bar Date Notice to determine whether you must file a proof of claim to preserve your rights The Bar Date Notice is available online at www bmcrestructuring.com or upon request at the address on the back of this form

THIS SPACE IS FOR COURT USE ONLY

1 Amount of Claim as of Date Case Filed $ 400,000 00 according to proof

If all or part of your claim is secured, complete item 4 below, however, if all of your claim is unsecured, do not complete item 4 If all or part of your claim is entitled to priority, complete item 5 If your claim is asserted pursuant to 11 U S C § 503(b)(9), complete item 6

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim Attach itemized statement of interest or charges

2 Basis for Claim Breach of Contract
(See instruction #2 on reverse side)

3 Last four digits of any number by which creditor identifies Debtor _____

3a. Debtor may have scheduled account as. _____
(See instruction #3a on reverse side)

4 Secured Claim (See instruction #4 on reverse side)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information

Nature of property or right of setoff. ☐ Real Estate ☐ Motor Vehicle ☐ Equipment ☐ Other **Describe.**

Value of Property. $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim,

if any. $_____ **Basis for perfection** _____

Amount of Secured Claim. $_____ **Amount Unsecured:** $_____

6 Claim Pursuant to 11 U.S.C. § 503(b)(9)
Indicate the amount of your claim arising from your provision of goods sold to a Debtor in the ordinary course of the Debtor's business in the 20 days before June 16, 2009
Attach documentation supporting such claim $_____

7 Credits The amount of all payments on this claim has been credited for the purpose of making this proof of claim

8. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages and security agreements You may also attach a summary Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary (*See instruction #8 and definition of "redacted" on reverse side*)

DO NOT SEND ORIGINAL DOCUMENTS ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING

If the documents are not available, please explain in an attachment.

5. Amount of Claim Entitled to Priority under *11 U.S C § 507(a)* **If any portion of your claim falls in one of the following categories, check the box and state the amount.**

Specify the priority of the claim

☐ Domestic support obligations under 11 U S C § 507(a)(1)(A) or (a)(1)(B)

☐ Wages, salaries, or commissions (up to $10,950) earned within 180 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier – 11 U S C § 507(a)(4)

☐ Contributions to an employee benefit plan – 11 U S C § 507(a)(5)

☐ Up to $2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U S C § 507 (a)(7)

☐ Taxes or penalties owed to governmental units – 11 U S C § 507 (a)(8)

☐ Other – Specify applicable paragraph of 11 U S C § 507(a)(__) (Note Do not include Section 503(b)(9) Claims here)

Amount entitled to priority

$_____

Date: 8/28/09

Signature. The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above Attach copy of power of attorney, if any

/S/ Dean T Kirby, Jr , Attorney for Creditor

FOR COURT USE ONLY

Penalty for presenting fraudulent claim Fine of up to $500,000 or imprisonment for up to 5 years, or both 18 U S C. §§ 152 and 3571
Modified B10 (GCG) (12/08)

08-31-09A10:55 RCVD

KIRBY & McGUINN
A PROFESSIONAL CORPORATION

707 BROADWAY SUITE 1750
SAN DIEGO CA 92101-4515
HTTP //WWW KIRBYMAC COM

JAMES P CASTRANOVA II
C COLIN COSSIO
JANA LOGAN
MARTIN T MCGUINN
KENNETH C NOORIGIAN
CHERYL EDWARDS TANNENBERG

DEAN T KIRBY JR
VOICE 619 525-1652
FAX 619 525-1651
E-MAIL DKIRBY@KIRBYMAC COM

August 28, 2009

VIA OVERNIGHT DELIVERY
The Garden City Group
Attn Building Materials Holding Corporation
5151 Blazer Parkway, Suite A
Dublin, OH 43017

Re *In re Building Materials Holding Corporation*
Consolidated Case No 09-12074
United States Bankruptcy Court, District of Delaware

Ladies and Gentlemen

Enclosed are twelve proofs of claim, listed below, which are intended to be filed separately in the cases indicated THERE ARE NO DUPLICATES ENCLOSED, AND NO COPIES TO CONFORM

