

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

)	
In re:)	Chapter 11
)	
DOMINION PAVING & SEALING, INC.,)	Case No. 15-32966
)	
Debtor.)	
)	

**DEBTOR’S MOTION TO SELL REAL PROPERTY
FREE AND CLEAR OF LIENS AND INTERESTS**

Dominion Paving & Sealing, Inc. (the “**Debtor**”), by counsel, pursuant to 11 U.S.C. §§ 363(b) and (f) moves the Court (the “**Motion**”) for authority to sell certain real property of the Debtor located at 10900 Paulbrook Drive, Chesterfield, Virginia, as more particularly described on Exhibit A attached hereto (the “**Property**”) to Milmar Holdings, LLC and Hazzard Investments, LLC (collectively, the “**Buyer**”) free and clear of all liens and interests, and in support thereof, states as follows:

Background

1. On June 10, 2015 (the “**Petition Date**”), the Debtor commenced this case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
2. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

Christopher L. Perkins (Virginia Bar No. 41783)
LeClairRyan, A Professional Corporation
919 East Main Street, 24th Floor
Richmond, VA 23219
(804) 783-7550

Counsel for Debtor and Debtor-in-Possession

3. On July 8, 2015, the United States Trustee appointed the Official Committee of Unsecured Creditors ("**Committee**").

4. Prior to the Petition Date, the Debtor owned the Property subject to an October 25, 2011 credit line deed of trust in the original principal amount of \$850,000.00 ("**DOT**") in favor of SunTrust Bank ("**SunTrust**"). A copy of the DOT is attached hereto as Exhibit B. The remaining principal balance due on the DOT was \$754,501.38 plus accrued interest and late fees of \$52,518.40 as of October 31, 2016.

5. The Debtor is also indebted to SunTrust pursuant to two promissory notes with total balances, as of October 31, 2016, of \$395,909.33 and one commercial credit card agreement with a total balance, as of October 31, 2016, of \$144,815.41, all of which are secured against other assets of the Debtor and cross-collateralized with the DOT.

6. On or about March 12, 2015, the Internal Revenue Service ("**IRS**") gave notice of a tax lien on all of the assets of the Debtor, including the Property.

7. On July 2, 2015, the IRS filed its Proof of Claim (Claim No. 16) asserting a secured claim in the amount of \$237,302, which lien is junior to the claims and lien of SunTrust.

8. On October 14, 2015, SunTrust filed its Proof of Claim (Claim No. 63).

9. By Notice of Transfer dated October 7, 2016, SunTrust assigned its Proof of Claim, and all rights and interests in the DOT, among other things, to Big Shoulders Capital LLC ("**BSC**").

10. On August 9, 2016, the Debtor and Committee filed their Joint Chapter 11 Plan of Reorganization ("**Plan**") which contemplated the sale of the Property.

11. By Order dated November 30, 2016, BSC, the Debtor, and the Committee entered into an Amended And Restated Final Order Authorizing The Debtor To Use Cash Collateral, And Granting Adequate Protection (“**Cash Collateral Order**”). Among other things, the Cash Collateral Order provides: (i) a December 31, 2016 deadline for the Debtor to obtain an order approving the sale of the Property, and (ii) the allocation of the proceeds of that sale, in part, to BSC.

Relief Requested

12. The Debtor proposes to sell the Property to the Buyer for \$1,150,000.00 and enter into a 5-year Lease Agreement with the Buyer. Copies of the Commercial Purchase Agreement (“**Purchase Agreement**”) and a draft Lease Agreement (“**Lease**”) are attached as Exhibits C and D. The Buyer is purchasing the Property as part of a §1031 tax-deferred exchange wherein the Buyer is selling other unrelated property and utilizing the funds from that sale to purchase the Property. The closings for both of the Buyer’s transactions are scheduled for January 3, 2017. Consequently, the December 31, 2016 deadline in the Cash Collateral Order is required to effectuate the §1031 exchange.

13. The sales price represents a fair market value of the Property. Chesterfield Commercial Realty (“**CCR**”)¹ aggressively marketed the Property for four months. The Property was listed on both LoopNet and CoStar, online commercial real estate marketplaces. The Property received numerous expressions of interest and was visually inspected by three interested parties. The Purchase Price equates to \$111.87 per square foot, which is substantially

¹ An application to employ CCR will be filed separately.

higher than the average price of \$75.81 per square foot for the six comparable properties analyzed by CCR and recently sold in the same market.

14. The Property is not necessary for the Debtor's successful reorganization. In fact, the sale proceeds will result in a substantial reduction (potentially as much as 76%) to the BSC debt and will greatly enhance the Debtor's ability to successfully confirm its Plan.

15. The Debtor seeks authority to sell the Property free and clear of all liens pursuant to sections 363(b) and (f) of the Bankruptcy Code.

Basis for Relief

16. Pursuant to section 363(b)(1) of the Bankruptcy Code, a debtor may sell property of the estate other than in the ordinary course of business. A debtor may sell property not in the ordinary course of business at private sale pursuant to Rule 6004(f)(1) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"). Here, the Debtor proposes and seeks authority to sell the Property to the Buyer pursuant to the terms of the Purchase Agreement. The purchase price of the Property is more than reasonable under the circumstances and is the result of arm's length negotiations between the Debtor and the Buyer.

