

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOUR ENTERPRISES, LLC, a Nevada
limited liability company; MULUGETA
BOUR, an individual; and HILENA
MENGESHA, an individual,

Appellants,

vs.

4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an
Idaho general partnership,

Respondents.

Case No.: 83099

(Consolidated with Case No. 82699)

District Court No.: A-19-794864-C

Electronically Filed
Nov 18, 2021 04:35 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court,
The Honorable Veronica Barisich Presiding
(preceded by the Honorable Trevor Atkin and the Honorable Michael Cherry)

RESPONDENTS' SUPPLEMENTAL APPENDIX

F. THOMAS EDWARDS, ESQ.

Nevada Bar No. 9549

tedwards@nevadafirm.com

JESSICA M. LUJAN, ESQ.

Nevada Bar No. 14913

jlujan@nevadafirm.com

HOLLEY DRIGGS

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: (702) 791-0308

Facsimile: (702) 791-1912

Attorneys for Respondents

CHRONOLOGICAL INDEX TO SUPPLEMENTAL APPENDIX

| Document Description | Date | Vol. | Bates Nos. |
|---|-------------|-------------|-------------------|
| Plaintiff's Motion for Summary Judgment Regarding Breach of Contract Claims | 12/1/21 | 1 | 1 - 112 |
| Minute Order (granting Motion for Entry of Judgment) | 3/3/21 | 1 | 113-114 |
| Notice of Entry of Judgment (and Judgment) | 3/9/21 | 1 | 115-121 |

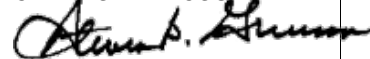
ALPHABETICAL INDEX TO SUPPLEMENTAL APPENDIX

| Document Description | Date | Vol. | Bates Nos. |
|---|-------------|-------------|-------------------|
| Minute Order (granting Motion for Entry of Judgment) | 3/3/21 | 1 | 113-114 |
| Notice of Entry of Judgment (and Judgment) | 3/9/21 | 1 | 115-121 |
| Plaintiff's Motion for Summary Judgment Regarding Breach of Contract Claims | 12/1/21 | 1 | 1 - 112 |

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm of Holley Driggs, and that I electronically filed the foregoing **RESPONDENTS' SUPPLEMENTAL APPENDIX** with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on the 18th day of November, 2021. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Sandy Sell
an employee of Holley Driggs



1 F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
2 E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
3 Nevada Bar No. 14913
E-mail: jlujan@nevadafirm.com
4 HOLLEY DRIGGS
400 South Fourth Street, Third Floor
5 Las Vegas, Nevada 89101
Telephone: 702/791-0308
6 Facsimile: 702/791-1912

7 *Attorneys for Plaintiffs/Counterdefendants*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
11 general partnership,

12 Plaintiffs,

13 v.

14 BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
15 individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

16 Defendants.

17 BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
18 individual; HILENA MENGESHA, an
19 individual; DOES 1 through 100, inclusive,

20 Counterclaimants.

21 v.

22 4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership, DOES I-X; and ROE
23 CORPORATIONS I-X,

24 Counterdefendants,

Case No: A-19-794864-C
Dept. No.: 8

HEARING DATE REQUESTED

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
REGARDING THEIR BREACH OF
CONTRACT CLAIMS**

25 Plaintiffs/Counterdefendants, 4520 Arville, a California general partnership; and
26 McKinley Manor, an Idaho general partnership (collectively "Plaintiffs"), by and through their
27 attorneys of record, the law firm of Holley Driggs, move for summary judgment on their claims
28

1 for breach of contract against Defendants Bour Enterprises, LLC, Mulugeta Bour and Hilena
2 Mengesha (collectively “Defendants”). Defendants breached their leases and personal guaranties
3 without any legal justification, such that Plaintiffs are entitled to summary judgment on the
4 Defendants’ breach of those agreements. This motion is made and based upon the papers and
5 pleadings on file herein, the following points and authorities, any exhibits attached hereto, and any
6 oral argument at the hearing on this matter.

7 Dated this 1st day of December, 2020.

8 **HOLLEY DRIGGS**

9
10 /s/ F. Thomas Edwards

11 F. THOMAS EDWARDS, ESQ.

12 Nevada Bar No. 9549

13 JESSICA M. LUJAN, ESQ.

14 Nevada Bar No. 14913

15 400 South Fourth Street, Third Floor

16 Las Vegas, Nevada 89101

17 *Attorneys for Plaintiffs/Counterdefendants*
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs' straightforward breach of contract action arises out of Defendants' early,
4 unauthorized abandonment of their lease of Plaintiffs' warehouse space located at 4560 S. Arville
5 St., C-10, 23, 24, and 29, Las Vegas, NV 89103 (the "Premises"). In an attempt to avoid liability
6 for their breaches of the leases and personal guaranties, Defendants asserted the amount of "dust
7 and debris" at the Premises and the lack of sufficient parking justified their abandonment of the
8 lease. However, Defendants' assertions are fundamentally flawed for a series of reasons.

9 First, Defendants' commercial lease expressly states that Defendants accepted the Premises
10 in an "as-is" condition. Second, Defendants' commercial lease expressly states that Defendants
11 were responsible for any maintenance of the interior of the Premises, such that if there was an issue
12 with the "dust and debris," it was Defendants' contractual obligation to remedy that issue. Third,
13 Defendants cannot claim they were unaware of the condition of the Premises because Defendants
14 operated out of the premises pursuant to a sub-lease for almost two (2) years before they signed
15 the leases that are at issue in this lawsuit. Fourth, the first page of the leases signed (and initialed)
16 by Defendants clearly identify the number of parking spaces Defendants could use.

17 Defendants signed legally binding leases and personal guaranties. Defendants have no
18 legal justification for abandoning the Premises and breaching those contracts. Plaintiffs are
19 entitled to enforce those contracts. Therefore, Plaintiffs are entitled to summary judgment on their
20 breach of contract claims against Defendants.

21 **II. STATEMENT OF UNDISPUTED MATERIAL FACTS**

22 1. In July of 2015, Defendants started to manage Stardust Limousine, which was
23 operating out of unit C-23/24 at the Premises. *See* excerpts of deposition transcript of NRC
24 30(b)(6) Designee of Bour Enterprises, LLC, 15:20-25, 16:1-5, attached hereto as **Exhibit 1**.

25 2. Later in 2015, Defendants purchased Stardust Limousine and continued to operate
26 the business out of Suite C-23/24 at the Premises under the existing Stardust Limousine lease. *See*
27 Ex. 1, 15:2-5.

1 3. Because Defendants were operating the business out of unit C-23/24 at the
2 Premises, Defendants were aware of the condition of the Premises. *See* Ex. 1, 23:1-12.

3 4. When Defendants complained about the condition of the Premises, the Plaintiffs
4 explained that Stardust Limousine leased the Premises in an “as-is” condition. *See* Ex. 1, 23:14-
5 23.

6 5. Defendants also complained that they wanted additional parking, despite the fact
7 that Defendants understood that each warehouse unit was assigned only a few parking spaces. *See*
8 Ex. 1, 26:6-19, 27:20-28:6.

9 6. In 2017, Plaintiffs requested that Defendants sign a new lease, as opposed to
10 continuing to operate under the Stardust Limousine lease. *See* Ex. 1, 24:16-21.

11 7. On or about April 20, 2017, Defendants signed a new lease for unit C-23/24 at the
12 Premises and a related personal guaranty. *See* Unit C-23/24 Lease, Addendum and Guaranty,
13 attached hereto as **Exhibit 2**. *See also*, Ex. 1, 45:6-46:1; 50:25-51:5.

14 8. At or about the same time, to alleviate Defendants’ concern about parking,
15 Plaintiffs recommended that Defendants lease an additional warehouse unit, which would provide
16 an additional number of parking spaces and additional room to park vehicles inside the new
17 warehouse unit. *See* Ex. 1, 27:20-28:6.

18 9. Defendants agreed and on or about April 20, 2017, signed an additional lease for
19 unit C-10/29. *See* Unit C-10/29 Lease, Addendum and Guaranty, attached hereto as **Exhibit 3**.
20 *See also*, Ex. 1, 57:14-58:11; 60:1-6.

21 10. The terms of the leases are nearly identical. *See* Exs. 2 and 3.

22 11. For example, the first pages of the leases provide that Defendants are entitled to
23 four (4) unreserved parking spaces, for a total of eight (8) spaces between the leases:

24 **1.2(b) Parking:** Four (4) unreserved vehicle parking spaces
25 (“Unreserved Parking Spaces”); and n/a reserved vehicle parking
26 spaces (“Reserved Parking Spaces”).

26 *See* Exs. 2 at ARV000001 and 3 at ARV000034.

27 12. Section 7.1(a) of the leases expressly provide that Defendants are responsible for
28 all maintenance of the Premises.

1 **7. Maintenance; Repairs, Utility Installations; Trade Fixtures**
2 **and Alterations.**

3 **7.1 Lessee's Obligations.**

4 **(a) In General.** Subject to the provisions of Paragraph 2.2
5 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with
6 Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or
7 Destruction), and 14 (Condemnation), **Lessee shall, at Lessee's sole**
8 **expense, keep the Premises,** Utility Installations (intended for
9 Lessee's exclusive use, no matter where located), and Alterations **in**
10 **good order, condition and repair** (whether or not the portion of
11 the Premises requiring repairs, or the means of repairing the same,
12 are reasonably or readily accessible to Lessee, and whether or not
13 the need for such repairs occurs as a result of Lessee's use, any prior
14 use, the elements or the age of such portion of the Premises),
15 including, but not limited to, all equipment or facilities, such as
16 plumbing, HVAC equipment, electrical, lighting facilities, boilers,
17 pressure vessels, fixtures, interior walls, interior surfaces of exterior
18 walls, ceilings, floors, windows, doors, plate glass, and skylights but
19 excluding any items which are the responsibility of Lessor pursuant
20 to Paragraph 7.2. Lessee, in keeping the Premises in good order,
21 condition and repair, shall exercise and perform good maintenance
22 practices, specifically including the procurement and maintenance
23 of the service contracts required by Paragraph 7.1(b) below. Lessee's
24 obligations shall include restorations, replacements or renewals
25 when necessary to keep the Premises and all improvements thereon
26 or a part thereof in good order, condition and state of repair.

27 *See Exs. 2 at ARV000007 and 3 at ARV000040, Section 7.1(a) (emphasis added).*

28 13. Moreover, Defendants expressly accepted the Premises in an "as-is" condition.

 1. Condition of Premises. **Lessee hereby accepts the Premises in**
 "as-is" condition with any additional alterations and improvements
 to be completed at Lessee's expense and in accordance with Section
 7 of Lease.

See Exs. 2 at ARV000026 and 3 at ARV000059, Section 1 of the Addendum (emphasis added).

 14. Defendants understand what it means to accept the Premises in an "as-is" condition.

 Q. And in your mind what does it mean to accept the space as is?

A. It means I will take it as it is, no problem, I'll take
 responsibility, that's what it means.

See Ex. 1, 47:20-24.

1 15. Defendants acknowledged that that they conducted any necessary investigations as
2 to the condition of the Premises and that Defendants were not relying upon any representations by
3 Plaintiffs other than those set forth in the leases.

4 **2.4 Acknowledgements. Lessee acknowledges that: (a) it has**
5 **been advised by Lessor and/or Brokers to satisfy itself with**
6 **respect to the condition of the Premises** (including but not limited
7 to the electrical, HVAC and fire sprinkler systems, security,
8 environmental aspects, and compliance with Applicable
9 Requirements and the Americans with Disabilities Act), and their
10 suitability for Lessee's intended use, (b) **Lessee has made such**
11 **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.

12 *See* Exs. 2 at ARV000003 and 3 at ARV000036, Section 2.4 (emphasis added).

13 16. Abandoning the Premises and failing to pay rent are breaches of the leases. *See*
14 Exs. 2 at ARV000015–16 and 3 at ARV000048–49 (Sections 13.6 and 23.1).

15 17. To the extent Defendants believed that Plaintiffs breached the leases, the leases
16 require Defendants to mail formal notice of the alleged breach to Plaintiffs requesting that
17 Plaintiffs cure the issue. *See* Exs. 2 at ARV000013 and 3 at ARV000046 (Sections 13.1(a) and
18 (b)). However, Defendants never sent Plaintiffs a formal notice of any alleged breach requesting
19 that Plaintiffs cure the issue. *See* Ex. 1, 36:9-11.

20 18. The leases “may be modified only in writing, signed by the Parties in interest at the
21 time of the modification.” *See* Exs. 2 at ARV000019 and 3 at ARV000052 (Section 46).

22 19. Right above Defendants’ signature on the leases, in bold and capitalized text, the
23 parties confirm that they:

24 **HAVE CAREFULLY READ AND REVIEWED THIS LEASE**
25 **AND EACH TERM AND PROVISION CONTAINED**
26 **HEREIN, AND BY THE EXECUTION OF THIS LEASE**
27 **SHOW THEIR INFORMED AND VOLUNTARY CONSENT**
28 **THERE TO. THE PARTIES HEREBY AGREE THAT, AT**
THE TIME THIS LEASE IS EXECUTED, THE TERMS OF
THIS LEASE ARE COMMERCIALY REASONABLE AND

**EFFECTUATE THE INTENT AND PURPOSE OF LESSOR
AND LESSEE WITH RESPECT TO THE PREMISES.**

See Exs. 2 at ARV000020 and 3 at ARV000053 (emphasis in original).

20. Likewise, right above the Defendants' signature on the leases, in bold and capitalized text, the leases provide that:

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.**

See Exs. 2 at ARV000020 and 3 at ARV000053 (emphasis in original).

21. The Guaranties provide that "Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rent and all other sums payable by Lessee under said Lease." *See* Exs. 2 at ARV000029 and 3 at ARV000062.

22. Defendants utilized the Premises until on or about May 8, 2018, when they vacated the Premises. *See* Declaration of Kevin Donahoe, attached hereto as **Exhibit 4**.

23. Attached hereto as **Exhibits 5 and 6** are ledgers for the leases, reflecting all rent owed under the leases, all payments made by Defendants under the leases and the outstanding balance owed under the leases.

III. SUMMARY JUDGMENT STANDARD

A party may move for summary judgment on "all or any part" of any claim, counterclaim, or declaratory relief. *See* NRCP 56(a). Summary judgment is appropriate under NRCP 56 and "shall be rendered forthwith" when the pleadings and other evidence properly before the court demonstrate that no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1029, 1031 (Nev. 2005) (quoting NRCP 56(c)); *Tucker v. Action Equip. & Scaffold Co.*, 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997). In *Wood*, the Nevada Supreme Court abrogated the "slightest doubt" standard and adopted the standard as employed by the United States Supreme Court in *Celotex Corp v.*

1 *Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) and *Matsushita*
2 *Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574 (1986).

3 In opposing summary judgment, the non-moving party cannot “simply show that there is
4 some metaphysical doubt” as to the operative facts in order to avoid summary judgment in the
5 moving party’s favor. *Wood*, 121 P.3d at 1031 (*quoting Matsushita*, 475 U.S. at 586). The non-
6 moving party “must, by affidavit or otherwise, set forth specific facts demonstrating the existence
7 of a genuine issue for trial or have summary judgment entered against him.” *Wood*, 121 P.3d at
8 1031 (*quoting Bulbman, Inc. v. Nevada Bell*, 109 Nev. 105, 110, 825 P.2d 588, 591 (1992)). The
9 non-moving party is “not entitled to build a case on the gossamer threads of whimsy, speculation,
10 and conjecture.” *Wood*, 121 P.3d at 1031 (*quoting Collins v. Union Fed. Sav. & Loan*, 99 Nev.
11 284, 302, 662 P.2d 610, 621 (1983)).