CREDITOR	DEBTOR	AMOUNT
Robert R Thomas	SelectBuild Construction, Inc Case No 09-12076	$400,000 00
Restated Robert R Thomas Trust	SelectBuild Construction, Inc Case No 09-12076	$400,000 00
Ralph Road, LLC	Building Materials Holding Corporation Case No 09-12074	$418,408 22
Ralph Road, LLC	BMC West Corporation Case No 09-12075	$418,408.22
Ralph Road, LLC	SelectBuild Construction, Inc. Case No. 09-12076	$418,408 22
Ralph Road, LLC	HNR Framing Systems, Inc. Case No 09-12081	$418,408 22

Gregg Street, LLC	Building Materials Holding Corporation Case No 09-12074	$407,808 86
Gregg Street, LLC	BMC West Corporation Case No 09-12075	$407,808 86
Gregg Street, LLC	SelectBuild Construction, Inc Case No. 09-12076	$407,808 86
Gregg Street, LLC	HNR Framing Systems, Inc Case No 09-12081	$407,808 86
Crosthwaite Circle, LLC	SelectBuild Construction, Inc. Case No. 09-12076	Unk (Contingent)
Robert R. Thomas	Building Materials Holding Corporation Case No 09-12074	$8,714 02

If you have any questions, please don't hesitate to telephone me personally

Very Truly Yours,

Dean T Kirby, Jr

The within claim is based upon the attached Securities Purchase Agreement dated as of October 17, 2005, between BMC Construction, Inc ("BMC") and HNR Framing Systems, Inc ("HNR") on the one hand and Restated Robert R Thomas Trust dated April 14, 1999 and Robert R Thomas (collectively, "Claimant") on the other hand, and on the attached Asset Purchase Agreement of even date between FSC Construction, Inc ("FSC"), HNR, and Home Building Components, Inc on the one hand and Claimants on the other hand The Securities Purchase Agreement and Asset Purchase Agreement are listed in Schedule G, filed on behalf of Debtor SelectBuild Construction, Inc ("SelectBuild"), (Docket No 214) as an executory contract Claimant reserves the right to file a cure claim at such time as the Debtor seeks to assume the Securities Purchase Agreement and/ or the Asset Purchase Agreement pursuant to 11 U S C §365

To the best of Claimant's knowledge, information and belief, Selectbuild is the successor in interest to BMC as the "Buyer" under the Securities Purchase Agreement and to FSC as the "Buyer" under the Asset Purchase Agreement Claimant reserves the right to amend this proof of claim to name other entities which, without Claimant's knowledge, may have assumed the obligations of the Buyer under the Securities Purchase Agreement and/or the Asset Purchase Agreement

Pursuant to the Asset Purchase Agreement, and as part of the consideration paid for the assets (i) HNR, entered into a lease of the property at 13465 Gregg Street, Poway California, from Gregg Street, LLC, a special purpose entity, (ii) HNR also entered into a lease of the property at 13495 Gregg Street, Poway California, from Gregg Street, LLC , (iii) FSC entered into a lease of the property at 340 W Ralph Road, Imperial California, from Ralph Road, LLC, a special purpose entity, and (iv) FSC Construction, Inc entered into a lease of the property at 12345 Crosthwaite Circle, Poway California from Crosthwaite Circle, LLC, a special purpose entity These leases were referred to in the Asset Purchase Agreement as the 'New Shareholder Leases "

The New Shareholder Leases were subsequently terminated in part, as follows (i) the Crosthwaite Circle lease was terminated and the property leased to a new tenant, with FSC agreeing to remain liable as an indemnitor under the terms of a "Lease Termination Agreement", (ii) the Gregg Street and Ralph Road leases were each the subject of a "Partial Lease Termination Agreement" which reduced the tenant's obligations The New Shareholder Leases relating to Gregg Street and Ralph Road were rejected by the Debtors, as authorized by Order entered

Claimant contends that the Securities Purchase Agreement, Asset Purchase Agreement and New Shareholder Leases were part of the same transaction such that rejection of the New Shareholder Leases precludes assumption of the Securities Purchase Agreement and Assets Purchase Agreement Without waiving this position and for the sake of clarity, Gregg Street, LLC and Ralph Road, LLC have filed separate proofs of claim relating to rejection of the New Shareholder Leases