17. The Debtor further proposes and requests authority to sell the Property free and clear of all liens, claims, rights and interests, known and unknown, pursuant to section 363(f) of the Bankruptcy Code, and that all such liens, claims, rights and interests attach to the proceeds of the sale in the order of their respective priority.

18. Pursuant to 11 U.S.C. § 363(f), grounds exist for the sale of the Property free and clear of the liens, claims, rights and interests as set forth above, in that the interests are liens and the price at which the Property is to be sold is greater than the aggregate value of all liens on the

Property and/or all lienholders after notice and an opportunity to object, affirmatively or impliedly consent to the sale. Specifically, the IRS will be provided with notice of this Motion and to the extent it does not respond, shall be deemed to consent to the sale pursuant to applicable law.²

19. The sale of the Property will benefit the Estate and is in the best interests of the Estate and its creditors. Indeed, BSC and the Committee support the sale, which will enable the Debtor to significantly reduce its debt and subsequently amend its current plan of reorganization to restructure the balance of its debts with BSC, the IRS, and that of its other creditors.

20. The Debtor further seeks authority to distribute the proceeds of the sale in the following manner:

- a. the payment of all usual and customary closing costs and commissions;
- b. the payment of all accrued but unpaid real and personal property taxes, if any, on a prorated basis to the date of closing;
- c. the payment of the balance owed to BSC on the DOT; and
- d. as to any remaining balance, in accordance with the Cash Collateral Order, the United States Bankruptcy Code, and any applicable confirmed plan of the Debtor.

21. Absent any objection to the proposed sale, it is appropriate for the Court to make its order approving the sale of the Property become effective immediately upon entry, as provided by Federal Rule of Bankruptcy Procedure 6004(g).

² Such consent shall be binding notwithstanding the decision in *In re DeCelis*, 349 B.R. 465 (E.D. Va. 2006)(holding that silence is not consent).

22. The Buyer is not an insider of the Debtor, has agreed to purchase the Property as the result of an arms' length transaction, is a bona fide purchaser within the meaning of 11 U.S.C. § 363(m), and the consideration to be paid by the Purchaser constitutes "value", as that term has been defined by courts interpreting § 363(m) of the Bankruptcy Code, for the Property.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order substantially in the form attached hereto as Exhibit E: (i) authorizing the Debtor to sell the Property free and clear of all liens to the Buyer; (ii) authorizing Debtor to apply the Sale Proceeds as requested herein; (iii) waiving the stay imposed by Bankruptcy Rule 6004(h); and (iv) granting such other and further relief as is just and appropriate under the circumstances.

DOMINION PAVING & SEALING, INC.

/s/ Christopher L. Perkins
Counsel

Christopher L. Perkins (Virginia Bar No. 41783)
LeClairRyan, A Professional Corporation
919 East Main Street, 24th Floor
Richmond, VA 23219
(804) 783-7550

Counsel for Debtor and Debtor-in-Possession

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 2016, a true copy of the foregoing *Debtor's Motion to Sell Real Property Free and Clear of Liens and Interests* was filed with the Court via the Clerk's CM/ECF electronic filing system and served electronically on all parties receiving electronic notice in this case and/or by first-class mail, postage prepaid to the following parties:

Roger G. Bowers
FutureLaw, LLC
1802 Bayberry Court, Suite 403
Richmond, Virginia 23226
Counsel for Buyer

Eric S. Prezant
Justin Morgan
Bryan Cave
161 North Clark Street, Suite 4300
Chicago, IL 60601-3315

Peter J. Barrett
Kutak Rock, LLP
1111 E. Main Street, Suite 800
Richmond, Virginia 23219
Counsel for Big Shoulders Capital LLC

Robert B. Van Arsdale
Assistant United States Trustee
Office of the United States Trustee
701 East Broad Street, Suite 4304
Richmond, VA 23219
Assistant U.S. Trustee

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BuchalterNemer, PC
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-1730
Counsel for DIP Lender

Gary H. Leibowitz
Cole Schotz P.C.
300 E. Lombard Street, Suite 1450
Baltimore, MD 21202
*Counsel for Official Committee of Unsecured
Creditors*

Internal Revenue Service
c/o Robert P. McIntosh
Assistant United States Attorney
919 E. Main Street, Suite 1900
Richmond, VA 23219

/s/ Christopher L. Perkins
Counsel

EXHIBIT A
(Description of Property)

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PARCEL 1:

Tract A:

All that certain piece or parcel of land together with improvements thereon and appurtenances thereto containing one acre as shown on that plat entitled "Plat Showing 1.000 acre of land lying on the north line of Paulbrook Drive being a portion of 360 Commercial Park West, Clover Hill District, Chesterfield County, Virginia", dated May 23, 1991, prepared by Mark B. Beall, Land Surveyor, Balzer and Associates, Inc., a copy of which is recorded along with the Deed in Deed Book 2182, page 1091.

