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,

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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**.

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37.1 **Execution**. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this Lease.

37.2 **Default**. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

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

39. **Options**. If Lessee is granted an option, as defined below, then the following provisions shall apply.

39.1 **Definition**. **"Option"** shall mean: (a) the right to extend 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.

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49. **Mediation and Arbitration of Dispu.** An Addendum requiring the Mediation and/or the ..bitration 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 COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, 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:	**By LESSEE:**
4520 ARVILLE MCKINLEY MANOR	BOUR ENTERPRISES LLC, a Nevada limited liability company
By:	By:
Name Printed: Kevin J. Donahoe	Name Printed: Mulugeta Bour
Title: Owner Agent	Title: Manager
By:	By:
Name Printed:	Name Printed:
Title:	Title:
Address: 7674 W. Lake Mead Blvd., 104 Las Vegas, NV 89128	Address: 4560 S. Arville Street, #23 Las Vegas, NV 89103
Telephone: (702) 364-0909	Telephone: (702) 808-2047
Facsimile: (702) 364-5885	Facsimile: ( )
Federal ID No. 95-4590150	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.

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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-23 & 24, 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.

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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)):	The New Base Rent shall be:
May 1, 2018 and annually thereafter	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

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you are utilizing the most current form: AIR C .MERCIAL REAL ESTATE ASSOCIATION, 700 S. F .wer Street, Suite 600, Los Angeles, Calif. 90017

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Exhibit A

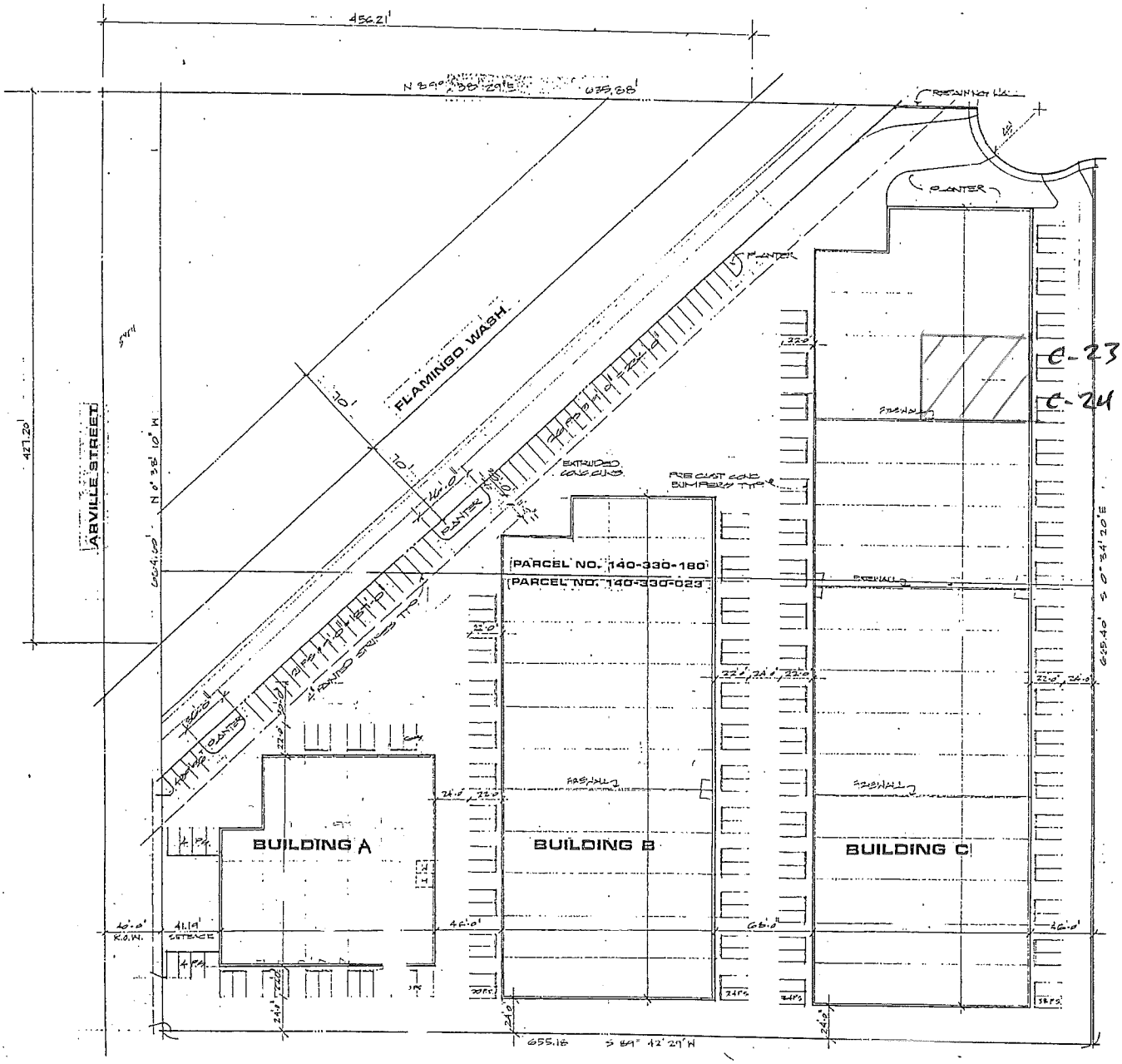

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Exhibit B

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.

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

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

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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"

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EXHIBIT 3

STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - NET
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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)

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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

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to terminate this Lease upon 90 days prior en notice to Lessee unless Lessee notifies Lesso 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

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driveways, entrances, parking spaces, parki :eas, loading and unloading areas, ingress, egress, ction 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.

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(viii) Th t of any Capital Expenditure to the Building or the l t 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,

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substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. **"Reportable Use"** shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, 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

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days following such commitment. In such case, 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**.

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(a) **Definitions.** As used herein, 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

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Lessee and Lessor as an additional insur[illegible]gainst claims for bodily injury, personal injury and [illegible]erty 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

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companies may have against Lessor or Les , as the case may be, so long as the insurance is n alidated 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.

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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.

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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

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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,

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which, when coupled with the then existing ɔurces of Lessee, equals or exceeds the combine[illegible]ncial 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

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be equal to the prime rate reported in the ll Street Journal as published closest prior to the 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

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month's rent has been paid in advance. Prospective 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

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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,

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attorn to such new owner, and upon reque[illegible]nter into a new lease, containing all of the terms a[illegible]ovisions 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**.

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37.1 **Execution**. The Guar s, 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.

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49. **Mediation and Arbitration of D tes.** An Addendum requiring the Mediation and/o 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 COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, 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:	**By LESSEE:**
4520 ARVILLE	BOUR ENTERPRISES LLC,
MCKINLEY MANOR	a Nevada limited liability company
By:	By:
Name Printed: Kevin J. Donahoe	Name Printed: Mulugeta Bour
Title: Owner Agent	Title: Manager
By:	By:
Name Printed:	Name Printed:
Title:	Title:
Address: 7674 W. Lake Mead Blvd., 104	Address: 4560 S. Arville Street, #23
Las Vegas, NV 89128	Las Vegas, NV 89103
Telephone: (702) 364-0909	Telephone: (702) 808-2047
Facsimile: (702) 364-5885	Facsimile: ( )
Federal ID No. 95-4590150	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.

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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.

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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)):	The New Base Rent shall be:
May 1, 2018 and annually thereafter	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

_____ _____
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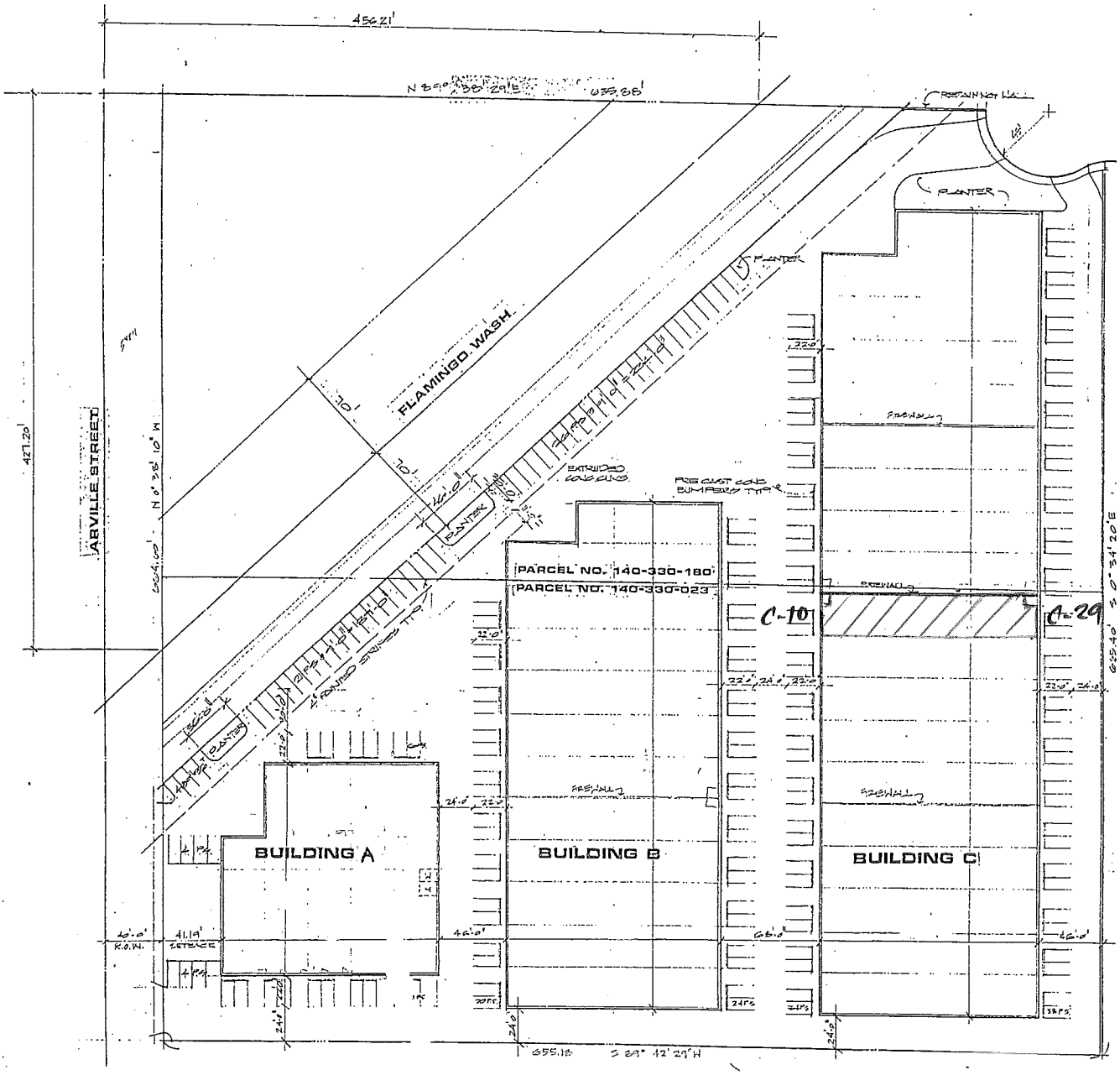
ARV000056

AI000464

Exhibit A



ARV000057

AI000465

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.

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,

MB

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

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assignment and their successors and assig

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"

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EXHIBIT 4

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

Counterclaimants.

v.

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

Counterdefendants,

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

DECLARATION OF KEVIN DONAHOE

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

/ / /

/ / /

HOLLEY DRIGGS

1. I am the President of Commercial Specialists, the property manager for Plaintiffs for the property at 4560 S. Arville St., Las Vegas, NV 89103, including units C-10, 23, 24, and 29 (the "Premises").

2. I have personal knowledge of the matters set forth herein, with the exception of those stated upon information and belief, and as to those I believe them to be true to the best of my knowledge. If called to do so, I could and would testify competently to the matters set forth herein.

3. I make this declaration in support of Plaintiffs' Motion for Summary Judgment Regarding Their Breach of Contract Claims (the "Motion").

4. Attached to the Motion as Exhibit 2 is a true and accurate copy of the Unit C-23/24 Lease, Addendum and Guaranty between Plaintiffs and Defendants.

5. Attached to the Motion as Exhibit 3 is a true and accurate copy of the Unit C-10/19 Lease, Addendum and Guaranty between Plaintiffs and Defendants.

6. Defendants utilized the Premises until on or about May 8, 2018, when they vacated the Premises.

7. Attached to the Motion 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.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 30th day of November 2020.

KEVIN DONAHOE

HOLLEY DRIGGS

EXHIBIT 5

Tenant Ledger

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)

Bour Enterprises LLC
1401 Via Savona Drive
Henderson, NV 89052

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

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

Tenant Ledger

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)	

Bour Enterprises LLC
1401 Via Savona Drive
Henderson, NV 89052

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

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

ARA

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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

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

Tenant Ledger

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)

Bour Enterprises LLC
1401 Via Savona Drive
Henderson, NV 89052

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

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

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Steven D. Grierson
CLERK OF THE COURT

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BLACK & WADHAMS
Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorneys for Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

Counterclaimants

v.

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

Counter-Defendants,

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

OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT REGARDING BREACH OF CONTRACT CLAIMS

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

Case Number: A-19-794864-C

Defendants/Counterclaimants BOUR ENTERPRISES, LLC, MULUGETA BOUR and HILENA MENGESHA (hereinafter collectively the "Defendants"), by and through their attorney of record, Rusty Graf, Esq., of the law firm of Black & Wadhams, hereby file their Opposition to Plaintiffs/Counter-Defendants' Motion for Summary Judgment Regarding their Breach of Contract Claims. This Opposition is based upon the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any argument entertained by the Court at the hearing of this matter.

Dated this 17th day of December 2020.

BLACK & WADHAMS

#15271

RUSTY GRAF, ESQ.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Attorney for Defendants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

MEMORANDUM OF POINTS AND AUTHORITIES

I.

LEGAL ARGUMENT

A. INTRODUCTION

On or about April 20, 2017, Defendants entered into two (2) lease agreements (hereinafter the "Leases") with Plaintiffs 4520 Arville and McKinley Manor (hereinafter collectively the "Plaintiffs") for the lease of certain commercial properties commonly known as 4560 S. Arville St., C10, 23, 24 and 29, Las Vegas, NV 89103 (hereinafter the "Subject Properties"). At or around the time the Leases were signed, Plaintiffs and Defendants also executed two (2) Lease Addendums (hereinafter the "Addendums") and Defendants also executed personal guaranties of the Leases (hereinafter the "Guaranties"). The Addendums inconspicuously stated that the Subject

Properties were being leased to Defendants "as-is" but, as described further below, this clause was legally insufficient to waive certain duties and obligations of Plaintiffs' towards the Subject Properties. *See Plaintiffs' Motion for Summary Judgment, Exhibit 2.*

This became relevant when, on or about April 17, 2018, Defendants notified Plaintiffs that they were terminating the Leases because: (1) unsanitary conditions rendered the Subject Properties unfit, uninhabitable, unhealthy, and unsafe for both customers and employees; and (2) Plaintiffs had failed to live up to assurances made at the time the Leases were signed as to additional parking being provided for Defendants' use. *See attached Exhibit 1, Declaration of Anthony Bour.* Plaintiffs subsequently filed a Complaint against Defendants asserting claims of Breach of Contract (as to the Leases), Breach of Contract (as to the Guaranties), Breach of the Implied Covenant of Good Faith and Fair Dealing, Unjust Enrichment and Declaratory Relief. Defendants answered Plaintiffs' Complaint by asserting affirmative defenses including Constructive Eviction and Breach of Contract by Plaintiffs (through breach of the Implied Warranty of Habitability). Defendants also asserted both Constructive Eviction and Breach of Contract as counterclaims against Plaintiffs.

Despite the inadequacy of the "as-is" clause of the Addendums, Plaintiffs have subsequently used this clause to argue that they are not responsible for any of the issues present at the Subject Properties which breached the Implied Warranty of Habitability and ultimately resulted in the Defendants' Constructive Eviction from the Subject Properties. *See Plaintiffs' Motion for Summary Judgment, generally.* Plaintiffs have now brought the instant Motion for Summary Judgment as to their claims of Breach of Contract as to the Leases and Breach of Contract as to the Guaranties. However, Plaintiffs' Motion fails to address the fact that Defendants have plead Constructive Eviction (as both a counterclaim and an affirmative defense) and the existence of a Constructive Eviction is a matter of fact. As will be argued below, the facts supporting the

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10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

affirmative defense and counterclaim for Constructive Eviction bar the rendering of the instant Motion for Summary Judgment, as it is a genuine issue of material fact.

B. STANDARD FOR ANALYZING A MOTION FOR SUMMARY JUDGMENT

Pursuant to NRCP 56, a Motion for Summary Judgment may only be granted if "the movant shows that there is **no genuine dispute as to any material fact**" and that they are "**entitled to judgment** as a **matter of law**." *(Emphasis added) See NRCP 56(a)*. In seeking to demonstrate these requirements have been met, "the moving party will bear the burden of persuasion" and "**must present evidence that would entitle it to a judgment as a matter of law** in the absence of contrary evidence." *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007)*. Further, "[e]vidence introduced in support of or opposition to a motion for summary judgment must be admissible evidence" and "[a] party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence." *See Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983); see also NRCP 56(c)(2).*

C. CONTROLLING CASE LAW FROM THE NEVADA SUPREME COURT REQUIRES DENIAL OF PLAINTIFFS' MOTION

Though there are a number of issues with Plaintiffs' arguments, the instant Motion for Summary Judgment can, and should, be denied for based only on the failure of Plaintiffs to effectively address the fact that Defendants have plead Constructive Eviction, as both a counterclaim and an affirmative defense. In Nevada, the claim or defense of constructive eviction by the tenant of a commercial property requires: (1) "the landlord must either act or fail to act"; (2) "the landlord's action or inaction must render the whole or a substantial part of the premises… unfit for occupancy for the purpose for which it was leased" (internal quotations omitted); (3) "the tenant must actually vacate the premises within a reasonable time"; and (4) the tenant must provide

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"notice of and a reasonable opportunity to cure the defect." *See Mason-McDuffie Real Estate, Inc. v. Villa Fiore Dev., LLC, 130 Nev. 834, 838–40, 335 P.3d 211, 214–15 (2014).* Further, the Nevada Supreme Court has held that Summary Judgment is not appropriate for a claim or defense of Constructive Eviction, specifically stating "[w]hether **constructive eviction** has occurred **is a factual determination** to be **made by the trier of fact**." *(Emphasis added) See Mason-McDuffie Real Estate Inc. v. Villa Fiore Development, LLC, 130 Nev. 834, 335 P.3d 211 (2014).*

i. Plaintiffs' Constructive Eviction Arguments Lack Legal Foundation or Support

Despite this clear barrier to Summary Judgment, Plaintiffs proceed to argue that they did not engage in Constructive Eviction, and thus should be granted Summary Judgment, because only breach of express (rather than implied) duties or rights can give rise to a Constructive Eviction. *See Plaintiffs' Motion for Summary Judgment, Pg. 12-13.* However, the three (3) cases which Plaintiffs cite in attempting to provide some legal foundation for this argument do not actually provide any support for their position and, in fact, actually support denial of the instant Motion. Plaintiffs' state that a "landlord must act or fail to act in breach of the lease terms before there can be a constructive eviction", which is purported to mean that a breach of implied warranties would be insufficient to sustain a claim or defense of Constructive Eviction. *See Plaintiffs' Motion for Summary Judgment, Pg. 12.* This is incorrect, as described below, and means that Plaintiffs' instant Motion must be denied under the Nevada Supreme Court holding that "[w]hether **constructive eviction** has occurred **is a factual determination** to be **made by the trier of fact**." (Emphasis added) *See Mason-McDuffie Real Estate Inc. v. Villa Fiore Development, LLC, 130 Nev. 834, 335 P.3d 211 (2014).*

ii. Case Law Cited by Plaintiffs Actually Supports Defendants' Position

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Plaintiffs' instant Motion cites to three (3) cases in support of their argument against their Constructive Eviction of Plaintiffs: (1) *Las Vegas Oriental, Inc. v. Sabella's of Nevada*; (2) *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Development*; and (3) *Winchell v. Schiff*. *Id. at 12-13.* Again, as outlined below, none of these cases actually support Plaintiffs' arguments. Further, Defendants would emphasize that the holding of the case *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Development*, contains the above cited express statement by the Nevada Supreme Court that Constructive Eviction is "a factual determination".

In *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Development*, the Nevada Supreme Court heard a case where a commercial landlord filed a complaint against a tenant for breach of lease, which resulted in the tenant bringing a counterclaim for Constructive Eviction (centered on allegations the landlord failed to maintain the property's roof). *See Mason-McDuffie Real Estate, Inc. v. Villa Fiore Dev., LLC, 130 Nev. 834, 835–40, 335 P.3d 211, 212–15 (2014).* Plaintiffs argue that this case supports their instant Motion because "[t]he Court never discussed any implied duties of the landlord, but rather only the express duties owed under the lease" and ultimately "found that there was no constructive eviction **because the tenant failed to provide notice and a reasonable opportunity to cure** the roof leaks. *(Emphasis added) See Plaintiffs' Motion for Summary Judgment, Pg. 12.*

Similarly, Plaintiffs cite to the case *Winchell v. Schiff*, in again seeking to provide support for their assertion that only the breach of express duties or rights, rather than implied, can result in Constructive Eviction. *See Plaintiffs' Motion for Summary Judgment, Pg. 12-13.* In *Winchell v. Schiff*, the Nevada Supreme Court considered, in pertinent part, whether a landlord's entry onto a leased property, as explicitly permitted by the lease, could amount to a Constructive Eviction for the purposes of bringing a claim of breach of the covenant of quiet enjoyment. *See Winchell v. Schiff, 124 Nev. 938, 947, 193 P.3d 946, 952 (2008).*

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To be clear, neither of these cases provide any support whatsoever for Plaintiffs' argument that Constructive Eviction can only result from a breach of express duties or rights. Neither case contains any mention of, nor do they even imply the existence of, such a requirement. Plaintiffs are essentially arguing that, because they have found two (2) cases that were decided based on the breach of express duties or rights, they have established that only express duties or rights can result in a Constructive Eviction. This is incorrect and is clearly unsupported by any of the case law to which Plaintiffs cite. Further, as stated below, the case *Las Vegas Oriental, Inc. v. Sabella's of Nevada* actually indicates the opposite, as the Court explicitly stated that a Constructive Eviction results from the action or inaction of a landlord rendering a leased property unfit for "the purpose for which it was demised". *See Las Vegas Oriental, Inc. v. Sabella's of Nevada, Inc., 97 Nev. 311, 312, 630 P.2d 255, 255 (1981).*

In *Las Vegas Oriental, Inc. v. Sabella's of Nevada*, the Nevada Supreme Court considered whether a landlord had breached a commercial lease "by virtue of its failure to provide adequate heating and air conditioning to a portion of the leased premises." *See Las Vegas Oriental, Inc. v. Sabella's of Nevada, Inc., 97 Nev. 311, 312, 630 P.2d 255, 255 (1981).* Plaintiffs argue that this case supports their position because "[t]he Court never discussed any implied duties of the landlord, but rather only whether the landlord breached the lease." *See Plaintiffs' Motion for Summary Judgment, Pg. 13.* However, closer examination of this case reveals that its holding is actually contrary to Plaintiffs' argument.

In *Las Vegas Oriental, Inc. v. Sabella's of Nevada*, a landlord alleged that the tenant was the one who had breached the lease "by abandoning the premises nine months into a thirty-six month lease" while the lessee argued "the abandonment was justified because of Las Vegas Oriental's failure to provide adequate heating and air conditioning to the bar and lounge area of the supper club." *Id. at 312–13.* The Court held that "the failure to provide heating and cooling to the

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Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

lounge and bar area constituted a constructive eviction" and specifically stated that "a constructive eviction occurs when **through the landlord's actions or inaction** the whole, or a substantial part, of **the premises is rendered unfit for occupancy for the purpose for which it was demised**." *(Internal quotations omitted) (Emphasis added) Id.* Clearly, this doesn't offer any support for Plaintiffs' assertion that breach of express rights or duties is necessary for Constructive Eviction to occur. Further, here, the actions and inactions of Plaintiffs did defeat the purpose for which the Subject Properties were leased and Plaintiffs were fully informed of: (1) Defendants' intended use of the Subject Properties; and (2) that their actions and inactions were rendering the Subject Properties unfit for that purpose. *See attached Exhibit 1, Declaration of Anthony Bour, Pg 2.*

iii. There Exists a Genuine Dispute of Material Facts as to the Constructive Eviction and Summary Judgment Must be Denied.

Here, Defendants' assertion of Constructive Eviction as a counterclaim and affirmative defense is determinative for the instant Motion because, as described above, Constructive Eviction is a "factual determination" and there remains a genuine dispute of material facts as to whether the Constructive Eviction occurred. To reiterate, Constructive Eviction occurs when (1) a landlord acts or fails to act; (2) the action or inaction renders the whole, or a substantial part, of the property unfit for the purpose for which it was leased; (3) the tenant vacates within a reasonable time; and (4) the tenant provided the landlord with notice and a reasonable opportunity to cure the defect. Defendants' have asserted that Plaintiffs' actions and inactions, as landlords of the Subject Properties, rendered those Properties unfit for the purpose for which they were leased. *See attached Exhibit 1, Declaration of Anthony Bour, Pg. 2, #4-8.* Defendants' have also maintained that Plaintiffs' were fully informed and aware of the purpose for which the Subject Properties were leased. *Id. at #1-3.* Finally, Defendants assert that they provided reasonable notice of the defects, reasonable opportunity to cure, and vacated the property. *Id. at #9-12.*

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As outlined above, all of the elements of Constructive Eviction have been met. Further, NRCP 56 requires that a Motion for Summary Judgment only be granted when no genuine issue as to any material fact exists. *See NRCP 56(a)*. Plaintiffs' Motion contains a statement of material facts which they assert are undisputed and form the basis (in conjunction with their argument as to being entitled to judgment as a matter of law) of the instant Motion for Summary Judgment. *See Plaintiffs' Motion for Summary Judgment, Pg. 3-7*. Therefore, Plaintiffs must demonstrate these supposedly undisputed material facts either refute, or otherwise overcome, the allegations by Defendants which establish the elements of Constructive Eviction. However, closer examination of these supposedly undisputed material facts reveals they do not refute, or otherwise overcome, Defendants' counterclaim and affirmative defense of Constructive Eviction. Below Defendants describe in further detail how the supposedly undisputed material facts in Plaintiffs' Motion fail to address each of the elements of Constructive Eviction.

Though Plaintiffs make numerous statements of supposedly undisputed facts as to who was responsible for the condition of the Subject Properties, these have no relevance as they are all legal arguments (which are disputed). *Id.* Further, Plaintiffs do not state anywhere that it is an undisputed fact that neither their actions nor inactions rendered the property unfit for the purpose for which it was leased. *Id.* Instead, Plaintiffs simply focus on arguing legal arguments as to the responsibility for those conditions, including stating the Subject Properties were accepted in "as-is" condition which waived any responsibility of Plaintiffs for those conditions. *Id.* Again, this is a legal argument rather than a factual statement. Therefore, Plaintiffs' statement of supposedly undisputed facts does nothing to refute, or otherwise overcome, Defendants' allegations that Constructive Eviction occurred. NRCP 56 requires that a Motion for Summary Judgment only be granted when no genuine issue as to any material fact exists. Thus, here, the Constructive Eviction remains a factual determination and the Motion for Summary Judgment must be denied.

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D. PLAINTIFFS ARE ALSO NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW

Plaintiffs' Motion for Summary Judgment is premised on three (3) inaccurate assertions: (1) that "Plaintiffs performed under the contracts by providing Defendants access to the Premises in an "as is" condition"; (2) that "Defendants breached the contracts by abandoning the Premises and failing to pay rent and other charges required under the leases and guaranties"; and (3) "[a]s to Defendants' position that the dust and debris at the Premises justified their abandonment of the lease, the argument fails as matter of law." *(internal quotations omitted) See Plaintiffs' Motion for Summary Judgment, Pg. 8-9.* As described above, Plaintiffs are the moving party requesting summary judgment and, therefore, bear the burden of proof. As described above, meeting this burden requires that Plaintiffs show they are entitled to judgment as a matter of law. However, Plaintiffs cannot meet this burden and their Motion for Summary Judgment must be denied.

Ultimately, the Motion is premised upon the fundamentally flawed, and demonstrably false, argument that it is possible to demonstrate that Plaintiffs are entitled to judgment as a matter of law. *See Plaintiffs' Motion for Summary Judgment, Pg. 9-12.* This is impossible because it would require Plaintiffs to demonstrate: (1) that, as a matter of law, the Implied Warranty of Habitability does not apply to commercial properties and, thus, Defendants' asserted defense that Plaintiffs breached the Leases through their breach of this Warranty is legally invalid; and (2) that Plaintiffs' can meet their burden of proof by providing sufficient evidence that there is no genuine dispute of any material facts relating to Defendants' asserted defense of Constructive Eviction. However, Plaintiffs cannot demonstrate that as a matter of law the Implied Warranty of Habitability does not apply to commercial properties and, further, cannot meet the burden of proof necessary to overcome Defendants' defense of Constructive Eviction. Therefore, Plaintiffs

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unambiguously cannot meet the requirements for summary judgment imposed by NRCP 56(a) and the instant Motion for Summary Judgment must be denied.

i. Plaintiffs Cannot Demonstrate that the Implied Warranty of Habitability Does Not Apply to Commercial Properties as a Matter of Law

As stated above, the lynchpin of Plaintiffs argument for Summary Judgment is their assertion that, as a matter of law, the Implied Warranty of Habitability does not apply to commercial properties in Nevada. Without being able to establish as much, Plaintiffs' argument necessarily fails, as they cannot meet the requirement of NRCP 56(a) that summary judgment only be granted to a party entitled to such "as a matter of law". *See NRCP 56(a).* As described in more detail below, Plaintiffs make no valid arguments in the instant Motion as to the Implied Warranty of Habitability, instead merely relying upon: (1) statutes which make no mention of whether the implied warranty of habitability applies to commercial properties; (2) case law from other jurisdictions that is not controlling in Nevada. *See Plaintiffs' Motion for Summary Judgment, Pg. 10-11.* Further, Plaintiffs directly admit that "**the Nevada Supreme Court has not expressly addressed the issue**" and that "NRS Chapter 118C, relating to commercial leases, **contains no mention of habitability** or fitness for a particular purpose." *(emphasis added) Id. at 10.*

These admissions by Plaintiffs alone unambiguously establish that the instant Motion must be denied, as NRCP 56 clearly states that Plaintiffs have the burden of establishing they are "**entitled** to judgment **as a matter of law**." *(Emphasis added) See NRCP 56(a).* A party cannot be entitled to judgment as a matter of law regarding an issue which has not been established as a matter of law. Therefore, Plaintiffs' Motion for Summary Judgment must be denied.

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BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

ii. **The Statutes & Case Law Cited by Plaintiffs Fail to Establish that the Implied Warranty of Habitability does not apply to Commercial Properties as a Matter of Law.**

There are no Nevada statutes, nor any controlling case law, which limits the Implied Warranty of Habitability to commercial leases. Despite this clear barrier to Summary Judgment, Plaintiffs proceed to assert that the rules of statutory interpretation and remote case law, which is not controlling in Nevada, support their argument. *See Plaintiffs' Motion for Summary Judgment, Pg. 10.* However, both assertions fail to address the fact that a Motion for Summary Judgment can only be granted if the moving party is "entitled to judgment as a matter of law". *See NRCP 56(a).*

a. **The Rules of Statutory Interpretation Fail to Support Plaintiffs' Argument**

Plaintiffs' Motion for Summary Judgment states that NRS Chapter 118A, which relates to residential leases, expressly states that there is an Implied Warranty of Habitability while NRS Chapter 118C, which relates to commercial leases, "contains no mention of habitability or fitness for a particular purpose." *See Plaintiffs' Motion for Summary Judgment, Pg. 10.* This is correct but provides no foundation for Plaintiffs' subsequent argument that "[b]ecause the Nevada Legislature applied the concept of habitability to residential leases, but not commercial leases, the Court must presume that the Nevada Legislature deliberately excluded the applicability of habitability to commercial leases." *Id.* In seeking to provide some support for this unfounded assertion, Plaintiffs proceed by stating that the rules of statutory interpretation used by Nevada Courts include: (1) that "the mention of one thing implies the exclusion of another"; and (2) that where the Legislature has, for example, explicitly applied a rule to one type of proceeding, this court will presume it deliberately excluded the rule's application to other types of proceedings." *Id.* Again, this is true, but it still provides no support for Plaintiffs' instant Motion.

In fact, Plaintiffs' argument is a misapplication of these rules of statutory interpretation. Plaintiffs cite to two (2) cases in support of their argument that the rules of statutory interpretation demonstrate that the Implied Warranty of Habitability does not apply to commercial leases, *Sonia F. v. Eighth Judicial District Court* and *In re Estate of Prestie*. *Id.* In *Sonia F. v. Eighth Judicial District Court*, the Court considered whether Nevada's rape shield law applied in civil cases. *See Sonia F. v. Eighth Judicial Dist. Court, 125 Nev. 495, 499, 215 P.3d 705, 708 (2009)*. In *In re Estate of Prestie*, the Court considered the potential impact of other statutes on the revocation of a will under NRS 133.110. *See In re Estate of Prestie, 122 Nev. 807, 814, 138 P.3d 520, 524 (2006).* In both cases, the Court stated that "the mention of one thing implies the exclusion of another" as a rule of statutory interpretation but, also in both cases, the Court only applied this rule to the interpretation of a single statute. *See Sonia F. v. Eighth Judicial Dist. Court, 125 Nev. 495, 499, 215 P.3d 705, 708 (2009); see also In re Estate of Prestie, 122 Nev. 807, 814, 138 P.3d 520, 524 (2006).* What Plaintiffs now argue is an absurd interpretation and application of this rule, as they seek to apply it to multiple statutes simultaneously. NRS 118A and NRS 118C are separate and distinct statutes, meaning that the mention of something within NRS 118A clearly does not imply the exclusion of the same thing within NRS 118C.

To illustrate this point, NRS 78A governs the activities of close corporations within Nevada and states, in pertinent part, that "[n]o record which is written in a language other than English may be filed or submitted for filing in the Office of the Secretary of State pursuant to the provisions of this chapter unless it is accompanied by a verified translation of that record into the English language." *See NRS 78A.015*. Similarly, NRS 78B governs the activities of benefit corporations within Nevada but, unlike NRS 78A.015, contains no provisions regarding the language of records filed in the Office of the Secretary of State. *See NRS 78B.*

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Plaintiffs assert that the rules of statutory interpretation require, even for completely separate statutes, that the Court interpret the mention of one thing as implying the exclusion of another. Therefore, under Plaintiffs' interpretation of the rules of statutory interpretation, the fact that NRS 78A.015 states that a verified translation of a record into the English may be filed with the Secretary of State means that the lack of such a provision in NRS 78B amounts to evidence of clear legislative intent to prohibit such filings by benefit corporations. Clearly this is incorrect, which demonstrates that the rule of statutory interpretation in question can only be rationally applied in analyzing a single statute. The mention of something with a single Nevada Revised Statute cannot logically or consistently be interpreted to imply that same thing's purposeful exclusion from each of the hundreds of other Nevada Revised Statutes. Any attempt to do so would lead to wildly chaotic and unpredictable results.

b. Case Law does not Support Plaintiffs' Argument

To reiterate, when discussing the Implied Warranty of Habitability, Plaintiffs: (1) directly admit that "the Nevada Supreme Court has not expressly addressed the issue"; and (2) cite only to remote case law, which is not controlling in Nevada. *See Plaintiffs' Motion for Summary Judgment, Pg. 10-12.* This alone is determinative for the instant Motion, as Plaintiffs cannot make any logical and consistent argument that the Implied Warranty of Habitability does not apply to Nevada commercial properties as a matter of law, while unambiguously admitting the issue is not directly addressed in any Nevada Statute or any Nevada controlling case law.

The cases to which Plaintiffs do cite have no relevance to the instant Motion, regardless of how persuasive they may or may not be, because it is impossible for a party to demonstrate that they are entitled to judgment as a matter of law when the only authority available in support of their position is persuasive case law. By arguing that the Implied Warranty of Habitability does not apply to commercial leases, Plaintiffs are asking the Court to engage in judicial activism by

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Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

unilaterally expanding the legal protections in place for landlords in a manner that is both anti-consumer and harmful to Nevada's business community.

iii. The "as-is" Clause of the Addendums did not Waive the Implied Warranty of Habitability

As there is no support for Plaintiffs' argument that the Implied Warranty of Habitability is not present for commercial properties, they are left to rely upon their assertion that the "as-is" clause of the Lease Addendums waived the warranty. *Id. at 8-9*. However, as described in detail below, the "as-is" clause was legally insufficient and failed to disclaim any implied warranties on the Subject Properties.

a. Legal Standard for Exclusion or Modification of Warranty

Implied warranties may only be modified or excluded by "appropriate **conspicuous** language". *(Emphasis added) See Bill Stremmel Motors, Inc. v. IDS Leasing Corp., 89 Nev. 414, 416, 514 P.2d 654, 656 (1973)*. Further, NRS 104.1201 provides that the Court should determine whether a contractual term disclaiming an implied warranty is "conspicuous" by looking to see if the following specific requirements:

> "Conspicuous terms **include the following**: (1) [a] **heading in capitals** equal to or greater in size than the surrounding text, or in contrasting type, font or color to the surrounding text of the same or lesser size; and (2) [l]anguage in the body of a record or display **in larger type than the surrounding text, or in contrasting type**, font or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks **that call attention to the language**."

(Emphasis added) See NRS 104.1201(j).

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(702) 869-8801 FAX: (702) 869-2669

b. The "as-is" Clause did not Disclaim the Implied Warranty of Habitability

In stark contrast to these explicit requirements for a contractual term to be considered "conspicuous", and therefore capable of disclaiming an implied warranty, Plaintiffs' included the following "as-is" clause in the Addendums:

> **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.

This is not conspicuous and did not disclaim any implied warranties for four (4) key reasons. First, it should be noted that the "as-is" clause it is not even in the actual body of the Lease contracts but rather in the Addendums. *See Plaintiffs' Motion for Summary Judgment, Exhibit 2, Addendum.* This should weigh heavily against it being deemed a valid conspicuous disclaimer of the implied warranties. Second, this clause was included in the body of the Addendum, meaning it clearly was not set apart in the manner the Court requires. *Id.* Third, the clause is in the same font as the rest of the Addendum and is not emphasized or made explicitly noticeable in any way. *Id.* Fourth, the clause is not bolded or capitalized, making it very easy to overlook and therefore, by definition, not conspicuous. *Id.* Because of this lack of conspicuousness, the "as-is" provision cannot effectively disclaim an implied warranty and should be disregarded.

Additionally, the Defendants would note that the "as-is" clause also fails as a disclaimer of implied warranties in another respect, as Plaintiffs failed to include the statutorily required language. NRS 104.2316 states that "to exclude or modify the implied warranty of merchantability

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Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous." *See NRS 104.2316(2)*. This was further emphasized by the Nevada Supreme Court, in the case *Bill Stremmel Motors, Inc. v. IDS Leasing Corp.*, as a key requirement for effectively disclaiming either an express or implied warranty. *See Bill Stremmel Motors, Inc. v. IDS Leasing Corp.,* 89 Nev. 414 (1973).

Here, the Court can see that there is no explicit mention of the warranties Plaintiffs' assert they disclaimed, making the "as-is" clause insufficient and invalid. The clause does not specifically address or otherwise mention the implied warranties and, therefore, fails to disclaim them. As a result, the Plaintiffs were still bound by the implied warranties of fitness, merchantability, and habitability and breached the contracts with Defendants.

c. Case Law Supports Defendants' Argument

This requirement that the "as-is" clause be sufficiently conspicuous has been explicitly discussed by the Nevada Supreme Court in a number of cases. For example, in *Bill Stremmel Motors, Inc. v. IDS Leasing Corp.*, a business entered into a long-term lease for a communications system that subsequently failed to operate properly, causing the lessee to stop making the contractually agreed upon lease payments. *See Bill Stremmel Motors, Inc. v. IDS Leasing Corp., 89 Nev. 414 (1973)*. The lessor then brought a complaint against the lessee, alleging breach of contract due to a warranty on the system. *Id.* The lessor argued that warranty had been waived by a provision of the lease contract, while the lessee argued that the waiver was not effective because the provision was not sufficiently obvious within the contract. *Id.*

Ultimately, the Court found the waiver was sufficiently conspicuous, and therefore effective, because the waiver specifically stated, in large all capitalized letters, that the lessor was expressly disclaiming the warranties of fitness and merchantability and specifically identified that

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those warranties were being waived (it did not simply state the leased property was being accepted as-is. *Id.*

Similarly, in *Sierra Diesel Injection Service, Inc. v. Burroughs Corp.*, the buyer of computer system brought an action against the seller of that system, alleging it failed to perform as represented in breach of implied warranties. *See Sierra Diesel Injection Service, Inc. v. Burroughs Corp., Inc., 890 F.2d 108 (1989)*. The seller asserted that the contract for the sale of the system included a valid and conspicuous disclaimer of warranties which excused the failure to perform as promised *Id.* In determining whether the disclaimer was conspicuous, the Court cited to the requirements provided by NRS 104.1201(10) (now NRS 104.1201(j)) and stated that a contractual term is conspicuous when included in the body of a form if "it is in larger or other contrasting type or color." *Id.* Neither of which is true here.

iii. Plaintiffs' Argument as to Constructive Eviction Requiring Breach of Express Duties or Rights is Without Foundation or Support

Plaintiffs also argue that they did not engage in Constructive Eviction and, in support of that argument, cite to three (3) cases which they purport means that a "landlord must act or fail to act in breach of the lease terms before there can be a constructive eviction", meaning breach of implied warranties would be insufficient to sustain a claim or defense of Constructive Eviction. *See Plaintiffs' Motion for Summary Judgment, Pg. 12.* However, as described below, the cases cited by Plaintiffs do not actually support their argument and should be disregarded.

a. Case Law Cited by Plaintiffs Actually Supports Defendants' Position

Plaintiffs' instant Motion cites to three (3) cases in support of their argument against their Constructive Eviction of Plaintiffs: (1) *Las Vegas Oriental, Inc. v. Sabella's of Nevada*; (2) *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Development*; and (3) *Winchell v. Schiff*. *Id. at 12-13*. As outlined below, none of these cases actually support Plaintiffs' arguments.

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In Las Vegas Oriental, Inc. v. Sabella's of Nevada, the Nevada Supreme Court considered whether a landlord had breached a commercial lease "by virtue of its failure to provide adequate heating and air conditioning to a portion of the leased premises." *See Las Vegas Oriental, Inc. v. Sabella's of Nevada, Inc., 97 Nev. 311, 312, 630 P.2d 255, 255 (1981).* Plaintiffs argue that this case supports their position because "[t]he Court never discussed any implied duties of the landlord, but rather only whether the landlord breached the lease." *See Plaintiffs' Motion for Summary Judgment, Pg. 13.* However, closer examination of this case reveals that its holding is actually contrary to Plaintiffs' argument.

In Las Vegas Oriental, Inc. v. Sabella's of Nevada, a landlord alleged that the tenant was the one who had breached the lease "by abandoning the premises nine months into a thirty-six month lease" while the lessee argued "the abandonment was justified because of Las Vegas Oriental's failure to provide adequate heating and air conditioning to the bar and lounge area of the supper club." *Id. at 312–13.* The Court held that "the failure to provide heating and cooling to the lounge and bar area constituted a constructive eviction" and specifically stated that "a constructive eviction occurs when **through the landlord's actions or inaction** the whole, or a substantial part, of **the premises is rendered unfit for occupancy for the purpose for which it was demised**." *(Internal quotations omitted) (Emphasis added) Id.*

In Mason-McDuffie Real Estate, Inc. v. Villa Fiore Development, the Nevada Supreme Court heard a case where a commercial landlord filed a complaint against a tenant for breach of lease, which resulted in the tenant bringing a counterclaim for Constructive Eviction (centered on allegations the landlord failed to maintain the property's roof). *See Mason-McDuffie Real Estate, Inc. v. Villa Fiore Dev., LLC, 130 Nev. 834, 835–40, 335 P.3d 211, 212–15 (2014).* Plaintiffs argue that this case supports their instant Motion because "[t]he Court never discussed any implied duties of the landlord, but rather only the express duties owed under the lease" and ultimately "found that

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there was no constructive eviction **because the tenant failed to provide notice and a reasonable opportunity to cure** the roof leaks. *(Emphasis added) See Plaintiffs' Motion for Summary Judgment, Pg. 12.* Plaintiffs similarly cite to the case *Winchell v. Schiff*, again in seeking to provide support for their assertion that only the breach of express duties or rights, rather than implied, can result in Constructive Eviction. *See Plaintiffs' Motion for Summary Judgment, Pg. 12-13.* In *Winchell v. Schiff*, the Nevada Supreme Court considered, in pertinent part, whether a landlord's entry onto a leased property, as explicitly permitted by the lease, could amount to a Constructive Eviction for the purposes of bringing a claim of breach of the covenant of quiet enjoyment. *See Winchell v. Schiff, 124 Nev. 938, 947, 193 P.3d 946, 952 (2008).*

To be clear, neither of these cases provide any support whatsoever for Plaintiffs' argument that Constructive Eviction can only result from a breach of express duties or rights. Neither case contains any mention of, nor do they even imply the existence of, such a requirement. Plaintiffs are essentially arguing that, because they have found two (2) cases that were decided based on the breach of express duties or rights, they have established that only express duties or rights can result in a Constructive Eviction. This is incorrect and is clearly unsupported by any of the case law to which Plaintiffs cite. Further, as stated above, the case *Las Vegas Oriental, Inc. v. Sabella's of Nevada* actually indicates the opposite, as the Court explicitly stated that a Constructive Eviction results from the action or inaction of a landlord rendering a leased property unfit for "the purpose for which it was demised". *See Las Vegas Oriental, Inc. v. Sabella's of Nevada, Inc., 97 Nev. 311, 312, 630 P.2d 255, 255 (1981).*

III.

CONCLUSION

Based on the above discussion, it is clear that Plaintiffs are unable to meet the burden of proof required for their Motion for Summary Judgment, as they cannot show: (1) that there are

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(702) 869-8801 FAX: (702) 869-2669

actually no genuine disputes of material fact; and (2) that they are actually entitled to judgment as a matter of law. Further, Plaintiffs specifically make the granting of the instant Motion impossible, as they directly identify that one of the key issues on which they must be "entitled to judgment as a matter of law" in order to be granted summary judgment (whether the Implied Warranty of Habitability applies to commercial leases) is an issue for which there is no established law. Plaintiffs admit that this issue of whether the Implied Warranty of Habitability applies to commercial leases is something that is not directly addressed by any Nevada Revised Statute and which the Nevada Supreme Court has never directly ruled upon. As a result, this issue is not appropriate for summary judgment and Defendants' respectfully request that the Court deny Plaintiffs' Motion.

Dated this 17th day of December 2020.

BLACK & WADHAMS

#15271

RUSTY GRAF, ESQ.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Attorney for Defendants/Counterclaimants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & WADHAMS and that on the 17th day of December 2020, I caused the above and foregoing document entitled **OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT REGARDING THEIR BREACH OF CONTRACT CLAIMS** to be served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

[X] by electronic service through Clark County Eighth Judicial District Court's electronic filing/service system;

[ ] pursuant to EDCR 7.26, to be sent via facsimile;

[ ] hand delivered to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

F. Thomas Edwards, Esq.
HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

Diane Meeter
An Employee of Black & Wadhams

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

EXHIBIT 1

OPPM
BLACK & LOBELLO
Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blacklobello.law
Attorneys for Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive. Defendants.	Case No.: A-19-794864-C Dept. No.: 8 **DECLARATION OF ANTHONY BOUR IN SUPPORT OF DEFENDANTS AND COUNTERCLAIMANTS OPPOSITION TO MOTION TO DISMISS COUNTERCLAIMS AND DEFENDANTS AND COUNTERCLAIMANTS MOTION FOR SUMMARY JUDGMENT**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X; Counter Defendants,	**[Exempt from Arbitration]** **[Declaratory Relief Requested]**

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Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

Per NRCP 56, a party asserting that a fact is not genuinely disputed for a motion for summary judgment must support that assertion by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." *See NRCP 56(a)*. The following declaration of Anthony Bour is offered in support of Counterclaimants' motion for summary judgment.

DECLARATION OF ANTHONY BOUR

1. On or about April 20, 2017, Bour Enterprises, LLC entered into agreements with 4520 Arville and McKinely Manor for the lease of certain commercial properties located at 4560 S. Arville St., C-10, 23, 24 and 29, Las Vegas, NV 89103.

2. Bour Enterprises entered into the leases for the purpose of operating its business on the leased properties, and 4520 Arville and McKinely Manor were informed, prior to signing the lease, of that intention and represented that the properties were fit for this intended use as a commercial business facility.

3. 4520 Arville and McKinely Manor representative was informed that the properties must be fit for the operation of Bour Enterprise's business and I expressed concerns as to parking.

4. Prior to the execution of the leases, 4520 Arville and McKinely Manor offered assurances that parking arrangements would be made in order to provide business vehicles sufficient parking spaces and room to safely maneuver through the parking lot.

5. After entering into the leases, 4520 Arville and McKinely Manor declined or purposely failed to fulfill their promise to make the parking arrangements that were necessary for the successful operation of Bour Enterprise on the properties.

6. From the inception of Bour Enterprise's leasing of the properties, they were infested with rodents, rodent excrement and urine, mounds of particulate, dust and other debris.

7. The unsanitary conditions were unfit, uninhabitable, unhealthy and unsafe for customers and employees and unfit for Bour Enterprise's occupancy and the operation of its business.

8. Two (2) employees of Bour Enterprises have sought medical treatment as a result of these conditions.

9. On or about April 17, 2018, I delivered a letter of notice to terminate the leases to 4520

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(702) 869-8801 FAX: (702) 869-2669

Arville and McKinely Manor, citing the unsanitary condition of the property, and lack of promised parking arrangements as the basis for the termination.

10. On or about April 24, 2018, 4520 Arville and McKinely Manor's legal counsel responded and unequivocally declined to address either the unsanitary/unhealthful conditions and the promised parking arrangements, when he rejected the lease termination notice.

11. On or about May 3, 2018, Bour Enterprises sent David Burns a letter of Bour Enterprise's intent to vacate the properties immediately, and of its intent to terminate the leases, effective May 31, 2018, due to the ongoing health hazards.

12. As of May 21, 2019, 4520 Arville and McKinely Manor assessed Bour Enterprise Sixty-Two Thousand Two Hundred Twenty-Three Dollars and Eight Cents ($62,223.08) in rent, late fees, common area maintenance charges, and other charges under the leases, all assessed while the properties were uninhabitable and unfit for the purpose asserted for the operation of the Bour Enterprises business.

I, Anthony Bour, declare under penalty of perjury that the foregoing is true and correct.

Executed on the 15 day of August, 2019

Mulugeta Bour

(printed name)

(signature)

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10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the ____ day of August 2019, I caused the above and foregoing document entitled **DECLARATION OF ANTHONY BOUR IN SUPPORT OF DFENDANTS AND COUNTERCLAIMANTS OPPOSITION TO MOTION TO DISMISS COUNTERCLAIMS AND DEFENDANTS AND COUNTERCLAIMANTS MOTION FOR SUMMARY JUDGMENT** to be served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

[X] by electronic service through Wiznet, Clark County Eighth Judicial District Court's electronic filing/service system;

[ ] pursuant to EDCR 7.26, to be sent via facsimile;

[ ] hand delivered to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

F. Thomas Edwards, Esq.
HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

_____
An Employee of Black & LoBello

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

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Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 8 **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT REGARDING BREACH OF CONTRACT CLAIMS** **Date of Hearing: January 12, 2021** **Time of Hearing: 9:30 a.m.**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

Plaintiffs/Counterdefendants, 4520 Arville, a California general partnership; and McKinley Manor, an Idaho general partnership (collectively "Plaintiffs"), by and through their

Docket 83099 Document 2021-28553

Case Number: A-19-794864-C

attorneys of record, the law firm of Holley Driggs, hereby submit this reply in support of their Motion for Summary Judgment Regarding Contract Claims.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Defendants do not dispute that they abandoned their leases ("Leases") of Plaintiffs' commercial premises (the "Premises") early and without authorization, causing Plaintiffs' damages. Absent any legal justification for doing so, Defendants are unquestionably liable for breaching the Leases. Thus, as their *only* argument in defense of Plaintiffs' claims, Defendants have proffered the unsupportable argument that they were constructively evicted as a result of Plaintiffs' alleged breach of implied warranty of habitability for failing to clean up the "dust and debris" at the Premises. *Id.* Defendants assert that this "constructive eviction" excused their performance under the Leases.

Because of the "as-is" provisions found in the Leases, however, the only way Defendants can show that they were constructively evicted based upon Plaintiffs' alleged failure to clean up the Premises is to show that such action or inaction on the part of Plaintiffs breached an *implied* warranty of habitability that somehow overcame Defendants' express agreement to accept the Premises in an "as-is" condition.[1] Despite Defendants' hollow arguments to the contrary, Plaintiffs have demonstrated that there is no implied warranty of habitability in the commercial context under Nevada law.

Thus, with no implied warranty of habitability imposed in commercial leases under Nevada law, and signed Leases which expressly place the responsibility of custodial upkeep on the Defendants, Defendants are foreclosed from demonstrating—as a matter of fact or law—that a constructive eviction has occurred such that Defendants are relieved from liability for their unauthorized early abandonment of their Leases.

[1] Notably, Defendants were well aware of the condition of the Premises when they signed the Leases, as they had 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.

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This Reply will debunk a series of myths concocted by Defendants in a last-ditch attempt to confuse the issues and create a genuine dispute of material fact for trial where none exists:

Myth #1: "[I]t is impossible for a party to demonstrate that they are entitled to judgment as a matter of law when the only authority available in support of their position is persuasive case law." Opposition at 14, on file herein.

Myth #2: Plaintiffs' presentation of Nevada landlord/tenant statutes, Nevada Supreme Court case law, and persuasive case law from various districts is insufficient to support Plaintiffs' argument that there is no implied warranty of habitability in the commercial context in Nevada.

Myth #3: The "as-is" clauses of the leases are invalid pursuant to NRS 104—*the UCC statute.*

Once these easily refuted myths are set aside, the remaining issues are determinative: Defendants failed to set forth any admissible evidence to overcome Plaintiffs' Motion for Summary Judgment and create a genuine dispute of fact for trial, and therefore the Court must enter summary judgment in Plaintiffs' favor on their breach of contract claims.

I. LEGAL ARGUMENT

Defendants' Opposition fails to set forth any authority supporting their argument that the implied warranty of habitability applies in the commercial context in Nevada, and similarly fails to dispute any facts or present any evidence demonstrating that Defendants did not breach their Leases with Plaintiffs. *See* Opposition. Thus, with none of the facts in dispute, the Court is left with *only* two issues to resolve—both of which are *legal* questions that may be resolved by the Court at summary judgment: (1) does the implied warranty of habitability apply in the commercial context?; and (2) if it does, is such implied warranty enforceable despite the "as-is" clauses in the Leases? Because the answer to both of these legal questions is "no," this Court should grant the instant Motion and enter summary judgment in favor of Plaintiffs on their breach of contract claims.

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A. DEFENDANTS' ENTIRE OPPOSITION TO SUMMARY JUDGMENT RESTS ON THREE EASILY REFUTABLE MYTHS, THUS REQUIRING ENTRY OF SUMMARY JUDGMENT IN PLAINTIFFS' FAVOR

1. *Myth #1: "[I]t is impossible for a party to demonstrate that they are entitled to judgment as a matter of law when the only authority available in support of their position is persuasive case law."*

Reality: This Court can—and must—rely on persuasive authority in the absence of controlling authority at summary judgment.

Plaintiffs moved for summary judgment on the grounds that, *inter alia*, Defendants could not have been constructively evicted based on any breach of an implied warranty, as there is no implied warranty of habitability in commercial leases in Nevada (and thus Defendants have no viable defense to their clear breach thereof). At the crux of Defendants' Opposition is the false notion that the Court cannot rely on persuasive authority in ruling on issues of law at summary judgment. This argument is absurd, however, as it is axiomatic that it is the sole province of the Court to decide issues of law and of the fact-finder to decide issues of fact. *See Lee v. GNLV Corp.*, 117 Nev. 291, 295, 22 P.3d 209, 211 (2001) (acknowledging that it is the district court's function to perceive and apply the law); *Branda v. Sanford*, 97 Nev. 643, 646, 637 P.2d 1223, 1225 (1981) (questions of law are "within the province of the court").

Thus, when faced with a legal issue that has not already been decided by crystal clear statutory or case law (as here[2]), it is the exclusive function of the *Court* to say what the law is. Allowing Defendants to proceed to a costly trial on the grounds that certain legal issues remain undecided would therefore be pointless, as going to trial would not change the fact that the Court must ultimately determine how the law should be applied (because the jury is tasked only with fact-finding, not drawing legal conclusions). *See Zamora v. Price*, 125 Nev. 388, 394, 213 P.3d 490, 494 (2009) (discussing the jury's duty as fact-finder).

[2] As the parties have pointed out, despite the weight of statutory and persuasive authority in support, the Nevada Supreme Court has never explicitly held that there is no implied warranty of habitability in the commercial context in Nevada.

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Moreover, it is the overwhelming consensus of courts across the country—including in Nevada—that a trial court may consider and rely upon persuasive authority in determining whether to grant summary judgment:

Nevada

- In the absence of controlling law, "the Court will look to Nevada law or persuasive authority from other jurisdictions to dispose of Bank of America's Motion for Summary Judgment." *Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat. Tr. & Sav. Ass'n*, 23 F. Supp. 2d 1166, 1171–72 (D. Nev. 1998).

Louisiana

- "Based on the generally persuasive authority of two circuit courts and the highest court of a sister state . . . defendants' motion for summary judgment solely on the survival claim should be granted. . ." *Carter v. R.J. Reynolds Tobacco Co.,* No. CIV.A. 03-330, 2004 WL 1497770, at *4 (E.D. La. July 1, 2004).

Tennessee

- "Given that there are no disputes of material fact, the Court finds that, on the basis of persuasive authority, Trane has established that it is entitled to summary judgment." *Trane U.S. Inc. v. Neblett*, 291 F. Supp. 3d 848, 855 (M.D. Tenn. 2018).

Mississippi

- "[B]ased on the foregoing persuasive authorities, the Court is of the view that Defendants are entitled to summary judgment . . ." *Lashley v. Pfizer, Inc.,* 877 F. Supp. 2d 466, 473 (S.D. Miss. 2012), *aff'd,* 750 F.3d 470 (5th Cir. 2014).

California

- "The court finds *White v. Cooper* [] a persuasive authority favoring summary judgment for defendants." *Foqua v. Presley*, No. S 00-1319 LKK PAN P, 2005 WL 1865500, at *5 (E.D. Cal. Aug. 4, 2005), *report and recommendation adopted sub nom. Fuqua v. Presely*, No. CVS001319 LKK PAN P, 2005 WL 2271925 (E.D. Cal. Sept. 16, 2005).

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Pennsylvania

- "These decisions provide persuasive authority for the trial court's decision in the present case to enter summary judgment against Appellant." *Albert v. Sheeley's Drug Store, Inc.*, 2020 PA Super 154, 234 A.3d 820, 823–24 (2020).

Oklahoma

- "In light of this persuasive authority on the same subject matter, the Court finds summary judgment appropriate on this narrow ground." *Am. Fid. Assurance Co. v. Bank of New York Mellon*, No. CV-11-1284-D, 2018 WL 6582381, at *5 (W.D. Okla. Oct. 31, 2018), *aff'd,* 820 F. App'x 684 (10th Cir. 2020).

Connecticut

- "Both *Davis* and *McCarthy* are persuasive authority in evaluating the propriety of granting summary judgment in the case at hand." *Lewis v. CIL Realty, Inc.,* No. CV166029825S, 2017 WL 3881040, at *3 (Conn. Super. Ct. July 26, 2017).

Fourth Circuit

- Entry of summary judgment affirmed where "the district court examined the law of North Carolina and persuasive authority from other States" in making its summary judgment ruling. *Dunlap v. Great-W. Life Assur. Co.,* 81 F.3d 149 (4th Cir. 1996).

Fifth Circuit

- "[B]ased on persuasive authority, the district court's decision to grant summary judgment was correct." *Trumble Steel Erectors, Inc. v. Moss*, 304 F. App'x 236, 242 (5th Cir. 2008).

The overwhelming weight of the foregoing authority suggests not only that this Court *may* consider persuasive authority in the absence of controlling law at summary judgment, but that it *must* do so. Thus, in considering whether the implied warranty of habitability applies in the commercial lease context, the Court is free to consider *all* the authority presented by Plaintiffs in their Motion—authoritative and persuasive alike.

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2. <u>Myth #2</u>: Plaintiffs' presentation of Nevada landlord/tenant statutes, Nevada Supreme Court case law, and persuasive case law from various districts is insufficient to support Plaintiffs' argument that there is no implied warranty of habitability in the commercial context in Nevada.

Reality: The various authorities presented by Plaintiffs, when read together, confirm that there is no implied warranty of habitability in the commercial context in Nevada, and Defendants have presented no authority to the contrary.

Defendants take issue with the Nevada case law presented by Plaintiffs' in support of their Motion because the Court did not explicitly hold in any of those cases that the implied warranty of habitability does not apply in the commercial context. *See* Opposition at 6–8, 18–20. While this is true (as the Nevada Supreme Court has never addressed this issue one way or the other), this Court should not be misled by Defendants' attempts to misconstrue these authorities.

The key point illustrated by the Nevada case law cited by Plaintiffs is the simple reality that the Nevada Supreme Court has *never* found a constructive eviction occurred in the commercial context based on a breach of the implied warranty of habitability where the commercial lease did not *expressly* require the action and/or inaction of the landlord. *See* Motion at 10–11 (collecting cases/authority). Rather, in all the Nevada cases discussing constructive eviction from a commercial property, the Nevada Supreme Court found that the constructive eviction occurred based on the landlord's breach of a <u>specific lease provision</u>. *Id.* Defendants have not presented, and Plaintiffs are not aware of, any Nevada case in which a constructive eviction was found to have occurred based solely on the commercial landlord's breach of any *implied* warranty of habitability. *See* Opposition. Thus, it stands to reason that the Nevada Supreme Court has purposely declined to apply the doctrine in the commercial context.

Contrary to Defendants' position, then, this Court would not "expand[] the legal protections in place for landlords" by declining to apply the implied warranty of habitability doctrine to a scenario in which it has *never before been applied*. *See* Opposition at 14–15. Rather, the greater act of "judicial activism" would be for this Court to expand the applicability of the implied warranty of habitability to the commercial arena, where neither the Nevada statute (NRS 118C) nor the Nevada case law supports such expansion.

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Indeed, Plaintiffs cited various authorities that, when read together, confirm that there is no implied warranty of habitability in the commercial context in Nevada:

- **Nevada Statutes.** NRS 118A (residential landlord/tenant statute) contains a habitability provision[3], whereas NRS 118C (commercial landlord/tenant statute) does not. Under the rules of statutory construction, the legislature's failure to include a habitability provision from NRS 118C implies the *purposeful exclusion* of the same. *In re Estate of Prestie*, 122 Nev. 807, 814, 138 P.3d 520, 524 (2006) ("We have previously recognized the fundamental rule of statutory construction that the mention of one thing implies the exclusion of another.") (internal alterations and quotation marks omitted). *See* Motion at 10.
- **Persuasive Authority.** Persuasive case law from various jurisdictions which confirm that the implied warranty of habitability is not typically applied in the commercial context. *See* Motion at 10–11 (citing *B.W.S. Investments v. Mid-Am Restaurants, Inc.*, 1990 WL 108794 (N.D. 1990) (citing 3A *Thompson on Real Property,* § 1230 (1981); 2 *Powell on Real Property,* § 233(2)(b) (1990); 49 Am.Jur.2d *Landlord and Tenant* § 768 (1970); Annotation, *Modern Status of Rules as to Existence to Implied Warranty of Habitability or Fitness for use of Leased Premises,* 40 A.L.R. 3d 646, 650 (1971); Restatement (Second) of Property, Landlord and Tenant, § 5.1 Caveat and Comment (1977); *Teller v. McCoy*, 162 W. Va. 367, 380 (1978)).[4]

[3] NRS 118A, relating to residential leases, expressly states that "[t]he landlord shall at all times during the tenancy maintain the dwelling unit in a habitable condition." NRS 118A.290. There is no such provision in NRS 118C.