The Securities Purchase Agreement provides among other things that Claimant will indemnify SelectBuild against construction defect claims Prior to the bankruptcy, Claimant protested in writing that SelectBuild was failing to perform its duties under the Securities Purchase Agreement in the handling of those claims and to mitigate the construction defect losses Claimant has suffered damages due to these breaches in the form of increased

expenses incurred in defending and indemnifying against these claims in an amount not less than $400,000 00, according to proof

The Securities Purchase Agreement, Asset Purchase Agreement and New Shareholder Leases each require that all disputes arising under or relating to them be subject to alternative dispute resolution, consisting first of non-binding mediation and then binding arbitration under the rules of the American Arbitration Association In submitting proofs of claim in this bankruptcy case, Claimant does not waive such dispute resolution provisions and demands that any objection to the within claim be submitted to mediation and if necessary to binding arbitration

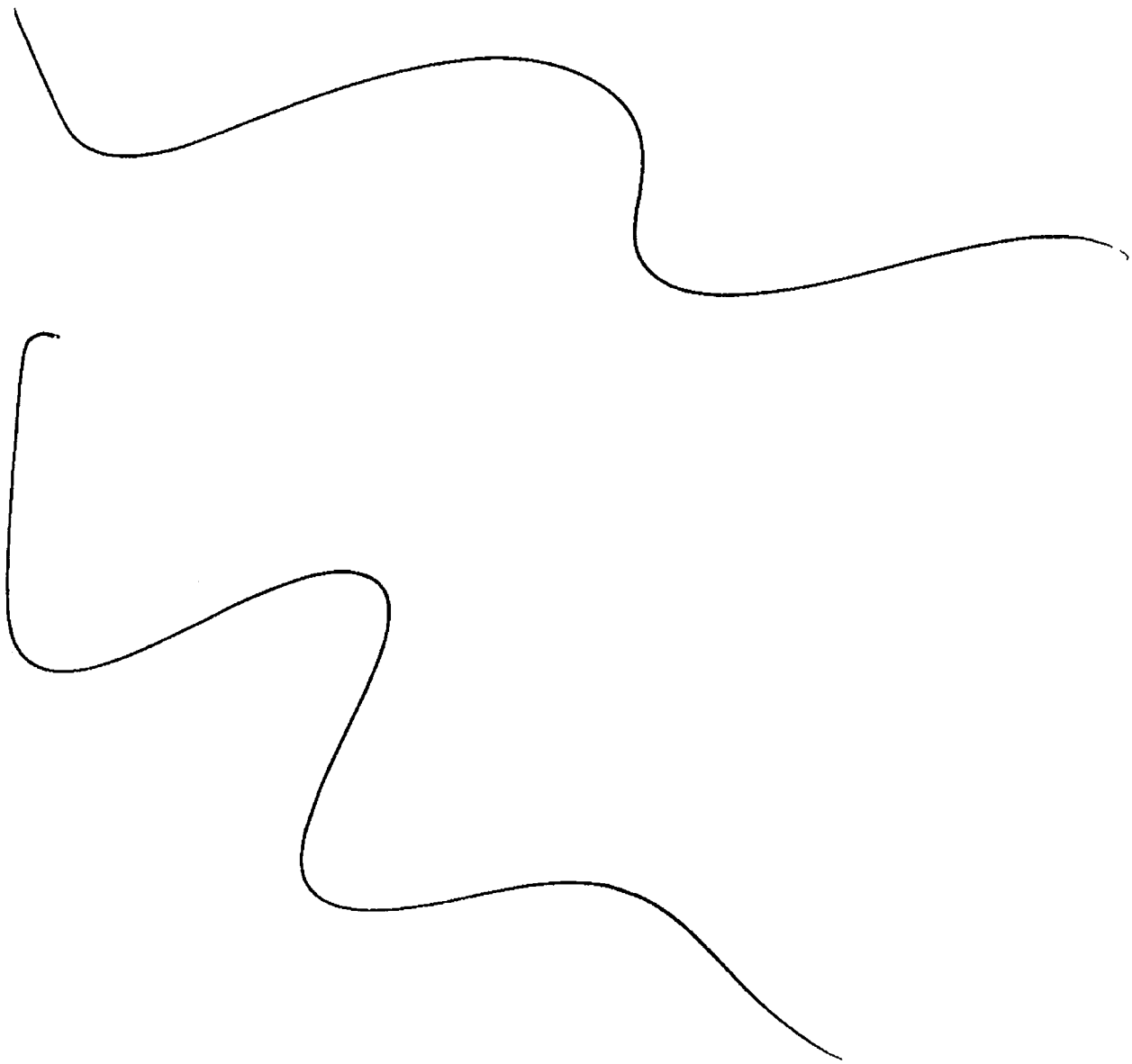


EXHIBIT L

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, et al. [1]	)	Case No. 09-12074 (KJC) Jointly Administered
Debtors	)	**Re: Docket No. 762**

OBJECTION BY ROBERT R. THOMAS AND THE RESTATED THOMAS TRUST DATED APRIL 14, 2009 TO CONFIRMATION OF JOINT PLAN OF REORGANIZATION AS AMENDED OCTOBER 22, 2009

Robert R. Thomas ("Mr. Thomas") and The Restated Thomas Trust Dated April 14, 2009 (the "Thomas Trust") (collectively, the "Thomas Parties") hereby file this objection (the "Limited Objection") to confirmation of the Joint Plan of Reorganization As Amended October 22, 2009 (the "Plan") [Docket No. 276]. In support of this Limited Objection, the Thomas Parties respectfully represents as follows:

I. INTRODUCTION

1. The Thomas Parties are the counterparties to two executory contracts, each of which includes comprehensive alternative dispute resolution provisions governed by the Federal Arbitration Act. While the Thomas Parties protested the Debtors' breaches of the contracts prior to the bankruptcy, they had not yet proceeded to demand mediation and arbitration under the ADR provisions of the contracts.

[1] The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