12 IV. LEGAL ARGUMENT

13 Plaintiffs established that the parties entered into binding contracts, in the form of the leases
14 and guaranties. *See* Exs. 2 and 3. Plaintiffs performed under the contracts by providing
15 Defendants access to the Premises in an “as is” condition. *See* Ex. 4. Defendants breached the
16 contracts by abandoning the Premises and failing to pay rent and other charges required under the
17 leases and guaranties. *See* Exs. 4, 5 and 6. Defendants have been damaged in the amount of the
18 unpaid rent and other charges required under the leases and guaranties. *See* Exs. 5 and 6.
19 Therefore, Plaintiffs have established their breach of contract claims against Defendants.

20 The question then becomes whether Defendants have any valid defenses to their breach of
21 the contracts. As to Defendants’ position that the “dust and debris” at the Premises justified their
22 abandonment of the lease, the argument fails as matter of law. The parties are bound by the terms
23 of the leases and there is no implied warranty of habitability in commercial leases. Defendants
24 accepted the commercial Premises in an “as-is” condition and agreed that Defendants were
25 responsible for any maintenance of the interior of the Premises, such that if there was an issue with
26 the “dust and debris,” it was Defendants’ contractual obligation to remedy that issue. Moreover,
27 Defendants cannot claim they were unaware of the condition of the Premises because Defendants
28

operated out of the Premises pursuant to a sub-lease for almost two (2) years before they signed the leases that are at issue in this lawsuit.

Defendants' complaints about parking at the Premises likewise do not justify their breach of the contracts as a matter of law. The first page of the leases signed (and initialed) by Defendants clearly identify the number of parking spaces Defendants could use. Defendants understood that they only had the use of a few parking spaces per lease. To increase the parking available to Defendants, Defendants leased an additional unit. Defendants never alleged that they did not have access to the contractually allotted parking spaces. Moreover, Defendants cannot claim they were unaware of the available parking at the Premises because Defendants operated out of the Premises pursuant to a sub-lease for almost two (2) years before they signed the leases that are at issue in this lawsuit.

Plaintiffs have shown that Defendants breached the contracts. Defendants do not have a valid defense to their breach of the contracts. Therefore, Plaintiffs are entitled to summary judgment on their breach of contract claims.

A. DEFENDANTS ARE SOLELY RESPONSIBLE FOR THE CONDITION OF THE PREMISES BECAUSE THEY ACCEPTED THE PREMISES "AS IS" AND AGREED THAT ANY MAINTENANCE WITHIN THE PREMISES IS DEFENDANTS' OBLIGATION

Defendants cannot honestly dispute the plain language of the leases. As provided in the Addendums, "Lessee hereby accepts the Premises in "as-is" condition. *See* Exs. 2 at ARV000026 and 3 at ARV000059. Likewise, pursuant to Section 7.1(a) of the leases, "Lessee shall, at Lessee's sole expense, keep the Premises . . . in good order, condition and repair." *Id.* at ARV000007 and 3 at ARV000040. Therefore, to the extent the Defendants had a concern about the condition of the Premises, it was Defendants' contractual duty to remedy that situation.

To prevail on their defense that Defendants could abandon the Premises based upon the "dust and debris" in the Premises, Defendants must convince the Court that Plaintiffs, as the landlords of this commercial property, have an implied duty to clean the Premises (a.k.a. an implied duty of habitability or fitness for a particular purpose) notwithstanding the express

1 language in the leases to the contrary. Commercial landlords have no such implied duty, such that
2 Defendants' argument fails as a matter of law.

3 **1. Nevada Statutes Show that the Implied Warranty of Habitability Does**
4 **Not Apply to Commercial Leases.**

5 Nevada has one set of statutes addressing the Landlord/Tenant relationship for residential
6 leases (NRS Chapter 118A) and another set of statutes addressing the Landlord/Tenant relationship
7 for commercial leases (NRS Chapter 118C). NRS Chapter 118A, relating to residential leases,
8 expressly states that "[t]he landlord shall at all times during the tenancy maintain the dwelling unit
9 in a habitable condition." NRS 118A.290. On the other hand, NRS Chapter 118C, relating to
10 commercial leases, contains no mention of habitability or fitness for a particular purpose.

11 Because the Nevada Legislature applied the concept of habitability to residential leases,
12 but not commercial leases, the Court must presume that the Nevada Legislature deliberately
13 excluded the applicability of habitability to commercial leases. "We have previously recognized
14 the fundamental rule of statutory construction that the mention of one thing implies the exclusion
15 of another." *In re Estate of Prestie*, 122 Nev. 807, 814, 138 P.3d 520, 524 (2006) (internal
16 alterations and quotation marks omitted). "Therefore, where the Legislature has, for example,
17 explicitly applied a rule to one type of proceeding, this court will presume it deliberately excluded
18 the rule's application to other types of proceedings. *Sonia F. v. Eighth Judicial Dist. Court*, 125
19 Nev. 495, 499, 215 P.3d 705, 708 (2009). Under this fundamental rule of statutory construction,
20 the Court must presume that the Nevada Legislature deliberately excluded the applicability of
21 habitability to commercial leases. With no implied warranty of habitability in commercial leases,
22 Defendants' defense as to the condition of the premises fails as a matter of law.

23 **2. Caselaw Confirms that there is No Implied Duty of Habitability or**
24 **Fitness for a Particular Purpose in Commercial Leases.**

25 Although the Nevada Supreme Court has not expressly addressed the issue, the majority of
26 courts hold that the implied warranty of habitability and fitness for an intended purpose does not
27 apply to commercial leases. "Our review of the authorities reveals that the majority view, which
28 we adopt, does not extend an implied warranty of habitability or fitness to commercial leases."
B.W.S. Investments v. Mid-Am Restaurants, Inc., 1990 WL 108794 (N.D. 1990) (citing 3A

1 *Thompson on Real Property*, § 1230 (1981) (the doctrine of warranty of fitness which is part of
 2 the law of sales does not generally extend to the landlord-tenant relationship in commercial leases;
 3 the implied warranty of habitability does not apply to commercial structures); 2 *Powell on Real*
 4 *Property*, § 233(2)(b) (1990) (implied warranty of habitability applies in almost all jurisdictions
 5 only to residential tenancies; commercial leases are excluded primarily on the rationale that the
 6 feature of unequal bargaining power justifying the imposition of the warranty in residential leases
 7 is not present in commercial transactions); 49 Am.Jur.2d *Landlord and Tenant* § 768 (1970), (the
 8 general rule that there is no implied warranty of fitness or as to the conditions of the premises
 9 applies to premises leased for business purposes); Annotation, *Modern Status of Rules as to*
 10 *Existence to Implied Warranty of Habitability or Fitness for use of Leased Premises*, 40 A.L.R. 3d
 11 646, 650 (1971) (it has been stated that the implied warranty of habitability is not a warranty
 12 against all inconvenience or discomfort). *See generally*, Restatement (Second) of Property,
 13 Landlord and Tenant, § 5.1 Caveat and Comment (1977) (implied warranty of habitability not
 14 extended to commercial leases). “Most jurisdictions have expressly or impliedly refused to extend
 15 the implied warranty of habitability into commercial leases.” *Teller v. McCoy*, 162 W. Va. 367,
 16 380 (1978).

17 However, even the minority of courts that recognize an implied warranty of habitability or
 18 suitability in commercial leases hold that those warranties do not apply if the commercial tenant
 19 accepts the property in an “as-is” condition. “With respect to the abatement of rent for breach of
 20 the implied warranty of habitability, the doctrine’s application may not be extended to the fact
 21 pattern at bar involving a corporate tenant taking the premises ‘as is’ under a commercial lease.”
 22 *Coulston v. Telescope Productions, Ltd.*, 378 N.Y.S.2d 553, 554 (App. Term 1975). “If, however,
 23 the parties to a lease expressly agree that the tenant will repair certain defects, then the provisions
 24 of the lease will control.” *Davidow v. Inwood N. Prof'l Group--Phase I*, 747 S.W.2d 373, 376
 25 (Tex. 1988).

26 By agreeing to lease the building ‘as is,’ Gym–N–I agreed to make
 27 its own appraisal of the physical condition of the premises. Thus,
 28 the sole cause of Gym–N–I’s injury, by its own admission, is itself.
 We hold, therefore, that the “as is” clause negates Gym–N–I’s claim
 that Snider’s actions caused injury.

1 *Gym-N-I Playgrounds, Inc. v. Snider*, 220 S.W.3d 905, 914 (Tex. 2007).

2 Therefore, even if Nevada recognized these implied warranties in commercial tenancies,
 3 they are not applicable based upon the express language of the leases and addendums, which
 4 control. Not only did Defendants accept the property in an “as-is” condition, they separately
 5 agreed that “Lessee shall, at Lessee's sole expense, keep the Premises . . . in good order, condition
 6 and repair” See Exs. 2 at ARV000007 and 3 at ARV000040. With no implied warranty of
 7 habitability or suitability in commercial leases, Defendants’ defense as to the condition of the
 8 premises fails as a matter of law.

9 **3. The Doctrine of Constructive Eviction Does Not Create Any Implied**
 10 **Duties.**

11 Nevada caselaw recognizes constructive evictions in the context of commercial leases.
 12 However, the Nevada caselaw is consistent that the landlord must act or fail to act **in breach of**
 13 **the lease terms** before there can be a constructive eviction. The Nevada caselaw on constructive
 14 evictions in the context of commercial leases has never identified any implied duties of commercial
 15 landlords. Rather, the caselaw confirms that the relationship between commercial landlords and
 16 tenants is governed by the written agreements between them.

17 For example, in *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Development, LLC*, 130
 18 Nev. 834 (2014), the commercial tenant claimed a constructive eviction because the roof leaked.
 19 The landlord had a contractual duty to maintain the roof and protect the interior from water
 20 intrusion. *Id.* at 836. “Villa Fiore assumed the landlord’s duties **under the lease**, including the
 21 duty to maintain the roof and protect the interior from water intrusion.” *Id.* (emphasis added).
 22 The Court never discussed any implied duties of the landlord, but rather only the express duties
 23 owed under the lease. *Id.* Ultimately, the Court found that there was no constructive eviction
 24 because the tenant failed to provide notice and a reasonable opportunity to cure the roof leaks. *Id.*
 25 at 841.

26 In *Winchell v. Schiff*, 124 Nev. 938, 947, 193 P.3d 946, 952 (2008), the tenant argued that
 27 because the landlord entered tenant’s storage unit to inspect it, the tenant had been constructively
 28 evicted and the landlord breached the covenant of quiet enjoyment. The Court rejected the tenants’

1 claim because the lease expressly provided that the landlord could inspect the storage unit. “Under
2 the lease agreement, Schiff and her agents were permitted to enter Winchell's storage unit at any
3 reasonable time for the purpose of inspection or maintenance.” *Winchell*, 124 Nev. at 947, 193
4 P.3d at 952. Therefore, “Winchell could not show that he was constructively evicted because he
5 **voluntarily surrendered any right** to refuse Schiff’s reasonable entry under the terms of the
6 lease.” *Id.* (emphasis added). The Court never discussed any implied duties of the landlord, but
7 rather only the express duties and rights under the lease. *Id.* This is yet another example of how
8 Courts allow the terms of the written agreement between commercial tenants and landlords to
9 control.

10 In *Las Vegas Oriental, Inc. v. Sabella's of Nevada, Inc.*, 97 Nev. 311, 312, 630 P.2d 255
11 (1981), the Court considered whether the failure to provide adequate heating and air conditioning
12 was a breach of the lease and, therefore, a constructive eviction. Specifically, the Court stated: “In
13 this appeal we are required to determine if there is sufficient evidence to support the trial court’s
14 determination that Las Vegas Oriental, Inc., a landlord, **breached the lease between it and**
15 **Sabella’s** by virtue of its failure to provide adequate heating and air conditioning to a portion of
16 the leased premises.” *Id.* The Court found that the trial court properly ruled that the landlord
17 breached the lease and constructively evicted the tenant. *Las Vegas Oriental*, 97 Nev. at 313, 630
18 P.2d at 256 (1981). The Court never discussed any implied duties of the landlord, but rather only
19 whether the landlord breached the lease. *Id.*

20 The cases make clear that the doctrine of constructive eviction in the context of commercial
21 leases does not create any implied duties. Rather, the rights and duties of the commercial landlord
22 and tenant are governed by the agreement between the parties, not any implied duties. Because
23 Defendants accepted the property in an “as-is” condition and agreed that “Lessee shall, at Lessee's
24 sole expense, keep the Premises . . . in good order, condition and repair,” Defendants’ defense as
25 to the condition of the premises fails as a matter of law. See Exs. 2 at ARV000007 and 3 at
26 ARV000040.

27 ///

28 ///

B. DEFENDANTS' COMPLAINTS ABOUT PARKING AT THE PREMISES DO NOT JUSTIFY THEIR BREACH OF THE CONTRACTS

The first page of each lease expressly identifies Defendants' right to parking at the Premises.

1.2(b) Parking: Four (4) unreserved vehicle parking spaces ("Unreserved Parking Spaces"); and n/a reserved vehicle parking spaces ("Reserved Parking Spaces").

See Exs. 2 at ARV000001 and 3 at ARV000034. Not only did Defendants sign the leases, but they also initialed each page, including the first page identifying the number of parking spaces to which they were entitled. Defendants never alleged that they did not have access to the contractually allotted parking spaces. Defendants cannot honestly dispute the plain language of the leases with regarding to parking.

Defendants were aware of the parking situation at the Premises since taking over for Stardust Limousine in 2015. See Ex. 1, 16:1-5. Defendants knew that they were only assigned a few parking spots per unit. See Ex. 1, 26:6-19 ("You know, you rent one suite, you have specifically have 2 or 3 car parking."). When it came time for Defendants to sign their own lease in 2017 (as opposed to continuing to operate under the Stardust Limousine lease), Plaintiffs suggested that Defendants lease another warehouse unit to alleviate Defendants parking concerns and Defendants agreed to do so. See Ex. 1, 27:20-28:6.

Q. I see. Okay. So prior to 2017, you were having an issue with parking?

A. We always, always have. Everybody have issues on that property.

Q. And Dave's¹ suggestion to you was you should lease an additional suite --

A. Yes.

Q. -- to help with you that parking issue?

¹ "Dave" is a reference to David Burns, of Commercial Specialists, the property manager for Plaintiffs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A. Yeah.

Q. And you agreed to do that, right?

A. We agreed to do that.

See Ex. 1, 27:20-28:6.

At some point after the execution of the leases in 2017, Defendants requested additional parking spaces from Plaintiffs. However, Plaintiffs advised that they could not provide additional parking spaces.

Q. You said you requested additional parking spaces?

A. Yeah, he said he cannot provide that, there is not enough space.

See Ex. 1, 85:6-9.

Plaintiff provided Defendants with the contractually allotted parking spaces and Defendants do not allege anything to the contrary. In fact, to help address Defendants' parking concern, Plaintiffs leased Defendants an additional warehouse unit to provide additional parking. The fact that Plaintiffs refused a subsequent request for even more parking is not a valid reason to abandon the Premises and breach the contracts. Therefore, Plaintiffs are entitled to summary judgment on their breach of contract claims against Defendants.

V. CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court enter summary judgment in favor of Plaintiffs on the breach of contract claims against Defendants.

Dated this 1st day of December, 2020.

HOLLEY DRIGGS

/s/ F. Thomas Edwards
F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Attorneys for Plaintiffs/Counterdefendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 1st day of December, 2020, I did cause a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT REGARDING THEIR BREACH OF CONTRACT CLAIMS** to be served upon each of the parties listed below via electronic service through the Court's Odyssey File and Service System:

Rusty Graf, Esq.
BLACK & LOBELLO
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Brent Carson, Esq.
WINNER & CARSON
7935 W. Sahara Ave., Suite 101
Las Vegas, NV 89117

/s/ Sandy Sell
An employee of HOLLEY DRIGGS

EXHIBIT 1



DISTRICT COURT
CLARK COUNTY, NEVADA

4520 ARVILLE, a California) CASE NO.:
general partnership;) A-19-794864-C
MCKINLEY MANOR, an Idaho)
general partnership,) DEPT NO.: 8

Plaintiffs,

v.