[4] Plaintiffs also cited persuasive case law holding that, even in districts where the implied warranty of habitability *does* apply in the commercial context, those implied warranties do not apply if the commercial tenant accepts the property in an "as-is" condition, as here. *See* Motion at 11–12 (citing *Coulston v. Teliscope Productions, Ltd.*, 378 N.Y.S.2d 553, 554 (App. Term 1975); *Davidow v. Inwood N. Prof'l Group--Phase I*, 747 S.W.2d 373, 376 (Tex. 1988); *Gym-N-I Playgrounds, Inc. v. Snider*, 220 S.W.3d 905, 914 (Tex. 2007). The applicability of the "as-is" provisions in the Leases will be discussed in greater detail below.

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- **Nevada Case Law.** Nevada case law regarding constructive eviction, demonstrating that the Nevada Supreme Court follows the majority rule and does *not* apply the implied warranty of habitability in the commercial context. *See* Motion at 12–13.

Thus, while this Court may consider the ample persuasive authority presented by Plaintiffs, as demonstrated above, there is also considerable Nevada authority supporting Plaintiffs' argument that the implied warranty of habitability does not apply in the commercial context, and thus cannot shield Defendants from liability for their breaches of the Leases under their constructive eviction theory.

3. Myth #3: The "as-is" clauses of the leases are invalid pursuant to NRS 104—the UCC statute.

Reality: The Nevada statute governing UCC law is inapplicable to commercial leases of real property, and therefore Defendants have presented no authority to suggest that the "as-is" clauses are invalid.

Defendants dedicate several pages of their summary judgment opposition to their failed argument that the "as-is" clauses in the Leases are invalid because they are allegedly not "conspicuous," as defined under NRS 104.1201—the *UCC* statute. *See* Opposition at 15–18. First, NRS 104 (Uniform Commercial Code – Original Articles) unquestionably applies only to sale of goods transactions, and not to leases of real property. *See generally* NRS 104.1101 *et seq.* Therefore, the provisions of NRS 104 have no bearing on the validity of the "as-is" clauses in the Leases. "The U.C.C. thus not only clearly limits the application of implied warranties of merchantability and fitness for purpose to sales of goods, but it defines a sale of goods in a manner which precludes a residential lease agreement from being considered as such since the residential lease agreement contains neither a sale nor a good." *Miley v. Harmony Mill Ltd. P'ship*, 803 F. Supp. 965, 969 (D. Del. 1992). *See also, Ritchey v. Patt*, 431 Pa. Super. 219, 222, 636 A.2d 208, 210 (1994) (holding that Article 2 of the UCC did not apply to an action for the alleged breach of lease of real property).

Nonetheless, in this case, the "as-is" provisions are found on the very first page (as the very first term!) of the concurrently signed Lease Addendums that Defendants signed when they leased

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the Premises. *See* Motion Ex. 2 at ARV000026; Ex. 3 at ARV000059. Just following the opening recitals on the first page of the Lease Addendums, the "as-is" provisions appear exactly as follows:

> **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.

See Motion Ex. 2 at ARV000026.

> **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.

See Motion Ex. 3 at ARV000059.

As shown, the "as-is" clause is the very first term of the Lease Addendums, and attention is called to the clause by the underlined phrase reading "Condition of Premises." Moreover, Defendants initialed the bottom of *every page* of the Lease Addendums, indicating their understanding and acceptance of the terms therein. *See* Motion Ex. 2 at ARV000026; Ex. 3 at ARV000059.

Additionally, just above Defendants' signatures on the Leases, in bold and capitalized text, Defendants confirm that they:

> **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**

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VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

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

There is simply no support for the notion that the "as-is" clauses are invalid for any reason. Even the two cases cited by Defendants in support of their argument, *Bill Stremmel Motors, Inc. v. IDS Leasing Corp.*, 89 Nev. 414 (1973) and *Sierra Diesel Injection Service, Inc. v. Burroughs Corp.*, 890 F.2d 108 (9th Cir. 1989), relate to goods transactions—not real property transactions, as here. *See Bill Stremmel Motors, Inc. v. IDS Leasing Corp.*, 89 Nev. 414 (1973) (concerning a transaction relating to a "Centrum Communications system" that malfunctioned); *Sierra Diesel Injection Service, Inc. v. Burroughs Corp.*, 890 F.2d 108 (9th Cir. 1989) (concerning the purchase of a malfunctioned accounting hardware and software system).

Based on the foregoing, there are no grounds to invalidate the "as-is" clauses of the Leases. Nevertheless, even if the "as-is" clauses were found to be invalid (they are not), this would not change the fact that the Leases contain *zero* provisions that require Plaintiffs to maintain the cleanliness of the Premises. *See* Motion Exhs. 2–3. Thus, with no implied warranty of habitability and no lease terms requiring Plaintiffs to clean the "dust and debris" at the Premises, there can be no constructive eviction based thereon, as demonstrated above. Accordingly, Plaintiffs' Motion must be granted and summary judgment entered in Plaintiffs' favor.

B. PUTTING ASIDE DEFENDANTS' FAILED CONSTRUCTIVE EVICTION DEFENSE, PLAINTIFFS HAVE SET FORTH SUFFICIENT, UNDISPUTED EVIDENCE TO SHOW THAT DEFENDANTS ARE LIABLE FOR BREACH OF CONTRACT

At the outset of this Motion, the central questions to be resolved by the Court were (1) have Plaintiffs set forth sufficient law and evidence to show that Defendants are liable for breach of contract?, and (2) have Defendants set forth sufficient law and/or evidence to support their only defense against Plaintiffs' claims and create a genuine issue of material fact for trial? As demonstrated above, the second question can be answered in the negative by resolving three legal issues which Plaintiffs have discussed in detail *supra* (none of which create a genuine dispute of

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material fact for trial). Now that Plaintiffs have debunked Defendants' constructive eviction defense as a matter of law (their *sole* defense to Plaintiffs' breach of contract claims), the only question remaining is whether Plaintiffs satisfied their burden at summary judgment to show that Defendants are liable for breach of the Leases. They unquestionably have.

In their Motion, Plaintiffs presented sufficient evidence to satisfy all the elements of a breach of contract claim based on Defendants' early, unauthorized abandonment of their Leases. Indeed, among other things, Plaintiffs presented (1) signed copies of the Leases (and the guaranties and addendums thereto), which explicitly state that abandoning the Premises and failing to pay rent are breaches thereof; (2) Plaintiffs' Declaration affirming that Defendants vacated the Premises on or about May 8, 2018 (prior to the end of the Leases' term); and (3) ledgers denoting the unpaid rent owed by Defendants under the Leases. *See* Motion at 3–7.

This presentation satisfies Plaintiffs' initial burden under NRCP 56 to set forth evidence demonstrating that no genuine dispute of material fact exists for trial on Plaintiffs' breach of contract claims. *See Wood v. Safeway, Inc.*, 121 P.3d 1026, 1029, 1031 (Nev. 2005) (*quoting* NRCP 56(c)). "When a motion for summary judgment is made and supported as required by NRCP 56, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth ***specific facts*** demonstrating the existence of a genuine factual issue." *Wood*, 121 Nev. at 731, 121 P.3d at 1030–31 (internal quotations and citations omitted) (emphasis added). If the nonmoving party fails to introduce admissible evidence showing a genuine issue of material fact, the entry of summary judgment is appropriate. *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 872–73, 265 P.3d 698, 700 (2011) ("Choy did not present any specific facts or affidavits demonstrating the existence of a genuine issue supporting his claim that Ameristar owned or operated the Ameristar Casino Hotel Kansas City. The district court, therefore, properly granted Ameristar's motion for summary judgment."); *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671, 262 P.3d 705, 715 (2011) ("Francis submitted no affidavits or admissible evidence to rebut Wynn's motion for summary judgment. Accordingly, Francis provided no 'contrary evidence' that created genuine material issues of fact on Wynn's claims."); *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 604, 172 P.3d 131, 135 (2007) (Because the

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"opposition failed to introduce admissible evidence of specific facts showing that a genuine factual issue exists for trial," the Nevada Supreme Court "affirm[ed] the district court's order granting summary judgment.").

Critically, in their Opposition, Defendants make *no* argument and cite *no* evidence disputing the fact that they abandoned their leases early and without authorization, and failed to pay rent payments due and owing under the Leases.[5] *See* Opposition. Defendants' failure to direct the Court to *any* evidence demonstrating that they did not breach their Leases of the Premises means that Defendants have failed to create a genuine dispute of material fact for trial.[6] Accordingly, this Court must grant the instant Motion and enter summary judgment in Plaintiffs' favor on their breach of contract claims. *See Wood*, 121 Nev. at 731, 121 P.3d at 1030–31.

II. CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court grant the instant motion and enter summary judgment in Plaintiffs' favor on their breach of contract claims.

Dated this 5th day of January, 2021.

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

[5] Defendants also did not address Plaintiffs' argument with respect to the additional parking spots Defendants requested prior to abandoning the Premises. *See* Opposition. Therefore, Defendants concede any points related to this argument. *See* NRCP 56(e)(2) (the Court may consider facts undisputed where a party fails to properly address an opposing party's assertion of fact).

[6] Defendants cite one Nevada case for the proposition that "whether a constructive eviction has occurred is a factual determination to be made by the trier of fact." *See* Opposition at 5 (emphasis omitted). However, Defendants' constructive eviction defense relies on the implied warranty of habitability, which Plaintiffs have demonstrated does not apply in the commercial lease context. Therefore, Defendants cannot demonstrate that they have been constructively evicted as a matter of law, and thus there are no factual issues left to be determined by a jury.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 5th day of January, 2021, I did cause a true and correct copy of the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT REGARDING 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

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01/28/2021 1:37 PM
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counter-defendants

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DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** **Date of Hearing: January 12, 2021** **Time of Hearing: 9:30 a.m.**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counter-defendants,	

This matter came before the Court via telephonic hearing on January 12, 2021 at 9:30 a.m. upon Plaintiffs/Counter-defendants 4520 Arville, a California general partnership; and McKinley Manor, an Idaho general partnership's (collectively "Plaintiffs"), Motion for Summary Judgment

Case Number: A-19-794864-C

on their Breach of Contract Claims (the "Motion"), the Honorable Michael Cherry presiding. F. Thomas Edwards, Esq. appeared on behalf of Plaintiffs, and Rusty Graf, Esq. appeared on behalf of Defendants/Counterclaimants Bour Enterprises, LLC, a Nevada limited liability company; Mulugeta Bour; and Hilena Mengesha (collectively "Defendants").

The Court, having heard the arguments of counsel and having considered the papers and pleadings on file herein, and good cause appearing therefor, hereby enters the following findings of fact and conclusions of law. To the extent any finding of fact should properly be designated a conclusion of law, it shall be deemed a conclusion of law. To the extent any conclusion of law should properly be designated a finding of fact, it shall be deemed a finding of fact.

FINDINGS OF FACT

1. This action arises out of Defendants' early, unauthorized abandonment of their commercial leases of Plaintiffs' warehouse space located at 4560 S. Arville St., C-10, 23, 24, and 29, Las Vegas, NV 89103 (the "Premises"), which resulted in a breach of the Leases and the individual Defendants' personal guaranties thereof (the "Guaranties"). *See* Complaint, dated May 15, 2019, on file herein.

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

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

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

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

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

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

8. On or about April 20, 2017, Defendants signed a new lease for unit C-23/24 at the Premises and a related personal guaranty. *See* Motion Ex. 2 (Unit C-23/24 Lease, Addendum and Guaranty). *See also* Motion Ex. 1, 45:6-46:1; 50:25-51:5.

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

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

11. The terms of the leases are nearly identical. *See* Motion Exs. 2 and 3.

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

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

See Motion Exs. 2 at ARV000001 and 3 at ARV000034.

13. Section 7.1(a) of the leases expressly provides that Defendants are responsible for all maintenance of the Premises.

> **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

HOLLEY DRIGGS

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.

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

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

15. 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 Motion Ex. 1, 47:20-24.

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

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with

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> **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.

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

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

18. Right above Defendants' signature on the leases, in bold and capitalized text, the parties confirm that they:

> **HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES**.

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

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

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20. 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* Motion Exs. 2 at ARV000029 and 3 at ARV000062.

21. Defendants utilized the Premises until on or about May 8, 2018, when they vacated the Premises. *See* Motion Ex. 4 (Declaration of Kevin Donahoe). *See also* Motion Exs. 5 and 6 (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).

PROCEDURAL HISTORY

22. On May 15, 2019, Plaintiffs commenced this breach of contract action by filing its Complaint against Defendants, seeking damages for Defendants' early, unauthorized abandonment of Plaintiffs' Premises, which resulted in a breach of the Leases and the Guaranties. *See* Complaint, dated May 15, 2019, on file herein.

23. On July 16, 2019, Defendants filed their Answer and Counterclaims, asserting that Plaintiffs had caused Defendants to be constructively evicted from the Premises based on Plaintiff's alleged breach of the implied warranty of habitability (related to the purported "dust and debris" at the Premises and limited assigned parking spots), thereby excusing Defendants' performance under the Leases. *See* Defendants' Answer and Counterclaim, dated July 16, 2019, on file herein.

24. Following the close of discovery, Plaintiffs filed the underlying Motion for summary judgment on December 1, 2020. *See* Motion.

25. Defendants filed their Opposition to the Motion on December 17, 2020. *See* Opposition to Plaintiffs' Motion for Summary Judgment Regarding Breach of Contract Claims, filed December 17, 2020, on file herein (the "Opposition").

26. In their Opposition, Defendants cited no authority demonstrating that the implied warranty of habitability applies in the commercial lease context in Nevada, instead arguing that the Court could not decide this legal issue because there is no Nevada case law that squarely addresses that question. *Id.* Defendants also argued that the "as-is" clauses in the Leases were invalid. *Id.* at 15–18.

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27. On January 5, 2021, Plaintiffs filed their Reply in support of their Motion for Summary Judgment. *See* Plaintiffs' Reply in Support of Motion for Summary Judgment Regarding Breach of Contract Claims, filed January 5, 2021, on file herein.

CONCLUSIONS OF LAW

1. 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).

2. "A breach-of-contract claim requires proof of a valid contract, performance or excuse of performance by the non-breaching party, breach by the defendant, and damages." *Hosp. Int'l Grp. v. Gratitude Grp., LLC*, 387 P.3d 208 (Nev. 2016) (internal citations omitted).

3. In their Motion, Plaintiffs set forth adequate evidence and authority that Defendants breached the Leases and personal Guaranties:

a. The Leases and Guaranties are valid, fully executed contracts. *See* Motion Ex. 2 (Unit C-23/24 Lease, Addendum and Guaranty); Motion Ex. 3 (Unit C-10/29 Lease, Addendum and Guaranty).

b. Plaintiffs fully performed under the terms of the Leases and Guaranties. *See* Motion Ex. 4 (Declaration of Kevin Donahoe) (affirming that Defendants utilized the Premises pursuant to the Leases until May 8, 2018, when they vacated the Premises).

c. Defendants breached the Leases and Guaranties by abandoning the Premises early, without authorization, and failing to pay all monthly rent payments due under the Leases. *Id. See also* Motion Exs. 2 at ARV000015–16 and 3 at ARV000048–49 (Sections 13.6 and 23.1 of the Leases); Motion Exs. 5 and 6 (ledgers reflecting all outstanding balances owed under the Leases).

d. Plaintiffs incurred damages as a result of Defendants' non-payment of rent

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due and owing under the Leases and personal Guaranties. *Id.*

4. Defendants failed in their Opposition to cite evidence or authority demonstrating the existence of a genuine dispute of material fact for trial on the issue of whether Defendants breached the Leases and Guaranties, thereby relying solely on their constructive eviction theory to excuse their non-performance under the Leases and Guaranties. *See Wood*, 121 P.3d at 1030–31 ("When a motion for summary judgment is made and supported as required by NRCP 56, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth ***specific facts*** demonstrating the existence of a genuine factual issue.") (internal quotations and citations omitted) (emphasis added).

5. In a summary judgment setting, the Court has the authority to rule on issues of law, such as whether the implied warranty of habitability applies in the commercial lease context in Nevada. *See Lee v. GNLV Corp.*, 117 Nev. 291, 295, 22 P.3d 209, 211 (2001) (acknowledging that it is the district court's function to perceive and apply the law); *Branda v. Sanford*, 97 Nev. 643, 646, 637 P.2d 1223, 1225 (1981) (questions of law are "within the province of the court"); *Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat. Tr. & Sav. Ass'n*, 23 F. Supp. 2d 1166, 1171–72 (D. Nev. 1998) (In the absence of controlling law, "the Court will look to Nevada law or persuasive authority from other jurisdictions to dispose of Bank of America's Motion for Summary Judgment."). *See also* Reply at 5–6 (collecting cases).

6. Although the Nevada Supreme Court has not squarely addressed the issue, the weight of authority on the issue leads this Court to conclude that Nevada does not recognize an implied warranty of habitability in commercial leases. *Compare* NRS 118A (residential landlord/tenant statute, which contains an implied warranty of habitability provision, NRS 118A.290) *with* NRS 118C (commercial landlord/tenant statute omitting any implied warranty of habitability).[1] *See also B.W.S. Investments v. Mid-Am Restaurants, Inc.*, 1990 WL 108794 (N.D.

[1] *See In re Estate of Prestie*, 122 Nev. 807, 814, 138 P.3d 520, 524 (2006) ("We have previously recognized the fundamental rule of statutory construction that the mention of one thing implies the exclusion of another.") (internal alterations and quotation marks omitted); *Sonia F. v. Eighth Judicial Dist. Court*, 125 Nev. 495, 499, 215 P.3d 705, 708 (2009) ("Therefore, where the

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1990) (citing 3A *Thompson on Real Property,* § 1230 (1981) ("Our review of the authorities reveals that the majority view, which we adopt, does not extend an implied warranty of habitability or fitness to commercial leases."); 2 *Powell on Real Property,* § 233(2)(b) (1990) (implied warranty of habitability applies in almost all jurisdictions only to residential tenancies; commercial leases are excluded primarily on the rationale that the feature of unequal bargaining power justifying the imposition of the warranty in residential leases is not present in commercial transactions); 49 Am.Jur.2d *Landlord and Tenant* § 768 (1970) (no implied warranty of fitness for commercial premises); Annotation, *Modern Status of Rules as to Existence to Implied Warranty of Habitability or Fitness for use of Leased Premises,* 40 A.L.R. 3d 646, 650 (1971); Restatement (Second) of Property, Landlord and Tenant, § 5.1 Caveat and Comment (1977); *Teller v. McCoy*, 162 W. Va. 367, 380 (1978)) ("Most jurisdictions have expressly or impliedly refused to extend the implied warranty of habitability into commercial leases."); *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Development*, LLC, 130 Nev. 834 (2014) (basing constructive eviction analysis on commercial landlord's express duties under the lease, rather than any implied warranties); *Winchell v. Schiff*, 124 Nev. 938, 947, 193 P.3d 946, 952 (2008) (same); *Las Vegas Oriental, Inc. v. Sabella's of Nevada, Inc.*, 97 Nev. 311, 312, 630 P.2d 255 (1981) (same).

7. Even if Nevada did recognize an implied warranty of habitability in commercial leases, any implied warranty of habitability was waived by the "as-is" clauses in the Leases.

8. Because the implied warranty of habitability is not recognized in commercial leases in Nevada, Defendants cannot prevail and Plaintiffs are entitled to judgment as a matter of law.

Based on the foregoing, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion is GRANTED in its entirety;

IT IS FURTHER ORDERED that separate Judgment shall issue.

/ / /

/ / /

Legislature has, for example, explicitly applied a rule to one type of proceeding, this court will presume it deliberately excluded the rule's application to other types of proceedings.").

HOLLEY DRIGGS

IT IS SO ORDERED.

Dated this 28th day of January, 2021

7EA 642 F3CB C7CE
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

HOLLEY DRIGGS

/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

Attorneys for Plaintiffs/Counter-defendants

Approved as to form and content by:

BLACK & WADHAMS

Refused to sign
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Defendants/Counterclaimants

HOLLEY DRIGGS

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s)	CASE NO: A-19-794864-C DEPT. NO. Department 5

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 1/28/2021

Tom Edwards, Esq.	tedwards@nevadafirm.com
BRENT CARSON	bac@winnercarson.com
Diane Meeter	dmeeter@blacklobello.law
J. Graf	Rgraf@blacklobello.law
Sandra Sell	ssell@nevadafirm.com
Jessica Lujan	jlujan@nevadafirm.com

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Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 8 **NOTICE OF ENTRY OF ORDER**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

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HOLLEY DRIGGS

YOU, and each of you, will please take notice that an Order Granting Plaintiffs' Motion for Summary Judgment in the above entitled matter was filed and entered by the Clerk of the above-entitled Court on the 28th day of January, 2021, a copy of which is attached hereto.

Dated this 28th day of January, 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 28th day of January, 2021, I did cause a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**, 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

HOLLEY DRIGGS

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01/28/2021 1:37 PM
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counter-defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** **Date of Hearing: January 12, 2021** **Time of Hearing: 9:30 a.m.**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counter-defendants,	

This matter came before the Court via telephonic hearing on January 12, 2021 at 9:30 a.m. upon Plaintiffs/Counter-defendants 4520 Arville, a California general partnership; and McKinley Manor, an Idaho general partnership's (collectively "Plaintiffs"), Motion for Summary Judgment

Case Number: A-19-794864-C

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on their Breach of Contract Claims (the "Motion"), the Honorable Michael Cherry presiding. F. Thomas Edwards, Esq. appeared on behalf of Plaintiffs, and Rusty Graf, Esq. appeared on behalf of Defendants/Counterclaimants Bour Enterprises, LLC, a Nevada limited liability company; Mulugeta Bour; and Hilena Mengesha (collectively "Defendants").

The Court, having heard the arguments of counsel and having considered the papers and pleadings on file herein, and good cause appearing therefor, hereby enters the following findings of fact and conclusions of law. To the extent any finding of fact should properly be designated a conclusion of law, it shall be deemed a conclusion of law. To the extent any conclusion of law should properly be designated a finding of fact, it shall be deemed a finding of fact.

FINDINGS OF FACT

1. This action arises out of Defendants' early, unauthorized abandonment of their commercial leases of Plaintiffs' warehouse space located at 4560 S. Arville St., C-10, 23, 24, and 29, Las Vegas, NV 89103 (the "Premises"), which resulted in a breach of the Leases and the individual Defendants' personal guaranties thereof (the "Guaranties"). *See* Complaint, dated May 15, 2019, on file herein.

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

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

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

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

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

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

8. On or about April 20, 2017, Defendants signed a new lease for unit C-23/24 at the Premises and a related personal guaranty. *See* Motion Ex. 2 (Unit C-23/24 Lease, Addendum and Guaranty). *See also* Motion Ex. 1, 45:6-46:1; 50:25-51:5.

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

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

11. The terms of the leases are nearly identical. *See* Motion Exs. 2 and 3.

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

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

See Motion Exs. 2 at ARV000001 and 3 at ARV000034.

13. Section 7.1(a) of the leases expressly provides that Defendants are responsible for all maintenance of the Premises.

> **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

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> 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.

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

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

15. 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 Motion Ex. 1, 47:20-24.

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

> **2.4 Acknowledgements. Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with**

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> **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.

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

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

18. Right above Defendants' signature on the leases, in bold and capitalized text, the parties confirm that they:

> **HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES**.

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

19. 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.**
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See Motion Exs. 2 at ARV000020 and 3 at ARV000053 (emphasis in original).

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20. 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* Motion Exs. 2 at ARV000029 and 3 at ARV000062.

21. Defendants utilized the Premises until on or about May 8, 2018, when they vacated the Premises. *See* Motion Ex. 4 (Declaration of Kevin Donahoe). *See also* Motion Exs. 5 and 6 (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).

PROCEDURAL HISTORY

22. On May 15, 2019, Plaintiffs commenced this breach of contract action by filing its Complaint against Defendants, seeking damages for Defendants' early, unauthorized abandonment of Plaintiffs' Premises, which resulted in a breach of the Leases and the Guaranties. *See* Complaint, dated May 15, 2019, on file herein.

23. On July 16, 2019, Defendants filed their Answer and Counterclaims, asserting that Plaintiffs had caused Defendants to be constructively evicted from the Premises based on Plaintiff's alleged breach of the implied warranty of habitability (related to the purported "dust and debris" at the Premises and limited assigned parking spots), thereby excusing Defendants' performance under the Leases. *See* Defendants' Answer and Counterclaim, dated July 16, 2019, on file herein.

24. Following the close of discovery, Plaintiffs filed the underlying Motion for summary judgment on December 1, 2020. *See* Motion.

25. Defendants filed their Opposition to the Motion on December 17, 2020. *See* Opposition to Plaintiffs' Motion for Summary Judgment Regarding Breach of Contract Claims, filed December 17, 2020, on file herein (the "Opposition").

26. In their Opposition, Defendants cited no authority demonstrating that the implied warranty of habitability applies in the commercial lease context in Nevada, instead arguing that the Court could not decide this legal issue because there is no Nevada case law that squarely addresses that question. *Id.* Defendants also argued that the "as-is" clauses in the Leases were invalid. *Id.* at 15–18.

HOLLEY DRIGGS

27. On January 5, 2021, Plaintiffs filed their Reply in support of their Motion for Summary Judgment. *See* Plaintiffs' Reply in Support of Motion for Summary Judgment Regarding Breach of Contract Claims, filed January 5, 2021, on file herein.

CONCLUSIONS OF LAW

1. 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).

2. "A breach-of-contract claim requires proof of a valid contract, performance or excuse of performance by the non-breaching party, breach by the defendant, and damages." *Hosp. Int'l Grp. v. Gratitude Grp., LLC*, 387 P.3d 208 (Nev. 2016) (internal citations omitted).

3. In their Motion, Plaintiffs set forth adequate evidence and authority that Defendants breached the Leases and personal Guaranties:

a. The Leases and Guaranties are valid, fully executed contracts. *See* Motion Ex. 2 (Unit C-23/24 Lease, Addendum and Guaranty); Motion Ex. 3 (Unit C-10/29 Lease, Addendum and Guaranty).

b. Plaintiffs fully performed under the terms of the Leases and Guaranties. *See* Motion Ex. 4 (Declaration of Kevin Donahoe) (affirming that Defendants utilized the Premises pursuant to the Leases until May 8, 2018, when they vacated the Premises).

c. Defendants breached the Leases and Guaranties by abandoning the Premises early, without authorization, and failing to pay all monthly rent payments due under the Leases. *Id. See also* Motion Exs. 2 at ARV000015–16 and 3 at ARV000048–49 (Sections 13.6 and 23.1 of the Leases); Motion Exs. 5 and 6 (ledgers reflecting all outstanding balances owed under the Leases).

d. Plaintiffs incurred damages as a result of Defendants' non-payment of rent

HOLLEY DRIGGS

due and owing under the Leases and personal Guaranties. *Id.*

4. Defendants failed in their Opposition to cite evidence or authority demonstrating the existence of a genuine dispute of material fact for trial on the issue of whether Defendants breached the Leases and Guaranties, thereby relying solely on their constructive eviction theory to excuse their non-performance under the Leases and Guaranties. *See Wood*, 121 P.3d at 1030–31 ("When a motion for summary judgment is made and supported as required by NRCP 56, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth ***specific facts*** demonstrating the existence of a genuine factual issue.") (internal quotations and citations omitted) (emphasis added).

5. In a summary judgment setting, the Court has the authority to rule on issues of law, such as whether the implied warranty of habitability applies in the commercial lease context in Nevada. *See Lee v. GNLV Corp.*, 117 Nev. 291, 295, 22 P.3d 209, 211 (2001) (acknowledging that it is the district court's function to perceive and apply the law); *Branda v. Sanford*, 97 Nev. 643, 646, 637 P.2d 1223, 1225 (1981) (questions of law are "within the province of the court"); *Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat. Tr. & Sav. Ass'n*, 23 F. Supp. 2d 1166, 1171–72 (D. Nev. 1998) (In the absence of controlling law, "the Court will look to Nevada law or persuasive authority from other jurisdictions to dispose of Bank of America's Motion for Summary Judgment."). *See also* Reply at 5–6 (collecting cases).

6. Although the Nevada Supreme Court has not squarely addressed the issue, the weight of authority on the issue leads this Court to conclude that Nevada does not recognize an implied warranty of habitability in commercial leases. *Compare* NRS 118A (residential landlord/tenant statute, which contains an implied warranty of habitability provision, NRS 118A.290) *with* NRS 118C (commercial landlord/tenant statute omitting any implied warranty of habitability).[1] *See also B.W.S. Investments v. Mid-Am Restaurants, Inc.*, 1990 WL 108794 (N.D.

[1] *See In re Estate of Prestie*, 122 Nev. 807, 814, 138 P.3d 520, 524 (2006) ("We have previously recognized the fundamental rule of statutory construction that the mention of one thing implies the exclusion of another.") (internal alterations and quotation marks omitted); *Sonia F. v. Eighth Judicial Dist. Court*, 125 Nev. 495, 499, 215 P.3d 705, 708 (2009) ("Therefore, where the

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1990) (citing 3A *Thompson on Real Property,* § 1230 (1981) ("Our review of the authorities reveals that the majority view, which we adopt, does not extend an implied warranty of habitability or fitness to commercial leases."); 2 *Powell on Real Property,* § 233(2)(b) (1990) (implied warranty of habitability applies in almost all jurisdictions only to residential tenancies; commercial leases are excluded primarily on the rationale that the feature of unequal bargaining power justifying the imposition of the warranty in residential leases is not present in commercial transactions); 49 Am.Jur.2d *Landlord and Tenant* § 768 (1970) (no implied warranty of fitness for commercial premises); Annotation, *Modern Status of Rules as to Existence to Implied Warranty of Habitability or Fitness for use of Leased Premises,* 40 A.L.R. 3d 646, 650 (1971); Restatement (Second) of Property, Landlord and Tenant, § 5.1 Caveat and Comment (1977); *Teller v. McCoy*, 162 W. Va. 367, 380 (1978)) ("Most jurisdictions have expressly or impliedly refused to extend the implied warranty of habitability into commercial leases."); *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Development*, LLC, 130 Nev. 834 (2014) (basing constructive eviction analysis on commercial landlord's express duties under the lease, rather than any implied warranties); *Winchell v. Schiff*, 124 Nev. 938, 947, 193 P.3d 946, 952 (2008) (same); *Las Vegas Oriental, Inc. v. Sabella's of Nevada, Inc.*, 97 Nev. 311, 312, 630 P.2d 255 (1981) (same).

7. Even if Nevada did recognize an implied warranty of habitability in commercial leases, any implied warranty of habitability was waived by the "as-is" clauses in the Leases.

8. Because the implied warranty of habitability is not recognized in commercial leases in Nevada, Defendants cannot prevail and Plaintiffs are entitled to judgment as a matter of law.

Based on the foregoing, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion is GRANTED in its entirety;

IT IS FURTHER ORDERED that separate Judgment shall issue.

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Legislature has, for example, explicitly applied a rule to one type of proceeding, this court will presume it deliberately excluded the rule's application to other types of proceedings.").

HOLLEY DRIGGS

IT IS SO ORDERED.

Dated this 28th day of January, 2021

7EA 642 F3CB C7CE
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

HOLLEY DRIGGS

/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

Attorneys for Plaintiffs/Counter-defendants

Approved as to form and content by:

BLACK & WADHAMS

Refused to sign
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Defendants/Counterclaimants

HOLLEY DRIGGS

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s)	CASE NO: A-19-794864-C DEPT. NO. Department 5

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 1/28/2021

Tom Edwards, Esq.	tedwards@nevadafirm.com
BRENT CARSON	bac@winnercarson.com
Diane Meeter	dmeeter@blacklobello.law
J. Graf	Rgraf@blacklobello.law
Sandra Sell	ssell@nevadafirm.com
Jessica Lujan	jlujan@nevadafirm.com

Electronically Filed
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Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

Counterclaimants.

v.

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

Counterdefendants,

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

HEARING REQUESTED

PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT

Plaintiffs/Counterdefendants, 4520 Arville, a California general partnership; and McKinley Manor, an Idaho general partnership (collectively "Plaintiffs"), by and through their attorneys of record, the law firm of Holley Driggs, hereby submit this motion for entry of Judgment

Case Number: A-19-794864-C

HOLLEY DRIGGS

in favor of Plaintiffs in accordance with the Court's January 28, 2021 Order Granting Plaintiffs' Motion for Summary Judgment. In its Order, the Court expressly held that Plaintiffs had proved the essential elements of their claims for breach of contract, including damages. Because Defendants failed to present any admissible evidence or viable legal arguments in opposition to Plaintiffs' Motion for Summary Judgment, there are no procedural grounds upon which to proceed to a bench trial. Accordingly, all that is left to be done in this action is to enter Judgment in accordance with the evidence of Plaintiffs' damages, which was submitted with Plaintiffs' Motion for Summary Judgment, and which is accurately represented in the proposed Judgment attached hereto.

This Motion is made and based upon the papers and pleadings on file herein, the following points and authorities, the proposed Judgment attached hereto at **Exhibit 1**, and any oral argument at the hearing on this matter.

Dated this 10th day of February, 2021.

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND BACKGROUND

On January 12, 2021, the parties came before the Court for a hearing on Plaintiffs' Motion for Summary Judgment (the "SJ Motion") related to Defendants' early, unauthorized abandonment of their leases of Plaintiffs' commercial warehouse space (the "Premises"), which resulted in a breach of the leases ("Leases") and Defendants' individual guaranties thereof ("Guaranties"). *See* Order Granting Plaintiffs' Motion for Summary Judgment at 1, dated January 28, 2021, on file herein (the "Order Granting SJ"). The Honorable Justice Michael Cherry presided over the hearing. *See id.* at 2.

Having considered the briefing and evidence submitted by the parties and the oral argument presented by counsel at the hearing, the Court held that "Plaintiffs set forth adequate evidence and authority that Defendants breached the Leases and personal Guaranties[.]" *Id.* at 7, ¶ 3. Notably, this holding included a finding that "*Plaintiffs incurred damages* as a result of Defendants' non-payment of rent due and owing under the Leases and personal Guaranties." *Id.* at 7–8, ¶ 3(d) (emphasis added). The Court's Order Granting SJ also cites the various items of evidence Plaintiffs attached to their SJ Motion to support their damages, including the Leases, Guaranties, and ledgers reflecting all charges under the Leases, all payments made by Defendants under the Leases and the outstanding balances owed thereunder (the "Tenant Ledgers"). *Id.* at 3–6 ¶¶ 8, 10 (the Leases and Guaranties), ¶ 21 (the Tenant Ledgers). *See also* SJ Motion Exhs. 2–3, 5–6.

Critically, the Court held that "Defendants failed in their Opposition to cite evidence or authority demonstrating the existence of a genuine dispute of material fact for trial on the issue of whether Defendants breached the Leases and Guaranties, thereby relying <u>*solely*</u> on their constructive eviction theory to excuse their non-performance under the Leases and Guaranties." Order Granting SJ at 8, ¶ 4 (emphasis added) (citation omitted). A review of Defendants' summary judgment Opposition (the "SJ Opposition") confirms the same—no other affirmative defenses or disputes were presented. *See* SJ Opposition, dated December 17, 2020, on file herein. "Because the implied warranty of habitability is not recognized in commercial leases in Nevada," the Court held that "Defendants cannot prevail and Plaintiffs are entitled to judgment as a matter of law."

Order Granting SJ at 9, ¶ 8. In other words, the Court held that Nevada law did not support Defendants' *only* defense raised in response to Plaintiffs' SJ Motion. Accordingly, the Court granted summary judgment in favor of Plaintiffs and directed that "separate Judgment shall issue." Order Granting SJ at 9.

Despite these clear mandates from the Court, Defendants have twice objected to Plaintiffs' submission of a proposed Judgment in this action on the grounds that "they have plead affirmative defenses ***not addressed in the Motion for summary Judgment***, including and not limited to Plaintiffs' failure to mitigate or take reasonable steps to release the property" and have promised to address their objection in a motion to the Court, which has yet to be filed.[1] *See* Emails from R. Graf, Esq. to the Court, dated January 29 and February 2, 2021, attached hereto as **Exhibit 2** (emphasis added).

The parties appeared at a pre-trial conference before the Court on February 9, 2021, where the Court instructed that the parties shall proceed to a bench trial in April unless the dispute regarding the propriety of trial and issuance of Judgment can be resolved prior to the April trial date. Thus, Plaintiffs now move for entry of Judgment on the grounds that (1) Plaintiffs' SJ Motion attached/cited sufficient evidence to support their breach of contract claims, *including* the element of damages, as recognized by the Court's Order Granting SJ; (2) by failing to raise any arguments or objections related to damages in their SJ Opposition, Defendants have waived the same and are thus not entitled to proceed to trial; and (3) there is no practical or procedural reason to proceed to trial, as Plaintiffs have submitted all pertinent evidence and Defendants are procedurally barred from submitting any additional evidence.

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[1] Plaintiffs' first proposed Judgment was rejected by the Court because it did not include an adequate explanation of where the damages calculation came from. *See* Email from the Court, dated February 2, 2021, attached hereto as **Exhibit 3**. Accordingly, Plaintiffs submitted their second proposed Judgment later that day, which was revised to include citations to the relevant SJ Motion exhibits supporting Plaintiffs' damages calculation. *See* Email submission of second proposed Judgment, dated February 2, 2021, attached hereto as **Exhibit 4**.

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II. LEGAL ARGUMENT

A. PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT WAS GRANTED BECAUSE IT PROVED ALL ESSENTIAL ELEMENTS OF THE BREACH OF CONTRACT CLAIM—INCLUDING DAMAGES

"A breach-of-contract claim requires proof of a valid contract, performance or excuse of performance by the non-breaching party, breach by the defendant, ***and damages***." *Hosp. Int'l Grp. v. Gratitude Grp., LLC*, 387 P.3d 208 (Nev. 2016) (internal citations omitted) (emphasis added). The Court's Order Granting SJ confirms that Plaintiffs' SJ Motion "set forth adequate evidence and authority that Defendants breached the Leases and personal Guaranties", which necessarily includes the element of damages. Order Granting SJ at 7–8, ¶ 3(a)-(d). The order even references the exhibits Plaintiffs attached to their SJ Motion in support of their damages:

> a. The Leases and Guaranties are valid, fully executed contracts. *See* Motion Ex. 2 (Unit C-23/24 Lease, Addendum and Guaranty); Motion Ex. 3 (Unit C-10/29 Lease, Addendum and Guaranty).
> b. Plaintiffs fully performed under the terms of the Leases and Guaranties. *See* Motion Ex. 4 (Declaration of Kevin Donahoe) (affirming that Defendants utilized the Premises pursuant to the Leases until May 8, 2018, when they vacated the Premises).
> c. Defendants breached the Leases and Guaranties by abandoning the Premises early, without authorization, and ***failing to pay all monthly rent payments due under the Leases***. *Id. See also* Motion Exs. 2 at ARV000015–16 and 3 at ARV000048–49 (Sections 13.6 and 23.1 of the Leases); ***Motion Exs. 5 and 6 (ledgers reflecting all outstanding balances owed under the Leases)***.
> d. ***Plaintiffs incurred damages as a result of Defendants' non-payment of rent due and owing under the Leases and personal Guaranties***. *Id.*

Id. (emphasis added).

Moreover, the Court held that "Defendants failed in their Opposition to cite evidence or authority demonstrating the existence of a genuine dispute of material fact for trial on the issue of whether Defendants breached the Leases and Guaranties, thereby relying *solely* on their constructive eviction theory to excuse their non-performance under the Leases and Guaranties." Order Granting SJ at 8, ¶ 4 (emphasis added) (citation omitted). *See also* SJ Opposition. Therefore, because Plaintiffs set forth evidence to support every element of their claims for breach of contract,

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and because Defendants did not counter this showing with evidence or authority negating any essential elements (including the element of damages), the Court granted summary judgment in favor of Plaintiffs and ordered that separate Judgment shall issue.

In accordance with the Court's Order, Plaintiffs have prepared a proposed Judgment that sets forth Plaintiffs' damages as supported by the evidence, which includes specific citations to the evidence attached to Plaintiffs' SJ Motion. *See* Ex. 1. The evidence Plaintiffs rely upon to support their damages calculation is as follows:

- The Defendants' Leases of Units C-23/24 and Units C-10/29, which are attached to the SJ Motion as Exs. 2–3.
  - The provisions of Section 1 of the Leases set forth the term, base rent, and other monthly charges due under the Leases. *See* SJ Motion Exs. 2–3 at 1 (Sections 1.3–1.7).
  - Section 13.4 of the Leases provide for late charges resulting from late payment (or non-payment) of rent. *Id.* at 14 (Section 13.4).
  - Section 13.5 of the Leases set forth the rate of interest to be imposed on any late payments under the Leases, which is based in part on the Wall Street Journal prime interest rate. *Id.* at 14–15 (Section 13.5).
- The individual Defendants' personal Guaranties, which are attached at the end of SJ Motion Exs. 2–3 (ARV000029–30, ARV000062–63). The Guaranties confirm that the individual Defendants should be held jointly and severally liable for the Judgment.
- The Tenant Ledgers, which are attached to the SJ Motion as Exs. 5–6. The Tenant Ledgers provide a detailed computation of all charges under the Leases, all payments made by Defendants and the outstanding balances due under the Leases and Guaranties.

Defendants have not challenged the accuracy or authenticity of this evidence and have therefore waived their right to do so. *See* SJ Opposition. *See also* Section B, *infra*. Thus, taking all the evidence together, Plaintiffs' damages can be easily and accurately calculated, including the

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principal amounts owed by Defendants, as well as the contractually agreed upon interest that accrues on such principal amounts. These sums are broken down by category in the proposed Judgment attached hereto as Ex. 1. As will be discussed, Defendants have waived any right to object to Plaintiffs' damages by failing to do so at summary judgment. Therefore, there is no reason for the Court to delay entering Judgment in favor of Plaintiffs.

B. DEFENDANTS HAVE WAIVED ANY ARGUMENTS WITH RESPECT TO THE SUM OF PLAINTIFFS' DAMAGES BY FAILING TO RAISE SUCH ARGUMENTS AT SUMMARY JUDGMENT

Defendants have objected to entry of Judgment in this action on the grounds that they "have plead affirmative defenses not addressed in the Motion for summary Judgment, including and not limited to Plaintiffs' failure to mitigate or take reasonable steps to release the property". *See* Ex 2 (Emails from R. Graf, Esq. to the Court).[2] As the Court recognized in its Order Granting SJ, however, Defendants did not lodge any defenses or objections to Plaintiffs' request for summary judgment other than their failed argument regarding constructive eviction and the implied warranty of habitability. *See* Order Granting SJ at 8, ¶ 4; SJ Opposition. Having failed to dispute the straightforward documentary evidence supporting Plaintiffs' damages, all of which was attached to the SJ Motion, or otherwise raise their purported affirmative defenses in their SJ Opposition, Defendants have waived their right to proceed to trial in this matter. *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1030–31 (Nev. 2005) ("When a motion for summary judgment is made and supported as required by NRCP 56, the nonmoving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth ***specific facts*** demonstrating the existence of a genuine factual issue.") (internal quotations and citations omitted) (emphasis added).

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[2] If Defendants wanted to assert that Plaintiffs failed to reasonably mitigate their damages, Defendants bear the burden of proof on the issue and were required to attach any such evidence to their SJ Opposition. *Conner v. S. Nevada Paving, Inc.*, 103 Nev. 353, 355, 741 P.2d 800, 801 (1987) ("the burden of proving failure to mitigate is on the breaching party") (citing *Cobb v. Osman*, 83 Nev. 415, 422, 433 P.2d 259, 263 (1967)).

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Indeed, the Nevada Supreme Court has adopted the general rule that a point not raised at summary judgment "is deemed to have been waived and will not be considered . . ." *Schuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 436, 245 P.3d 542, 544 (2010) (internal quotations omitted) (citing *Old Aztec Mine, Inc. v. Brown,* 97 Nev. 49, 52, 623 P.2d 981, 983 (1981)). For example, in *Schuck*, the district court granted summary judgment in favor of the defendant on Schuck's property damage claims, finding that Schuck failed to attach and cite adequate evidence to defeat the defendant's summary judgment motion. *Id.* at 435–36. On appeal, Schuck attempted to raise new arguments he had not previously presented in opposition to summary judgment. *Id.* at 437.

The Court rejected these new arguments, explaining:

> The gist of a summary judgment motion is to require the adverse party to show that it has a claim or defense, *and has evidence sufficient to allow a jury to find in its favor on that claim or defense*. The opposition sets it out, and then the *movant has a fair chance in its reply papers to show why the respondent's evidence fails to establish a genuine issue of material fact*.

Id. at 439 (citing *Carmen v. San Francisco Unified School Dist.,* 237 F.3d 1026, 1031 (9th Cir. 2001)) (emphasis added). Thus, the Court found that the defendant had "filed a properly supported motion for summary judgment that showed why, both factually and legally, [the defendant] should prevail", but "Schuck did not offer or identify competent evidence to contradict or cast doubt on the facts [the defendant] identified as undisputed." *Id.* at 438. "On this record, summary judgment in favor of [the defendant] was appropriate". *Id.*

Here, Defendants admit that they are objecting to entry of Judgment on grounds not raised at summary judgment. *See* Ex. 2. As in *Schuck*, Defendants have waived any such arguments or defenses. If Defendants had any viable affirmative defenses or objections to Plaintiffs' evidence of damages (which they do not), it was Defendants' responsibility to present those defenses or objections in their SJ Opposition. *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1030–31 (Nev. 2005). Because they failed to do so, entry of Judgment in conformance with Plaintiffs' evidence of damages is appropriate, as there are no issues of fact left for trial.

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C. THERE IS NEITHER A PROCEDURAL BASIS NOR ANY PRACTICAL REASON TO PROCEED TO TRIAL IN THIS ACTION, AS ALL RELEVANT AND ADMISSIBLE EVIDENCE HAS ALREADY BEEN PRESENTED TO THE COURT

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)). Because Plaintiffs have already laid all their evidence of damages properly before the Court and Defendants failed in their SJ Opposition to create a genuine dispute of material fact for trial (and are now procedurally barred from submitting any new evidence or defenses) there is no procedural basis to proceed to trial.

Nor is there any practical reason to do so. At trial, Plaintiffs would only present the same evidence to support their damages that they attached to their SJ Motion. The single exhibit attached to Defendants' SJ Opposition does nothing to counter Plaintiffs' evidence of damages. Because Defendants have waived any arguments or objections not previously raised, and may not present new evidence not previously disclosed during discovery, there is nothing that Defendants could present at a bench trial that would negate the calculation of Plaintiffs' damages as set forth in the attached proposed Judgment. *See* NRCP 37(c)(1) ("If a party fails to provide information or identify a witness as required by Rule 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless."). The Nevada Supreme Court has made clear that "trial by ambush will not be tolerated." *Pierce Lathing Co. v. ISEC, Inc.*, 114 Nev. 291, 296, 956 P.2d 93, 96 (1998). Plaintiffs therefore respectfully request that the Court act in the best interest of judicial economy (and the limited time and resources of the parties), enter the proposed Judgment attached hereto at Exhibit 1 and vacate the trial.

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III. CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court grant the instant motion and enter Judgment in Plaintiffs' favor and against Defendants, jointly and severally, as enumerated in the proposed Judgment attached hereto.

Dated this 10th day of February, 2021.

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

HOLLEY DRIGGS

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 10th day of February, 2021, I did cause a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR 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

EXHIBIT 1

HOLLEY DRIGGS

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counter-defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **JUDGMENT AGAINST DEFENDANTS BOUR ENTERPRISES, LLC, MULUGETA BOUR, AND HILENA MENGESHA**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counter-defendants,	

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

HOLLEY DRIGGS

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 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 January 28, 2021 in the amount of $22,070.40;
4. Post-judgment interest at 9.5% (Wall Street Journal prime rate 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 January 28, 2021, until satisfied in full;
5. **For a total amount of $161,524.90, plus post-judgment interest at $36.30 per day from January 28, 2021, until satisfied in full.**

IT IS SO ORDERED.

Respectfully submitted by:

HOLLEY DRIGGS

/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

Attorneys for Plaintiffs/Counter-defendants

Approved as to form and content by:

BLACK & WADHAMS

Refused To Sign
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Defendants/Counterclaimants

HOLLEY DRIGGS

EXHIBIT 2

Sandy Sell

Subject: FW: A-19-794864-C - Judgment - 4520 Arville et al vs Bour Enterprises, LLC et al

From: Rusty Graf <rgraf@blackwadhams.law>
Sent: Friday, January 29, 2021 5:10 PM
To: Sandy Sell <ssell@nevadafirm.com>; DC5Inbox@ClarkCountyCourts.us; mosert@clarkcountycourts.us; Dept05LC@clarkcountycourts.us
Cc: Tom Edwards <tedwards@nevadafirm.com>; Jessica M. Lujan <jlujan@nevadafirm.com>; Rusty Graf <Rgraf@blacklobello.law>; Diane Meeter <dmeeter@blackwadhams.law>
Subject: RE: A-19-794864-C - Judgment - 4520 Arville et al vs Bour Enterprises, LLC et al

Defendants object to the entry of Judgment as they have plead affirmative defenses not addressed in the Motion for summary Judgment, including and not limited to Plaintiffs' failure to mitigate or take reasonable steps to release the property.

Thank you.

Sent from Mail for Windows 10

From: Sandy Sell
Sent: Friday, January 29, 2021 5:07 PM
To: DC5Inbox@ClarkCountyCourts.us; mosert@clarkcountycourts.us; Dept05LC@clarkcountycourts.us
Cc: Tom Edwards; Jessica M. Lujan; Rusty Graf; Diane Meeter
Subject: A-19-794864-C - Judgment - 4520 Arville et al vs Bour Enterprises, LLC et al

Good afternoon:

Please see the attached proposed Judgment Against Defendants Bour Enterprises, LLC; Mulegeta Bour and Hilena Mengesha from Plaintiffs for the above referenced matter. Opposing counsel, cc'd on this email, has refused to sign. No competing Judgment is expected.

Thank you.

Sandy Sell
Legal Assistant
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

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Sandy Sell

Subject: FW: A-19-794864-C - Judgment - 4520 Arville et al vs Bour Enterprises, LLC et al

From: Rusty Graf <rgraf@blackwadhams.law>
Sent: Tuesday, February 2, 2021 4:14 PM
To: Moser, Tara <mosert@clarkcountycourts.us>
Cc: Sandy Sell <ssell@nevadafirm.com>; DC5Inbox <DC5Inbox@clarkcountycourts.us>; Lee, Han <Dept05LC@clarkcountycourts.us>; Tom Edwards <tedwards@nevadafirm.com>; Jessica M. Lujan <jlujan@nevadafirm.com>; Rusty Graf <rgraf@blacklobello.law>; Diane Meeter <dmeeter@blackwadhams.law>; Mark Lounsbury <mlounsbury@blackwadhams.law>
Subject: Re: A-19-794864-C - Judgment - 4520 Arville et al vs Bour Enterprises, LLC et al

No competing judgment is expected from the Defense, because We object to the entry of any judgment at this juncture. We will address the issue in a motion to the Court.

Sent from Rusty Graf's iPhone.
Please note my new email is: rgraf@blackwadhams.law.

On Feb 2, 2021, at 4:11 PM, Moser, Tara <mosert@clarkcountycourts.us> wrote:

Thank you.

Sincerely,

Tara Moser
Judicial Executive Assistant to Judge Veronica Barisich
Eighth Judicial District Court, Department 5
Phone: 702-671-4360
Fax: 702-671-4359
Email: Mosert@clarkcountycourts.us

From: Sandy Sell [mailto:ssell@nevadafirm.com]
Sent: Tuesday, February 2, 2021 4:10 PM
To: DC5Inbox; Moser, Tara; Lee, Han
Cc: Tom Edwards; Jessica M. Lujan; Rusty Graf; Diane Meeter
Subject: A-19-794864-C - Judgment - 4520 Arville et al vs Bour Enterprises, LLC et al

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Good afternoon:

Pursuant to the email we received this morning, please see the attached revised proposed Judgment Against Defendants Bour Enterprises, LLC; Mulegeta Bour and Hilena Mengesha from Plaintiffs for the above referenced matter. Opposing counsel is cc'd on this email. No competing Judgment is expected.

Thank you.

Sandy Sell
Legal Assistant
Las Vegas Office

<image001.png>

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

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EXHIBIT 3

Sandy Sell

From: NoReply@clarkcountycourts.us
Sent: Tuesday, February 2, 2021 11:22 AM
To: Sandy Sell
Subject: Eighth Judicial District Court - Proposed Order Returned

A-19-794864-C - Judgment - 4520 Arville et al vs Bour Enterprises, LLC et al

Your proposed order or document requiring a judge's signature to the court has been returned for the following reason(s): Although the January 29, 2021 order indeed stated that a separate judgment will be issued, there is no explanation as to where the calculation came from. Thus, the court cannot verify where the judgment amount ordered is correct and thus, cannot sign this judgment at this time. Thank you.

EXHIBIT 4

HOLLEY DRIGGS

Sandy Sell

From: Sandy Sell
Sent: Tuesday, February 2, 2021 4:10 PM
To: DC5Inbox@ClarkCountyCourts.us; mosert@clarkcountycourts.us; Dept05LC@clarkcountycourts.us
Cc: Tom Edwards; Jessica M. Lujan; Rusty Graf; Diane Meeter
Subject: A-19-794864-C - Judgment - 4520 Arville et al vs Bour Enterprises, LLC et al
Attachments: Judgment Against Defendants Bour Enterprises, LLC Mulegeta Bour and Hilena Mengesha.pdf; Judgment Against Defendants.docx

Good afternoon:

Pursuant to the email we received this morning, please see the attached revised proposed Judgment Against Defendants Bour Enterprises, LLC; Mulegeta Bour and Hilena Mengesha from Plaintiffs for the above referenced matter. Opposing counsel is cc'd on this email. No competing Judgment is expected.

Thank you.

Sandy Sell
Legal Assistant
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

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Electronically Filed
2/24/2021 11:33 AM
Steven D. Grierson
CLERK OF THE COURT

OPPO
BLACK & WADHAMS
Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorneys for Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No.: A-19-794864-C Dept. No.: 8 **OPPOSITION TO PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT ON OST** **Hearing Date: 03/02/21** **Hearing Time: 9:00 AM**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X; Counter-Defendants,	

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Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

Case Number: A-19-794864-C

COMES NOW Defendants/Counterclaimants Bour Enterprises, LLC (hereinafter "Bour"); Mulugeta Bour; and Hilena Mengesha (hereinafter collectively the "Defendants"), by and through their attorney of record, Rusty Graf, Esq., of the law firm of Black & Wadhams, and hereby file their Opposition to Plaintiffs/Counter-Defendants' 4520 Arville and McKinley Manor (hereinafter collectively the "Plaintiffs") Motion for Entry of Judgment on an Order Shortening Time. This Opposition is based upon the following Memorandum of Points and Authorities, the pleadings, and papers on file herein, and any argument entertained by the Court at the hearing of this matter.

Dated this 24th day of February 2021.

BLACK & WADHAMS

RUSTY GRAF, ESQ.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Attorney for Defendants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

MEMORANDUM OF POINTS AND AUTHORITIES

I.

PERTINENT FACTUAL BACKGROUND

As the Court is aware, this matter arises from two (2) lease agreements formed between Defendants and Plaintiffs for certain commercial properties commonly known as 4560 S. Arville St., C10, 23, 24 and 29, Las Vegas, NV 89103 (hereinafter the "Subject Properties"). Plaintiffs have alleged that Defendants breached those leases and subsequently brought their Complaint which asserted causes of action for: (1) breach of lease; (2) breach of guaranties; (3) breach of the implied covenant of good faith and fair dealing; (4) unjust enrichment; and (5) declaratory relief as to the validity and enforceability of the leases. *See Plaintiffs' Complaint, Pg.3-5.* Defendants answered that Complaint and asserted both counterclaims and affirmative defenses to Defendants

causes of action. Those counterclaims included: (1) constructive eviction; (2) breach of lease; (3) breach of the implied covenant of good faith and fair dealing; (4) declaratory relief as to Plaintiffs' actions/inactions constituting constructive eviction and as to Defendants not being liable for rent or other additional charges under the leases. *See Defendants' Answer and Counterclaims, Pg. 10-13*. The affirmative defenses asserted by Defendants included: (1) that Plaintiffs' actions were the proximate cause of their damages; (2) that Plaintiffs failed to mitigate their damages; (3) that any damages Plaintiffs' incurred were caused, in part or in whole, by their own negligence and as a result they are either barred from recovery or, in the alternative, Defendants are entitled to an offset; and (4) that the doctrines of novation, accord and satisfaction, and recoupment either bar Plaintiffs from recovery or, in the alternative, require the amount of damages to be reduced accordingly. *Id. at 4-6.*

On December 1, 2020, Plaintiffs' filed their Motion for Summary Judgment regarding their breach of contract claims. Therein, Plaintiffs' argued that Summary Judgment was appropriate because there was no dispute of material fact as to the existence of the leases and they were entitled to judgment as a matter of law because: (1) there is no implied warranty of habitability or fitness for a particular purpose in commercial leases; (2) issues with parking did not justify breach of the leases; and (3) the doctrine of constructive eviction does not create any implied duties. *See Plaintiffs' Motion for Summary Judgment, Pg. 8-14.* The Motion for Summary Judgment did not include any actual calculation of damages and merely attached as Exhibits 5 and 6 tenant ledgers which were not cited within the body of the motion or otherwise discussed at all. *See Plaintiffs' Motion for Summary Judgment generally; see also Plaintiffs' Motion for Summary Judgment Exhibits 5 & 6.*

The Court has since granted Defendants' Motion for Summary Judgment in an Order entered on January 28, 2021. Therein, it was stated as Conclusions of Law that: (1) "[t]he Leases

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and Guaranties are valid, fully executed contracts"; (2) "Plaintiffs fully performed under the terms of the Leases and Guaranties"; (3) "Defendants breached the Leases and Guaranties by abandoning the Premises early, without authorization, and failing to pay all monthly rent payments due under the Leases"; and (4) "Plaintiffs incurred damages as a result of Defendants' non-payment of rent due and owing under the Leases and personal Guaranties." *See Order Granting Summary Judgment, Pg. 7-8.* There were no further Findings of Fact or Conclusions of Law which addressed the affirmative defenses asserted by Defendants or related to any calculation of damages by Plaintiffs. *Id.* There was no specific finding as to an amount of damage to be awarded either. Nor was there a finding as to the amount that should be entered. Thus, the Plaintiffs have filed this motion seeking a specific judgment amount.

II.

LEGAL ARGUMENT

Plaintiffs have now brought their Motion for Entry of Judgment, arguing that it is appropriate because, following the Court granting the Motion for Summary Judgment, "all that is left to be done in this action is to enter Judgment in accordance with the evidence of Plaintiffs' damages, which was submitted with Plaintiffs' Motion for Summary Judgment, and which is accurately represented in the proposed Judgment attached hereto." *See Motion for Entry of Judgment, Pg. 2.* The fundamental flaw in this request is the fact that, as stated above, the Motion for Summary Judgment and resulting Order did not address either: (1) the validity and calculation of the amount of damages incurred; or (2) the validity of Defendants' affirmative defenses and the impact of those defenses on the sum of damages. *See Order Granting Summary Judgment.* Without an actual adjudication of these issues, it would be improper for judgment to be entered against Defendants' as requested by the instant Motion.

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More specifically, Plaintiffs argue in the instant Motion that the Court has found that Defendants "failed in their Opposition to cite evidence or authority demonstrating the existence of a genuine dispute of material fact for trial on the issue of whether Defendants breached the Leases and Guaranties, thereby relying solely on their constructive eviction theory to excuse their non-performance under the Leases and Guaranties." *See Motion for Entry of Judgment, Pg. 3.* Plaintiffs continue by stating that "[a] review of Defendants' summary judgment Opposition (the "SJ Opposition") confirms the same—no other affirmative defenses or disputes were presented" and, as the Court held that constructive eviction was not applicable and this was "the only defense raised in response" to Plaintiffs' Motion for Summary Judgment, "Defendants have waived the same and are thus not entitled to proceed to trial". *Id. at 3-4.* Plaintiffs attempt to support this argument by further asserting that their Motion for Summary Judgment "attached/cited sufficient evidence to support their breach of contract claims, including the element of damages." *Id. at 4.*

A. Proving the Element of Damages is Not Equivalent to Adjudication of the Calculation of Those Damages

Plaintiffs' are correct in citing case law which states that the elements of a breach-of-contract claim are proof of a valid contract, performance, or excuse of performance by the non-breaching party, breach by the defendant and damages, these are the elements of a breach of contract claim in Nevada. *Id. at 5.* However, Plaintiffs' use these elements to make the argument that proving the existence of damages is equivalent to proving that the amount of damages calculated and asserted is valid. *Id.* This is completely without legal foundation and contrary to common sense.

To reiterate, the affirmative defenses asserted by Defendants in this matter included: (1) that Plaintiffs' actions were the proximate cause of their own damages; (2) that Plaintiffs failed to mitigate their damages; (3) that any damages Plaintiffs' incurred were caused, in part or in whole,

by their own negligence and as a result they are either barred from recovery or, in the alternative, Defendants are entitled to an offset; and (4) that the doctrines of novation, accord and satisfaction, and recoupment either bar Plaintiffs from recovery or, in the alternative, require the amount of damages to be reduced accordingly. *See Defendants' Answer and Counterclaims, Pg. 4-6.* What all these affirmative defenses have in common is that, if found to be valid at trial, they would result in an offset or reduction of the damages due to Plaintiffs.

B. Legal Standard for Mitigating Damages

In Nevada, "a party cannot recover damages for loss that he could have avoided by reasonable efforts. *See Conner v. S. Nevada Paving, Inc., 103 Nev. 353, 355, 741 P.2d 800, 801 (1987).* The requirement that a party make those reasonable efforts to avoid damages through mitigation "begins when the breach is discovered." *Id.* The burden of proving failure to mitigate is on the breaching party, but "[i]t is impossible to determine which damages could have been mitigated without knowing when the breach occurred." *Id.* Here, Defendants' have argued that they had never breached the lease because they were constructively evicted by Plaintiffs and this was only adjudicated by the Plaintiffs' Motion for Summary Judgment. Thus, prior to that adjudication occurring, it was "impossible to determine which damages could have been mitigated" as it had not yet been established when the breach had occurred. *Id.* Therefore, though the burden of proof is on Defendants' to prove failure to mitigate damages, they did not have that burden in responding to a Motion for Summary Judgment that did not even address the Plaintiffs' asserted calculation of damages.

C. Defendants' Affirmative Defenses Have Not Been Waived and Must be Adjudicated

Further, consideration of these affirmative defenses reveals the logical flaw in Plaintiffs' argument that because the affirmative defenses were not specifically discussed in Defendants' Opposition to Plaintiffs' Motion for Summary Judgment, they were waived. This is illogical

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because it assumes that all affirmative defenses have relevance to a Motion for Summary Judgment. They do not. For example, why would Defendants' have argued that Plaintiffs' failed to mitigate their damages in the Opposition to the Motion for Summary Judgment? Failure to mitigate damages is not an element of breach of contract, nor is it a defense to the validity of a claim of breach of contract, it is a defense to the amount of damages a party asserts they have incurred as a result of a breach if that breach is found to have occurred. This makes it clear that any discussion of Plaintiffs' failure to mitigate their damages in Defendants' Opposition to the Motion for Summary Judgment would have been irrelevant and failure to do so does not constitute a waiver of that defense. The same applies to the other defenses stated above. Any affirmative defense that asserts a reduction or offset of damages should occur, rather than asserting the defense completely invalidates the underlying claim, is not waived simply by failing to discuss it in a context where its validity has no impact on the outcome (like a Motion for Summary Judgment).

Thus, though Plaintiffs may have met the element of damages for their breach of contract claims, it is nonsensical to now argue that simply establishing damages exist for the purposes of Summary Judgment means that any asserted calculation of those damages should now be deemed valid (particularly when the sum of damages weren't even discussed, merely attached as uncited exhibits). Therefore, it would be improper to enter judgment in this matter without an adjudication of the affirmative defenses which Defendants have asserted offset or reduce the damages incurred by Plaintiffs.

After briefly discussing the tenant ledgers attached as Exhibits to the Motion for Summary Judgment, which Plaintiffs' assert are the correct calculation of damages to be entered as a judgment, Plaintiffs again argue that "Defendants have not challenged the accuracy or authenticity of this evidence and have therefore waived their right to do so." *See Motion for Entry of Judgment, Pg. 6.* Again, even cursory consideration of the situation reveals fundamental flaws in this logic,

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the most important of which is the fact that do not have to challenge the accuracy or authenticity of this evidence to assert that it is not the correct calculation of damages. For example, if it were found at trial that Plaintiffs' failed to take any reasonable actions to mitigate their damages then the sum of those damages due to Plaintiffs' would be reduced or offset even if the numbers stated in those tenant ledgers were completely correct.