BEGINNING at a point which is 673.75' west of where the west line of Speeks Drive, extended intersects the north line Paulbrook Drive, thence S. 64 degrees 30' 15" W. a distance of 14.79 feet to a point; thence along a curve to the right having a radius of 40 feet a distance of 27.19 feet to a point; thence along a curve having a radius of 50 feet a distance of 63.83 feet thence N. 59 degrees 41' 41" W. a distance of 80.14 feet to a rod set; thence N. 25 degrees 29' 45" W a distance of 246.74 feet to a rod set; thence N. 65 degrees 48' 12" E a distance of 144.54 feet to a rod; thence S . 25 degrees 29' 45" E a distance of 321.10 321.10 feet to a rod; to the point of beginning.

Tract B:

All that certain piece or parcel of land together with improvements thereon and appurtenances thereto containing one acre as shown on that plat entitled "Plat Showing 1.000 acres of land lying on the North line of Paulbrook Drive being a portion of 360 Commercial Park West, Clover Hill District, Chesterfield County, Virginia", dated May 23, 1991, prepared by Mark B. Beall, Land Surveyor, Balzer and Associates, Inc., a copy of which is recorded along with the Deed in Deed Book 2182, page 1091.

BEGINNING at a point which is 673.75' west of where the west line of Speeks Drive, extended intersects with the north line of Paulbrook Drive, thence N. 25 degrees 29' 45" W a distance of 321.10 feet to a rod; thence N. 65 degrees 48' 12" E a distance of 136.35 feet to a rod; thence S. 25 degrees 29' 45" E a distance of 318.01 feet to a rod; thence S. 64 degrees 30' 15" W a distance of 136.31 feet to the point of beginning.

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BEING the same real estate conveyed to Maughan Construction Co., Inc., a Virginia corporation by Deed from Commercial Park Property, a Virginia general partnership dated July 18, 1991, recorded October 9, 1991, in the Clerk's Office, Circuit Court, County of Chesterfield, Virginia, in Deed Book 2182, page 1091.

PARCEL 2:

ALL that certain piece or parcel of land with the improvements thereon and appurtenances thereto belonging, lying and being in Clover Hill District of Chesterfield County, Virginia, containing 2.153 acres of land as is more particularly described in that certain plat of survey entitled "PLAT SHOWING A 16' DRAINAGE EASEMENT ACROSS THE PROPERTY OF COMMERCIAL PARK PROPERTY TAX MAP NUMBER 49-6(12)1, CLOVER HILL DISTRICT, CHESTERFIELD COUNTY, VIRGINIA", prepared by Balzer and Associates, Inc., and dated September 9, 1991, a copy of which is attached and recorded with the Deed in Deed Book 2902, page 133 for a more particular description of the property hereby conveyed.

BEING the same real estate conveyed to Maughan Construction Company, Inc., a Virginia Corporation by Deed from William T. Cantrell, Inc., a Virginia Corporation dated January 12, 2001, recorded January 18, 2001, in the Clerk's Office, Circuit Court, County of Chesterfield, Virginia, in Deed Book 3983, page 492.

INSTRUMENT #36576
RECORDED IN THE CLERK'S OFFICE OF
CHESTERFIELD ON
OCTOBER 26, 2011 AT 01:27PM
JUDY L. WORTHINGTON, CLERK
RECORDED BY: JAB

EXHIBIT B
(Deed of Trust)

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EDW



Credit Line Deed of Trust
Virginia

PIN/Tax Map Reference No.: 741685674300000 744685674300000
744685786000000

This instrument prepared by, and after recordation to be returned to:

SunTrust Bank
919 East Main Street
CS-HDQ-2102
Richmond, VA 23219

Address for purpose of notice to Trustee or SunTrust Bank:

SunTrust Bank Commercial Loan Center
Attn: Legal Notice Specialist
211 Perimeter Center Parkway
Suite 100
Atlanta, GA 30346

THIS IS A CREDIT LINE DEED OF TRUST

This Credit Line Deed of Trust, made and entered into as of October 26, 2011, by and among Dominion Paving & Sealing, Inc., Corporation, (herein, whether one or more, referred to as "Grantor"); Clay R. Jacob and Thomas S. ZACHRY whose business address is SunTrust Commercial Credit, Attn: CCSC AU-GA-0039, 7818 Parham Road, Richmond, VA 23294 (either of whom may act, herein referred to as "Trustee" and Grantee for indexing purposes); and SunTrust Bank its present and future affiliates, successors and assigns (referred to herein as "SunTrust" and Grantee for indexing purposes) provides:

The name of the noteholder secured hereby is SunTrust Bank. Communications to the noteholder pursuant to Va. Code 55-58.2 are to be mailed or delivered to SunTrust Bank at the address for purpose of notice stated above.

This instrument was drafted by SunTrust Bank and prepared by SunTrust Bank

The maximum aggregate amount of principal to be secured hereby at any one time is Eight Hundred Fifty Thousand Dollars (\$850,000.00).