2. The Plan contains a general provision to the effect that all executory contracts of the Debtors are to be assumed, subject to exceptions not applicable here.[2] Following approval of the Disclosure Statement, the Debtors served their Sixth Omnibus (Substantive) Objection to Claims, which objects to all of the various claims of the Thomas Parties. The deadline to respond to the Sixth Omnibus Objection is December 8, 2009. The Thomas Parties intend to oppose the Sixth Omnibus Objection by seeking to compel arbitration.

3. This Limited Objection to plan confirmation relates only to those provisions of the Plan which would require the dispute between the Debtors and the Thomas Parties to be resolved by the Bankruptcy Court via objections to proposed Cure Claims.[3] The Thomas Parties contend that the Federal Arbitration Act and controlling case law require enforcement of the ADR provisions of these contracts.

II. STATEMENT OF THE CASE

4. Prior to October, 2005, the Thomas Trust was the 100% shareholder of HNR Framing Systems, Inc. The Thomas Trust was also the 100% shareholder of Home Building Components, Inc. ("HBC") HNR did business as a framing contractor. As such, it constructed the framing for literally thousands of homes in California. HBC was a manufacturer of roof trusses.

---

[2] The Plan provides that all executory contracts of the Debtors will be assumed unless previously rejected or appearing on the "Rejected Executory Contract and Unexpired Lease List." To this point, counsel for the Thomas Parties has been unable to locate the list on the Docket. It therefore appears that the Debtors intend to assume the contracts with the Thomas Parties.

[3] The Plan also provides that no later November 20, the Debtors will notify counterparties to executory contracts of proposed Cure Claims, with counterparties having until December 3 to object to the proposed Cure Claims. As of the date of this brief, the Thomas Parties cannot locate any notice of proposed Cure Claims on the Docket, and they have not been served with proposed Cure Claims by any means other than perhaps by mail not yet received.

5. In about October, 2005, the Thomas Trust entered into a "Securities Purchase Agreement"[4] under which it agreed to sell 100% of the stock of HNR to BMC Construction, Inc. The Thomas parties believe that BMC Construction is now Selectbuild Construction, Inc., one of the Debtors in this chapter 11 case. Concurrently, HBC entered into an "Asset Purchase Agreement"[5] under which it agreed to sell substantially all of its assets to FSC Construction, Inc. The Thomas Parties believe that FSC Construction was later merged into one of the Debtor entities. The Securities Purchase Agreement and Asset Purchase Agreement are referred to collectively herein as the "Acquisition Agreement."