D. <u>The Failure to Mitigate Damages Defense Does Not Require Defendants' to Have Disputed Documentary Evidence Supporting Plaintiffs' Damages.</u>

Finally, Defendants' would emphasize the irony of Plaintiffs' argument that "[h]aving failed to dispute the straightforward documentary evidence supporting Plaintiffs' damages, all of which was attached to the SJ Motion, or otherwise raise their purported affirmative defenses in their SJ Opposition, Defendants have waived their right to proceed to trial in this matter" when the affirmative defenses in question do not attempt to dispute the validity of this documentary evidence but rather its applicability to determining the amount of damages actually incurred. In their Motion for Summary Judgment, Plaintiffs' very brief discussion of damages simply stated, "Defendants have been damaged in the amount of the unpaid rent and other charges required under the leases and guaranties" and cited to tenant ledgers for the Subject Properties. *See Plaintiffs' Motion for Summary Judgment, Pg. 8.* Defendants' did not dispute this assertion in their Opposition because they were aware that, if the Court found that the other elements of breach of contract existed, there would not be a valid argument that at least some damages had not been incurred by Plaintiffs' due to lost rent. However, this does not in any way amount to waiver of any argument over the amount of those damages. Specifically, relevant here, again, is the affirmative defense of failure to mitigate damages. Even if Defendants' conceded that the damage element of breach of contract claim was met if the Court found Constructive Eviction was not applicable, that in no way mean that

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Las Vegas, Nevada 89135
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Plaintiffs' fully complied with their duty to mitigate those damages and the impact of that failure on the amount of damages actually due from Defendants.

Finally, the last Conclusion of Law, does not make sense, let alone does it state a conclusion of law. Specifically, it provides:

> "8. Because the implied warranty of habitability is not recognized in commercial leases in Nevada, Defendants cannot prevail and Plaintiffs are entitled to judgment as a matter of law."

See Order Granting Summary Judgment. Assuming that the Court concurs with the finding of Senior Justice Cherry, that the implied warranty of habitability is not recognized by the courts of Nevada, it does not inexplicably follow that judgment as a matter of law then follows. Defendants have the burden of proof for the affirmative defenses asserted, and they can and will prove those affirmative defenses at the bench trial currently set. The Plaintiffs failed to pray for a judgment amount, knowing that the affirmative defense could offset those amounts, if any. Further, Defendants' opposition included the Declaration of Defendant Bour, included as Exhibit 1 to the Opposition, clearly refutes the damages amount and the reasons for the same.

Proof of the Affirmative defenses is also present in the lack of responses to the interrogatories by the Plaintiffs. See Exhibit "A". Particularly, Plaintiffs responded as follows:

> INTERROGATORY NO. 30: Please give step by step description of any actions taken to mitigate damages after Defendants informed you they would no longer be leasing the Subject Property.
>
> RESPONSE TO INTERROGATORY NO. 30: This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. Kendall v. GES Exposition Servs., Inc., 174 F.R.D. 684, 686 (D. Nev. 1997).

See Exhibit "A", p. 18. Further, the documents produced by the Plaintiffs and the Declaration of Bour attached to the Opposition to the Motion for Summary Judgment, substantiate the failure to mitigate. See Exhibit "B", 4520 Arville First Supplement to its NRCP 16.1 Production.

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III.

CONCLUSION

As discussed above, it is both legally incorrect and unsupported by this record for Plaintiffs' to argue that the failure to discuss affirmative defenses that were not relevant to the outcome of a Motion for Summary Judgment when the Plaintiff failed to pray for a judgment amount. Thus, those affirmative defenses must still be adjudicated before any judgment is entered. Therefore, Defendants' respectfully request that the Court deny Plaintiffs' Motion for Entry of Judgement and proceed with the Bench Trial currently set.

Dated this 24th day of February 2021.

BLACK & WADHAMS

RUSTY GRAF, ESQ.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Attorney for Defendants/Counterclaimants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & WADHAMS and that on the 24th day of February 2021, I caused the above and foregoing document entitled **OPPOSITION TO PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT ON AN ORDER SHORTENING TIME** to be served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

[X] by electronic service through Wiznet, Clark County Eighth Judicial District Court's electronic filing/service system;

[ ] pursuant to EDCR 7.26, to be sent via facsimile;

[ ] hand delivered to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

F. Thomas Edwards, Esq.
HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

An Employee of Black & Wadhams

EXHIBIT A

ELECTRONICALLY SERVED
4/17/2020 3:49 PM

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: 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 Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

Counterclaimants.

v.

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

Counterdefendants,

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

PLAINTIFF 4520 ARVILLE'S RESPONSES TO DEFENDANTS/ COUNTERCLAIMANTS' FIRST SET OF INTERROGATORIES TO PLAINTIFF 4520 ARVILLE

Plaintiff 4520 Arville ("Plaintiff"), by and through its attorneys, of the law firm of Holley Driggs, and pursuant to Rules 26 and 33 of the Nevada Rules of Civil Procedure, hereby answers Defendant Bour Enterprises' First Set of Interrogatories as follows:

HOLLEY DRIGGS

GENERAL OBJECTIONS

The objections set forth below are incorporated into Plaintiff's response to each interrogatory whether or not specific reference is made to such objection in the response to a particular interrogatory.

1. The following responses are made solely for this action. Each response is subject to all objections as to competence, relevance, privilege, materiality, propriety, admissibility, and any and all other objections and grounds that would require the exclusion of any statement contained herein if any questions were asked of, or if any statement contained herein were made by, or if any documents contained herein were offered by, a witness present and testifying in court, all of which objections are reserved and may be interposed at the time of any hearing on this action.

2. The following responses are based upon a reasonable and diligent search of the information and documents presently available to and within the custody, control or possession of Plaintiff. Plaintiff reserves the right to amend these responses, including objections, upon the discovery of additional information and documents. The fact that Plaintiff has responded to any interrogatory is not intended and shall not be construed as a waiver of all or any part of any objection to any interrogatory.

3. Plaintiff objects to each interrogatory to the extent that it seeks the disclosure of information protected by the attorney-client privilege and/or the attorney work product doctrine, or both, and its responses herein shall not be deemed to be any waiver of any such doctrine, privilege, or protection.

4. Plaintiff objects to each interrogatory to the extent that it seeks "all," "each," "any," or "every" document or information concerning various subjects or events, or pertaining to them in "any way," on the grounds that such interrogatories are overly broad, unduly burdensome, oppressive, vague, and ambiguous. Plaintiff construes such interrogatories to call for central facts currently known to it which directly support its contentions.

5. Plaintiff objects to each interrogatory to the extent that it seeks information not relevant to the subject matter of this action and/or is not reasonably calculated to lead to the discovery of admissible evidence.

HOLLEY DRIGGS

6. Plaintiff objects to each interrogatory on the grounds that each is premature. Plaintiff anticipates that it will identify additional witnesses, documents, and facts surrounding its contentions after it has had an opportunity to conduct additional discovery in this action.

RESPONSES TO FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1:

Please state when and where 4520 Arville, was formed, identify all individuals or entities who have possessed any ownership stake in 4520 Arville, from the formation of the entity to present, and identify all current and former managers and officers of the partnership.

RESPONSE TO INTERROGATORY NO. 1:

Objection. The formation, owners and managers of Plaintiff are not relevant or proportional to the needs of discovery in this case. These issues have no importance to resolving the issues at stake in the action. There is no benefit to this discovery to justify the burden or expense of the discovery. The request is overly broad as it has no limitation as to time. The request is overly broad as it is not limited to the persons that may have involvement in or knowledge of the issues regarding this litigation.

Without waiving these objections, Plaintiff was formed in California on or about August 30, 1996. On October 13, 2016, Kevin Donahoe became the co-manager of Plaintiff along with Edwin Praver. On December 8, 2018, when Mr. Praver passed away, Mr. Donahoe became the sole manager. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 2:

Name all experts you intend to call as witnesses and for each describe the nature of their specialties, their experience, training and medical affiliations, all opinions which they have reached/rendered and intend to give at trial in this matter and the factual basis for each such opinion. Please also attach to your answers to these interrogatories, copies of all written reports made by each expert and the expert's CV and/or resume.

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RESPONSE TO INTERROGATORY NO. 2:

Pursuant to NRCP 33(d), Plaintiff identifies Plaintiffs' Rebuttal Expert Disclosure Pursuant to NRCP 16.1(a)(2), which was electronically served upon Defendants on 3/23/2020 at 7:55 pm. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 3:

Please state the name, address, and contact information of each person known to you, your attorneys, agents or any investigators employed by you or your attorneys or by anyone acting on your behalf, having knowledge of facts relevant to the subject matter of this action.

For each such person, please state:

(a) The subject matter allegedly known by each such person regarding this matter;

(b) Whether any such person has provided to anyone a written, recorded, transcribed or other graphic statement or representation concerning the subject matter of this action; and

(c) Whether you intend to call the individual as a witness at the time of the trial.

RESPONSE TO INTERROGATORY NO. 3:

Pursuant to NRCP 33(d), Plaintiff identifies Plaintiffs/Counterdefendants' Initial Disclosure of Witnesses and Documents Pursuant to NRCP 16.1, including all supplements thereto. Plaintiff has not obtained any statements from potential witnesses. This request is premature as to who Plaintiff expects to call as a witness at the time of trial. That information will be provided in accordance with NRCP 16.1(a)(3). Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 4:

If you have obtained any written or recorded statements concerning the allegations contained in Plaintiffs' Compliant or in Defendants' Counterclaims, set forth the name and address of the person who gave the statement and wrote it, the date and content of the statement, and the present custodian of the statement.

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RESPONSE TO INTERROGATORY NO. 4:

Plaintiff has not obtained any statements from potential witnesses. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 5:

If you know the existence of any picture, movies, audiotapes, videotapes, diagrams, x-rays, documents, reports, or other objects (real evidence) related to the allegations contained in Plaintiffs' Complaint or in Defendants' Counterclaims or related to the issue of damages, state the nature, subject matter, date produced or obtained, add the name and address of the present custodian of each.

RESPONSE TO INTERROGATORY NO. 5:

Pursuant to NRCP 33(d), Plaintiff identifies Plaintiffs/Counterdefendants' Initial Disclosure of Witnesses and Documents Pursuant to NRCP 16.1, including all supplements thereto. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 6:

State whether you have ever named as a party in any administrative, civil, or criminal proceedings arising from a dispute with tenant over a building, structure, or other property you own, lease, or otherwise control. If yes, state the case name, case number, name of the complaining party, state, county and tribunal before whom the proceeding took place and the date you were first notified of the possibility of a claim and your insurance carrier at the time.

RESPONSE TO INTERROGATORY NO. 6:

Objection. Whether Plaintiff has been involved in any administrative, civil, or criminal proceedings with tenant regarding any building is not relevant or proportional to the needs of discovery in this case. These issues have no importance to resolving the issues at stake in the action. Any such information would be public and, therefore, is available to Defendants. There is no benefit to this discovery to justify the burden or expense of the discovery. The request is overly broad as it has no limitation as to time. The request is overly broad as it is not limited to the Subject Property.

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Without waiving these objections, other than the instant action, Plaintiff has never been named as a party in any administrative, civil, or criminal proceedings arising from a dispute with tenant over the Subject Property. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 7:

Set forth in detail the following information pertaining to all policies or agreements of liability insurance covering or pertaining to acts or omissions committed by or on your behalf at the time of the occurrences referenced in Plaintiff's Complaint, designating which, if any, are primary coverage and which are excess coverage: name and address of the insurance carrier, all limits of liability coverage, name and address of the named insured and policy number full description of acts or omissions to which coverage extends, full description of any and all exclusions, the dates of coverage, and the present custodian of the policy.

RESPONSE TO INTERROGATORY NO. 7:

Pursuant to NRCP 33(d), Plaintiff identifies Plaintiffs/Counterdefendants' Initial Disclosure of Witnesses and Documents Pursuant to NRCP 16.1, including all supplements thereto. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 8:

Set forth in detail the following information pertaining to all policies or agreements of liability insurance covering or pertaining to acts or omissions committed by or on your behalf at the time of the occurrences referenced in Defendants' Counterclaims, designating which, if any, are primary coverage and which are excess coverage: name and address of the insurance carrier, all limits of liability coverage, name and address of the named insured and policy number, full description of acts or omissions to which coverage extends, full description of any and all exclusions, the dates of coverage, and the present custodian of the policy.

RESPONSE TO INTERROGATORY NO. 8:

Pursuant to NRCP 33(d), Plaintiff identifies Plaintiffs/Counterdefendants' Initial Disclosure of Witnesses and Documents Pursuant to NRCP 16.1, including all supplements thereto. Plaintiff reserves the right to supplement or amend this response as discovery continues.

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INTERROGATORY NO. 9:

Please state any and all representations made by you to Defendants as to the fitness of the Subject Property for its intended use as a commercial business facility.

RESPONSE TO INTERROGATORY NO. 9:

Objection. This request is overly broad as it contains no limitation as to time.

Without waiving said objections, pursuant to NRCP 33(d), Plaintiff identifies the subject leases, which are Bates labeled as ARV00001-30 and ARV00034-63. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 10:

Please state any and all representations made by you to Defendants as to the availability of parking at the Subject Property.

RESPONSE TO INTERROGATORY NO. 10:

Objection. This request is overly broad as it contains no limitation as to time.

Without waiving said objections, pursuant to NRCP 33(d), Plaintiff identifies the subject leases, which are Bates labeled as ARV00001-30 and ARV00034-63. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 11:

Please state whether you have any training, policies, rules, regulations, procedures, protocols, guidelines, or standards concerning or referring to the maintenance of any building, structure, or other property which you own, lease, or otherwise control.

RESPONSE TO INTERROGATORY NO. 11:

Objection. As Defendants accepted the Subject Property in an "as is" condition and had the contractual obligation to maintain the Subject Property, whether Plaintiff has any training, policies, rules, regulations, procedures, protocols, guidelines, or standards concerning or referring to the maintenance regarding any building is not relevant or proportional to the needs of discovery in this case. These issues have no importance to resolving the issues at stake in the action. There is no benefit to this discovery to justify the burden or expense of the discovery. The request is

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overly broad as it has no limitation as to time. The request is overly broad as it is not limited to the Subject Property.

Without waiving said objections, pursuant to NRCP 33(d), Plaintiffs identifies the subject leases, which are Bates labeled as ARV00001-30 and ARV00034-63. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 12:

State whether you have any training, policies, rules, regulations, procedures, protocols, guidelines, or standards concerning or referring to safety inspections, environmental hazard inspections, and/or determinations of habitability for any building, structure, or other property which you own, lease, or otherwise control.

RESPONSE TO INTERROGATORY NO. 12:

Objection. As Defendants accepted the Subject Property in an "as is" condition and had the contractual obligation to inspect the Subject Property, whether Plaintiff has any training, policies, rules, regulations, procedures, protocols, guidelines, or standards concerning or referring to safety inspections, environmental hazard inspections, and/or determinations of habitability for any building is not relevant or proportional to the needs of discovery in this case. These issues have no importance to resolving the issues at stake in the action. There is no benefit to this discovery to justify the burden or expense of the discovery. The request is overly broad as it has no limitation as to time. The request is overly broad as it is not limited to the Subject Property. The definition of environmental hazard, including any condition that presents any risk, is so overly broad that it is meaningless. A door presents a risk that it could be shut on someone's hand. A stair presents a risk that someone could trip on it. A wall presents a risk that someone could run into it.

Without waiving said objections, pursuant to NRCP 33(d), Plaintiffs identifies the subject leases, which are Bates labeled as ARV00001-30 and ARV00034-63. Plaintiff reserves the right to supplement or amend this response as discovery continues.

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INTERROGATORY NO. 13:

Set forth any and all policies, rules, regulations, procedures, protocols, guidelines, or standards you use to determine whether a building, structure, or other property which you own, lease, or otherwise control is safe to use and/or occupy before it is leased to a tenant.

RESPONSE TO INTERROGATORY NO. 13:

Objection. As Defendants accepted the Subject Property in an "as is" condition and had the contractual obligation to inspect and maintain the Subject Property, whether Plaintiff has any policies, rules, regulations, procedures, protocols, guidelines, or standards used to determine whether any building is safe to use and/or occupy before it is leased to a tenant for any building is not relevant or proportional to the needs of discovery in this case. These issues have no importance to resolving the issues at stake in the action. There is no benefit to this discovery to justify the burden or expense of the discovery. The request is overly broad as it has no limitation as to time. The request is overly broad as it is not limited to the Subject Property.

Without waiving said objections, pursuant to NRCP 33(d), Plaintiffs identifies the subject leases, which are Bates labeled as ARV00001-30 and ARV00034-63. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 14:

Set forth any and all policies, rules, regulations, procedures, protocols, guidelines, or standards you use to ensure a building, structure, or other property which you own, lease, or otherwise control is free of substances which are harmful to a person's health, including but not limited to all potential environmental hazards.

RESPONSE TO INTERROGATORY NO. 14:

Objection. As Defendants accepted the Subject Property in an "as is" condition and had the contractual obligation to inspect and maintain the Subject Property, whether Plaintiff has any policies, rules, regulations, procedures, protocols, guidelines, or standards used to determine whether any building is free of substances is not relevant or proportional to the needs of discovery in this case. These issues have no importance to resolving the issues at stake in the action. There is no benefit to this discovery to justify the burden or expense of the discovery. The request is

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overly broad as it has no limitation as to time. The request is overly broad as it is not limited to the Subject Property. The definition of environmental hazard, including any condition that presents any risk, is so overly broad that it is meaningless. A door presents a risk that it could be shut on someone's hand. A stair presents a risk that someone could trip on it. A wall presents a risk that someone could run into it.

Without waiving said objections, pursuant to NRCP 33(d), Plaintiffs identifies the subject leases, which are Bates labeled as ARV00001-30 and ARV00034-63. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 15:

Please give a step by step description of the method any employee, contractor, or other individual, uses to perform inspections of any building, structure, or other property which you own, lease, or otherwise control.

RESPONSE TO INTERROGATORY NO. 15:

Objection. As Defendants accepted the Subject Property in an "as is" condition and had the contractual obligation to inspect and maintain the Subject Property, Plaintiff's method of inspection for any building is not relevant or proportional to the needs of discovery in this case. These issues have no importance to resolving the issues at stake in the action. There is no benefit to this discovery to justify the burden or expense of the discovery. The request is overly broad as it has no limitation as to time. The request is overly broad as it is not limited to the Subject Property. The request is overly broad and unduly burdensome because any inspection will necessarily depend on the circumstances such that this request is not answerable. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 16:

Please give a step by step description of the training you provide employees, contractors, or any other individuals you use to conduct inspections of any building, structure, or other property which you own, lease, or otherwise control.

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RESPONSE TO INTERROGATORY NO. 16:

Objection. As Defendants accepted the Subject Property in an "as is" condition and had the contractual obligation to inspect and maintain the Subject Property, Plaintiff's training regarding inspections for any building is not relevant or proportional to the needs of discovery in this case. These issues have no importance to resolving the issues at stake in the action. There is no benefit to this discovery to justify the burden or expense of the discovery. The request is overly broad as it has no limitation as to time. The request is overly broad as it is not limited to the Subject Property.

Without waiving said objections, Plaintiff utilizes the services of an experienced commercial property manager, such that Plaintiff does not train the property manager in the performance of its duties. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 17:

Please give a step by step description of the method any employee, contractor, or other individual, uses to determine if any building, structure, or other property which you own, lease, or otherwise control is safe to occupy and free of any environmental hazards.

RESPONSE TO INTERROGATORY NO. 17:

Objection. As Defendants accepted the Subject Property in an "as is" condition and had the contractual obligation to inspect and maintain the Subject Property, Plaintiff's method of inspection for any building is not relevant or proportional to the needs of discovery in this case. These issues have no importance to resolving the issues at stake in the action. There is no benefit to this discovery to justify the burden or expense of the discovery. The request is overly broad as it has no limitation as to time. The request is overly broad as it is not limited to the Subject Property. The definition of environmental hazard, including any condition that presents any risk, is so overly broad that it is meaningless. A door presents a risk that it could be shut on someone's hand. A stair presents a risk that someone could trip on it. A wall presents a risk that someone could run into it. The request is overly broad and unduly burdensome because any inspection will

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necessarily depend on the circumstances such that this request is not answerable. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 18:

Please state any risks you are aware of that are associated with presence of environmental hazards within commercial properties and identify when you became aware of those risks.

RESPONSE TO INTERROGATORY NO. 18:

Objection. As Defendants accepted the Subject Property in an "as is" condition and had the contractual obligation to inspect and maintain the Subject Property, any conceivable risks within any commercial property are not relevant or proportional to the needs of discovery in this case. These issues have no importance to resolving the issues at stake in the action. There is no benefit to this discovery to justify the burden or expense of the discovery. The request is overly broad as it has no limitation as to time. The request is overly broad as it is not limited to the Subject Property. The phrase "any risk" is so overly broad that it renders the request unanswerable. The definition of environmental hazard, including any condition that presents any risk, is so overly broad that it is meaningless. A door presents a risk that it could be shut on someone's hand. A stair presents a risk that someone could trip on it. A wall presents a risk that someone could run into it. This request is unintelligible. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 19:

Please state whether you inform the lessees of any building, structure, or other property which you own, lease, or otherwise control of any risks associated the presence of any type of environment hazards within the building, structure, or other property.

RESPONSE TO INTERROGATORY NO. 19:

Objection. As Defendants accepted the Subject Property in an "as is" condition and had the contractual obligation to inspect and maintain the Subject Property, any conceivable risks within any commercial property are not relevant or proportional to the needs of discovery in this case. These issues have no importance to resolving the issues at stake in the action. There is no benefit to this discovery to justify the burden or expense of the discovery. The request is overly

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broad as it has no limitation as to time. The request is overly broad as it is not limited to the Subject Property or the subject Defendants. The definition of environmental hazard, including any condition that presents any risk, is so overly broad that it is meaningless. A door presents a risk that it could be shut on someone's hand. A stair presents a risk that someone could trip on it. A wall presents a risk that someone could run into it. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 20:

Identify in detail, each statement, action, or omission, or declaration against interest, whether oral or written, by conduct, silence, or otherwise, which you contend was made by or on behalf of Defendants and provide the place and date when each such statement was made and any witnesses thereto.

RESPONSE TO INTERROGATORY NO. 20:

Objection. This request asks Plaintiff to recite the precise time and place any Defendant made any statement or took any action, at any time, to anybody, regarding any subject. This request is overly broad because it contains no subject matter limitation. The request is overly broad as it has no limitation as to time. The request is overly broad as it is not limited to the Subject Property or the subject Defendants. This discovery is not relevant or proportional to the needs of discovery in this case. These issues have no importance to resolving the issues at stake in the action. There is no benefit to this discovery to justify the burden or expense of the discovery. This request is so overly broad it is simply not answerable. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 21:

For each expert you intend to utilize for any aspect of this litigation, please identify each expert and list each time that expert has rendered a report for an insurance company or attorney regarding a medical malpractice claim, a personal injury claim, or worker's compensation claim within the last five years. For each such evaluation and/or report, indicate whether the evaluation and/or report was done on behalf of the plaintiff or defendant, and the compensation paid to the expert.

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RESPONSE TO INTERROGATORY NO. 21:

Objection. As this case does not involve a medical malpractice claim, a personal injury claim or a worker's compensation claim, this discovery is not relevant or proportional to the needs of discovery in this case. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 22:

Please indicate the annual income reported on the income tax returns for the last five years for any expert you intend to utilize in this case for any reason, including the amounts of money reported on any W-2 and 1099 forms to specifically identify each entity that provided the 1099 form and the amount of compensation of each 1099 form.

RESPONSE TO INTERROGATORY NO. 22:

Objection. The personal financial information of Plaintiffs' expert is protected information that is not subject to discovery. The personal financial information of Plaintiffs' expert is not relevant or proportional to the needs of discovery in this case. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 23:

For each expert you intend to utilize for any aspect of this litigation, indicate each and every document any such expert reviewed prior to rendering his/her expert opinions, and identify the factual basis for such expert opinion.

RESPONSE TO INTERROGATORY NO. 23:

Pursuant to NRCP 33(d), Plaintiff identifies Plaintiffs' Rebuttal Expert Disclosure Pursuant to NRCP 16.1(a)(2), which was electronically served upon Defendants on 3/23/2020 at 7:55 pm. Plaintiff reserves the right to supplement or amend this response as discovery continues.

INTERROGATORY NO. 24:

If you contend that Defendants have made any false statement or claims with regard to any aspect of your Complaint or Defendant's Counterclaims, please identify any and all such statements you claim are false and the reason(s) you claim these statements are false.

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RESPONSE TO INTERROGATORY NO. 24:

Objection. This request is overly broad as it is not focused on any particular statement. This request also includes discrete subparts that exceed the number of interrogatories permitted by NRCP 33(a)(1). Accordingly, Plaintiff will attempt to respond to the discrete subparts of this interrogatory until the limit is reached and will not provide any further response.

24. Defendants falsely denied paragraph 1 of Plaintiff's Complaint because this Court has jurisdiction over this matter because the acts and omissions of the Defendants occurred in Clark County, Nevada.

25. Defendants falsely denied paragraph 2 of Plaintiff's Complaint venue is proper in Clark County because a substantial part of the events or omissions giving rise to the claim occurred in Clark County, Nevada.

26. Defendants falsely denied paragraph 3 of Plaintiff's Complaint because Plaintiff 4520 Arville is, and at all times relevant herein was, a general partnership existing under the laws of the State of California.

27. Defendants falsely denied paragraph 4 of Plaintiff's Complaint because Plaintiff McKinley Manor is, and at all relevant times herein was, a general partnership existing under the laws of the State of Idaho.

28. Defendants falsely denied paragraph 6 of Plaintiff's Complaint because the Guarantors executed personal guaranties of the relevant leases.

29. Defendants falsely denied paragraph 10 of Plaintiff's Complaint because on one or more occasions, Defendants have failed or refused to make certain payments to Plaintiffs as and when due under the terms of the Leases and the Guaranties.

30. Defendants falsely denied paragraph 11 of Plaintiff's Complaint because Defendants' obligations under the Leases and Guaranties remain in full force and effect.

31. Defendants falsely denied paragraph 12 of Plaintiff's Complaint because Defendants' failure to make payments under the Leases and Guaranties is unexcused and amounts to a complete breach thereof.

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32. Defendants falsely denied paragraph 13 of Plaintiff's Complaint because Plaintiffs have placed all necessary demands upon Defendants for performance of their obligations under the Leases and Guaranties, but Defendants have failed or refused to cure their defaults.

33. Defendants falsely denied paragraph 15 of Plaintiff's Complaint because the Leases constitute valid, binding and enforceable contracts between Plaintiffs and Lessee.

34. Defendants falsely denied paragraph 16 of Plaintiff's Complaint because through its actions described in the Complaint, Lessee has materially breached its obligations under the Leases.

35. Defendants falsely denied paragraph 17 of Plaintiff's Complaint because Plaintiffs have duly performed all conditions, covenants, obligations and promises on its part to be performed, except to the extent excused or waived by Lessee's breaches as described herein.

36. Defendants falsely denied paragraph 18 of Plaintiff's Complaint because Plaintiffs have also placed demand upon Lessee for performance, but Lessee failed or refused to perform, and continues to fail or refuse to perform, its obligations under the Leases.

37. Defendants falsely denied paragraph 19 of Plaintiff's Complaint because as a direct and proximate result of Lessee's breaches of the Leases, Plaintiffs have been damaged in a substantial sum, in excess of $15,000.

38. Defendants falsely denied paragraph 20 of Plaintiff's Complaint because Plaintiffs have, by reason of the foregoing, been required to utilize the services of an attorney and are entitled to recover their attorneys' fees and costs from Lessees.

39. Defendants falsely denied paragraph 22 of Plaintiff's Complaint because the Guaranties constitute valid, binding and enforceable contracts between Plaintiffs and the Guarantors.

40. Defendants falsely denied paragraph 23 of Plaintiff's Complaint because through their actions described in the Complaint, the Guarantors are in complete default of their obligations under the Guaranties.

Plaintiff reserves the right to supplement or amend this response as discovery continues.

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INTERROGATORY NO. 25:

Please state any financial or ownership interest you may now possess or have ever possessed in 4520 Arville.

RESPONSE TO INTERROGATORY NO. 25:

This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 686 (D. Nev. 1997).

INTERROGATORY NO. 26:

Please give a step by step description of the method you use to inspect the condition of a building, structure, or other property you own, lease, or control before it is leased to a tenant.

RESPONSE TO INTERROGATORY NO. 26:

This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 686 (D. Nev. 1997).

INTERROGATORY NO. 27:

If an inspection of the Subject Property was not conducted prior to Plaintiffs entering into a lease with Defendants, please state why.

RESPONSE TO INTERROGATORY NO. 27:

This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 686 (D. Nev. 1997).

INTERROGATORY NO. 28:

Please state how and when you became aware of the injuries Defendants allege were caused by environmental hazards within the Subject Property.

RESPONSE TO INTERROGATORY NO. 28:

This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 686 (D. Nev. 1997).

INTERROGATORY NO. 29:

Please state how and when you became aware that Defendants would no longer be leasing the Subject Property.

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RESPONSE TO INTERROGATORY NO. 29:

This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 686 (D. Nev. 1997).

INTERROGATORY NO. 30:

Please give step by step description of any actions taken to mitigate damages after Defendants informed you they would no longer be leasing the Subject Property.

RESPONSE TO INTERROGATORY NO. 30:

This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 686 (D. Nev. 1997).

INTERROGATORY NO. 31:

Please state whether you have any training, policies, rules, regulations, procedures, protocols, guidelines or standards concerning or referring to cleaning, repairing, or otherwise altering a building, structure, or other property after a lease with a tenant has ended and give a step by step description of any actions taken to clean, repair, and or alter the Subject Property after you became aware Defendants would no longer be leasing the Subject Property. If any individual or business was hired to assess, clean, repair, other otherwise alter the Subject Property in any way after you became aware Defendants would no longer be leasing the Subject Property, please state their name and contact information.

RESPONSE TO INTERROGATORY NO. 31:

This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 686 (D. Nev. 1997).

INTERROGATORY NO. 32:

Please state the name and contact information of any individual or business or other tenant who leased the Subject Property prior to Defendants and list the dates of those leases.

RESPONSE TO INTERROGATORY NO. 32:

This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 686 (D. Nev. 1997).

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INTERROGATORY NO. 33:

Please state the name and contact information of any individual or business or other tenant who has leased any building, structure, unit, or other property immediately adjacent or connected to the Subject Property and list the dates of those leases.

RESPONSE TO INTERROGATORY NO. 33:

This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 686 (D. Nev. 1997).

INTERROGATORY NO. 34:

Please state whether you have ever had another tenant complain of environmental hazards, the presence of harmful or foreign substances, the safety, and/or the habitability of any building, structure, or other property which you own, lease, or otherwise control and state with particularity the content of those complaints, the location of the property being complained of, any subsequent cleaning, repair, remediation, alteration, or other steps you took to address the complaint, and the name and contact information of that tenant.

RESPONSE TO INTERROGATORY NO. 34:

This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 686 (D. Nev. 1997).

INTERROGATORY NO. 35:

Please state whether the Subject Property has been leased and/or sold since May 2018, the name and contact information of any individual or business who has leased or purchased the Subject Property, and, if applicable, the date of the lease and/or sale.

RESPONSE TO INTERROGATORY NO. 35:

This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 686 (D. Nev. 1997).

INTERROGATORY NO. 36:

Please state the time, means, and content of any and all communications you had with Defendants prior to their entering into the lease for the Subject Property, while Defendants were leasing the subject property, and after Defendants left the Subject Property in May of 2018.

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RESPONSE TO INTERROGATORY NO. 36:

This Request exceeds the total interrogatories allowed by NRCP 33(a)(1), such that no response is necessary. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 686 (D. Nev. 1997).

Dated this 17th day of April, 2020.

HOLLEY DRIGGS

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

Attorneys for Plaintiffs

HOLLEY DRIGGS

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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Kevin Donahoe, am the manager of 4520 Arville's tenancy in common with regard to the subject property in this action. I have read PLAINTIFF 4520 ARVILLE'S RESPONSES TO DEFENDANTS/COUNTERCLAIMANTS' FIRST SET OF INTERROGATORIES TO PLAINTIFF 4520 ARVILLE, know the contents thereof, and the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters I believe to be true.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 14th day of April, 2019.

Signature

HOLLEY DRIGGS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 17th day of April, 2020, I did cause a true and correct copy of the foregoing **PLAINTIFF 4520 ARVILLE'S RESPONSES TO DEFENDANTS/COUNTERCLAIMANTS' FIRST SET OF INTERROGATORIES TO PLAINTIFF 4520 ARVILLE**, 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 B

ELECTRONICALLY SERVED
1/27/2020 3:12 PM

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: jlujan@nevadafirm.com
HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 8 **PLAINTIFFS/ COUNTERDEFENDANTS' FIRST SUPPLEMENTAL DISCLOSURE OF WITNESSES AND DOCUMENTS PURSUANT TO NRCP 16.1**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

Plaintiffs 4520 ARVILLE, and MCKINLEY MANOR ("Plaintiffs"), by and through their attorneys of record, Holley Driggs Walch Fine Puzey Stein & Thompson, hereby submit their First

Supplemental Disclosures Pursuant to NRCP 16.1. These disclosures are based on information reasonably available to Plaintiffs as of this date, recognizing that the investigation continues and that discovery has just begun. Plaintiffs reserve the right to supplement or modify this initial disclosure statement at any time as additional information becomes available during the course of discovery. **New information in bold.**

In making these disclosures, Plaintiffs do not purport to identify every individual, document, data compilation, or tangible thing possibly relevant to this lawsuit. Rather, Plaintiffs' disclosure represents a good faith effort to identify discoverable information they currently and reasonably believe may be used to support their claims and defenses as required by NRCP 16.1. Furthermore, Plaintiffs make these disclosures without waiving their right to object to the production of any document, data compilations, or tangible thing disclosed on the basis of any privilege, work product, relevancy, undue burden, or other valid objection. These disclosures do not include information that may be used solely for impeachment purposes. While making these disclosures, Plaintiffs reserves among other rights, (1) the right to object on the grounds of competency, privilege, work product, relevancy and materiality, admissibility, hearsay, or any other proper grounds to the use of any disclosed information, for any purpose in whole or in part in this action or any other action, and (2) the right to object on any and all grounds, at any time, to any discovery request or motion relating to the subject matter of this disclosure.

The following disclosures are made subject to the above objections and qualifications.

A. <u>WITNESSES</u>

1. Person Most Knowledgeable of 4520 Arville
   c/o Holley Driggs Walch Fine Puzey Stein & Thompson
   400 South Fourth Street, Third Floor
   Las Vegas, Nevada 89101
   (702) 791-0308

The PMK of 4520 Arville, a California general partnership, is expected to have information regarding the facts and circumstances at issue in this action.

2. Person Most Knowledgeable of McKinley Manor
   c/o Holley Driggs Walch Fine Puzey Stein & Thompson
   400 South Fourth Street, Third Floor
   Las Vegas, Nevada 89101

HOLLEY DRIGGS
WALCH FINE PUZEY STEIN THOMPSON

(702) 791-0308

The PMK of McKinley Manor, an Idaho general partnership, is expected to have information regarding the facts and circumstances at issue in this action.

3. David Burns
   c/o Holley Driggs Walch Fine Puzey Stein & Thompson
   400 South Fourth Street, Third Floor
   Las Vegas, Nevada 89101
   (702) 791-0308

David Burns is expected to have information regarding the facts and circumstances at issue in this action.

4. Kevin Donahoe
   c/o Holley Driggs Walch Fine Puzey Stein & Thompson
   400 South Fourth Street, Third Floor
   Las Vegas, Nevada 89101
   (702) 791-0308

Kevin Donahoe is expected to have information regarding the facts and circumstances at issue in this action.

5. Person Most Knowledgeable for Bour Enterprises, LLC
   c/o Black & LoBello
   10777 W. Twain Ave., Suite 300
   Las Vegas, Nevada 89135
   (702) 869-8801

The PMK of Bour Enterprises is expected to have information regarding the facts and circumstances at issue in this action.

6. Mulugeta Bour
   c/o Black & LoBello
   10777 W. Twain Ave., Suite 300
   Las Vegas, Nevada 89135
   (702) 869-8801

Mr. Bour is expected to have information regarding the facts and circumstances at issue in this action.

7. Hilena Mengesha
   c/o Black & LoBello
   10777 W. Twain Ave., Suite 300
   Las Vegas, Nevada 89135
   (702) 869-8801

HOLLEY DRIGGS
WALCH FINE PUZEY STEIN THOMPSON

Ms. Mengesha is expected to have information regarding the facts and circumstances at issue in this action.

Plaintiffs incorporate by reference all documents produced by any other parties in this action. Plaintiffs reserve the right to supplement their list of witnesses as the identity of additional witnesses becomes known during the course of discovery.

B. DOCUMENTS

Pursuant to NRCP 16.1(a)(1)(B), Plaintiff hereby produces the following documents:

Document Description	**Bates Nos.**
C-23 & 24 Lease, Addendum and Guaranty	ARV000001 – ARV000030
C-23 & 24 Ledger	ARV000031 – ARV000033
C-10 & 29 Lease, Addendum and Guaranty	ARV000034 – ARV000063
C-10 & 29 Ledger	ARV000064 – ARV000066
April 17, 2018 correspondent to Plaintiffs	ARV000067
April 24, 2018, correspondence to Defendants	ARV000068 – ARV000069
May 3, 2018 correspondence to Plaintiffs	ARV000070 – ARV000072
May 7, 2018 email exchange between counsel	ARV000073
Costar Listing	**ARV000074**
Realnex Listing	**ARV000075 – ARV000079**

Plaintiffs incorporate by reference all documents produced by any other parties in this action. Plaintiffs reserve the right to supplement their list of documents as the existence of additional documents becomes known during the course of discovery.

C. DAMAGES

Pursuant to the C-23 & 24 Lease, Addendum and Guaranty, Plaintiff is entitled to recover $62,223.08, as detailed in the C-23 & 24 Ledger, plus interest equal to the prime rate reported in the Wall Street Journal plus 4% pursuant to Section 13.5 of the Lease, plus attorney fees and costs.

Pursuant to the C-10 & 29 Lease, Addendum and Guaranty, Plaintiff is entitled to recover $77,231.42, as detailed in the C-10 & 29 Ledger, plus interest equal to the prime rate reported in the Wall Street Journal plus 4% pursuant to Section 13.5 of the Lease, plus attorney fees and costs.

Plaintiffs reserve their rights to supplement this disclosure as additional information becomes available through discovery or by other means.

///

HOLLEY DRIGGS
WALCH FINE PUZEY STEIN THOMPSON

D. INSURANCE AGREEMENTS

Not applicable to Plaintiffs.

Dated this 27th day of January, 2020.

HOLLEY, DRIGGS, WALCH,
FINE, PUZEY, STEIN & THOMPSON

/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

HOLLEY DRIGGS
WALCH FINE PUZEY STEIN THOMPSON

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs Walch Fine Puzey Stein & Thompson and that on this 27th day of January, 2020, I did cause a true and correct copy of the foregoing **PLAINTIFFS/COUNTERDEFENDANTS' FIRST SUPPLEMENTAL DISCLOSURE OF WITNESSES AND DOCUMENTS PURSUANT TO NRCP 16.1**, to be served upon each of the parties listed below via electronic service through the Court's Odyssey File and Service System:

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10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

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

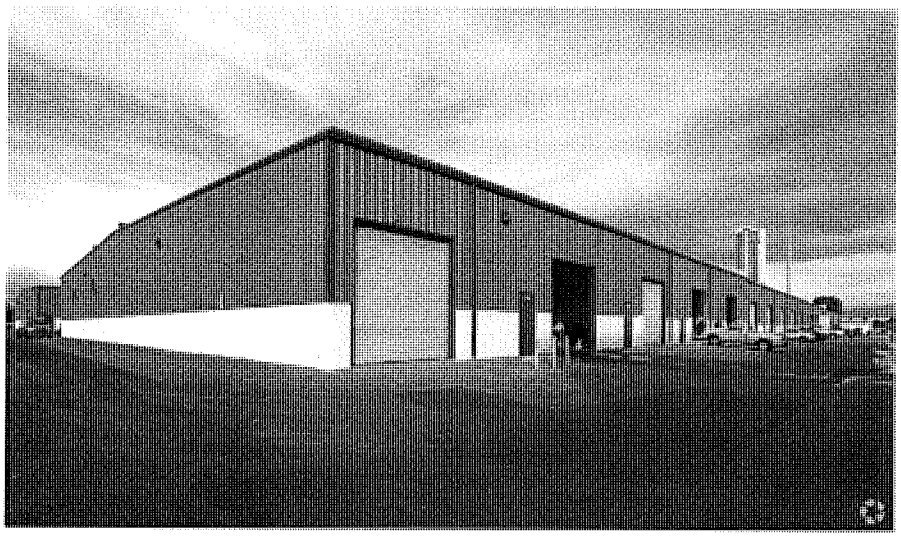
/s/ Sandy Sell
An employee of HOLLEY DRIGGS WALCH FINE PUZEY STEIN & THOMPSON

HOLLEY DRIGGS WALCH FINE PUZEY STEIN THOMPSON

Lease Availability Report

4560 Arville St

Las Vegas, NV 89103 - West Las Vegas Ind Submarket



BUILDING

Type:	**Class C Industrial**
Subtype:	**Warehouse**
Tenancy:	**Multiple**
Year Built:	**1986**
RBA:	**85,080 SF**
Floors:	**1**
Typical Floor:	**85,080 SF**

AVAILABILITY

Min Divisble:	**1,500 SF**
Max Contig:	**4,560 SF**
Total Available:	**10,620 SF**
Asking Rent:	**$$7.20 - $8.40/NNN**

EXPENSES PER SF

Taxes:	**$0.47 (2012)**
Opex:	**$1.68 (2012)**
Total Expenses:	**$2.15 (2012)**

SPACES

Floor	Suite	Use	Type	SF Avail	Flr Contig	Bldg Contig	Rent	Occupancy	Term
P 1st	C10	Industrial	Direct	4,560	4,560	4,560	$7.20/NNN	Vacant	2 - 5 Yrs
P 1st	C23/C2	Industrial	Direct	4,560	4,560	4,560	$7.20/NNN	Vacant	2 - 5 Yrs
P 1st	C1	Office	Direct	1,500	1,500	1,500	$8.40/NNN	Vacant	Negotiable

LOADING

Docks:	**None**	Drive Ins:	**38 tot./10'w x 12'h**
Cross Docks:	**None**	Rail Spots:	**None**

FEATURES

Bus Line

LAND

Land Area:	**4.73 AC**
Zoning:	**M-1**
Parcel	**162-19-701-008**

TRANSPORTATION

Parking: 40 free Surface Spaces are available; Ratio of 0.70/1,000 SF

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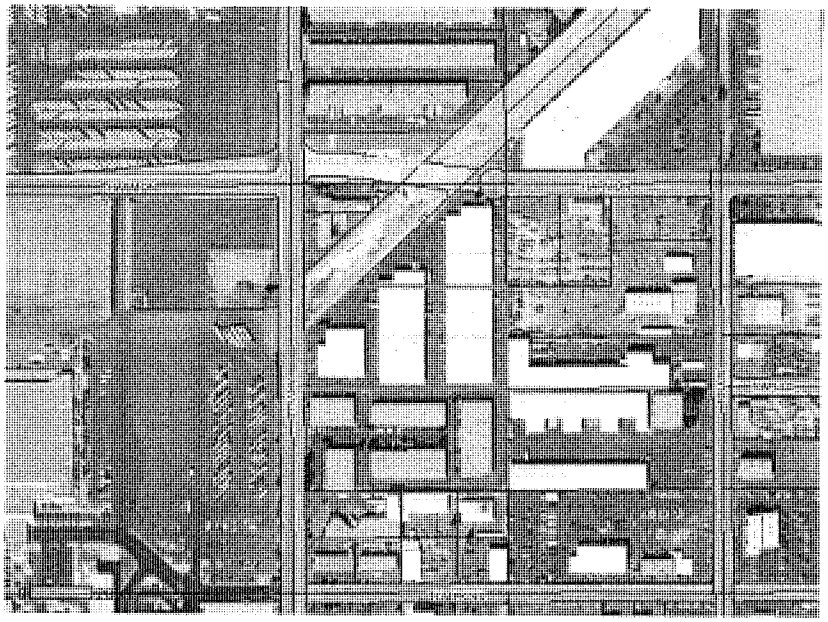
ARV000074

AI000611

Arville Industrial Park

4560 S. Arville Street, Las Vegas, NV 89103
INDUSTRIAL FOR LEASE

LISTING ID: 117594
Status: Active
Prepared By: Kevin Donahoe
Created On: September 16, 2019



Offering Summary

Co-op Commission	3.00 %
SF/Month	$0.60 - $0.75
SF/Year	$7.20 - $9.00
Available	1,500 - 4,560 SF
CAM	.22
Min Divis	1,500 SF
Max Contig	4,560 SF
Cross Streets	Arville St & Tropicana Ave
Building Size	159,060 SF
Year Built	1985
Zoning	M-1
Gas	Yes
Water	Yes

Property Type

Industrial, Industrial Business Park, Manufacturing, Warehouse

Property Description

Great central location, competitive lease rates, with spaces from 2,280 square feet. Fully sprinklered buildings with skylights and 12' x 12' roll-up doors.

Area Description

Located on South Arville Street between West Flamingo Road and West Tropicana Avenue with easy access to the Strip and I-15.

Highlights

Immediate occupancy
Grade level loading with community well dock access
Fire sprinklered
Evaporative Cooling
Additional access from Harmon Avenue

Kevin Donahoe
President
Commercial Specialists
(702) 364-0909
kdonahoe@commercialspecialists.com

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Arville Industrial Park

4560 S. Arville Street, Las Vegas, NV 89103

INDUSTRIAL FOR LEASE

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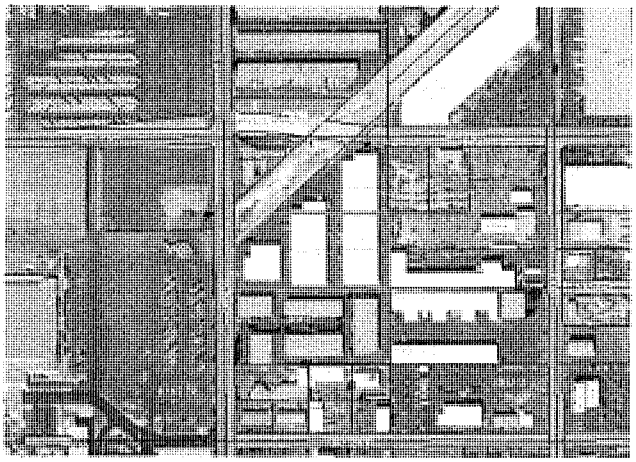

Kevin Donahoe
President
Commercial Specialists
(702) 364-0909
kdonahoe@commercialspecialists.com

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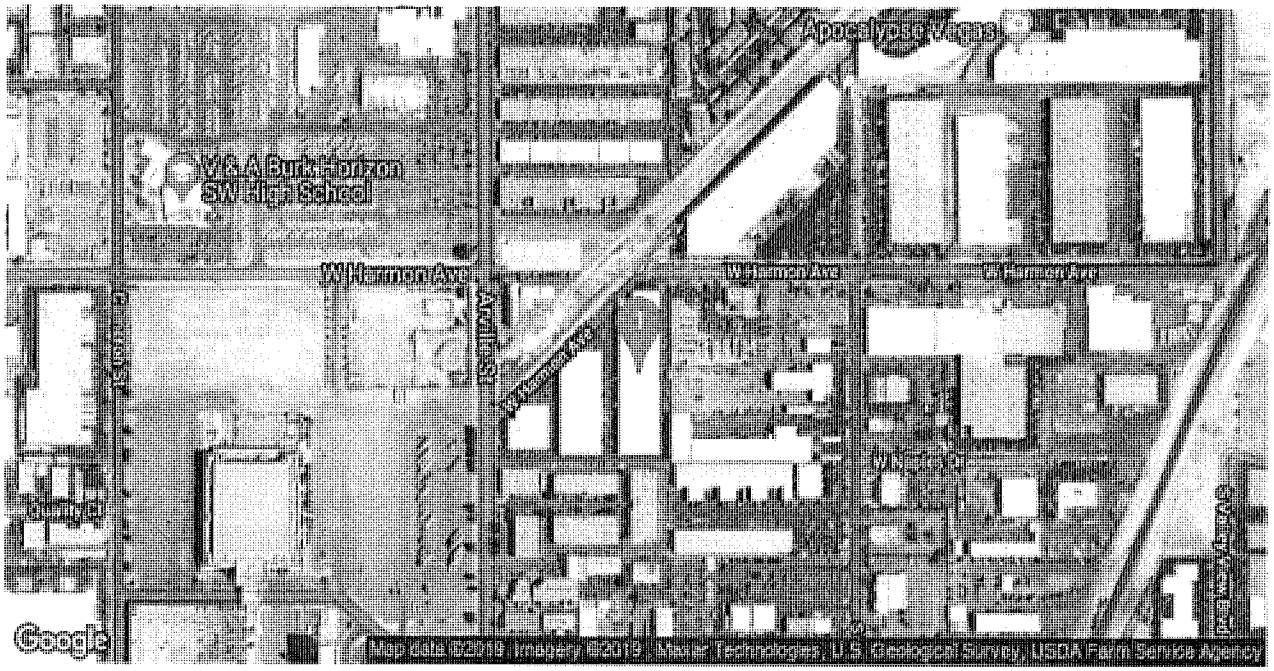

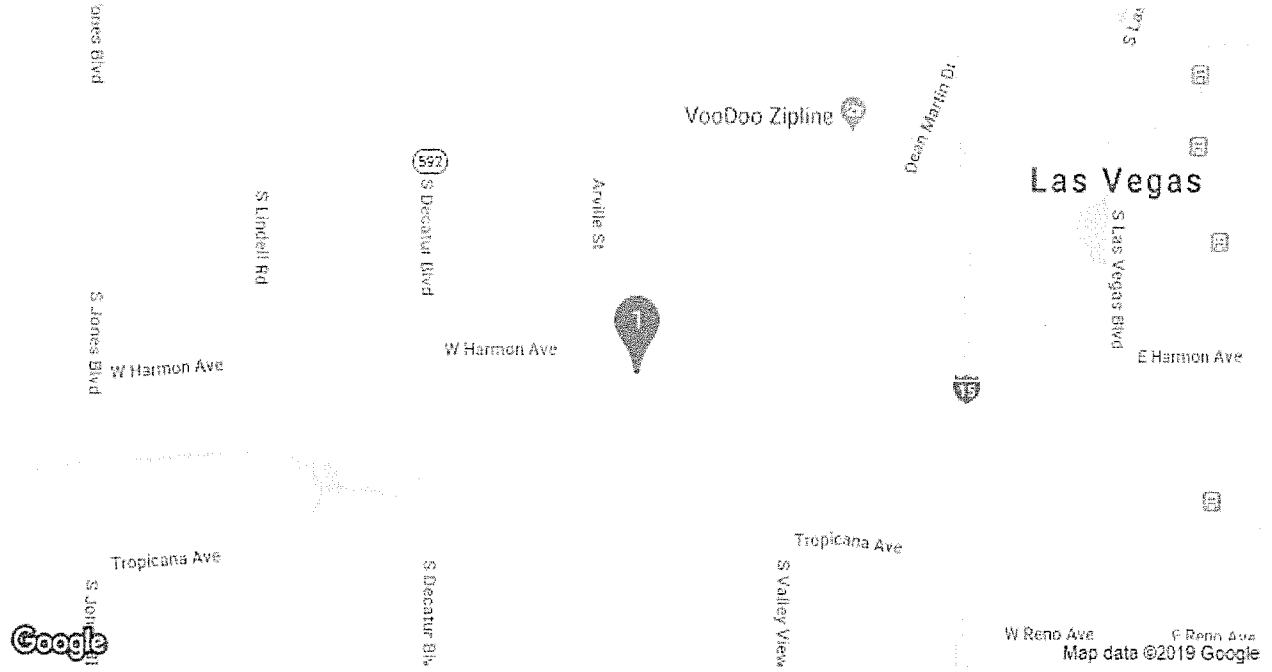

Kevin Donahoe
President
Commercial Specialists
(702) 364-0909
kdonahoe@commercialspecialists.com

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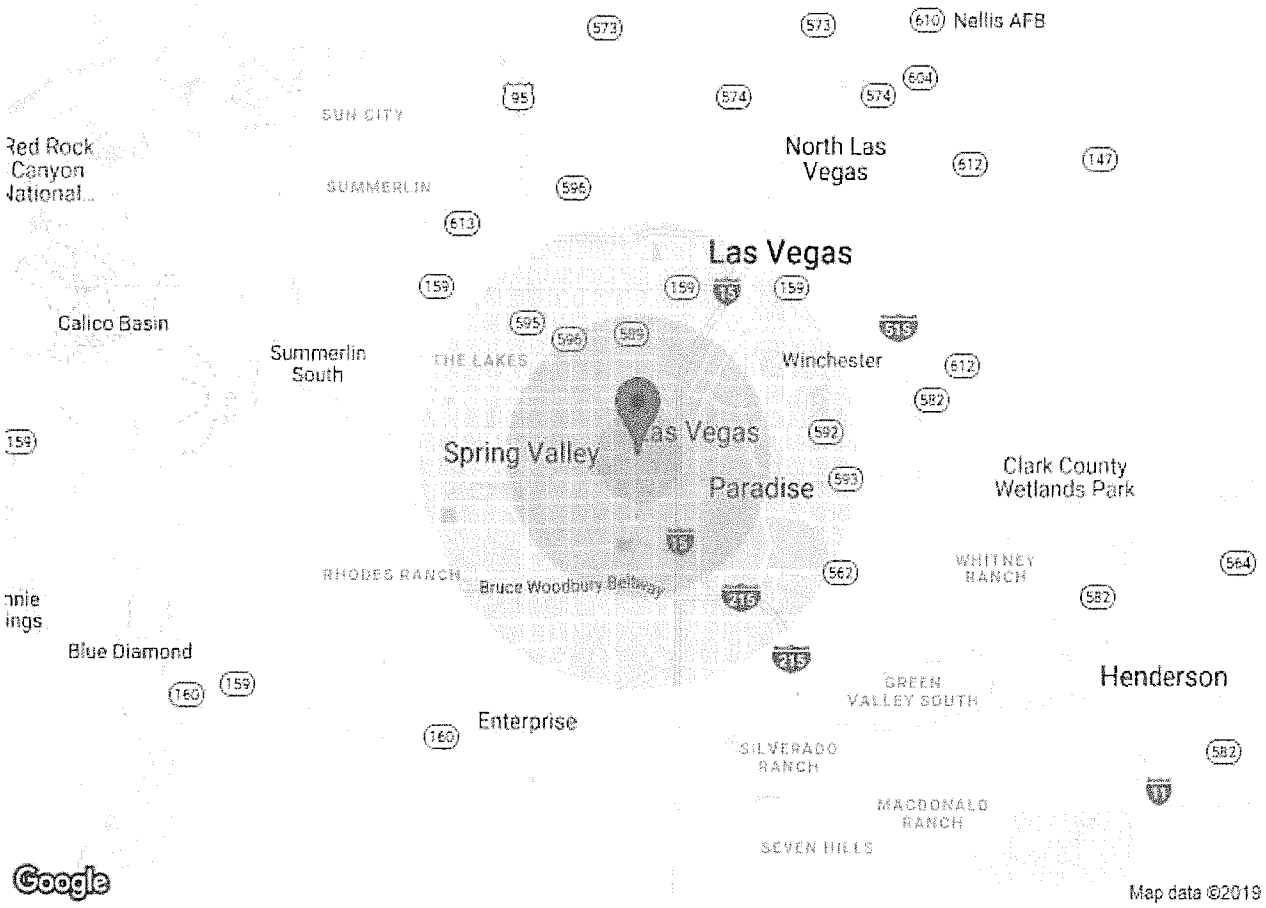
ARV000077

Arville Industrial Park

4560 S. Arville Street, Las Vegas, NV 89103
INDUSTRIAL FOR LEASE

LISTING ID: 117594
Status: Active
Prepared By: Kevin Donahoe
Created On: September 16, 2019



POPULATION	1 MILE	3 MILES	5 MILES
Total Population	19,633	133,035	373,626
Female Population	9,507	66,026	187,592
Male Population	10,126	67,009	186,034

HOUSEHOLDS & INCOME	1 MILE	3 MILES	5 MILES
Housing Units	12,922	81,549	200,139
Median Income	44,210	42,552	48,535
Household Income < 100k	8,585	49,446	128,168
100k > Household Income < 200k	527	4,493	17,543
Household Income > 200k	63	952	3,739

Kevin Donahoe
President
Commercial Specialists
(702) 364-0909
kdonahoe@commercialspecialists.com

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Arville Industrial Park

4560 S. Arville Street, Las Vegas, NV 89103
INDUSTRIAL FOR LEASE

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Space Details

Floor/Suite	Space Available	Min Divisible	Max Contiguous	Lease Rate	Date Available	Sublease
C-1	1,500	1,500	1,500	$0.75 /sf/m $9.00 /sf/yr	-	No

Space Description: Corner location with good visibility and access. Warehouse with office, restroom and grade level 12' x 12' roll up door. Space is 30' wide x 50' deep.

Lease Type	NNN Lease	**Warehouse %**	100	**Heating**	-
Lease Terms	2-5 years	**Broadband**	Yes	**Power**	-
CAM	.22	**Sprinklers**	Yes	**Dock Doors**	-
Load Factor	-	**Clear Height**	-	**Grade Doors**	1

Floor/Suite	Space Available	Min Divisible	Max Contiguous	Lease Rate	Date Available	Sublease
C-23, 24	4,560	4,560	4,560	$0.60 /sf/m $7.20 /sf/yr	-	No

Space Description: Unit is 60' wide and 76' deep with a single office. The unit ideal for shop use or storage.

Lease Type	NNN Lease	**Warehouse %**	90	**Heating**	-
Lease Terms	2-5 Years	**Broadband**	Yes	**Power**	-
CAM	.22	**Sprinklers**	Yes	**Dock Doors**	-
Load Factor	-	**Clear Height**	-	**Grade Doors**	2

Floor/Suite	Space Available	Min Divisible	Max Contiguous	Lease Rate	Date Available	Sublease
C-10 & 29	4,560	4,560	4,560	$0.60 /sf/m $7.20 /sf/yr	-	No

Space Description: Unit is 30' wide and 152' deep with a single office. There are (2) 12' x 12' roll-up doors are at each end of the warehouse for easy pull-in/pull-out.

Lease Type	NNN Lease	**Warehouse %**	95	**Heating**	-
Lease Terms	2-5 Years	**Broadband**	Yes	**Power**	-
CAM	.22	**Sprinklers**	Yes	**Dock Doors**	-
Load Factor	-	**Clear Height**	-	**Grade Doors**	2

Kevin Donahoe
President
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kdonahoe@commercialspecialists.com

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2/26/2021 9:07 AM
Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR ENTRY OF JUDGMENT** **Date of Hearing: March 2, 2021** **Time of Hearing: 9:00 a.m.**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

Plaintiffs/Counterdefendants, 4520 Arville, a California general partnership; and McKinley Manor, an Idaho general partnership (collectively "Plaintiffs"), by and through their attorneys of record, the law firm of Holley Driggs, hereby submit this reply in support of their

Case Number: A-19-794864-C

HOLLEY DRIGGS

motion for entry of Judgment in favor of Plaintiffs in accordance with the Court's January 28, 2021 Order Granting Plaintiffs' Motion for Summary Judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

- In Paragraph 23 of the Statement of Undisputed Material Facts of Plaintiffs' Motion for Summary Judgment, Plaintiffs expressly explained that their detailed computations of the damages for the Leases were set forth in Exhibits 5 and 6 to the Motion for Summary Judgement.

> 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.

See Motion for Summary Judgment, 7:16-19 (emphasis in original).

- Under the Legal Argument Section of Plaintiff's Motion for Summary Judgment, Plaintiffs walked through each element of the breach of contract claim, citing the specific evidence that supported each element – **including damages**.

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

See Motion for Summary Judgment, 8:13-19 (emphasis added).

- In the Declaration of Kevin Donahoe, attached to the Motion for Summary Judgment as Exhibit 4, Plaintiffs again articulated that their detailed computation of the damages for the two leases were set forth in Exhibits 5 and 6 to the Motion for Summary Judgement.

> 7. Attached to the Motion 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.

See Ex. 4 to Motion for Summary Judgment.

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- The ledgers attached as Exhibits 5 and 6 to the Motion for Summary Judgment set forth six (6) pages of a detailed damages computation, identifying each charge under the Leases, each payment under the Leases and the total amount owed under the Leases, $62,223.08 for Units C-23/24 (Ex. 5) and $77,231.42 Units C-10/29 (Ex. 6).
- There is no law, in Nevada or elsewhere, that these detailed computations in Exhibits 5 and 6 needed to be copied-and-pasted into the Motion for Summary Judgment for the amounts to be valid.
- At no point in the Motion for Summary Judgment did Plaintiffs request *partial* summary judgment. Rather, Plaintiffs requested summary judgment on the entirety of their breach of contract claims against Defendants, which necessarily includes damages.
- To the extent that Defendants believed that they had evidence that Plaintiffs failed to reasonably mitigate their damages, Defendants were required to present that evidence in their opposition to the Motion for Summary Judgment. *Schuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434-439, 436, 245 P.3d 542 (2010) (internal quotations omitted) (citing *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) and *Carmen v. San Francisco Unified School Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001)).
- Defendants' failure to present that evidence in opposition to the Motion for Summary Judgment means that the argument "is deemed to have been waived and will not be considered." *Schuck*, 126 Nev. at 436, 245 P.3d at 544.
- Without citing to any authority to support their position, Defendants attempt to argue that they were not required to raise their affirmative defenses in opposition to the Motion for Summary Judgment. However, this argument is undermined by the Nevada Supreme Court's decision in *Schuck* and caselaw from around the country holding that if an affirmative defense is not raised in opposition to summary judgment, it is waived.
    - "And we believe the trial court correctly held that Ecolab's failure to raise its affirmative defense of estoppel in opposition to Diversey Lever's summary judgment motion constituted an abandonment of the defense." *Diversey Lever, Inc. v. Ecolab, Inc.*, 191 F.3d 1350, 1352 (Fed. Cir. 1999).

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- "This Court finds that because Defendant failed to adequately develop and argue the affirmative defense of statute of limitations in her opposition to the motion for summary judgment, the statute of limitations defense is waived." *Vineberg v. Bissonnette*, 529 F. Supp. 2d 300, 305–06 (D.R.I. 2007), aff'd, 548 F.3d 50 (1st Cir. 2008).
- "Moreover, the defendants in their brief in opposition to UCB's motion for summary judgment develop no cogent legal argument in support of that [affirmative] defense. Thus, I consider that defense waived." *United Cent. Bank v. Wells St. Apartments, LLC*, 957 F. Supp. 2d 978, 988 (E.D. Wis. 2013), aff'd sub nom. *United Cent. Bank v. KMWC 845, LLC*, 800 F.3d 307 (7th Cir. 2015).
- "On the issue before us the law is well-settled and noncontroversial: an affirmative defense must be asserted in response to a motion for summary judgment. Otherwise the defense is waived." *Reiswerg v. Statom*, 926 N.E.2d 26, 33 (Ind. 2010).
- "While the pro se defendants asserted certain affirmative defenses in their answers, their memorandum in opposition to the commission's motion for summary judgment was not accompanied by any submissions or argument pursuant to Mass.R.Civ.P. 56, 365 Mass. 824 (1974), raising those defenses. We therefore consider them waived." *Historic Dist. Comm'n of Chelmsford v. Kalos*, 48 Mass. App. Ct. 919, 920, 725 N.E.2d 245, 247 (2000).
- "Rawl has waived these affirmative defenses by not asserting them in its own motion for summary judgment and, more importantly, by not asserting them in its opposition to the Trusts' motion for summary judgment." *United Mine Workers of Am. 1974 Pension Tr. v. Pittston Co.*, 793 F. Supp. 339, 344 (D.D.C. 1992).
- "We conclude that Mr. Bugg waived any claim with regard to his affirmative defenses because he failed to properly assert them in his

HOLLEY DRIGGS

opposition to the summary judgment motion." *Estate of Downs v. Bugg*, 242 S.W.3d 729, 733 (Mo. Ct. App. 2007).

- "If a defendant in its pleadings raises an affirmative defense, but subsequently fails to address the issue in opposition to a summary judgment motion, the affirmative defense is waived." *Abbott v. Bates*, 670 N.E.2d 916, 920 n.1 (Ind. Ct. App. 1996).
- "In addition, the failure to raise pleaded affirmative defenses in opposition to a motion for summary judgment renders those defenses abandoned and waived thus subject to dismissal." *Wells Fargo Bank, N.A. v. Burke*, 52 Misc. 3d 944, 951, 34 N.Y.S.3d 865, 872 (N.Y. Sup. Ct. 2016), aff'd, 166 A.D.3d 1054, 88 N.Y.S.3d 449 (2018) (citations omitted).