For and in consideration of the indebtedness herein recited and the trust herein created, Grantor hereby grants, bargains, mortgages, assigns, sells and conveys unto Trustee, in trust, with power of sale and with general warranty of title, all of Grantor's present and future right, title and interest in and to certain real estate located in the County of Chesterfield, Virginia, more particularly described on attached Exhibit A which has the address of 10900, 10910, 10920 Paulbrook Dr, Midlothian, VA 23112 together with all easements and appurtenances thereto, all of the rights of Grantor in and to the streets, alleys, and rights-of-way appurtenant to and adjoining or adjacent to the land described above and together with any and all right title and interest of Grantor in and to the improvements, which shall include any and all buildings and structures now or at any time hereafter erected, constructed or situated upon said land or any part thereof, together with all fixtures, machinery, apparatus, fittings and equipment now or hereafter located in or upon the premises and now owned or which may hereafter be owned by Grantor, in and upon said land and premises, or which may hereafter be placed thereon, including, but not limited to, any equity which may be acquired by Grantor in such property as a result of the making of installment payments on account of the

Copies: 0
Distribution: Original - Filed in Land Records
630036 (12/09)
For Real Estate Located in Virginia



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purchase thereof, including but not limited to elevators, escalators, boilers, engines, heating, ventilating and air conditioning systems, sprinkler or fire extinguishing systems, plumbing, partitions, wiring, storm doors and windows, wire screens, awnings, carpentry, drapes, window shades, switchboards, communications apparatus, floor tiling, linoleum, attached cabinets, wall panels and decorations attached to walls and ceilings, gas and electrical fixtures, chattels, attached appliances and material used and to be used in the buildings and structures. Reference in this Deed of Trust to "Property" shall be deemed to include, in addition to the described land, improvements now or hereafter located thereon and rights appurtenant thereto, all the equipment, furnishings, fixtures, goods and chattels, above-mentioned and conveyed, all of which are deemed part and parcel of the real estate and appropriated to the use of the real estate and, whether affixed or not, shall for the purposes of this Deed of Trust be deemed conclusively to be real estate and conveyed hereby, together with the proceeds of all the foregoing.

In Trust (a) to secure the prompt performance and payment of all Obligations (as hereinafter defined), in favor of or payable to SunTrust and (b) to secure performance and observance of the terms and conditions of this Deed of Trust, any Note (as hereinafter defined) or any Agreement (as hereinafter defined).

SunTrust has extended credit, or may in the future extend credit to Dominion Paving & Sealing, Inc. (herein, whether one or more, "Debtor," and which as used herein shall include any one or more and any combination of the parties constituting Debtor). The term "Obligations" as used herein shall mean all obligations and indebtedness of Debtor to SunTrust, whether now existing or hereinafter arising, direct or indirect, fixed or contingent, due or to become due, joint or several, for whatever purpose, irrespective of how such indebtedness is evidenced, including but not limited to all Notes and Agreement, as defined herein, executed by Debtor, all liabilities, obligations, agreements and undertakings of Debtor to SunTrust pursuant to any interest rate hedge agreement or other derivative transaction agreement or any foreign exchange contract or any application or other agreement requesting SunTrust to issue any letter of credit including, without limitation, the obligation of Debtor to reimburse SunTrust for all amounts funded by SunTrust pursuant to any such letter of credit, all obligations and other liabilities of Debtor to SunTrust in respect of any of the following services (i) any treasury or other cash management services, including, without limitation, automated clearing house (ACH) origination and other funds transfer, depository (including, without limitation, cash vault and check deposit), zero balance account and sweep, returned items processing, controlled disbursement, positive pay, lockbox, account reconciliation and information reporting, payables outsourcing, payroll processing, and trade finance services, and (ii) card services, including, without limitation, credit card (including, without limitation, purchasing card and commercial card), prepaid card (including, without limitation, payroll, stored value and gift cards), merchant services processing, and debit card services and (a) all costs of collection and protection of SunTrust's rights, including attorneys' fees allowed by law, whether such collection or protection occurs prior to, during, or after any bankruptcy proceedings filed by or against Debtor (all the foregoing being hereinafter collectively referred to as the "Obligations"); provided, however, that the aggregate outstanding principal amount of all Obligations secured by this Deed of Trust shall not at any one time exceed the maximum aggregate amount of principal stated above, plus interest thereon (at the rate or rates set forth in the Notes or Agreements or other evidences of such indebtedness), fees due with respect to any such indebtedness, and, to the extent permitted by applicable law, any prepayment fees and any swap breakage fees associated with any interest rate hedge agreement or other derivative transaction agreement all costs of collection, including without limitation, any costs and expenses incurred by Trustee or SunTrust in connection with the enforcement of this Deed of Trust or as otherwise provided herein. Obligations shall include, but not be limited to, the principal of, interest on and all other amounts due under or in connection with a Note dated October 26, 2011 in the principal amount of \$850,000.00 by Dominion Paving & Sealing, Inc. and any modifications, extensions or renewals thereof.

As used herein the term "Note" shall mean each and any note or obligations executed and delivered by Debtor to SunTrust, whether joint or several or joint and several, to repay the Obligations or any part thereof. The term "Agreement" shall mean each and any agreement between Debtor and SunTrust of whatever nature executed and delivered by Debtor to SunTrust in connection with any Note or the Obligations or any part thereof.