6. The Acquisition Agreement establishes an ongoing contractual relationship between the Debtors on the one hand and the Trust on the other. The parties' mutual contractual duties include among other things the agreement of the Trust to indemnify Selectbuild against construction defect claims. Prior to the bankruptcy, the Thomas Parties protested in writing that Selectbuild was failing to perform its duties under the Securities Purchase Agreement in the handling of those claims and to mitigate the construction defect losses.

7. Both the Securities Purchase Agreement and the Asset Purchase Agreement[6] provide in part:

> (a) With the exception of disputes arising pursuant to Sections 10 and 22.6, any dispute, controversy or claim arising out of or relating to this Agreement or any transaction contemplated hereby, whether based on contract, tort, statute or other legal or equitable theory (including without limitation, any claim of fraud, misrepresentation or fraudulent inducement or any question of validity or effect of this Agreement including this

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[4] Exhibit A to the Declaration Robert R. Thomas filed herewith (the "Thomas Decl.")

[5] Thomas Decl. Exh B.

[6] Thomas Decl. Exh A pp. 47-48; Exh B p. 44

> clause) or the breach or termination thereof ("Dispute"), shall be resolved in accordance with this Section . . . .
>
> (b) The parties shall first use their reasonable and good faith efforts to settle any Dispute through non-binding mediation to be held in Orange County, California ("Mediation"), prior to initiating binding arbitration as set forth below. . . . If for any reason the parties are unable to resolve the Dispute within thirty (30) days following the date of the Notice of Dispute, such Dispute shall be resolved by binding arbitration to be conducted before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration rules and regulations promulgated by AAA as in effect at the time of the arbitration, and as follows . . . .

8. Prior to closing of the acquisition, HNR occupied the property located at 13465 and 13495 Gregg Street, Poway California, under leases from entities which are affiliates of the Trust. HBC occupied the facilities located at 12345 Crossthwaite Circle, Poway, California and 340 West Ralph Road, Imperial California, under leases from entities which are affiliates of the Thomas Trusts.

9. As part of the consideration paid in the acquisition, Selectbuild and FSC agreed to lease the Poway and Imperial properties at above market rent.[7] These new leases were referred to in the Acquisition Agreement as the "New Shareholder Leases." The rent under these New Shareholder Leases was negotiated by the parties as an integral part of the purchase price in the acquisition which affected the cash amount paid at closing. These New Shareholder Leases were later terminated in part, and modified by written agreements which contain simplified versions of the same ADR provisions which are included in the Acquisition Agreement.[8] The Debtors

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[7] See, Declaration of Paul S. Street in Support of Debtors' . . . First Day Motions fld 6-16-09 Docket No. 3 p. 40 ¶ 100.

[8] Thomas Decl. p. 3 ¶¶ 8, 9.

vacated the leased premises and filed a first day motion to reject the New Shareholder Leases.[9]

10. The Thomas Parties filed a "Reservation of Rights and Limited Response" to the Debtors' motion to reject,[10] which explained that the New Shareholder Leases were part of a unified acquisition transaction. The Reservation of Rights notified the Debtors that rejection of the New Shareholder Leases would give rise to a defense, based on a right of recoupment, to the Debtors' indemnity claims under the Securities Purchase Agreement. It stated:

> This Reservation of Rights and Limited Response does not ask the Court for any relief in relation to the Debtors' First Omnibus Motion. It is a statement of position, intended to inform the Debtors on the record of what the Thomas Parties believe that the legal consequences of rejection will be. As to all of the claims, rights and defenses which will arise from rejection, the Thomas Parties do not waive their right to arbitrate, and hereby expressly reserve all other such claims, rights and defenses.

11. The Debtors filed a Reply[11] which took issue with the recoupment argument, but which also argued that this Court lacked jurisdiction to consider the issue, because only the motion to reject the New Shareholder Leases was before it at the time. The Court entered an Order approving rejection of the leases which does not address the effect of rejection on the Acquisition Agreement.[12]

---

[9] "Debtors' First Omnibus Motion for an Order Authorizing Rejection of Certain Unexpired Leases and Executory Contracts, Nunc Pro Tunc to the Rejection Effective Date" filed 6-16-2009 as Docket No. 33).