CONCLUSION

Plaintiffs adequately supported their claim for damages with admissible evidence in the form of the ledgers attached to the Motion for Summary Judgment as Exhibits 5 and 6. By failing to raise its affirmative defenses in response to this admissible evidence regarding damages, Defendants waived those affirmative defenses. Therefore, Plaintiffs are entitled to the entry of judgment against Defendants, jointly and severally, for the amounts due reflected in the ledgers, plus interest as provided in the Leases.

Dated this 26th day of February, 2021.

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

HOLLEY DRIGGS

HOLLEY DRIGGS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 26th day of February, 2021, I did cause a true and correct copy of the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR 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

Electronically Filed
03/04/2021 7:03 PM
CLERK OF THE COURT

ORDR
BLACK & LOBELLO
Tisha R. Black, Esq. (Bar No. 5876)
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
tblack@blackwadhams.law
Attorney for Defendants/Counterclaimants

DISTRICT COURT

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No.: A-19-794864-C Dept. No.: ~~8~~ 5
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X. Counter Defendants,	**Hearing Date: March 15, 2021** **Hearing Time: 9:00 a.m.**

ORDER GRANTING BLACK & LOBELLO NOTICE OF ATTORNEYS' LIEN' AND MOTION TO ADJUDICATE ATTORNEYS' LIEN FOR CLIENT'S FAILURE TO PAY FEES AND COSTS, TO PERFECT ATTORNEYS' LIEN AND FORECLOSE ON ATTORNEY'S LIEN

BLACK &LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

Black & LoBello filed its Motion to Adjudicate Attorneys' Lien for Client's Failure to Pay Fees and Costs, To Perfect Attorneys' Lien and Foreclose on Attorneys' Lien ("Motion for Attorney Lien) for Defendants, Bour Enterprises, Mulugeta Bour and Hilena Mengesha, (collectively "Plaintiffs")

The Defendants filed their Non-Opposition to the Motion for Attorney Lien.

The deadline for all interested parties in this matter to file an Opposition was February 23, 2021.

No Oppositions have been filed.

THIS COURT HEREBY FINDS that attorney fees incurred in this matter are reasonable.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Black & LoBello's valid, perfected attorneys' lien against Defendants should be reduced to judgment, along with the fees and costs for the instant motion and entered in favor of Black & LoBello in the amount of $27,517.72.

IT IS HEREBY FURTHER, ORDERED, ADJUDGED AND DECREED that Black & LoBello may collect said judgment by any and all legal means necessary including but not limited to garnishments, wage assignments and liens.

IT IS HEREBY FURTHER, ORDERED, ADJUDGED AND DECREED that judgment shall be entered upon the Notice of Entry of this Judgment in favor of Black & LoBello based upon its lid, perfected attorneys' lien against Defendants in the amount of $27,517.22.

IT IS HEREBY FURTHER, ORDERED, ADJUDGED AND DECREED that the hearing in this matter is hereby vacated.

THIS COURT HEREBY vacates the hearing date and time in this matter.

BLACK &LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

IT IS FURTHER ORDERED that a file-stamped copy of this order will be sent to:

Hilena Megaesha
office@stardusttransportation.com

Tony Bour
Tonybour2@gmail.com

Bour Enterprises, LLC
bac@wonnercarson.com

Bour Enterprises
c/o Brent Carson, Esq.
7935 W. Sahara Ave., #101
Las Vegas, NV 89117
bac@wonnercarson.com

Dated this ____ day of _____ 2021.

Dated this 4th day of March, 2021

V Barisich

DISTRICT COURT JUDGE

EFA F25 5725 0902
Veronica M. Barisich
District Court Judge

Submitted by:

BLACK & LOBELLO

Tisha R. Black, Esq.
Nevada Bar No. 5876
10777 West Twain Avenue, Suite 300
Las Vegas, NV 89135
Attorney for Defendants

BLACK &LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s)	CASE NO: A-19-794864-C DEPT. NO. Department 5

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/4/2021

Tom Edwards, Esq.	tedwards@nevadafirm.com
BRENT CARSON	bac@winnercarson.com
Diane Meeter	dmeeter@blacklobello.law
J. Graf	Rgraf@blacklobello.law
Sandra Sell	ssell@nevadafirm.com
Jessica Lujan	jlujan@nevadafirm.com
Marsha Stallsworth	mstallsworth@blackwadhams.law
Marsha Stallsworth	mstallsworth@blackwadhams.law

Electronically Filed
3/8/2021 1:39 PM
Steven D. Grierson
CLERK OF THE COURT

NOEJ
BLACK & LOBELLO
Tisha R. Black Esq. (Bar No. 5876)
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
tblack@blackwadhams.law
Defendants

DISTRICT COURT

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No.: A-19-794864-C Dept. No.: 5
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X. Counter Defendants,	**Hearing Date: March 16, 2021** **Hearing Time: 9:00 a.m.**

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

NOTICE OF ENTRY OF ORDER GRANTING BLACK & LOBELLO NOTICE OF ATTORNEYS' LIEN' AND MOTION TO ADJUDICATE ATTORNEYS' LIEN FOR CLIENT'S FAILURE TO PAY FEES AND COSTS, TO PERFECT ATTORNEYS' LIEN AND FORECLOSE ON ATTORNEY'S LIEN

PLEASE TAKE NOTICE, that an Order Granting Black & LoBello's Notice of

Case Number: A-19-794864-C

Attorneys' Lien and Motion to Adjudicate Attorneys' Lien for Client's Failure to Pay Fees and Costs, To Perfect Attorneys' Lien and Foreclose on Attorneys' Lien was entered by the Court on March 4, 2021, a copy of which is attached hereto as Exhibit A.

Dated this 8th day of March 2021.

BLACK & LOBELLO

/s/ Tisha R. Black, Esq.
Tisha R. Black, Esq.
Nevada Bar No. 5876
10777 West Twain Avenue, Suite 300
Las Vegas, NV 89135
Attorney for Plaintiffs

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 8th day of March 2021, I caused the above and foregoing document to be served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail in a sealed envelope upon which first class postage was prepaid certified return receipt in Las Vegas, Nevada to:

[X] by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;

F. Thomas Edwards, Esq.
HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, NV 89101
tedwards@nevadafirm.cm

[X] by direct email to:

Hilena Megaesha
office@stardusttransportation.com

Tony Bour
Tonybour2@gmail.com

Bour Enterprises, LLC
bac@wonnercarson.com

Bour Enterprises
c/o Brent Carson, Esq.
7935 W. Sahara Ave., #101
Las Vegas, NV 89117
bac@wonnercarson.com

[ ] pursuant to EDCR 7.26, to be sent via facsimile;

[ ] hand delivered to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

/s/ Tisha R. Black
An Employee of Black & Lobello

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

EXHIBIT A

ELECTRONICALLY SERVED
3/4/2021 7:04 PM

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03/04/2021 7:03 PM
CLERK OF THE COURT

ORDR
BLACK & LOBELLO
Tisha R. Black, Esq. (Bar No. 5876)
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
tblack@blackwadhams.law
Attorney for Defendants/Counterclaimants

DISTRICT COURT

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No.: A-19-794864-C Dept. No.: ~~8~~ 5
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X. Counter Defendants,	**Hearing Date: March 15, 2021** **Hearing Time: 9:00 a.m.**

ORDER GRANTING BLACK & LOBELLO NOTICE OF ATTORNEYS' LIEN' AND MOTION TO ADJUDICATE ATTORNEYS' LIEN FOR CLIENT'S FAILURE TO PAY FEES AND COSTS, TO PERFECT ATTORNEYS' LIEN AND FORECLOSE ON ATTORNEY'S LIEN

BLACK &LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

Black & LoBello filed its Motion to Adjudicate Attorneys' Lien for Client's Failure to Pay Fees and Costs, To Perfect Attorneys' Lien and Foreclose on Attorneys' Lien ("Motion for Attorney Lien) for Defendants, Bour Enterprises, Mulugeta Bour and Hilena Mengesha, (collectively "Plaintiffs")

The Defendants filed their Non-Opposition to the Motion for Attorney Lien.

The deadline for all interested parties in this matter to file an Opposition was February 23, 2021.

No Oppositions have been filed.

THIS COURT HEREBY FINDS that attorney fees incurred in this matter are reasonable.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Black & LoBello's valid, perfected attorneys' lien against Defendants should be reduced to judgment, along with the fees and costs for the instant motion and entered in favor of Black & LoBello in the amount of $27,517.72.

IT IS HEREBY FURTHER, ORDERED, ADJUDGED AND DECREED that Black & LoBello may collect said judgment by any and all legal means necessary including but not limited to garnishments, wage assignments and liens.

IT IS HEREBY FURTHER, ORDERED, ADJUDGED AND DECREED that judgment shall be entered upon the Notice of Entry of this Judgment in favor of Black & LoBello based upon its lid, perfected attorneys' lien against Defendants in the amount of $27,517.22.

IT IS HEREBY FURTHER, ORDERED, ADJUDGED AND DECREED that the hearing in this matter is hereby vacated.

THIS COURT HEREBY vacates the hearing date and time in this matter.

BLACK &LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

IT IS FURTHER ORDERED that a file-stamped copy of this order will be sent to:

Hilena Megaesha
office@stardusttransportation.com

Tony Bour
Tonybour2@gmail.com

Bour Enterprises, LLC
bac@wonnercarson.com

Bour Enterprises
c/o Brent Carson, Esq.
7935 W. Sahara Ave., #101
Las Vegas, NV 89117
bac@wonnercarson.com

Dated this ____ day of _____ 2021.

Dated this 4th day of March, 2021

V Barisich

DISTRICT COURT JUDGE

EFA F25 5725 0902
Veronica M. Barisich
District Court Judge

Submitted by:

BLACK & LOBELLO

Tisha R. Black, Esq.
Nevada Bar No. 5876
10777 West Twain Avenue, Suite 300
Las Vegas, NV 89135
Attorney for Defendants

BLACK &LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s)	CASE NO: A-19-794864-C DEPT. NO. Department 5

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/4/2021

Tom Edwards, Esq.	tedwards@nevadafirm.com
BRENT CARSON	bac@winnercarson.com
Diane Meeter	dmeeter@blacklobello.law
J. Graf	Rgraf@blacklobello.law
Sandra Sell	ssell@nevadafirm.com
Jessica Lujan	jlujan@nevadafirm.com
Marsha Stallsworth	mstallsworth@blackwadhams.law
Marsha Stallsworth	mstallsworth@blackwadhams.law

ELECTRONICALLY SERVED
3/9/2021 12:35 PM

Electronically Filed
03/09/2021 12:35 PM
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **ORDER GRANTING PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT** **Date of Hearing: March 2, 2021** **Time of Hearing: 9:00 a.m.**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

///

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Docket 83099 Document 2021-28553

Case Number: A-19-794864-C

HOLLEY DRIGGS

This matter came before the Court upon Plaintiffs' Motion for Entry of Judgment on March 2, 2021 at 9:00 a.m. F. Thomas Edwards, Esq., appeared on behalf of Plaintiffs. Rusty Graf, Esq., appeared on behalf of Defendants. The Court carefully reviewed and considered the relevant briefs and documents on file in this case and considered the oral arguments of counsel. After taking the matter under advisement, the Court FINDS and CONCLUDES as follows:

Per the Court's order entered January 28, 2021, the Court granted Plaintiffs' Motion For Summary Judgment Regarding Their Breach of Contract Claims. Per that order, the Court concluded that the undisputed material facts established 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 subject leases.

Therefore, the only remaining issue is whether a trial is necessary to prove Plaintiffs' damages. The damages Plaintiffs sought were set forth in the Exhibits 5 and 6 of the Plaintiffs' Motion For Summary Judgment Regarding Their Breach of Contract Claims, wherein Plaintiffs sought $62,223.08 for Units C-23/24 and $77,231.42 for Units C-10/29, for a total of $139,454.50. In response to Plaintiffs' Motion For Summary Judgment Regarding Their Breach of Contract Claims, Defendants did not challenge the appropriateness of the amounts and did not raise the applicable affirmative defenses with regard to the damages sought. Under *Shuck v. Signature Flight Support of Nevada*, *Inc.*, 126 Nev. 434, 436, 245 P.3d 542, 544 (2010), the arguments that were not raised in response to the original motion must be deemed to have been waived and cannot be subsequently considered. Thus, there are no issues of material fact with regard to Plaintiffs' damages and Plaintiffs' Motion for Entry of Judgment should be granted.

Good cause appearing, the Court ORDERS as follows:

1. IT IS HEREBY ORDERED that Plaintiffs' Motion for Entry of Judgment is hereby GRANTED in its entirety;

2. IT IS FURTHER ORDERED that a separate judgment shall issue in favor of Plaintiffs and against Defendants, jointly and severally, in the amount of $139,454.50, plus pre- and post-judgment interest at the rate provided for in the subject leases; and

HOLLEY DRIGGS

3. IT IS FURTHER ORDERED that the Pre-Trial Conference, Calendar Call and Bench Trial shall be VACATED.

IT IS SO ORDERED.

Dated this 9th day of March, 2021

99B 7B4 1827 0BBB
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

HOLLEY DRIGGS

/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

Attorneys for Plaintiffs/Counter-defendants

Approved as to form and content by:

BLACK & WADHAMS

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

Attorneys for Defendants/Counterclaimants

HOLLEY DRIGGS

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

BLACK & WADHAMS
ATTORNEYS AT LAW

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.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s)	CASE NO: A-19-794864-C DEPT. NO. Department 5

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/9/2021

Tom Edwards, Esq.	tedwards@nevadafirm.com
BRENT CARSON	bac@winnercarson.com
Diane Meeter	dmeeter@blacklobello.law
J. Graf	Rgraf@blacklobello.law
Sandra Sell	ssell@nevadafirm.com
Jessica Lujan	jlujan@nevadafirm.com
Marsha Stallsworth	mstallsworth@blackwadhams.law
Marsha Stallsworth	mstallsworth@blackwadhams.law

Electronically Filed
3/9/2021 4:07 PM
Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **NOTICE OF ENTRY OF ORDER**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

YOU, and each of you, will please take notice that an Order Granting Plaintiffs' Motion for Entry of Judgment in the above-entitled matter was filed and entered by the Clerk of the above-

///

HOLLEY DRIGGS

entitled Court on the 9th day of March, 2021, a copy of which is attached hereto.

Dated this 9th[th] 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 ORDER**, 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

ELECTRONICALLY SERVED
3/9/2021 12:35 PM

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03/09/2021 12:35 PM
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **ORDER GRANTING PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT** **Date of Hearing: March 2, 2021** **Time of Hearing: 9:00 a.m.**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

///

///

Case Number: A-19-794864-C

HOLLEY DRIGGS

This matter came before the Court upon Plaintiffs' Motion for Entry of Judgment on March 2, 2021 at 9:00 a.m. F. Thomas Edwards, Esq., appeared on behalf of Plaintiffs. Rusty Graf, Esq., appeared on behalf of Defendants. The Court carefully reviewed and considered the relevant briefs and documents on file in this case and considered the oral arguments of counsel. After taking the matter under advisement, the Court FINDS and CONCLUDES as follows:

Per the Court's order entered January 28, 2021, the Court granted Plaintiffs' Motion For Summary Judgment Regarding Their Breach of Contract Claims. Per that order, the Court concluded that the undisputed material facts established 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 subject leases.

Therefore, the only remaining issue is whether a trial is necessary to prove Plaintiffs' damages. The damages Plaintiffs sought were set forth in the Exhibits 5 and 6 of the Plaintiffs' Motion For Summary Judgment Regarding Their Breach of Contract Claims, wherein Plaintiffs sought $62,223.08 for Units C-23/24 and $77,231.42 for Units C-10/29, for a total of $139,454.50. In response to Plaintiffs' Motion For Summary Judgment Regarding Their Breach of Contract Claims, Defendants did not challenge the appropriateness of the amounts and did not raise the applicable affirmative defenses with regard to the damages sought. Under *Shuck v. Signature Flight Support of Nevada*, *Inc.*, 126 Nev. 434, 436, 245 P.3d 542, 544 (2010), the arguments that were not raised in response to the original motion must be deemed to have been waived and cannot be subsequently considered. Thus, there are no issues of material fact with regard to Plaintiffs' damages and Plaintiffs' Motion for Entry of Judgment should be granted.

Good cause appearing, the Court ORDERS as follows:

1. IT IS HEREBY ORDERED that Plaintiffs' Motion for Entry of Judgment is hereby GRANTED in its entirety;

2. IT IS FURTHER ORDERED that a separate judgment shall issue in favor of Plaintiffs and against Defendants, jointly and severally, in the amount of $139,454.50, plus pre- and post-judgment interest at the rate provided for in the subject leases; and

HOLLEY DRIGGS

3. IT IS FURTHER ORDERED that the Pre-Trial Conference, Calendar Call and Bench Trial shall be VACATED.

IT IS SO ORDERED.

Dated this 9th day of March, 2021

99B 7B4 1827 0BBB
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

HOLLEY DRIGGS

/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

Attorneys for Plaintiffs/Counter-defendants

Approved as to form and content by:

BLACK & WADHAMS

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

Attorneys for Defendants/Counterclaimants

HOLLEY DRIGGS

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

BLACK & WADHAMS
ATTORNEYS AT LAW

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)

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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

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s)	CASE NO: A-19-794864-C DEPT. NO. Department 5

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/9/2021

Tom Edwards, Esq.	tedwards@nevadafirm.com
BRENT CARSON	bac@winnercarson.com
Diane Meeter	dmeeter@blacklobello.law
J. Graf	Rgraf@blacklobello.law
Sandra Sell	ssell@nevadafirm.com
Jessica Lujan	jlujan@nevadafirm.com
Marsha Stallsworth	mstallsworth@blackwadhams.law
Marsha Stallsworth	mstallsworth@blackwadhams.law

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Steven D. Grierson
CLERK OF THE COURT

MRTX
BLACK & WADHAMS
Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorneys for Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

BERTOLDO BAKER CARTER & SMITH
Brent A. Carter, Esq.
Nevada Bar No. 5903
7408 W. Sahara Avenue
Las Vegas, NV 89117
Ph: (702) 228-2600
Fax: (702) 228-2333
bac@winnercarson.com
Attorneys for Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No.: A-19-794864-C Dept. No.: 8 **DEFENDANTS' MOTION TO RETAX** **HEARING REQUESTED**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants,	

Case Number: A-19-794864-C

v.

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

Counter Defendants.

Defendants and Counterclaimants BOUR ENTERPRISES, LLC, a Nevada limited liability company, MULUGETA BOUR, an individual, and HILENA MENGESHA, an individual, by and through their attorney of record, Rusty Graf, Esq. of Black & Wadhams, hereby file their MOTION TO RETAX. This Motion is made and based on the papers and pleadings on file herein, the following Memorandum of Points and Authorities, any exhibits attached hereto, and any argument at hearing on this matter.

Dated this 18 day of March 2021.

BLACK & WADHAMS

Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorneys for Defendants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

MEMORANDUM OF POINTS & AUTHORITIES

I.

INTRODUCTION & BACKGROUND

On December 1, 2020, the Plaintiffs' filed a Motion for Summary Judgment regarding their breach of contract claims. A hearing was held on January 12, 2021 and, subsequently, the Court entered an Order granting that Motion on January 28, 2021. The Plaintiffs then filed a Motion for Entry of Judgment on February 10, 2021 and a hearing was held on March 2, 2021. The Court ultimately granted Plaintiffs' Motion for Entry of Judgment and filed an Order entering Judgments against the Defendants on March 9, 2021. The Judgment was then entered March _____, 2021.

A. PLAINTIFFS' MEMORANDUM OF FEES & COSTS

On March 15, 2021, Plaintiffs filed their Memorandum of Costs and Disbursements (hereinafter the "Memo"). *See attached Exhibit 1.* The Memo states that the Plaintiffs' Costs and Disbursements were as follows:

Clerk's fees (NRS 18.005(1)) $1,323.90

Reporters' fees for depositions/copies (NRS 18.005(2)) ..... $ 2,216.81

Service of process/summons (NRS 18.005(7)) ..... $ 1,126.72

Photocopies and postage (NRS 18.005(12)-(14)) ..... $ 203.64

Legal Research/other "necessary expenses" (NRS 18.005(17)) .... $ 3,665.22

Id. at 1-2. As detailed below, these Costs and Disbursements and improper, inaccurate and/or not compensable under NRS 18.005 and, therefore, the Defendants respectfully request that the Court retax the same.

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BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

II.

LEGAL ARGUMENT

A. LEGAL STANDARD FOR MOTION TO RETAX

A party who disputes the costs contained in an adverse party's verified memorandum may request the court determine the costs pursuant to NRS 18.110(4), which provides:

> Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall settle the costs. *See NRS 18.110(4).*

B. LEGAL STANDARD FOR AWARDING COSTS

Pursuant to NRS 18.020, Costs may properly be recovered to a prevailing party in the following cases:

1. In an action for the recovery of real property or a possessory right thereto.
2. In an action to recover the possession of personal property, where the value of the property amounts to more than $2,500. The value must be determined by the jury, court or master by whom the action is tried.
3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500.
4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court.

See NRS 18.020.

Neither costs nor attorney fees incurred incident to litigation may be recovered unless authorized by statute or rule. *Sun Realty v. Eighth Judicial Dist. Ct.*, 91 Nev. 774, 776, 542 P.2d 1072, 1074 (1975). Even in instances where a party is entitled to request its costs, the trial court still retains discretion when determining the reasonableness of the individual costs to be awarded. *See U.S. Design & Const. Corp. v. International Broth. of Elec. Workers, 118 Nev. 458, 50 P.3d*

170 (2002); See also Bergmann v. Boyce, 109 Nev. 670, 856 P.2d 560 (1993). Discretion should be "sparingly exercised" when considering "expenses not specifically allowed by statute and precedent" because "statutes permitting recovery of costs, being in derogation of the common law, must be strictly construed." *See Bergmann v. Boyce, 109 Nev. at 679.* A strict construction of the statute "requires that the phrase 'reasonable costs' be interpreted to mean actual costs that are reasonable, rather than a reasonable estimate or calculation of such costs based upon administrative convenience." *Gibellini v. Klindt, 110 Nev. 1201, 1206, 885 P.2d 540 (1994).*

NRS 18.005 enumerates compensable costs as follows:

1. Clerks' fees.
2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition.
3. Jurors' fees and expenses, together with reasonable compensation of an officer appointed to act in accordance with NRS 16.120.
4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the court finds that the witness was called at the instance of the prevailing party without reason or necessity.
5. Reasonable fees of not more than five expert witnesses in an amount of not more than $1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee.
6. Reasonable fees of necessary interpreters.
7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.
8. Compensation for the official reporter or reporter pro tempore.
9. Reasonable costs for any bond or undertaking required as part of the action.
10. Fees of a court bailiff or deputy marshal who was required to work overtime.
11. Reasonable costs for telecopies.
12. Reasonable costs for photocopies.
13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

See NRS 18.005.

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

The Nevada Supreme Court has held that this statute must be strictly construed to allow only the costs specifically enumerated therein, and only under the circumstances provided for in the statute. *See Bobby Berosini, Ltd v. People for the Ethical Treatment of Animals, 114 Nev. 1348, 1352-53, 971 P.2d 383 (1998).* Applying these principles to the instant matter, Plaintiffs respectfully submit that this Court should grant the Motion to Retax, as some of the costs delineated in Defendants' Memorandum of Costs and Disbursements are not recoverable under applicable and relevant authority.

C. PLAINTIFFS' ASSERTED LEGAL RESEARCH COSTS ARE UNREASONABLE AND UNNECESSARY AND MUST BE RETAXED

As stated above, costs incurred in litigation can only be recovered if authorized by statute or rule and, even if such costs are so authorized, the Court has the discretion to determine the reasonableness of the costs to be award. *See Sun Realty v. Eighth Judicial Dist. Ct., 91 Nev. 774, 542 P.2d 1072 (1975); see also U.S. Design & Const. Corp. v. International Broth. of Elec. Workers, 118 Nev. 458, 50 P.3d 170 (2002).* Here, Plaintiffs' Memo asserts costs of "$3,665.22" for "Legal Research/other necessary expenses" and cites to NRS 18.005(17) as the authorizing statute. *See Plaintiffs' Memorandum, Pg. 2.* NRS 18.005(17) authorized the award of "other reasonable and necessary expense incurred in connection with the action, including **reasonable and necessary expenses for computerized services for legal research.**" *(Emphasis added) See NRS 18.005(17).* However, while computerized services for legal research is authorized by the statute, review of the bills attached to Plaintiffs' Memo demonstrates that a significant portion of the costs asserted under this category was for research on Westlaw which was neither reasonable nor necessary. The unreasonable and unnecessary costs, which should thus be retaxed, are as follows:

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BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

1. **$1,459.60 - Westlaw Research on December 31, 2020:**

The first unreasonable and unnecessary Westlaw cost stated in Plaintiffs' Memo is a charge for $1,459.60 for research conducted on December 31, 2020. *See Plaintiffs' Memorandum of Costs, Pg. 11.* The procedural history of this case demonstrates that: (1) the only pending motion on December 31, 2020 was the Plaintiffs' Motion for Summary Judgment Regarding Their Breach of Contract Claims; and (2) that Defendants filed their Opposition to that Motion on December 17, 2020 and Defendants filed their Reply on January 5, 2021. *See attached Exhibit 1, Pg. 16-18.* Therefore, the January 5, 2021 Reply is the only pleading which could reasonably have necessitated the December 31, 2020 legal research costs asserted by Plaintiffs. *Id.* However, examination of that Reply demonstrates that there was no reasonable or necessary basis for Plaintiffs to have incurred $1,459.60 in legal research expenses.

The Reply's legal argument section begins by discussing the argument of Defendants' that Summary Judgment was inappropriate on a matter of law that had not yet been settled. *See attached Exhibit 2, Pg. 4.* After just a brief discussion, Plaintiffs cited to a Nevada federal court case, *Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat. Tr. & Sav. Ass'n*, in support of the assertion that the Court may look to persuasive authority of other jurisdictions in considering a Motion for Summary Judgment. *See attached Exhibit 2, Pg. 5.* Though research on the case *Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat. Tr. & Sav. Ass'n* may have been necessary, however, Plaintiffs then proceeded to cite to case law from nine (9) other jurisdictions (Louisiana, Tennessee, Mississippi, California, Pennsylvania, Oklahoma, Connecticut, the Fourth Circuit, and the Fifth Circuit) and these were all simply offered as persuasive authority for the assertion that the Court "may consider persuasive authority in the absence of controlling law at summary judgment". *See attached Exhibit 2, Pg. 6.*

It is clear and unambiguous that citing to case law from nine (9) other jurisdictions as

persuasive authority for the argument that the Court may consider persuasive authority was extremely excessive and, thus, both unreasonable and unnecessary. *Id.* Further, Defendants would re-emphasize that, immediately prior to this extensive discussion of case law from across the country, the Plaintiffs cited to persuasive case law from within Nevada (*Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat. Tr. & Sav. Ass'n*) which established the point being argued. Finally, $1500.00 for legal research is not only unreasonable it is incredible. Therefore, the additional research expenses were unquestionably not necessary and non-compensable under NRS 18.005(17) and Defendants' respectfully request the Court retax these asserted costs.

2. $316.67 - Westlaw Research on April 9, 2020:

The next unreasonable and unnecessary Westlaw cost is a charge for $316.67 for research conducted on April 9, 2020. *See Plaintiffs' Memorandum of Costs, Pg. 3.* The cost of this research was not reasonable or necessary because it was not connected with actions taken or pleadings filed in this litigation by either the Plaintiffs or Defendants. This is evidenced in the procedural history by: (1) the only action taken or pleading filed in the preceding month (March 2020) was the Defendants' Addendum to Designation of Expert Witnesses filed March 16, 2020; (2) the only actions taken or pleadings filed in April of 2020 were the filing of an Order Setting Civil Bench Trial (4/6/20), the filing of an Order regarding the Discovery Commissioner's Report and Recommendations (4/9/20), the filing of a Notice of Entry of Order (4/9/20), the filing of a Stipulation and Order to Continue Deadlines (4/27/20) and the filing of another Notice of Entry of Order (4/28/20); (3) there were no pending motions on April 9, 2020; and (4) following the filing of the April 28, 2020 Notice of Entry of Order, no further actions were taken until July 13, 2019 and that action was merely the remittance of a filing fee. *See attached Exhibit 1, Pg. 14-15.* Therefore, it is again clear that this legal research cost was not a "reasonable and **necessary expense** incurred **in connection with the action**", as required by NRS 18.005(17) and pertinent

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

case law cited above, and it too must be retaxed. *See NRS 18.005(17).*

3. $446.55 - Westlaw Research on February 6, 2020:

The next unreasonable and unnecessary legal research cost is a charge for $446.55 for Westlaw research conducted on February 6, 2020. *See Plaintiffs' Memorandum of Costs, Pg. 3.* Again, this was not reasonable or necessary because it was not connected with actions taken or pleadings filed in this litigation by either the Plaintiffs or Defendants. Briefly, examination of the procedural history demonstrates that: (1) in December of 2019 Plaintiffs filed a Motion to Compel Discovery and Defendants' filed an Opposition and Countermotion to Extend Time to Disclose Expert Witnesses; (2) both parties filed Replies and hearings were held on January 14, 2020 and January 30, 2020; (3) the Discovery Commissioner's Report & Recommendations were also filed on January 30, 2020; (4) there were no further actions that took place in the case until February 20, 2020, when a status check was held and an Order was entered from the January 30, 2020 hearing; (5) there were no pending motions on February 6, 2020; and (6) there were no other actions taken or pleadings filed which would have necessitated legal research on Westlaw for at least the six months following February 6, 2020. *See attached Exhibit 1, Pg. 11-15.* Thus, it is unambiguous that the Westlaw research costs incurred on February 6, 2020 were not a "reasonable and **necessary expense** incurred **in connection with the action**", as required by NRS 18.005(17) and pertinent case law cited above, and this cost must be retaxed. *See NRS 18.005(17).*

4. $17.55 - Westlaw Research on September 30, 2019:

The final unreasonable and unnecessary legal research cost is a charge for $17.55 for Westlaw research conducted on September 30, 2019. *See Plaintiffs' Memorandum of Costs, Pg. 6.* This Westlaw research was not reasonable or necessary because it too was clearly not connected with actions taken or pleadings filed in this litigation by either the Plaintiffs or Defendants. Examination of the procedural history demonstrates that, prior to September 30, 2019, the only

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

recent actions which had occurred in the case had been an Order filed September 12, 2019 (denying Plaintiffs' Motion to Dismiss Counterclaims and Defendants' Countermotion for Summary Judgment), and Notice of Entry of that Order filed September 30, 2019. *See attached Exhibit 1, Case Docket, Pg. 9.* Further, the procedural history demonstrates: (1) the only action taken on September 30, 2019 was an administrative reassignment by the Court; (2) there were no pending motions or other pleadings on September 30, 2019; and (3) there were not any subsequent actions in the case until the October 11, 2019 Mandatory Rule 16 Conference. *Id. at 9-10.* Therefore, as it was unconnected to the actions taken in this case and/or any pleadings filed by Plaintiffs or Defendants, the September 30, 2019 Westlaw research was not a "reasonable and **necessary expense** incurred **in connection with the action**", as required by NRS 18.005(17) and pertinent case law cited above, and this cost must also be retaxed. *See NRS 18.005(17).*

D. THE REQUESTED COSTS, RUNNER FEES, ARE NOT COMPENSABLE UNDER NRS 18.005

Plaintiff's Memo also includes ten "delivery" charges amounting to $150.00 and has attached runner slips for these deliveries. *See Plaintiffs' Memorandum of Costs, Pg. 6-20 & Pg. 27-36.* First, Defendants would emphasize that runner costs are not specifically enumerated under NRS 18.005. *See NRS 18.005.* Further, Plaintiffs do not cite any legal authority authorizing the taxing of such costs, and Court applies its discretion sparingly "when considering whether or not to allow expenses not specifically allowed by statute and precedent". *See Bergmann, 109 Nev. at 679, 856 P.2d at 565-566.* Additionally, it must be noted that there is persuasive legal authority which suggests that such costs are not compensable.

Specifically, federal courts have consistently held that overhead costs, such as administrative fees, supplies and the use of runners are not properly taxable. *See, e.g., Warner Chilcott Labs. Ireland Ltd. v. Impax Labs., Inc., 2013 WL 1876441, at *12 (D. N.J. April 18, 2013)*

(holding costs slip sheets, tabs, binders, folders, red weld file pockets and labels. . . .constitute[d] attorney's overhead and as such, [was] not taxable"); *N.J. Mfrs. Ins. Group v. Electrolux, Inc., 2013 WL 5817161, at *12 (D. N.J. Oct. 21, 2013)* (holding costs "for labels and binders, which constitute attorney's overhead and as such, are not taxable"); *J-Way Leasing, Ltd. v. Am. Bridge Co., 2010 WL 816439, at *4 (N.D. Ohio March 4, 2010)* ("[C]osts for marking exhibits are overhead expenses and not taxable . . . ."); *Butler v. Wright, 2010 WL 599387, at *8 (M.D. Fl. Feb 16, 2010)* (holding "operating overhead is not taxable"); *Osorio v. Dole Food Co., 2010 WL 3212065, at *7 (S.D. Fl. July 7, 2010)* ("Courts have held that costs for tabs and binders are not taxable costs because they are subsumed within operating overhead."); *Van Voorhis v. Hillsborough Bd. of County Comm'rs, 2008 WL 2790244, at *5 (M.D. Fl. July 18, 2008)* (finding cost of supplies movant purchased from Staples was "subsumed within operating overhead and . . . not taxable.").

Again, as runner costs are not specifically mentioned under any of the provisions of NRS 18.005, Plaintiffs' only reasonable argument regarding these costs is that they fall under NRS 18.005(17). It is implicit in both the language of the statute and its application in relevant case law, that the Court analyzes whether non-specifically enumerated costs and fees are compensable under NRS 18.005(17) by putting the burden on the party seeking to tax the costs to demonstrate that those costs are reasonable and necessary (in addition to being incurred in connection with the action). See *Bergmann v. Boyce, 109 Nev. at 679;* See *U.S. Design & Const. Corp. v. International Broth. of Elec. Workers, 118 Nev. 458, 50 P.3d 170 (2002);* See *Bobby Berosini, Ltd v. People for the Ethical Treatment of Animals, 114 Nev. 1348, 1352-53, 971 P.2d 383 (1998);* See also *NRS 18.005(17)*. The demonstration that unenumerated costs are reasonable and necessary must be sufficiently compelling as to persuade the Court that it is appropriate to exercise discretion that the Nevada Supreme Court has directly stated should only be used "sparingly" and deem the costs compensable. *Id.* Here, runner fees are an unenumerated cost and Plaintiffs do not cite any legal

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

authority which would either compel or reasonably persuade the Court to exercise discretion meant to be used "sparingly". Thus, the costs are not compensable and should be retaxed.

E. PLAINTIFFS HAVE EITHER MISSTATED THEIR SERVICE OF PROCESS COSTS OR FAILED TO INCLUDE AN ACCURATE ACCOUNTING OF THEIR SERVICE OF PROCESS COSTS

Per NRS 18.005(7), "[t]he fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary" is a compensable expense. *See NRS 18.005(7).* Plaintiffs' Memo asserts that the total compensable costs under NRS 18.005(7) incurred for "Service of process/summons" were "$1,126.72". *See Plaintiffs' Memorandum of Costs, Pg. 2.* However, the transactions listings included with Plaintiffs' Memo only lists the following for service of process costs:

1. June 5, 2019 - $199.00. *See Plaintiffs' Memorandum of Costs, Pg. 6.*
2. June 28, 2019 - $90.00. *Id. at Pg. 12.*
3. May 4, 2020 - $54.00. *Id. at 7.*
4. May 4, 2020 - $54.00. *Id. at 7.*
5. May 4, 2020 - $54.00. *Id. at 13.*
6. May 4, 2020 - $112.35. *Id. at 13.*

The total of these six (6) services of process transactions stated in Plaintiffs' Memo is $563.35, not "$1,126.72" as asserted by Plaintiffs. *See Plaintiffs' Memorandum of Costs, Pg. 2.* Therefore, Defendants respectfully request that the Court retax Plaintiffs' asserted Service of Process/Summons costs.

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BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

III.

CONCLUSION

Based on the foregoing, the Defendants respectfully request that the Court grant their Motion to Retax and: (1) retax the legal research costs asserted by Plaintiffs by $2240.37 as outlined above; (2) retax the runner/delivery costs asserted by Plaintiffs by $150.00 as outlined above; and (3) retax the service of process/summons costs asserted by Plaintiffs by 563.37 as outlined above.

Dated this 18th day of March 2021.

BLACK & WADHAMS

Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorneys for Defendants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & WADHAMS and that on the 18th day of March 2021, I caused the above and foregoing document entitled **DEFENDANTS' MOTION TO RETAX** to be served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

[X] by electronic service through Wiznet, Clark County Eighth Judicial District Court's electronic filing/service system;

[ ] pursuant to EDCR 7.26, to be sent via facsimile;

[ ] hand delivered to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

F. Thomas Edwards, Esq.
HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

/s/ Diane Meeter
An Employee of Black & Wadhams

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

EXHIBIT 1

Electronically Filed
3/15/2021 5:29 PM
Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

MEMORANDUM OF COSTS AND DISBURSEMENTS

Clerk's fees (NRS 18.005(1)) ..... $ 1,323.90

Reporters' fees for depositions/copies (NRS 18.005(2))	$ 2,216.81
Service of process/summons (NRS 18.005(7))	$ 1,126.72
Photocopies and postage (NRS 18.005(12)-(14))	$ 203.64
Legal Research/other "necessary expenses" (NRS 18.005(17))	$ 3,665.22
TOTAL	$ **8,536.29**

Dated this 15th day of March, 2021.

HOLLEY DRIGGS

Jessica M. Lujan
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

HOLLEY DRIGGS

HOLLEY DRIGGS

Affidavit

STATE OF NEVADA)
ss.
COUNTY OF CLARK)

Jessica M. Lujan, Esq. being duly sworn, states: that affiant is the attorney for the Plaintiffs/Counter-defendants and has personal knowledge of the above costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this affiant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

JESSICA M. LUJAN, ESQ.
Attorney for Plaintiffs/Counterdefendants

SIGNED AND SWORN to before me this
15 day of March, 2021.

NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
MARIA STAFILATOS
Appt No. 06-104150-1
My Appt Expires Feb. 20, 2021

HOLLEY DRIGGS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 15th day of March, 2021, and pursuant to EDCR 8.05 and NRCP 5(b), I caused to be served electronically using the Court's E-Filing E-Service System, a true and correct copy of the foregoing **MEMORANDUM OF COSTS AND DISBURSEMENTS** to all parties in this case registered with the E-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

COSTS

HOLLEY DRIGGS

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
6/5/2019		03827-59 / Commercial Specialists	sp	1.00	199.00	199.00
		Bour Enterprises, LLC		1.00	199.00	199.00
		Service of process				
3/1/2021		03827-59 / Commercial Specialists	pc	22.00	0.15	3.30
		Bour Enterprises, LLC		22.00	0.15	3.30
		Photocopies				
3/9/2021		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
5/15/2019		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
12/14/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
9/6/2019	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				
1/11/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
10/29/2020		03827-59 / Commercial Specialists	pc	395.00	0.15	59.25
		Bour Enterprises, LLC		395.00	0.15	59.25
		Photocopies				
3/9/2020		03827-59 / Commercial Specialists	pc	3.00	0.15	0.45
		Bour Enterprises, LLC		3.00	0.15	0.45
		Photocopies				
12/15/2020		03827-59 / Commercial Specialists	pc	15.00	0.15	2.25
		Bour Enterprises, LLC		15.00	0.15	2.25
		Photocopies				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
11/5/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
3/11/2021		03827-59 / Commercial Specialists	pc	2.00	0.15	0.30
		Bour Enterprises, LLC		2.00	0.15	0.30
		Photocopies				
10/29/2020		03827-59 / Commercial Specialists	pc	5.00	0.15	0.75
		Bour Enterprises, LLC		5.00	0.15	0.75
		Photocopies				
2/27/2020		03827-59 / Commercial Specialists	pc	4.00	0.15	0.60
		Bour Enterprises, LLC		4.00	0.15	0.60
		Photocopies				
3/9/2021		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
12/14/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
10/10/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
6/6/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
12/14/2020		03827-59 / Commercial Specialists	pc	114.00	0.15	17.10
		Bour Enterprises, LLC		114.00	0.15	17.10
		Photocopies				
3/1/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
5/4/2020		03827-59 / Commercial Specialists	sp	1.00	54.00	54.00
		Bour Enterprises, LLC		1.00	54.00	54.00
		Service of process				
10/29/2020		03827-59 / Commercial Specialists	pc	35.00	0.15	5.25
		Bour Enterprises, LLC		35.00	0.15	5.25
		Photocopies				
6/25/2019		03827-59 / Commercial Specialists	bon	1.00	500.00	500.00
		Bour Enterprises, LLC		1.00	500.00	500.00
		Bond fee				
3/9/2020		03827-59 / Commercial Specialists	pc	3.00	0.15	0.45
		Bour Enterprises, LLC		3.00	0.15	0.45
		Photocopies				
2/27/2020		03827-59 / Commercial Specialists	pc	8.00	0.15	1.20
		Bour Enterprises, LLC		8.00	0.15	1.20
		Photocopies				
10/13/2020		03827-59 / Commercial Specialists	pc	17.00	0.15	2.55
		Bour Enterprises, LLC		17.00	0.15	2.55
		Photocopies				
5/4/2020		03827-59 / Commercial Specialists	sp	1.00	54.00	54.00
		Bour Enterprises, LLC		1.00	54.00	54.00
		Service of process				
2/27/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
2/6/2020		03827-59 / Commercial Specialists	wr	1.00	446.55	446.55
		Bour Enterprises, LLC		1.00	446.55	446.55
		Westlaw online research				
1/11/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
12/31/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	3.00 3.00	0.15 0.15	0.45 0.45
5/1/2018		03827-59 / Commercial Specialists Bour Enterprises, LLC Postage E109	po	1.00 1.00	0.94 0.94	0.94 0.94
2/27/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	1.00 1.00	0.15 0.15	0.15 0.15
1/4/2021		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	1.00 1.00	0.15 0.15	0.15 0.15
12/14/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	13.00 13.00	0.15 0.15	1.95 1.95
8/12/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Filing fee	ff	1.00 1.00	4.40 4.40	4.40 4.40
12/14/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	11.00 11.00	0.15 0.15	1.65 1.65
12/18/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	2.00 2.00	0.15 0.15	0.30 0.30
7/9/2019		03827-59 / Commercial Specialists Bour Enterprises, LLC Filing fee	ff	1.00 1.00	3.50 3.50	3.50 3.50
9/3/2019	RC	03827-59 / Commercial Specialists Bour Enterprises, LLC Delivery Charges	de	1.00 1.00	15.00 15.00	15.00 15.00

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
5/16/2019		03827-59 / Commercial Specialists	pc	2.00	0.15	0.30
		Bour Enterprises, LLC		2.00	0.15	0.30
		Photocopies				
1/4/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
5/26/2020		03827-59 / Commercial Specialists	pc	3.00	0.15	0.45
		Bour Enterprises, LLC		3.00	0.15	0.45
		Photocopies				
5/15/2019		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
9/25/2019		03827-59 / Commercial Specialists	po	1.00	0.50	0.50
		Bour Enterprises, LLC		1.00	0.50	0.50
		Postage E109				
12/14/2020		03827-59 / Commercial Specialists	ff	1.00	9.50	9.50
		Bour Enterprises, LLC		1.00	9.50	9.50
		Filing fee				
1/10/2020		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
3/1/2021		03827-59 / Commercial Specialists	pc	112.00	0.15	16.80
		Bour Enterprises, LLC		112.00	0.15	16.80
		Photocopies				
12/14/2020		03827-59 / Commercial Specialists	ff	1.00	200.00	200.00
		Bour Enterprises, LLC		1.00	200.00	200.00
		Filing fee				
3/9/2021		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
9/3/2019	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				
11/5/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
8/12/2020		03827-59 / Commercial Specialists	ff	1.00	30.00	30.00
		Bour Enterprises, LLC		1.00	30.00	30.00
		Filing fee				
7/1/2020		03827-59 / Commercial Specialists	cr	1.00	379.83	379.83
		Bour Enterprises, LLC		1.00	379.83	379.83
		Court reporter				
5/15/2019		03827-59 / Commercial Specialists	pc	6.00	0.15	0.90
		Bour Enterprises, LLC		6.00	0.15	0.90
		Photocopies				
1/11/2021		03827-59 / Commercial Specialists	pc	6.00	0.15	0.90
		Bour Enterprises, LLC		6.00	0.15	0.90
		Photocopies				
9/30/2019		03827-59 / Commercial Specialists	wr	1.00	17.55	17.55
		Bour Enterprises, LLC		1.00	17.55	17.55
		Westlaw online research				
2/16/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
3/5/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
5/15/2019		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
10/13/2020		03827-59 / Commercial Specialists	pc	14.00	0.15	2.10
		Bour Enterprises, LLC		14.00	0.15	2.10
		Photocopies				
1/11/2021		03827-59 / Commercial Specialists	pc	15.00	0.15	2.25
		Bour Enterprises, LLC		15.00	0.15	2.25
		Photocopies				
6/25/2019		03827-59 / Commercial Specialists	bon	1.00	500.00	500.00
		Bour Enterprises, LLC		1.00	500.00	500.00
		Bond fee				
6/28/2019		03827-59 / Commercial Specialists	sp	1.00	90.00	90.00
		Bour Enterprises, LLC		1.00	90.00	90.00
		Service of process				
10/13/2020		03827-59 / Commercial Specialists	pc	14.00	0.15	2.10
		Bour Enterprises, LLC		14.00	0.15	2.10
		Photocopies				
11/15/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
9/4/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
1/7/2021		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
6/21/2019	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				
1/28/2020	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
12/21/2020		03827-59 / Commercial Specialists	pc	21.00	0.15	3.15
		Bour Enterprises, LLC		21.00	0.15	3.15
		Photocopies				
10/30/2020		03827-59 / Commercial Specialists	pc	25.00	0.15	3.75
		Bour Enterprises, LLC		25.00	0.15	3.75
		Photocopies				
2/14/2020	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				
5/4/2020		03827-59 / Commercial Specialists	sp	1.00	54.00	54.00
		Bour Enterprises, LLC		1.00	54.00	54.00
		Service of process				
10/29/2020		03827-59 / Commercial Specialists	pc	5.00	0.15	0.75
		Bour Enterprises, LLC		5.00	0.15	0.75
		Photocopies				
3/1/2021		03827-59 / Commercial Specialists	pc	6.00	0.15	0.90
		Bour Enterprises, LLC		6.00	0.15	0.90
		Photocopies				
10/29/2020		03827-59 / Commercial Specialists	pc	75.00	0.15	11.25
		Bour Enterprises, LLC		75.00	0.15	11.25
		Photocopies				
8/29/2019		03827-59 / Commercial Specialists	wr	1.00	204.44	204.44
		Bour Enterprises, LLC		1.00	204.44	204.44
		Westlaw online research				
1/31/2020		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
5/4/2020		03827-59 / Commercial Specialists	sp	1.00	112.36	112.36
		Bour Enterprises, LLC		1.00	112.36	112.36
		Service of process				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
9/4/2019		03827-59 / Commercial Specialists	ff	1.00	7.00	7.00
		Bour Enterprises, LLC		1.00	7.00	7.00
		Filing fee				
2/26/2021		03827-59 / Commercial Specialists	wr	1.00	224.89	224.89
		Bour Enterprises, LLC		1.00	224.89	224.89
		Westlaw online research				
8/16/2019		03827-59 / Commercial Specialists	wr	1.00	9.84	9.84
		Bour Enterprises, LLC		1.00	9.84	9.84
		Westlaw online research				
1/14/2021		03827-59 / Commercial Specialists	pc	7.00	0.15	1.05
		Bour Enterprises, LLC		7.00	0.15	1.05
		Photocopies				
10/29/2020		03827-59 / Commercial Specialists	pc	5.00	0.15	0.75
		Bour Enterprises, LLC		5.00	0.15	0.75
		Photocopies				
10/10/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
3/1/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
8/12/2020		03827-59 / Commercial Specialists	ff	1.00	4.40	4.40
		Bour Enterprises, LLC		1.00	4.40	4.40
		Filing fee				
2/24/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
6/6/2019		03827-59 / Commercial Specialists	ff	1.00	748.60	748.60
		Bour Enterprises, LLC		1.00	748.60	748.60
		Filing fee				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
9/4/2019	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				
1/11/2021		03827-59 / Commercial Specialists	pc	27.00	0.15	4.05
		Bour Enterprises, LLC		27.00	0.15	4.05
		Photocopies				
1/11/2021		03827-59 / Commercial Specialists	pc	112.00	0.15	16.80
		Bour Enterprises, LLC		112.00	0.15	16.80
		Photocopies				
2/8/2021		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
1/11/2021		03827-59 / Commercial Specialists	pc	14.00	0.15	2.10
		Bour Enterprises, LLC		14.00	0.15	2.10
		Photocopies				
4/9/2020		03827-59 / Commercial Specialists	wr	1.00	316.67	316.67
		Bour Enterprises, LLC		1.00	316.67	316.67
		Westlaw online research				
10/13/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
2/27/2020		03827-59 / Commercial Specialists	pc	3.00	0.15	0.45
		Bour Enterprises, LLC		3.00	0.15	0.45
		Photocopies				
12/14/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
1/28/2020	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
12/18/2020		03827-59 / Commercial Specialists	pc	2.00	0.15	0.30
		Bour Enterprises, LLC		2.00	0.15	0.30
		Photocopies				
12/21/2020		03827-59 / Commercial Specialists	pc	21.00	0.15	3.15
		Bour Enterprises, LLC		21.00	0.15	3.15
		Photocopies				
12/31/2020		03827-59 / Commercial Specialists	pc	3.00	0.15	0.45
		Bour Enterprises, LLC		3.00	0.15	0.45
		Photocopies				
1/4/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
1/4/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
1/4/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
12/31/2020		03827-59 / Commercial Specialists	wr	1.00	1,459.60	1,459.60
		Bour Enterprises, LLC		1.00	1,459.60	1,459.60
		Westlaw				
1/7/2021		03827-59 / Commercial Specialists	ff	1.00	200.00	200.00
		Bour Enterprises, LLC		1.00	200.00	200.00
		Filing fee				
1/7/2021		03827-59 / Commercial Specialists	ff	1.00	9.50	9.50
		Bour Enterprises, LLC		1.00	9.50	9.50
		Filing fee				
1/7/2021		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
5/15/2019		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
9/4/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
5/16/2019		03827-59 / Commercial Specialists	pc	2.00	0.15	0.30
		Bour Enterprises, LLC		2.00	0.15	0.30
		Photocopies				
1/7/2021		03827-59 / Commercial Specialists	ff	1.00	200.00	200.00
		Bour Enterprises, LLC		1.00	200.00	200.00
		Filing fee				
1/8/2020	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				
3/1/2021		03827-59 / Commercial Specialists	pc	47.00	0.15	7.05
		Bour Enterprises, LLC		47.00	0.15	7.05
		Photocopies				
5/12/2020		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
5/12/2020		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
2/27/2020		03827-59 / Commercial Specialists	pc	10.00	0.15	1.50
		Bour Enterprises, LLC		10.00	0.15	1.50
		Photocopies				
5/16/2019		03827-59 / Commercial Specialists	pc	2.00	0.15	0.30
		Bour Enterprises, LLC		2.00	0.15	0.30
		Photocopies				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
12/3/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	2.00 2.00	0.15 0.15	0.30 0.30
3/26/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	1.00 1.00	0.15 0.15	0.15 0.15
1/7/2021		03827-59 / Commercial Specialists Bour Enterprises, LLC Filing fee	ff	1.00 1.00	9.50 9.50	9.50 9.50
12/1/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	1.00 1.00	0.15 0.15	0.15 0.15
12/3/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	5.00 5.00	0.15 0.15	0.75 0.75
3/3/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Filing fee	ff	1.00 1.00	3.50 3.50	3.50 3.50
12/1/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	1.00 1.00	0.15 0.15	0.15 0.15
9/4/2019	RC	03827-59 / Commercial Specialists Bour Enterprises, LLC Delivery Charges	de	1.00 1.00	15.00 15.00	15.00 15.00
2/10/2021		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	10.00 10.00	0.15 0.15	1.50 1.50
12/3/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	11.00 11.00	0.15 0.15	1.65 1.65

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
1/11/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
11/30/2020		03827-59 / Commercial Specialists	wr	1.00	63.11	63.11
		Bour Enterprises, LLC		1.00	63.11	63.11
		Westlaw online research				
1/11/2021		03827-59 / Commercial Specialists	pc	79.00	0.15	11.85
		Bour Enterprises, LLC		79.00	0.15	11.85
		Photocopies				
8/12/2020		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
1/4/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
12/1/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
10/13/2020		03827-59 / Commercial Specialists	pc	11.00	0.15	1.65
		Bour Enterprises, LLC		11.00	0.15	1.65
		Photocopies				
3/9/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
8/9/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
5/15/2019		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
11/18/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
11/20/2020		03827-59 / Commercial Specialists	pc	16.00	0.15	2.40
		Bour Enterprises, LLC		16.00	0.15	2.40
		Photocopies				
12/3/2020		03827-59 / Commercial Specialists	pc	7.00	0.15	1.05
		Bour Enterprises, LLC		7.00	0.15	1.05
		Photocopies				
5/16/2019		03827-59 / Commercial Specialists	pc	3.00	0.15	0.45
		Bour Enterprises, LLC		3.00	0.15	0.45
		Photocopies				
8/12/2020		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
12/13/2019		03827-59 / Commercial Specialists	wr	1.00	75.51	75.51
		Bour Enterprises, LLC		1.00	75.51	75.51
		Westlaw online research				
8/12/2020		03827-59 / Commercial Specialists	ff	1.00	30.00	30.00
		Bour Enterprises, LLC		1.00	30.00	30.00
		Filing fee				
1/29/2021		03827-59 / Commercial Specialists	wr	1.00	69.00	69.00
		Bour Enterprises, LLC		1.00	69.00	69.00
		Westlaw online research				
11/29/2020		03827-59 / Commercial Specialists	pc	7.00	0.15	1.05
		Bour Enterprises, LLC		7.00	0.15	1.05
		Photocopies				
8/16/2019		03827-59 / Commercial Specialists	wr	1.00	222.11	222.11
		Bour Enterprises, LLC		1.00	222.11	222.11
		Westlaw online research				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative		Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
			Grand Total	Worked:	1,440.00		7,139.70
				Billed:	1,440.00		7,139.70

INVOICES

HOLLEY DRIGGS

Veritext, LLC
Western Region

707 Wilshire Boulevard, Suite 3500
Los Angeles CA 90017
Tel. 877-955-3855 Fax. 949-608-3438
Fed. Tax ID: 20-3132569

VERITEXT LEGAL SOLUTIONS

03827-59

Bill To: F. Thomas Edwards Esq
Marsha Palrose
400 South Fourth Street
Suite 300
Las Vegas, NV, 89101

Invoice #: CA4280671
Invoice Date: 4/1/2020
Balance Due: $379.83

Case: 4520 Arville v. Bour Enterprises, LLC
Job #: 4038755 | Job Date: 3/26/2020 | Delivery: Normal
Case #: A19794864C
Billing Atty: F. Thomas Edwards Esq
Location: Holley Driggs
400 South Fourth Street | Suite 300
Las Vegas, NV 89101
Sched Atty: F. Thomas Edwards Esq | Holley Driggs

Third Party:

Witness	Description	Units	Quantity	Amount
Mahteme Zewdie	Certificate of Non Appearance (CNA)	1	1.00	$335.00
	Electronic Delivery and Handling	Package	1.00	$28.00

Notes:

Invoice Total:	$363.00
Payment:	$0.00
Credit:	$0.00
Interest:	$16.83
Balance Due:	$379.83

TERMS: Payable upon receipt. Accounts 30 days past due will bear a finance charge of 1.5% per month. Accounts unpaid after 90 days agree to pay all collection costs, including reasonable attorney's fees. Contact us to correct payment errors. No adjustments will be made after 90 days. For more information on charges related to our services please consult http://www.veritext.com/services/all-services/services-information

THIS INVOICE IS 90 DAYS PAST DUE, PLEASE REMIT - THANK YOU

To pay online, go to www.veritext.com

Veritext accepts all major credit cards
(American Express, Mastercard, Visa, Discover)

Please remit payment to:
Veritext
P.O. Box 71303
Chicago IL 60694-1303

Invoice #: CA4280671
Job #: 4038755
Invoice Date: 4/1/2020
Balance: $379.83

121748

Veritext, LLC - Western Region

Tel. 877-955-3855 Email: lvdepo@veritext.com
Fed. Tax ID: 20-3132569

VERITEXT LEGAL SOLUTIONS

Bill To: F. Thomas Edwards Esq
Marsha Palrose
400 South Fourth Street
Suite 300
Las Vegas, NV, 89101

Invoice #: 4645329
Invoice Date: 11/11/2020
Balance Due: $2,296.83

Case: 4520 Arville v. Bour Enterprises, LLC (A19794864C) **Proceeding Type: Depositions**

Job #: 4300753 | Job Date: 11/2/2020 | Delivery: Expedited

Location: Las Vegas, NV

Billing Atty: F. Thomas Edwards Esq

Scheduling Atty: F. Thomas Edwards Esq | Holley Driggs

Witness: 30b6 Bour Enterprises	Quantity	Amount
Original with 1 Certified Transcript	171.00	$1,496.25
Attendance	1.00	$300.00
Waiting Time (Reporter/Videographer Standby Fee)	0.50	$47.50
Exhibits	100.00	$65.00
Exhibits - Color	2.00	$1.90
Exhibits - Multimedia Duplication	1.00	$25.00
Surcharge - Expert/Medical/Technical	171.00	$85.50
Litigation Package-Secure File Suite	1.00	$55.00
Production & Processing	1.00	$50.00
Electronic Delivery and Handling	1.00	$35.00

Notes:

Invoice Total:	**$2,161.15**
Payment:	**$0.00**
Credit:	**$0.00**
Interest:	**$135.68**
Balance Due:	**$2,296.83**

TERMS: Payable upon receipt. Accounts 30 days past due will bear a finance charge of 1.5% per month. Accounts unpaid after 90 days agree to pay all collection costs, including reasonable attorney's fees. Contact us to correct payment errors. No adjustments will be made after 90 days. For more information on charges related to our services please consult http://www.veritext.com/services/all-services/services-information

THIS INVOICE IS 120 DAYS PAST DUE, PLEASE REMIT - THANK YOU

Please remit payment to:
Veritext
P.O. Box 71303
Chicago IL 60694-1303
Fed. Tax ID: 20-3132569

To pay online, go to www.veritext.com
Veritext accepts all major credit cards
(American Express, Mastercard, Visa, Discover)

Invoice #: 4645329
Invoice Date: 11/11/2020
Balance Due: $2,296.83

Tom Edwards

Subject: FW: Veritext West - 4645329 - 4520 Arville v. Bour Enterprises, LLC - 2020-11-02
Attachments: 4645329.pdf

From: Noemi Sandoval <collections-west@veritext.com>
Sent: Monday, March 15, 2021 9:23 AM
To: Marsha Palrose <mpalrose@nevadafirm.com>
Subject: Re: Veritext West - 4645329 - 4520 Arville v. Bour Enterprises, LLC - 2020-11-02

Good morning, Ms. Palrose. I hope you are having a wonderful morning. I would like to follow up with you regarding your last email.

I have reviewed your concerns further with our management team. Management would like to extend a discount of 15% on this invoice. The total amount due for Invoice 4645329 is $1,836.98 if paid within the next 30days.

Please let me know if you have any additional questions or concerns regarding this invoice. Thank you very much for your help with this. Wishing you an amazing day.

Best regards,

Noemi Sandoval
Finance Representative

VERITEXT
611 Anton Blvd. 5th Floor | Costa Mesa, CA 92626
Direct: 949.777.9311 || **Main** 714.549.3700
collections-west@veritext.com
www.veritext.com

Want to pay your bill online? Go to our website, www.veritext.com and click on the "Pay by Credit Card" link. Otherwise, kindly forward payments to P.O. Box 71303, Chicago IL 60694.

AI000688

RUN SLIPS

HOLLEY DRIGGS

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

1/25/17
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 4 PM
Client Name: Coast Specialties Client No: 0337-57
Type of Item: Check
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☐ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☐ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Posting Cost Bond. take to Court for posting. Bring back receipt

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

AI000690

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

8/28/19
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 5pm
Client Name: Comm Specialists Client No: 03827-57
Type of Item: Hearing Binder
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☒ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☐ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☒ Leave Courtesy Copy in Dept. 8 Phx Bldg. 11th Fl Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: _____
Please deliver courtesy copy to Dept. 8 Phx Bldg 11th Floor. Thx

Secretary: Sandy Runner: _____
Date Completed: 8/28/19 Date Billed: _____

Received by _____

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

9/3/19
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 2:30 run
Client Name: Comm Specialists Client No: 03827-58
Type of Item: Order + JCCR
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☒ Pick Up From: Black + Lobello
Address: 10777 W. Twain Ave #300 Phone: 702-869-8801
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☒ File With:
☐ County Clerk ☐ Family Court Clerk
☐ Master Calendar ☐ Bankruptcy Clerk
☐ Discovery Commissioner ☐ Federal Court Clerk
☐ Arbitration ☐ Justice Court Clerk
☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Please pick up signed Order + JCCR from Reception @ Black + LoBello - 10777 W. Twain Ave. Ste 300 LV NV 89135
TKY

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

AI000692

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

9/3/19
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 2:30 pm
Client Name: Comm Specialists Client No: 23227-59
Type of Item: JCCR
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☒ Pick Up From: Winner & Carson 7935 W. Sahara Ave
Address: Ste 101 LV NV 89117 Phone: 702-471-1111
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☐ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☐ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Please pick up JCCR from Winner & Carson @ 7935 W. Sahara Ave #101 Las Vegas NV 89117 Thx

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

AI000693

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

9/4/19
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 10 am run
Client Name: Cuzan Specialists Client No: 03827-59
Type of Item: Order
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☒ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☐ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☒ Leave in Dept. 8 Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Please deliver to Dept. 8 Judge's box, Phx Blds 11th Floor.

Thx

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

AI000694

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

1/4/17
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 2:30 pm
Client Name: Comm Specialists Client No: 03627.59
Type of Item: JCCR
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☒ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☒ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Please deliver courtesy copy to Discovery Commissioner Thx

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

9/10/19
Date

Due By: ☐ Immediately ☑ Today ☐ Tomorrow
Time Deadline: 5 pm
Client Name: Coin Specialists Client No: 12527-59
Type of Item: Deed
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☑ Pick Up From: Dept 5 Phx Bldg 11th Floor
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☐ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☐ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Please pick up Signed Order from Dept. 5 in Phx Bldg 11th Floor Thx

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

AI000696

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

11/3/2020
Date

Due By: ☐ Immediately ☑ Today ☐ Tomorrow
Time Deadline: 2:30 pm
Client Name: Comm Specialists Client No: 03017.57
Type of Item: Hearing Binder
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☐ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☐ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☒ Leave Courtesy Copy in ~~Dept.~~ Discovery Commissioner Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☑ Special Instructions: Please deliver courtesy copy binder to the Discovery Commissioners office. Thx

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

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RUNNER INSTRUCTIONS

1/28/2020
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 5pm
Client Name: Comm Specialist Client No: 03827-59
Type of Item: Disc. Comm Report & Recommendations
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☒ File With:
☐ County Clerk
☐ Master Calendar
☒ Discovery Commissioner
☐ Arbitration
☐ Family Court Clerk
☐ Bankruptcy Clerk
☐ Federal Court Clerk
☐ Justice Court Clerk
☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Please deliver to Discovery Commissioner's office for filing Thx

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

Date

Due By: ☐ Immediately ☐ Today ☐ Tomorrow
Time Deadline: _____
Client Name: _____ Client No: _____
Type of Item: _____
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☐ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☐ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☐ Special Instructions: _____

Secretary: _____ Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

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3/18/2021 3:43 PM
Steven D. Grierson
CLERK OF THE COURT

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BLACK & WADHAMS
Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorneys for Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

BERTOLDO BAKER CARTER & SMITH
Brent A. Carter, Esq.
Nevada Bar No. 5903
7408 W. Sahara Avenue
Las Vegas, NV 89117
Ph: (702) 228-2600
Fax: (702) 228-2333
bac@winnercarson.com
Attorneys for Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No.: A-19-794864-C Dept. No.: 8 **DEFENDANTS' AMENDED MOTION TO RETAX**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants,	

Case Number: A-19-794864-C

v.

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

Counter Defendants.