It is understood and agreed that the Obligations will be advanced from time to time by SunTrust in accordance with the provisions of any Note or any Agreement, each of which is incorporated herein and made a part hereof by reference to the same extent as if fully set forth herein, and it is further understood and agreed that, from time to time, repayments on account of the Obligations may be made and SunTrust may thereafter make additional advances including re-advances of sums previously repaid, as provided in any Note or any Agreement, it being understood and agreed that each and every advance made at the present or hereafter to Debtor or on behalf of Debtor or Grantor shall be deemed to be an advance made on account of the Obligations and secured hereby unless otherwise specifically provided in the Note, Agreement or other documents evidencing such advance.

Repayment to SunTrust of all of the Obligations by Debtor shall not terminate the lien of this Deed of Trust unless it is released by SunTrust upon receipt of the written request of Grantor, payment of all outstanding Obligations and termination of all applicable Notes and Agreements; otherwise it shall remain in force to secure future advances and indebtedness, irrespective of any additional security that may be taken as to the Obligations. Upon authorization of SunTrust, Trustee and/or

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SunTrust shall release and discharge, at the expense of Grantor or Debtor, this Deed of Trust and the liens, security interests and assignments created hereby.

Grantor represents, warrants, covenants and agrees as follows:

1. **Payment and Performance.** Grantor shall perform its obligations under and comply with the provisions of this Deed of Trust and any Note and any Agreement to which it is a party.

2. **Covenants; Warranty of Title; Payment of Taxes and Assessments; Prior Deeds of Trust or Mortgages.** Grantor makes the covenants and agrees to the other provisions set forth in Section 55-59 of the Code of Virginia (1950), as amended. Grantor is lawfully seized of the Property in fee simple absolute or the leasehold estate if this Credit Line Deed of Trust is on a leasehold, and has the right to convey the same. At the time of recordation, this Deed of Trust shall be a first lien and encumbrance on the Property. Grantor will execute such further assurances as Trustee or SunTrust deems necessary or desirable in order to more fully vest title in Trustee. So long as any part of the Obligations shall be unpaid, Grantor will protect the title and possession of the Property and will pay when the same become due all taxes and assessments now existing or hereafter levied or assessed upon the Property or the interest therein created by this Deed of Trust, or which by the laws of the jurisdiction where the Property is located may be levied or assessed against Trustee or its successors, or SunTrust, for or on account of the Obligations upon this Deed of Trust or the interest in the Property thereby created, together with all sums now or hereafter owing on any senior deeds of trust or mortgages. Grantor will provide SunTrust with evidence of any such payments which from time to time may be required by SunTrust. Grantor will, at its expense, take such other action and execute such other instruments as may be necessary or desirable in the sole discretion of SunTrust to preserve and protect the lien and priority of this Deed of Trust and all other instruments evidencing or securing payment of the sums secured hereby.

3. **Preservation and Maintenance of Property; Environmental Requirements.** No building or other improvement shall be substantially altered, removed or demolished, except for changes which enhance its value, nor shall any fixtures or attached appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged without the prior written consent of SunTrust (provided, however, that minor non-structural changes costing not more than \$10,000 may be undertaken without such consent, and that replacement of such appliances or fixtures of equivalent value and function may be undertaken without such consent). Grantor will not commit or suffer any waste, nor permit or suffer any impairment or deterioration of the Property, or any part thereof. Grantor will at all times keep and maintain the Property and every part thereof in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Grantor will comply with all statutes, orders, requirements or decrees relating to the Property, whether under federal, state, county or municipal authority, and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are applicable to the Property or which have been granted to or contracted for by Grantor in connection with any existing or presently contemplated use of Property. Grantor will permit SunTrust or its agents to enter upon and inspect the Property at all reasonable times and SunTrust shall have the right to obtain such appraisals, reappraisals, appraisal updates or environmental inspections as SunTrust, in its sole discretion, may deem necessary from time to time.

Grantor represents and warrants that the Property never has been, and never will be so long as this Deed of Trust remains in effect, used for the generation, collection, manufacture, storage, treatment, disposal, release or threatened release of any hazardous substance, as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), Superfund Amendments and Reauthorization Act ("SARA"), applicable state laws, or regulations adopted pursuant to either of the foregoing. Grantor agrees to comply with any federal, state, or local law, statute, ordinance or regulation, court or administrative order or decree or private agreement regarding materials which require special handling in collection, storage, treatment or disposal because of their impact on the environment ("Environmental Requirements"). Grantor agrees to indemnify and hold SunTrust harmless against any and all claims and losses and expenses and costs resulting from a breach of this paragraph and Grantor will pay or reimburse SunTrust for all costs and expenses for expert opinions, inspections or investigations required or requested by SunTrust which, in SunTrust's sole discretion, are necessary to ensure compliance with this paragraph. This obligation to indemnify shall survive the payment of the Obligations and the release of this Deed of Trust.