BOUR ENTERPRISES, LLC, a
Nevada limited liability
company; MULUGETA BOUR, an
individual; HILENA MENGESHA,
an individual; DOES 1
through 100, inclusive,

Defendants.

DEPOSITION

OF

NRCP 30(B)(6) DESIGNEE

BOUR ENTERPRISES, LLC, a
Nevada limited liability
company; MULUGETA BOUR, an
individual; HILENA MENGESHA,
an individual; DOES 1
through 100, inclusive,

OF BOUR ENTERPRISES, LLC

MULUGETA BOUR

LAS VEGAS, NEVADA

MONDAY,

NOVEMBER 2, 2020

vs.

4520 ARVILLE, a California
general partnership;
MCKINLEY MANOR, an Idaho
general partnership, DOES
I-X; and ROE CORPORATION
I-X,

Counterdefendants.

REPORTED BY: JEWEL WILLIAMS, CCR NO. 941

1 DEPOSITION OF NRCP 30(B)(6) DESIGNEE OF
2 BOUR ENTERPRISES, LLC, MULUGETA BOUR, held at Holley
3 Driggs Walch Fine Puzey Stein & Thompson, located at
4 400 South Fourth Street, Third Floor, Las Vegas,
5 Nevada, 89101, on Monday, November 2, 2020, at
6 10:52 a.m., before Jewel Williams, Certified Court
7 Reporter, in and for the State of Nevada.

8
9 APPEARANCES:

10 For the Plaintiffs 4520 Arville and McKinley Manor:

11 HOLLEY DRIGGS WALCH FINE PUZEY STEIN &
12 THOMPSON

13 BY: F. THOMAS EDWARDS, ESQ.

400 South Fourth Street, Third Floor

14 Las Vegas, Nevada 89101

702.791.0308

15 tedwards@nevadafirm.com

16 For the Defendants Bour Enterprises, LLC, Mulugeta
17 Bour, and Hilena Mengesha:

BLACK & WADHAMS

18 BY: RUSTY GRAF, ESQ.

10777 West Twain Avenue, Suite 300

19 Las Vegas, Nevada 89135

702.869.8801

20 rgraf@blackwadhams.law

21 Also Present:

22 Kevin Donahoe, Commercial Specialists

23 ENVISION LEGAL SOLUTIONS

24 BY: JEWEL WILLIAMS

I N D E X

EXAMINATION BY: PAGE

By Mr. Edwards 5

By Mr. Graf 117

FURTHER EXAMINATION BY:

By Mr. Edwards 134

By Mr. Graf 143

E X H I B I T S

NUMBER DESCRIPTION PAGE

Exhibit 1 Notice of Deposition of NRCP 30(b)(6) witness 10

Exhibit 2 Standard Industrial/Commercial Multi-Tenant Lease-Net ARV000001 - 000028 43

Exhibit 3 Guaranty of Lease ARV000029 - 000030 50

Exhibit 4 Tenant Ledger ARV000031 - 000033 52

Exhibit 5 Standard Industrial/Commercial Multi-Tenant Lease-Net ARV000034 - 000061 55

Exhibit 6 Guaranty of Lease ARV000062 - 000063 59

Exhibit 7 Tenant Ledger ARV000064 - 000066 60

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

| EXHIBITS (CONTINUED) | | |
|----------------------|--|-----|
| Exhibit 8 | Email Chain DEFCC000081 - 000083 | 70 |
| Exhibit 9 | 4/17/2018 Termination of Lease Letter ARV000067 | 74 |
| Exhibit 10 | 5/3/2018 Letter from Connell Law ARV000070 - 000072 | 85 |
| Exhibit 11 | Photographs DEFCC000092 - 000093 | 90 |
| Exhibit 12 | DVD containing three videos | 94 |
| Exhibit 13 | Industrial/Office Building and Property Lease DEFCC000095 - 000114 | 102 |

1 Enterprises, LLC. No, Stardust Limousine. Sorry.

2 Q. So at the end of 2015 you took over the
3 management of Stardust Limousine and you bought
4 Stardust Limousine, correct?

5 A. Yes.

6 Q. Also before the deposition, I let the court
7 reporter know that because we are wearing masks
8 sometimes we're going to be harder to hear, so she
9 may interrupt us at certain times and ask you to
10 repeat things.

11 A. Absolutely, no problem.

12 Q. I may do the same thing.

13 A. No problem.

14 Q. When you were with Bell Trans, what did you
15 do for them?

16 A. I'm a driver.

17 Q. Driver, okay.

18 And same thing for 24/7 Limo?

19 A. Yes.

20 Q. So it's July of 2015 when you started to
21 manage the business?

22 A. Yes, somewhere around end of summer.

23 Q. In July 2015, where did Stardust Limousine
24 operate from?

25 A. At that time the Arville property.

1 Q. The Arville property?

2 A. Yes.

3 Q. That's the one we're here to talk about
4 today?

5 A. Yes. Yes.

6 Q. Now, when we're talking about the Arville
7 property, there is actually two different spaces,
8 right?

9 A. No, it was only one at that time.

10 Q. Only one?

11 A. Yeah. I think it's 23.

12 Q. One more time?

13 A. 23.

14 Q. 23?

15 A. Yeah, Suite 23.

16 Q. Got you.

17 A. 23-24.

18 Q. 23-24. Okay.

19 And as a manager for Stardust Limousine,
20 what were your duties?

21 A. Just managing drivers. Just timing the
22 clock-in/clock-out on time. Just take care of the
23 car. If any car is broke down, make sure they fix
24 it. Any complaint customer have, managers. Just I
25 was planning to take over so I was just involved

1 A. Pretty bad.

2 Q. How so?

3 A. Extremely bad. There's no lighting. It
4 was very dusty. And Dave told us that time it used
5 to be a tile cutting place. And it's a lot of dust
6 just falling off from the sky and a lot of drivers
7 and detailers and mechanics complaining.

8 Q. Back in 2015?

9 A. Yeah, 2015 or '16 or '17.

10 Q. 2015, '16.

11 A. Since I've been there, yeah, '17 until I
12 leave, it's always like that.

13 Q. Got you.

14 A. We have no discretion, he said -- Dave told
15 us it's nothing he can do, the previous owner of the
16 company, he signed it as it is.

17 Q. Okay.

18 A. Not with me.

19 Q. So you're saying Stardust Limousine leased
20 the property as is?

21 A. That's what he says, but I don't know the
22 lease. I didn't read it. I don't know. It's not
23 mine. I don't know.

24 Q. Got you.

25 A. I'm just saying verbally what he told me.

1 Q. Got you.

2 Did you ask him to clean it up?

3 A. Oh, yes, so many times. Impossible, yeah.

4 Q. And what did he tell you?

5 A. He said -- the owner, he doesn't want to
6 spend money. He doesn't want to do it.

7 Q. And the time frame we're talking about now
8 is 2015, 2016?

9 A. I'm talking since I've been there until I
10 leave. We talk -- me and Dave, we talk almost every
11 other month or every two months or every three
12 months or every month. So many occasions we talk
13 about this, yeah.

14 Q. And Dave's explanation to you was, I can't
15 do anything because the Stardust has an as-is lease?

16 A. That's what he said. But I didn't have
17 that kind of lease with Stardust and everything, but
18 I was already there so he want me to sign a lease
19 and one day just came in and he make us sign a lease
20 although we already there established. We don't
21 have nowhere to go.

22 Q. Okay. Okay.

23 A. Kind of you have to do it. You have to do
24 it kind of thing. We didn't get a chance to sign --
25 read it or nothing like that. It's not like he gave

1 Q. When was the first time you remember being
2 inside Suite 10-29?

3 A. It said 2017, I don't know, remember.

4 Q. Sometime in 2017?

5 A. Yeah.

6 Q. I guess under what circumstances do you
7 find yourself in Suite 10-29?

8 A. He told us we have to take another suite
9 because it's too many cars parking outside and
10 everything. So I said, okay. We cooperate and we
11 took that one.

12 Q. Is that Dave?

13 A. Yeah, he kind of suggesting or kind of we
14 have to do that. He doesn't want a lot of people --
15 that it's not parking space permitted for business
16 like us. You know, you rent one suite, you have
17 specifically have 2 or 3 car parking. It's
18 impossible for us, we got 10, 15, 20 cars. Employee
19 and staff where they park it's impossible.

20 MR. GRAF: Did we get Dave's last name yet?

21 BY MR. EDWARDS:

22 Q. Are you referring to David Burns?

23 A. David Burns that's who I would be
24 communicating with him, yeah, which I have
25 communication until the last minute I move out.

1 Q. So in roughly 2017 when David was asking
2 you to sign this new lease, he suggested that you
3 should also lease an additional suite so you have
4 additional parking?

5 A. Yeah, it's indoor parking instead of
6 outside parking or we can't park outside.

7 Q. So this was for indoor parking, not outdoor
8 parking?

9 A. Indoor and outdoor. We have to park indoor
10 or outdoor.

11 Q. I'm sorry. What's that?

12 A. We have to park indoor or outdoor. The
13 limousines are parked indoor that's where we're
14 leasing them.

15 Q. Okay.

16 A. The drivers are parked outdoors.

17 Q. What's parked outside? The drivers for
18 your business?

19 A. Yes, the drivers.

20 Q. I see. Okay.

21 So prior to 2017, you were having an issue
22 with parking?

23 A. We always, always have. Everybody have
24 issues on that property.

25 Q. And Dave's suggestion to you was you should

1 lease an additional suite --

2 A. Yes.

3 Q. -- to help with you that parking issue?

4 A. Yeah.

5 Q. And you agreed to do that, right?

6 A. We agreed to do that. But, like I say,
7 when everything come, we didn't have no chance, I
8 didn't have no chance to show the attorney. I
9 didn't think it was going to come to this. And I
10 don't have no bad or negative or any kind of bad
11 experience with Dave, so we always in good
12 communication, we just go for.

13 Q. What was the condition of Suite 10-29 in
14 2017 when you were first there?

15 A. A little better. Much better than 23.

16 Q. Much better?

17 A. Much better than 23. It wasn't the best
18 but it was much better.

19 Q. What wasn't the best about it?

20 A. You have to understand, it's still this
21 animals like rat and stuff running around with the
22 properties. The suite, what did you say 29-10, I
23 don't remember the exact number, that one is a
24 different condition. But the suite next to it is
25 very bad condition, it was an abandoned place, it

1 Mr. Burns about the condition of the property,
2 right?

3 A. Yes, he's aware of it.

4 Q. He's aware of it. Did you ever send a
5 formal notice to him?

6 A. I probably talked to him or Dave, I just
7 couldn't find those emails and everything now. But,
8 yes, he's aware of it, yeah.

9 Q. Did you ever send him a letter in the mail
10 saying these are the problems that you need to fix?

11 A. No, I didn't.

12 Q. You did not?

13 A. Knowing now I wish.

14 Q. You wish you would have?

15 A. Yes, I wish I would have done it, knowing
16 now.

17 Q. Do you remember when you signed your new
18 lease for the new location?

19 A. No, I can't tell you exactly, but I can go
20 look at it. 2018 sometime, but I can go look at it,
21 yeah.

22 Q. Then after you signed the new lease, what
23 did you tell my clients?

24 A. Before I signed the new lease, we already
25 talk about I'm moving out and we already have

1 time because it was very hard to find commercial
2 warehouse like that close to the strip to lease it.
3 It was very easy, so that's what Dave said to me. I
4 said, okay, I understand that, I'll take this one
5 facility, and I moved out. That's what it is.

6 Q. On the first page of Exhibit 2, bottom
7 right-hand corner, do you see your initials?

8 A. Yeah.

9 Q. And, in fact, you initialled every page,
10 correct, of Exhibit 2?

11 A. Yeah, I see. I see only one place. Yeah,
12 MB that's me. Yeah.

13 Q. And if we turn to page 20?

14 A. Page what?

15 Q. Page 20?

16 A. Yes.

17 Q. Do you see your signature on this page?

18 A. Yeah.

19 Q. And your initials in the bottom right-hand
20 corner?

21 A. Yes.

22 Q. And if you could turn again to the very
23 last page of Exhibit 2.

24 A. Yes.

25 Q. Do you see your signature here as well?

1 A. Yes.

2 Q. Do you understand that when you signed this
3 lease you just like Stardust accepted the space as
4 is?

5 MR. GRAF: Objection. Calls for a legal
6 conclusion.

7 THE WITNESS: No. Absolutely no.

8 BY MR. EDWARDS:

9 Q. You didn't understand that?

10 A. No.

11 Q. Just because you didn't read these paper?

12 A. No, even verbally we talked about this.

13 Q. What did you talk about?

14 A. I don't like it. I don't want this space.
15 It's very bad. It's not even on my list. I
16 discussed about it and we talked about it.

17 Q. So did you have any conversations with Dave
18 about whether you were going to sign this lease as
19 is?

20 A. No.

21 Q. No conversations whatsoever?

22 A. No conversation at all.

23 Q. At any point did Dave's position change?

24 A. No. He told me he --

25 MR. GRAF: Hold on. Objection. Vague as

1 to time.

2 BY MR. EDWARDS:

3 Q. Did Dave's position as to whose
4 responsibility it was to clean up this space ever
5 change?

6 MR. GRAF: Same objection.

7 BY MR. EDWARDS:

8 Q. Go ahead.

9 A. Like I say earlier, Dave, he listed the
10 previous owner as it is. The owner, they don't want
11 to spend money, they don't want to clean it. That's
12 his response all the time.

13 Q. And that never changed?

14 A. Never changed and never -- I never agreed
15 with that too either, so...

16 Q. But you understand the concept of accepting
17 space as is, right?

18 A. I do, but if I did not agree with that, I
19 did not accept it.

20 Q. And in your mind what does it mean to
21 accept the space as is?

22 A. It means I will take it as it is, no
23 problem, I'll take responsibility, that's what it
24 means. I never take that responsibility. I never
25 agreed with it.

1 worry about it, which is he didn't say like, hey
2 Tony, you need to sign this lease, you need to give
3 it to your attorney, somebody need to read it, you
4 need to read it, I'll come back next week, he didn't
5 say it like that I know that for sure. He came in
6 like, hey, you got to sign this and I got to go, in
7 and out.

8 (Exhibit 3 was marked for identification.)

9 BY MR. EDWARDS:

10 Q. Because you haven't read the leases, it
11 would be a waste of time to go through and talk
12 about what your understanding of various terms were?

13 A. Yes.

14 Q. So in front of you I'm showing you what has
15 been marked as Exhibit 3. Do you recognize this
16 document?

17 A. No. I didn't know it was separate like
18 this.

19 Q. What's that?

20 A. I didn't know it was like separate like
21 this, out of this.

22 Q. You didn't know the guaranty was separate
23 from the lease?

24 A. I have no idea.

25 Q. Do you recognize your initials on the

1 bottom right-hand corner?

2 A. Yes, I see that.

3 Q. And you see your signature on page 2 of
4 Exhibit 3?

5 A. Yeah.

6 Q. But you didn't read this before you signed
7 it?

8 A. Yeah, I don't know like this came in
9 separate too. That's something like.

10 Q. This came in separate, what do you mean by
11 that?

12 A. Well, he just give me a lease, right, this
13 is a lease, right?

14 Q. Right.

15 A. Well, this should have been inside of here
16 somewhere.

17 Q. You're saying when you were handed the
18 lease, the guaranty was attached to it?

19 A. I would think so, yeah. Not separately
20 come like that.

21 Q. Do you recognize --

22 A. If I get like this one page, I would have
23 looked at it a little more carefully. It's only one
24 page and I can read it five, ten times, probably I
25 would get an idea.

1 have a property under somebody's name by Nevada
2 Authority. I have to have something, kind of paper
3 from him. I didn't know it was this. I can figure
4 out something that I can look at. Yeah, I had been
5 there for a year and a half, tell me I signed a
6 lease at that time, I didn't know this. You see,
7 that's how much I didn't look at it.

8 Q. So just like you did not review Exhibit 2
9 before Mr. Burns asked you to signed, you did not
10 review Exhibit 5 before you signed, right?