Defendants and Counterclaimants BOUR ENTERPRISES, LLC, a Nevada limited liability company, MULUGETA BOUR, an individual, and HILENA MENGESHA, an individual, by and through their attorney of record, Rusty Graf, Esq. of Black & Wadhams, hereby file their AMENDED MOTION TO RETAX. This Motion is made and based on the papers and pleadings on file herein, the following Memorandum of Points and Authorities, any exhibits attached hereto, and any argument at hearing on this matter.

Dated this 18th day of March 2021.

BLACK & WADHAMS

Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorneys for Defendants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

MEMORANDUM OF POINTS & AUTHORITIES

I.

INTRODUCTION & BACKGROUND

On December 1, 2020, the Plaintiffs' filed a Motion for Summary Judgment regarding their breach of contract claims. A hearing was held on January 12, 2021 and, subsequently, the Court entered an Order granting that Motion on January 28, 2021. The Plaintiffs then filed a Motion for Entry of Judgment on February 10, 2021 and a hearing was held on March 2, 2021. The Court ultimately granted Plaintiffs' Motion for Entry of Judgment and filed an Order entering Judgments against the Defendants on March 9, 2021. The Judgment was then entered March 9th, 2021.

A. PLAINTIFFS' MEMORANDUM OF FEES & COSTS

On March 15, 2021, Plaintiffs filed their Memorandum of Costs and Disbursements (hereinafter the "Memo"). *See attached Exhibit 1.* The Memo states that the Plaintiffs' Costs and Disbursements were as follows:

Clerk's fees (NRS 18.005(1)) $1,323.90

Reporters' fees for depositions/copies (NRS 18.005(2)) ..... $ 2,216.81

Service of process/summons (NRS 18.005(7)) ..... $ 1,126.72

Photocopies and postage (NRS 18.005(12)-(14)) ..... $ 203.64

Legal Research/other "necessary expenses" (NRS 18.005(17)) .... $ 3,665.22

Id. at 1-2. As detailed below, these Costs and Disbursements and improper, inaccurate and/or not compensable under NRS 18.005 and, therefore, the Defendants respectfully request that the Court retax the same.

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BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

II.

LEGAL ARGUMENT

A. LEGAL STANDARD FOR MOTION TO RETAX

A party who disputes the costs contained in an adverse party's verified memorandum may request the court determine the costs pursuant to NRS 18.110(4), which provides:

> Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall settle the costs. *See NRS 18.110(4).*

B. LEGAL STANDARD FOR AWARDING COSTS

Pursuant to NRS 18.020, Costs may properly be recovered to a prevailing party in the following cases:

1. In an action for the recovery of real property or a possessory right thereto.
2. In an action to recover the possession of personal property, where the value of the property amounts to more than $2,500. The value must be determined by the jury, court or master by whom the action is tried.
3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500.
4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court.

See NRS 18.020.

Neither costs nor attorney fees incurred incident to litigation may be recovered unless authorized by statute or rule. *Sun Realty v. Eighth Judicial Dist. Ct.*, 91 Nev. 774, 776, 542 P.2d 1072, 1074 (1975). Even in instances where a party is entitled to request its costs, the trial court still retains discretion when determining the reasonableness of the individual costs to be awarded. *See U.S. Design & Const. Corp. v. International Broth. of Elec. Workers, 118 Nev. 458, 50 P.3d*

170 (2002); *See also Bergmann v. Boyce, 109 Nev. 670, 856 P.2d 560 (1993)*. Discretion should be "sparingly exercised" when considering "expenses not specifically allowed by statute and precedent" because "statutes permitting recovery of costs, being in derogation of the common law, must be strictly construed." *See Bergmann v. Boyce, 109 Nev. at 679.* A strict construction of the statute "requires that the phrase 'reasonable costs' be interpreted to mean actual costs that are reasonable, rather than a reasonable estimate or calculation of such costs based upon administrative convenience." *Gibellini v. Klindt, 110 Nev. 1201, 1206, 885 P.2d 540 (1994).*

NRS 18.005 enumerates compensable costs as follows:

1. Clerks' fees.
2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition.
3. Jurors' fees and expenses, together with reasonable compensation of an officer appointed to act in accordance with NRS 16.120.
4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the court finds that the witness was called at the instance of the prevailing party without reason or necessity.
5. Reasonable fees of not more than five expert witnesses in an amount of not more than $1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee.
6. Reasonable fees of necessary interpreters.
7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.
8. Compensation for the official reporter or reporter pro tempore.
9. Reasonable costs for any bond or undertaking required as part of the action.
10. Fees of a court bailiff or deputy marshal who was required to work overtime.
11. Reasonable costs for telecopies.
12. Reasonable costs for photocopies.
13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

See NRS 18.005.

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

The Nevada Supreme Court has held that this statute must be strictly construed to allow only the costs specifically enumerated therein, and only under the circumstances provided for in the statute. *See Bobby Berosini, Ltd v. People for the Ethical Treatment of Animals, 114 Nev. 1348, 1352-53, 971 P.2d 383 (1998).* Applying these principles to the instant matter, Plaintiffs respectfully submit that this Court should grant the Motion to Retax, as some of the costs delineated in Defendants' Memorandum of Costs and Disbursements are not recoverable under applicable and relevant authority.

C. PLAINTIFFS' ASSERTED LEGAL RESEARCH COSTS ARE UNREASONABLE AND UNNECESSARY AND MUST BE RETAXED

As stated above, costs incurred in litigation can only be recovered if authorized by statute or rule and, even if such costs are so authorized, the Court has the discretion to determine the reasonableness of the costs to be award. *See Sun Realty v. Eighth Judicial Dist. Ct., 91 Nev. 774, 542 P.2d 1072 (1975); see also U.S. Design & Const. Corp. v. International Broth. of Elec. Workers, 118 Nev. 458, 50 P.3d 170 (2002).* Here, Plaintiffs' Memo asserts costs of "$3,665.22" for "Legal Research/other necessary expenses" and cites to NRS 18.005(17) as the authorizing statute. *See Plaintiffs' Memorandum, Pg. 2.* NRS 18.005(17) authorized the award of "other reasonable and necessary expense incurred in connection with the action, including **reasonable and necessary expenses for computerized services for legal research.**" *(Emphasis added) See NRS 18.005(17).* However, while computerized services for legal research is authorized by the statute, review of the bills attached to Plaintiffs' Memo demonstrates that a significant portion of the costs asserted under this category was for research on Westlaw which was neither reasonable nor necessary. The unreasonable and unnecessary costs, which should thus be retaxed, are as follows:

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10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

1. **$1,459.60 - Westlaw Research on December 31, 2020:**

The first unreasonable and unnecessary Westlaw cost stated in Plaintiffs' Memo is a charge for $1,459.60 for research conducted on December 31, 2020. *See Plaintiffs' Memorandum of Costs, Pg. 11.* The procedural history of this case demonstrates that: (1) the only pending motion on December 31, 2020 was the Plaintiffs' Motion for Summary Judgment Regarding Their Breach of Contract Claims; and (2) that Defendants filed their Opposition to that Motion on December 17, 2020 and Defendants filed their Reply on January 5, 2021. *See attached Exhibit 2, Pg. 16-18.* Therefore, the January 5, 2021 Reply is the only pleading which could reasonably have necessitated the December 31, 2020 legal research costs asserted by Plaintiffs. *Id.* However, examination of that Reply demonstrates that there was no reasonable or necessary basis for Plaintiffs to have incurred $1,459.60 in legal research expenses.

The Reply's legal argument section begins by discussing the argument of Defendants' that Summary Judgment was inappropriate on a matter of law that had not yet been settled. *See attached Exhibit 3, Pg. 4.* After just a brief discussion, Plaintiffs cited to a Nevada federal court case, *Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat. Tr. & Sav. Ass'n*, in support of the assertion that the Court may look to persuasive authority of other jurisdictions in considering a Motion for Summary Judgment. *See attached Exhibit 3, Pg. 5.* Though research on the case *Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat. Tr. & Sav. Ass'n* may have been necessary, however, Plaintiffs then proceeded to cite to case law from nine (9) other jurisdictions (Louisiana, Tennessee, Mississippi, California, Pennsylvania, Oklahoma, Connecticut, the Fourth Circuit, and the Fifth Circuit) and these were all simply offered as persuasive authority for the assertion that the Court "may consider persuasive authority in the absence of controlling law at summary judgment". *See attached Exhibit 3, Pg. 6.*

It is clear and unambiguous that citing to case law from nine (9) other jurisdictions as

persuasive authority for the argument that the Court may consider persuasive authority was extremely excessive and, thus, both unreasonable and unnecessary. *Id.* Further, Defendants would re-emphasize that, immediately prior to this extensive discussion of case law from across the country, the Plaintiffs cited to persuasive case law from within Nevada (*Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat. Tr. & Sav. Ass'n*) which established the point being argued. Finally, $1500.00 for legal research is not only unreasonable it is incredible. Therefore, the additional research expenses were unquestionably not necessary and non-compensable under NRS 18.005(17) and Defendants' respectfully request the Court retax these asserted costs.

2. $316.67 - Westlaw Research on April 9, 2020:

The next unreasonable and unnecessary Westlaw cost is a charge for $316.67 for research conducted on April 9, 2020. *See Plaintiffs' Memorandum of Costs, Pg. 3.* The cost of this research was not reasonable or necessary because it was not connected with actions taken or pleadings filed in this litigation by either the Plaintiffs or Defendants. This is evidenced in the procedural history by: (1) the only action taken or pleading filed in the preceding month (March 2020) was the Defendants' Addendum to Designation of Expert Witnesses filed March 16, 2020; (2) the only actions taken or pleadings filed in April of 2020 were the filing of an Order Setting Civil Bench Trial (4/6/20), the filing of an Order regarding the Discovery Commissioner's Report and Recommendations (4/9/20), the filing of a Notice of Entry of Order (4/9/20), the filing of a Stipulation and Order to Continue Deadlines (4/27/20) and the filing of another Notice of Entry of Order (4/28/20); (3) there were no pending motions on April 9, 2020; and (4) following the filing of the April 28, 2020 Notice of Entry of Order, no further actions were taken until July 13, 2019 and that action was merely the remittance of a filing fee. *See attached Exhibit 2, Pg. 14-15.* Therefore, it is again clear that this legal research cost was not a "reasonable and **necessary expense** incurred **in connection with the action**", as required by NRS 18.005(17) and pertinent

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

case law cited above, and it too must be retaxed. *See NRS 18.005(17).*

3. $446.55 - Westlaw Research on February 6, 2020:

The next unreasonable and unnecessary legal research cost is a charge for $446.55 for Westlaw research conducted on February 6, 2020. *See Plaintiffs' Memorandum of Costs, Pg. 3.* Again, this was not reasonable or necessary because it was not connected with actions taken or pleadings filed in this litigation by either the Plaintiffs or Defendants. Briefly, examination of the procedural history demonstrates that: (1) in December of 2019 Plaintiffs filed a Motion to Compel Discovery and Defendants' filed an Opposition and Countermotion to Extend Time to Disclose Expert Witnesses; (2) both parties filed Replies and hearings were held on January 14, 2020 and January 30, 2020; (3) the Discovery Commissioner's Report & Recommendations were also filed on January 30, 2020; (4) there were no further actions that took place in the case until February 20, 2020, when a status check was held and an Order was entered from the January 30, 2020 hearing; (5) there were no pending motions on February 6, 2020; and (6) there were no other actions taken or pleadings filed which would have necessitated legal research on Westlaw for at least the six months following February 6, 2020. *See attached Exhibit 2, Pg. 11-15.* Thus, it is unambiguous that the Westlaw research costs incurred on February 6, 2020 were not a "reasonable and **necessary expense** incurred **in connection with the action**", as required by NRS 18.005(17) and pertinent case law cited above, and this cost must be retaxed. *See NRS 18.005(17).*

4. $17.55 - Westlaw Research on September 30, 2019:

The final unreasonable and unnecessary legal research cost is a charge for $17.55 for Westlaw research conducted on September 30, 2019. *See Plaintiffs' Memorandum of Costs, Pg. 6.* This Westlaw research was not reasonable or necessary because it too was clearly not connected with actions taken or pleadings filed in this litigation by either the Plaintiffs or Defendants. Examination of the procedural history demonstrates that, prior to September 30, 2019, the only

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

recent actions which had occurred in the case had been an Order filed September 12, 2019 (denying Plaintiffs' Motion to Dismiss Counterclaims and Defendants' Countermotion for Summary Judgment), and Notice of Entry of that Order filed September 30, 2019. *See attached Exhibit 3, Case Docket, Pg. 9.* Further, the procedural history demonstrates: (1) the only action taken on September 30, 2019 was an administrative reassignment by the Court; (2) there were no pending motions or other pleadings on September 30, 2019; and (3) there were not any subsequent actions in the case until the October 11, 2019 Mandatory Rule 16 Conference. *Id. at 9-10.* Therefore, as it was unconnected to the actions taken in this case and/or any pleadings filed by Plaintiffs or Defendants, the September 30, 2019 Westlaw research was not a "reasonable and **necessary expense** incurred **in connection with the action**", as required by NRS 18.005(17) and pertinent case law cited above, and this cost must also be retaxed. *See NRS 18.005(17).*

D. THE REQUESTED COSTS, RUNNER FEES, ARE NOT COMPENSABLE UNDER NRS 18.005

Plaintiff's Memo also includes ten "delivery" charges amounting to $150.00 and has attached runner slips for these deliveries. *See Plaintiffs' Memorandum of Costs, Pg. 6-20 & Pg. 27-36.* First, Defendants would emphasize that runner costs are not specifically enumerated under NRS 18.005. *See NRS 18.005.* Further, Plaintiffs do not cite any legal authority authorizing the taxing of such costs, and Court applies its discretion sparingly "when considering whether or not to allow expenses not specifically allowed by statute and precedent". *See Bergmann, 109 Nev. at 679, 856 P.2d at 565-566.* Additionally, it must be noted that there is persuasive legal authority which suggests that such costs are not compensable.

Specifically, federal courts have consistently held that overhead costs, such as administrative fees, supplies and the use of runners are not properly taxable. *See, e.g., Warner Chilcott Labs. Ireland Ltd. v. Impax Labs., Inc., 2013 WL 1876441, at *12 (D. N.J. April 18, 2013)*

(holding costs slip sheets, tabs, binders, folders, red weld file pockets and labels. . . .constitute[d] attorney's overhead and as such, [was] not taxable"); *N.J. Mfrs. Ins. Group v. Electrolux, Inc., 2013 WL 5817161, at *12 (D. N.J. Oct. 21, 2013)* (holding costs "for labels and binders, which constitute attorney's overhead and as such, are not taxable"); *J-Way Leasing, Ltd. v. Am. Bridge Co., 2010 WL 816439, at *4 (N.D. Ohio March 4, 2010)* ("[C]osts for marking exhibits are overhead expenses and not taxable . . . ."); *Butler v. Wright, 2010 WL 599387, at *8 (M.D. Fl. Feb 16, 2010)* (holding "operating overhead is not taxable"); *Osorio v. Dole Food Co., 2010 WL 3212065, at *7 (S.D. Fl. July 7, 2010)* ("Courts have held that costs for tabs and binders are not taxable costs because they are subsumed within operating overhead."); *Van Voorhis v. Hillsborough Bd. of County Comm'rs, 2008 WL 2790244, at *5 (M.D. Fl. July 18, 2008)* (finding cost of supplies movant purchased from Staples was "subsumed within operating overhead and . . . not taxable.").

Again, as runner costs are not specifically mentioned under any of the provisions of NRS 18.005, Plaintiffs' only reasonable argument regarding these costs is that they fall under NRS 18.005(17). It is implicit in both the language of the statute and its application in relevant case law, that the Court analyzes whether non-specifically enumerated costs and fees are compensable under NRS 18.005(17) by putting the burden on the party seeking to tax the costs to demonstrate that those costs are reasonable and necessary (in addition to being incurred in connection with the action). See *Bergmann v. Boyce, 109 Nev. at 679;* See *U.S. Design & Const. Corp. v. International Broth. of Elec. Workers, 118 Nev. 458, 50 P.3d 170 (2002);* See *Bobby Berosini, Ltd v. People for the Ethical Treatment of Animals, 114 Nev. 1348, 1352-53, 971 P.2d 383 (1998);* See also *NRS 18.005(17)*. The demonstration that unenumerated costs are reasonable and necessary must be sufficiently compelling as to persuade the Court that it is appropriate to exercise discretion that the Nevada Supreme Court has directly stated should only be used "sparingly" and deem the costs compensable. *Id.* Here, runner fees are an unenumerated cost and Plaintiffs do not cite any legal

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

authority which would either compel or reasonably persuade the Court to exercise discretion meant to be used "sparingly". Thus, the costs are not compensable and should be retaxed.

E. PLAINTIFFS HAVE EITHER MISSTATED THEIR SERVICE OF PROCESS COSTS OR FAILED TO INCLUDE AN ACCURATE ACCOUNTING OF THEIR SERVICE OF PROCESS COSTS

Per NRS 18.005(7), "[t]he fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary" is a compensable expense. *See NRS 18.005(7).* Plaintiffs' Memo asserts that the total compensable costs under NRS 18.005(7) incurred for "Service of process/summons" were "$1,126.72". *See Plaintiffs' Memorandum of Costs, Pg. 2.* However, the transactions listings included with Plaintiffs' Memo only lists the following for service of process costs:

1. June 5, 2019 - $199.00. *See Plaintiffs' Memorandum of Costs, Pg. 6.*
2. June 28, 2019 - $90.00. *Id. at Pg. 12.*
3. May 4, 2020 - $54.00. *Id. at 7.*
4. May 4, 2020 - $54.00. *Id. at 7.*
5. May 4, 2020 - $54.00. *Id. at 13.*
6. May 4, 2020 - $112.35. *Id. at 13.*

The total of these six (6) services of process transactions stated in Plaintiffs' Memo is $563.35, not "$1,126.72" as asserted by Plaintiffs. *See Plaintiffs' Memorandum of Costs, Pg. 2.* Therefore, Defendants respectfully request that the Court retax Plaintiffs' asserted Service of Process/Summons costs.

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BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

III.

CONCLUSION

Based on the foregoing, the Defendants respectfully request that the Court grant their Motion to Retax and: (1) retax the legal research costs asserted by Plaintiffs by $2240.37 as outlined above; (2) retax the runner/delivery costs asserted by Plaintiffs by $150.00 as outlined above; and (3) retax the service of process/summons costs asserted by Plaintiffs by 563.37 as outlined above.

Dated this 19 day of March 2021.

BLACK & WADHAMS

Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorneys for Defendants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & WADHAMS and that on the 18th day of March 2021, I caused the above and foregoing document entitled **DEFENDANTS' AMENDED MOTION TO RETAX** to be served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

[X] by electronic service through Wiznet, Clark County Eighth Judicial District Court's electronic filing/service system;

[ ] pursuant to EDCR 7.26, to be sent via facsimile;

[ ] hand delivered to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

F. Thomas Edwards, Esq.
HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

/s/ Diane Meeter
An Employee of Black & Wadhams

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

EXHIBIT "1"

Electronically Filed
3/15/2021 5:29 PM
Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

HOLLEY DRIGGS

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

MEMORANDUM OF COSTS AND DISBURSEMENTS

Clerk's fees (NRS 18.005(1)) ..... $ 1,323.90

Reporters' fees for depositions/copies (NRS 18.005(2))	$ 2,216.81
Service of process/summons (NRS 18.005(7))	$ 1,126.72
Photocopies and postage (NRS 18.005(12)-(14))	$ 203.64
Legal Research/other "necessary expenses" (NRS 18.005(17))	$ 3,665.22
TOTAL	$ **8,536.29**

Dated this 15th day of March, 2021.

HOLLEY DRIGGS

Jessica M. Lujan

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

HOLLEY DRIGGS

Affidavit

STATE OF NEVADA)
ss.
COUNTY OF CLARK)

Jessica M. Lujan, Esq. being duly sworn, states: that affiant is the attorney for the Plaintiffs/Counter-defendants and has personal knowledge of the above costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this affiant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

JESSICA M. LUJAN, ESQ.
Attorney for Plaintiffs/Counterdefendants

SIGNED AND SWORN to before me this
15 day of March, 2021.

NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
MARIA STAFILATOS
Appt No. 06-104150-1
My Appt Expires Feb. 20, 2021

HOLLEY DRIGGS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 15th day of March, 2021, and pursuant to EDCR 8.05 and NRCP 5(b), I caused to be served electronically using the Court's E-Filing E-Service System, a true and correct copy of the foregoing **MEMORANDUM OF COSTS AND DISBURSEMENTS** to all parties in this case registered with the E-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

COSTS

HOLLEY DRIGGS

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
6/5/2019		03827-59 / Commercial Specialists	sp	1.00	199.00	199.00
		Bour Enterprises, LLC		1.00	199.00	199.00
		Service of process				
3/1/2021		03827-59 / Commercial Specialists	pc	22.00	0.15	3.30
		Bour Enterprises, LLC		22.00	0.15	3.30
		Photocopies				
3/9/2021		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
5/15/2019		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
12/14/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
9/6/2019	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				
1/11/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
10/29/2020		03827-59 / Commercial Specialists	pc	395.00	0.15	59.25
		Bour Enterprises, LLC		395.00	0.15	59.25
		Photocopies				
3/9/2020		03827-59 / Commercial Specialists	pc	3.00	0.15	0.45
		Bour Enterprises, LLC		3.00	0.15	0.45
		Photocopies				
12/15/2020		03827-59 / Commercial Specialists	pc	15.00	0.15	2.25
		Bour Enterprises, LLC		15.00	0.15	2.25
		Photocopies				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
11/5/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
3/11/2021		03827-59 / Commercial Specialists	pc	2.00	0.15	0.30
		Bour Enterprises, LLC		2.00	0.15	0.30
		Photocopies				
10/29/2020		03827-59 / Commercial Specialists	pc	5.00	0.15	0.75
		Bour Enterprises, LLC		5.00	0.15	0.75
		Photocopies				
2/27/2020		03827-59 / Commercial Specialists	pc	4.00	0.15	0.60
		Bour Enterprises, LLC		4.00	0.15	0.60
		Photocopies				
3/9/2021		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
12/14/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
10/10/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
6/6/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
12/14/2020		03827-59 / Commercial Specialists	pc	114.00	0.15	17.10
		Bour Enterprises, LLC		114.00	0.15	17.10
		Photocopies				
3/1/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
5/4/2020		03827-59 / Commercial Specialists	sp	1.00	54.00	54.00
		Bour Enterprises, LLC		1.00	54.00	54.00
		Service of process				
10/29/2020		03827-59 / Commercial Specialists	pc	35.00	0.15	5.25
		Bour Enterprises, LLC		35.00	0.15	5.25
		Photocopies				
6/25/2019		03827-59 / Commercial Specialists	bon	1.00	500.00	500.00
		Bour Enterprises, LLC		1.00	500.00	500.00
		Bond fee				
3/9/2020		03827-59 / Commercial Specialists	pc	3.00	0.15	0.45
		Bour Enterprises, LLC		3.00	0.15	0.45
		Photocopies				
2/27/2020		03827-59 / Commercial Specialists	pc	8.00	0.15	1.20
		Bour Enterprises, LLC		8.00	0.15	1.20
		Photocopies				
10/13/2020		03827-59 / Commercial Specialists	pc	17.00	0.15	2.55
		Bour Enterprises, LLC		17.00	0.15	2.55
		Photocopies				
5/4/2020		03827-59 / Commercial Specialists	sp	1.00	54.00	54.00
		Bour Enterprises, LLC		1.00	54.00	54.00
		Service of process				
2/27/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
2/6/2020		03827-59 / Commercial Specialists	wr	1.00	446.55	446.55
		Bour Enterprises, LLC		1.00	446.55	446.55
		Westlaw online research				
1/11/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
12/31/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	3.00 3.00	0.15 0.15	0.45 0.45
5/1/2018		03827-59 / Commercial Specialists Bour Enterprises, LLC Postage E109	po	1.00 1.00	0.94 0.94	0.94 0.94
2/27/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	1.00 1.00	0.15 0.15	0.15 0.15
1/4/2021		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	1.00 1.00	0.15 0.15	0.15 0.15
12/14/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	13.00 13.00	0.15 0.15	1.95 1.95
8/12/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Filing fee	ff	1.00 1.00	4.40 4.40	4.40 4.40
12/14/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	11.00 11.00	0.15 0.15	1.65 1.65
12/18/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	2.00 2.00	0.15 0.15	0.30 0.30
7/9/2019		03827-59 / Commercial Specialists Bour Enterprises, LLC Filing fee	ff	1.00 1.00	3.50 3.50	3.50 3.50
9/3/2019	RC	03827-59 / Commercial Specialists Bour Enterprises, LLC Delivery Charges	de	1.00 1.00	15.00 15.00	15.00 15.00

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
5/16/2019		03827-59 / Commercial Specialists	pc	2.00	0.15	0.30
		Bour Enterprises, LLC		2.00	0.15	0.30
		Photocopies				
1/4/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
5/26/2020		03827-59 / Commercial Specialists	pc	3.00	0.15	0.45
		Bour Enterprises, LLC		3.00	0.15	0.45
		Photocopies				
5/15/2019		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
9/25/2019		03827-59 / Commercial Specialists	po	1.00	0.50	0.50
		Bour Enterprises, LLC		1.00	0.50	0.50
		Postage E109				
12/14/2020		03827-59 / Commercial Specialists	ff	1.00	9.50	9.50
		Bour Enterprises, LLC		1.00	9.50	9.50
		Filing fee				
1/10/2020		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
3/1/2021		03827-59 / Commercial Specialists	pc	112.00	0.15	16.80
		Bour Enterprises, LLC		112.00	0.15	16.80
		Photocopies				
12/14/2020		03827-59 / Commercial Specialists	ff	1.00	200.00	200.00
		Bour Enterprises, LLC		1.00	200.00	200.00
		Filing fee				
3/9/2021		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
9/3/2019	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				
11/5/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
8/12/2020		03827-59 / Commercial Specialists	ff	1.00	30.00	30.00
		Bour Enterprises, LLC		1.00	30.00	30.00
		Filing fee				
7/1/2020		03827-59 / Commercial Specialists	cr	1.00	379.83	379.83
		Bour Enterprises, LLC		1.00	379.83	379.83
		Court reporter				
5/15/2019		03827-59 / Commercial Specialists	pc	6.00	0.15	0.90
		Bour Enterprises, LLC		6.00	0.15	0.90
		Photocopies				
1/11/2021		03827-59 / Commercial Specialists	pc	6.00	0.15	0.90
		Bour Enterprises, LLC		6.00	0.15	0.90
		Photocopies				
9/30/2019		03827-59 / Commercial Specialists	wr	1.00	17.55	17.55
		Bour Enterprises, LLC		1.00	17.55	17.55
		Westlaw online research				
2/16/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
3/5/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
5/15/2019		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
10/13/2020		03827-59 / Commercial Specialists	pc	14.00	0.15	2.10
		Bour Enterprises, LLC		14.00	0.15	2.10
		Photocopies				
1/11/2021		03827-59 / Commercial Specialists	pc	15.00	0.15	2.25
		Bour Enterprises, LLC		15.00	0.15	2.25
		Photocopies				
6/25/2019		03827-59 / Commercial Specialists	bon	1.00	500.00	500.00
		Bour Enterprises, LLC		1.00	500.00	500.00
		Bond fee				
6/28/2019		03827-59 / Commercial Specialists	sp	1.00	90.00	90.00
		Bour Enterprises, LLC		1.00	90.00	90.00
		Service of process				
10/13/2020		03827-59 / Commercial Specialists	pc	14.00	0.15	2.10
		Bour Enterprises, LLC		14.00	0.15	2.10
		Photocopies				
11/15/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
9/4/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
1/7/2021		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
6/21/2019	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				
1/28/2020	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
12/21/2020		03827-59 / Commercial Specialists	pc	21.00	0.15	3.15
		Bour Enterprises, LLC		21.00	0.15	3.15
		Photocopies				
10/30/2020		03827-59 / Commercial Specialists	pc	25.00	0.15	3.75
		Bour Enterprises, LLC		25.00	0.15	3.75
		Photocopies				
2/14/2020	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				
5/4/2020		03827-59 / Commercial Specialists	sp	1.00	54.00	54.00
		Bour Enterprises, LLC		1.00	54.00	54.00
		Service of process				
10/29/2020		03827-59 / Commercial Specialists	pc	5.00	0.15	0.75
		Bour Enterprises, LLC		5.00	0.15	0.75
		Photocopies				
3/1/2021		03827-59 / Commercial Specialists	pc	6.00	0.15	0.90
		Bour Enterprises, LLC		6.00	0.15	0.90
		Photocopies				
10/29/2020		03827-59 / Commercial Specialists	pc	75.00	0.15	11.25
		Bour Enterprises, LLC		75.00	0.15	11.25
		Photocopies				
8/29/2019		03827-59 / Commercial Specialists	wr	1.00	204.44	204.44
		Bour Enterprises, LLC		1.00	204.44	204.44
		Westlaw online research				
1/31/2020		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
5/4/2020		03827-59 / Commercial Specialists	sp	1.00	112.36	112.36
		Bour Enterprises, LLC		1.00	112.36	112.36
		Service of process				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
9/4/2019		03827-59 / Commercial Specialists	ff	1.00	7.00	7.00
		Bour Enterprises, LLC		1.00	7.00	7.00
		Filing fee				
2/26/2021		03827-59 / Commercial Specialists	wr	1.00	224.89	224.89
		Bour Enterprises, LLC		1.00	224.89	224.89
		Westlaw online research				
8/16/2019		03827-59 / Commercial Specialists	wr	1.00	9.84	9.84
		Bour Enterprises, LLC		1.00	9.84	9.84
		Westlaw online research				
1/14/2021		03827-59 / Commercial Specialists	pc	7.00	0.15	1.05
		Bour Enterprises, LLC		7.00	0.15	1.05
		Photocopies				
10/29/2020		03827-59 / Commercial Specialists	pc	5.00	0.15	0.75
		Bour Enterprises, LLC		5.00	0.15	0.75
		Photocopies				
10/10/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
3/1/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
8/12/2020		03827-59 / Commercial Specialists	ff	1.00	4.40	4.40
		Bour Enterprises, LLC		1.00	4.40	4.40
		Filing fee				
2/24/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
6/6/2019		03827-59 / Commercial Specialists	ff	1.00	748.60	748.60
		Bour Enterprises, LLC		1.00	748.60	748.60
		Filing fee				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
9/4/2019	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				
1/11/2021		03827-59 / Commercial Specialists	pc	27.00	0.15	4.05
		Bour Enterprises, LLC		27.00	0.15	4.05
		Photocopies				
1/11/2021		03827-59 / Commercial Specialists	pc	112.00	0.15	16.80
		Bour Enterprises, LLC		112.00	0.15	16.80
		Photocopies				
2/8/2021		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
1/11/2021		03827-59 / Commercial Specialists	pc	14.00	0.15	2.10
		Bour Enterprises, LLC		14.00	0.15	2.10
		Photocopies				
4/9/2020		03827-59 / Commercial Specialists	wr	1.00	316.67	316.67
		Bour Enterprises, LLC		1.00	316.67	316.67
		Westlaw online research				
10/13/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
2/27/2020		03827-59 / Commercial Specialists	pc	3.00	0.15	0.45
		Bour Enterprises, LLC		3.00	0.15	0.45
		Photocopies				
12/14/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
1/28/2020	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
12/18/2020		03827-59 / Commercial Specialists	pc	2.00	0.15	0.30
		Bour Enterprises, LLC		2.00	0.15	0.30
		Photocopies				
12/21/2020		03827-59 / Commercial Specialists	pc	21.00	0.15	3.15
		Bour Enterprises, LLC		21.00	0.15	3.15
		Photocopies				
12/31/2020		03827-59 / Commercial Specialists	pc	3.00	0.15	0.45
		Bour Enterprises, LLC		3.00	0.15	0.45
		Photocopies				
1/4/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
1/4/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
1/4/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
12/31/2020		03827-59 / Commercial Specialists	wr	1.00	1,459.60	1,459.60
		Bour Enterprises, LLC		1.00	1,459.60	1,459.60
		Westlaw				
1/7/2021		03827-59 / Commercial Specialists	ff	1.00	200.00	200.00
		Bour Enterprises, LLC		1.00	200.00	200.00
		Filing fee				
1/7/2021		03827-59 / Commercial Specialists	ff	1.00	9.50	9.50
		Bour Enterprises, LLC		1.00	9.50	9.50
		Filing fee				
1/7/2021		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
5/15/2019		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
9/4/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
5/16/2019		03827-59 / Commercial Specialists	pc	2.00	0.15	0.30
		Bour Enterprises, LLC		2.00	0.15	0.30
		Photocopies				
1/7/2021		03827-59 / Commercial Specialists	ff	1.00	200.00	200.00
		Bour Enterprises, LLC		1.00	200.00	200.00
		Filing fee				
1/8/2020	RC	03827-59 / Commercial Specialists	de	1.00	15.00	15.00
		Bour Enterprises, LLC		1.00	15.00	15.00
		Delivery Charges				
3/1/2021		03827-59 / Commercial Specialists	pc	47.00	0.15	7.05
		Bour Enterprises, LLC		47.00	0.15	7.05
		Photocopies				
5/12/2020		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
5/12/2020		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
2/27/2020		03827-59 / Commercial Specialists	pc	10.00	0.15	1.50
		Bour Enterprises, LLC		10.00	0.15	1.50
		Photocopies				
5/16/2019		03827-59 / Commercial Specialists	pc	2.00	0.15	0.30
		Bour Enterprises, LLC		2.00	0.15	0.30
		Photocopies				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
12/3/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	2.00 2.00	0.15 0.15	0.30 0.30
3/26/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	1.00 1.00	0.15 0.15	0.15 0.15
1/7/2021		03827-59 / Commercial Specialists Bour Enterprises, LLC Filing fee	ff	1.00 1.00	9.50 9.50	9.50 9.50
12/1/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	1.00 1.00	0.15 0.15	0.15 0.15
12/3/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	5.00 5.00	0.15 0.15	0.75 0.75
3/3/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Filing fee	ff	1.00 1.00	3.50 3.50	3.50 3.50
12/1/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	1.00 1.00	0.15 0.15	0.15 0.15
9/4/2019	RC	03827-59 / Commercial Specialists Bour Enterprises, LLC Delivery Charges	de	1.00 1.00	15.00 15.00	15.00 15.00
2/10/2021		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	10.00 10.00	0.15 0.15	1.50 1.50
12/3/2020		03827-59 / Commercial Specialists Bour Enterprises, LLC Photocopies	pc	11.00 11.00	0.15 0.15	1.65 1.65

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
1/11/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
11/30/2020		03827-59 / Commercial Specialists	wr	1.00	63.11	63.11
		Bour Enterprises, LLC		1.00	63.11	63.11
		Westlaw online research				
1/11/2021		03827-59 / Commercial Specialists	pc	79.00	0.15	11.85
		Bour Enterprises, LLC		79.00	0.15	11.85
		Photocopies				
8/12/2020		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
1/4/2021		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
12/1/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
10/13/2020		03827-59 / Commercial Specialists	pc	11.00	0.15	1.65
		Bour Enterprises, LLC		11.00	0.15	1.65
		Photocopies				
3/9/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
8/9/2019		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
5/15/2019		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
11/18/2020		03827-59 / Commercial Specialists	pc	1.00	0.15	0.15
		Bour Enterprises, LLC		1.00	0.15	0.15
		Photocopies				
11/20/2020		03827-59 / Commercial Specialists	pc	16.00	0.15	2.40
		Bour Enterprises, LLC		16.00	0.15	2.40
		Photocopies				
12/3/2020		03827-59 / Commercial Specialists	pc	7.00	0.15	1.05
		Bour Enterprises, LLC		7.00	0.15	1.05
		Photocopies				
5/16/2019		03827-59 / Commercial Specialists	pc	3.00	0.15	0.45
		Bour Enterprises, LLC		3.00	0.15	0.45
		Photocopies				
8/12/2020		03827-59 / Commercial Specialists	ff	1.00	3.50	3.50
		Bour Enterprises, LLC		1.00	3.50	3.50
		Filing fee				
12/13/2019		03827-59 / Commercial Specialists	wr	1.00	75.51	75.51
		Bour Enterprises, LLC		1.00	75.51	75.51
		Westlaw online research				
8/12/2020		03827-59 / Commercial Specialists	ff	1.00	30.00	30.00
		Bour Enterprises, LLC		1.00	30.00	30.00
		Filing fee				
1/29/2021		03827-59 / Commercial Specialists	wr	1.00	69.00	69.00
		Bour Enterprises, LLC		1.00	69.00	69.00
		Westlaw online research				
11/29/2020		03827-59 / Commercial Specialists	pc	7.00	0.15	1.05
		Bour Enterprises, LLC		7.00	0.15	1.05
		Photocopies				
8/16/2019		03827-59 / Commercial Specialists	wr	1.00	222.11	222.11
		Bour Enterprises, LLC		1.00	222.11	222.11
		Westlaw online research				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative		Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
			Grand Total	Worked:	1,440.00		7,139.70
				Billed:	1,440.00		7,139.70

INVOICES

HOLLEY DRIGGS

Veritext, LLC
Western Region

707 Wilshire Boulevard, Suite 3500
Los Angeles CA 90017
Tel. 877-955-3855 Fax. 949-608-3438
Fed. Tax ID: 20-3132569

VERITEXT LEGAL SOLUTIONS

#3827-59

Bill To: F. Thomas Edwards Esq
Marsha Palrose
400 South Fourth Street
Suite 300
Las Vegas, NV, 89101

Invoice #:	CA4280671
Invoice Date:	4/1/2020
Balance Due:	$379.83

Case:	4520 Arville v. Bour Enterprises, LLC	**Third Party:**
Job #:	4038755 | Job Date: 3/26/2020 | Delivery: Normal	
Case #:	A19794864C	
Billing Atty:	F. Thomas Edwards Esq	
Location:	Holley Driggs 400 South Fourth Street | Suite 300 Las Vegas, NV 89101	
Sched Atty:	F. Thomas Edwards Esq | Holley Driggs	

Witness	Description	Units	Quantity	Amount
Mahteme Zewdie	Certificate of Non Appearance (CNA)	1	1.00	$335.00
	Electronic Delivery and Handling	Package	1.00	$28.00

Notes:

Invoice Total:	$363.00
Payment:	$0.00
Credit:	$0.00
Interest:	$16.83
Balance Due:	$379.83

TERMS: Payable upon receipt. Accounts 30 days past due will bear a finance charge of 1.5% per month. Accounts unpaid after 90 days agree to pay all collection costs, including reasonable attorney's fees. Contact us to correct payment errors. No adjustments will be made after 90 days. For more information on charges related to our services please consult http://www.veritext.com/services/all-services/services-information

THIS INVOICE IS 90 DAYS PAST DUE, PLEASE REMIT - THANK YOU

To pay online, go to www.veritext.com

Veritext accepts all major credit cards
(American Express, Mastercard, Visa, Discover)

Please remit payment to:
Veritext
P.O. Box 71303
Chicago IL 60694-1303

Invoice #:	**CA4280671**
Job #:	**4038755**
Invoice Date:	**4/1/2020**
Balance:	**$379.83**

121748

Veritext, LLC - Western Region
Tel. 877-955-3855 Email: lvdepo@veritext.com
Fed. Tax ID: 20-3132569

VERITEXT LEGAL SOLUTIONS

Bill To: F. Thomas Edwards Esq
Marsha Palrose
400 South Fourth Street
Suite 300
Las Vegas, NV, 89101

Invoice #:	**4645329**
Invoice Date:	**11/11/2020**
Balance Due:	**$2,296.83**

Case: 4520 Arville v. Bour Enterprises, LLC (A19794864C) **Proceeding Type: Depositions**

Job #: 4300753 | Job Date: 11/2/2020 | Delivery: Expedited

Location: Las Vegas, NV

Billing Atty: F. Thomas Edwards Esq

Scheduling Atty: F. Thomas Edwards Esq | Holley Driggs

Witness: 30b6 Bour Enterprises	**Quantity**	**Amount**
Original with 1 Certified Transcript	171.00	$1,496.25
Attendance	1.00	$300.00
Waiting Time (Reporter/Videographer Standby Fee)	0.50	$47.50
Exhibits	100.00	$65.00
Exhibits - Color	2.00	$1.90
Exhibits - Multimedia Duplication	1.00	$25.00
Surcharge - Expert/Medical/Technical	171.00	$85.50
Litigation Package-Secure File Suite	1.00	$55.00
Production & Processing	1.00	$50.00
Electronic Delivery and Handling	1.00	$35.00

Notes:

Invoice Total:	**$2,161.15**
Payment:	**$0.00**
Credit:	**$0.00**
Interest:	**$135.68**
Balance Due:	**$2,296.83**

TERMS: Payable upon receipt. Accounts 30 days past due will bear a finance charge of 1.5% per month. Accounts unpaid after 90 days agree to pay all collection costs, including reasonable attorney's fees. Contact us to correct payment errors. No adjustments will be made after 90 days. For more information on charges related to our services please consult http://www.veritext.com/services/all-services/services-information

THIS INVOICE IS 120 DAYS PAST DUE, PLEASE REMIT - THANK YOU

Please remit payment to:
Veritext
P.O. Box 71303
Chicago IL 60694-1303
Fed. Tax ID: 20-3132569

To pay online, go to www.veritext.com
Veritext accepts all major credit cards
(American Express, Mastercard, Visa, Discover)

Invoice #:	**4645329**
Invoice Date:	**11/11/2020**
Balance Due:	**$2,296.83**

121748

AI000738

Tom Edwards

Subject: FW: Veritext West - 4645329 - 4520 Arville v. Bour Enterprises, LLC - 2020-11-02
Attachments: 4645329.pdf

From: Noemi Sandoval <collections-west@veritext.com>
Sent: Monday, March 15, 2021 9:23 AM
To: Marsha Palrose <mpalrose@nevadafirm.com>
Subject: Re: Veritext West - 4645329 - 4520 Arville v. Bour Enterprises, LLC - 2020-11-02

Good morning, Ms. Palrose. I hope you are having a wonderful morning. I would like to follow up with you regarding your last email.

I have reviewed your concerns further with our management team. Management would like to extend a discount of 15% on this invoice. The total amount due for Invoice 4645329 is $1,836.98 if paid within the next 30days.

Please let me know if you have any additional questions or concerns regarding this invoice. Thank you very much for your help with this. Wishing you an amazing day.

Best regards,

Noemi Sandoval
Finance Representative

VERITEXT
611 Anton Blvd. 5th Floor | Costa Mesa, CA 92626
Direct: 949.777.9311 || **Main** 714.549.3700
collections-west@veritext.com
www.veritext.com

Want to pay your bill online? Go to our website, www.veritext.com and click on the "Pay by Credit Card" link. Otherwise, kindly forward payments to P.O. Box 71303, Chicago IL 60694.

RUN SLIPS

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

4/25/17
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 4 PM
Client Name: Coast Specialties Client No: 0327-57
Type of Item: Check
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☐ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☐ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Posting Cost Bond. take to Court for posting. Bring back receipt

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

8/28/19
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 5pm
Client Name: Coast Specialty Client No: 03827-57
Type of Item: Hearing Binder
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☒ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☐ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☒ Leave Courtesy Copy in Dept. 8 Phx Bldg. 11th Fl Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☑ Special Instructions: Please deliver courtesy copy to Dept. 8 Phx Bldg 11th Floor. Thx

Secretary: Sandy Runner: _____
Date Completed: 8/28/19 Date Billed: _____

Received by _____

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

9/3/19
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 2:30 run
Client Name: Comm Specialists Client No: 03827-59
Type of Item: Order + JCCR
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☒ Pick Up From: Black + LoBello
Address: 10777 W. Twain Ave #300 Phone: 702-869-8801
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☒ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☐ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Please pick up signed Order + JCCR from Reception @ Black + LoBello - 10777 W. Twain Ave. Ste 300 LV NV 89135
Thx

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

AI000743

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

9/3/19
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 2:30 pm
Client Name: Comm Specialists Client No: 03627.59
Type of Item: JCCR
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☒ Pick Up From: Winner & Carson 7935 W. Sahara Ave
Address: Ste 101 LV NV 89117 Phone: 702-471-1111
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☐ File With:
☐ County Clerk
☐ Master Calendar
☐ Discovery Commissioner
☐ Arbitration
☐ Family Court Clerk
☐ Bankruptcy Clerk
☐ Federal Court Clerk
☐ Justice Court Clerk
☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Please pick up JCCR from Winner & Carson @ 7935 W. Sahara Ave #101 Las Vegas NV 89117 Thx

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

9/4/19
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 10 am run
Client Name: Cugno Specialists Client No: 02822.59
Type of Item: Order
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☒ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☐ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☒ Leave in Dept. 8 Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Please deliver to Dept. 8 Judge's box, Phx Clds 11th Floor.

Thx

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

AI000745

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

1/4/17
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 2:30 pm
Client Name: Omni Specialists Client No: 13627.59
Type of Item: JCCR
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☒ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☒ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Please deliver courtesy copy to Discovery Commissioner Thx

Secretary: Sandy Runner: _____
Date Completed: 1/4/17 Date Billed: _____

Received by _____

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

9/16/19
Date

Due By: ☐ Immediately ☑ Today ☐ Tomorrow

Time Deadline: 5 PM

Client Name: Comm Specialists Client No: 03527-59

Type of Item: Order

☐ Check/Cash in the Amount of $_____ is Attached

☐ Hand Deliver To: _____

Address: _____

Person Receiving: _____ Phone: _____

☐ Wait for Person to Sign and Return ☐ Okay to Leave

☑ Pick Up From: Dept. 8 Phx Bldg 11th Floor

Address: _____ Phone: _____

☐ Receipt of Copy

To: _____ At: _____

To: _____ At: _____

To: _____ At: _____

☐ File With:

☐ County Clerk
☐ Master Calendar
☐ Discovery Commissioner
☐ Arbitration
☐ Family Court Clerk
☐ Bankruptcy Clerk
☐ Federal Court Clerk
☐ Justice Court Clerk
☐ Justice Court Henderson

☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.

☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.

☐ Issued By: _____ ☐ Certified By: _____

☐ Record at County Recorder ☐ Deliver to Probate Commissioner

☒ Special Instructions: Please pick up Signed Order from Dept. 8 in Phx Bldg 11th Floor Thx

Secretary: Sandy Runner: _____

Date Completed: _____ Date Billed: _____

Received by _____

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

11/3/2020
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 2:30 pm
Client Name: Comm Specialists Client No: 03217.59
Type of Item: Hearing Binder
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☐ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☐ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☒ Leave Courtesy Copy in ~~Dept.~~ Discovery Commissioner Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: Please deliver courtesy copy binder to the Discovery Commissioner's office. Thx

Secretary: Sandy Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

1/28/2020
Date

Due By: ☐ Immediately ☒ Today ☐ Tomorrow
Time Deadline: 5pm
Client Name: Comm Specialist Client No: 03827-59
Type of Item: Disc Comm Report & Recommendations
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☒ File With: ☐ Family Court Clerk
☐ County Clerk ☐ Bankruptcy Clerk
☐ Master Calendar ☐ Federal Court Clerk
☒ Discovery Commissioner ☐ Justice Court Clerk
☐ Arbitration ☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☒ Special Instructions: _____
Please deliver to Discovery Commissioner's office for filing. Thx

Secretary: Jmd Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

HOLLEY•DRIGGS•WALCH•FINE•WRAY•PUZEY•THOMPSON
400 South Fourth Street, Third Floor, Las Vegas, NV 89101
Tel (702) 791-0308 • Fax (702) 791-1912

RUNNER INSTRUCTIONS

Date

Due By: ☐ Immediately ☐ Today ☐ Tomorrow
Time Deadline: _____
Client Name: _____ Client No: _____
Type of Item: _____
☐ Check/Cash in the Amount of $_____ is Attached
☐ Hand Deliver To: _____
Address: _____
Person Receiving: _____ Phone: _____
☐ Wait for Person to Sign and Return ☐ Okay to Leave
☐ Pick Up From: _____
Address: _____ Phone: _____
☐ Receipt of Copy
To: _____ At: _____
To: _____ At: _____
To: _____ At: _____
☐ File With:
☐ County Clerk
☐ Master Calendar
☐ Discovery Commissioner
☐ Arbitration
☐ Family Court Clerk
☐ Bankruptcy Clerk
☐ Federal Court Clerk
☐ Justice Court Clerk
☐ Justice Court Henderson
☐ Leave Courtesy Copy in Dept. _____ Slot/Chambers.
☐ Leave in Dept. _____ Slot/Chambers for Judge's Signature.
☐ Issued By: _____ ☐ Certified By: _____
☐ Record at County Recorder ☐ Deliver to Probate Commissioner
☐ Special Instructions: _____

Secretary: _____ Runner: _____
Date Completed: _____ Date Billed: _____

Received by _____

EXHIBIT "2"

Case Information

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

Case Number	Court	Judicial Officer
A-19-794864-C	Department 5	Barisich, Veronica M.
File Date	Case Type	Case Status
05/15/2019	Other Landlord Tenant	Closed

Party

Plaintiff
4520 Arville

Active Attorneys ▾
Lead Attorney
Edwards, F. Thomas
Retained

Attorney
Story, Sean E.
Retained

Attorney
Lujan, Jessica M
Retained

Counter Defendant
4520 Arville

Active Attorneys ▾
Lead Attorney
Edwards, F. Thomas
Retained

Attorney
Story, Sean E.
Retained

	Attorney Lujan, Jessica M Retained
Plaintiff McKinley Manor	Active Attorneys ▾ Lead Attorney Edwards, F. Thomas Retained
	Attorney Story, Sean E. Retained
	Attorney Lujan, Jessica M Retained
Counter Defendant McKinley Manor	Active Attorneys ▾ Lead Attorney Edwards, F. Thomas Retained
	Attorney Story, Sean E. Retained
	Attorney Lujan, Jessica M Retained
Other (Participant) Black & Lobello	
Defendant Bour Enterprises LLC	Active Attorneys ▾ Lead Attorney Carson, Brent A Retained

	Attorney Graf, J. Rusty Retained
Counter Claimant Bour Enterprises LLC	Active Attorneys ▾ Lead Attorney Carson, Brent A Retained
	Attorney Graf, J. Rusty Retained
Defendant Bour, Mulugeta	Active Attorneys ▾ Lead Attorney Carson, Brent A Retained
	Attorney Graf, J. Rusty Retained
Counter Claimant Bour, Mulugeta	Active Attorneys ▾ Lead Attorney Carson, Brent A Retained
	Attorney Graf, J. Rusty Retained
Defendant Mengesha, Hilena	Active Attorneys ▾ Lead Attorney Carson, Brent A Retained
	Attorney

Graf, J. Rusty
Retained

Counter Claimant
Mengesha, Hilena

Active Attorneys ▾
Lead Attorney
Carson, Brent A
Retained

Attorney
Graf, J. Rusty
Retained

Disposition Events

01/28/2021 Judgment ▾

Judicial Officer
Barisich, Veronica M.

Judgment Type
Summary Judgment

Monetary Judgment

Debtors: Bour Enterprises LLC (Defendant), Mulugeta Bour (Defendant), Hilena Mengesha (Defendant)

Creditors: 4520 Arville (Plaintiff), McKinley Manor (Plaintiff)

Judgment: 01/28/2021 Docketed: 01/29/2021

Comment: Certain Claims

03/04/2021 Judgment ▾

Judicial Officer
Barisich, Veronica M.

Judgment Type
Judgment

Monetary Judgment

Debtors: Bour Enterprises LLC (Defendant), Mulugeta Bour (Defendant), Hilena Mengesha (Defendant)

Creditors: Black & Lobello (Other)

Judgment: 03/04/2021 Docketed: 03/05/2021

Total Judgment: $27,517.72

03/09/2021 Judgment ▾

Judicial Officer
Barisich, Veronica M.

Judgment Type
Judgment Plus Interest

Monetary Judgment

Debtors: Bour Enterprises LLC (Defendant), Mulugeta Bour (Defendant), Hilena Mengesha (Defendant)

Creditors: 4520 Arville (Plaintiff), McKinley Manor (Plaintiff)

Judgment: 03/09/2021 Docketed: 03/10/2021

Total Judgment: $162,756.77

Events and Hearings

05/15/2019 Complaint ▾

Comment
Complaint

05/15/2019 Peremptory Challenge ▾

Comment
Peremptory Challenge of Judge

05/15/2019 Initial Appearance Fee Disclosure ▾

Comment
Initial Appearance Fee Disclosure

05/16/2019 Notice of Department Reassignment ▾

Comment
Notice of Department Reassignment

05/16/2019 Summons Electronically Issued - Service Pending ▾

Comment
Summons

05/16/2019 Summons Electronically Issued - Service Pending ▾

Comment
Summons

05/16/2019 Summons Electronically Issued - Service Pending ▾

Comment
Summons

06/20/2019 Initial Appearance Fee Disclosure ▾

Comment
Initial Appearance Fee Disclosure

06/20/2019 Demand for Security of Costs ▾

Comment
Demand for Security Costs 4520 Arville

06/20/2019 Demand for Security of Costs ▾

Comment
Demand for Security Costs McKinley Manor

06/26/2019 Notice of Posting of Cost Bond ▾

Comment
Notice of Posting of Cost Bond

06/26/2019 Notice of Posting of Cost Bond ▾

Comment
Notice of Posting of Cost Bond

07/09/2019 Notice of Intent to Take Default ▾

Comment
Seven Day Notice of Intent to Take Default

07/16/2019 Answer and Counterclaim ▾

Comment
Defendants' Answer and Counterclaim

07/16/2019 Exhibits ▾

Comment
Exhibit 1 - 6

07/16/2019 Initial Appearance Fee Disclosure ▾

Comment
Initial Appearance Fee Disclosures

08/01/2019 Motion to Dismiss ▾

Comment
Plaintiff/Counterdefendants' Motion to Dismiss Counterclaims

08/01/2019 Clerk's Notice of Hearing ▾

Comment
Notice of Hearing

08/12/2019 Opposition to Motion ▾

Comment
Defendants and Counterclaimants Opposition to Motion to Dismiss Counterclaims and Defendants and Counterclaimants Motion for Summary Judgment

08/16/2019 Errata ▾

Comment
Notice of Errata Re Declaration of Anthony Bourt

08/22/2019 Opposition to Motion For Summary Judgment ▾

Comment
Plaintiffs' Opposition to Defendants' Countermotion for Summary Judgment

08/27/2019 Clerk's Notice of Hearing ▾

Comment
Notice of Hearing

08/27/2019 Reply in Support ▾

Comment
Plaintiffs/Counterdefendants' Reply In Support Of Motion To Dismiss Counterclaims

08/29/2019 Reply in Support ▾

Comment
Defendants/CounterClaimant's Reply In Support of Countermotion for Summary Judgment

09/03/2019 Motion to Dismiss ▾

Judicial Officer(s)
Vacant, DC 8, Bixler, James

Hearing Time
8:30 AM

Comment
Plaintiffs/Counterdefendants' Motion to Dismiss Counterclaims

09/03/2019 Opposition and Countermotion ▾

Judicial Officer(s)
Vacant, DC 8, Bixler, James

Hearing Time
8:30 AM

Comment
Defendants and Counterclaimants Opposition to Motion to Dismiss Counterclaims and Defendants and Counterclaimants Motion for Summary Judgment

09/03/2019 All Pending Motions ▾

Judicial Officer(s)
Vacant, DC 8, Bixler, James

Hearing Time
8:30 AM

Result
Matter Heard

Parties Present
Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Graf, J. Rusty

Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Graf, J. Rusty

Defendant

Attorney: Graf, J. Rusty

09/04/2019 Joint Case Conference Report

Comment
Joint Case Conference Report

09/06/2019 Order

Comment
Order to Appear for Scheduling Conference

09/12/2019 Order Denying Motion

Comment
Order Denying Without Prejudice Plaintiffs/Counterdefendants' Motion to Dismiss Counterclaims and Defendants/Counterclaimants' Countermotion for Summary Judgment

09/13/2019 Notice of Entry of Order

Comment
Notice of Entry of Order

09/30/2019 Administrative Reassignment - Judicial Officer Change

Comment
From Vacant DC8 to Judge Trevor L. Atkin

10/11/2019 Mandatory Rule 16 Conference

Original Type
Mandatory Rule 16 Conference

Judicial Officer
Bixler, James

Hearing Time
8:30 AM

Result
Scheduling Order Will Issue

Parties Present ▲
Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Carson, Brent A

Attorney: Graf, J. Rusty

Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Carson, Brent A

Attorney: Graf, J. Rusty

Defendant

Attorney: Carson, Brent A

Attorney: Graf, J. Rusty

10/14/2019 Answer to Counterclaim ▼

Comment
Answer to Counterclaim

10/18/2019 Scheduling and Trial Order ▼

Comment
Scheduling Order and Order Setting Civil Bench Trial

10/22/2019 Scheduling and Trial Order ▼

Comment
Amended Scheduling Order and Order Setting Civil Bench Trial

10/30/2019 Offer of Judgment ▼

Comment
Defendants/Counterclaimants Offer of Judgment

12/05/2019 Motion to Compel ▼

Comment
Plaintiffs/Counterdefendants' Motion to Compel Discovery

12/06/2019 Clerk's Notice of Hearing ▼

Comment
Notice of Hearing

12/20/2019 Opposition and Countermotion ▾

Comment
Opposition to Motion to Compel Discovery And Counter-Motion to Extend The Time To Disclose Expert Witnesses

01/07/2020 Reply in Support ▾

Comment
Reply in Support of Plaintiffs' Motion to Compel Discovery and Opposition to Defendants' Counter-Motion to Extend Time to Disclose Expert Witnesses

01/14/2020 Motion to Compel ▾

Judicial Officer
Truman, Erin

Hearing Time
9:00 AM

Result
Granted in Part

Comment
Plaintiffs/Counterdefendants' Motion to Compel Discovery

01/14/2020 Opposition and Countermotion ▾

Judicial Officer
Truman, Erin

Hearing Time
9:00 AM

Result
Off Calendar

Comment
Deft's Opposition to Motion to Compel Discovery and Counter-Motion to Extend The Time To Disclose Expert Witnesses

01/14/2020 All Pending Motions ▾

Judicial Officer
Truman, Erin

Hearing Time
9:00 AM

Result
Matter Heard

Parties Present ▲

Plaintiff

Attorney: Edwards, F. Thomas

Attorney: Lujan, Jessica M

Defendant

Attorney: Graf, J. Rusty

Plaintiff

Attorney: Edwards, F. Thomas

Attorney: Lujan, Jessica M

Defendant

Attorney: Graf, J. Rusty

Defendant

Attorney: Graf, J. Rusty

01/17/2020 Notice of Hearing ▼

Comment
Motion to Continue Expert Disclosure Deadline on an Order Shortening Time

01/24/2020 Order Shortening Time ▼

Comment
Defendants / Counter Claimants' Motion to Continue Expert Disclosure on Order Shortening Time

01/28/2020 Response ▼

Comment
Plaintifs' Response to Defendants' Motion to Continue on Order Shortening Time

01/28/2020 Reply ▼

Comment
Reply to Plaintiffs' Response to Defendants' Motion to Continue on Order Shortening Time

01/30/2020 Motion to Continue ▼

Judicial Officer
Atkin, Trevor

Hearing Time
10:00 AM

Result
Granted

Comment
Motion to Continue Expert Disclosure Deadlines on Order Shortening Time

Parties Present ▲
Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Graf, J. Rusty

Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Graf, J. Rusty

Defendant

Attorney: Graf, J. Rusty

01/30/2020 Discovery Commissioners Report and Recommendations ▼

Comment
Discovery Commissioner s Report and Recommendations

02/20/2020 Status Check: Compliance ▼

Judicial Officer
Truman, Erin

Hearing Time
3:00 AM

Cancel Reason
Vacated

Comment
Status Check: Compliance / 1-14-2020

02/20/2020 Order ▼

Comment
Order from January 30, 2020 Hearing

02/20/2020 Notice of Entry of Order ▼

Comment
Notice of Entry of Order from January 30, 2020 Hearing

02/21/2020 Miscellaneous Filing ▼

Comment
Defendant's Production - 2nd Supp to NRCP 16.1

02/21/2020 Supplement ▼

Comment
Defendant's Second Supplement To NRCP 16.1 Initial List of Witnesses And Documents

02/21/2020 Miscellaneous Filing ▾

Comment
Log of Priveleged Documents

02/21/2020 Designation of Expert Witness ▾

Comment
Defendants' Designation of Expert Witnesses

02/27/2020 Stipulation and Order ▾

Comment
Stipulation and Order to Continue Deadlines

02/28/2020 Notice of Entry of Stipulation and Order ▾

Comment
Notice of Entry of Stipulation and Order to Continue Deadlines

03/16/2020 Addendum ▾

Comment
Defendants Addendum to Designation of Expert Witnesses

04/06/2020 Order Setting Civil Bench Trial ▾

Comment
Order Setting Civil Bench Trial

04/07/2020 Order ▾

Comment
Order Re: Discovery Commissioner's Report and Recommendations

04/09/2020 Notice of Entry of Order ▾

Comment
Notice of Entry of Order

04/27/2020 Stipulation and Order ▾

Comment
Stipulation and Order to Continue Deadlines (Second Request)

04/28/2020 Notice of Entry of Order ▾

Comment
Notice of Entry of Order

07/13/2020 Filing Fee Remittance ▾

Comment
Filing Fee Remittance

07/29/2020 Stipulation and Order to Extend Discovery Deadlines ▾

Comment
Stipulation And Order to Continue Deadlines (Third Request)

07/29/2020 Order Setting Civil Bench Trial ▾

Comment
Order Setting Civil Bench Trial

07/29/2020 Notice of Entry of Order ▾

Comment
Notice of Entry of Order

10/13/2020 Pre Trial Conference ▾

Judicial Officer
Atkin, Trevor

Hearing Time
8:30 AM

Cancel Reason
Vacated - Superseding Order

11/09/2020 Calendar Call ▾

Judicial Officer
Atkin, Trevor

Hearing Time
8:30 AM

Cancel Reason
Vacated - Superseding Order

11/10/2020 Motion for Summary Judgment ▾

Comment
Plaintiffs' Motion for Summary Judgment Regarding Counterclaim Damages

11/10/2020 Clerk's Notice of Hearing ▾

Comment
Notice of Hearing

11/16/2020 Bench Trial ▾

Judicial Officer
Atkin, Trevor

Hearing Time
9:00 AM

Cancel Reason
Vacated - Superseding Order

11/19/2020 Amended Order Setting Jury Trial ▾

Comment
Amended Order Setting Civil Jury Trial

11/20/2020 Amended Order Setting Civil Non-Jury Trial ▾

Comment
2nd Amended Order Setting Civil Bench Trial

11/25/2020 Opposition to Motion For Summary Judgment ▾

Comment
Opposition to Plaintiffs' Motion for Summary Judgment Regarding Countereclaim Damages

12/01/2020 Motion for Summary Judgment ▾

Comment
Plaintiffs' Motion for Summary Judgment Regarding Their Breach of Contract Claims

12/02/2020 Clerk's Notice of Hearing ▾

Comment
Notice of Hearing

12/08/2020 Reply in Support ▾

Comment
Plaintiffs' Reply In Support Of Motion For Summary Judgment Regarding Counterclaim Damages

12/09/2020 At Request of Court ▾

Original Type
At Request of Court

Judicial Officer
Atkin, Trevor

Hearing Time
3:00 AM

Result
Hearing Set

Comment
BlueJeans Notice for Department 8 on December 15, 2020

12/15/2020 Motion for Summary Judgment ▾

Judicial Officer
Atkin, Trevor

Hearing Time
9:30 AM

Result
Dismissed

Comment
Plaintiffs' Motion for Summary Judgment Regarding Counterclaim Damages

Parties Present ▴
Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Graf, J. Rusty

Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Graf, J. Rusty

Defendant

Attorney: Graf, J. Rusty

12/17/2020 Opposition to Motion For Summary Judgment ▾

Comment
Opposition to Plaintiffs' Motion for Summary Judgment Regarding Breach of Contract Claimis

01/04/2021 Case Reassigned to Department 5 ▾

Comment
Judicial Reassignment to Judge Veronica M. Barisich

01/05/2021 Pre Trial Conference ▾

Judicial Officer
Atkin, Trevor

Hearing Time
8:30 AM

Cancel Reason
Vacated - per Order

01/05/2021 Reply in Support ▾

Comment
Plaintiffs' Reply In Support Of Motion for Summary Judgment Regarding Breach of Contract Claims

01/08/2021 Minute Order ▾

Judicial Officer
Barisich, Veronica M.

Hearing Time
11:50 AM

Result
Minute Order - No Hearing Held

01/12/2021 Motion for Summary Judgment ▾

Judicial Officer
Cherry, Michael A.