4. **Insurance.** Grantor will keep the Property and the improvements thereon insured against loss by fire, casualty and other hazards (including flood damage, if the improvements are located in a special flood hazard area) as may from time to time be required by SunTrust for the benefit of SunTrust. If permitted by applicable law, Grantor will maintain

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such public liability and indemnity insurance as may from time to time be required by SunTrust. To the extent permitted by applicable law, all such insurance shall be written in forms, amounts and by companies satisfactory to SunTrust and losses thereunder shall be payable to SunTrust pursuant to a standard noncontributing mortgagee's clause. Certificates or other proof of insurance shall be delivered to SunTrust and Grantor shall provide SunTrust with such evidence of payment or premiums due on account of such insurance as from time to time may be required by SunTrust. All such policies shall provide for at least thirty (30) days' prior written notice to SunTrust of any cancellation or modification thereof, including without limitation, cancellation for nonpayment of premium. Grantor shall give SunTrust prompt notice of any loss covered by such insurance and SunTrust shall have the right to join Grantor in adjusting any loss. Grantor hereby authorizes SunTrust, at SunTrust's option, to collect, adjust and compromise any losses under any such insurance policies herein referred to. Any funds received as payment for any loss under any such insurance shall be paid over to SunTrust and shall be applied, after deducting the costs of collection, at the option of SunTrust, either to the prepayment of the Obligations or to the reimbursement of Grantor for expense actually incurred by Grantor in the restoration or replacement of Property, or any part thereof. In the event of foreclosure of this Deed of Trust or other transfer of title to the Property conveyed hereby, all right, title and interest of Grantor, in and to any insurance policies then in force, shall pass to the purchaser or grantee, which may be, but shall not be limited to, SunTrust.

5. **SunTrust's Right to Remedy Defaults.** In the event Grantor shall neglect or refuse (a) to keep the Property in good repair and condition; (b) to pay promptly when due all taxes and assessments as aforesaid; (c) to remove any statutory liens on the Property; (d) to keep the buildings, improvements and chattels insured as aforesaid; (e) to deliver certificates or other proof of the policies or policy of insurance or the renewals thereof to SunTrust as aforesaid; (f) or if all amounts owed under any Note, Agreement or other obligation secured by this Deed of Trust or any other deed of trust or other lien on the Property are not paid promptly when due or all obligations, covenants, conditions and agreements under such deed of trust or other lien are not observed, then SunTrust may, if it shall so elect, in addition to any other rights it may have under this Deed of Trust, take possession of the Property, make repairs as it deems necessary, pay such taxes and assessments with the accrued penalties and/or interest, pay any necessary expenses, redeem the Property which may have been sold or forfeited for taxes or assessments thereon, purchase any tax title thereon, remove any statutory liens or encumbrances and prosecute or defend any suit in relation thereto, or insure and keep insured said buildings improvements and chattels as provided herein, or make any payments as may be necessary to cure any default. Any sums including, without limitation, costs, expenses and attorneys' fees which may be expended by SunTrust or Trustee in so doing or otherwise for the protection or preservation of the Property hereby or the lien of this Deed of Trust thereon, shall bear interest from the dates of such payments at the highest rate of interest being paid on any Obligations (but in no event higher than the rate or rates permitted under applicable law), shall be paid by Grantor to SunTrust upon demand, shall become a part of the Obligations and shall be recoverable as such in all respects. Any such liens, claims, taxes, expenses, assessments or tax titles so purchased, paid or redeemed by SunTrust shall, as between the parties hereto and their successors in interest, be deemed valid, so that in no event shall the necessity or validity of any such payment be disputed.
6. **Default, Acceleration of Payments; Trustee's Sale or Lease; Advertisement Required.** Any of the following shall constitute an event of default under this Deed of Trust (a) Debtor's failure to make when due any installment or other payment of any Obligations, whether of principal, interest, late charge or otherwise; (b) the death, dissolution, merger, acquisition, consolidation or termination of existence of Grantor, Debtor, any guarantor or endorser of any Obligations or any party who has pledged any property as collateral for any Obligations (collectively, a "Party"); (c) the insolvency of any Party, or the application for the appointment of a receiver for any Party or the filing of a petition under any provisions of the Federal Bankruptcy Code, as now or hereinafter in effect, by or against any Party or any assignment for the benefit of creditors by or against any Party; (d) the entry of a judgment against any party or the issuance or service of any attachment, levy or garnishment against any Party or the property of any Party; (e) a determination by SunTrust that it deems itself insecure or that a material adverse change in the financial condition of any Party has occurred since the date of this Deed of Trust; (f) the failure of any Party to perform any obligation under any Note or Agreement or this Deed of Trust; (g) a default under any superior or inferior lien upon the Property; or (h) the sale, transfer, conveyance or assignment of any beneficial interest in any Party, including but not limited to voting stock, partnership interests or beneficial interests in a trust, without the prior written consent of SunTrust. Upon the occurrence of any event of default regardless of whether SunTrust shall have cured such event of default on behalf of Grantor in accordance with the terms of this Deed of Trust, SunTrust may elect, without notice, to cause all the Obligations to be at once due and payable in full, and the Trustee, or its successor in trust, as soon as reasonably practicable after requested to do so by SunTrust (i) may take possession of the Property, may make any repairs or replacements to the Property deemed necessary by Trustee or SunTrust and/or sell (and in case of