11 A. Like I said, he just walked in and told us
12 to sign, we sign and he goes, I don't know. Now,
13 looking at it today, it just don't make sense to me.

14 Q. Do you recognize your signatures on the
15 bottom right-hand corner of the pages for
16 Exhibit 5? I may have misspoke.

17 Do you recognize your initials on the
18 bottom right-hand corner of the pages of Exhibit 5?

19 A. Yes.

20 Q. Yes?

21 A. Yes.

22 Q. And if you turn to ARV 53, bottom
23 right-hand corner.

24 A. You say 53?

25 Q. 53, bottom right-hand corner. You see the

1 stamp says ARV?

2 A. Yes.

3 Q. Do you recognize your signature on this
4 page?

5 A. Yes, sir.

6 Q. If you go back another few pages to the
7 last page of the document, ARV 61. Do you recognize
8 your signature --

9 A. Yes.

10 Q. -- on this page as well?

11 A. Yes, I do.

12 Q. Just like Exhibit 2, because you didn't
13 read this lease before you signed it, having me go
14 through it and talking to you about your
15 understanding about the various provisions would be
16 a waste of time, correct?

17 A. Yes. I didn't even -- I didn't even have a
18 chance to read it or I didn't know. Yes, it was a
19 waste of time now, yes.

20 Q. And when you were asked to sign this lease,
21 did you ask for additional time to review it?

22 A. Like I said, I have a very good
23 relationship with him verbally. I didn't think it
24 was going to be issued. I didn't ask, he didn't
25 offer me either. I didn't know if he was supposed

1 Q. And you see your signature on the next
2 page?

3 A. Yes, sir.

4 Q. You see your wife's initials and signature
5 as well?

6 A. Yeah, it look the same as before, yeah.

7 Q. But before you signed this document, you
8 did not read it?

9 A. Yes, sir. I don't even know -- like I
10 said, I don't even know this came separate until
11 this day, I'm just surprised now.

12 Q. And just to make sure we're on the same
13 page.

14 A. I understand.

15 Q. You did not review this document Exhibit 6
16 before you signed it?

17 A. No, I didn't.

18 (Exhibit 7 was marked for identification.)

19 BY MR. EDWARDS:

20 Q. I'm showing you what's been marked as
21 Exhibit 7 which is the ledger for suites 10 and 29.
22 Just like last time, you see that there is a column
23 of charges, payments, and balance?

24 A. It looks the same as the other one. But I
25 don't know what to say about it. I don't know.

1 Mr. Burns?

2 A. It means additional parking space.

3 MR. GRAF: Objection. Misstates the
4 testimony.

5 BY MR. EDWARDS:

6 Q. You said you requested additional parking
7 spaces?

8 A. Yeah, he said he cannot provide that, there
9 is not enough space.

10 (Exhibit 10 was marked for identification.)

11 BY MR. EDWARDS:

12 Q. Showing you what's been marked as
13 Exhibit 10. Do you recognize this document?

14 A. No.

15 Q. Do you recognize the second page of
16 Exhibit 10?

17 A. Yeah, they came from my picture on my
18 phone, yeah.

19 Q. You took this picture?

20 A. Yeah.

21 Q. On your phone?

22 A. It looks like my finger.

23 Q. When did you take this picture?

24 A. When I was inside there. I don't know when
25 it is.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF NEVADA)

) ss:

COUNTY OF CLARK)

I, Jewel Williams, a Certified Court Reporter
licensed by the State of Nevada, do hereby certify:
That I reported the deposition of MULUGETA BOUR on
Monday, November 2, 2020, at 10:52 a.m.

That prior to being deposed, the witness was
duly sworn by me to testify to the truth. That I
thereafter transcribed my said stenographic notes via
computer-aided transcription into written form, and
that the typewritten transcript is a complete, true,
and accurate transcription of said shorthand notes;
that review of the transcript was not requested.

I further certify that I am not a relative,
employee, or independent contractor of counsel or of
any of the parties involved in the proceeding; nor a
person financially interested in the proceeding; nor
do I have any other relationship that may reasonably
cause my impartiality to be questioned.

IN WITNESS HEREOF, I have set my hand in my
office in the County of Clark, State of Nevada.

Dated: 11/9/20



JEWEL WILLIAMS, CCR NO. 941

EXHIBIT 2





STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - NET AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only April 20, 2017, is made by and between 4520 ARVILLE, a California general partnership and MCKINLEY MANOR, an Idaho general partnership, as tenants in common ("Lessor") and BOUR ENTERPRISES LLC, a Nevada limited liability company

_____, ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 4560 South Arville Street, C-23 & 24, located in the City of Las Vegas, County of Clark, State of Nevada, with zip code 89103, as outlined on Exhibit A attached hereto ("Premises") and generally described as (describe briefly the nature of the Premises): Approximately 4,560 square feet of industrial/warehouse space located in the Project known as "Arville Industrial Park"

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, exterior walls or utility raceways of the building containing the Premises ("Building") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) **Parking:** Four (4) unreserved vehicle parking spaces ("Unreserved Parking Spaces"); and n/a reserved vehicle parking spaces ("Reserved Parking Spaces"). (See also Paragraph 2.6)

1.3 **Term:** Two (2) years and one (1) months ("Original Term") commencing May 1, 2017

("Commencement Date") and ending May 31, 2019

("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** Upon Lease execution ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$ 1,824.00 per month ("Base Rent"), payable on the 1st day of each month commencing on the Commencement Date. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 **Lessee's Share of Common Area Operating Expenses:** Two and 86/100 percent (2.86 %) ("Lessee's Share").

1.7 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** \$ 1,824.00 for the period 05/01/2017-05/31/2017

(b) **Common Area Operating Expenses:** \$ 912.00 for the period 05/01/2017-05/31/2017

(c) **Security Deposit:** \$ 2,736.00 ("Security Deposit"). (See also Paragraph 5)

(d) **Other:** \$ n/a for _____

(e) **Total Due Upon Execution of this Lease:** \$ 5,472.00

1.8 **Agreed Use:** Administrative operations and vehicle storage for a limousine service

_____. (See also Paragraph 6)

1.9 **Insuring Party.** Lessor is the "Insuring Party". (See also Paragraph 8)

PAGE 1 OF 20

INITIALS _____

©1999 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

AK m/b
INITIALS

FORM MTN-2-2/99E
ARV000001

000041

1.10 Real Estate Brokers: (See Paragraph 15)

(a) Representation: The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- ☒ Commercial Specialists represents Lessor exclusively ("Lessor's Broker");
☐ n/a represents Lessee exclusively ("Lessee's Broker"); or
☐ n/a 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 Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of (per agreement) or ---- % of the total Base Rent for the brokerage services rendered by the Brokers).

1.11 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by MULUGETA BOUR, an individual, and HILENA K. MENGESHA, an individual ("Guarantor"). (See also Paragraph 37)

1.12 Addenda and Exhibits. Attached hereto is an Addendum or Addenda consisting of Paragraphs 1 through 5 and Exhibits A through B, all of which constitute a part of this Lease.

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 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.

2.2 Condition. Lessor shall deliver that portion of the Premises contained within the Building ("Unit") 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, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date and that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects. If a non-compliance with such 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) 30 days as to the remaining systems and other elements of the Unit. 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 (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7).

2.3 Compliance. Lessor warrants that the improvements on the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Start Date ("Applicable Requirements"). Said warranty does not apply to the use to which Lessee will put the Premises 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 Unit, 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 the 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 and Lessee shall allocate the obligation to pay for the portion of such costs reasonably attributable to the Premises pursuant to the formula set out in Paragraph 7.1(d); provided, however, that if 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 be fully responsible for the cost thereof, and Lessee shall not 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.

2.6 Vehicle Parking. Lessee shall be entitled to use the number of Unreserved Parking Spaces and Reserved Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles.**" Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor.

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 Common Areas - Definition. The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 Common Areas - Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas - Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of

driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

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 Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall, however, 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 as agreed, 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 it receives possession of the Premises. 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. Except as otherwise provided, if possession is not tendered to Lessee by the Start Date and Lessee does not terminate this Lease, as aforesaid, 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 of the Premises is not delivered within 4 months 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 tender 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 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) **"Common Area Operating Expenses"** are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership and operation of the Project, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire detection and/or sprinkler systems.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) Trash disposal, pest control services, property management, security services, and the costs of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas.

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

- (viii) The cost of any Capital Expenditure to the Building or the Project covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such Capital Expenditure over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month.
- (ix) Any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses shall be payable by Lessee within 10 days after a reasonably detailed statement of actual expenses is presented to Lessee. At Lessor's option, however, an amount may be estimated by Lessor from time to time of Lessee's Share of annual Common Area Operating Expenses and the same shall be payable monthly or quarterly, as Lessor shall designate, during each 12 month period of the Lease term, on the same day as the Base Rent is due hereunder. Lessor shall deliver to Lessee within 60 days after the expiration of each calendar year a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments under this Paragraph 4.2(d) during the preceding year exceed Lessee's Share as indicated on such statement, Lessor shall credit the amount of such over-payment against Lessee's Share of Common Area Operating Expenses next becoming due. If Lessee's payments under this Paragraph 4.2(d) during the preceding year were less than Lessee's Share as indicated on such statement, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

4.3 **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. 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 charges which may be due.

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 Lessor 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 14 days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within 30 days after the Premises have been vacated pursuant to Paragraph 7.4(c) below, 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. 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,

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, 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, 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 areas outside of the Project). 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 existed as a result of Hazardous Substances on the Premises prior to the Start Date 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 the Start Date, 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 Premises, without regard to whether said 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 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.

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, 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 contamination 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.

7. Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(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, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. 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.

(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) clarifiers, and (iv) any other equipment, if reasonably required by Lessor. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and if Lessor so elects, 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 reimburse Lessor for 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 at a rate that is commercially reasonable in the judgment of Lessor's accountants. Lessee may, however, prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives 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 lines, power panels, electrical distribution, security and fire protection systems, communication systems, 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, 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 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) **Indemnification.** 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 materialman'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 also 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 Project) 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. 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 of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

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, an "Additional Insured-Managers or Lessors of Premises Endorsement" and contain the "Amendment of the Pollution Exclusion Endorsement" for damage caused by heat, smoke or fumes from a hostile fire. 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. All insurance carried by Lessee 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.** Lessor shall obtain and keep in force a policy or policies of insurance 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 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. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4. 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 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.

(b) **Rental Value.** Lessor shall also 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.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

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 B+, V, 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 30 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, in any 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 from Liability.** 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 Premises, 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, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor nor from the failure of Lessor to enforce the provisions of any other lease in the Project. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

9. **Damage or Destruction.**

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 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. 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.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. 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.

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 \$5,000 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 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 shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful 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.

9.8 **Waive Statutes.** 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.

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 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 Project 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 Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project or any portion thereof or a change in the improvements thereon. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Lessor shall pay the Real Property Taxes applicable to the Project, and except as otherwise provided in Paragraph 10.3, any such amounts shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building 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 determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. 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.** 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. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the dumpster and/or an increase in the number of times per month that the dumpster is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs.

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) A change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% 51% 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.

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 therefore 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 \$1,000 or 10% of the current monthly Base Rent applicable to the portion of the Premises which is the subject of the proposed assignment or sublease, whichever is greater, 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.

(f) 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.

(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. 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.

(c) 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, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41 (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 10 days following written notice to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), 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.

(e) 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 (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(g) 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. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefor. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. 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 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 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 equal to the prime rate reported in the Wall Street Journal as published closest prior to the date when due plus 4%, 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 an amount equal to the greater of one month's Base Rent or the Security Deposit, and to pay an excess of such expense under protest, reserving Lessee's right to reimbursement from Lessor. 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 floor area of the Unit, or more than 25% of Lessee's Reserved Parking Spaces, 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 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.

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (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 1.10, 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 encumbrances may rely upon the Responding Party's Estoppel Certificate, and the 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 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. 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 20 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 6.2 above.

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.** Subject to the provisions of Paragraph 17 above, the obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, the individual partners of Lessor or its or their individual partners, 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 the individual partners of Lessor, or its or their individual partners, 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. The liability (including court costs and attorneys' fees), of any Broker with respect to negotiation, execution, delivery or performance by either Lessor or Lessee under this Lease or any amendment or modification hereto shall be limited to an amount up to 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.

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 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 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.** 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. 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.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship. (See attached Duties Owed by a Nevada Real Estate Licensee)

(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 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 liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Lease 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) Buyer and Seller 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 Device 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 such new owner, this Lease shall automatically become a new Lease between Lessee and such new owner, upon all of the terms and conditions hereof, for the remainder of the term hereof, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations hereunder, 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.

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 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 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 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. All such activities shall be without abatement of rent or liability to Lessee. Lessor may at any time place on the Premises any ordinary "**For Sale**" signs and Lessor may during the last 6 months of the term hereof place on the Premises any ordinary "**For Lease**" signs. Lessee may at any time place on the Premises any ordinary "**For Sublease**" sign.

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. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project 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, 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 the term of or renew this Lease or to extend 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 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, (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), (ii) Lessor gives to Lessee 3 or more notices of separate Default during any 12 month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

40. **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.

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. **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.

43. **Authority.** 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.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **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.

46. **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.

47. **Multiple Parties.** If more than one person or entity is named herein as either Lessor or Lessee, such multiple Parties shall have joint and several responsibility to comply with the terms of this Lease.

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 and/or Brokers arising out of this Lease ☐ is ☒ is not attached to this Lease.

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 COMMERCIALY 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, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE 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 ARE LOCATED.

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

Execute at: 7674 West Lake Mead Boulevard, 104

Executed at: _____

On: _____

on: _____

By LESSOR:

4520 ARVILLE
MCKINLEY MANOR

By: _____

Name Printed: Kevin J. Donahoe

Title: Owner Agent

By LESSEE:

BOUR ENTERPRISES LLC,
a Nevada limited liability company

By: _____

Name Printed: Mulgeta Bour

Title: Manager

By: _____

Name Printed: _____

Title: _____

Address: 7674 W. Lake Mead Blvd., 104

Las Vegas, NV 89128

By: _____

Name Printed: _____

Title: _____

Address: 4560 S. Arville Street, #23

Las Vegas, NV 89103

Telephone: (702) 364-0909

Facsimile: (702) 364-5885

Federal ID No. 95-4590150

Telephone: (702) 808-2047

Facsimile: ()

Federal ID No. _____

These forms are often modified to meet changing requirements of law and needs of the industry. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 700 South Flower Street, Suite 600, Los Angeles, CA 90017. (213) 687-8777.

©Copyright 1999 By AIR Commercial Real Estate Association.

All rights reserved.

No part of these works may be reproduced in any form without permission in writing.

INITIALS

PAGE 20 OF 20

K me
INITIALS

©1999 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

FORM MTN-2-2/99E
ARV000020

000060



By and Between (Lessor) 4520 ARVILLE, a California general partnership
and MCKINLEY MANOR, an Idaho general
partnership, as tenants in common

Address of Premises: 4560 South Arville Street, C-23 & 24, Las Vegas,
Nevada 89103

000061

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

☐ II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s): _____

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an ☐ appraiser or ☐ broker ("Consultant" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new 'Base Month' for the purpose of calculating any further Adjustments.

☒ III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):

May 1, 2018 and annually
thereafter

The New Base Rent shall be:

Base Rent to increase by \$.025
per square foot, or \$114.00
per month

B. NOTICE:

Unless specified otherwise herein, notice of any such adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.