[10] "Reservation of Rights and Limited Response to Debtor's First Omnibus Motion For An Order Authorizing Rejection Of Certain Unexpired Leases And Executory Contracts, Nunc Pro Tunc To The Rejection Effective Date" filed 7-10-2009 as Docket Entry No. 156.

[11] "Debtors' Reply to the Reservation of Rights and Limited Response to Debtors' First Omnibus Motion for an Order Authorizing Rejection Of Certain Unexpired Leases And Executory Contracts, Nunc Pro Tunc To The Rejection Effective Date" filed 7-13-09 as Docket Entry No. 173.

[12] "First Order Authorizing the Debtors To Reject Certain Unexpired Leases and Executory Contracts, Nunc Pro Tunc To The Rejection Effective Date" entered 7-16-09 as Docket Entry No. 242.

12. Ralph Road, LLC and Gregg Street, LLC, the landlords under the New Shareholder Leases, timely filed proofs of claim for rejection damages. Because it was uncertain as to which of the Debtor entities was the successor in interest to the original tenants under the New Shareholder Leases, each of these claims was filed against four entities: Building Materials Holding Corp., Selectbuild Construction, Inc., H.N.R Framing Systems, Inc., and BMC West Corporation.

13. Also prior to the general claims bar date, the Thomas Parties filed proofs of claim against Debtor Selectbuild Construction, Inc., based upon pre-petition breaches of the Securities Purchase Agreement. Each proof of claim was submitted in the amount of $400,000, which is an estimate of the amount of damages incurred due to the lack of cooperation by the Debtors in defending construction defect claims.

The Plan provides in relevant part:

> **6.1** ***Assumption and Rejection of Contracts and Unexpired Leases.*** Except as otherwise provided herein or pursuant to the Confirmation Order, all Executory Contracts and Unexpired Leases . . . shall be assumed pursuant to section 365(a) of the Bankruptcy Code as of the Effective Date, except for any such contract or lease (i) that has been assumed or rejected, or renegotiated and either assumed or rejected on renegotiated tenns, pursuant to an order of the Bankruptcy Court entered prior to the Effective Date . . . or (iv) that is identified on the Rejected Executory Contract and Unexpired Lease List.
>
> ***6.4 Cure of Defaults.*** Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Claim in Cash on the Effective Date . . . . In the event of a dispute regarding (i) the Cure Claim . . . or (iii) any other matter pertaining to assumption, the payments required by section 365(b)(1) of the Bankruptcy Code in respect of Cure Claims shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption. At least 20 days prior to the Confirmation Hearing, the Debtors shall provide for notices of proposed assumption and proposed Cure Claims to be sent to applicable third parties. . . . . Any

> counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or Cure Claim will be deemed to have assented to such assumption and Cure Claim. If an objection to a proposed Cure Claim is sustained by the Bankruptcy Court, the Reorganized Debtors may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming it.

14. Counsel for the Thomas Parties has not been able to locate in the Docket the "Rejected Executory Contract and Unexpired Lease List" and has not been notified that the Debtors now intend to reject the Acquisition Agreement. It therefore appears that the Debtors intend to assume these agreements on the Effective Date of the Plan. Also, counsel for the Thomas Parties has not received, and cannot locate on the docket, any notice of the proposed Cure Claims. These proposed Cure Claims were required under the Plan to be served on November 20.

15. On November 13, 2009, the Debtors filed their "Sixth Omnibus (Substantive) Objection to Claims . . . ." (Docket No. 929). This Sixth Omnibus Objection objects to the $400,000 claim based on breach of the Securities Purchase Agreement filed by Mr. Thomas, based on the grounds that the Debtor's books and records indicate no liability. In addition, the Sixth Omnibus Objection objects to some, but not all, of the proofs of claim filed by Ralph Road, LLC and Gregg Street, LLC in relation to the rejection of the New Shareholder Leases. The deadline to respond to the Sixth Omnibus Objection is December 8, 2009.