Hearing Time
9:30 AM

Result
Granted

Comment
Plaintiffs' Motion for Summary Judgment Regarding Their Breach of Contract Claims

Parties Present ▴

Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Graf, J. Rusty

Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Graf, J. Rusty

Defendant

Attorney: Graf, J. Rusty

01/28/2021 Order Granting Motion ▾

Comment
Order Granting Plaintiffs' Motion for Summary Judgment on Breach of Contract Claims

01/28/2021 Notice of Entry of Order ▾

Comment
Notice of Entry of Order

02/01/2021 Calendar Call ▾

Judicial Officer
Atkin, Trevor

Hearing Time
8:30 AM

Cancel Reason
Vacated

02/04/2021 Minute Order ▾

Judicial Officer
Barisich, Veronica M.

Hearing Time
3:00 AM

Result
Minute Order - No Hearing Held

02/08/2021 Jury Trial ▾

Judicial Officer
Atkin, Trevor

Hearing Time
9:00 AM

Cancel Reason
Vacated - per Order

02/09/2021 Pre Trial Conference ▾

Judicial Officer
Barisich, Veronica M.

Hearing Time
8:30 AM

Result
Matter Heard

Parties Present ▲

Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Graf, J. Rusty

Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Graf, J. Rusty

Defendant

Attorney: Graf, J. Rusty

02/09/2021 Motion to Adjudicate Attorney's Lien ▼

Comment
Black & LoBello's Motion to Adjudicate Attorneys' Lien for Plaintiff's Failure to Pay Fees and Costs

02/09/2021 Clerk's Notice of Hearing ▼

Comment
Notice of Hearing

02/10/2021 Motion for Entry of Judgment ▼

Comment
Plaintiffs' Motion for Entry of Judgment

02/11/2021 Clerk's Notice of Hearing ▼

Comment
Clerk's Notice of Hearing

02/11/2021 Order Setting Civil Bench Trial ▼

Comment
Order Setting Civil Bench Trial, Pretrial, and Calendar Call

02/17/2021 Order Shortening Time ▼

Comment
Plaintiff's Ex Parte Motion for Order Shortening Time on Plaintiff's Motion for entry of Judgment Pursuant to EDCR 2.26

02/18/2021 Notice of Entry of Order ▼

Comment
Notice of Entry of Order Shortening Time and Notice of Hearing

02/22/2021 Notice of Change of Hearing ▾

Comment
Notice of Change of Hearing

02/24/2021 Opposition to Motion ▾

Comment
Opposition to Plaintiffs' Motion For Entry of Judgment on OST

02/25/2021 Minute Order ▾

Original Type
Minute Order

Judicial Officer
Barisich, Veronica M.

Hearing Time
3:00 AM

Result
Minute Order - No Hearing Held

02/26/2021 Reply in Support ▾

Comment
Plaintiffs' Reply In Support Of Motion For Entry of Judgment

03/02/2021 Motion for Judgment ▾

Judicial Officer
Barisich, Veronica M.

Hearing Time
9:00 AM

Result
Granted

Comment
Plaintiffs' Motion for Entry of Judgment

Parties Present ▴
Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Graf, J. Rusty

Plaintiff

Attorney: Edwards, F. Thomas

Defendant

Attorney: Graf, J. Rusty

Defendant

Attorney: Graf, J. Rusty

03/02/2021 Notice of Non Opposition ▾

Comment
Notice of Non-Opposition to Black & Lobello Notice of Motion; Notice of Attorneys' Lien and Motion to Adjudicate Attorneys' Lien for Defendants' Failure to Pay Fees and Costs, to Perfect Attorneys' Lien and Foreclosure on Attorneys' Lien

03/03/2021 Minute Order ▾

Judicial Officer
Barisich, Veronica M.

Hearing Time
3:00 AM

Result
Minute Order - No Hearing Held

Comment
Plaintiff's Motion for Entry of Judgment

03/04/2021 Order ▾

Comment
Order Granting Black and Lobello Notice of Attorney's Lien and Motion to Adjudicate Attorneys' Lien for Client's Failure to Pay Fees and Costs to Perfect Attorneys' Lien and Foreclose on Attorney's Lien

03/08/2021 Calendar Call ▾

Judicial Officer
Barisich, Veronica M.

Hearing Time
8:30 AM

Cancel Reason
Vacated

03/08/2021 Notice of Entry of Order ▾

Comment
Notice of Entry of Order Granting Black and Lobello Notice of Attorneys' Lien' and Motion to Adjudicate Attorneys' Lien for Client's Failure to Pay Fees and Costs, to Perfect Attorneys' Lien and Foreclose on Attorney's Lien

03/09/2021 Order Granting Motion ▾

Comment
Order Granting Motion for Entry of Judgment

03/09/2021 Judgment ▾

Comment
Judgment Against Defendants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

03/09/2021 Notice of Entry of Order ▾

Comment
Notice of Entry of Order

03/09/2021 Notice of Entry of Judgment ▾

Comment
Notice of Entry of Judgment

03/15/2021 Bench Trial ▾

Judicial Officer
Barisich, Veronica M.

Hearing Time
9:00 AM

Cancel Reason
Vacated - per Order

03/15/2021 Memorandum of Costs and Disbursements ▾

Comment
Memorandum of Costs and Disbursements

03/16/2021 Motion ▾

Judicial Officer
Barisich, Veronica M.

Hearing Time
9:00 AM

Cancel Reason
Vacated - per Order

Comment
Black & LoBello's Motion to Adjudicate Attorneys' Lien for Plaintiff's Failure to Pay Fees and Costs

03/16/2021 Pre Trial Conference ▾

Judicial Officer
Barisich, Veronica M.

Hearing Time
11:00 AM

Cancel Reason
Vacated - per Order

04/12/2021 Calendar Call ▾

Judicial Officer
Barisich, Veronica M.

Hearing Time
8:30 AM

Cancel Reason
Vacated - per Order

04/19/2021 Bench Trial ▾

Judicial Officer
Barisich, Veronica M.

Hearing Time
9:00 AM

Cancel Reason
Vacated - per Order

Financial

4520 Arville

Total Financial Assessment				$1,150.00
Total Payments and Credits				$1,150.00
5/15/2019	Transaction Assessment			$270.00
5/15/2019	Efile Payment	Receipt # 2019-29814-CCCLK	4520 ARVILLE	($270.00)
5/15/2019	Transaction Assessment			$450.00

5/15/2019	Efile Payment	Receipt # 2019-29971-CCCLK	4520 ARVILLE	($450.00)
7/13/2020	Transaction Assessment			$30.00
7/13/2020	Efile Payment	Receipt # 2020-37277-CCCLK	4520 Arville	($30.00)
11/10/2020	Transaction Assessment			$200.00
11/10/2020	Efile Payment	Receipt # 2020-63634-CCCLK	4520 Arville	($200.00)
12/1/2020	Transaction Assessment			$200.00
12/1/2020	Efile Payment	Receipt # 2020-67712-CCCLK	4520 Arville	($200.00)

Bour Enterprises LLC

Total Financial Assessment	$536.00
Total Payments and Credits	$536.00

6/20/2019	Transaction Assessment			$446.00
6/20/2019	Efile Payment	Receipt # 2019-37811-CCCLK	Bour Enterprises LLC	($446.00)
7/16/2019	Transaction Assessment			$90.00
7/16/2019	Efile Payment	Receipt # 2019-43384-CCCLK	Bour Enterprises LLC	($90.00)

McKinley Manor

Total Financial Assessment	$0.00
Total Payments and Credits	$0.00

EXHIBIT "3"

Electronically Filed
1/5/2021 2:22 PM
Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 8 **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT REGARDING BREACH OF CONTRACT CLAIMS** **Date of Hearing: January 12, 2021** **Time of Hearing: 9:30 a.m.**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

Plaintiffs/Counterdefendants, 4520 Arville, a California general partnership; and McKinley Manor, an Idaho general partnership (collectively "Plaintiffs"), by and through their

HOLLEY DRIGGS

Case Number: A-19-794864-C

attorneys of record, the law firm of Holley Driggs, hereby submit this reply in support of their Motion for Summary Judgment Regarding Contract Claims.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Defendants do not dispute that they abandoned their leases ("Leases") of Plaintiffs' commercial premises (the "Premises") early and without authorization, causing Plaintiffs' damages. Absent any legal justification for doing so, Defendants are unquestionably liable for breaching the Leases. Thus, as their *only* argument in defense of Plaintiffs' claims, Defendants have proffered the unsupportable argument that they were constructively evicted as a result of Plaintiffs' alleged breach of implied warranty of habitability for failing to clean up the "dust and debris" at the Premises. *Id.* Defendants assert that this "constructive eviction" excused their performance under the Leases.

Because of the "as-is" provisions found in the Leases, however, the only way Defendants can show that they were constructively evicted based upon Plaintiffs' alleged failure to clean up the Premises is to show that such action or inaction on the part of Plaintiffs breached an *implied* warranty of habitability that somehow overcame Defendants' express agreement to accept the Premises in an "as-is" condition.[1] Despite Defendants' hollow arguments to the contrary, Plaintiffs have demonstrated that there is no implied warranty of habitability in the commercial context under Nevada law.

Thus, with no implied warranty of habitability imposed in commercial leases under Nevada law, and signed Leases which expressly place the responsibility of custodial upkeep on the Defendants, Defendants are foreclosed from demonstrating—as a matter of fact or law—that a constructive eviction has occurred such that Defendants are relieved from liability for their unauthorized early abandonment of their Leases.

[1] Notably, Defendants were well aware of the condition of the Premises when they signed the Leases, as they had 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.

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This Reply will debunk a series of myths concocted by Defendants in a last-ditch attempt to confuse the issues and create a genuine dispute of material fact for trial where none exists:

Myth #1: "[I]t is impossible for a party to demonstrate that they are entitled to judgment as a matter of law when the only authority available in support of their position is persuasive case law." Opposition at 14, on file herein.

Myth #2: Plaintiffs' presentation of Nevada landlord/tenant statutes, Nevada Supreme Court case law, and persuasive case law from various districts is insufficient to support Plaintiffs' argument that there is no implied warranty of habitability in the commercial context in Nevada.

Myth #3: The "as-is" clauses of the leases are invalid pursuant to NRS 104—*the UCC statute.*

Once these easily refuted myths are set aside, the remaining issues are determinative: Defendants failed to set forth any admissible evidence to overcome Plaintiffs' Motion for Summary Judgment and create a genuine dispute of fact for trial, and therefore the Court must enter summary judgment in Plaintiffs' favor on their breach of contract claims.

I. LEGAL ARGUMENT

Defendants' Opposition fails to set forth any authority supporting their argument that the implied warranty of habitability applies in the commercial context in Nevada, and similarly fails to dispute any facts or present any evidence demonstrating that Defendants did not breach their Leases with Plaintiffs. *See* Opposition. Thus, with none of the facts in dispute, the Court is left with *only* two issues to resolve—both of which are *legal* questions that may be resolved by the Court at summary judgment: (1) does the implied warranty of habitability apply in the commercial context?; and (2) if it does, is such implied warranty enforceable despite the "as-is" clauses in the Leases? Because the answer to both of these legal questions is "no," this Court should grant the instant Motion and enter summary judgment in favor of Plaintiffs on their breach of contract claims.

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A. DEFENDANTS' ENTIRE OPPOSITION TO SUMMARY JUDGMENT RESTS ON THREE EASILY REFUTABLE MYTHS, THUS REQUIRING ENTRY OF SUMMARY JUDGMENT IN PLAINTIFFS' FAVOR

1. ***Myth #1**: "[I]t is impossible for a party to demonstrate that they are entitled to judgment as a matter of law when the only authority available in support of their position is persuasive case law."*

   Reality: This Court can—and must—rely on persuasive authority in the absence of controlling authority at summary judgment.

Plaintiffs moved for summary judgment on the grounds that, *inter alia*, Defendants could not have been constructively evicted based on any breach of an implied warranty, as there is no implied warranty of habitability in commercial leases in Nevada (and thus Defendants have no viable defense to their clear breach thereof). At the crux of Defendants' Opposition is the false notion that the Court cannot rely on persuasive authority in ruling on issues of law at summary judgment. This argument is absurd, however, as it is axiomatic that it is the sole province of the Court to decide issues of law and of the fact-finder to decide issues of fact. *See Lee v. GNLV Corp.*, 117 Nev. 291, 295, 22 P.3d 209, 211 (2001) (acknowledging that it is the district court's function to perceive and apply the law); *Branda v. Sanford*, 97 Nev. 643, 646, 637 P.2d 1223, 1225 (1981) (questions of law are "within the province of the court").

Thus, when faced with a legal issue that has not already been decided by crystal clear statutory or case law (as here[2]), it is the exclusive function of the *Court* to say what the law is. Allowing Defendants to proceed to a costly trial on the grounds that certain legal issues remain undecided would therefore be pointless, as going to trial would not change the fact that the Court must ultimately determine how the law should be applied (because the jury is tasked only with fact-finding, not drawing legal conclusions). *See Zamora v. Price*, 125 Nev. 388, 394, 213 P.3d 490, 494 (2009) (discussing the jury's duty as fact-finder).

[2] As the parties have pointed out, despite the weight of statutory and persuasive authority in support, the Nevada Supreme Court has never explicitly held that there is no implied warranty of habitability in the commercial context in Nevada.

Moreover, it is the overwhelming consensus of courts across the country—including in Nevada—that a trial court may consider and rely upon persuasive authority in determining whether to grant summary judgment:

Nevada

- In the absence of controlling law, "the Court will look to Nevada law or persuasive authority from other jurisdictions to dispose of Bank of America's Motion for Summary Judgment." *Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat. Tr. & Sav. Ass'n*, 23 F. Supp. 2d 1166, 1171–72 (D. Nev. 1998).

Louisiana

- "Based on the generally persuasive authority of two circuit courts and the highest court of a sister state . . . defendants' motion for summary judgment solely on the survival claim should be granted. . ." *Carter v. R.J. Reynolds Tobacco Co.*, No. CIV.A. 03-330, 2004 WL 1497770, at *4 (E.D. La. July 1, 2004).

Tennessee

- "Given that there are no disputes of material fact, the Court finds that, on the basis of persuasive authority, Trane has established that it is entitled to summary judgment." *Trane U.S. Inc. v. Neblett*, 291 F. Supp. 3d 848, 855 (M.D. Tenn. 2018).

Mississippi

- "[B]ased on the foregoing persuasive authorities, the Court is of the view that Defendants are entitled to summary judgment . . ." *Lashley v. Pfizer, Inc.*, 877 F. Supp. 2d 466, 473 (S.D. Miss. 2012), *aff'd*, 750 F.3d 470 (5th Cir. 2014).

California

- "The court finds *White v. Cooper* [] a persuasive authority favoring summary judgment for defendants." *Foqua v. Presley*, No. S 00-1319 LKK PAN P, 2005 WL 1865500, at *5 (E.D. Cal. Aug. 4, 2005), *report and recommendation adopted sub nom. Fuqua v. Presely*, No. CVS001319 LKK PAN P, 2005 WL 2271925 (E.D. Cal. Sept. 16, 2005).

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Pennsylvania

- "These decisions provide persuasive authority for the trial court's decision in the present case to enter summary judgment against Appellant." *Albert v. Sheeley's Drug Store, Inc.*, 2020 PA Super 154, 234 A.3d 820, 823–24 (2020).

Oklahoma

- "In light of this persuasive authority on the same subject matter, the Court finds summary judgment appropriate on this narrow ground." *Am. Fid. Assurance Co. v. Bank of New York Mellon*, No. CV-11-1284-D, 2018 WL 6582381, at *5 (W.D. Okla. Oct. 31, 2018), *aff'd*, 820 F. App'x 684 (10th Cir. 2020).

Connecticut

- "Both *Davis* and *McCarthy* are persuasive authority in evaluating the propriety of granting summary judgment in the case at hand." *Lewis v. CIL Realty, Inc.*, No. CV166029825S, 2017 WL 3881040, at *3 (Conn. Super. Ct. July 26, 2017).

Fourth Circuit

- Entry of summary judgment affirmed where "the district court examined the law of North Carolina and persuasive authority from other States" in making its summary judgment ruling. *Dunlap v. Great-W. Life Assur. Co.*, 81 F.3d 149 (4th Cir. 1996).

Fifth Circuit

- "[B]ased on persuasive authority, the district court's decision to grant summary judgment was correct." *Trumble Steel Erectors, Inc. v. Moss*, 304 F. App'x 236, 242 (5th Cir. 2008).

The overwhelming weight of the foregoing authority suggests not only that this Court *may* consider persuasive authority in the absence of controlling law at summary judgment, but that it *must* do so. Thus, in considering whether the implied warranty of habitability applies in the commercial lease context, the Court is free to consider *all* the authority presented by Plaintiffs in their Motion—authoritative and persuasive alike.

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2. ***Myth #2: Plaintiffs' presentation of Nevada landlord/tenant statutes, Nevada Supreme Court case law, and persuasive case law from various districts is insufficient to support Plaintiffs' argument that there is no implied warranty of habitability in the commercial context in Nevada.***

Reality: The various authorities presented by Plaintiffs, when read together, confirm that there is no implied warranty of habitability in the commercial context in Nevada, and Defendants have presented no authority to the contrary.

Defendants take issue with the Nevada case law presented by Plaintiffs' in support of their Motion because the Court did not explicitly hold in any of those cases that the implied warranty of habitability does not apply in the commercial context. *See* Opposition at 6–8, 18–20. While this is true (as the Nevada Supreme Court has never addressed this issue one way or the other), this Court should not be misled by Defendants' attempts to misconstrue these authorities.

The key point illustrated by the Nevada case law cited by Plaintiffs is the simple reality that the Nevada Supreme Court has *never* found a constructive eviction occurred in the commercial context based on a breach of the implied warranty of habitability where the commercial lease did not *expressly* require the action and/or inaction of the landlord. *See* Motion at 10–11 (collecting cases/authority). Rather, in all the Nevada cases discussing constructive eviction from a commercial property, the Nevada Supreme Court found that the constructive eviction occurred based on the landlord's breach of a specific lease provision. *Id.* Defendants have not presented, and Plaintiffs are not aware of, any Nevada case in which a constructive eviction was found to have occurred based solely on the commercial landlord's breach of any *implied* warranty of habitability. *See* Opposition. Thus, it stands to reason that the Nevada Supreme Court has purposely declined to apply the doctrine in the commercial context.

Contrary to Defendants' position, then, this Court would not "expand[] the legal protections in place for landlords" by declining to apply the implied warranty of habitability doctrine to a scenario in which it has *never before been applied*. *See* Opposition at 14–15. Rather, the greater act of "judicial activism" would be for this Court to expand the applicability of the implied warranty of habitability to the commercial arena, where neither the Nevada statute (NRS 118C) nor the Nevada case law supports such expansion.

Indeed, Plaintiffs cited various authorities that, when read together, confirm that there is no implied warranty of habitability in the commercial context in Nevada:

- **Nevada Statutes.** NRS 118A (residential landlord/tenant statute) contains a habitability provision[3], whereas NRS 118C (commercial landlord/tenant statute) does not. Under the rules of statutory construction, the legislature's failure to include a habitability provision from NRS 118C implies the *purposeful exclusion* of the same. *In re Estate of Prestie*, 122 Nev. 807, 814, 138 P.3d 520, 524 (2006) ("We have previously recognized the fundamental rule of statutory construction that the mention of one thing implies the exclusion of another.") (internal alterations and quotation marks omitted). *See* Motion at 10.
- **Persuasive Authority.** Persuasive case law from various jurisdictions which confirm that the implied warranty of habitability is not typically applied in the commercial context. *See* Motion at 10–11 (citing *B.W.S. Investments v. Mid-Am Restaurants, Inc.*, 1990 WL 108794 (N.D. 1990) (citing 3A *Thompson on Real Property*, § 1230 (1981); 2 *Powell on Real Property*, § 233(2)(b) (1990); 49 Am.Jur.2d *Landlord and Tenant* § 768 (1970); Annotation, *Modern Status of Rules as to Existence to Implied Warranty of Habitability or Fitness for use of Leased Premises*, 40 A.L.R. 3d 646, 650 (1971); Restatement (Second) of Property, Landlord and Tenant, § 5.1 Caveat and Comment (1977); *Teller v. McCoy*, 162 W. Va. 367, 380 (1978)).[4]

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[3] NRS 118A, relating to residential leases, expressly states that "[t]he landlord shall at all times during the tenancy maintain the dwelling unit in a habitable condition." NRS 118A.290. There is no such provision in NRS 118C.

[4] Plaintiffs also cited persuasive case law holding that, even in districts where the implied warranty of habitability *does* apply in the commercial context, those implied warranties do not apply if the commercial tenant accepts the property in an "as-is" condition, as here. *See* Motion at 11–12 (citing *Coulston v. Teliscope Productions, Ltd.*, 378 N.Y.S.2d 553, 554 (App. Term 1975); *Davidow v. Inwood N. Prof'l Group--Phase I*, 747 S.W.2d 373, 376 (Tex. 1988); *Gym-N-I Playgrounds, Inc. v. Snider*, 220 S.W.3d 905, 914 (Tex. 2007). The applicability of the "as-is" provisions in the Leases will be discussed in greater detail below.

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- **Nevada Case Law.** Nevada case law regarding constructive eviction, demonstrating that the Nevada Supreme Court follows the majority rule and does *not* apply the implied warranty of habitability in the commercial context. *See* Motion at 12–13.

Thus, while this Court may consider the ample persuasive authority presented by Plaintiffs, as demonstrated above, there is also considerable Nevada authority supporting Plaintiffs' argument that the implied warranty of habitability does not apply in the commercial context, and thus cannot shield Defendants from liability for their breaches of the Leases under their constructive eviction theory.

3. Myth #3: The "as-is" clauses of the leases are invalid pursuant to NRS 104—the UCC statute.

Reality: The Nevada statute governing UCC law is inapplicable to commercial leases of real property, and therefore Defendants have presented no authority to suggest that the "as-is" clauses are invalid.

Defendants dedicate several pages of their summary judgment opposition to their failed argument that the "as-is" clauses in the Leases are invalid because they are allegedly not "conspicuous," as defined under NRS 104.1201—the *UCC* statute. *See* Opposition at 15–18. First, NRS 104 (Uniform Commercial Code – Original Articles) unquestionably applies only to sale of goods transactions, and not to leases of real property. *See generally* NRS 104.1101 *et seq.* Therefore, the provisions of NRS 104 have no bearing on the validity of the "as-is" clauses in the Leases. "The U.C.C. thus not only clearly limits the application of implied warranties of merchantability and fitness for purpose to sales of goods, but it defines a sale of goods in a manner which precludes a residential lease agreement from being considered as such since the residential lease agreement contains neither a sale nor a good." *Miley v. Harmony Mill Ltd. P'ship*, 803 F. Supp. 965, 969 (D. Del. 1992). *See also, Ritchey v. Patt*, 431 Pa. Super. 219, 222, 636 A.2d 208, 210 (1994) (holding that Article 2 of the UCC did not apply to an action for the alleged breach of lease of real property).

Nonetheless, in this case, the "as-is" provisions are found on the very first page (as the very first term!) of the concurrently signed Lease Addendums that Defendants signed when they leased

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the Premises. *See* Motion Ex. 2 at ARV000026; Ex. 3 at ARV000059. Just following the opening recitals on the first page of the Lease Addendums, the "as-is" provisions appear exactly as follows:

> **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.

See Motion Ex. 2 at ARV000026.

> **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.

See Motion Ex. 3 at ARV000059.

As shown, the "as-is" clause is the very first term of the Lease Addendums, and attention is called to the clause by the underlined phrase reading "Condition of Premises." Moreover, Defendants initialed the bottom of *every page* of the Lease Addendums, indicating their understanding and acceptance of the terms therein. *See* Motion Ex. 2 at ARV000026; Ex. 3 at ARV000059.

Additionally, just above Defendants' signatures on the Leases, in bold and capitalized text, Defendants confirm that they:

> **HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND**

VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

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

There is simply no support for the notion that the "as-is" clauses are invalid for any reason. Even the two cases cited by Defendants in support of their argument, *Bill Stremmel Motors, Inc. v. IDS Leasing Corp.*, 89 Nev. 414 (1973) and *Sierra Diesel Injection Service, Inc. v. Burroughs Corp.*, 890 F.2d 108 (9th Cir. 1989), relate to goods transactions—not real property transactions, as here. *See Bill Stremmel Motors, Inc. v. IDS Leasing Corp.*, 89 Nev. 414 (1973) (concerning a transaction relating to a "Centrum Communications system" that malfunctioned); *Sierra Diesel Injection Service, Inc. v. Burroughs Corp.*, 890 F.2d 108 (9th Cir. 1989) (concerning the purchase of a malfunctioned accounting hardware and software system).

Based on the foregoing, there are no grounds to invalidate the "as-is" clauses of the Leases. Nevertheless, even if the "as-is" clauses were found to be invalid (they are not), this would not change the fact that the Leases contain *zero* provisions that require Plaintiffs to maintain the cleanliness of the Premises. *See* Motion Exhs. 2–3. Thus, with no implied warranty of habitability and no lease terms requiring Plaintiffs to clean the "dust and debris" at the Premises, there can be no constructive eviction based thereon, as demonstrated above. Accordingly, Plaintiffs' Motion must be granted and summary judgment entered in Plaintiffs' favor.

B. PUTTING ASIDE DEFENDANTS' FAILED CONSTRUCTIVE EVICTION DEFENSE, PLAINTIFFS HAVE SET FORTH SUFFICIENT, UNDISPUTED EVIDENCE TO SHOW THAT DEFENDANTS ARE LIABLE FOR BREACH OF CONTRACT

At the outset of this Motion, the central questions to be resolved by the Court were (1) have Plaintiffs set forth sufficient law and evidence to show that Defendants are liable for breach of contract?, and (2) have Defendants set forth sufficient law and/or evidence to support their only defense against Plaintiffs' claims and create a genuine issue of material fact for trial? As demonstrated above, the second question can be answered in the negative by resolving three legal issues which Plaintiffs have discussed in detail *supra* (none of which create a genuine dispute of

material fact for trial). Now that Plaintiffs have debunked Defendants' constructive eviction defense as a matter of law (their *sole* defense to Plaintiffs' breach of contract claims), the only question remaining is whether Plaintiffs satisfied their burden at summary judgment to show that Defendants are liable for breach of the Leases. They unquestionably have.

In their Motion, Plaintiffs presented sufficient evidence to satisfy all the elements of a breach of contract claim based on Defendants' early, unauthorized abandonment of their Leases. Indeed, among other things, Plaintiffs presented (1) signed copies of the Leases (and the guaranties and addendums thereto), which explicitly state that abandoning the Premises and failing to pay rent are breaches thereof; (2) Plaintiffs' Declaration affirming that Defendants vacated the Premises on or about May 8, 2018 (prior to the end of the Leases' term); and (3) ledgers denoting the unpaid rent owed by Defendants under the Leases. *See* Motion at 3–7.

This presentation satisfies Plaintiffs' initial burden under NRCP 56 to set forth evidence demonstrating that no genuine dispute of material fact exists for trial on Plaintiffs' breach of contract claims. *See Wood v. Safeway, Inc.*, 121 P.3d 1026, 1029, 1031 (Nev. 2005) (*quoting* NRCP 56(c)). "When a motion for summary judgment is made and supported as required by NRCP 56, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth ***specific facts*** demonstrating the existence of a genuine factual issue." *Wood*, 121 Nev. at 731, 121 P.3d at 1030–31 (internal quotations and citations omitted) (emphasis added). If the nonmoving party fails to introduce admissible evidence showing a genuine issue of material fact, the entry of summary judgment is appropriate. *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 872–73, 265 P.3d 698, 700 (2011) ("Choy did not present any specific facts or affidavits demonstrating the existence of a genuine issue supporting his claim that Ameristar owned or operated the Ameristar Casino Hotel Kansas City. The district court, therefore, properly granted Ameristar's motion for summary judgment."); *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671, 262 P.3d 705, 715 (2011) ("Francis submitted no affidavits or admissible evidence to rebut Wynn's motion for summary judgment. Accordingly, Francis provided no 'contrary evidence' that created genuine material issues of fact on Wynn's claims."); *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 604, 172 P.3d 131, 135 (2007) (Because the

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"opposition failed to introduce admissible evidence of specific facts showing that a genuine factual issue exists for trial," the Nevada Supreme Court "affirm[ed] the district court's order granting summary judgment.").

Critically, in their Opposition, Defendants make *no* argument and cite *no* evidence disputing the fact that they abandoned their leases early and without authorization, and failed to pay rent payments due and owing under the Leases.[5] *See* Opposition. Defendants' failure to direct the Court to *any* evidence demonstrating that they did not breach their Leases of the Premises means that Defendants have failed to create a genuine dispute of material fact for trial.[6] Accordingly, this Court must grant the instant Motion and enter summary judgment in Plaintiffs' favor on their breach of contract claims. *See Wood*, 121 Nev. at 731, 121 P.3d at 1030–31.

II. CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court grant the instant motion and enter summary judgment in Plaintiffs' favor on their breach of contract claims.

Dated this 5th day of January, 2021.

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

Attornevs for Plaintiffs/Counterdefendants

[5] Defendants also did not address Plaintiffs' argument with respect to the additional parking spots Defendants requested prior to abandoning the Premises. *See* Opposition. Therefore, Defendants concede any points related to this argument. *See* NRCP 56(e)(2) (the Court may consider facts undisputed where a party fails to properly address an opposing party's assertion of fact).

[6] Defendants cite one Nevada case for the proposition that "whether a constructive eviction has occurred is a factual determination to be made by the trier of fact." *See* Opposition at 5 (emphasis omitted). However, Defendants' constructive eviction defense relies on the implied warranty of habitability, which Plaintiffs have demonstrated does not apply in the commercial lease context. Therefore, Defendants cannot demonstrate that they have been constructively evicted as a matter of law, and thus there are no factual issues left to be determined by a jury.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 5th day of January, 2021, I did cause a true and correct copy of the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT REGARDING 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

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Steven D. Grierson
CLERK OF THE COURT

NOAS
BLACK & WADHAMS
Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorney for Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No.: A-19-794864-C Dept. No.: 8 **NOTICE OF APPEAL**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X; Counter Defendants,	

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

Case Number: A-19-794864-C

NOTICE IS HEREBY GIVEN that Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha, by and through their attorney of record, Rusty Graf, Esq. of the law firm Black & Wadhams, appeals to the Supreme Court of the State of Nevada from the Order granting Plaintiffs/Counterdefendants' Motion for Entry of Judgment filed in the above-captioned matter on March 9, 2021 with Notice of Entry filed March 9, 2021, and from the Judgment entered March 9, 2021 with Notice of Entry of Judgment field March 9, 2021.

Dated this 24 day of March 2021.

BLACK & WADHAMS

#15271

RUSTY GRAF, ESQ.
Nevada Bar No. 6322
10777 W. Twain Ave., 3rd Fl.
Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (fax)
rgraf@blackwadhams.law
Attorney for Defendants/Counterclaimants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF E-SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & WADHAMS and that on the 24th day of March 2021, the above and foregoing document entitled **DEFENDANTS/COUNTERCLAIMANTS' NOTICE OF APPEAL** was served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

[X] by electronic service through Wiznet, Clark County Eighth Judicial District Court's electronic filing/service system;

[ ] pursuant to EDCR 7.26, to be sent via facsimile;

[ ] hand delivered to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

F. Thomas Edwards, Esq.
Jessica M. Lujan, Esq.
HOLLEY DRIGGS
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

Diane Meeter
An Employee of Black & Wadhams

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

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Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **Date of Hearing: April 20, 2021** **Time of Hearing: 9:00 AM**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO RETAX COSTS

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HOLLEY DRIGGS

Plaintiffs/Counterdefendants, 4520 Arville and McKinley Manor (collectively "Plaintiffs"), by and through their attorneys of record, the law firm of Holley Driggs, hereby submits this Opposition to Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour, and Hilena Mengesha (together "Defendants") Motion to Retax Costs.

This Opposition is made and based upon the papers and pleadings on file herein, the following memorandum of points and authorities, and any oral argument at the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Aside from one mathematical error correctly noted by Defendants in their Motion to Retax Costs, Defendants' objections to Plaintiffs' Memo of Costs are without merit. Indeed, Defendants assert that Plaintiffs' delivery charges (which total just $150) are non-compensable under NRS 18.005, despite Nevada case law expressly holding that such costs are recoverable. Additionally, Defendants take issue with a portion of the biggest ticket item asserted—legal research—claiming that such costs are excessive and "unrelated" to the litigation. This argument ignores the reality that Plaintiffs were forced to incur legal research costs throughout the litigation in order to refute Defendants' baseless counterclaims and affirmative defenses (upon which Plaintiffs ultimately prevailed and obtained Judgment in their favor).

The Court has been provided sufficient information to determine that Plaintiffs incurred costs in the amount of $7,972.93. Such costs are eminently reasonable for a case that was litigated for nearly two years prior to resolution, and which required adjudication not only of Plaintiffs' claims, but also of Defendants' meritless counterclaims and affirmative defenses.

II. LEGAL ARGUMENT

A. Legal Research Costs

Defendants take issue with several of Plaintiffs' legal research charges based on the dates of such charges and the pending motions in the litigation at the time. *See* Motion to Retax Costs at 6–10, dated 3/18/2021, on file herein. Defendants also object to the amount of certain legal research charges. *Id.* at 7–8. Defendants' argument misses the mark for several reasons.

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First, the dates of the Westlaw charges in the transactions listing attached to the Memo of Costs are not the dates the research was conducted. Rather, the dates listed represent the dates upon which such accumulated costs were billed by Westlaw to Holley Driggs.

Second, a review of the Westlaw research reports during certain timeframes referenced by Defendants demonstrates the propriety of the research charges. For example, Defendants dispute a $1,459.60 research charge on December 31, 2020. *See* Motion to Retax Costs at 7–8. As Defendants correctly point out, this was around the time that Plaintiffs were researching and drafting the Reply in support of their Motion for Summary Judgment Regarding Their Breach of Contract Claims. *See* Plaintiffs' Reply, dated 1/5/2021, on file herein. Notably, Plaintiffs were forced to reply to a slew of meritless arguments presented in Defendants' Opposition to the Motion for Summary Judgment, including the assertions that: (1) this Court is not entitled to rely on persuasive authority when deciding a motion for summary judgment (Opposition at 14); (2) a jury must decide whether a constructive eviction occurred (*Id.* at 5); (3) the "as-is" clauses in the subject Leases of real property were invalid under the UCC statute (*Id.* at 15–18); and (4) the implied warranty of habitability applies in the commercial context in Nevada (*Id.* at 18–19).

The following is just a sampling of the Westlaw searches that Plaintiffs' counsel ran in preparing to draft the Reply, consistent with the above arguments set forth by Defendants:

persuasive authority can support motion for summary judgment (22) **Search Type:** Plain Language **Content:** Cases **Jurisdiction:** Nevada	12/01/2020 3:40 PM
adv: "summary judgment" /s "persuasive authority" (285) **Search Type:** Boolean T&C **Content:** Cases	12/29/2020 2:54 PM
court decides the applicable rules of law (16) **Search Type:** Plain Language **Content:** Overview **Jurisdiction:** Nevada	12/03/2020 10:37 AM
jury does not make conclusions of law (277) **Search Type:** Plain Language **Content:** Cases **Jurisdiction:** Nevada	12/03/2020 10:43 AM

nevada rules of civil procedure are authoritative (30) **Search Type:** Plain Language **Content:** Cases **Jurisdiction:** Nevada	12/03/2020 1:21 PM
constructive eviction damages (43) **Search Type:** Plain Language **Content:** Cases **Jurisdiction:** Nevada (State & Fed.)	12/21/2020 10:39 AM
adv: "as-is" /5 "lease" (25) **Search Type:** Boolean T&C **Content:** Cases **Jurisdiction:** Nevada (State & Fed.)	12/30/2020 4:05 PM
UCC does not apply to real property transactions (31) **Search Type:** Plain Language **Content:** Cases **Jurisdiction:** Nevada (State & Fed.)	12/31/2020 11:23 AM

As shown in the above sampling of entries, these searches returned as many as 285 results to sift through, read, and evaluate. Many additional searches were necessary to address the finer points articulated in Plaintiffs' briefing at summary judgment. However, it is important to note that the research examples mentioned above were only necessary to refute Defendants' baseless arguments, which should not have been asserted in the first place. Indeed, had Defendants run these searches prior to asserting their counterclaims and affirmative defenses, they would have realized that such claims and defenses lacked merit under Nevada law. This would have, in turn, saved Plaintiffs the costs they incurred refuting the same.

Unfortunately, the Westlaw report does not extend far enough back in time to reveal the searches made during the remaining timeframes discussed by Defendants in their Motion to Retax Costs. However, the song remains the same. Plaintiffs were forced to conduct a great deal of research refuting Defendants' arguments throughout this litigation, all of which were eventually deemed to lack any merit. Plaintiffs were aware of Defendants' constructive eviction defense/counterclaim (based on the implied warranty of habitability) early on in the case, and conducted research from time to time to prepare for forthcoming motion practice, discovery, and other landmarks throughout the litigation. There is no rule that dictates when such research is allowed to be performed, and certainly no rule stating that legal research may only be performed when a motion is pending. Plaintiffs therefore respectfully submit that the Westlaw charges listed

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in their Memo of Costs were necessarily and reasonably incurred, and thus they are entitled to recover the full amount thereof.

B. Delivery Costs

Defendants incorrectly argue that delivery charges are non-compensable under NRS 18.005. *See* Motion to Retax Costs at 10–12, dated 3/18/2021, on file herein. The Nevada Supreme Court has expressly held that "[t]he trial court may award courier expenses to the extent that the court determines that the expenses incurred were reasonable and necessary." *Bergmann v. Boyce*, 109 Nev. 670, 682, 856 P.2d 560, 568 (1993), *abrogated on other grounds, as recognized by Matter of DISH Network Derivative Litig.*, 133 Nev. 438, 451, 401 P.3d 1081, 1093 (2017). The delivery charges are appropriately backed up with the run slips that detail the date and reason for the deliveries. *See* Memo of Costs, dated 3/15/2021, on file herein. The Court therefore has sufficient information to determine that the delivery charges were reasonable and necessary, such that Plaintiffs are entitled to recover the full $150.00 in delivery charges.

C. Service of Process Costs

Plaintiffs inadvertently doubled their service of process costs when they were tallying and calculating these costs as set forth in the transactions listing. The costs associated with service of process set forth in the Memo of Costs total $563.36, not $1,126.72 (a difference of exactly $563.36). Therefore, Plaintiffs concede that their total amount of costs should be reduced by $563.36, for a total costs award of $7,972.93.

III. CONCLUSION

Defendants' Motion to Retax Costs should be denied in part, consistent with the foregoing. Plaintiffs are entitled to recover the full amount of their delivery and legal research costs, as such

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costs were actually and reasonably incurred. However, Plaintiffs' service of process costs should be reduced by $536.36, such that Plaintiffs are entitled to an award of costs in the *total* amount of $7,972.93.

Dated this 26th day of March, 2021.

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

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 26th day of March, 2021, I did cause a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO RETAX COSTS** 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

Electronically Filed
3/29/2021 12:24 PM
Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **HEARING REQUESTED** **PLAINTIFFS' MOTION FOR ATTORNEYS' FEES**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

Plaintiffs/Counterdefendants, 4520 Arville, a California general partnership; and McKinley Manor, an Idaho general partnership (collectively "Plaintiffs"), by and through their attorneys of record, the law firm of Holley Driggs, hereby move, pursuant to NRS 18.010 for an

Case Number: A-19-794864-C

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award of attorneys' fees against Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour, and Hilena Mengesha (together "Defendants"). The attorney fees incurred to date total $88,145.00.

This Motion for Attorneys' Fees (the "Motion") is made and based upon the papers and pleadings on file herein, the following memorandum of points and authorities, the Declaration of F. Thomas Edwards, Esq., attached hereto at **Exhibit 1**, and any oral argument at the hearing on this matter.

Dated this 29th day of March, 2021.

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND BACKGROUND

This case should have been a straightforward action for breach of contract related to Defendants' early, unauthorized abandonment of their commercial leases (the "Leases") of Plaintiffs' warehouse space (the "Premises"). However, instead of dealing with the cut and dry claims against them, Defendants unnecessarily complicated this matter by asserting baseless counterclaims and affirmative defenses, asserting that they had been constructively evicted from the Premises in light of Plaintiffs' alleged breach of the implied warranty of habitability related to "dust and debris" at the Premises.

While their constructive eviction claim was a *superficially* attractive excuse for Defendants' non-performance under the Leases, Defendants knew or should have known that this defense/counterclaim was meritless from the start: First, Defendants' commercial Leases expressly state that Defendants accepted the Premises in an "as-is" condition. Second, Defendants' commercial Leases expressly state that Defendants were responsible for any maintenance of the interior of the Premises, such that if there was an issue with the "dust and debris," it was Defendants' contractual obligation to remedy that issue. Third, Defendants could not claim they were unaware of the condition of the Premises because Defendants operated out of the premises pursuant to a sub-lease for almost two (2) years before they signed the Leases at issue in this lawsuit. Fourth, as Plaintiffs pointed out in their Motion to Dismiss Defendants' counterclaims (filed less than *three (3) months* after Plaintiffs initiated this suit), the implied warranty of habitability does not apply to commercial leases in Nevada. *See* Motion to Dismiss Counterclaims at 7–8, dated 8/1/2019, on file herein.

Despite these clear bases warranting dismissal of Defendants' counterclaims, Defendants opposed the Motion to Dismiss and filed a Countermotion for Summary Judgment on these same issues. *See* Defendants' Opposition to Motion to Dismiss and Countermotion for Summary Judgment, dated 8/12/2019, on file herein. Presumably out of an abundance of caution, the

presiding Judge at the time, the Hon. Judge James Bixler[1], found that it was premature to rule on either the Motion to Dismiss or the Countermotion for Summary Judgment, and denied both without prejudice. *See* Order Denying Motion to Dismiss and Countermotion for Summary Judgment, dated 9/12/2019, on file herein.

Accordingly, Plaintiffs had no choice but to participate in a lengthy and expensive discovery process primarily concerning Defendants' counterclaims, which ultimately resulted in the same conclusion Plaintiffs had reached at the outset: Defendants' constructive eviction claim lacked merit, and Plaintiffs were entitled to a full recovery on their claims. On December 1, 2020, over a year after they filed their Motion to Dismiss Defendants' counterclaims, Plaintiffs filed their Motion for Summary Judgment, which set forth essentially the same arguments regarding the lack of warranty of habitability in the commercial lease context in Nevada, and the "as-is" clauses in the Leases. *See* Plaintiffs' Motion for Summary Judgment on Their Breach of Contract Claims, dated 12/1/2020, on file herein.

Because Defendants failed to set forth any authority in their briefing or at the hearing before the Hon. Justice Michael Cherry refuting the arguments set forth in Plaintiffs' Motion for Summary Judgment, the Court granted Plaintiffs' Motion for Summary Judgment at the hearing on January 12, 2021. This event should have marked the end of these proceedings. However, despite the Court's granting summary judgment in favor of Plaintiffs, Defendants adamantly opposed entry of Judgment against them. This resulted in Plaintiffs' having to draft a Motion for Entry of Judgment (which Defendants also opposed) to convince the Court that entry of Judgment in favor of Plaintiffs was appropriate. Following a hearing, the Court granted Plaintiffs' Motion for Entry of Judgment on March 9, 2021 and entered Judgment on the same day. *See* Order Granting Plaintiffs' Motion for Entry of Judgment; Judgment, both dated 3/9/2021, on file herein.

Now, Defendants have filed a Notice of Appeal, indicating that they intend to force Plaintiffs to expend even more time and resources following Defendants' inexcusable breaches of the Leases. *See* Notice of Appeal, dated 3/24/2021, on file herein. Plaintiffs therefore respectfully

[1] This case was also assigned to the Hon. Judge Trevor Atkin.

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request an award of their reasonably and necessarily incurred attorneys' fees, so that they may gear up to fight the next portion of this senseless battle. Accordingly, Plaintiffs request an award of fees in the amount of $88,145.00 incurred over almost two (2) years of litigation, requiring 373.6 hours of work at an effective hourly rate of just $235.93.

II. LEGAL ARGUMENT

A. Plaintiffs Timely Seek Their Attorneys' Fees

NRCP 54(d)(2)(B) requires the prevailing party to file a motion for attorney fees within 21 days after the Notice of Entry of Judgment. Notice of Entry of Judgment was submitted on March 9, 2021. Plaintiffs bring this Motion within 21 days of the Notice of Entry of Judgment. Therefore, Plaintiffs' request for attorneys' fees is timely.

B. Plaintiffs are Entitled to Recover Their Fees pursuant to the Lease Agreements

Plaintiffs are entitled to recover the entirety of their attorneys' fees incurred in successfully prosecuting this action and defending against the counterclaims lodged by Defendants pursuant to fee-shifting provisions in the Leases, which entitle the prevailing party in any suit involving the Premises to recover its attorneys' fees from the non-prevailing party. "Attorney fees are . . . available when authorized by rule, statute, or contract." *Henry Prods. Inc. v. Tarmu*, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998). "The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law." NRS 18.010(1). The Supreme Court of Nevada noted, with respect to the language above, "[i]t is the rule that provisions in contracts for the payment of attorney's fees in the event it is necessary to resort to aid of counsel for enforcement or collection are valid and enforceable." *Bates v. Chronister*, 100 Nev. 675, 683, 691 P.2d 865, 871 (1984).

The Leases contain identical fee-shifting provisions, which state, in pertinent part:

> **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,

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> 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. . .

See Leases, attached hereto as **Exhibits 3 and 4** at 18 (Section 31).

Because Plaintiffs obtained a judgment against Defendants in this action for their breach of the Leases, and also successfully defended the counterclaims lodged by Defendants, Plaintiffs are entitled to recover their reasonably and necessarily incurred attorneys' fees.

C. The Fees Sought by Plaintiffs are Reasonable

A court deciding a motion for attorneys' fees must consider the following four factors when determining their reasonableness: (1) the qualities of the advocate (ability, training, experience, professional standing, and skill); (2) the character of the work to be done (difficulty, intricacy, importance, time and skill required); (3) the work actually performed by the lawyer (skill, time and attention given to the work); and (4) the results (success and benefits derived). *Hornwood v. Smith's Food King No. 1*, 107 Nev. 80, 87, 807 P.2d 208, 213 (1991); *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

1. The Qualities of the Advocates

This Court had the opportunity to assess the quality of the advocacy of Holley Driggs in its written and oral advocacy that resulted in Plaintiffs successfully prosecuting this action and obtaining a significant monetary judgment in their favor. In doing so, Plaintiffs also successfully defended against Defendants' counterclaims and affirmative defenses. Moreover, Holley Driggs is "AV" rated by Martindale-Hubbell and has practiced in the Nevada courts for more than two decades.

The quality of Holley Driggs' work is evidenced by, among other things, its successful prosecution of this action. Further, the qualities of the individual attorneys working on this matter support the reasonableness of the fees. *See* Edwards Decl. ¶¶ 7-10. This factor weighs heavily in favor of awarding Plaintiffs the full amount of $88,145.00 in fees.

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2. The Character of the Work to Be Done

Although this should have been a straightforward breach of contract action, Defendants complicated this matter exponentially by asserting meritless counterclaims and affirmative defenses alleging Defendants' constructive eviction based on the implied warranty of habitability—which does not exist for commercial leases in Nevada. *See* Edwards Decl. ¶ 11. Refuting these baseless counterclaims required in-depth legal research (on a novel issue never before considered by the Nevada Supreme Court), expert witness reports and in-person walkthroughs of the Premises, and excess motion practice that would not have otherwise been necessary. *Id.* Thus, the character of the work to be done was dictated by Defendants' unrelenting attempts to fight Plaintiffs' legitimate claims against them throughout the litigation. Ultimately, Defendants' efforts failed, and Plaintiffs obtained Judgment in their favor. This factor thus weighs in favor of awarding Plaintiffs the full amount of $88,145.00 in fees.

3. The Work Actually Performed

As evidence of the work performed by Holley Driggs in the instant lawsuit, Plaintiffs attach to this Motion as **Exhibit 2** partially redacted time entries of Holley Driggs. *See* Edwards Decl. ¶ 12. In summary, these time entries include, but are not limited to, work performed for the following:

a. Analysis of the Leases and case facts, and correspondence with Defendants and their counsel regarding the same;
b. Drafting the Complaint;
c. Drafting the Notice of Intent to Take Default and correspondence with opposing counsel regarding the same;
d. Reviewing and responding to Defendants' counterclaims and affirmative defenses;
e. Legal research and drafting of the Motion to Dismiss Defendants' counterclaims (and reply in support);
f. Opposing Defendants' countermotion for summary judgment;
g. Preparing for and attending the hearings on the above motions;

h. Preparing disclosures and conducting full discovery, including written discovery and depositions;

i. Reviewing discovery exchanged between the parties;

j. Drafting a meet and confer letter and subsequent motion to compel;

k. Correspondence with potential experts and review of Defendants' expert report;

l. Preparing for and attending the hearing on the motion to compel;

m. Preparing various proposed orders and stipulations;

n. Legal research and drafting of the Motion for Sanctions against Defendants (and reply in support);

o. Engaging in settlement discussions;

p. Legal research and drafting of the Motions for Summary Judgment (and replies in support);

q. Preparing for and attending the hearings on the Motions for Summary Judgment;

r. Drafting the Motion for Entry of Judgment (and reply in support);

s. Preparing for and attending the hearing on the Motion for Entry of Judgment;

t. Drafting the proposed orders on the above motions and final Judgment.

As a result of the aforementioned work (and other work not mentioned) performed on this matter, Plaintiffs successfully prosecuted this action and ultimately obtained a judgment in their favor. This factor weighs in favor of awarding Plaintiffs the full amount of $88,145.00 incurred over almost two (2) years of litigation, requiring 373.6 hours of work at an effective hourly rate of just $235.93.

4. The Result

Here, the result favors a finding that the fees were reasonable. Plaintiffs commenced this straightforward action to collect unpaid Lease payments from Defendants as a result of their early and unauthorized abandonment of Plaintiffs' Premises under the Leases. *See* Edwards Decl. ¶ 13. Defendants complicated this matter by asserting baseless affirmative defenses and counterclaims, which Plaintiffs successfully defeated at summary judgment. *Id.* As a result, Plaintiffs obtained a

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significant monetary judgment in their favor. Accordingly, the result favors a finding that Plaintiffs' fees were reasonable.

III. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court grant the instant Motion and grant Plaintiffs an award of attorneys' fees in the amount of $88,145.00.

Dated this 29th day of March, 2021.

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

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 29th day of March, 2021, I did cause a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR ATTORNEYS' FEES** 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

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **DECLARATION OF F. THOMAS EDWARDS, ESQ. IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

I, F. Thomas Edwards, declare as follows:

1. I am an attorney with the law firm Holley Driggs (the "Firm"), counsel of record for Plaintiffs 4520 Arville, a California general partnership; and McKinley Manor, an Idaho

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general partnership (collectively "Plaintiffs"), in the above-captioned case.

2. I have personal knowledge of the matters set forth herein and if called to do so, I could and would testify competently to the following.

3. I make this declaration in support of Plaintiffs' Motion for Attorneys' Fees (the "Motion").

4. The total amount of attorneys' fees actually and necessarily incurred by Plaintiffs through the Firm in prosecuting this action is $88,145.00, representing 373.6 hours of work at an effective hourly rate of $235.93, which are more fully set forth in the partially redacted Transactions Listing of amounts billed to Plaintiffs, a true and accurate copy of which is attached to the Motion as Exhibit 2.

5. Pursuant to the factors articulated in *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 829, 192 P.3d 730, 736 (2008) and *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969), the time expended by the Firm on this matter was reasonable and necessary. The fees were actually incurred in defending this action and conform to the usual practice and standards of the Las Vegas area. Specifically, the following *Brunzell* factors all support the reasonableness of the fees actually and necessarily incurred: 1) *quality of the advocate*: ability, training, education, experience, professional standing and skill (¶¶ 6-12); 2) *the character of the work to be done*: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation (¶ 13); 3) *the work actually performed by the lawyer*, the skill, time and attention given to the work (¶ 14); and 4) *the result*: whether the attorney was successful and what benefits were derived (¶ 15). *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969).

6. The ability, training, education, experience, professional standing and skill of the attorneys working on Plaintiffs' case justify the full amount of attorneys' fees incurred this action.

7. I am the lead attorney for Plaintiffs on this case and a shareholder at the Firm. I received my Juris Doctorate from the University of Arizona James E. Rogers College of Law in 2005 and was admitted to the Nevada State Bar in 2005. I have practiced law continuously since

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that time specializing in litigation and received the AV Preeminent Rating by Martindale-Hubbell. My hourly rate for the matter was $360.00.

8. Sean E. Story, Esq. was an associate at the Firm and was a working attorney on this case. He received his Juris Doctorate from the University of Arizona James E. Rogers College of Law in 2015 and was admitted to the Nevada State Bar in 2015. His hourly rate for the matter was $260.00.

9. Jessica M. Lujan, Esq. is an associate at Holley Driggs and was a working attorney on this case. She received her Juris Doctorate from Boston University School of Law and was admitted to the Nevada State Bar in 2018. She clerked for the Honorable Judge James C. Mahan of the United States District Court for the District of Nevada and has been practicing law since that time, specializing in litigation. Her hourly rate for this matter ranged from $240.00 to $250.00.

10. Kandy Halsey is a paralegal at Holley Driggs provided assistance with recording certain documents with the Clark County Recorder's Office. Ms. Halsey has been employed with Holley Driggs as a paralegal since 2018. Her hourly rate for this matter was $220.00.

11. The character of the work performed in this case supports the reasonableness of the fess actually and necessarily incurred. Although this should have been a straightforward breach of contract action, Defendants complicated this matter exponentially by asserting meritless counterclaims and affirmative defenses alleging Defendants' constructive eviction based on the implied warranty of habitability—which does not exist for commercial leases in Nevada. Refuting these baseless counterclaims required in-depth legal research, expert witness reports and in-person walkthroughs of the Premises, and excess motion practice that would not have otherwise been necessary.

12. The actual work performed by the Firm supports the reasonableness of the fees actually and necessarily incurred by Plaintiffs. The Transactions Listing attached to the Motion as Exhibit 2 reflects the actual amount of time expended by the Firm on the tasks described therein.

13. Finally, the result of the work supports the reasonableness of the fees incurred by Plaintiffs. Plaintiffs commenced this straightforward action to collect unpaid Lease payments from Defendants as a result of their early and unauthorized abandonment of Plaintiffs' Premises under

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the Leases. Defendants complicated this matter by asserting baseless affirmative defenses and counterclaims, which Plaintiffs successfully defeated at summary judgment.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

Dated this 29th day of March, 2021.

/s/ F. Thomas Edwards
F. THOMAS EDWARDS, ESQ.

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EXHIBIT 2

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
4/24/2018	FTE	03827-59 / Commercial Specialists	T	2.40	360.00	864.00
		Bour Enterprises, LLC		2.40	360.00	864.00
		Review correspondence from Mr. Bour; review leases; draft response to Mr. Bour; correspond with client regarding same; revise and finalize letter				
5/7/2018	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review correspondence from client and Attorney Connell; correspond with Attorney Connell regarding same				
5/8/2018	FTE	03827-59 / Commercial Specialists	T	0.70	360.00	252.00
		Bour Enterprises, LLC		0.70	360.00	252.00
		Review correspondence between partis; correspond with opposing counsel regarding same; teleconference with opposing counsel; send status report to client				
5/11/2018	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Correspond with opposing counsel; correspond with client				
5/15/2019	FTE	03827-59 / Commercial Specialists	T	2.20	360.00	792.00
		Bour Enterprises, LLC		2.20	360.00	792.00
		Review documents from client; review prior demand letter; correspond with client regarding same; draft complaint; correspond with client regarding same; consider judicial assignment; teleconference with client regarding same; draft peremptory challenge				
5/16/2019	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Send status report to client				
6/4/2019	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Teleconferecnew ith opposing counsel; send status report to client				
6/13/2019	FTE	03827-59 / Commercial Specialists	T	0.70	360.00	252.00
		Bour Enterprises, LLC		0.70	360.00	252.00
		Teleconference Attorney Carson; correspond with				

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
		Attorney Carson				
6/17/2019	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Correspond with opposing counsel regarding response deadline				
6/24/2019	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Prepare three day notice of intent to take default against guarantors; review demand for cost bond; prepare notices of posting cost bond; send status report to client; teleconference with opposing counsel				
7/8/2019	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Send status report to client and consdier next steps; teleconference with opposing counsel				
7/10/2019	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Send status report to client				
7/16/2019	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Correspond with opposing counsel regarding response to complaint				
7/22/2019	FTE	03827-59 / Commercial Specialists	T	1.30	360.00	468.00
		Bour Enterprises, LLC		1.30	360.00	468.00
		Reveiw and analyze answer and counterclaim and consider response thereto; correspond with client regarding same				
7/22/2019	SES	03827-59 / Commercial Specialists	T	1.20	260.00	312.00
		Bour Enterprises, LLC		1.20	0.00	0.00
		Review and analyze Defendants' answer and counterclaim				
7/23/2019	SES	03827-59 / Commercial Specialists	T	2.10	260.00	546.00
		Bour Enterprises, LLC		2.10	260.00	546.00
		Review and analyze case law regarding [redacted]				

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
		[redacted]; continue drafting motion to dismiss				
7/24/2019	SES	03827-59 / Commercial Specialists Bour Enterprises, LLC Continue drafting motion to dismiss section regarding maintenance obligations	T	2.10 2.10	260.00 260.00	546.00 546.00
7/25/2019	SES	03827-59 / Commercial Specialists Bour Enterprises, LLC Revise draft of motion to dismiss	T	0.30 0.30	260.00 260.00	78.00 78.00
7/26/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Review and revise motion to dismiss	T	0.60 0.60	360.00 360.00	216.00 216.00
7/26/2019	SES	03827-59 / Commercial Specialists Bour Enterprises, LLC Review and analyze case law regarding [redacted]; revise motion to dismiss counterclaims	T	2.40 2.40	260.00 0.00	624.00 0.00
7/29/2019	SES	03827-59 / Commercial Specialists Bour Enterprises, LLC Revise motion to dismiss; review and analyze case law regarding [redacted]	T	1.20 1.20	260.00 260.00	312.00 312.00
7/29/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Review and revise motion to dismiss	T	3.40 3.40	360.00 360.00	1,224.00 1,224.00
7/31/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Revise motion to dismiss counterclaims; correspond with client regarding same; teeconference with client	T	0.70 0.70	360.00 360.00	252.00 252.00
8/1/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Finalize and file motion to dismiss; send status report to client	T	0.30 0.30	360.00 360.00	108.00 108.00

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Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
8/12/2019	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review opposition to motion to dismiss and countermotion for summary judgment				
8/13/2019	FTE	03827-59 / Commercial Specialists	T	4.70	360.00	1,692.00
		Bour Enterprises, LLC		4.70	360.00	1,692.00
		Draft reply to opposition to motion to dismiss				
8/13/2019	SES	03827-59 / Commercial Specialists	T	0.90	0.00	0.00
		Bour Enterprises, LLC		0.90	0.00	0.00
		Preliminary review of Defendants' opposition to motion to dismiss and countermotion for summary judgment; review and analyze case law regarding [redacted]				
8/14/2019	FTE	03827-59 / Commercial Specialists	T	1.40	360.00	504.00
		Bour Enterprises, LLC		1.40	360.00	504.00
		Draft opposition to countermotion for summary judgment				
8/15/2019	FTE	03827-59 / Commercial Specialists	T	2.70	360.00	972.00
		Bour Enterprises, LLC		2.70	360.00	972.00
		Draft opposition to countermotion for summary judgment; correspond with client regarding [redacted]				
8/16/2019	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Correspond with client; revise opposition to countermotion for summary judgment				
8/20/2019	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Revise opposition to countermotion for summary judgment; correspond with client regarding [redacted]				
8/21/2019	FTE	03827-59 / Commercial Specialists	T	1.40	360.00	504.00
		Bour Enterprises, LLC		1.40	360.00	504.00
		Revise opposition to countermotion for summary judgment; correspond with client regarding [redacted] draft declaration of Mr Burns in support of				

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
		opposition; draft declaration of Mr. Edwards in support of opposition				
8/22/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Correspond with client; revise and finalize oppositon to countermotion for summary judgment	T	0.60 0.60	360.00 360.00	216.00 216.00
8/23/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Correspond with client regarding [redacted] prepare notice of early case conference	T	0.40 0.40	360.00 360.00	144.00 144.00
8/29/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Prepare for and attend early case conference; prepare joint case conference report	T	1.10 1.10	360.00 360.00	396.00 396.00
8/30/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Review defendants' reply in support of countermotion for summary judgment and consider response thereto	T	0.90 0.90	360.00 360.00	324.00 324.00
9/2/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Prepare for hearing	T	0.60 0.60	360.00 360.00	216.00 216.00
9/3/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Prepare for and attend hearing; correspond with chambers regarding joint case conference report; draft order on the pending motions; draft joint case conference report; correspond with opposing cousnel; send status report to client	T	2.70 2.70	360.00 360.00	972.00 972.00
8/30/2019	SES	03827-59 / Commercial Specialists Bour Enterprises, LLC Review and analyze case law regarding duty arising from lease as applied to constructive eviction (no charge)	T	0.60 0.60	0.00 0.00	0.00 0.00

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Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
9/12/2019	FTE	03827-59 / Commercial Specialists	T	0.90	360.00	324.00
		Bour Enterprises, LLC		0.90	360.00	324.00
		Prepare initial disclsoures				
9/13/2019	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Review correspondence from opposing cousnel; send status report to client				
9/16/2019	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review correspodnence and documents from client; correspond with client regarding [redacted]; follow up with opposing counsel regarding initial disclosures and inspection				
9/17/2019	FTE	03827-59 / Commercial Specialists	T	0.50	360.00	180.00
		Bour Enterprises, LLC		0.50	360.00	180.00
		Correspond with client; correspond with opposing counsel				
9/18/2019	FTE	03827-59 / Commercial Specialists	T	0.90	360.00	324.00
		Bour Enterprises, LLC		0.90	360.00	324.00
		Correspond with client; prepare for and attend site inspection				
9/19/2019	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Corespond with opposing counsel regarding disclosures; review initial disclsoures from defendants				
9/20/2019	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review videos and photos produced by Defendants; correspond with opposing counsel; send status report to client				
9/24/2019	FTE	03827-59 / Commercial Specialists	T	2.70	360.00	972.00
		Bour Enterprises, LLC		2.70	360.00	972.00
		Draft discovery requests to defendants; prepare deposition topics for defendants				

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
9/25/2019	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Revise discovery requests and correspond with client regarding [redacted]				
9/26/2019	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review correspondence and documents from client; revise and finalize requests for production of documents; send status report to client				
10/11/2019	FTE	03827-59 / Commercial Specialists	T	1.60	360.00	576.00
		Bour Enterprises, LLC		1.60	360.00	576.00
		Prepare for and attend scheduling conference; draft answer to counterclaims				
10/14/2019	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Revise and finalize answer to counterclaim				
10/16/2019	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Send status report to client				
10/22/2019	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Teleconference with opposing counsel regarding deadlines				
10/28/2019	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Review defendants' responses to discovery requests				
10/30/2019	FTE	03827-59 / Commercial Specialists	T	0.90	360.00	324.00
		Bour Enterprises, LLC		0.90	360.00	324.00
		Review offer of judgment and consider response thereto; send status report to client regarding offer of judgment and discovery responses				
10/30/2019	JML	03827-59 / Commercial Specialists	T	0.30	240.00	72.00
		Bour Enterprises, LLC		0.30	240.00	72.00
		Review discovery responses and T. Edwards' email to client; discuss and strategize with T. Edwards				

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Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
		regarding [redacted]				
11/1/2019	JML	03827-59 / Commercial Specialists	T	1.90	240.00	456.00
		Bour Enterprises, LLC		1.90	240.00	456.00
		Review defendant responses to requests for discovery; identify responses warranting discussion at Rule 16.1 hearing				
11/4/2019	JML	03827-59 / Commercial Specialists	T	2.80	240.00	672.00
		Bour Enterprises, LLC		2.80	240.00	672.00
		Review discovery responses; categorize various objections by type; formulate responses to various objections in preparation of Rule 16.1 Meet and Confer letter to opposing counsel				
11/5/2019	JML	03827-59 / Commercial Specialists	T	5.50	0.00	0.00
		Bour Enterprises, LLC		5.50	0.00	0.00
		Continue drafting Rule 16.1 meet and confer letter; correspond with T. Edwards regarding [redacted] (no charge)				
11/7/2019	FTE	03827-59 / Commercial Specialists	T	0.70	360.00	252.00
		Bour Enterprises, LLC		0.70	360.00	252.00
		Review and revise correspondence to opposing counsel regaridng discovery disputes				
11/8/2019	JML	03827-59 / Commercial Specialists	T	0.30	240.00	72.00
		Bour Enterprises, LLC		0.30	240.00	72.00
		Review S. Sell's proposed revisions and discuss mailing options regarding Rule 16.1 Meet and Confer letter				
11/8/2019	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Correspond with opposing counsel regarding discovery disputes				
11/15/2019	FTE	03827-59 / Commercial Specialists	T	0.90	360.00	324.00
		Bour Enterprises, LLC		0.90	360.00	324.00
		Prepare for and conduct meet and confer with opposing counsel regarding discovery disputes				