NOTE: These forms are often modified to meet changing requirements of law and needs of the industry. Always write or call to make sure

you are utilizing the most current form: AIR COMMERCIAL REAL ESTATE ASSOCIATION, 700 S. Flower Street, Suite 600, Los Angeles, Calif. 90017

INITIALS

PAGE 3 OF 3

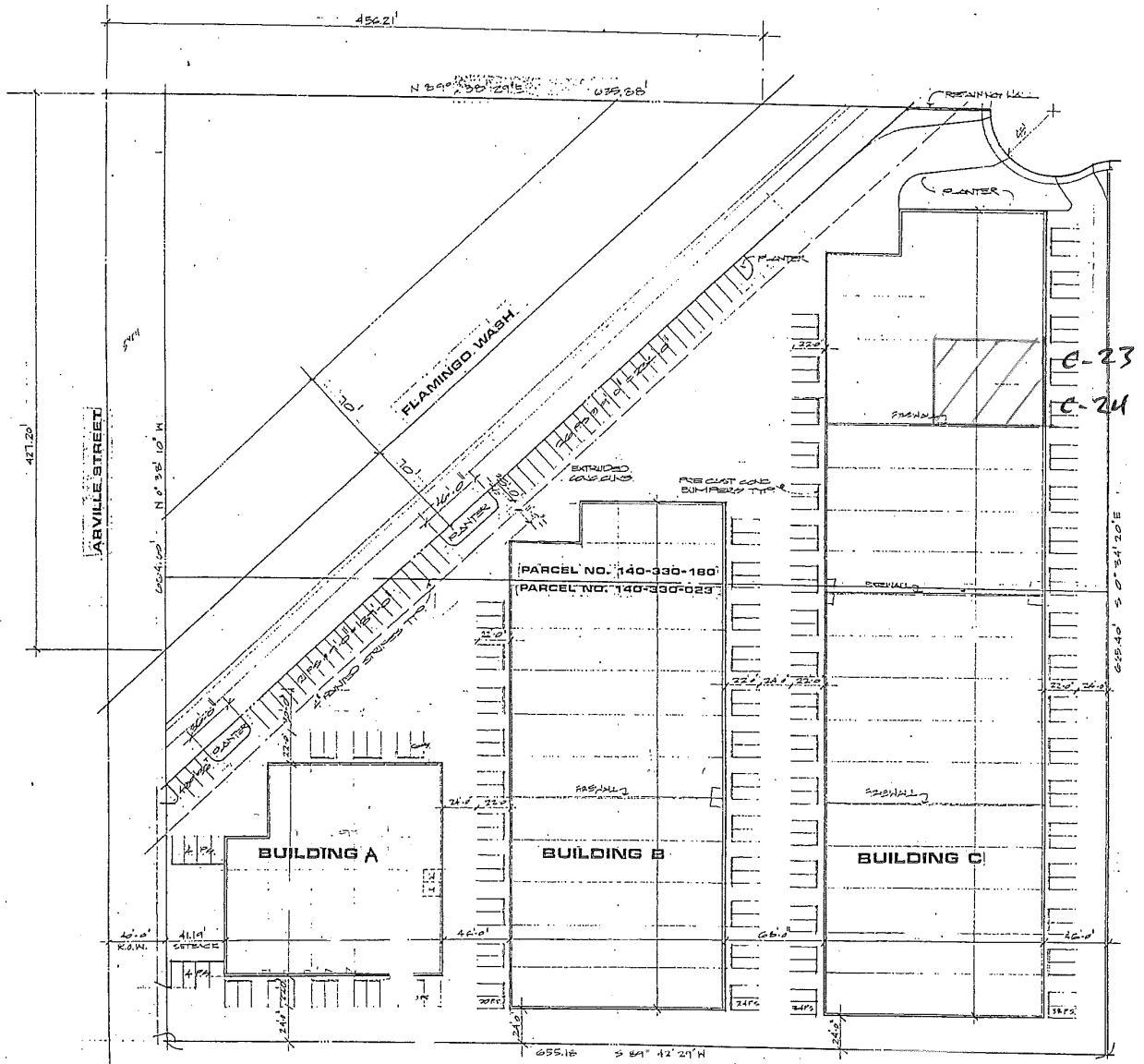
©2000 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

 mvb
INITIALS

FORM RA-3-8/00E
ARV000023

000063

Exhibit A



SITE PLAN

1:40'0"

M.B.

ARV000024

000064

Exhibit B

SIGNAGE CRITERIA

This criterion is being established to provide Lessee with signage specifications for signage conformity throughout the Project. This criterion shall be strictly enforced and any non-conforming or unapproved signage must be removed or brought into conformance within ten (10) days of Lessor's request, at the expense of the Lessee.

General Specification

1. Lessor shall determine approved signage location to Lessee upon request of Lessee.
2. Signage copy to be individual cut out letters, white in color, and affixed on the building without penetrating the surface of the building. Letters shall not to exceed three (3) feet in height.
3. Only established trade names shall be displayed.
4. Sign design, materials, copy and placement to be approved by Lessor in writing prior to installation. Lessee shall deliver to Lessor two (2) sets of plans for Lessor's approval.

General Construction Requirements

1. Lessee shall be responsible for contracting for the installation and maintenance of Lessee's signage.
2. Lessee shall be responsible for the actions of Lessee's sign contractor or vendor.
3. Lessee's sign contractor or vendor shall repair any damage to any portion of the Building structure or fascia caused by said contractor or vendor's work.
4. No signage of any type shall be directly painted on the exterior walls of the Building.
5. Sign contractor or vendor shall contact Lessor prior to commencement of any work so Lessor may inspect sign materials to insure conformance with approved drawings.
6. Lessee to pay for the cost of sign removal and building restoration at the time Lessee vacates the Premises.
7. Sign contractor or vendor shall carry Workmen's compensation and public liability insurance against all damage suffered or done to any and all persons and/or property while engaged in the installation of signage. Said insurance coverage shall be a minimum of \$1,000,000.00. A copy of the policy or certificate of insurance naming Lessor as additional insured shall be delivered to Lessor prior to signage installation.

MB
A

ARV000025

000065

LEASE ADDENDUM

This Lease Addendum is made and entered into on this 20th day of April, 2017, and is hereby attached to and becomes a part of the Lease dated April 20, 2017 by and between 4520 ARVILLE, a California general partnership, and MCKINLEY MANOR, an Idaho general partnership, as tenants in Common, hereinafter referred to as "Lessor", and BOUR ENTERPRISES LLC, a Nevada limited liability company, hereinafter referred to as "Lessee".

RECITALS:

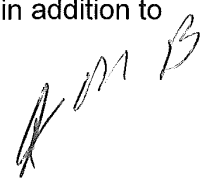
WHEREAS, Lessee and Lessor desire to amend the Lease between the parties for the Premises known as 4560 South Arville Street, C-23 & 24, Las Vegas, Nevada 89103.

TERMS:

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in the Lease, and this Lease Addendum, the parties agree as follows:

1. Condition of Premises. Lessee hereby accepts the Premises in "as-is" condition with any additional alterations and improvements to be completed at Lessee's expense and in accordance with Section 7 of Lease.

2. Trash Disposal. In the areas where garbage dumpsters are provided within the Project, Lessee may utilize the dumpsters for waste paper and incidental trash only. Packing skids, boxes, and construction materials are not to be placed in or around dumpsters. It is the sole responsibility of Lessee to dispose of excessive trash and packaging materials away from the Project or to obtain Lessee's own dumpster at Lessee's own expense. Trash or materials stored outside of the Premises by Lessee, and not disposed of properly in a dumpster is prohibited, and Lessor shall have the right to charge Lessee for the cost of properly disposing of said trash or materials in addition to



any fine that the Lessor may levy against Lessee for such offense.

3. Lessee's Share. Lessee's Share of Common Area Operating Expenses to be paid by Lessee to Lessor shall be no less than \$.20 per square foot, per month, or Nine Hundred Twelve and No/00 Dollars (\$912.00), for the duration of the Term of the Lease.

4. Lessee's Vehicles. Lessee, at Lessee's cost, shall take all necessary precautions to protect the concrete slab and walls of the Premises from automotive spills of any chemicals or petroleum products which may come into contact with the floor or walls as a result of the operation of Lessee's business, and Lessee shall not leave Lessee's vehicles parked outside of the Premises in the parking areas overnight.

5. Rent Abatement. As consideration for Lessee's performance of all obligations to be performed by Lessee under the Lease, and provided Lessee is not in default of the Lease, Lessor shall credit Lessee's rental account Three Hundred Fifteen and 78/00 Dollars (\$315.78) for Month 1 of the Lease.

Except as amended by this Lease Addendum, all the provisions, terms and conditions of the Lease shall remain in full force and effect and the same is hereby ratified and confirmed.

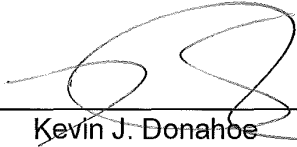
Signatures to follow

Handwritten initials 'MB' and a signature.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Addendum
as of this date.

LESSOR:

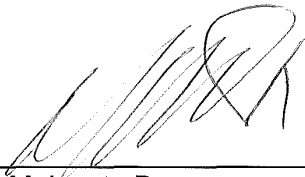
**4520 ARVILLE, a California general
partnership, and MCKINLEY MANOR,
an Idaho general partnership,
as tenants in common**

By: 
Kevin J. Donahoe

Its: Owner Agent

LESSEE:

**BOUR ENTERPRISES LLC,
a Nevada limited liability company**

By: 
Mulugeta Bour

Its: Manager



AIR COMMERCIAL REAL ESTATE ASSOCIATION GUARANTY OF LEASE

WHEREAS, 4520 ARVILLE, a California general partnership and MCKINLEY MANOR, an Idaho general partnership, as tenants in common, hereinafter "Lessor", and BOUR ENTERPRISES LLC, a Nevada limited liability company, hereinafter "Lessee", are about to execute a document entitled "Lease" dated April 20, 2017 concerning the premises commonly known as 4560 South Arville Street, C-23 & 24, Las Vegas, Nevada 89103 wherein Lessor will lease the premises to Lessee, and

WHEREAS, MULUGETA BOUR, an individual, and HILENA MENGESHA, an individual hereinafter "Guarantors" have a financial interest in Lessee, and

WHEREAS, Lessor would not execute the Lease if Guarantors did not execute and deliver to Lessor this Guarantee of Lease.

NOW THEREFORE, in consideration of the execution of the foregoing Lease by Lessor and as a material inducement to Lessor to execute said Lease, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rents and all other sums payable by Lessee under said Lease and the faithful and prompt performance by Lessee of each and every one of the terms, conditions and covenants of said Lease to be kept and performed by Lessee.

It is specifically agreed that the terms of the foregoing Lease may be modified by agreement between Lessor and Lessee, or by a course of conduct, and said Lease may be assigned by Lessor or any assignee of Lessor without consent or notice to Guarantors and that this Guaranty shall guarantee the performance of said Lease as so modified.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Lessor to enforce any of the rights or remedies of the Lessor under said Lease, whether pursuant to the terms thereof or at law or in equity.

No notice of default need be given to Guarantors, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which Lessor may proceed immediately against Lessee and/or against Guarantors following any breach or default by Lessee or for the enforcement of any rights which Lessor may have as against Lessee under the terms of the Lease or at law or in equity.

Lessor shall have the right to proceed against Guarantors hereunder following any breach or default by Lessee without first proceeding against Lessee and without previous notice to or demand upon either Lessee or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations relating to this Guaranty or the Lease, (d) any right to require the Lessor to proceed against the Lessee or any other Guarantor or any other person or entity liable to Lessor, (e) any right to require Lessor to apply to any default any security deposit or other security it may hold under the Lease, (f) any right to require Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantors, (g) any right of subrogation.

Guarantors do hereby subrogate all existing or future indebtedness of Lessee to Guarantors to the obligations owed to Lessor under the Lease and this Guaranty.

If a Guarantor is married, such Guarantor expressly agrees that recourse may be had against his or her separate property for all of the obligations hereunder.

The obligations of Lessee under the Lease to execute and deliver estoppel statements and financial statements, as therein provided, shall be deemed to also require the Guarantors hereunder to do and provide the same.

The term "Lessor" refers to and means the Lessor named in the Lease and also Lessor's successors and assigns. So long as Lessor's interest in the Lease, the leased premises or the rents, issues and profits therefrom, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Lessor's interest shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or

assignment and their successors and assigns.

The term "Lessee" refers to and means the Lessee named in the Lease and also Lessee's successors and assigns.

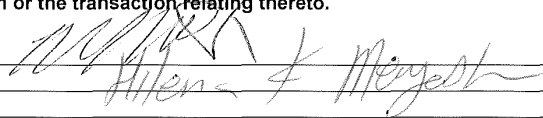
In the event any action be brought by said Lessor against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee which shall be fixed by the court.

If this Form has been filled in, it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by the AIR Commercial Real Estate Association, the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Form or the transaction relating thereto.

Executed at: _____

On: _____

Address: _____



"GUARANTORS"

EXHIBIT 3





STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - NET AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only April 20, 2017, is made by and between 4520 ARVILLE, a California general partnership and MCKINLEY MANOR, an Idaho general partnership, as tenants in common ("Lessor") and BOUR ENTERPRISES LLC, a Nevada limited liability company

("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 4560 South Arville Street, C-10 & 29, located in the City of Las Vegas, County of Clark, State of Nevada, with zip code 89103, as outlined on Exhibit A attached hereto ("Premises") and generally described as (describe briefly the nature of the Premises): Approximately 4,560 square feet of industrial/warehouse space located in the Project known as "Arville Industrial Park"

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, exterior walls or utility raceways of the building containing the Premises ("Building") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) **Parking:** Four (4) unreserved vehicle parking spaces ("Unreserved Parking Spaces"); and n/a reserved vehicle parking spaces ("Reserved Parking Spaces"). (See also Paragraph 2.6)

1.3 **Term:** Two (2) years and one (1) months ("Original Term") commencing May 1, 2017

("Commencement Date") and ending May 31, 2019

("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** Upon Lease execution ("Early Possession Date").

(See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$ 1,824.00 per month ("Base Rent"), payable on the 1st day of each month commencing on the Commencement Date. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 **Lessee's Share of Common Area Operating Expenses:** Two and 86/100 percent (2.86 %) ("Lessee's Share").

1.7 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** \$ 1,824.00 for the period 05/01/2017-05/31/2017

(b) **Common Area Operating Expenses:** \$ 912.00 for the period 05/01/2017-05/31/2017

(c) **Security Deposit:** \$ 2,736.00 ("Security Deposit"). (See also Paragraph 5)

(d) **Other:** \$ n/a for _____

(e) **Total Due Upon Execution of this Lease:** \$ 5,472.00

1.8 **Agreed Use:** Administrative operations and vehicle storage for a limousine service

. (See also Paragraph 6)

1.9 **Insuring Party.** Lessor is the "Insuring Party". (See also Paragraph 8)

1.10 **Real Estate Brokers:** (also Paragraph 15)

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- ☒ Commercial Specialists represents Lessor exclusively ("Lessor's Broker");
☐ n/a represents Lessee exclusively ("Lessee's Broker"); or
☐ n/a 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 Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of (per agreement) or ---- % of the total Base Rent for the brokerage services rendered by the Brokers).

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by MULUGETA BOUR, an individual, and HILENA K. MENGESHA, an individual ("Guarantor"). (See also Paragraph 37)

1.12 **Addenda and Exhibits.** Attached hereto is an Addendum or Addenda consisting of Paragraphs 1 through 5 and Exhibits A through B, all of which constitute a part of this Lease.

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 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.

2.2 **Condition.** Lessor shall deliver that portion of the Premises contained within the Building ("Unit") 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, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date and that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects. If a non-compliance with such 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) 30 days as to the remaining systems and other elements of the Unit. 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 (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7).

2.3 **Compliance.** Lessor warrants that the improvements on the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Start Date ("Applicable Requirements"). Said warranty does not apply to the use to which Lessee will put the Premises 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 Unit, 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 the 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 and Lessee shall allocate the obligation to pay for the portion of such costs reasonably attributable to the Premises pursuant to the formula set out in Paragraph 7.1(d); provided, however, that if 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 be fully responsible for the cost thereof, and Lessee shall not 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.

2.6 **Vehicle Parking.** Lessee shall be entitled to use the number of Unreserved Parking Spaces and Reserved Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles**." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor.