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default of any purchaser, resell) in whole or in part the Property at public auction at such time and place and upon such terms and conditions as Trustee may deem appropriate or as otherwise required by applicable law or rule of the court following public advertisement for the time and in the manner proscribed by applicable law and in accordance with paragraph 16a, and in case of any sale, Trustee may require a bidder's deposit of not more than ten percent (10%) of the sales price, but not less than \$1,000, and shall (the terms of sale having been complied with) execute a deed or deeds, assignment and transfer of title to the Property to the purchaser, with such purchaser being discharged from all liability to see the application of the purchase money; at any such sale SunTrust may bid and become the purchaser of the Property; and (ii) may revoke any license granted to Grantor to collect and apply rents, issues and profits; and (iii) may take possession of the Property and may lease the Property either pending sale or until the amount of the Obligations is paid and deduct from rents received all costs of collection, repair, replacement and administration and apply the net proceeds to the Obligations. The Trustee is hereby empowered to bring in its name, or in the name of the Grantor, any suit or action it deems advisable for the enforcement of the provisions of this clause, but the Trustee and SunTrust shall be in no way personally liable under any of the provisions of such lease or of this clause, and shall not be personally liable to any person by virtue of their possession of the Property or by virtue of their acting under any provisions of this clause, except to the extent of accounting for rents actually received by them.

The proceeds of any sale of the Property by Trustee shall be applied by Trustee. First, to pay all proper costs and charges, including but not limited to court costs, advertising expenses, auctioneers' allowances, the expenses, if any, required to correct any irregularity in the title, premium for Trustee's bond, auditors' fees, attorneys' fees, cost of repairs or replacements, and all other expenses of sale incurred in and about the protection and execution of this Deed of Trust, and all moneys advanced for taxes, assessments, insurance, and with interest thereon at the highest rate of interest being paid on any Obligations (but in no event higher than the rate or rates permitted under applicable law), and all taxes and assessments due upon said land and premises at time of sale, and to retain as compensation a trustee's commission of five percent (5%) of the gross proceeds of said sale or sales unless a larger percentage or amount is agreed upon in writing by SunTrust, and attorneys' fees and expenses of any litigation which may arise on account of the execution and enforcement of this Deed of Trust or any Note or Agreement, Second, to pay and satisfy all Obligations, interest and all other charges hereby secured then remaining unpaid, and interest thereon to date of payment, whether the same shall be due or not, it being understood and agreed by Grantor that the amounts due under any Note or Agreement shall, upon such sale being made before the maturity thereof, be and become immediately due and payable at the election of SunTrust; and Third, to pay the remainder of said proceeds, if any, to Grantor, its heirs, personal representatives, successors or assigns, or to any other person lawfully entitled thereto, upon the delivery and surrender to the purchaser, his, her or their heirs and assigns, of possession of the Property and premises, less costs and expenses of obtaining possession. If after so applying such proceeds, any portion of the Obligations shall remain unpaid, such balances shall continue to be due and payable, and shall be subject to collection by SunTrust by suit or otherwise. In the event the Property shall be advertised for sale as above provided but be withdrawn from sale or for any other reason not sold, Trustee shall be entitled to one-half of the commission above provided to be computed on the debt hereby secured or so much thereof as remains unpaid, including any advances, re-advances and accruals, and any fees of attorneys or auctioneers, and any other expenses shall be charged to and paid by Grantor. In addition, in the event of default hereunder, SunTrust shall have all rights and remedies permitted by law and by any document evidencing, governing, or securing the obligations secured hereby.

Substitute Trustee. SunTrust has the irrevocable right and power to substitute without cause or notice a trustee or trustees in the place of any Trustee named under this Deed of Trust. Such power of appointment and substitution may be exercised at any time hereafter and as many times as SunTrust, its successors or assigns, may desire. Such substitute Trustee(s) shall be vested with the same titles and powers as are granted herein to the original Trustee. Nothing herein contained shall deprive SunTrust of its right to apply for and receive any relief regarding the Trustee thereunder which is now, or which may hereafter be, provided for by the internal laws of the jurisdiction in which the Property is located or applicable federal law.

Condemnation. Grantor hereby irrevocably grants, assigns, transfers and sets over unto SunTrust all right, title and interest of Grantor in and to any award or payment made (not to exceed the outstanding Obligations including, without limitation, accrued interest, and costs, expenses, reasonable attorneys' fees, and disbursements incurred by SunTrust in connection with collection of such award and payment) in respect of (a) any taking of the Property or any part thereof as a result of, or by agreement in anticipation or in lieu of, any exercise of the power of eminent domain or condemnation; and (b) any such taking of any appurtenances to the Property; and (c) any damage to the Property

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or any part thereof due to governmental action affecting, but not resulting in a taking of, the Property, including, by way of example and not by way of limitation, the changing of the grade of a street adjacent or proximate to the Property. Grantor agrees to promptly notify SunTrust of the commencement of any condemnation or eminent domain proceeding. Grantor further agrees, upon request, to make, execute and deliver any assignments or other instruments necessary for the purpose of assigning or transferring any such award or awards to SunTrust free and clear of any encumbrances whatsoever. The excess amount of such award over and above sums due SunTrust on account of the Obligations, interest and other charges, shall be paid to Grantor, its successor and assigns.