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
11/15/2019	JML	03827-59 / Commercial Specialists	T	0.70	240.00	168.00
		Bour Enterprises, LLC		0.70	240.00	168.00
		Attend telephonic meet and confer conference regarding discovery disputes; take detailed notes regarding discussion, additional disputes, and proposed resolutions				
11/19/2019	JML	03827-59 / Commercial Specialists	T	0.50	240.00	120.00
		Bour Enterprises, LLC		0.50	240.00	120.00
		Review and analyze client documents and notes from 16.1 conference; begin compiling documents in support of Motion to Compel Discovery				
11/20/2019	JML	03827-59 / Commercial Specialists	T	1.80	240.00	432.00
		Bour Enterprises, LLC		1.80	240.00	432.00
		Begin drafting outline of Motion to Compel				
11/20/2019	FTE	03827-59 / Commercial Specialists	T	1.80	360.00	648.00
		Bour Enterprises, LLC		1.80	360.00	648.00
		Send status report to client; correspond with opposing counsel regarding discovery disputes and expert inspection; search for and correspond with potential experts; correspond with client regarding [redacted]; teleconference with potential expert				
11/21/2019	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Correspond with client regarding [redacted]				
11/22/2019	JML	03827-59 / Commercial Specialists	T	1.30	240.00	312.00
		Bour Enterprises, LLC		1.30	240.00	312.00
		Begin drafting Declaration of T. Edwards in support of Motion to Compel				
11/25/2019	JML	03827-59 / Commercial Specialists	T	5.60	0.00	0.00
		Bour Enterprises, LLC		5.60	0.00	0.00
		Research applicable rules and case law; begin drafting Motion to Compel Discovery (no charge)				
11/25/2019	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Consider arguments for discovery motion				

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
11/26/2019	JML	03827-59 / Commercial Specialists Bour Enterprises, LLC Continue drafting Motion to Compel Discovery	T	2.60 2.60	240.00 240.00	624.00 624.00
11/26/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Correspond with opposing counsel regarding inspection	T	0.30 0.30	360.00 360.00	108.00 108.00
11/27/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Correspond with opposing cousnel; coresond with client; correspond with potential experts	T	0.70 0.70	360.00 360.00	252.00 252.00
11/27/2019	JML	03827-59 / Commercial Specialists Bour Enterprises, LLC Create spreadsheet of defendants' discovery request responses for review and comparison in support of Motion to Compel	T	0.40 0.40	240.00 240.00	96.00 96.00
12/1/2019	JML	03827-59 / Commercial Specialists Bour Enterprises, LLC Continue drafting Motion to Compel Discovery	T	3.00 3.00	240.00 240.00	720.00 720.00
12/2/2019	JML	03827-59 / Commercial Specialists Bour Enterprises, LLC Continue drafting Motion to Compel; create appendix of discovery requests and responses to attach to the motion to compel; strategize with T. Edwards regarding [redacted]	T	4.30 4.30	240.00 240.00	1,032.00 1,032.00
12/2/2019	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Correspond with potential expert; review expert CV, rate schedule and testifying expereince; correspond with client regarding [redacted]	T	0.60 0.60	360.00 360.00	216.00 216.00
12/3/2019	JML	03827-59 / Commercial Specialists Bour Enterprises, LLC Finish drafting motion to compel; cite all relevant exhibits and ensure all citations are properly formatted; finalize supporting declaration of T. Edwards; conduct final review and make necessary edits	T	4.80 4.80	0.00 0.00	0.00 0.00

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Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
12/3/2019	FTE	03827-59 / Commercial Specialists	T	1.70	360.00	612.00
		Bour Enterprises, LLC		1.70	360.00	612.00
		Review and revise motion to compel				
12/4/2019	FTE	03827-59 / Commercial Specialists	T	2.20	360.00	792.00
		Bour Enterprises, LLC		2.20	360.00	792.00
		Teleconference with opposing counsel regarding deadlines; review and revise motion to compel; correspond with client; correspond with opposing counsel				
12/4/2019	JML	03827-59 / Commercial Specialists	T	2.30	0.00	0.00
		Bour Enterprises, LLC		2.30	0.00	0.00
		Review T. Edwards' revisions to the motion to compel; make additional revisions according to T. Edwards' notes; conduct research regarding formatting rules, routing to the discovery commissioner, and consequences of improper objections				
12/5/2019	JML	03827-59 / Commercial Specialists	T	4.30	240.00	1,032.00
		Bour Enterprises, LLC		4.30	240.00	1,032.00
		Continue revising motion to compel; conduct additional legal research in support; contact the court to clarify motion routing instructions; amend Declaration of T. Edwards				
12/5/2019	FTE	03827-59 / Commercial Specialists	T	1.60	360.00	576.00
		Bour Enterprises, LLC		1.60	360.00	576.00
		Revise and finalize motion to compel; send status report to client				
12/17/2019	JML	03827-59 / Commercial Specialists	T	0.20	0.00	0.00
		Bour Enterprises, LLC		0.20	0.00	0.00
		Research local court rules regarding time to file reply briefs; strategize with T. Edwards regarding [redacted]				
12/20/2019	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review oppositon to motion to compel and consdier response thereto				

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
12/20/2019	JML	03827-59 / Commercial Specialists	T	0.50	240.00	120.00
		Bour Enterprises, LLC		0.50	240.00	120.00
		Review defendants' response to motion to compel and countermotion for extension of time for disclosure of expert witnesses; make notes regarding arguments on reply and opposition thereto				
1/1/2020	JML	03827-59 / Commercial Specialists	T	3.40	0.00	0.00
		Bour Enterprises, LLC		3.40	0.00	0.00
		Begin drafting reply to motion to compel and response to Defendants' counter-motion to extend time to disclose expert witnesses; conduct legal research in support of the reply/response (No Charge)				
1/2/2020	JML	03827-59 / Commercial Specialists	T	2.40	0.00	0.00
		Bour Enterprises, LLC		2.40	0.00	0.00
		Finish drafting reply/response to motion to compel and counter-motion to extend time; draft declaration of T. Edwards in support of the same; review T. Edwards' suggested revisions; strategize with T. Edwards regarding suggested revisions (No Charge)				
1/2/2020	FTE	03827-59 / Commercial Specialists	T	1.40	360.00	504.00
		Bour Enterprises, LLC		1.40	360.00	504.00
		Review and revise reply brief				
1/3/2020	FTE	03827-59 / Commercial Specialists	T	1.60	360.00	576.00
		Bour Enterprises, LLC		1.60	360.00	576.00
		Prepare fact timeline				
1/5/2020	JML	03827-59 / Commercial Specialists	T	1.50	240.00	360.00
		Bour Enterprises, LLC		1.50	240.00	360.00
		Revise reply to motion to compel and opposition to counter-motion to extend time+				
1/6/2020	JML	03827-59 / Commercial Specialists	T	3.20	0.00	0.00
		Bour Enterprises, LLC		3.20	0.00	0.00
		Finish revising reply to motion to compel and response to counter-motion to extend time (No Charge)				

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
1/6/2020	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review and revise reply in support of motion to compel				
1/7/2020	JML	03827-59 / Commercial Specialists	T	0.70	240.00	168.00
		Bour Enterprises, LLC		0.70	240.00	168.00
		Finalize T. Edwards' declaration in support of reply/opposition to motion to compel and counter-motion to extend time; send to T. Edwards for final review and S. Sell to finalize and file; forward emails to S. Sell for inclusion as an exhibit to the reply				
1/7/2020	FTE	03827-59 / Commercial Specialists	T	0.70	360.00	252.00
		Bour Enterprises, LLC		0.70	360.00	252.00
		Revise declaration; finalize and file reply brief				
1/13/2020	FTE	03827-59 / Commercial Specialists	T	1.20	360.00	432.00
		Bour Enterprises, LLC		1.20	360.00	432.00
		Prepare for hearing				
1/14/2020	FTE	03827-59 / Commercial Specialists	T	2.30	360.00	828.00
		Bour Enterprises, LLC		2.30	360.00	828.00
		Prepare for and attend hearing and discovery				
1/14/2020	JML	03827-59 / Commercial Specialists	T	3.50	240.00	840.00
		Bour Enterprises, LLC		3.50	240.00	840.00
		Attend hearing on motion to compel before discovery commissioner				
1/15/2020	JML	03827-59 / Commercial Specialists	T	5.30	0.00	0.00
		Bour Enterprises, LLC		5.30	0.00	0.00
		Draft the discovery commissioner's report and recommendation regarding plaintiffs' motion to compel; correspond with T. Edwards regarding the same; review T. Edwards' suggested edits and make revisions accordingly; research case law in support of arguments for summary judgment (No Charge)				
1/15/2020	FTE	03827-59 / Commercial Specialists	T	0.70	360.00	252.00
		Bour Enterprises, LLC		0.70	360.00	252.00
		Review and revise discovery commissioner's report and recommendation; correspond with opposing				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
		counsel regarding same				
1/16/2020	JML	03827-59 / Commercial Specialists	T	5.80	240.00	1,392.00
		Bour Enterprises, LLC		5.80	240.00	1,392.00
		Continue research in support of Motion for Summary Judgment				
1/16/2020	FTE	03827-59 / Commercial Specialists	T	0.10	360.00	36.00
		Bour Enterprises, LLC		0.10	360.00	36.00
		Correspond with opposing counsel				
1/21/2020	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Send status report to client				
1/22/2020	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Follow up with opposing counsel regarding order and depositions				
1/23/2020	JML	03827-59 / Commercial Specialists	T	0.20	240.00	48.00
		Bour Enterprises, LLC		0.20	240.00	48.00
		Review Attorney Graf's proposed changes to the proposed order regarding the motion to compel; correspond with T. Edwards regarding [redacted]				
1/26/2020	JML	03827-59 / Commercial Specialists	T	2.20	240.00	528.00
		Bour Enterprises, LLC		2.20	240.00	528.00
		Draft response to defendants' Motion to Extend Expert Disclosure Deadline				
1/27/2020	JML	03827-59 / Commercial Specialists	T	0.20	240.00	48.00
		Bour Enterprises, LLC		0.20	240.00	48.00
		Research local rules of practice in support of response to defendants' motion to extend time				
1/27/2020	FTE	03827-59 / Commercial Specialists	T	1.70	360.00	612.00
		Bour Enterprises, LLC		1.70	360.00	612.00
		Review and revise opposition to motion to extend expert deadline; teleconference with opposing counsel's office; send status report to client; prepare supplemental disclsoures of property listings				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
1/28/2020	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Follow up with opposing counsel regarding regarding discovery order; teleconference with opposing counsel regarding discovery order				
1/28/2020	JML	03827-59 / Commercial Specialists	T	0.40	240.00	96.00
		Bour Enterprises, LLC		0.40	240.00	96.00
		Participate in teleconference with Attorney Graf regarding the draft discovery commissioner report and recommendation; make revisions as discussed; forward final draft to Attorney Graf for review and signature				
1/29/2020	JML	03827-59 / Commercial Specialists	T	0.90	240.00	216.00
		Bour Enterprises, LLC		0.90	240.00	216.00
		Continue drafting motion for summary judgment on habitability issue				
1/29/2020	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Prepare for hearing on motion to continue trial				
1/30/2020	FTE	03827-59 / Commercial Specialists	T	1.90	360.00	684.00
		Bour Enterprises, LLC		1.90	360.00	684.00
		Prepare for and attend hearing on motion to continue trial; review informaiton for [redacted]; send status report to client; review and revise proposed order				
1/31/2020	FTE	03827-59 / Commercial Specialists	T	0.50	360.00	180.00
		Bour Enterprises, LLC		0.50	360.00	180.00
		Teleconference with expert				
2/3/2020	JML	03827-59 / Commercial Specialists	T	5.10	240.00	1,224.00
		Bour Enterprises, LLC		5.10	0.00	0.00
		Continue drafting motion for summary judgment on habitability issue				
2/4/2020	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Follow up expert; follow up with opposing counsel regarding documents				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
2/5/2020	FTE	03827-59 / Commercial Specialists	T	0.50	360.00	180.00
		Bour Enterprises, LLC		0.50	360.00	180.00
		Review expert engagement letter and correspond with client regarding same; correspond with expert; correspond with opposing counsel regarding inspection				
2/6/2020	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Teleconference with opposing counsel; correspond with client [redacted]				
2/7/2020	FTE	03827-59 / Commercial Specialists	T	1.60	360.00	576.00
		Bour Enterprises, LLC		1.60	360.00	576.00
		Correspond with opposing counsel; attend site visit				
2/10/2020	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Correspond with opposing counsel regarding discovery issues				
2/12/2020	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Follow up with opposing cousnel regarding discovery issues				
2/12/2020	JML	03827-59 / Commercial Specialists	T	0.20	240.00	48.00
		Bour Enterprises, LLC		0.20	240.00	48.00
		Check status of discovery commissioner's report and recommendation				
2/17/2020	FTE	03827-59 / Commercial Specialists	T	0.70	360.00	252.00
		Bour Enterprises, LLC		0.70	360.00	252.00
		Review correspondence from opposing counsel; calculate new discovery deadlines and correspond with opposing counsel regarding same				
2/18/2020	FTE	03827-59 / Commercial Specialists	T	0.90	360.00	324.00
		Bour Enterprises, LLC		0.90	360.00	324.00
		Review disclsoure from defendants; correspond with opposing counsel regarding same; teleconference with opposingt counsel regarding same				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
2/19/2020	FTE	03827-59 / Commercial Specialists	T	1.60	360.00	576.00
		Bour Enterprises, LLC		1.60	360.00	576.00
		Send status report to client; prepare notice of depositions and subpoenas; draft discovery requests to Bour; correspond with expert				
2/19/2020	JML	03827-59 / Commercial Specialists	T	0.20	240.00	48.00
		Bour Enterprises, LLC		0.20	240.00	48.00
		Review Bour's supplemental disclosure of documents and witnesses				
2/24/2020	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Review defendant's expert report and correspond with our expert regaridng same				
2/25/2020	FTE	03827-59 / Commercial Specialists	T	0.90	360.00	324.00
		Bour Enterprises, LLC		0.90	360.00	324.00
		Correspond with expert regarding rebuttal report; send status report to client; consider motion for sanctions; follow up on status of subpoenas to employees				
2/28/2020	JML	03827-59 / Commercial Specialists	T	6.80	240.00	1,632.00
		Bour Enterprises, LLC		6.80	240.00	1,632.00
		Begin drafting motion for sanctions				
3/2/2020	JML	03827-59 / Commercial Specialists	T	1.80	240.00	432.00
		Bour Enterprises, LLC		1.80	240.00	432.00
		Continue drafting motion for sanctions				
3/3/2020	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Correspond with opposing counsel regarding inspection; teleconference with opposing counsel regarding inspection				
3/3/2020	JML	03827-59 / Commercial Specialists	T	3.80	240.00	912.00
		Bour Enterprises, LLC		3.80	240.00	912.00
		Continue drafting motion for sanctions; consider additional arguments and conduct legal research [redacted]				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
3/4/2020	JML	03827-59 / Commercial Specialists	T	5.00	0.00	0.00
		Bour Enterprises, LLC		5.00	0.00	0.00
		Finish drafting motion for sanctions (no charge)				
3/4/2020	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Review depositions topics from opposing counsel and consider response thereto; correspond with opposing counsel regarding discvoery issues				
3/6/2020	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Coordinate inspection				
3/8/2020	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Correspond with opposing counsel				
3/9/2020	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Teleconference with expert; consider response to deposition notice; send status report to client; revise and finalize subpoena to employee				
3/9/2020	RVG	03827-59 / Commercial Specialists	T	4.20	0.00	0.00
		Bour Enterprises, LLC		4.20	0.00	0.00
		Research and drafting memo regarding [redacted]				
3/10/2020	RVG	03827-59 / Commercial Specialists	T	0.30	0.00	0.00
		Bour Enterprises, LLC		0.30	0.00	0.00
		Research and drafting memo regarding [redacted]				
3/10/2020	FTE	03827-59 / Commercial Specialists	T	1.90	360.00	684.00
		Bour Enterprises, LLC		1.90	360.00	684.00
		Review and revise motion for sanctions				
3/11/2020	JML	03827-59 / Commercial Specialists	T	3.50	240.00	840.00
		Bour Enterprises, LLC		3.50	240.00	840.00
		Revise Motion for Sanctions; conduct legal research [redacted]				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
3/11/2020	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Teleconference with expert; revise depositon topics and correspond with client regarding same; review research regarding [redacted]				
3/11/2020	RVG	03827-59 / Commercial Specialists	T	2.60	0.00	0.00
		Bour Enterprises, LLC		2.60	0.00	0.00
		Research and drafting email regarding [redacted]				
3/11/2020	RVG	03827-59 / Commercial Specialists	T	1.24	0.00	0.00
		Bour Enterprises, LLC		1.24	0.00	0.00
		Research regarding [redacted]				
3/13/2020	RVG	03827-59 / Commercial Specialists	T	4.90	0.00	0.00
		Bour Enterprises, LLC		4.90	0.00	0.00
		Research and Drafting Memo Regarding [redacted]				
3/13/2020	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Correspond with expert				
3/16/2020	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Review research regarding [redacted]; review status of depositions				
3/16/2020	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review and revise motion for sanctions				
3/16/2020	JML	03827-59 / Commercial Specialists	T	0.30	240.00	72.00
		Bour Enterprises, LLC		0.30	240.00	72.00
		Consider appropriate time to file Motion for Sanctions				

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Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
3/16/2020	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review Bour's supplemental expert report and correspond [redacted]				
3/19/2020	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Review deposition notices and interrogatories; consider deposiiton strategy; correspond with client regarding [redacted] teleconference with client				
3/20/2020	JML	03827-59 / Commercial Specialists	T	0.20	240.00	48.00
		Bour Enterprises, LLC		0.20	240.00	48.00
		Revise and finalize motion for sanctions				
3/20/2020	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Correspond with expert; correspond with opposing counsel				
3/22/2020	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review supplemental disclosure from defendants; review interrogatory responses; consider response to deficient interrogatory responses				
3/22/2020	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Consider sanctions for motion for sanctions				
3/23/2020	FTE	03827-59 / Commercial Specialists	T	1.90	360.00	684.00
		Bour Enterprises, LLC		1.90	360.00	684.00
		Correspond with expert; teleconference with opposing counsel; correspond with opposing counsel; prepare expert witnesss disclosure; review expert report				
3/24/2020	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Analyze expert reports and send status report to client regarding [redacted]				

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Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
3/24/2020	JML	03827-59 / Commercial Specialists	T	0.30	240.00	72.00
		Bour Enterprises, LLC		0.30	240.00	72.00
		Consider strategy for [redacted]				
3/25/2020	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Correspond with opposing counsel regarding deposition; consider [redacted]				
3/25/2020	JML	03827-59 / Commercial Specialists	T	1.90	240.00	456.00
		Bour Enterprises, LLC		1.90	240.00	456.00
		Draft second stipulation to continue discovery deadlines				
3/26/2020	FTE	03827-59 / Commercial Specialists	T	1.40	360.00	504.00
		Bour Enterprises, LLC		1.40	360.00	504.00
		Teleconference with opposing counsel regaridng deposition; prepare for and make record of non-appearance of Mr. Zewdie; revise stipulation and order to extend deadlines				
3/26/2020	JML	03827-59 / Commercial Specialists	T	0.50	240.00	120.00
		Bour Enterprises, LLC		0.50	240.00	120.00
		Finalize stipulation to continue deadlines; review email from Attorney Graf regarding the same; consider the appropriate length of the extension				
3/27/2020	FTE	03827-59 / Commercial Specialists	T	0.50	360.00	180.00
		Bour Enterprises, LLC		0.50	360.00	180.00
		Consider length of extension of deadlines; correspond with opposing counsel regarding same				
3/27/2020	JML	03827-59 / Commercial Specialists	T	0.30	240.00	72.00
		Bour Enterprises, LLC		0.30	240.00	72.00
		Revise stipulation to extend deadlines with dates agreed upon by Attorney Graf				
3/30/2020	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Correspond with opposing counsel regarding HIPAA release and stipulaiton to extend deadline; teleconference with opposing counsel regarding same; finalie and submit stipulation to extend time				

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
4/1/2020	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Correspond with opposing counsel regarding medical records and case deadlines				
4/2/2020	FTE	03827-59 / Commercial Specialists	T	0.10	360.00	36.00
		Bour Enterprises, LLC		0.10	360.00	36.00
		Correspond with opposing counsel regarding discovery and deadlines				
4/3/2020	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Review deadline for discovery respones				
4/6/2020	FTE	03827-59 / Commercial Specialists	T	0.10	360.00	36.00
		Bour Enterprises, LLC		0.10	360.00	36.00
		Correspond with opposing counsel regarding medical providers of employee				
4/9/2020	FTE	03827-59 / Commercial Specialists	T	1.90	360.00	684.00
		Bour Enterprises, LLC		1.90	360.00	684.00
		Prepare notice of entry of order; prepare objections to and redlines of Rule 30(b)(6) deposition notices; correspond with opposing counsel regarding same				
4/13/2020	FTE	03827-59 / Commercial Specialists	T	3.20	360.00	1,152.00
		Bour Enterprises, LLC		3.20	360.00	1,152.00
		Correspond with opposing counsel regarding depositions; draft responses to interrogatory responses				
4/14/2020	FTE	03827-59 / Commercial Specialists	T	1.20	360.00	432.00
		Bour Enterprises, LLC		1.20	360.00	432.00
		Revise discovery responses and correspond with client regarding [redacted] prepare response for McKinley Manor; correspond with opposing counsel regarding depositions				
4/17/2020	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Finalize interrogatory resposnes for 4520 Arville; finalize interrogatory respones for McKinley Manor;				

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Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
		send status report to client				
4/28/2020	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Prepare notice of entry of stipulation and order to extend case				
4/30/2020	FTE	03827-59 / Commercial Specialists	T	0.90	360.00	324.00
		Bour Enterprises, LLC		0.90	360.00	324.00
		Draft response to opposing counsel regarding discovery issues; send status report to client				
4/30/2020	JML	03827-59 / Commercial Specialists	T	0.30	240.00	72.00
		Bour Enterprises, LLC		0.30	0.00	0.00
		Review correspondence from Attorney Graf and proposed response thereto				
5/12/2020	FTE	03827-59 / Commercial Specialists	T	0.10	360.00	36.00
		Bour Enterprises, LLC		0.10	360.00	36.00
		Correspond with expert				
5/19/2020	FTE	03827-59 / Commercial Specialists	T	0.10	360.00	36.00
		Bour Enterprises, LLC		0.10	360.00	36.00
		Review discovery deadlines and trial schedule				
5/26/2020	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Review invoice from expert; correspond with expert regarding same				
5/29/2020	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Review documents from expert; correspond with client regarding same				
6/1/2020	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Correspond with client; execute change order				
6/9/2020	JML	03827-59 / Commercial Specialists	T	0.30	240.00	72.00
		Bour Enterprises, LLC		0.30	240.00	72.00
		Review latest correspondence from opposing counsel and consider strategies for [redacted]				

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
[redacted]						
7/27/2020	JML	03827-59 / Commercial Specialists	T	0.50	240.00	120.00
		Bour Enterprises, LLC		0.50	240.00	120.00
		Review current discovery deadlines; draft stipulation and order to extend the same				
7/27/2020	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Review stipulation to extend discovery; correspond with opposing counsel regarding same				
8/19/2020	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Review status of discovery; correspond with opposing cousnel regarding deposition				
8/25/2020	FTE	03827-59 / Commercial Specialists	T	0.10	360.00	36.00
		Bour Enterprises, LLC		0.10	360.00	36.00
		Correspond with opposing counsel regarding depositions				
8/27/2020	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Teleconference with opposing counsel regarding settlement and strategy				
8/31/2020	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Correspond with client regarding [redacted]				
9/23/2020	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Send status report to client; prepare settlement proposal and correspond with client regarding [redacted] propose settlement to opposing counsel				
10/1/2020	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Correspond with client regarding [redacted]				

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
10/2/2020	FTE	03827-59 / Commercial Specialists	T	0.90	360.00	324.00
		Bour Enterprises, LLC		0.90	360.00	324.00
		Correspond with opposing counsel regarding settlement and deposition; prepare depositon notice; teleconference with opposing counsel; consider settlement strategy; correspond with client regarding [redacted] send counteroffer to opposing counsel				
10/2/2020	JML	03827-59 / Commercial Specialists	T	0.40	250.00	100.00
		Bour Enterprises, LLC		0.40	250.00	100.00
		Review and revise 30(b)(6) deposition notice as to Bour Enterprises				
10/16/2020	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Teleconference with opposing counsel regarding settlement				
10/19/2020	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Teleconference with opposing counsel's office regarding settlement				
10/27/2020	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Correspond with client regarding [redacted]				
10/29/2020	FTE	03827-59 / Commercial Specialists	T	1.70	360.00	612.00
		Bour Enterprises, LLC		1.70	360.00	612.00
		Prepare for deposition				
10/30/2020	FTE	03827-59 / Commercial Specialists	T	2.60	360.00	936.00
		Bour Enterprises, LLC		2.60	360.00	936.00
		Prepare for deposition				
11/2/2020	FTE	03827-59 / Commercial Specialists	T	5.30	360.00	1,908.00
		Bour Enterprises, LLC		5.30	360.00	1,908.00
		Prepare for and take deposition of defendant				
11/4/2020	FTE	03827-59 / Commercial Specialists	T	1.90	360.00	684.00
		Bour Enterprises, LLC		1.90	360.00	684.00
		Draft motion for summary judgment regarding				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
		damages				
11/5/2020	FTE	03827-59 / Commercial Specialists	T	1.20	360.00	432.00
		Bour Enterprises, LLC		1.20	360.00	432.00
		Draft motion for summary judgment regarding damages				
11/5/2020	JML	03827-59 / Commercial Specialists	T	0.60	250.00	150.00
		Bour Enterprises, LLC		0.60	0.00	0.00
		Review draft motion for summary judgment on defendant's damages; make suggested revisions(no charge)				
11/9/2020	FTE	03827-59 / Commercial Specialists	T	1.00	360.00	360.00
		Bour Enterprises, LLC		1.00	360.00	360.00
		Review deposition transcript; update motion for summary judgment; correspond with client regarding same				
11/10/2020	FTE	03827-59 / Commercial Specialists	T	0.70	360.00	252.00
		Bour Enterprises, LLC		0.70	360.00	252.00
		Revise and finalize motion for summary judgment regarding damages; send status report to client				
11/18/2020	FTE	03827-59 / Commercial Specialists	T	3.30	360.00	1,188.00
		Bour Enterprises, LLC		3.30	360.00	1,188.00
		Prepare motion for summary judgment				
11/19/2020	FTE	03827-59 / Commercial Specialists	T	3.20	360.00	1,152.00
		Bour Enterprises, LLC		3.20	360.00	1,152.00
		Draft motion for summary judgment				
11/19/2020	JML	03827-59 / Commercial Specialists	T	0.50	250.00	125.00
		Bour Enterprises, LLC		0.50	0.00	0.00
		Review and make suggested revisions to the motion for summary judgment on Plaintiffs' breach of contract claims (no charge)				
11/20/2020	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Revise motion for summary judgment				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
11/25/2020	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review oppositon to motion for summary judgment; send status report to client				
11/27/2020	JML	03827-59 / Commercial Specialists	T	1.00	250.00	250.00
		Bour Enterprises, LLC		1.00	250.00	250.00
		Research additional case law on [redacted]				
11/30/2020	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Draft client declaration in support of motion for summary judgment; correspondw ith client regarding same				
11/30/2020	JML	03827-59 / Commercial Specialists	T	2.00	250.00	500.00
		Bour Enterprises, LLC		2.00	0.00	0.00
		Finalize motion for summary judgment; compile exhibits in support thereof (no charge)				
12/1/2020	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Finalize and file motion for summary judgment				
12/1/2020	JML	03827-59 / Commercial Specialists	T	1.50	250.00	375.00
		Bour Enterprises, LLC		1.50	250.00	375.00
		Review Defendants' opposition to the motion for summary judgment on counterclaim damages; begin drafting reply to the same				
12/2/2020	JML	03827-59 / Commercial Specialists	T	3.30	250.00	825.00
		Bour Enterprises, LLC		3.30	250.00	825.00
		Continue drafting reply brief in support of motion for summary judgment regarding counterclaim damages				
12/3/2020	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Send status report to client				
12/3/2020	JML	03827-59 / Commercial Specialists	T	4.90	250.00	1,225.00
		Bour Enterprises, LLC		4.90	0.00	0.00
		Continue drafting reply in support of motion for				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
		summary judgment on counterclaim damages				
12/4/2020	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Review and revise reply in support of motion for summary judgment regarding damages; correspond with client regarding [redacted]	T	0.80 0.80	360.00 360.00	288.00 288.00
12/4/2020	JML	03827-59 / Commercial Specialists Bour Enterprises, LLC Finish drafting reply in support of motion for summary judgment on counterclaim damages	T	0.20 0.20	250.00 250.00	50.00 50.00
12/14/2020	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Prepare for hearing on summary judgmenr regarding damages	T	1.40 1.40	360.00 360.00	504.00 504.00
12/15/2020	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Prepare for and attend hearing on damages; consdier strategy; send status report to client	T	1.90 1.90	360.00 360.00	684.00 684.00
12/17/2020	JML	03827-59 / Commercial Specialists Bour Enterprises, LLC Conduct legal research regarding [redacted]	T	2.00 2.00	250.00 250.00	500.00 500.00
12/17/2020	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Review opposition to motion for summary judgment and consider response thereto; consider [redacted] strategy	T	0.40 0.40	360.00 360.00	144.00 144.00
12/18/2020	FTE	03827-59 / Commercial Specialists Bour Enterprises, LLC Consider [redacted] research; correspond with opposing cousnel; have meet and confer with opposing counsel	T	0.80 0.80	360.00 360.00	288.00 288.00

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
12/18/2020	JML	03827-59 / Commercial Specialists	T	4.10	250.00	1,025.00
		Bour Enterprises, LLC		4.10	0.00	0.00
		Draft memorandum regarding [redacted] begin drafting motion in limine				
12/20/2020	JML	03827-59 / Commercial Specialists	T	2.80	250.00	700.00
		Bour Enterprises, LLC		2.80	250.00	700.00
		Continue drafting motion in limine; research additional case law [redacted]				
12/21/2020	FTE	03827-59 / Commercial Specialists	T	0.70	360.00	252.00
		Bour Enterprises, LLC		0.70	360.00	252.00
		Revise motion in limine				
12/21/2020	JML	03827-59 / Commercial Specialists	T	2.00	250.00	500.00
		Bour Enterprises, LLC		2.00	250.00	500.00
		Continue drafting the motion in limine regarding Defendants' damages; review Bour's opposition to the motion for summary judgment on Plaintiffs' claims				
12/22/2020	JML	03827-59 / Commercial Specialists	T	1.10	250.00	275.00
		Bour Enterprises, LLC		1.10	250.00	275.00
		Finish drafting the motion in limine to exclude evidence of damages				
12/22/2020	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Revise motion in limine				
12/23/2020	FTE	03827-59 / Commercial Specialists	T	0.10	360.00	36.00
		Bour Enterprises, LLC		0.10	360.00	36.00
		Correspond with client regarding [redacted]				
12/23/2020	JML	03827-59 / Commercial Specialists	T	2.60	250.00	650.00
		Bour Enterprises, LLC		2.60	250.00	650.00
		Review Defendants' opposition to the motion for summary judgment on breach of contract claims; begin outlining arguments for reply brief; legal research [redacted]				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
12/29/2020	JML	03827-59 / Commercial Specialists	T	6.00	250.00	1,500.00
		Bour Enterprises, LLC		6.00	0.00	0.00
		Begin drafting reply in support of motion for summary judgment on breach of contract claims				
12/30/2020	JML	03827-59 / Commercial Specialists	T	3.50	250.00	875.00
		Bour Enterprises, LLC		3.50	250.00	875.00
		Continue drafting reply brief in support of motion for summary judgment on breach of contract claims				
12/31/2020	JML	03827-59 / Commercial Specialists	T	2.90	250.00	725.00
		Bour Enterprises, LLC		2.90	250.00	725.00
		Continue drafting reply in support of motion for summary judgment on breach of contract claims				
1/4/2021	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Revise reply brief; correspond wih client regarding [redacted]				
1/4/2021	JML	03827-59 / Commercial Specialists	T	0.70	250.00	175.00
		Bour Enterprises, LLC		0.70	250.00	175.00
		Continue drafting reply in support of motion for summary judgment on breach of contract claims				
1/5/2021	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Finalize and filed reply brief; send status report to client				
1/11/2021	FTE	03827-59 / Commercial Specialists	T	2.70	360.00	972.00
		Bour Enterprises, LLC		2.70	360.00	972.00
		Teleconferences with opposing counsel; correspond with opposing counsel; correspond with client; prepare for hearing				
1/11/2021	JML	03827-59 / Commercial Specialists	T	2.00	250.00	500.00
		Bour Enterprises, LLC		2.00	250.00	500.00
		Consider potential questions that may arise at summary judgment hearing and draft proposed answers to the same				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
1/12/2021	FTE	03827-59 / Commercial Specialists	T	2.40	360.00	864.00
		Bour Enterprises, LLC		2.40	360.00	864.00
		Prepare for and attend summary judgment hearing; send status report to client; correspond with opposing counsel regarding settlement and financials				
1/12/2021	JML	03827-59 / Commercial Specialists	T	0.30	250.00	75.00
		Bour Enterprises, LLC		0.30	0.00	0.00
		Attend motion for summary judgment hearing via teleconference				
1/14/2021	JML	03827-59 / Commercial Specialists	T	5.40	250.00	1,350.00
		Bour Enterprises, LLC		5.40	0.00	0.00
		Continue drafting Order on Motion for Summary Judgment on Breach of Contract Claims				
1/19/2021	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review and revise proposed order on summary judgment				
1/19/2021	JML	03827-59 / Commercial Specialists	T	2.50	250.00	625.00
		Bour Enterprises, LLC		2.50	0.00	0.00
		Continue drafting order granting motion for summary judgment and judgment; research statutory pre- and post-judgment interest requirements				
1/20/2021	JML	03827-59 / Commercial Specialists	T	2.40	250.00	600.00
		Bour Enterprises, LLC		2.40	0.00	0.00
		Continue drafting Order Granting Summary Judgment and Judgment				
1/20/2021	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Revise order and judgment				
1/21/2021	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Correspond with opposing counsel regarding the order and judgment				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
1/22/2021	JML	03827-59 / Commercial Specialists	T	0.30	250.00	75.00
		Bour Enterprises, LLC		0.30	250.00	75.00
		Finalize proposed order granting summary judgment and judgment				
1/22/2021	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Review revised order; correspond with opposing counsel regarding same				
1/25/2021	JML	03827-59 / Commercial Specialists	T	0.50	250.00	125.00
		Bour Enterprises, LLC		0.50	250.00	125.00
		Review Attorney Graf's proposed revisions to the Order granting summary judgment; make recommendation as to which proposed revisions should be accepted and rejected; contact court regarding whether Judgment should be submitted simultaneously with Order granting summary judgment				
1/25/2021	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review proposed revisions to order from opposing counsel; correspond with opposing counsel regarding same; teleconference with opposing counsel's office regarding submission of orders				
1/28/2021	JML	03827-59 / Commercial Specialists	T	0.60	250.00	150.00
		Bour Enterprises, LLC		0.60	250.00	150.00
		Revise proposed judgment to reflect date of entry of order granting summary judgment; research [redacted]; consider arguments in reply				
1/28/2021	FTE	03827-59 / Commercial Specialists	T	0.90	360.00	324.00
		Bour Enterprises, LLC		0.90	360.00	324.00
		Review order entered by court; prepare notice of entry of order; send status report to client; correspond with opposing counsel regarding judgment; consider deadlines to request fees and costs; teleconference with opposing counsel regarding settlement; send status report to client				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
2/1/2021	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Review scheduled hearing dates and consider strategy				
2/2/2021	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review fedback from court on judgment; revise judgment				
2/8/2021	JML	03827-59 / Commercial Specialists	T	0.20	250.00	50.00
		Bour Enterprises, LLC		0.20	250.00	50.00
		Call Court to confirm status of proposed judgment and forthcoming pre-trial conference				
2/8/2021	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Correspond with client; prepare for pre-trial hearing				
2/9/2021	FTE	03827-59 / Commercial Specialists	T	0.90	360.00	324.00
		Bour Enterprises, LLC		0.90	360.00	324.00
		Prepare for and attend pre-hearing conference; review motion for attorney lien; send status report to client				
2/9/2021	JML	03827-59 / Commercial Specialists	T	7.00	250.00	1,750.00
		Bour Enterprises, LLC		7.00	250.00	1,750.00
		Draft the motion for entry of judgment				
2/10/2021	FTE	03827-59 / Commercial Specialists	T	1.40	360.00	504.00
		Bour Enterprises, LLC		1.40	360.00	504.00
		Review and revise motion for entry of judgment; research [redacted]; send status report to client				
2/10/2021	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Correspond with opposing counsel regarding lien motion				
2/10/2021	JML	03827-59 / Commercial Specialists	T	1.70	250.00	425.00
		Bour Enterprises, LLC		1.70	0.00	0.00
		Continue drafting motion for entry of judgment;				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
		compile exhibits in support thereof; research [redacted]				
2/11/2021	FTE	03827-59 / Commercial Specialists	T	0.60	360.00	216.00
		Bour Enterprises, LLC		0.60	360.00	216.00
		Review notice of hearing and order setting trial; consdier strategy; send status report to client				
2/15/2021	JML	03827-59 / Commercial Specialists	T	0.90	250.00	225.00
		Bour Enterprises, LLC		0.90	250.00	225.00
		Draft ex parte motion for order shortening time				
2/16/2021	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Revise and finalize reqeust for order shortening time				
2/18/2021	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Review order shortening time; prepare notice of entry of order; send status report to client				
2/23/2021	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Correspond with opposing counsel regarding briefing deadlines				
2/24/2021	FTE	03827-59 / Commercial Specialists	T	2.80	360.00	1,008.00
		Bour Enterprises, LLC		2.80	360.00	1,008.00
		Review opposition to motion for entry of judgment; draft reply brief				
2/24/2021	JML	03827-59 / Commercial Specialists	T	0.20	250.00	50.00
		Bour Enterprises, LLC		0.20	250.00	50.00
		Review reply in support of motion for entry of judgment and suggest revisions thereto				
2/25/2021	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Correspond with client regarding [redacted]				

Transactions Listing with billed amounts

Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
3/1/2021	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Teleconferences with Attorney Carson regarding settlement; correspond with client regarding [redacted] prepare for hearing				
3/2/2021	FTE	03827-59 / Commercial Specialists	T	1.80	360.00	648.00
		Bour Enterprises, LLC		1.80	360.00	648.00
		Prepare for and attend hearing; correspond with opposing counsel regarding settlement; send status report to client				
3/2/2021	JML	03827-59 / Commercial Specialists	T	0.40	250.00	100.00
		Bour Enterprises, LLC		0.40	250.00	100.00
		Attend hearing on motion for judgment and consider strategy for potential bench trial				
3/3/2021	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Review minute order; correspond with client regarding [redacted]				
3/4/2021	FTE	03827-59 / Commercial Specialists	T	0.90	360.00	324.00
		Bour Enterprises, LLC		0.90	360.00	324.00
		Draft order granting motion for judgment				
3/5/2021	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Review order and judgment; correspond with opposing counsel regarding same; review order from Ms. Black; send status report to client				
3/8/2021	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Review correspodence from opposing counsel; finalize order and judgment for submission to court				
3/9/2021	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Review order granting motion and judgment; prepare notices of entry of order and judgment; send status report to client				

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Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
3/9/2021	JML	03827-59 / Commercial Specialists	T	0.40	250.00	100.00
		Bour Enterprises, LLC		0.40	250.00	100.00
		Review [redacted]				
3/10/2021	JML	03827-59 / Commercial Specialists	T	2.70	250.00	675.00
		Bour Enterprises, LLC		2.70	250.00	675.00
		[redacted] in support of affidavit of judgment; draft affidavit of judgment; review documents from K. Donahoe in support of affidavit of judgment				
3/11/2021	JML	03827-59 / Commercial Specialists	T	0.80	250.00	200.00
		Bour Enterprises, LLC		0.80	250.00	200.00
		Continue searching [redacted]				
3/11/2021	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Consider [redacted] strategy [redacted]; revise declaration for recorded judgment				
3/12/2021	KAH	03827-59 / Commercial Specialists	T	0.50	220.00	110.00
		Bour Enterprises, LLC		0.50	220.00	110.00
		Electronically record with the Clark County Recorder's Office the Judgment Against Bour Enterprises, LLC; download recorded document to incorporate into permanant file; email same to Attorney Edwards				
3/12/2021	FTE	03827-59 / Commercial Specialists	T	0.10	360.00	36.00
		Bour Enterprises, LLC		0.10	360.00	36.00
		Send status report to client				
3/15/2021	JML	03827-59 / Commercial Specialists	T	1.90	250.00	475.00
		Bour Enterprises, LLC		1.90	250.00	475.00
		Review costs transaction listing; draft memo of costs				
3/15/2021	FTE	03827-59 / Commercial Specialists	T	0.10	360.00	36.00
		Bour Enterprises, LLC		0.10	360.00	36.00
		Correspond with client				

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Search for: 03827-59 Search by: Matter ID Stage: (all) Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units Stm Units	Price Stm Price	Value Ext Amount
3/15/2021	FTE	03827-59 / Commercial Specialists	T	0.40	360.00	144.00
		Bour Enterprises, LLC		0.40	360.00	144.00
		Revise memorandum of costs				
3/18/2021	FTE	03827-59 / Commercial Specialists	T	0.80	360.00	288.00
		Bour Enterprises, LLC		0.80	360.00	288.00
		Review motion to retax costs and consider response thereto; send status report to client; review amended motion to retax; correspond with co-counsel regarding same				
3/18/2021	JML	03827-59 / Commercial Specialists	T	0.20	250.00	50.00
		Bour Enterprises, LLC		0.20	250.00	50.00
		Review motion to retax costs				
3/23/2021	JML	03827-59 / Commercial Specialists	T	0.50	250.00	125.00
		Bour Enterprises, LLC		0.50	250.00	125.00
		Begin drafting motion for fees and costs				
3/23/2021	FTE	03827-59 / Commercial Specialists	T	0.20	360.00	72.00
		Bour Enterprises, LLC		0.20	360.00	72.00
		Correspond with opposing counsel regarding attorney fees				
3/24/2021	FTE	03827-59 / Commercial Specialists	T	0.30	360.00	108.00
		Bour Enterprises, LLC		0.30	360.00	108.00
		Consider strategy for request for fees and costs				
3/25/2021	FTE	03827-59 / Commercial Specialists	T	1.20	360.00	432.00
		Bour Enterprises, LLC		1.20	360.00	432.00
		Consider strategy; send status report to client; review and revise motion for attorney fees				
3/25/2021	JML	03827-59 / Commercial Specialists	T	6.30	250.00	1,575.00
		Bour Enterprises, LLC		6.30	250.00	1,575.00
		Continue drafting motion for fees and costs				
		Grand Total	Worked:	373.64		97,977.00
			Billed:	373.64		88,145.00

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)

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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

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to terminate this Lease upon 90 days prior en notice to Lessee unless Lessee notifies Lesso 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

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driveways, entrances, parking spaces, parki :eas, loading and unloading areas, ingress, egress, ction 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.

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(viii) The cost of any Capital Expenditure to the Building or the Project 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,

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substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. **"Reportable Use"** shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, 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

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days following such commitment. In such case, 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**.

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(a) **Definitions.** As used herein, 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

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Lessee and Lessor as an additional insur[illegible]gainst claims for bodily injury, personal injury and [illegible]erty 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

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companies may have against Lessor or Les , as the case may be, so long as the insurance is n alidated 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.

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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.

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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

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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,

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which, when coupled with the then existing ources of Lessee, equals or exceeds the combine ncial 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

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be equal to the prime rate reported in the ll Street Journal as published closest prior to the 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

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month's rent has been paid in advance. Prospective 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

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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,

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attorn to such new owner, and upon reque[illegible]nter into a new lease, containing all of the terms a[illegible]ovisions 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**.

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37.1 **Execution**. The Guar s, 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.

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49. **Mediation and Arbitration of D tes.** An Addendum requiring the Mediation and/o 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 COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, 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:	**By LESSEE:**
4520 ARVILLE	BOUR ENTERPRISES LLC,
MCKINLEY MANOR	a Nevada limited liability company
By:	By:
Name Printed: Kevin J. Donahoe	Name Printed: Mulugeta Bour
Title: Owner Agent	Title: Manager
By:	By:
Name Printed:	Name Printed:
Title:	Title:
Address: 7674 W. Lake Mead Blvd., 104	Address: 4560 S. Arville Street, #23
Las Vegas, NV 89128	Las Vegas, NV 89103
Telephone: (702) 364-0909	Telephone: (702) 808-2047
Facsimile: (702) 364-5885	Facsimile: (___)
Federal ID No. 95-4590150	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.

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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.

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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)):	The New Base Rent shall be:
May 1, 2018 and annually thereafter	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

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

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Exhibit A

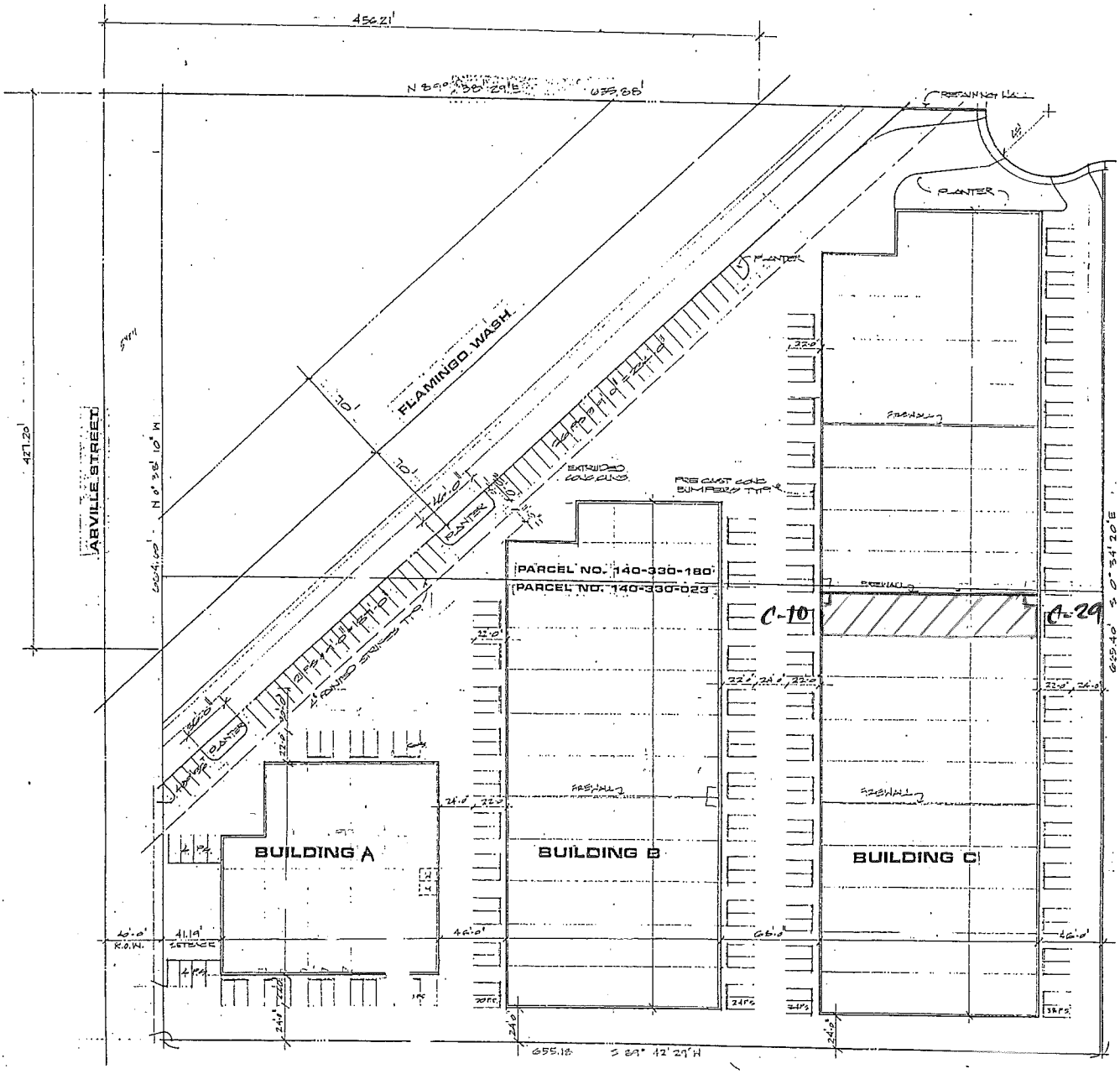

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Exhibit B

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.

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,

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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

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assignment and their successors and assig

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"

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EXHIBIT 4

HOLLEY DRIGGS

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)

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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

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to terminate this Lease upon 90 days prior writt[illegible]otice to Lessee unless Lessee notifies Lessor, in [illegible]g, 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

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driveways, entrances, parking spaces, parking a , loading and unloading areas, ingress, egress, direc 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.

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(viii) The cos[illegible]any Capital Expenditure to the Building or the Projec[illegible]t 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,

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substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. **"Reportable Use"** shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, 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

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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**.

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(a) **Definitions**. The "**Utility Installations**" refers to all floor and wind[illegible]overings, 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

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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

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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.

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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.

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10.4 **Joint Assessment**. If the B[illegible]ng is not separately assessed, Real Property Taxes [illegible]ocated 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

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sublease, be deemed to have assumed and agr to conform and comply with each and every term, c enant, 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,

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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

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be equal to the prime rate reported in the Wa. .eet Journal as published closest prior to the date ...en 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

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month's rent has been paid in advance. Prospe purchasers and encumbrances may rely upon the esting 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

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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,

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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**.

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37.1 **Execution**. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this Lease.

37.2 **Default**. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

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

39. **Options**. If Lessee is granted an option, as defined below, then the following provisions shall apply.

39.1 **Definition**. **"Option"** shall mean: (a) the right to extend 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.

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49. **Mediation and Arbitration of Dispu.** An Addendum requiring the Mediation and/or the ..bitration 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 COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, 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:	**By LESSEE:**
4520 ARVILLE MCKINLEY MANOR	BOUR ENTERPRISES LLC, a Nevada limited liability company
By:	By:
Name Printed: Kevin J. Donahoe	Name Printed: Mulugeta Bour
Title: Owner Agent	Title: Manager
By:	By:
Name Printed:	Name Printed:
Title:	Title:
Address: 7674 W. Lake Mead Blvd., 104 Las Vegas, NV 89128	Address: 4560 S. Arville Street, #23 Las Vegas, NV 89103
Telephone: (702) 364-0909	Telephone: (702) 808-2047
Facsimile: (702) 364-5885	Facsimile: ( )
Federal ID No. 95-4590150	Federal ID No.

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INITIALS

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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-23 & 24, 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.

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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)):	The New Base Rent shall be:
May 1, 2018 and annually thereafter	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.

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_____ _____
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Exhibit A

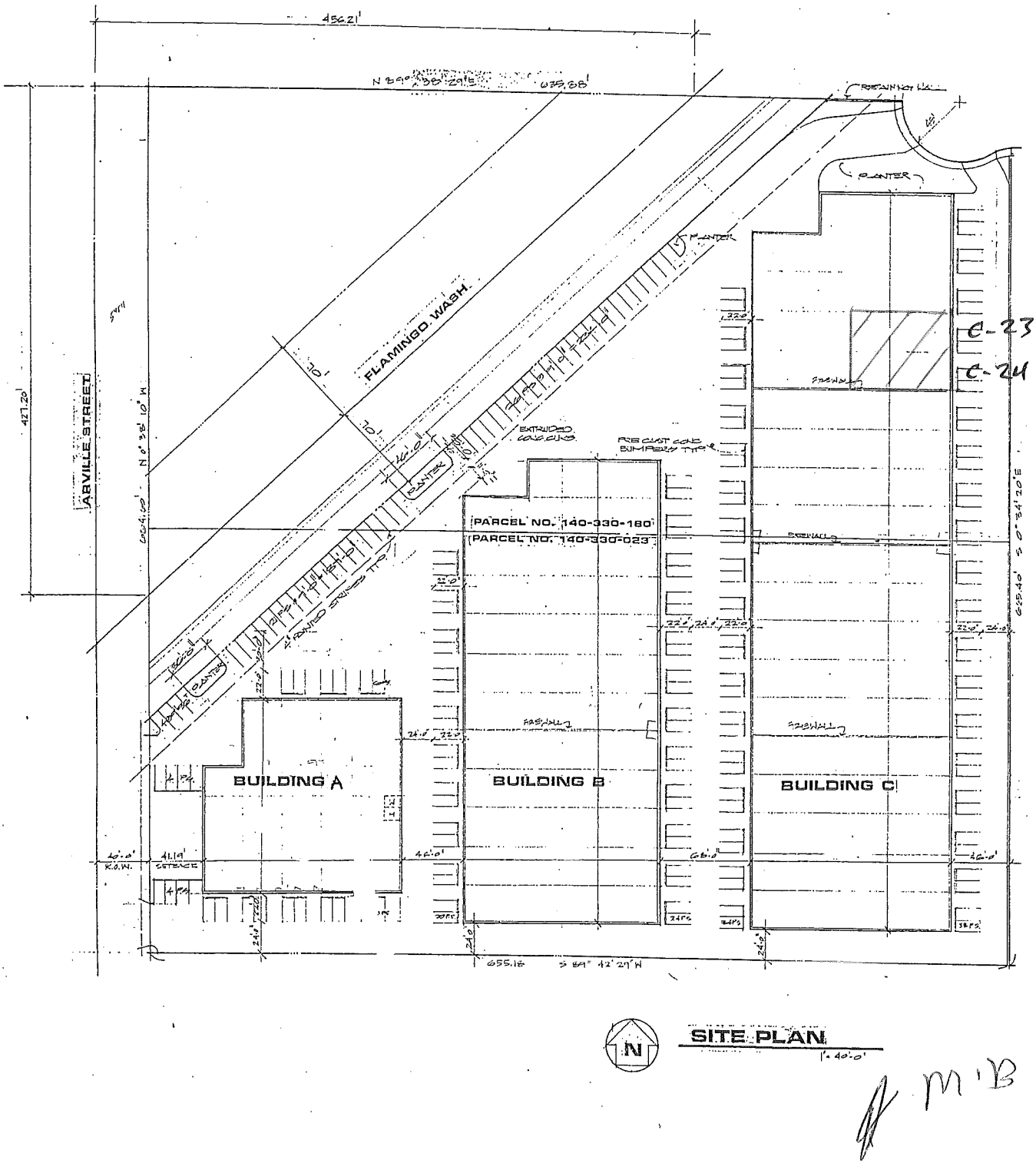

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Exhibit B

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.

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

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

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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"

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BLACK & WADHAMS
Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorneys for Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

BERTOLDO BAKER CARTER & SMITH
Brent A. Carter, Esq.
Nevada Bar No. 5903
7408 W. Sahara Avenue
Las Vegas, NV 89117
Ph: (702) 228-2600
Fax: (702) 228-2333
bac@winnercarson.com
Attorneys for Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No.: A-19-794864-C Dept. No.: 8 **OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants,	

Case Number: A-19-794864-C

v.

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

Counter Defendants.

Defendants/Counterclaimants, Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha (hereinafter collectively the "Defendants"), by and through their attorney of record, Rusty Graf, Esq. of Black & Wadhams, hereby file their OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES. This Opposition is made and based on the papers and pleadings on file herein, the following Memorandum of Points and Authorities, any exhibits attached hereto, and any argument at hearing on this matter.

Dated this 12th day of April 2021.

BLACK & WADHAMS

Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorneys for Defendants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

MEMORANDUM OF POINTS & AUTHORITIES

I.

INTRODUCTION

The Plaintiffs are correct that the Leases for the Subject Properties provide, in pertinent part, that the prevailing party will be "entitled to reasonable attorneys' fees." *See Plaintiffs' Motion for Attorneys' Fees at 5*. However, Plaintiffs are incorrect in asserting that the fees they seek are reasonable. In their instant Motion, the Plaintiffs request attorneys' fees in the amount of Eight-Eight Thousand One Hundred and Forty-Five Dollars and 00/100 Cents ($88,145.00). *Id at 2.* As described in further detail below, analysis of the Brunzell factors is required for determining the amount of reasonable attorneys' fees a party may be awarded and, here, such consideration demonstrates that the attorneys' fees being sought by Plaintiffs are not reasonable and should therefore should be reduced.

II.

LEGAL ARGUMENT

The decision whether to award attorneys' fees "is within the sound discretion of the trial court." *See Bergmann v. Boyce, 109 Nev. 670, 856 P.2d 560 (1993)*. When analyzing a Motion for Attorneys' Fees, if the Court determines that the moving party is eligible to receive an award of fees, the Court then engages in a second analysis to determine what amount of fees is reasonable to award using the Brunzell Factors. See *Schouweiler v. Yancy Co., 101 Nev. 827, 712 P.2d 786 (1985) (citing Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969))*. The Brunzell Factors include: (1) the qualities of the advocate: his ability, training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, intricacy, importance, the time and skill required, the responsibility imposed and the prominence and character of the parties when they affect the importance of the litigation; (3) the work actually

performed by the lawyer: the skill, time and attention given to the work; and (4) the result: whether the attorney was successful and what benefits were derived. *Id.*

A. ANALYSIS OF THE BRUNZELL FACTORS

i. The Qualities of the Advocate

The first Brunzell factor analyzes the reasonableness of the attorneys' fees being sought in light of the qualities of the advocate, including their ability, training, education, experience, professional standing and skill. *See Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969).* Here, the Plaintiffs argue as follows regarding this first Brunzell Factor:

> This Court had the opportunity to assess the quality of the advocacy of Holley Driggs in its written and oral advocacy that resulted in Plaintiffs successfully prosecuting this action and obtaining a significant monetary judgment in their favor. In doing so, Plaintiffs also successfully defended against Defendants' counterclaims and affirmative defenses. Moreover, Holley Driggs is "AV" rated by Martindale-Hubbell and has practiced in the Nevada courts for more than two decades.
>
> The quality of Holley Driggs' work is evidenced by, among other things, its successful prosecution of this action. Further, the qualities of the individual attorneys working on this matter support the reasonableness of the fees. See Edwards Decl. ¶¶ 7-10. This factor weighs heavily in favor of awarding Plaintiffs the full amount of $88,145.00 in fees.

See *Plaintiffs' Motion for Attorneys' Fees at 6.*

In *Brunzell v. Golden Gate Nat'l Bank*, the Nevada Supreme court made it clear that this factor analyzes the reasonableness of the attorneys' fees being sought based on the qualities of the individual attorneys who performed the work, not the reputation or rating the law firm which employs those attorneys. *See Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969).* Thus, the only part of the Plaintiffs' argument which is relevant to this factor is their statement that "[f]urther, the qualities of the individual attorneys working on this matter support the reasonableness of the fees. See Edwards Decl. ¶¶ 7-10." *See Plaintiffs' Motion for Attorneys' Fees at 6.*

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In the declaration of F. Thomas Edwards, Esq., cited by the Plaintiffs, Mr. Edwards states that the total amount of fees incurred by Plaintiffs is "$88,145.00, representing 373.6 hours of work at an effective hourly rate of $235.93". *See Plaintiffs' Motion for Attorneys' Fees, Exhibit 1, Pg. 2*. In that declaration, Mr. Edwards proceeds to describe his own ability, training, education, experience, professional standing and skill and that of: (1) the Holley Driggs associate attorney Sean E. Story, Esq.; (2) the Holley Driggs associate attorney Jessica M. Lujan, Esq.; and (3) the Holley Driggs paralegal Kandy Halsey. *Id. at 2-3*. No other individuals are discussed. *Id.* However, examination of the Transactions Listing, attached to Plaintiffs' Motion as Exhibit 2, reveals substantial issues with the content of Mr. Edwards declaration. Specifically: (1) the representation that Holley Driggs conducted 373.6 hours of work at an effective hourly rate of $235.93 is inaccurate because it included a large number of hours that were designated "no charge" on the transactions list; and (2) the Transactions Listing includes a large number of hours billed by "RVG" whose identity is unknown and who is not one of the individuals who are discussed in Mr. Edwards declaration. Examination of the Transactions Listing reveals that a total of 47.34 hours were included in billing statements, and in the assertion that "Holley Driggs conducted 373.6 hours of work at an effective hourly rate of $235.93", despite being listed as "no charge". *Id. at Exhibit 2*.

Based on the above discussion, it is clear that this Brunzell Factor weighs against the reasonableness of the requested fees. This factor requires consideration of the individual qualities of the advocates, and the Plaintiffs' Motion: (1) fails to actually to address such qualities for the individual listed as "RVG" on the Transactions Listing; (2) overstates the amount of hours a worked by included numerous "no charge" transactions; and (3) demonstrates the existence of issues with the quality of the advocates in question due to the inclusion of these numerous "no charge" transactions. Therefore, the Defendants respectfully assert that this Brunzell Factor weighs

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in favor of the Defendants and the Court should reduce any award of attorneys' fees to the Plaintiffs accordingly.

ii. The Character of the Work

The second Brunzell factor analyzes the reasonableness of the attorneys' fees being sought in light of the character of the work, specifically its difficulty, intricacy, importance, the time and skill required, the responsibility imposed and the prominence and character of the parties when they affect the importance of the litigation. See *Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969).* Plaintiffs argue that "this should have been a straightforward breach of contract action" but, due to the Defendants asserting counterclaims and affirmative defenses, it was necessary for additional work to be performed as "[r]efuting these baseless counterclaims, required in-depth legal research (on a novel issue never before considered by the Nevada Supreme Court), expert witness reports and in-person walkthroughs of the Premises, and excess motion practice that would not have otherwise been necessary." *See Plaintiffs' Motion for Attorneys' Fees at 7.*

Here, this second Brunzell factor should be deemed to weigh against the reasonableness of the requested attorneys' fees because the Plaintiffs have directly admitted that this was essentially "a straightforward breach of contract action" and was only complicated by the constructive eviction counterclaim/defense. *Id.* As Plaintiffs proceed to state that the constructive eviction issue was "a novel issue never before considered by the Nevada Supreme Court", it is contradictory for them to subsequently state that it "required in-depth legal research". *Id.* It is self-evident that there was not "required in-depth legal research" to be done regarding an issue which has not been addressed by Nevada case law.

Further, the fact that these fees are not reasonable is also evidenced by the content of the Plaintiffs' pleadings. For example, in their Reply to the Defendants' Opposition to the Motion for

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Summary Judgment Regarding the Breach of Contract Claims, Plaintiffs cited to a Nevada federal court case, *Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat. Tr. & Sav. Ass'n*, in support of the assertion that the Court may look to persuasive authority of other jurisdictions in considering a Motion for Summary Judgment. *See Plaintiffs' Reply to Defendants' Opposition to Motion for Summary Judgment Regarding Breach of Contract Claims at 5*. Though research on the case *Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat. Tr. & Sav. Ass'n* may have been necessary, however, Plaintiffs then proceeded to cite to case law from nine (9) other jurisdictions (Louisiana, Tennessee, Mississippi, California, Pennsylvania, Oklahoma, Connecticut, the Fourth Circuit, and the Fifth Circuit) and these were all simply offered as persuasive authority for the assertion that the Court "may consider persuasive authority in the absence of controlling law at summary judgment". *Id. at 6.* Therefore, the Defendants respectfully assert that this Brunzell Factor weighs in favor of the Defendants and the Court should reduce any award of attorneys' fees to the Plaintiffs accordingly.

iii. The Work Actually Performed

The third Brunzell factor analyzes the reasonableness of the attorneys' fees being sought in light of the work actually performed by the lawyer and the skill, time and attention given to the work. *See Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969).* Here, though Plaintiffs argue that the work performed makes the fees requested reasonable, the discussion above of both the first and second Brunzell factor demonstrates that this is inaccurate. *See Plaintiffs' Motion for Attorneys' Fees at 7-8*. As described above, the most pertinent considerations for this factor are: (1) that many hours of work which Plaintiffs performed were listed as "no charge" on the transactions list and, thus, were deemed by Plaintiffs themselves to be either unnecessary or inadequately performed; and (2) that many of the actions taken by Plaintiffs, as exemplified by the clearly unnecessary legal research discussed above, were not actually a reasonable or necessary

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use of time and merely provided an opportunity to inflate the final bill. Therefore, the Defendants respectfully assert that this Brunzell Factor weighs in favor of the Defendants and the Court should reduce any award of attorneys' fees made to Plaintiffs.

iv. The Result

The final Brunzell factor analyzes the reasonableness of the attorneys' fees being sought in light of the results obtained, meaning whether the attorney was successful and what benefits were derived. *See Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969).* Here, the Plaintiffs argue that the fact that they prevailed and received a judgment makes this factor weigh in their favor. *See Plaintiffs' Motion for Attorneys' Fees at 8-9.* Though the Defendants do not dispute that Plaintiffs did have a judgment entered in their favor in this matter, it is important to consider the time and expense involved in obtaining that judgment despite the Plaintiffs' assertion that it was a "straightforward breach of contract action" complicated only by the constructive eviction counterclaim/defense. Viewed in this light, the Defendants respectfully assert that this Brunzell Factor weighs against a finding of reasonableness and the Court should reduce any award of attorneys' fees to the Plaintiffs accordingly.