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 **Common Areas - Definition.** The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of

driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, circulation of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

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 Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall, however, 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 as agreed, 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 it receives possession of the Premises. 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. Except as otherwise provided, if possession is not tendered to Lessee by the Start Date and Lessee does not terminate this Lease, as aforesaid, 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 of the Premises is not delivered within 4 months 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 tender 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 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) **"Common Area Operating Expenses"** are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership and operation of the Project, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire detection and/or sprinkler systems.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) Trash disposal, pest control services, property management, security services, and the costs of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas.

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

- (viii) The cost of any Capital Expenditure to the Building or the Unit not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such Capital Expenditure over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month.
- (ix) Any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses shall be payable by Lessee within 10 days after a reasonably detailed statement of actual expenses is presented to Lessee. At Lessor's option, however, an amount may be estimated by Lessor from time to time of Lessee's Share of annual Common Area Operating Expenses and the same shall be payable monthly or quarterly, as Lessor shall designate, during each 12 month period of the Lease term, on the same day as the Base Rent is due hereunder. Lessor shall deliver to Lessee within 60 days after the expiration of each calendar year a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments under this Paragraph 4.2(d) during the preceding year exceed Lessee's Share as indicated on such statement, Lessor shall credit the amount of such over-payment against Lessee's Share of Common Area Operating Expenses next becoming due. If Lessee's payments under this Paragraph 4.2(d) during the preceding year were less than Lessee's Share as indicated on such statement, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

4.3 **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. 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 charges which may be due.

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 Lessor 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 14 days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within 30 days after the Premises have been vacated pursuant to Paragraph 7.4(c) below, 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. 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,

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, 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, 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 areas outside of the Project). 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 existed as a result of Hazardous Substances on the Premises prior to the Start Date 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 the Start Date, 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 , this Lease shall continue in full force and effect, 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 Premises, without regard to whether said 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 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.

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, 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 contamination 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.

7. **Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.**

(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, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. 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.

(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) clarifiers, and (iv) any other equipment, if reasonably required by Lessor. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and if Lessor so elects, 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 reimburse Lessor for 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 at a rate that is commercially reasonable in the judgment of Lessor's accountants. Lessee may, however, prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives 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 low coverings, air lines, power panels, electrical distribution, security and fire protection systems, communication systems, 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, 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 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) **Indemnification.** 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 materialman'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 also 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 Project) 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. 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 of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

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, an "Additional Insured-Managers or Lessors of Premises Endorsement" and contain the "Amendment of the Pollution Exclusion Endorsement" for damage caused by heat, smoke or fumes from a hostile fire. 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. All insurance carried by Lessee 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.** Lessor shall obtain and keep in force a policy or policies of insurance 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 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. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4. 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 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.

(b) **Rental Value.** Lessor shall also 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.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

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 B+, V, 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 30 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 from Liability.** 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 Premises, 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, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor nor from the failure of Lessor to enforce the provisions of any other lease in the Project. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

9. **Damage or Destruction.**

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 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. 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.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. 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.

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 \$5,000 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 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 fund. satisfactory assurance thereof within 30 days after ng 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 shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful 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.

9.8 **Waive Statutes.** 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.

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 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 Project 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 Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project or any portion thereof or a change in the improvements thereon. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Lessor shall pay the Real Property Taxes applicable to the Project, and except as otherwise provided in Paragraph 10.3, any such amounts shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request.

10.4 **Joint Assessment.** If Building is not separately assessed, Real Property taxes allocated to the Building 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 determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. 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.** 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. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the dumpster and/or an increase in the number of times per month that the dumpster is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs.

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) A change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% 51% 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.

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 therefore 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 \$1,000 or 10% of the current monthly Base Rent applicable to the portion of the Premises which is the subject of the proposed assignment or sublease, whichever is greater, 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.

(f) 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 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. 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.

(c) 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, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41 (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 10 days following written notice to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), 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.

(e) 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 (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(g) 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. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefor. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. 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 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 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 equal to the prime rate reported in the Wall Street Journal as published closest prior to the date when due plus 4%, 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 an amount equal to the greater of one month's Base Rent or the Security Deposit, and to pay an excess of such expense under protest, reserving Lessee's right to reimbursement from Lessor. 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 floor area of the Unit, or more than 25% of Lessee's Reserved Parking Spaces, 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 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.

15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (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 1.10, 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. Protective purchasers and encumbrances may rely upon. Requesting Party's Estoppel Certificate, and the 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 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. 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 20 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 6.2 above.

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.** Subject to the provisions of Paragraph 17 above, the obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, the individual partners of Lessor or its or their individual partners, 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 the individual partners of Lessor, or its or their individual partners, 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. The liability (including court costs and attorneys' fees), of any Broker with respect to negotiation, execution, delivery or performance by either Lessor or Lessee under this Lease or any amendment or modification hereto shall be limited to an amount up to 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.

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 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 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.** 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. 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.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship. (See attached Duties Owed by a Nevada Real Estate Licensee)

(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 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 licensees, 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 liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Lease 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) Buyer and Seller 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 Device 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 such new owner, this Lease shall automatically become a new Lease between Lessee and such new owner, upon all of the terms and conditions hereof, for the remainder of the term hereof, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations hereunder, 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.

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 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 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 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. All such activities shall be without abatement of rent or liability to Lessee. Lessor may at any time place on the Premises any ordinary "**For Sale**" signs and Lessor may during the last 6 months of the term hereof place on the Premises any ordinary "**For Lease**" signs. Lessee may at any time place on the Premises any ordinary "**For Sublease**" sign.

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.** Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project 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 _____, 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 the term of or renew this Lease or to extend 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 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, (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), (ii) Lessor gives to Lessee 3 or more notices of separate Default during any 12 month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

40. **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.

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. **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.

43. **Authority.** 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.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **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.

46. **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.

47. **Multiple Parties.** If more than one person or entity is named herein as either Lessor or Lessee, such multiple Parties shall have joint and several responsibility to comply with the terms of this Lease.

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 Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☒ is not attached to this Lease.

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 COMMERCIALY 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, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE 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 ARE LOCATED.

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

Execute at: 7674 West Lake Mead Boulevard, 104

Executed at: _____

On: _____

on: _____

By LESSOR:

4520 ARVILLE
MCKINLEY MANOR

By: _____

Name Printed: Kevin J. Donahoe

Title: Owner Agent

By LESSEE:

BOUR ENTERPRISES LLC,
a Nevada limited liability company

By: _____

Name Printed: Mulugeta Bour

Title: Manager

By: _____

Name Printed: _____

Title: _____

Address: 7674 W. Lake Mead Blvd., 104

Las Vegas, NV 89128

By: _____

Name Printed: _____

Title: _____

Address: 4560 S. Arville Street, #23

Las Vegas, NV 89103

Telephone: (702) 364-0909

Facsimile: (702) 364-5885

Federal ID No. 95-4590150

Telephone: (702) 808-2047

Facsimile: () _____

Federal ID No. _____

These forms are often modified to meet changing requirements of law and needs of the industry. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 700 South Flower Street, Suite 600, Los Angeles, CA 90017. (213) 687-8777.

©Copyright 1999 By AIR Commercial Real Estate Association.

All rights reserved.

No part of these works may be reproduced in any form without permission in writing.

m 1 B

PAGE 20 OF 20

INITIALS

©1999 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

FORM MTN-2-2/99E
ARV000053

000091



RENT ADJUSTMENT(S) STANDARD LEASE ADDENDUM

Dated April 20, 2017

By and Between (Lessor) 4520 ARVILLE, a California general partnership
and MCKINLEY MANOR, an Idaho general
partnership, as tenants in common

(Lessee) BOUR ENTERPRISES LLC, a Nevada limited
liability company

Address of Premises: 4560 South Arville Street, C-10 & 29, Las Vegas,
Nevada 89103

Paragraph 1.5

A. RENT ADJUSTMENTS:

The monthly rent for each month of the adjustment period(s) specified below shall be increased using the method(s) indicated below:

(Check Method(s) to be Used and Fill in Appropriately)

☐ **I. Cost of Living Adjustment(s) (COLA)**

a. On (Fill in COLA Dates): May 1, 2018, and annually thereafter

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): ☐ CPI W (Urban Wage Earners and Clerical Workers) or ☒ CPI U (All Urban Consumers), for (Fill in Urban Area):

Los Angeles-Riverside-Orange County

, All Items



(1982-1984 = 100), herein referred to as "CPI".

b. The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the ☒ first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month"): _____. The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than 110 percent (110%) of the rent payable for the month immediately preceding the rent adjustment.

PAGE 1 OF 3

INITIALS

©2000 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

 
INITIALS

FORM RA-3-8/00E
ARV000054

000092

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

☐ II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s): _____

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an ☐ appraiser or ☐ broker ("Consultant" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new 'Base Month' for the purpose of calculating any further Adjustments.

☒ III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s):

May 1, 2018 and annually
thereafter

The New Base Rent shall be:

Base Rent to increase by \$.025
per square foot, or \$114.00
per month

B. NOTICE:

Unless specified otherwise herein, notice of any such adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.


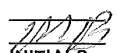
NOTE: These forms are often modified to meet changing requirements of law and needs of the industry. Always write or call to make sure

you are utilizing the most current form: () COMMERCIAL REAL ESTATE ASSOCIATION, 70 Flower Street, Suite 600, Los Angeles, Calif.
90017

INITIALS

PAGE 3 OF 3

©2000 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

 
INITIALS

FORM RA-3-8/00E
ARV000056

000094



000095

Exhibit B

SIGNAGE CRITERIA

This criterion is being established to provide Lessee with signage specifications for signage conformity throughout the Project. This criterion shall be strictly enforced and any non-conforming or unapproved signage must be removed or brought into conformance within ten (10) days of Lessor's request, at the expense of the Lessee.

General Specification

1. Lessor shall determine approved signage location to Lessee upon request of Lessee.
2. Signage copy to be individual cut out letters, white in color, and affixed on the building without penetrating the surface of the building. Letters shall not to exceed three (3) feet in height.
3. Only established trade names shall be displayed.
4. Sign design, materials, copy and placement to be approved by Lessor in writing prior to installation. Lessee shall deliver to Lessor two (2) sets of plans for Lessor's approval.

General Construction Requirements

1. Lessee shall be responsible for contracting for the installation and maintenance of Lessee's signage.
2. Lessee shall be responsible for the actions of Lessee's sign contractor or vendor.
3. Lessee's sign contractor or vendor shall repair any damage to any portion of the Building structure or fascia caused by said contractor or vendor's work.
4. No signage of any type shall be directly painted on the exterior walls of the Building.
5. Sign contractor or vendor shall contact Lessor prior to commencement of any work so Lessor may inspect sign materials to insure conformance with approved drawings.
6. Lessee to pay for the cost of sign removal and building restoration at the time Lessee vacates the Premises.
7. Sign contractor or vendor shall carry Workmen's compensation and public liability insurance against all damage suffered or done to any and all persons and/or property while engaged in the installation of signage. Said insurance coverage shall be a minimum of \$1,000,000.00. A copy of the policy or certificate of insurance naming Lessor as additional insured shall be delivered to Lessor prior to signage installation.

M. B.
AK

ARV000058

000096

LEASE ADDENDUM

This Lease Addendum is made and entered into on this 20th day of April, 2017, and is hereby attached to and becomes a part of the Lease dated April 20, 2017 by and between 4520 ARVILLE, a California general partnership, and MCKINLEY MANOR, an Idaho general partnership, as tenants in Common, hereinafter referred to as "Lessor", and BOUR ENTERPRISES LLC, a Nevada limited liability company, hereinafter referred to as "Lessee".

RECITALS:

WHEREAS, Lessee and Lessor desire to amend the Lease between the parties for the Premises known as 4560 South Arville Street, C-10 & 29, Las Vegas, Nevada 89103.

TERMS:

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in the Lease, and this Lease Addendum, the parties agree as follows:

1. Condition of Premises. Lessor, at Lessor's cost, shall make sure that the overhead florescent light fixtures, electrical outlets, plumbing, and doors are in proper working order at the commencement of the Lease; otherwise, Lessee hereby accepts the Premises in "as-is" condition with any additional alterations and improvements to be completed at Lessee's expense and in accordance with Section 7 of Lease.

2. Trash Disposal. In the areas where garbage dumpsters are provided within the Project, Lessee may utilize the dumpsters for waste paper and incidental trash only. Packing skids, boxes, and construction materials are not to be placed in or around dumpsters. It is the sole responsibility of Lessee to dispose of excessive trash and packaging materials away from the Project or to obtain Lessee's own dumpster at Lessee's own expense. Trash or materials stored outside of the Premises by Lessee,



and not disposed of properly in a dumpster is prohibited, and Lessor shall have the right to charge Lessee for the cost of properly disposing of said trash or materials in addition to any fine that the Lessor may levy against Lessee for such offense.

3. Lessee's Share. Lessee's Share of Common Area Operating Expenses to be paid by Lessee to Lessor shall be no less than \$.20 per square foot, per month, or Nine Hundred Twelve and No/00 Dollars (\$912.00), for the duration of the Term of the Lease.

4. Lessee's Vehicles. Lessee, at Lessee's cost, shall take all necessary precautions to protect the concrete slab and walls of the Premises from automotive spills of any chemicals or petroleum products which may come into contact with the floor or walls as a result of the operation of Lessee's business, and Lessee shall not leave Lessee's vehicles parked outside of the Premises in the parking areas overnight.

5. Rent Abatement. As consideration for Lessee's performance of all obligations to be performed by Lessee under the Lease, and provided Lessee is not in default of the Lease, Lessor shall credit Lessee's rental account Two Thousand Seven Hundred Thirty-six and No/00 Dollars (\$2,736.00) for Month 1 of the Lease.

Except as amended by this Lease Addendum, all the provisions, terms and conditions of the Lease shall remain in full force and effect and the same is hereby ratified and confirmed.

Signatures to follow



IN WITNESS WHEREOF, the parties hereto have executed this Lease Addendum
as of this date.

LESSOR:

**4520 ARVILLE, a California general
partnership, and MCKINLEY MANOR,
an Idaho general partnership,
as tenants in common**

By: 
Kevin J. Donahoe

Its: Owner Agent

LESSEE:

**BOUR ENTERPRISES LLC,
a Nevada limited liability company**

By: 
Mulugeta Bour

Its: Manager



AIR COMMERCIAL REAL ESTATE ASSOCIATION GUARANTY OF LEASE

WHEREAS, 4520 ARVILLE, a California general partnership and MCKINLEY MANOR, an Idaho general partnership, as tenants in common, hereinafter "Lessor", and BOUR ENTERPRISES LLC, a Nevada limited liability company, hereinafter "Lessee", are about to execute a document entitled "Lease" dated April 20, 2017 concerning the premises commonly known as 4560 South Arville Street, C-10 & 29, Las Vegas, Nevada 89103 wherein Lessor will lease the premises to Lessee, and

WHEREAS, MULUGETA BOUR, an individual, and HILENA MENGESHA, an individual hereinafter "Guarantors" have a financial interest in Lessee, and

WHEREAS, Lessor would not execute the Lease if Guarantors did not execute and deliver to Lessor this Guarantee of Lease.

NOW THEREFORE, in consideration of the execution of the foregoing Lease by Lessor and as a material inducement to Lessor to execute said Lease, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rents and all other sums payable by Lessee under said Lease and the faithful and prompt performance by Lessee of each and every one of the terms, conditions and covenants of said Lease to be kept and performed by Lessee.

It is specifically agreed that the terms of the foregoing Lease may be modified by agreement between Lessor and Lessee, or by a course of conduct, and said Lease may be assigned by Lessor or any assignee of Lessor without consent or notice to Guarantors and that this Guaranty shall guarantee the performance of said Lease as so modified.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Lessor to enforce any of the rights or remedies of the Lessor under said Lease, whether pursuant to the terms thereof or at law or in equity.

No notice of default need be given to Guarantors, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which Lessor may proceed immediately against Lessee and/or against Guarantors following any breach or default by Lessee or for the enforcement of any rights which Lessor may have as against Lessee under the terms of the Lease or at law or in equity.