III. ENFORCEMENT OF THE ADR PROVISIONS OF THE ACQUISITION AGREEMENTS IS MANDATED BY THE FEDERAL ARBITRATION ACT

16. 9 U.S.C. § 2 provides in part:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof . . . . shall be valid, irrevocable, and

> enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

17. 9 U.S.C. § 1 states that "'commerce,' as herein defined, means commerce among the several States . . . ." The Acquistion Agreement documents a purchase and sale of assets and securities between, on the one hand: (i) Mr. Thomas, a California resident; (ii) the Thomas Trusts, which were established by Mr. Thomas under the laws of California; (iii) HnR Framing Systems, Inc. and Home Building Components, Inc., both of them California corporations with their chief executive offices in California. The acquiring parties, on the other hand, were BMC Construction, Inc., a Delaware corporation with executive offices in both San Francisco, California and Boise, Idaho and operations nationwide; FSC Construction, Inc., a Delaware corporation with its chief executive offices in San Francisco and Boise.

18. Given both the interstate operations of the businesses involved and the fact that the parties to the Acquisition Agreement were residents of different states, the Acquisition Agreement clearly constitutes a contract "evidencing a transaction involving commerce" such that the Federal Arbitration Act applies to the ADR provisions of these contracts. See generally, *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 55-56, 123 S.Ct. 2037, 156 L.Ed.2d 46 (2003).

19. 9 U.S.C. § 3 provides:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

20. The Debtor's Amended Plan does not itself seek to disallow the claims of the Thomas Parties or to adjudicate their defenses to further indemnity claims under the Acquisition

Agreement. It does, however, seek to establish a system for the resolution of Cure Claims which is confined to legal proceedings in the Bankruptcy Court. Specifically, the Debtors are to propose Cure Claims to which the Thomas Parties must object in Court. If the Thomas Parties fail to object, or their objection is overruled by the Bankruptcy Court, then they will be barred from asserting these claims and defenses in the future in relation to the Acquisition Agreement.

21. The Thomas Parties are making only a limited objection to confirmation of the Amended Plan. The Thomas Parties only object to the Plan's provisions for determining their Cure Claims, because the Plan does not require resolution of claims and defenses relating to the Acquisition Agreement according to the ADR provisions.

IV. THE BANKRUPTCY COURT HAS NO DISCRETION TO DENY ARBITRATION IN THIS CASE

22. There is no question that confirmation of a chapter 11 plan, as well as the allowance and disallowance of claims against the bankruptcy estate, are "core matters" as to which this Court has the jurisdiction to make a final determination. 28 U.S.C. § 157(b)(2)(B) & (L). However, whether any matter is or is not within the Bankruptcy Court's core jurisdiction "does not affect whether the Bankruptcy Court [has] the discretion to deny arbitration . . . ." *In re Mintze*, 434 F.3d 222, 229 (3d Cir. 2006).

23. *Mintze* was a chapter 13 case filed by a Debtor who had, prepetition, notified her home mortgage lender of her intent to rescind for alleged violation of the Truth in Lending Act ("TILA" 15 U.S.C. §§ 1601-1667f). The Debtor commenced an adversary proceeding to enforce the rescission, then opposed the lender's motion to compel arbitration. The Bankruptcy Court found that both the confirmation of the chapter 13 plan and the allowance of the lender's claim were core matters, and "decided that the matter was best resolved in the bankruptcy court system because the outcome of Mintze's rescission claim would affect her bankruptcy plan and the

distribution of monies to her other creditors." *In re Mintze*, 434 F.3d 222, 227 (3d Cir. 2006). The District Court affirmed, but the Third Circuit reversed.

24. The Third Circuit held that the abuse of discretion standard of review did not apply to the appeal in *Mintze*, supra., because the above-quoted provisions of the FAA are mandatory in their requirement that courts must stay judicial proceedings in order to allow for contractual arbitration. In determining whether FAA applied, the Third Circuit applied the test articulated in *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 107 S.Ct. 2332, 96 L.Ed.2d 185 (1987) and applied in *Hays & Co. v. Merrill Lynch Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1156 (3d Cir.1989). As recapitulated in *Mintze*, supra., 434 F.3d at 229, the standard is as follows:

> By itself, the FAA mandates enforcement of applicable arbitration agreements even for federal statutory claims. See *McMahon,* 482 U.S. at 226, 107 S.Ct. 2332.
>
> The FAA's mandate can, however, be overridden. If a party opposing arbitration can demonstrate that "Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue," the FAA will not compel courts to enforce an otherwise applicable arbitration agreement. *McMahon,* 482 U.S. at 227, 107 S.Ct. 2332. To overcome enforcement of arbitration, a party must establish congressional intent to create an exception to the FAA's mandate with respect to the party's statutory claims. Congressional intent can be discerned in one of three ways: (1) the statute's text, (2) the statute's legislative history, or (3) "an inherent conflict between arbitration and the statute's underlying purposes." *McMahon,* 482 U.S. at 227, 107 S.Ct. 2332.

25. The Court in *Mintze*, supra, found nothing in the Bankruptcy Code that evidenced a Congressional intent to make an exception to the FAA's mandate to enforce the arbitration clause contained in the loan documents. The Court concluded that "[i]f arbitration is enforced in this case, we likewise cannot perceive of a sufficiently adverse effect on the underlying purposes

of the Bankruptcy Code." *In re Mintze*, 434 F.3d 222, 232 (3d Cir. 2006).

26. The Debtor in *Mintze* presumably argued that the ability to rescind her home mortgage loan was pivotal to her ability to confirm a chapter 13 plan. In contrast, in this case the rights under the Acquisition Agreement are by no means pivotal to this chapter 11 reorganization. The claims filed by the Thomas Parties relating to the breach of the Acquisition Agreement total $400,000.00 The projected 2009 financial statements of the reorganized Debtors, attached as Exhibit F to the Disclosure Statement, show total assets of $401,200,000, current assets of $234,800,000, and 2009 gross revenue of $693,000,000.

V. CONCLUSION

27. The Thomas Parties therefore object to confirmation of the Amended Plan on the grounds that it provides for the resolution of its claims and defenses under the Acquisition Agreement in a manner which is not consistent with the ADR provisions contained in the Acquisition Agreement. The Thomas Parties request that this Court order that all proceedings relating to the Debtors' proposed assumption of the Acquisition Agreement be stayed pending the resolution of the claims and defenses of the parties by proceedings consistent with the ADR provisions.

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DATE: November 25, 2009

Ian Connor Bifferato (No. 3273)
Thomas F. Driscoll III (No. 4703)
Kevin G. Collins (No. 5149)
Bifferato LLC
800 N. King St., Plaza Level
Wilmington, DE 19801
Telephone: (302) 429-1900
Fax: (302) 429-8600
Email: cbifferato@bifferato.com
tdriscoll@bifferato.com
kcollins@bifferato.com

-and-

Dean T. Kirby, Jr. (Calif. No. 090114)
Kirby & McGuinn, A P.C.
707 Broadway, Suite 1750
San Diego, CA 92101
Telephone: (619) 525-1652
Fax: (619) 525-1651
Email: dkirby@kirbymac.com

Attorneys for Robert R. Thomas
and The Restated Robert R. Thomas
Trust dated April 14, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this the 25th day of November, 2009, a copy of the foregoing *Objection by Robert R. Thomas and the Restated Thomas Trust Dated April 14, 2009 to Confirmation of Joint Plan of Reorganization as Amended October 22, 2009* was caused to be served on the following, in the manner so indicated:

VIA HAND DELIVERY
Sean M. Beach, Esq.
Donald J. Bowman, Jr., Esq.
Robert F. Poppiti, Jr., Esq.
YOUNG, CONAWAY, STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19801

VIA U.S. FIRST CLASS MAIL
Michael A. Rosenthal, Esq.
Matthew K. Kelsey, Esq.
Aaron G. York, Esq.
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue, 47th Floor
New York, NY 10166-0193

VIA HAND DELIVERY
Bradford J. Sandler, Esq.
Benesch Friedlander Coplan & Aronoff
222 Delaware Avenue, Suite 801
Wilmington, DE 19801

VIA U.S. FIRST CLASS MAIL
Christopher J. Giaimo, Esq.
Arent Fox, PLLC
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

VIA HAND DELIVERY
United States Trustee
844 King Street, Room 2207
Lockbox #35
Wilmington, DE 19899-0035

Thomas F. Driscoll (No. 4703)