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BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

III.

CONCLUSION

Based on the foregoing, the Brunzell factors weigh against any finding that the Eight-Eight Thousand One Hundred and Forty-Five Dollars and 00/100 Cents ($88,145.00) in attorneys' fees requested by the Plaintiffs are reasonable. As the Brunzell Factors demonstrate the fees sought are not reasonable, the Defendants respectfully assert and request that any amount of fees which are awarded to the Plaintiffs should be reduced accordingly.

Dated this 20 day of April 2021.

BLACK & WADHAMS

Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorneys for Defendants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & WADHAMS and that on the 12th day of April 2021, I caused the above and foregoing document entitled **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES** to be served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

[X] by electronic service through Wiznet, Clark County Eighth Judicial District Court's electronic filing/service system;

[ ] pursuant to EDCR 7.26, to be sent via facsimile;

[ ] hand delivered to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

F. Thomas Edwards, Esq.
HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

Diane Meeter
An Employee of Black & Wadhams

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

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Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES** **Hearing Date: May 5, 2021** **Hearing Time: In Chambers**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

Plaintiffs/Counterdefendants, 4520 Arville, a California general partnership; and McKinley Manor, an Idaho general partnership (collectively "Plaintiffs"), by and through their attorneys of record, the law firm of Holley Driggs, hereby submit this Reply in support of their

Docket 83099 Document 2021-28553

Case Number: A-19-794864-C

Motion for Attorneys' Fees (the "Motion for Fees"). The attorney fees requested total $88,145.00. This Reply is made and based upon the papers and pleadings on file herein and the following memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Again, Defendants have lodged meritless arguments in opposition to Plaintiffs' reasonable request for attorneys' fees (which they incurred fighting Defendants' baseless affirmative defenses and counterclaims throughout this action). Plaintiffs will briefly discuss why Defendants' arguments in opposition to the instant Motion for Fees fail to overcome Plaintiffs' reasonable request for fees actually and necessarily incurred in this action, totaling $88,145.00 at an effective hourly rate of just $235.93.

- **The effective hourly rate for Holley Driggs' work was calculated correctly.** The effective hourly rate charged by Plaintiffs' counsel is calculated by taking the total fees incurred (here, $88,145.00) and dividing that figure by the total number of hours worked (373.64). In this case, the effective hourly rate is $235.93.[1] Defendants assert that because some of the hours in Plaintiffs' fee transaction listing were designated as "no charge," that those hours should not be included in Plaintiffs' calculation of the "effective hourly rate" charged by their attorneys. This argument is nonsensical, because even if certain hours worked by Holley Driggs attorneys were not ultimately passed along to the client, these are still hours that Plaintiffs' counsel spent advancing their case. The effective hourly rate simply calculates the average dollar amount charged to Plaintiffs per hour of work Plaintiffs' counsel spent on their case. Moreover, because Plaintiffs are not seeking to collect on those "no charged" hours (but rather, only those hours for which fees were *actually* incurred by Plaintiffs), there is nothing inaccurate about Plaintiffs'

[1] 88,145 / 373.60 = 235.93. Holley Driggs bills in one-tenth of an hour increments. Therefore, the 373.64 figure should actually be 373.60, with the extra .04 representing a typo in the billing. However, because the .04 of an hour was not passed along to the client (written off as a "no charge"), this typo does not affect the overall calculation. *See* Transaction Listing, Mot. Ex. 2 at 19.

HOLLEY DRIGGS

calculation, which is meant only to demonstrate to the Court the overall reasonableness of Holley Driggs' fees.

- **Plaintiffs do not seek to recover any "no charged" hours.** A review of Plaintiffs' transaction listing confirms that they do not seek to recover fees for hours that were "no charged" (*i.e.*, where the "Value Ext Amount" is $0.00). *See* Transaction Listing, Mot. Ex. 2 at 37 (showing the difference between hours worked and hours billed). Therefore, a discussion of those discounted hours is irrelevant to the Court's analysis of whether Plaintiffs' *actually and necessarily* incurred fees were reasonable. In other words, if an amount was not charged to the Plaintiffs and Plaintiffs are not seeking to recover those amounts in the Motion for Fees, the analysis of those "no charged" hours is irrelevant. Moreover, the fact that Plaintiffs' counsel took it upon themselves to "no charge" Plaintiffs for hours that were actually worked *confirms* that Holley Driggs was judicious about the reasonableness of the fees it extended to its clients. There is no reason to reduce Plaintiffs' award for the simple fact that their counsel elected to give them a discount on certain of their bills.

- **Plaintiffs were not charged for work performed by "RVG".** Defendants take issue that work performed by "RVG" (Robin V. Gonzales, Esq.) appears on Plaintiffs' transaction listing, but Plaintiffs' Motion for Fees does not address the "qualities" of this individual under the *Brunzell* factors. The reason for this is simple: Holley Driggs did not charge Plaintiffs for any work performed by Mr. Gonzales (a mere 13.24 hours). *See* Transaction Listing, Mot. Ex. 2 at 18–19. Thus, a description of Mr. Gonzales's qualities did not appear to be necessary for the purpose of justifying Plaintiffs' *incurred* fees in this action.

Nevertheless, to assuage Defendants, Robin V. Gonzales, Esq., was an associate at Holley Driggs who provided minor assistance on this case during a one-week timeframe. He received his Juris Doctorate from UNLV's William S. Boyd School of Law in 2019 and has been practicing law ever since. His hourly rate for this matter was $0.00.

➢ **Plaintiffs were forced to conduct legal research to counter Defendants' baseless, unsupported positions.** At summary judgment, Defendants took the absurd position (citing *no* law in support) that this Court is not free to rely on persuasive authority in considering whether to grant summary judgment. In reply, Plaintiffs conducted the legal research that Defendants should have conducted before lodging their nonsensical argument and provided the Court with a sampling of authority demonstrating that Defendants' position was false—this Court may rely on persuasive authority in the absence of binding case law.

However, because none of the cases identified by Plaintiffs on this point were from the Nevada Supreme Court (the only tribunal that issues decisions that bind this Court), Plaintiffs found it prudent to provide the Court with persuasive authority from various courts to substantiate their critical position. If Defendants were going to balk at the time required to conduct the legal research that was necessary to counter their outlandish positions, Defendants should have performed this research themselves and avoided lodging meritless arguments to which Plaintiffs were forced to respond.

I. CONCLUSION

For these reasons, the attorney fees incurred by Plaintiffs were reasonably and necessarily incurred. Based on the foregoing, Plaintiffs respectfully request that this Court grant the instant Motion for Fees and award Plaintiffs' attorneys' fees in the amount of $88,145.00.

Dated this 28th day of April, 2021.

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

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 28th day of April, 2021, I did cause a true and correct copy of the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES** 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

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CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **FIRST SUPPLEMENTAL JUDGMENT AGAINST DEFENDANTS BOUR ENTERPRISES, LLC, MULUGETA BOUR, AND HILENA MENGESHA**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants.	

Based on the Court's Order Granting in Part Plaintiffs' Motion for Fees and Defendant's Motion to Retax Costs, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of Plaintiffs/Counter-defendants 4520 Arville and McKinley Manor ("Plaintiffs") and against Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour, and Hilena

Case Number: A-19-794864-C

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Mengesha ("Defendants"), jointly and severally, for $60,000.00 in actually and reasonably incurred attorneys' fees and $6,307.71 in actually and reasonably incurred costs, for a total of **$66,307.71,** plus interest at 7.25% (Wall Street Journal prime rate of 3.25% published on 3/16/20 plus 4%, per Section 13.5 of the subject Leases) in the amount of $13.17 per day until satisfied in full.

IT IS FURTHER ORDERED that the instant First Supplemental Judgment constitutes a supplement to the previous Judgment entered by this Court on March 9, 2021, which is otherwise unaffected and remains in full force and effect from its date of issuance.

IT IS SO ORDERED.

Dated this 24th day of May, 2021

56B AFD 4A7D 88BF
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

HOLLEY DRIGGS

/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

Attorneys for Plaintiffs/Counter-defendants

Approved as to form and content by:

BLACK & WADHAMS

Declined to sign
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Defendants/Counterclaimants

HOLLEY DRIGGS

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s)	CASE NO: A-19-794864-C DEPT. NO. Department 5

AUTOMATED CERTIFICATE OF SERVICE

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Service Date: 5/24/2021

Tom Edwards, Esq.	tedwards@nevadafirm.com
BRENT CARSON	bac@winnercarson.com
Diane Meeter	dmeeter@blacklobello.law
J. Graf	Rgraf@blacklobello.law
Sandra Sell	ssell@nevadafirm.com
Jessica Lujan	jlujan@nevadafirm.com
Marsha Stallsworth	mstallsworth@blackwadhams.law
Marsha Stallsworth	mstallsworth@blackwadhams.law
Corinne Montana	cmontana@blackwadhams.law

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05/27/2021 11:30 AM
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

Counterclaimants.

v.

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

Counterdefendants,

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

ORDER GRANTING IN PART PLAINTIFFS' MOTION FOR FEES AND DEFENDANTS' MOTION TO RETAX COSTS

Hearing Date: May 6, 2021
Hearing Time: In Chambers

This matter came before the Court on May 6, 2021 in Chambers upon Plaintiffs/Counterdefendants, 4520 Arville and McKinley Manor (collectively "Plaintiffs") Motion for Attorneys' Fees (the "Motion for Fees") and Defendants/Counterclaimants Bour

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Enterprises, LLC, Mulugeta Bour, and Hilena Mengesha's ("Defendants") Motion to Retax Costs, the Honorable Veronica M. Barisich presiding.

The Court, having considered the papers and pleadings on file herein, and good cause appearing therefor, hereby enters the following findings of fact and conclusions of law pursuant to EDCR 2.23 and Administrative Order 21-03. To the extent any finding of fact should properly be designated a conclusion of law, it shall be deemed a conclusion of law. To the extent any conclusion of law should properly be designated a finding of fact, it shall be deemed a finding of fact.

FINDINGS OF FACT

1. On January 28, 2021, the Court granted summary judgment in favor of Plaintiffs on their breach of contract claims, concluding that there was sufficient evidence that Defendants breached the subject Leases and personal Guaranties. *See* Order Granting Summary Judgment, on file herein.

2. The Court rejected Defendant's sole argument as to constructive eviction, as the implied warranty of habitability (upon which Defendant's constructive eviction defense relied) is inapplicable in commercial leases. *Id.* at 8–9, ¶ 6. Even if such warranty is applicable, it was specifically waived by the Defendants in the Leases. *Id.* at 9, ¶ 7.

3. Thereafter, on March 9, 2021, the Court granted Plaintiffs' Motion for Entry of Judgment, concluding that trial was not necessary to prove Plaintiffs' damages because Defendants failed to challenge the amount owed or raise any applicable affirmative defenses with regard to the damages sought. *See* Order Granting Motion for Entry of Judgment at 2, on file herein. Thus, trial was vacated and Judgment against Defendants was entered on March 9, 2021, in the amount of $162,756.77, which included applicable interest. *Id.* at 2–3.

4. The subject Leases contain identical fee-shifting provisions (the "Fee-Shifting Provisions"), which state, in pertinent part:

> 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

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> 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. . .

See Leases, Motion for Summary Judgment ("MSJ") Exs. 3 and 4 at 18 (Section 31).

5. The subject Leases further provide the rate of interest (the "Interest Rate") that shall apply to an award of attorneys' fees and costs awarded pursuant to the Leases:

> 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 primate 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.

See Leases, Motion for Summary Judgment ("MSJ") Exs. 3 and 4 at 14–15 (Section 13.5).

6. On March 15, 2021, Plaintiffs timely filed a Memorandum of Costs and Disbursements on March 15, 2021. *See* Memorandum of Costs, on file herein.

7. On March 18, 2021, Defendants timely filed a Motion to Retax Costs. *See* Motion to Retax Costs, on file herein.

8. Thereafter, on March 29, 2021, Plaintiffs timely filed their motion for attorneys' fees. *See* Motion for Fees, on file herein.

CONCLUSIONS OF LAW

Plaintiffs' Motion for Fees

1. "Attorney fees are . . . available when authorized by rule, statute, or contract." *Henry Prods. Inc. v. Tarmu*, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998). "The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law." NRS 18.010(1). The Supreme Court of Nevada noted, with respect to the language above, "[i]t is the rule that provisions in contracts for the payment of attorney's fees in the event it is necessary to resort to aid of counsel for enforcement or collection are valid and

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enforceable." *Bates v. Chronister*, 100 Nev. 675, 683, 691 P.2d 865, 871 (1984).

2. Because Plaintiffs obtained a judgment against Defendants in this action for their breach of the Leases, and also successfully defended the counterclaims lodged by Defendants, Plaintiffs are entitled to recover their reasonably and necessarily incurred attorneys' fees pursuant to the Fee-Shifting Provisions in the Leases. *See* MSJ Exs. 3 and 4 at 18 (Section 31).

3. Whenever a district court awards attorney's fees, the reasonability of the award must always be a consideration. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The Nevada Supreme Court has provided factors to be utilized in determining whether the fees requested are reasonable, as follows: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. *Id.* After analyzing the *Brunzell* factors, the Court may award up to the full amount of fees requested.

4. The attorneys' fees sought by Plaintiffs are reasonable under the factors set forth in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

a. Although Defendants point out the billing entries for unknown "RVG" and various "no charge" transactions, Plaintiffs did not seek to recover on "no charge" transactions and entries by "RVG", who was later identified as Robin V. Gonzales, Esq. Thus, the factor regarding the qualities of the advocates weighs in favor of Plaintiffs. Moreover, Holley Driggs is "AV" rated by Martindale-Hubbell and has practiced in the Nevada courts for more than two decades.

b. The character of the work must be deemed in favor of Plaintiffs, given Plaintiffs' success at summary judgment.

c. As to the work actually performed, work done throughout the course of this lengthy case also militates in favor of Plaintiffs.

/ / /

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d. The result obtained was favorable to Plaintiffs, and thus this factor also weighs in Plaintiffs' favor.

5. After an overall analysis of the *Brunzell* factors, the appropriate attorney's fees appear to be $60,000.00.

Defendants' Motion to Retax Costs

6. NRS 18.020(1) states that "[c]osts must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered: (a) When the prevailing party has not recovered more than $20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party."

7. However, the costs must be expressly authorized under NRS 18.005. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 971 P.2d 383 (1998). The costs must also be substantiated by sufficient documentation and itemization. *Id.* The costs must be actual and reasonable. *Id.* Although the determination of allowable costs is within the sound discretion of the trial court, the statutes permitting recovery of costs must be strictly construed. *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994).

8. NRS 18.005 defines "costs" as

> 1. Clerks' fees.
> 2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition.
> . . .
> 7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.
> . . .
> 12. Reasonable costs for photocopies.
> . . .
> 17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

9. The Court finds that out of $8,536.29 in costs initially sought, Plaintiffs conceded that service of process costs were inaccurate and reduced their costs demand to $7,972.93. Although Defendants argue that delivery charges are not recoverable costs, at a minimum, such

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charges must be deemed other reasonable and necessary expenses incurred in connection with the action under NRS 18.005(17).

10. Defendants also questioned the legal research costs of $3,665.22 and under *Berosini*, the costs sought cannot be deemed to have been supported by sufficient documentation and itemization. Thus, the costs sought for legal research should be reduced to $2,000.00.

11. The final costs to be awarded to Plaintiffs shall be reduced to $6,307.71.

Based on the foregoing, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Fees is GRANTED IN PART, and Plaintiffs are awarded $60,000.00 in actually and reasonably incurred attorneys' fees, plus interest as provided by the subject Leases, consistent with the prior Judgment entered on March 9, 2021.[1]

IT IS FURTHER ORDERED that Defendants' Motion to Retax Costs is GRANTED IN PART, and Plaintiffs are awarded $6,307.71 in actually and reasonably incurred costs, plus interest as provided in the subject Leases, consistent with the prior Judgment entered on March 9, 2021.

IT IS FURTHER ORDERED that separate supplemental judgment for these amounts, plus interest until paid in full, shall issue.

IT IS SO ORDERED.

Dated this 27th day of May, 2021

D2A BA4 9809 CBF2
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

HOLLEY DRIGGS

/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
Attorneys for Plaintiffs/Counter-defendants

Approved as to form and content by:

BLACK & WADHAMS

Declined to sign
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Defendants/Counterclaimants

[1] The Interest Rate applicable to the First Supplemental Judgment awarding fees and costs shall be updated to reflect the most recent prime interest rate published by the Wall Street Journal, plus 4%, per Section 13.5 of the Leases.

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s)	CASE NO: A-19-794864-C DEPT. NO. Department 5

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 5/27/2021

Tom Edwards, Esq.	tedwards@nevadafirm.com
BRENT CARSON	bac@winnercarson.com
Diane Meeter	dmeeter@blacklobello.law
J. Graf	Rgraf@blacklobello.law
Sandra Sell	ssell@nevadafirm.com
Jessica Lujan	jlujan@nevadafirm.com
Marsha Stallsworth	mstallsworth@blackwadhams.law
Marsha Stallsworth	mstallsworth@blackwadhams.law
Corinne Montana	cmontana@blackwadhams.law

Electronically Filed
5/27/2021 5:00 PM
Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

HOLLEY DRIGGS

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **NOTICE OF ENTRY OF ORDER**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

YOU, and each of you, will please take notice that an Order Granting in Part Plaintiffs' Motion for Fees and Defendants' Motion to Retax Costs in the above-entitled matter was filed and

/ / /

entered by the Clerk of the above-entitled Court on the 27th day of May, 2021, a copy of which is attached hereto.

Dated this 27th[th] day of May, 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 27th day of May, 2021, I did cause a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**, 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

HOLLEY DRIGGS

ELECTRONICALLY SERVED
5/27/2021 11:30 AM

Electronically Filed
05/27/2021 11:30 AM
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

Counterclaimants.

v.

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

Counterdefendants,

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

ORDER GRANTING IN PART PLAINTIFFS' MOTION FOR FEES AND DEFENDANTS' MOTION TO RETAX COSTS

Hearing Date: May 6, 2021
Hearing Time: In Chambers

This matter came before the Court on May 6, 2021 in Chambers upon Plaintiffs/Counterdefendants, 4520 Arville and McKinley Manor (collectively "Plaintiffs") Motion for Attorneys' Fees (the "Motion for Fees") and Defendants/Counterclaimants Bour

Case Number: A-19-794864-C

HOLLEY DRIGGS

Enterprises, LLC, Mulugeta Bour, and Hilena Mengesha's ("Defendants") Motion to Retax Costs, the Honorable Veronica M. Barisich presiding.

The Court, having considered the papers and pleadings on file herein, and good cause appearing therefor, hereby enters the following findings of fact and conclusions of law pursuant to EDCR 2.23 and Administrative Order 21-03. To the extent any finding of fact should properly be designated a conclusion of law, it shall be deemed a conclusion of law. To the extent any conclusion of law should properly be designated a finding of fact, it shall be deemed a finding of fact.

FINDINGS OF FACT

1. On January 28, 2021, the Court granted summary judgment in favor of Plaintiffs on their breach of contract claims, concluding that there was sufficient evidence that Defendants breached the subject Leases and personal Guaranties. *See* Order Granting Summary Judgment, on file herein.

2. The Court rejected Defendant's sole argument as to constructive eviction, as the implied warranty of habitability (upon which Defendant's constructive eviction defense relied) is inapplicable in commercial leases. *Id.* at 8–9, ¶ 6. Even if such warranty is applicable, it was specifically waived by the Defendants in the Leases. *Id.* at 9, ¶ 7.

3. Thereafter, on March 9, 2021, the Court granted Plaintiffs' Motion for Entry of Judgment, concluding that trial was not necessary to prove Plaintiffs' damages because Defendants failed to challenge the amount owed or raise any applicable affirmative defenses with regard to the damages sought. *See* Order Granting Motion for Entry of Judgment at 2, on file herein. Thus, trial was vacated and Judgment against Defendants was entered on March 9, 2021, in the amount of $162,756.77, which included applicable interest. *Id.* at 2–3.

4. The subject Leases contain identical fee-shifting provisions (the "Fee-Shifting Provisions"), which state, in pertinent part:

> 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

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> 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. . .

See Leases, Motion for Summary Judgment ("MSJ") Exs. 3 and 4 at 18 (Section 31).

5. The subject Leases further provide the rate of interest (the "Interest Rate") that shall apply to an award of attorneys' fees and costs awarded pursuant to the Leases:

> 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 primate 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.

See Leases, Motion for Summary Judgment ("MSJ") Exs. 3 and 4 at 14–15 (Section 13.5).

6. On March 15, 2021, Plaintiffs timely filed a Memorandum of Costs and Disbursements on March 15, 2021. *See* Memorandum of Costs, on file herein.

7. On March 18, 2021, Defendants timely filed a Motion to Retax Costs. *See* Motion to Retax Costs, on file herein.

8. Thereafter, on March 29, 2021, Plaintiffs timely filed their motion for attorneys' fees. *See* Motion for Fees, on file herein.

CONCLUSIONS OF LAW

Plaintiffs' Motion for Fees

1. "Attorney fees are . . . available when authorized by rule, statute, or contract." *Henry Prods. Inc. v. Tarmu*, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998). "The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law." NRS 18.010(1). The Supreme Court of Nevada noted, with respect to the language above, "[i]t is the rule that provisions in contracts for the payment of attorney's fees in the event it is necessary to resort to aid of counsel for enforcement or collection are valid and

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enforceable." *Bates v. Chronister*, 100 Nev. 675, 683, 691 P.2d 865, 871 (1984).

2. Because Plaintiffs obtained a judgment against Defendants in this action for their breach of the Leases, and also successfully defended the counterclaims lodged by Defendants, Plaintiffs are entitled to recover their reasonably and necessarily incurred attorneys' fees pursuant to the Fee-Shifting Provisions in the Leases. *See* MSJ Exs. 3 and 4 at 18 (Section 31).

3. Whenever a district court awards attorney's fees, the reasonability of the award must always be a consideration. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The Nevada Supreme Court has provided factors to be utilized in determining whether the fees requested are reasonable, as follows: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. *Id.* After analyzing the *Brunzell* factors, the Court may award up to the full amount of fees requested.

4. The attorneys' fees sought by Plaintiffs are reasonable under the factors set forth in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

a. Although Defendants point out the billing entries for unknown "RVG" and various "no charge" transactions, Plaintiffs did not seek to recover on "no charge" transactions and entries by "RVG", who was later identified as Robin V. Gonzales, Esq. Thus, the factor regarding the qualities of the advocates weighs in favor of Plaintiffs. Moreover, Holley Driggs is "AV" rated by Martindale-Hubbell and has practiced in the Nevada courts for more than two decades.

b. The character of the work must be deemed in favor of Plaintiffs, given Plaintiffs' success at summary judgment.

c. As to the work actually performed, work done throughout the course of this lengthy case also militates in favor of Plaintiffs.

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d. The result obtained was favorable to Plaintiffs, and thus this factor also weighs in Plaintiffs' favor.

5. After an overall analysis of the *Brunzell* factors, the appropriate attorney's fees appear to be $60,000.00.

Defendants' Motion to Retax Costs

6. NRS 18.020(1) states that "[c]osts must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered: (a) When the prevailing party has not recovered more than $20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party."

7. However, the costs must be expressly authorized under NRS 18.005. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 971 P.2d 383 (1998). The costs must also be substantiated by sufficient documentation and itemization. *Id.* The costs must be actual and reasonable. *Id.* Although the determination of allowable costs is within the sound discretion of the trial court, the statutes permitting recovery of costs must be strictly construed. *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994).

8. NRS 18.005 defines "costs" as

> 1. Clerks' fees.
> 2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition.
> . . .
> 7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.
> . . .
> 12. Reasonable costs for photocopies.
> . . .
> 17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

9. The Court finds that out of $8,536.29 in costs initially sought, Plaintiffs conceded that service of process costs were inaccurate and reduced their costs demand to $7,972.93. Although Defendants argue that delivery charges are not recoverable costs, at a minimum, such

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charges must be deemed other reasonable and necessary expenses incurred in connection with the action under NRS 18.005(17).

10. Defendants also questioned the legal research costs of $3,665.22 and under *Berosini*, the costs sought cannot be deemed to have been supported by sufficient documentation and itemization. Thus, the costs sought for legal research should be reduced to $2,000.00.

11. The final costs to be awarded to Plaintiffs shall be reduced to $6,307.71.

Based on the foregoing, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Fees is GRANTED IN PART, and Plaintiffs are awarded $60,000.00 in actually and reasonably incurred attorneys' fees, plus interest as provided by the subject Leases, consistent with the prior Judgment entered on March 9, 2021.[1]

IT IS FURTHER ORDERED that Defendants' Motion to Retax Costs is GRANTED IN PART, and Plaintiffs are awarded $6,307.71 in actually and reasonably incurred costs, plus interest as provided in the subject Leases, consistent with the prior Judgment entered on March 9, 2021.

IT IS FURTHER ORDERED that separate supplemental judgment for these amounts, plus interest until paid in full, shall issue.

IT IS SO ORDERED.

Dated this 27th day of May, 2021

D2A BA4 9809 CBF2
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

HOLLEY DRIGGS

/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
Attorneys for Plaintiffs/Counter-defendants

Approved as to form and content by:

BLACK & WADHAMS

Declined to sign
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Defendants/Counterclaimants

[1] The Interest Rate applicable to the First Supplemental Judgment awarding fees and costs shall be updated to reflect the most recent prime interest rate published by the Wall Street Journal, plus 4%, per Section 13.5 of the Leases.

HOLLEY DRIGGS

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DISTRICT COURT
CLARK COUNTY, NEVADA

4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s)	CASE NO: A-19-794864-C DEPT. NO. Department 5

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 5/27/2021

Tom Edwards, Esq.	tedwards@nevadafirm.com
BRENT CARSON	bac@winnercarson.com
Diane Meeter	dmeeter@blacklobello.law
J. Graf	Rgraf@blacklobello.law
Sandra Sell	ssell@nevadafirm.com
Jessica Lujan	jlujan@nevadafirm.com
Marsha Stallsworth	mstallsworth@blackwadhams.law
Marsha Stallsworth	mstallsworth@blackwadhams.law
Corinne Montana	cmontana@blackwadhams.law

Electronically Filed
5/27/2021 5:00 PM
Steven D. Grierson
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

HOLLEY DRIGGS

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **NOTICE OF ENTRY OF FIRST SUPPLEMENTAL JUDGMENT AGAINST DEFENDANTS BOUR ENTERPRISES, LLC, MULUGETA BOUR AND HILENA MENGESHA**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants,	

YOU, and each of you, will please take notice that a First Supplemental Judgment Against Defendants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha in the above-entitled

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matter was filed and entered by the Clerk of the above-entitled Court on the 24th day of May, 2021, a copy of which is attached hereto.

Dated this 27th[th] day of May, 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 27th day of May, 2021, I did cause a true and correct copy of the foregoing **NOTICE OF ENTRY OF FIRST SUPPLEMENTAL JUDGMENT AGAINST DEFENDANTS**, 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

HOLLEY DRIGGS

ELECTRONICALLY SERVED
5/24/2021 11:52 AM

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05/24/2021 11:51 AM
CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: 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 Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No: A-19-794864-C Dept. No.: 5 **FIRST SUPPLEMENTAL JUDGMENT AGAINST DEFENDANTS BOUR ENTERPRISES, LLC, MULUGETA BOUR, AND HILENA MENGESHA**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants. v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X, Counterdefendants.	

Based on the Court's Order Granting in Part Plaintiffs' Motion for Fees and Defendant's Motion to Retax Costs, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of Plaintiffs/Counter-defendants 4520 Arville and McKinley Manor ("Plaintiffs") and against Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour, and Hilena

Case Number: A-19-794864-C

HOLLEY DRIGGS

Mengesha ("Defendants"), jointly and severally, for $60,000.00 in actually and reasonably incurred attorneys' fees and $6,307.71 in actually and reasonably incurred costs, for a total of **$66,307.71,** plus interest at 7.25% (Wall Street Journal prime rate of 3.25% published on 3/16/20 plus 4%, per Section 13.5 of the subject Leases) in the amount of $13.17 per day until satisfied in full.

IT IS FURTHER ORDERED that the instant First Supplemental Judgment constitutes a supplement to the previous Judgment entered by this Court on March 9, 2021, which is otherwise unaffected and remains in full force and effect from its date of issuance.

IT IS SO ORDERED.

Dated this 24th day of May, 2021

56B AFD 4A7D 88BF
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

HOLLEY DRIGGS

/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

Attorneys for Plaintiffs/Counter-defendants

Approved as to form and content by:

BLACK & WADHAMS

Declined to sign
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Defendants/Counterclaimants

HOLLEY DRIGGS

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s)	CASE NO: A-19-794864-C DEPT. NO. Department 5

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District 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:

Service Date: 5/24/2021

Tom Edwards, Esq.	tedwards@nevadafirm.com
BRENT CARSON	bac@winnercarson.com
Diane Meeter	dmeeter@blacklobello.law
J. Graf	Rgraf@blacklobello.law
Sandra Sell	ssell@nevadafirm.com
Jessica Lujan	jlujan@nevadafirm.com
Marsha Stallsworth	mstallsworth@blackwadhams.law
Marsha Stallsworth	mstallsworth@blackwadhams.law
Corinne Montana	cmontana@blackwadhams.law

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

4520 ARVILLE, et al.	)	CASE NO. A-19-794864-C
Plaintiffs,	)	DEPT. V
vs.	)	
BOUR ENTERPRISES, LLC, et al.,	)	
Defendants.	)	
And all related claims.	)	

BEFORE THE HONORABLE JAMES M. BIXLER, DISTRICT COURT JUDGE

TUESDAY, SEPTEMBER 3, 2019

RECORDER'S TRANSCRIPT OF HEARING:
PLAINTIFF/COUNTER-DEFENDANTS' MOTION TO DISMISS COUNTERCLAIMS

APPEARANCES:

FOR THE PLAINTIFFS: THOMAS F. EDWARDS, ESQ.

FOR THE DEFENDANTS: RUSTY J. GRAF, ESQ.

RECORDED BY: GAIL REIGER, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 3, 2019

(Case called at 8:45 a.m.)

THE COURT: -- Arville versus Bour Enterprises. This is Case Number -- I'm a little slow here -- this is Case No. A-19-794864. And everybody please identify yourselves for the record.

MR. EDWARDS: Tom Edwards for the plaintiffs.

MR. GRAF: Good morning, Your Honor. Rusty Graf on behalf of the Defendant Counter Claimants.

THE COURT: Okay. These are competing motions, basically, summary judgment on both sides. And if you guys don't have anything to add, I'm ready to rule, so whatever you want to do.

MR. GRAF: I was just going to ask if His Honor had any questions.

THE COURT: Not really. I mean, you both have been pretty thorough in your presentation.

MR. GRAF: And did you get our Reply from Thursday, Your Honor?

THE COURT: I'm sure I did. Let me double-check, because I didn't come in and pick up the files until -- yes. Yeah. Yeah. I got a chance to read through everything.

MR. GRAF: Thank you, Your Honor.

THE COURT: Here's -- here's the deal. This is not ripe for summary judgment at this time. There are too many

things that need to be examined. And I'll give you guys a choice. Either I can continue, which is probably not a good idea. I can continue your competing Motions for Summary Judgment until after you've done more discovery, or I can just go ahead and dismiss both of them. Because if I continue them, you're going to supplement them anyway, after you've done more discovery.

So it probably -- it would be just as easy to just deny the competing Motions for Summary Judgment and without prejudice to either side, let you continue discovery and then we'll come back and take another run at it.

MR. EDWARDS: Your Honor, just as a point of clarification, we have a Motion to Dismiss pending --

THE COURT: Yeah.

MR. EDWARDS: -- simply based on -- on whether there's a duty, an implied duty under Nevada law. And we think we'd win, because there is no implied duty. The Nevada legislature has told us as much. The majority of states around the country have told us the same.

THE COURT: Well, I -- I agree, that there -- and commercial as opposed to residential.

MR. EDWARDS: Exactly.

THE COURT: That's the -- 118(a), 118(c) have completely different languages involved. I'm not quite -- even though the 118(c) does not have that language about

implied warranties in it, I don't think that it is that definitive that it absolutely prohibits the concept of some type of an implied warranty.

I personally, I mean, I think that this thing is going to pan out and it's going to be kind of an uphill battle for you guys. But I think it's still premature at this point.

You know what, you guys really ought to -- ought to do at this early stage, if you feel comfortable with the amount of information you have available, man, I'd be asking this guy to -- to -- let's get a Settlement Conference of some sort in the works, because this is going to be expensive litigation. And I think that you guys could probably sit down and work something out at this early stage and save your -- both of your clients a lot of money and aggravation.

But that's just a suggestion. I think it would be wise if you guys would take that avenue, but that's up to you guys.

At this point, your Motion to Dismiss is denied. Motion for Summary Judgment is denied. You guys are kind of where you are right now.

MR. GRAF: Who do you want to prepare the --

THE COURT: Do we have a -- do we have a Scheduling Order?

MR. GRAF: We don't.

MR. EDWARDS: We -- we've submitted a Joint Case

Conference Report.

MR. GRAF: Yeah.

MR. EDWARDS: But I don't believe we've received a Scheduling Order back.

THE COURT: You're going to get one -- you're going to get one ASAP.

MR. GRAF: Okay.

THE COURT: Okay. Thank you, guys.

MR. EDWARDS: Thank you, Your Honor.

THE COURT: Appreciate it.

MR. EDWARDS: Thank you, Your Honor.

THE CLERK: Your Honor --

THE COURT: Yes.

THE CLERK: -- is that -- is that denied without prejudice?

THE COURT: Yes.

THE CLERK: Okay.

THE COURT: Yes. Absolutely. Without prejudice.

MR. EDWARDS: Without prejudice. Okay.

MR. GRAF: Thank you, Your Honor.

THE COURT: Thank you.

(Proceeding concluded at 8:49 a.m.)

* * * * *

* * * * *

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case.

Julie Lord

VERBATIM DIGITAL REPORTING, LLC

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

4520 ARVILLE, et al.	)	CASE NO. A-19-794864-C
Plaintiffs,	)	DEPT. V
vs.	)	
BOUR ENTERPRISES, LLC, et al.,	)	
Defendants.	)	

And all related claims.

BEFORE THE HONORABLE TREVOR ATKIN, DISTRICT COURT JUDGE

TUESDAY, DECEMBER 15, 2020

RECORDER'S TRANSCRIPT OF HEARING:
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT REGARDING COUNTERCLAIM DAMAGES

APPEARANCES:

FOR THE PLAINTIFFS:	THOMAS F. EDWARDS, ESQ. *Via Videoconference*
FOR THE DEFENDANTS:	RUSTY J. GRAF, ESQ. *Via Videoconference*

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC
(Hearing recorded via Bluejeans Videoconference/Audio)

LAS VEGAS, NEVADA, TUESDAY, DECEMBER 15, 2020

(Case called at 9:51 a.m.)

THE CLERK: Page 12, A-794864, 4520 Arville versus Bour Enterprises, LLC.

Who do we have for plaintiffs?

MR. EDWARDS: Tom -- excuse me -- Tom Edwards for the plaintiffs.

THE CLERK: Thank you. For the defendant?

MR. GRAF: Good morning, Your Honor. Rusty Graf for the defendants.

THE CLERK: Thank you.

THE COURT: Okay. This is Plaintiffs' Motion for Summary Judgment Regarding Counterclaim Damages. Specifically, there's no -- the defendants have failed to provide a damages computation. They have failed to produce any financial documents from which a computation of damages can be made. And the defendant testified that the plaintiffs don't even owe any money.

Conversely, the attorneys for the defendants-counterclaims argue, hey, our guy, English is not his first language. He was -- in his deposition he was taken out of context and maybe he didn't understand. And that the Nevada Supreme Court has indicated that the computation of damages requirements only applies to special damages, not general or other intangible damages.

That's my understanding of -- of how this has been framed. But it is Plaintiff Motion for Summary Judgment. So I am going to turn this over to Mr. Edwards.

MR. EDWARDS: Thank you, Your Honor. And I'll keep this short because --

THE COURT: Okay.

MR. EDWARDS: -- you certainly outlined the -- the issues. And we filed a Motion for Summary Judgment saying the counter claimants don't have any damages. And as you said, we know that, because they gave us a computation and they didn't give us any documents from which a computation could be based, or which, you know, damages could be proven.

Once we make that argument in summary judgment, the burden then shifts to the responding party. They have an obligation to come forward with admissible evidence of those damages, and then we can decide whether there is a genuine issue of material fact as to -- as to damages.

Here the counter claimants failed to meet their burden, because they did not provide you with any of evidence, not a declaration, not a bank record, a medical bill, nothing. And because they did not meet their burden of coming forward with admissible evidence in their Opposition, they lose, and we are entitled to summary judgment.

THE COURT: All right.

MR. EDWARDS: Thank you.

THE COURT: Mr. Graf, how are you -- how are you going to prove any damages if you haven't outlined any, or come forward with any damage claims, or you know, quantify your damages?

MR. GRAF: Your Honor, we -- we were required to produce the new Lease Agreement, so any difference in lease payments, that sort of thing, would be a damage, number one.

But number two, Your Honor, the causes of action in the counterclaim are for breach of the lease, constructive eviction, bad faith and DEC relief. Bad faith, I did that work for about 15 years. All that my client needs to come in and testify to is the fact that he was upset as a result of how he was -- how this whole situation was handled. And he did testify to that. Number one.

Number two, the constructive eviction, it kind of just works as a negating of their damages, Your Honor. Constructive eviction in the State of Nevada is a question of fact to be determined by a trier of fact at the time of the trial. And if it does exist, it is a bar of their damages on the breach of contract regarding the -- the lease.

So I understand what Mr. Edwards is trying to d here. But there are potentially -- we're not saying that we need damages for moving or that there's damages in a traditional tort type setting. That's -- that's not the causes of action that we have, Your Honor.

The causes of action here are for constructive eviction, for bad faith, and for breach of contract. And if His Honor says that, you know, the fact that we've got one lease, and another lease, and we can't compare the price on each -- on each of those, then okay. But the other issues as to constructive eviction and the damages that arise from that, it's just a bar of their damages, Your Honor.

So unless His Honor has any questions, that's where we're going to submit it.

THE COURT: All right. Thank you.

Mr. Edwards?

MR. EDWARDS: Very quickly, Your Honor.

You've just heard them, that they -- they'd like to present evidence of the difference between the two rental payments. And that's going to be their damages. Well, that's what's called special damages that they were required to disclose in discovery. They didn't do that. They can't bring that in.

Now, they're trying to turn their constructive eviction claim, an affirmative claim in which they allege damages into an affirmative defense. Those are two separate things. We're moving for summary judgment on their affirmative claim for constructive eviction, upon which they premise damages. They don't have damages. No evidence of damages whatsoever.

I guess, the only claim that they could theoretically survive is their DEC relief claim. Okay. Fine. Yeah, there's no damages associates -- associated with the DEC relief claim, so that can live.

But breach of contract, constructive eviction, and breach of the implied covenant claims all require damages. And you don't have any evidence before you as to what those damages are. Because of that, they haven't met their burden and we're entitled to summary judgment.

And last, Your Honor, I guess, the question is, if we go to trial, what -- what evidence -- what are we going -- what is the issue of fact that we will litigate as it relates to damages?

THE COURT: All right. Well --

MR. EDWARDS: Are they going to come up with --

THE COURT: Well --

MR. EDWARDS: Okay. Go ahead.

THE COURT: -- Mr. Edwards, here's the -- here's the way I'm -- I'm looking at it. Mr. Graf has laid out general damages are general damages. They going to -- I think this is -- I'm going to deny the motion. I think this is better framed as a Motion in Limine prior to the trial to preclude X, Y and Z in terms of damages.

I think general damages are leftover and remain, and it goes to the jury. If you don't think that your client

thinks that they haven't met their burden of proof relative to their counterclaim in presenting any evidence of damages, then you can move for a directed verdict in that regard. I don't -- I think it's premature in a Motion for Summary Judgment stage for the reasons outlined in the Opposition and by Mr. Graf this morning.

So I'm going to have Mr. Graf prepare the Order to that effect.

MR. GRAF: Thank you, Your Honor.

THE COURT: Thank you.

MR. EDWARDS: Thank you, Your Honor.

(Proceeding concluded at 9:58 a.m.)

* * * * *

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual telephonic proceedings in the above-entitled case.

Julie Lord

VERBATIM DIGITAL REPORTING, LLC

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

4520 ARVILLE, et al.	)	CASE NO. A-19-794864-C
Plaintiffs,	)	DEPT. V
vs.	)	
BOUR ENTERPRISES, LLC, et al.,	)	
Defendants.	)	
And all related claims.	)	

BEFORE THE HONORABLE JUSTICE MICHAEL A. CHERRY
SENIOR DISTRICT COURT JUDGE

TUESDAY, JANUARY 12, 2021

RECORDER'S TRANSCRIPT OF HEARING:
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT REGARDING THEIR BREACH OF CONTRACT CLAIMS

APPEARANCES:

FOR THE PLAINTIFFS: THOMAS F. EDWARDS, ESQ.
Via Videoconference

FOR THE DEFENDANTS: RUSTY J. GRAF, ESQ.
Via Videoconference

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC
(Hearing recorded via Bluejeans Videoconference/Audio)

LAS VEGAS, NEVADA, TUESDAY, JANUARY 12, 2021

(Case called at 9:49 a.m.)

THE CLERK: -- 794864, 4520 Arville versus Bour Enterprises, LLC.

Starting with plaintiffs' counsel, please state your name, Bar Number and who you are representing.

MR. EDWARDS: Good morning. Tom Edwards, Bar No. 9549, on behalf of the plaintiffs.

MR. GRAF: Good morning, Your Honor. Rusty Graf on behalf of the Bour Defendants.

THE COURT: This is Plaintiffs' Motion for Summary Judgment regarding the Breach of Contract Claims.

Plaintiff, go ahead.

MR. EDWARDS: Thank you, Your Honor.

This is a relatively straightforward breach of a commercial lease case. My client owns warehouse space. In 2015, the defendants bought one of our tenants, Stardust Limousine. And so, you know, dating back to 2015, the defendants were operating out of our warehouse as Stardust Limousine.

During the term of that lease, they -- they complained to my client that they weren't happy with how clean the -- the warehouse was and my client explained to them, sorry, Stardust Limousine signed -- signed a lease that says they accepted the premises as-is and to the extent there's any

concern about the cleanliness of the unit, tenant, Stardust Limousine, it's your job, under the lease, it's your obligation under the lease to clean up that unit.

When Stardust Limousine's lease expired in about 2017, my client asked that the -- the defendants themselves sign a lease, a new lease. At about the same time, defendants were saying they needed additional parking space. So not only did we release them the space they were already in, but we leased them an additional warehouse unit, which alotted them an additional four parking spaces. That's how these -- these work. And for each space that is -- each warehouse space that is leased, you're granted four parking spaces.

And this not only granted them additional four parking spaces, but it allowed them to park additional vehicles inside the warehouse to the extent they wanted to.

These leases for these two units were similar to the Stardust Limousine leases in that they -- they expressly say that the tenant accepts the premises as-is and that the tenant accepts the responsibility to maintain the premises. So if there's any problem with the condition, it's on the tenant to -- to fix it.

So then in 2018, defendants decided they wanted to move elsewhere, so they moved out and stopped paying our rent. So we've -- we've shown there's a contract that we performed that they have breached by moving out and stopping to pay rent

and that we've been damaged.

So the question then becomes do they have a defense. They are not alleging that my client breached any express provision of the lease. Instead, they're asking the Court to apply an implied warranty of habitability -- I'm sorry, I'm going to stumble over that word -- in -- in commercial leases in Nevada. And that's really the legal question that's before the Court.

Is there that implied warranty in Nevada applicable to commercial leases.

We start the analysis looking at the statute. As you know, there's -- there's a set of statutes applying to residential leases and another set applying to commercial leases. Nevada's legislature has made it very clear, in residential leases there is an implied warranty of habitability.

We looked for that same language, or even something similar in the commercial lease statutes, and it's not there at all. So as a basic statutory rule of construction, we must assume that the legislature intended to put that implied warranty language in the residential lease statutes, and intended to exclude it from the commercial leases statutes.

So we start out with a presumption that the Nevada legislature does not want an implied warranty applied to commercial leases.

Then we turn to the case law. The Nevada Supreme Court has not expressly addressed the issue, but courts across the country have, and have held that the majority -- or the majority held that there is no implied warranty for commercial leases. The concept being is in -- in a commercial lease you're dealing with two businesses. Negotiating an arm's length transaction and that they should be able to negotiate the terms of their deal. So the majority rule is, there is no implied warranty.

In the minority of states that -- that say that there is an implied warranty in commercial leases, they say that the -- the tenant can waive that implied warranty if they accept the lease as-is, which is exactly what the tenants did here. So no matter -- no matter how you slice it, there is no implied warranty of habitability for these leases in this case.

So because we've shown contract, we've -- we performed, they breached, and we've been damaged, and there's no implied warranty in Nevada, we're entitled to summary judgment.

THE COURT: Opposition?

MR. GRAF: Thank you, Your Honor.

The first paragraph of the Motion for Summary Judgment, Mr. Edwards argues that there was breach of a lease without legal justification. That's what we dispute, Your

Honor. So the affirmative defenses, and in the counterclaim filed by [indiscernible/audio distortion] the affirmative defense of constructive eviction, as well as the claim cause of action for constructive eviction, as well a breach of contract cause of action [indiscernible/audio distortion] we brought in the counterclaim.

This -- and -- and Your Honor, we detail in our Opposition the fact that constructive eviction is a question of fact. It has four elements and it says that basically the landlord's act or failure to act, it's the landlord's action or inaction renders the whole of the premises unfit for the occupation from [indiscernible/audio distortion] renting.

And then the tenant must vacate and the tenant must give Notice of Defect in time to cure.

I'll address each.

The failure to act is based upon notices and the discussions that were had between the parties. In the affidavit -- or excuse me -- in the Declaration of my client, at the end of our Opposition, they clearly state that initial notice was sent on April 17th, 2018.

On April 24th, the plaintiffs responded in writing. And then on May 3rd, 2018, the tenants sent plaintiffs a Notice to Vacate. And on May 31st, 2018, they vacated.

So the case law that we cite to Your Honor, as well as the case law that's cited to by Mr. Edwards requires that

we provide that notice, time to cure, and if they don't cure then we have to fulfill elements 3 and 4. And we must vacate, we must have given them the notice of the defect and the time cure. We did both.

The issue in the dispute here seems to be whether or not there is this warranty of habitability. Warranty of habitability exists in Nevada. Mr. Edwards is correct, it's an unsettled issue for the Courts in the State of Nevada

They have not ruled as to whether or not the Warranty of Habitability exists in a commercial lease. But we have argued through the various cases that we cited in there, in particular, cases discuss the fact that where there is a waiver of a warranty like this in Nevada, the Courts have determined that there has to be something special about that waiver. There has to be -- it's location inside of a heading. It has to have a different font. It has to have a larger font. It has to be in bold. It has to be capitalized. None of which is the case here, Your Honor.

In fact, this is -- this as-is language was hidden in an addendum that's attached to the lease.

So that -- that's the issue that's -- one of the issues that's here, Your Honor, [indiscernible/audio distortion].

But more importantly, the -- the case law that we cite is whether constructive eviction exists as to either the

affirmative defense or as the cause of action. It is a question of fact for a trier of fact to make that determination.

We, I think, have fulfilled our obligation to provide this Court with prima facie proof of the elements of the cause of action, as well as the affirmative defense.

More so, there is communication between the parties throughout the ongoing process. I don't think that the plaintiff is going to dispute the fact that there was ongoing communication between my client and the real estate agent/management company starting the problems at the unit.

More so, I don't think that there is going to be any dispute of the fact that those notices that I've described in the Declaration actually occurred. So really what we're talking about here is a factual issue of whether or not there was a breach of the warranty of habitability.

In terms of a determination by this Court is, I would venture to say, Your Honor, the fact that in the District Court, where His Honor is sitting today, as opposed to where His Honor used to sit, is not in the position to make a determination where there is an unsettled area of law.

So [indiscernible/audio distortion] is, is whether or not a trier of fact -- and we're set for a jury trial, Your Honor, in -- it got moved so, yeah, I think it's in March of this year [indiscernible/audio distortion] I doubt will occur.

But we're set for a jury trial in March of this year. And that is the trier of fact that should determine whether or not the facts are sufficient to prove either the cause of action or the affirmative defense of constructive eviction.

One -- just one other issue I'd like to cover, Your Honor, that was discussed by Mr. Edwards on the issue of the statutes. I think Mr. Edwards would be correct if we were talking about the statutory analysis regarding 18(c) and some other provision of 18(c). We're not.

He's trying to conflate the issues and say that you can do statutory construction of 118 -- I said 18, I apologize, Your Honor -- (b) and (c), residential versus [indiscernible/audio distortion] statutes. And what Mr. Edward was trying to argue was the fact that because there is not a stated warranty of habitability contained within 118(c), that you can use statutory construction and say that the Legislature intended not to put it in there. And I don't think that's the case, Your Honor.

I think statutory interpretation means that you analyze a particular chapter or a particular statute as to whether or not it contains something, not -- not two unrelated statutes in two different areas of law.

Unless His Honor has any questions, we'll submit it on that.

THE COURT: Reply, Mr. Edwards?

MR. EDWARDS: Thank you, Your Honor.

Again, I want to stay focused on the key issue which is, is there an implied warrant of habitability for commercial leases in Nevada. The defendants have not given you any authority, any legal authority to suggest that. We haven't heard any argument on that.

And the Court -- the defendants say that because it's an unsettled issue of Nevada law, the Judge, you, can't decide that. That's -- that's antithetical to how this Court works, Your Honor. You make the legal calls. A jury will decide any -- any remaining factual determinations.

This -- this legal issue is before you, and we're asking you for a decision on it.

Defendants attempt to rely on the constructive eviction cases to create this implied warranty. We've gone through all those cases in our Brief, Your Honor. Not one of them, not one relied upon an implied duty owed by a commercial landlord. Each and every one of those constructive eviction cases relied upon an express breach of contract. A breach of contract which simply does not exist here. They haven't pointed to a single -- a single piece of the lease that we have breached, because we haven't. That's why they're relying on this implied duty that doesn't exist.

//

They -- they skip over that a part of the analysis whether that implied duty exists, and start talking about whether it can be waived. And they're using, to talk about the -- how the language has to be -- of a waiver must be conspicuous. They're using -- relying on the UCC which applies only to the sale of goods. It has nothing to do with commercial leases what we're talking about today. And again, that analysis assumes in the first place that there is such an implied duty in Nevada law, and as we've shown, we don't believe there is, Your Honor. Thank you.

Thank you very much for your briefs and the argument in this matter. Both attorneys, certainly you are up to date on this situation.

My analysis is as follows. Defendants do not dispute that they terminated the lease early. Vacated the properties and failed to pay rent. There is no genuine issue of material fact as to this regard. Thus, plaintiffs are entitled to prevail as a matter of law on the breach of contract claim, absent any applicable defenses.

Affirmative defenses and counterclaim that defendants raise is for constructive eviction. This is based on implied warranty of habitability. However, as plaintiffs point out, Nevada law does not recognize implied warranty of habitability in a commercial lease setting unlike a residential lease setting. Plaintiffs cite a plethora of

persuasive authority from other states recognizing the same. Defendants cite none.

In a summary judgment setting, the Court has the authority to decide on a question of law. This clearly favors plaintiffs. Thus, since implied warranty of habitability in a commercial lease setting is not recognized, and since the claim and defense for a constructive eviction is based solely on implied warranty of habitability, as a matter of law defendants cannot prevail on the breach of contract claim.

Also, I'm very impressed that this was an as-is lease, which makes a big difference in my book.

I do invite the defendant to take this issue to the appellate courts, either the Supreme Court or the Court of Appeals. I think it's an issue that should be decided since it's been raised, but I'm not going to give -- I'm not going to find that there is a implied warranty of habitability.

Therefore, I grant the Motion for Summary Judgment. Plaintiff, please prepare the Order. And contgratulations to both of you. You did an excellent job on this case. It was a tough call for me, to tell you the truth.

That will be the order.

MR. EDWARDS: Thank you, Your Honor.

THE COURT: Thank you very much. Stay safe and thank you for participating in this matter.

MR. EDWARDS: Thank you.

(Proceeding concluded at 10:05 a.m.)

* * * * *

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual telephonic proceedings in the above-entitled case.

Julie Lord

VERBATIM DIGITAL REPORTING, LLC

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

4520 ARVILLE, et al.	)	CASE NO. A-19-794864-C
Plaintiffs,	)	DEPT. V
vs.	)	
BOUR ENTERPRISES, LLC, et al.,	)	
Defendants.	)	
And all related claims.	)	

BEFORE THE HONORABLE VERONICA M. BARISICH,
DISTRICT COURT JUDGE

TUESDAY, MARCH 2, 2021

RECORDER'S TRANSCRIPT OF HEARING:
PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT

APPEARANCES:

FOR THE PLAINTIFFS:	THOMAS F. EDWARDS, ESQ. *Via Videoconference*
FOR THE DEFENDANTS:	RUSTY J. GRAF, ESQ. *Via Videoconference*

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC
(Hearing recorded via Bluejeans Videoconference/Audio)

LAS VEGAS, NEVADA, TUESDAY, MARCH 2, 2021

(Case called at 9:02 a.m.)

THE CLERK: The first case we'll be calling is on page 3, 4520 Arville versus Bour Enterprises, LLC, Case No. A-794864.

Starting with the plaintiffs' counsel, can you please state your name, Bar Number and who you're repredsenting?

MR. EDWARDS: Tom Edwards for the plaintiffs, 9549.

MR. GRAF: Good morning, Your Honor. Rusty Graf for the defendants, Bour entities. 6322 is my Bar Number.

THE COURT: Good morning.

To begin with, we are here on plaintiffs' Motion for Entry of Judgment. But I wanted to note just procedurally that we are still waiting for an order from the December 15th, 2020 hearing on Plaintiffs' Motion for Summary Judgment on Counterclaim as to damages.

Oh, did we just get that? We might have just gotten that. If it was submitted, thank you. If it was not, please note that.

All right. And we are here again on Plaintiffs' Motion for Entry of Judgment. So Mr. Edwards, if you'd like to begin.

MR. EDWARDS: Thank you, Your Honor.

We moved for summary judgment on our breach of

contract claim, which necessarily includes establishing that there was a contract, establishing a breach and establishing damages.

As to the issue of damages, we in paragraph 23 of our statement of undisputed material facts, we identified that as attached as Exhibits 5 and 6 on the detailed ledgers for each, not just providing the bottom line number for damages, but providing a precise computation of our damages, showing when each and every charge was made, with the specific date, when each and every payment was made, and specific date, and providing a running total.

We reference those exhibits again in our Argument section when we're talking about damages.

We finally referenced it in our client declaration, who again articulated that those exhibits represented our computation of damages.

We've provided those computations for a very specific reason. We wanted to allow the defendants to attack any and all of our computation. For example, the defendants could have come and said, well, you see the payment on this particular date, we actually paid more. Here's proof of that payment.

Or they could have said that this charge on this particular date is not appropriate under the lease and here's the evidence to prove that.

Or they could have said, charges after this particular date are not appropriate because the plaintiff failed to reasonably mitigate, and provide evidence of that. They failed to do that as well.

In responding to a Motion for Summary Judgment, a respondent is obligated to come forth with all of their arguments, all of their defenses, and support those with evidence. If they fail to do that, the case law is absolutely clear, those arguments, those defenses, affirmative or otherwise, are waived.

We've cited to you a litany of cases along those points, along those lines, both from the Nevada Supreme Court, and from Courts around the country saying that if you don't raise an affirmative defense in opposition to a Motion for Summary Judgment, those arguments are waived.

For that reason, Your Honor, we ask for entry of judgment for the amounts reflected in Exhibits 5 and 6 to our Motion for Summary Judgment, plus interest, as allowed for under the leases.

THE COURT: Okay. Thank you, sir.

Mr. Graf?

MR. GRAF: Thank you, Your Honor.

I appreciate the Court bringing up the December 15th hearing. That was the hearing on the Motion regarding our counterclaim on the Motion for Summary Judgment. During that

hearing, Judge Atkin denied that motion and said that there was a material issue of fact as to the counterclaim regarding the constructive eviction.

What then happened was Justice Cherry, who sat as a Senior Judge, in ruling on this motion, for breach of contract, made a determination that was different from what Judge Atkins ruled on.

And I -- I say that for this reason, Your Honor, that the issue of, and what was being asked by the plaintiff in their motion, was never asked for a monetary judgment. They just asked for a judgment. And the only thing that they -- in their Reply here today that they assert is that they attached Exhibits 5 and 6, which were the ledgers for those accounts.

Here's the thing, Your Honor. They didn't ask for summary judgment or an adjudication of our affirmative defense of failure to mitigate the damages. They also -- and that is upon us to prove, and we have the burden, and I understand that. And we will prove that at the time of trial, their failure to mitigate their damages.

Your Honor, Mr. Edwards is saying that we have a duty or an obligation to oppose those numbers. I -- I don't oppose his math. Two plus two is four. We get that. That's not what we're talking about, Your Honor. What we're talking about is the failure to mitigate their damages and what proof

we can present at the time of the trial, the Bench Trial, in this matter. That's all that we're asking for, Your Honor. We're asking for the opportunity to prove up our affirmative defense of failure to mitigate. Plain and simple.

And Your Honor, the -- counsel says that there was those attachments, Exhibit 5 and Exhibit 6, to their Motion for Summary Judgment. I would just direct the Court that there was never a request anywhere in that motion for a judgment of a specific amount. That was our argument. That was the cases that we purported or -- excuse me -- put forward in front of the Court as to that issue.

Our affirmative defense, the -- is still intact. What Justice Cherry ruled upon was the fact that he said that there was not constructive eviction. Whether or not we agree with that, that's not for this discussion. But what he did not rule upon was our affirmative defense of failure to mitigate. And that's still there, Your Honor. That's an offset. And we've provided that case law to Her Honor in terms of these numbers.

I -- Mr. Edwards would have the Court believes that we should have, you know, disputed all of these other charges and everything else. That's -- that's not what we disagree with. We don't disagree with the fact that the lease provides for late charges, that it provides for other charges, that it provides for CAMs, that it provides for the monthly charges.

We don't dispute any of that. That's not what we're here to talk about.

What we are here to talk about is the fact that there was a failure to mitigate or a failure to relet this premises that we're going to put before Her Honor and let her make that decision.

And unless -- and -- and Your Honor, the other thing that we would assert is, is that Mr. Bour's affidavit does talk to that, and we asserted as much in our Opposition. It talks to their failures. And it talks to what he said was his communication with their real estate agent. So on that, Your Honor, we'll submit it.

THE COURT: Thank you.

Mr. Edwards, how do you want to respond?

MR. EDWARDS: Well, so first, Your Honor, I -- I'd politely like to disagree with counsel about what happened at the December 15th hearing. We brought a Motion for -- for Summary Judgment based upon the -- the defendants' failure to provide a computation of damages.

We said, Judge, if they don't provide a computation of damages they can't prevail on the counterclaims and we're entitled to summary judgment.

Judge Atkins said, you know, I think this is better phrased as a Motion in Limine. So if you're going to bring it, bring it as a Motion in Limine. That was the result of

the December 15th hearing. It had nothing to do with finding an issue of material fact. The Judge just wanted the -- the motion in the form of a Motion in Limine as opposed to a Motion for Summary Judgment.

The effect of that today is irrelevant because of the summary judgment entered by this Court.

Counsel says that in -- in moving for summary judgment I'm required to ask to adjudicate all of the defendants' affirmative defenses. That's simply not the law. There is no case law to support that anywhere.

They want to assert failure to mitigate. That is an affirmative defense. Nevada and case law from around the country says they must raise that argument in Opposition to Summary Judgment. If they don't, it's waived. They don't get two bite -- bites at the apple, and that's exactly what they're asking for today.

THE COURT: Okay. Thank you, gentlemen.

I was prepared to make an order today. But I'm going to take the case under advisement for a few days. I'd like to go back and look at the past two orders and review in more detail. So you will receive a written judgment, a minute order, in the next few days.

Okay. Thank you.

MR. EDWARDS: Thank you, Your Honor. The only -- my only concern is I think Friday is our deadline for Motions in

Limine. Can we --

THE COURT: You are right.

MR. EDWARDS: -- essentially toll [indiscernible/audio distortion] until -- until we hear from you?

THE COURT: Okay. Actually, Mr. Edwards, I will get that to you today. I will get the order --

MR. EDWARDS: Okay. I [indiscernible/audio distortion].

THE COURT: -- to you by the end of the day, to both of you. Okay? Thank you for pointing out --

MR. EDWARDS: Thank you.

THE COURT: -- thank you for pointing out the time frame.

All right. Gentlemen. Thank you.

MR. GRAF: Thank you.

THE COURT: Thank you very much. And have a nice rest of your day.

MR. GRAF: Thank you.

THE COURT: Thank you.

(Proceeding concluded at 9:12 a.m.)

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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual telephonic proceedings in the above-entitled case.

Julie Lord

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ANOA
BLACK & WADHAMS
Rusty Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Ph. (702) 869-8801
Fax (702) 869-2669
rgraf@blackwadhams.law
Attorneys for Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, Plaintiffs, v. BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Defendants.	Case No.: A-19-794864-C Dept. No.: 8 **AMENDED NOTICE OF APPEAL**
BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual; DOES 1 through 100, inclusive, Counterclaimants, v. 4520 ARVILLE, a California general partnership; MCKINLEY MANOR, an Idaho general partnership, DOES I-X; and ROE CORPORATIONS I-X; Counter Defendants.	

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

Case Number: A-19-794864-C

NOTICE IS HEREBY GIVEN that Defendants Bour Enterprises, LLC, a Nevada liability company, Mulugeta Bour and Hilena Mengesha, by and through their attorney of record, Rusty Graf, Esq. of the law firm Black & Wadhams, appeal to the Supreme Court of the State of Nevada from:

1. The Order granting Plaintiffs' Motion for Entry of Judgment filed on March 9, 2021, with Notice of Entry of Judgment and Notice of Entry of Order filed March 9, 2021.

2. The First Supplemental Judgment against Defendants entered May 24, 2021, which constitutes a supplement to the previous Judgment entered by this Court on March 9, 2021, with Notice of Entry of Judgment filed May 27, 2021.

3. The Order granting in part Plaintiffs' Motion for Fees and Defendants' Motion to Retax Costs filed May 27, 2021, with Notice of Entry of Order filed May 27, 2021.

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BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

This Amended Notice of Appeal supplements the previously filed Notice of Appeal and includes the following documents:

1. March 9, 2021, Order granting Plaintiffs' Motion for Entry of Judgment.
2. March 9, 2021, Judgment against Defendants
3. March 9, 2021, with Notice of Entry of Judgment.
4. March 9, 2021, with Notice of Entry of Order.
5. May 24, 2021, First Supplemental Judgment.
6. May 27, 2021, Notice of Entry of First Supplemental Judgment.
7. May 27, 2021, granting in part Plaintiffs' Motion for Fees and Defendants' Motion to Retax Costs.
8. May 27, 2021, Notice of Entry of Order granting in part Plaintiffs' Motion for Fees and Defendants' Motion to Retax Costs.

Dated this 22nd day of June 2021.

BLACK & WADHAMS

#15271

RUSTY GRAF, ESQ.
Nevada Bar No. 6322
10777 W. Twain Ave., 3rd Fl.
Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (fax)
rgraf@blackwadhams.law
Attorney for Defendants/Appellants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & WADHAMS and that on the 22nd day of June 2021, I caused the above and foregoing document entitled **AMENDED NOTICE OF APPEAL** to be served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

[X] by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;

[ ] pursuant to EDCR 7.26, to be sent via facsimile;

[ ] hand delivered to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

F. Thomas Edwards, Esq.
HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

/s/ Diane Meeter
An Employee of Black & Wadhams

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669