Lessor shall have the right to proceed against Guarantors hereunder following any breach or default by Lessee without first proceeding against Lessee and without previous notice to or demand upon either Lessee or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations relating to this Guaranty or the Lease, (d) any right to require the Lessor to proceed against the Lessee or any other Guarantor or any other person or entity liable to Lessor, (e) any right to require Lessor to apply to any default any security deposit or other security it may hold under the Lease, (f) any right to require Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantors, (g) any right of subrogation.

Guarantors do hereby subrogate all existing or future indebtedness of Lessee to Guarantors to the obligations owed to Lessor under the Lease and this Guaranty.

If a Guarantor is married, such Guarantor expressly agrees that recourse may be had against his or her separate property for all of the obligations hereunder.

The obligations of Lessee under the Lease to execute and deliver estoppel statements and financial statements, as therein provided, shall be deemed to also require the Guarantors hereunder to do and provide the same.

The term "Lessor" refers to and means the Lessor named in the Lease and also Lessor's successors and assigns. So long as Lessor's interest in the Lease, the leased premises or the rents, issues and profits therefrom, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Lessor's interest shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or

assignment and their successors and assigns.

The term "Lessee" refers to and means the Lessee named in the Lease and also Lessee's successors and assigns.

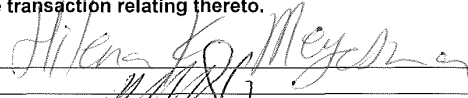
In the event any action be brought by said Lessor against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee which shall be fixed by the court.

If this Form has been filled in, it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by the AIR Commercial Real Estate Association, the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Form or the transaction relating thereto.

Executed at: _____

On: _____

Address: _____



"GUARANTORS"

EXHIBIT 4



1 F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
2 E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
3 Nevada Bar No. 14913
E-mail: jlujan@nevadafirm.com
4 HOLLEY DRIGGS
400 South Fourth Street, Third Floor
5 Las Vegas, Nevada 89101
Telephone: 702/791-0308
6 Facsimile: 702/791-1912

7 *Attorneys for Plaintiffs/Counterdefendants*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
11 general partnership,

12 Plaintiffs,

13 v.

14 BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
15 individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

16 Defendants.

17 BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
18 individual; HILENA MENGESHA, an
19 individual; DOES 1 through 100, inclusive,

20 Counterclaimants.

21 v.

22 4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership, DOES I-X; and ROE
23 CORPORATIONS I-X,

24 Counterdefendants,

Case No: A-19-794864-C
Dept. No.: 8

DECLARATION OF KEVIN DONAHOE

25 I, Kevin Donahoe, do hereby voluntarily state under penalty of perjury as follows:

26 ///

27 ///

28

KEVIN DONAHOE

EXHIBIT 5



Tenant Ledger

Bour Enterprises LLC
1401 Via Savona Drive
Henderson, NV 89052

Date: 05/14/19
 Tenant Code: zbour1
 Property: arv
 Unit: C23
 Status: Past
 Rent: 2,052.00
 Deposit: 0.00
 Move In Date: 05/01/17
 Move Out Date: 05/31/19
 Due Day: 1
 Tel# (O)
 Tel# (H)

| Date | Description | Charges | Payments | Balance |
|----------|---------------------------------|----------|-----------|----------|
| | Balance Forward | | | 0.00 |
| 04/24/17 | Security Deposit | 2,736.00 | | 2,736.00 |
| 04/25/17 | chk# 295 | | 2,736.00 | 0.00 |
| 05/01/17 | Rent | 1,824.00 | | 1,824.00 |
| 05/01/17 | Common Area Maintenance | 912.00 | | 2,736.00 |
| 05/01/17 | Rent Concession | -315.78 | | 2,420.22 |
| 05/30/17 | chk# 248 | | 2,420.00 | 0.22 |
| 06/01/17 | Rent | 1,824.00 | | 1,824.22 |
| 06/01/17 | Common Area Maintenance | 912.00 | | 2,736.22 |
| 06/08/17 | chk# 1570 | | 2,736.22 | 0.00 |
| 07/01/17 | Rent | 1,824.00 | | 1,824.00 |
| 07/01/17 | Common Area Maintenance | 912.00 | | 2,736.00 |
| 07/12/17 | chk# 629 | | 2,736.00 | 0.00 |
| 08/01/17 | Rent | 1,824.00 | | 1,824.00 |
| 08/01/17 | Common Area Maintenance | 912.00 | | 2,736.00 |
| 08/08/17 | chk# 655 | | 2,736.00 | 0.00 |
| 09/01/17 | Rent | 1,824.00 | | 1,824.00 |
| 09/01/17 | Common Area Maintenance | 912.00 | | 2,736.00 |
| 09/14/17 | Late Fee | 273.60 | | 3,009.60 |
| 09/14/17 | chk# 103 Reversed by ctrl#8361 | | 2,736.00 | 273.60 |
| 09/20/17 | Returned check charge | 55.00 | | 328.60 |
| 09/20/17 | chk# 103 NSF receipt Ctrl# 8345 | | -2,736.00 | 3,064.60 |
| 09/22/17 | chk# 695 | | 2,736.00 | 328.60 |
| 10/01/17 | Rent | 1,824.00 | | 2,152.60 |
| 10/01/17 | Common Area Maintenance | 912.00 | | 3,064.60 |
| 10/13/17 | Late Fee | 273.60 | | 3,338.20 |
| 10/16/17 | chk# 661 | | 2,736.11 | 602.09 |
| 11/01/17 | Rent | 1,824.00 | | 2,426.09 |
| 11/01/17 | Common Area Maintenance | 912.00 | | 3,338.09 |
| 11/07/17 | chk# 402 | | 2,736.00 | 602.09 |
| 12/01/17 | Rent | 1,824.00 | | 2,426.09 |
| 12/01/17 | Common Area Maintenance | 912.00 | | 3,338.09 |
| 12/13/17 | chk# 1696 | | 2,736.00 | 602.09 |
| 01/01/18 | Rent | 1,824.00 | | 2,426.09 |
| 01/01/18 | Common Area Maintenance | 912.00 | | 3,338.09 |
| 01/11/18 | chk# 1904 | | 3,338.00 | 0.09 |

CONTINUED

ARV000031

000106

Tenant Ledger

Bour Enterprises LLC
1401 Via Savona Drive
Henderson, NV 89052

Date: 05/14/19
 Tenant Code: zbour1
 Property: arv
 Unit: C23
 Status: Past
 Rent: 2,052.00
 Deposit: 0.00
 Move In Date: 05/01/17
 Move Out Date: 05/31/19
 Due Day: 1
 Tel# (O)
 Tel# (H)

| Date | Description | Charges | Payments | Balance |
|----------|---------------------------------|----------|----------|-----------|
| | Balance Forward | | | 0.09 |
| 02/01/18 | January 2018 CAM Increase | 91.20 | | 91.29 |
| 02/01/18 | Rent | 1,824.00 | | 1,915.29 |
| 02/01/18 | Common Area Maintenance | 1,003.20 | | 2,918.49 |
| 02/08/18 | chk# 1959 | | 2,827.00 | 91.49 |
| 03/01/18 | Rent | 1,824.00 | | 1,915.49 |
| 03/01/18 | Common Area Maintenance | 1,003.20 | | 2,918.69 |
| 03/12/18 | chk# 2015 | | 2,918.69 | 0.00 |
| 04/01/18 | Rent | 1,824.00 | | 1,824.00 |
| 04/01/18 | Common Area Maintenance | 1,003.20 | | 2,827.20 |
| 04/17/18 | chk# 3035 | | 2,827.20 | 0.00 |
| 05/01/18 | Annual Security Deposit Upgrade | 205.20 | | 205.20 |
| 05/01/18 | Rent | 1,938.00 | | 2,143.20 |
| 05/01/18 | Common Area Maintenance | 1,003.20 | | 3,146.40 |
| 05/11/18 | Late Fee | 314.64 | | 3,461.04 |
| 06/01/18 | Rent | 1,938.00 | | 5,399.04 |
| 06/01/18 | Common Area Maintenance | 1,003.20 | | 6,402.24 |
| 06/12/18 | Late Fee | 640.22 | | 7,042.46 |
| 07/01/18 | Rent (07/2018) | 1,938.00 | | 8,980.46 |
| 07/01/18 | Common Area Maintenance | 1,003.20 | | 9,983.66 |
| 07/12/18 | Late Fee | 998.37 | | 10,982.03 |
| 08/01/18 | Rent (08/2018) | 1,938.00 | | 12,920.03 |
| 08/01/18 | Common Area Maintenance | 1,003.20 | | 13,923.23 |
| 08/10/18 | Late Fee | 1,392.32 | | 15,315.55 |
| 09/01/18 | Rent (09/2018) | 1,938.00 | | 17,253.55 |
| 09/01/18 | Common Area Maintenance | 1,003.20 | | 18,256.75 |
| 09/07/18 | chk# 2746 Paid by Mengeal | | 6,365.00 | 11,891.75 |
| 09/12/18 | Late Fee | 1,189.18 | | 13,080.93 |
| 10/01/18 | Rent (10/2018) | 1,938.00 | | 15,018.93 |
| 10/01/18 | Common Area Maintenance | 1,003.20 | | 16,022.13 |
| 10/11/18 | Late Fee | 1,602.21 | | 17,624.34 |
| 11/01/18 | Rent (11/2018) | 1,938.00 | | 19,562.34 |
| 11/01/18 | Common Area Maintenance | 1,003.20 | | 20,565.54 |
| 11/12/18 | Late Fee | 2,056.65 | | 22,622.19 |
| 11/12/18 | Correct Late Fee | -0.10 | | 22,622.09 |
| 12/01/18 | Rent (12/2018) | 1,938.00 | | 24,560.09 |

CONTINUED

ARV000032

000107

Tenant Ledger

Bour Enterprises LLC
1401 Via Savona Drive
Henderson, NV 89052

Date: 05/14/19
 Tenant Code: zbour1
 Property: arv
 Unit: C23
 Status: Past
 Rent: 2,052.00
 Deposit: 0.00
 Move In Date: 05/01/17
 Move Out Date: 05/31/19
 Due Day: 1
 Tel# (O)
 Tel# (H)

| Date | Description | Charges | Payments | Balance |
|----------|-------------------------|-----------|----------|-----------|
| | Balance Forward | | | 24,560.09 |
| 12/01/18 | Common Area Maintenance | 1,003.20 | | 25,563.29 |
| 12/12/18 | Late Fee | 2,556.34 | | 28,119.63 |
| 12/12/18 | Correct Late Fee | -0.01 | | 28,119.62 |
| 01/01/19 | Rent (01/2019) | 1,938.00 | | 30,057.62 |
| 01/01/19 | Common Area Maintenance | 1,003.20 | | 31,060.82 |
| 01/14/19 | Late Fee | 3,106.09 | | 34,166.91 |
| 01/14/19 | Correct Late Fee | -0.01 | | 34,166.90 |
| 02/01/19 | Rent (02/2019) | 1,938.00 | | 36,104.90 |
| 02/01/19 | Common Area Maintenance | 1,003.20 | | 37,108.10 |
| 02/12/19 | Late Fee | 3,710.82 | | 40,818.92 |
| 02/12/19 | Correct Late Fee | -0.01 | | 40,818.91 |
| 03/01/19 | Rent (03/2019) | 1,938.00 | | 42,756.91 |
| 03/01/19 | Common Area Maintenance | 1,003.20 | | 43,760.11 |
| 03/12/19 | Late Fee | 4,376.02 | | 48,136.13 |
| 03/12/19 | Correct Late Fee | -0.01 | | 48,136.12 |
| 04/01/19 | Rent (04/2019) | 1,938.00 | | 50,074.12 |
| 04/01/19 | Common Area Maintenance | 1,003.20 | | 51,077.32 |
| 04/12/19 | Late Fee | 5,107.73 | | 56,185.05 |
| 05/01/19 | Rent (05/2019) | 2,052.00 | | 58,237.05 |
| 05/01/19 | Common Area Maintenance | 1,003.20 | | 59,240.25 |
| 05/10/19 | Late Fee | 5,924.03 | | 65,164.28 |
| 05/31/19 | Apply Security Deposit | -2,941.20 | | 62,223.08 |

| Current | 30 Days | 60 Days | 90 Days | Amount Due |
|----------|----------|----------|-----------|------------|
| 8,979.23 | 8,048.93 | 7,317.22 | 37,877.70 | 62,223.08 |

ARV000039

000108

EXHIBIT 6



Tenant Ledger

Bour Enterprises LLC
1401 Via Savona Drive
Henderson, NV 89052

Date: 05/14/19
 Tenant Code: zbour2
 Property: arv
 Unit: C10
 Status: Past
 Rent: 2,052.00
 Deposit: 0.00
 Move In Date: 05/01/17
 Move Out Date: 05/31/19
 Due Day: 1
 Tel# (O)
 Tel# (H)

| Date | Description | Charges | Payments | Balance |
|----------|---------------------------------|-----------|-----------|----------|
| | Balance Forward | | | 0.00 |
| 04/24/17 | Security Deposit | 2,736.00 | | 2,736.00 |
| 04/25/17 | chk# 295 | | 2,736.00 | 0.00 |
| 05/01/17 | Rent | 1,824.00 | | 1,824.00 |
| 05/01/17 | Common Area Maintenance | 912.00 | | 2,736.00 |
| 05/01/17 | Rent Concession | -1,824.00 | | 912.00 |
| 05/01/17 | CAM Concession | -912.00 | | 0.00 |
| 06/01/17 | Rent | 1,824.00 | | 1,824.00 |
| 06/01/17 | Common Area Maintenance | 912.00 | | 2,736.00 |
| 06/08/17 | chk# 1570 | | 2,735.78 | 0.22 |
| 07/01/17 | Rent | 1,824.00 | | 1,824.22 |
| 07/01/17 | Common Area Maintenance | 912.00 | | 2,736.22 |
| 07/12/17 | chk# 629 | | 2,736.22 | 0.00 |
| 08/01/17 | Rent | 1,824.00 | | 1,824.00 |
| 08/01/17 | Common Area Maintenance | 912.00 | | 2,736.00 |
| 08/08/17 | chk# 655 | | 2,736.00 | 0.00 |
| 09/01/17 | Rent | 1,824.00 | | 1,824.00 |
| 09/01/17 | Common Area Maintenance | 912.00 | | 2,736.00 |
| 09/14/17 | Late Fee | 273.60 | | 3,009.60 |
| 09/14/17 | chk# 103 Reversed by ctrl#8362 | | 2,736.00 | 273.60 |
| 09/20/17 | Returned check charge | 55.00 | | 328.60 |
| 09/20/17 | chk# 103 NSF receipt Ctrl# 8346 | | -2,736.00 | 3,064.60 |
| 09/22/17 | chk# 695 | | 2,736.00 | 328.60 |
| 10/01/17 | Rent | 1,824.00 | | 2,152.60 |
| 10/01/17 | Common Area Maintenance | 912.00 | | 3,064.60 |
| 10/13/17 | Late Fee | 273.60 | | 3,338.20 |
| 10/16/17 | chk# 661 | | 2,736.11 | 602.09 |
| 11/01/17 | Rent | 1,824.00 | | 2,426.09 |
| 11/01/17 | Common Area Maintenance | 912.00 | | 3,338.09 |
| 11/07/17 | chk# 402 | | 2,736.00 | 602.09 |
| 12/01/17 | Rent | 1,824.00 | | 2,426.09 |
| 12/01/17 | Common Area Maintenance | 912.00 | | 3,338.09 |
| 12/13/17 | chk# 1696 | | 2,736.00 | 602.09 |
| 01/01/18 | Rent | 1,824.00 | | 2,426.09 |
| 01/01/18 | Common Area Maintenance | 912.00 | | 3,338.09 |
| 01/11/18 | chk# 1904 | | 3,338.00 | 0.09 |

CONTINUED

ARV000064

000110

Tenant Ledger

**Bour Enterprises LLC
1401 Via Savona Drive
Henderson, NV 89052**

Date: 05/14/19
Tenant Code: zbour2
Property: arv
Unit: C10
Status: Past
Rent: 2,052.00
Deposit: 0.00
Move In Date: 05/01/17
Move Out Date: 05/31/19
Due Day: 1
Tel# (O)
Tel# (H)

| Date | Description | Charges | Payments | Balance |
|----------|---------------------------------|----------|----------|-----------|
| | Balance Forward | | | 0.09 |
| 02/01/18 | January 2018 CAM Increase | 91.20 | | 91.29 |
| 02/01/18 | Rent | 1,824.00 | | 1,915.29 |
| 02/01/18 | Common Area Maintenance | 1,003.20 | | 2,918.49 |
| 02/08/18 | chk# 1959 | | 2,827.00 | 91.49 |
| 03/01/18 | Rent | 1,824.00 | | 1,915.49 |
| 03/01/18 | Common Area Maintenance | 1,003.20 | | 2,918.69 |
| 03/12/18 | chk# 2015 | | 2,918.69 | 0.00 |
| 04/01/18 | Rent | 1,824.00 | | 1,824.00 |
| 04/01/18 | Common Area Maintenance | 1,003.20 | | 2,827.20 |
| 04/17/18 | chk# 3035 | | 2,827.20 | 0.00 |
| 05/01/18 | Annual Security Deposit Upgrade | 205.20 | | 205.20 |
| 05/01/18 | Rent | 1,938.00 | | 2,143.20 |
| 05/01/18 | Common Area Maintenance | 1,003.20 | | 3,146.40 |
| 05/11/18 | Late Fee | 314.64 | | 3,461.04 |
| 06/01/18 | Rent | 1,938.00 | | 5,399.04 |
| 06/01/18 | Common Area Maintenance | 1,003.20 | | 6,402.24 |
| 06/12/18 | Late Fee | 640.22 | | 7,042.46 |
| 07/01/18 | Rent (07/2018) | 1,938.00 | | 8,980.46 |
| 07/01/18 | Common Area Maintenance | 1,003.20 | | 9,983.66 |
| 07/12/18 | Late Fee | 998.37 | | 10,982.03 |
| 08/01/18 | Rent (08/2018) | 1,938.00 | | 12,920.03 |
| 08/01/18 | Common Area Maintenance | 1,003.20 | | 13,923.23 |
| 08/10/18 | Late Fee | 1,392.32 | | 15,315.55 |
| 09/01/18 | Rent (09/2018) | 1,938.00 | | 17,253.55 |
| 09/01/18 | Common Area Maintenance | 1,003.20 | | 18,256.75 |
| 09/12/18 | Late Fee | 1,825.68 | | 20,082.43 |
| 10/01/18 | Rent (10/2018) | 1,938.00 | | 22,020.43 |
| 10/01/18 | Common Area Maintenance | 1,003.20 | | 23,023.63 |
| 10/11/18 | Late Fee | 2,302.36 | | 25,325.99 |
| 11/01/18 | Rent (11/2018) | 1,938.00 | | 27,263.99 |
| 11/01/18 | Common Area Maintenance | 1,003.20 | | 28,267.19 |
| 11/12/18 | Late Fee | 2,826.72 | | 31,093.91 |
| 12/01/18 | Rent (12/2018) | 1,938.00 | | 33,031.91 |
| 12/01/18 | Common Area Maintenance | 1,003.20 | | 34,035.11 |
| 12/12/18 | Late Fee | 3,403.51 | | 37,438.62 |

CONTINUED

ARV000065

000111

Tenant Ledger

**Bour Enterprises LLC
1401 Via Savona Drive
Henderson, NV 89052**

Date: 05/14/19
Tenant Code: zbour2
Property: arv
Unit: C10
Status: Past
Rent: 2,052.00
Deposit: 0.00
Move In Date: 05/01/17
Move Out Date: 05/31/19
Due Day: 1
Tel# (O)
Tel# (H)

| Date | Description | Charges | Payments | Balance |
|----------|---------------------------------------|-----------|----------|-----------|
| | Balance Forward | | | 37,438.62 |
| 01/01/19 | Rent (01/2019) | 1,938.00 | | 39,376.62 |
| 01/01/19 | Common Area Maintenance | 1,003.20 | | 40,379.82 |
| 01/14/19 | Late Fee | 4,037.98 | | 44,417.80 |
| 02/01/19 | Rent (02/2019) | 1,938.00 | | 46,355.80 |
| 02/01/19 | Common Area Maintenance | 1,003.20 | | 47,359.00 |
| 02/12/19 | Late Fee | 4,735.90 | | 52,094.90 |
| 03/01/19 | Rent (03/2019) | 1,938.00 | | 54,032.90 |
| 03/01/19 | Common Area Maintenance | 1,003.20 | | 55,036.10 |
| 03/12/19 | Late Fee | 5,503.61 | | 60,539.71 |
| 04/01/19 | Rent (04/2019) | 1,938.00 | | 62,477.71 |
| 04/01/19 | Common Area Maintenance | 1,003.20 | | 63,480.91 |
| 04/12/19 | Late Fee | 6,348.09 | | 69,829.00 |
| 05/01/19 | Rent (05/2019) | 2,052.00 | | 71,881.00 |
| 05/01/19 | Common Area Maintenance | 1,003.20 | | 72,884.20 |
| 05/10/19 | Late Fee | 7,288.42 | | 80,172.62 |
| 05/31/19 | Rev 05/01/18 Security Deposit Upgrade | -205.20 | | 79,967.42 |
| 05/31/19 | Apply Security Deposit | -2,736.00 | | 77,231.42 |

| Current | 30 Days | 60 Days | 90 Days | Amount Due |
|-----------|----------|----------|-----------|------------|
| 10,343.62 | 9,289.29 | 8,444.81 | 49,153.70 | 77,231.42 |

ARV000066

000112

A-19-794864-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Landlord Tenant

COURT MINUTES

March 03, 2021

| | |
|---------------|------------------------------------|
| A-19-794864-C | 4520 Arville, Plaintiff(s) |
| | vs. |
| | Bour Enterprises LLC, Defendant(s) |

March 03, 2021 3:00 AM Minute Order

HEARD BY: Barisich, Veronica M.

COURT CLERK: Jennifer Lott

JOURNAL ENTRIES

- The Court notes that Plaintiff's Motion for Entry of Judgment was heard on March 2, 2021. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After carefully considering the evidence and arguments submitted, COURT ORDERS that Plaintiff's Motion shall be GRANTED.

Per January 28, 2021 order, the Court granted summary judgment on Plaintiff's breach of contract claims. Per this order, the Court concluded that there was sufficient evidence that Defendants breached the leases and personal guaranties. The Court rejected Defendant's argument as to constructive eviction as the implied warranty of habitability was deemed inapplicable in commercial leases and that even if such warranty is applicable, it was specifically waived by the Defendants in the lease.

The Court FINDS and CONCLUDES that the only remaining dispute is whether a trial is necessary to prove Plaintiff's damages. Plaintiff's damages sought were set forth in the exhibits 5 and 6 of the motion for summary judgment, wherein Plaintiff sought \$62,223.08 for lot C23 and \$77,231.42 for lot C10, for total of \$139,454.50. Defendants did not challenge the appropriateness of the amounts when the Plaintiff filed its motion for summary judgment and they did not raise the applicable affirmative defenses with regards to the damages sought. Under Shuck v. Signature Flight Support of Nevada, Inc., 126 Nev. 434, 245 P.3d 542 (2010), the argument that was not raised in the original motion must be deemed to have been waived and cannot be subsequently considered. Thus, the motion should be granted.

PRINT DATE: 03/03/2021

Page 1 of 2

Minutes Date: March 03, 2021

The Court ORDERS that Plaintiff's Motion shall be GRANTED. The Pre Trial Conference, Calendar Call and the Bench Trial shall be VACATED.

Counsel for Plaintiff is directed to submit a proposed Order and Judgment consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Defendants' counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 10 days consistent with AO 20-17.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl



1 F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
2 E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
3 Nevada Bar No. 14913
E-mail: jlujan@nevadafirm.com
4 HOLLEY DRIGGS
400 South Fourth Street, Third Floor
5 Las Vegas, Nevada 89101
Telephone: 702/791-0308
6 Facsimile: 702/791-1912

7 *Attorneys for Plaintiffs/Counterdefendants*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 4520 ARVILLE, a California general
11 partnership; MCKINLEY MANOR, an Idaho
general partnership,

12 Plaintiffs,

13 v.

14 BOUR ENTERPRISES, LLC, a Nevada limited
15 liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
16 individual; DOES 1 through 100, inclusive,

17 Defendants.

18 BOUR ENTERPRISES, LLC, a Nevada limited
19 liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

20 Counterclaimants.

21 v.

22 4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
23 general partnership, DOES I-X; and ROE
CORPORATIONS I-X,

24 Counterdefendants,

Case No: A-19-794864-C

Dept. No.: 5

NOTICE OF ENTRY OF JUDGMENT

26 YOU, and each of you, will please take notice that a Judgment Against Defendants Bour
27 Enterprises, LLC, Mulugeta Bour and Hilena Mengesha in the above-entitled matter was filed and
28 ///

entered by the Clerk of the above-entitled Court on the 9th day of March, 2021, a copy of which is attached hereto.

Dated this 9thth day of March, 2021.

HOLLEY DRIGGS

/s/ F. Thomas Edwards
 F. Thomas Edwards, Esq. (NBN 9549)
 Jessica M. Lujan, Esq. (NBN 14913)
 400 S. Fourth Street, Third Floor
 Las Vegas, NV 89101

Attorney for Plaintiffs/Counter-defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 9th day of March, 2021, I did cause a true and correct copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT**, to be served upon each of the parties listed below via electronic service through the Court's Odyssey File and Service System:

Rusty Graf, Esq.
 BLACK & LOBELLO
 10777 W. Twain Ave., Suite 300
 Las Vegas, NV 89135

Brent Carson, Esq.
 WINNER & CARSON
 7935 W. Sahara Ave., Suite 101
 Las Vegas, NV 89117

/s/ Sandy Sell
 An employee of HOLLEY DRIGGS

1 F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
2 E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
3 Nevada Bar No. 14913
E-mail: jlujan@nevadafirm.com
4 HOLLEY DRIGGS
400 South Fourth Street, Third Floor
5 Las Vegas, Nevada 89101
Telephone: 702/791-0308
6 Facsimile: 702/791-1912

7 *Attorneys for Plaintiffs/Counter-defendants*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
11 general partnership,

12 Plaintiffs,

13 v.

14 BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
15 individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

16 Defendants.

17 BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
18 individual; HILENA MENGESHA, an
19 individual; DOES 1 through 100, inclusive,

20 Counterclaimants.

21 v.

22 4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
23 general partnership, DOES I-X; and ROE
CORPORATIONS I-X,

24 Counter-defendants,

Case No: A-19-794864-C
Dept. No.: 5

**JUDGMENT AGAINST DEFENDANTS
BOUR ENTERPRISES, LLC,
MULUGETA BOUR, AND HILENA
MENGESHA**

25
26 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Judgment is entered in
27 favor of Plaintiffs 4520 Arville, a California general partnership, and McKinley Manor, an Idaho
28 general partnership (together, "Plaintiffs") and against Defendants Bour Enterprises, LLC, a

Nevada limited liability company, Mulugeta Bour, and Hilena Mengesha (together, "Defendants"), jointly and severally, as follows:

1. As to the Lease of Units C-23/24, the principal sum of \$62,223.08 in outstanding rent, CAM charges and late fees (*see* Tenant Ledger, attached as Exhibit 5 to Plaintiffs' Motion for Summary Judgment, filed 12/1/20 (the "Motion"));
2. As to the Lease of Units C-10/29, the principal sum of \$77,231.42 in outstanding rent, CAM charges and late fees (*see* Tenant Ledger, attached as Exhibit 6 to the Motion);
3. Pre-judgment interest at 9.5% (Wall Street Journal prime rate of 5.5% published on 12/20/18 plus 4%, per Section 13.5 of the Leases, attached as Exhibits 2 and 3 to the Motion) since the expiration of the Leases on May 31, 2019 through March 2, 2021 in the amount of \$23,302.27;
4. Post-judgment interest at 9.5% (Wall Street Journal prime rate of 5.5% published on 12/20/18 plus 4%, per Section 13.5 of the Leases, attached as Exhibits 2 and 3 to the Motion) in the amount of \$36.30 per day from March 3, 2021, until satisfied in full;
5. **For a total amount of \$162,756.77, plus post-judgment interest at \$36.30 per day from March 3, 2021, until satisfied in full.**

Dated this 9th day of March, 2021

IT IS SO ORDERED.



A0B B87 1ECA 45B5
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

Approved as to form and content by:

HOLLEY DRIGGS

BLACK & WADHAMS

/s/ F. Thomas Edwards
F. THOMAS EDWARDS, ESQ. (NBN 9549)
JESSICA M. LUJAN, ESQ. (NBN 14913)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

/s/ Rusty Graf
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Plaintiffs/Counter-defendants

Attorneys for Defendants/Counterclaimants

Sandy Sell

Subject: FW: Bour

From: Rusty Graf <rgraf@blackwadhams.law>
Sent: Monday, March 8, 2021 8:07:15 AM
To: Tom Edwards <tedwards@nevadafirm.com>
Cc: Jessica M. Lujan <jlujan@nevadafirm.com>; Diane Meeter <dmeeter@blackwadhams.law>; Mark Lounsbury <mlounsbury@blacklobello.law>
Subject: RE: Bour

No changes to either.

Thank you and Stay safe!

Rusty Graf, Esq.
Partner



p: (702)869-8801
f: (702)869-2669
a: 10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

W: www.blackwadhams.law
E: rgraf@blacklobello.law (Effective until August 1, 2020)
E: rgraf@blackwadhams.law (Effective August 1, 2020)



This electronic transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender that is protected by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510 and 2521 and may be legally privileged. This message (and any associated files) is intended only for the use of the individual or entity to which it is addressed and may contain information that is confidential, subject to copyright or constitutes a trade secret. If you are not the intended recipient, you are hereby notified that any dissemination, duplication or distribution of all, or any part of this message, or any file associated with this message, is strictly prohibited. If you have received this communication in error, please notify Black & Wadhams immediately by telephone (702-869-8801) and destroy the original message. Please be further advised that any message sent to or from Black & Wadhams may be monitored.

From: Tom Edwards <tedwards@nevadafirm.com>
Sent: Friday, March 5, 2021 12:44 PM
To: Rusty Graf <rgraf@blackwadhams.law>
Cc: Jessica M. Lujan <jlujan@nevadafirm.com>
Subject: Bour

Rusty,

Attached for your review are the order and judgment. The only change to the judgement from the last one you saw is that we updated the prejudgment interest amount. Please let me know if we can affix your electronic signature and submit.

Thanks

Tom

F. Thomas Edwards

Shareholder

Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 | Fax: 702.791.1912
400 S. 4th Street, Suite 300, Las Vegas NV 89101

Tel: 775.851.8700 | Fax: 775.851.7681
800 S. Meadows Parkway, Suite 800, Reno NV 89521

www.nevadafirm.com

This email message (including any attachments): (a) may include privileged, confidential, proprietary and/or other protected information, (b) is sent based upon a reasonable expectation of privacy, and (c) is not intended for transmission to, or receipt by, unauthorized persons. If you are not the intended recipient, please notify the sender immediately by telephone (702.791.0308) or by replying to this message and then delete the message and all copies or portions from your system. Thank you.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 4520 Arville, Plaintiff(s)

CASE NO: A-19-794864-C

7 vs.

DEPT. NO. Department 5

8 Bour Enterprises LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Judgment was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/9/2021

15 Tom Edwards, Esq.

tedwards@nevadafirm.com

16 BRENT CARSON

bac@winnercarson.com

17 Diane Meeter

dmeeter@blacklobello.law

18 J. Graf

Rgraf@blacklobello.law

19 Sandra Sell

ssell@nevadafirm.com

20 Jessica Lujan

jlujan@nevadafirm.com

21 Marsha Stallsworth

mstallsworth@blackwadhams.law

22 Marsha Stallsworth

mstallsworth@blackwadhams.law