Restrictions on Transfer of Property; No Secondary Financing; Mechanics' Liens.

NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY.

- a. If all or any part of the Property is sold, transferred, conveyed or encumbered without SunTrust's prior written consent, SunTrust may, at its option, require immediate payment in full of all sums secured by this Deed of Trust and exercise all remedies provided in this Deed of Trust in the event of default. However, this option shall not be exercised by SunTrust if exercise is prohibited by federal law as of the date of this Deed of Trust. SunTrust reserves the absolute option and right, if permitted by applicable law, among other things, to: require the agreement by Grantor and Grantor's transferee to any terms and conditions that SunTrust may require upon transfer; increase the rate of interest upon transfer; and charge an assumption fee.
- b. To the extent permitted by applicable law, Grantor shall not voluntarily or otherwise permit to be created or filed against the Property, without the prior written consent of SunTrust in each instance, any other deed of trust or mortgage or other lien or liens inferior or superior to the lien of this Deed of Trust. Further encumbrances, however, shall not be prohibited if the Property consists of a one-to-four family residential dwelling.
- c. Grantor will keep and maintain the Property free from all liens arising by virtue of all persons supplying labor or materials performed thereon or incorporated therein, notwithstanding by whom such labor or materials may have been contracted, and if any liens in respect to any such labor or materials are filed against the Property, Grantor shall cause the same to be released completely of record either by payment and discharge or by the posting of substitute collateral therefore in accordance with applicable laws within twenty (20) days of the filing thereof, and Grantor will make all payments on all liens permitted herein (if any), when due.

Assignment of Rents. Grantor hereby assigns unto SunTrust the rents, issues and profits accrued and to accrue from all tenants of the Property or any part thereof, during the term of this Deed of Trust, or any extensions thereof. Until and unless revoked by the SunTrust, Grantor shall have a license to manage and operate the Property and to collect and apply to its own account all rents, issues and profits as they become due, but no more than one month in advance. SunTrust may revoke this license at any time, in its sole and absolute discretion. SunTrust shall give the Grantor notice of any demand for rents made against tenants of the Property contemporaneously with the giving of notice to tenants. Grantor will not execute any assignment of the rents, issues and profits from the Property or any part thereof unless such assignment shall provide that it is subordinate to the assignment of rents set forth in this Deed of Trust and any other assignments executed pursuant hereto or in conjunction herewith.

Notice of Adverse Claim of Lien. If Grantor shall receive any notice or other instrument which might materially adversely affect the Property or the lien of this Deed of Trust thereon, Grantor will furnish, within three (3) days following such receipt, by certified mail, a copy of such notice or other instrument to SunTrust. The notices referred to herein shall include, but not be limited to, notices from any tenant or lessee claiming a default by Grantor under any lease or occupancy agreement, any notice by any public authority concerning any tax or special assessment, and any notice of any alleged violation of any building, zoning, fire or other law or regulation affecting the Property.

Remedies Cumulative; Forbearance by SunTrust/Trustee Not a Waiver. All remedies available to SunTrust or the Trustee with respect to this Deed of Trust or under any instrument evidencing, governing, or securing the Obligations, including, but not limited to, any other deeds conveying other property in trust to secure payment of the obligations secured hereunder, or provided by law or in equity or by any statute, or otherwise, shall be cumulative and may be pursued concurrently or successively. Grantor, for itself and all who claim under it, waives to the extent that it lawfully may, all right to have the Property marshaled upon any sale or foreclosure hereunder. No delay or omission of Trustee or SunTrust to exercise any right, power or remedy shall impair any such right, power or remedy, or shall be construed to be a waiver of any default or any acquiescence therein. No delay or omission on the part of SunTrust to exercise any option granted for acceleration of the maturity of the Obligations or for foreclosure following any default or any other option granted to SunTrust hereunder in any one or more instances, or tender and/or acceptance by SunTrust of any partial payment on account of Grantor's or Debtor's obligations shall constitute a

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waiver of any such default or operate to rescind any such acceleration and each such option shall remain continuously in full force and effect.

- 13. **Covenants Running with the Land.** All covenants hereof shall run with and be binding on the land and improvements conveyed hereby until this Deed of Trust shall be released of record.
- 14. **Hold Harmless.** Grantor shall save SunTrust and Trustee harmless from all costs and expenses, including reasonable attorneys' fees and costs incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body in and to which SunTrust and/or Trustee may be or become a party by reason of this Deed of Trust, including, but not limited to, condemnation, bankruptcy, probate and administration proceedings, as well as any of the foregoing wherein proof of claim is by law required to be filed or in which it becomes necessary to defend or uphold the terms or priority of this Deed of Trust, and all money paid or expended by SunTrust or Trustee in that regard, together with interest thereon from date of such payment at the highest rate of interest being charged on any Obligations (but in no event higher than the rate or rates permitted under applicable law), shall be immediately and without notice due and payable by Grantor, shall become a part of the Obligations and shall be recoverable as such in all respects.
- 15. **Trustee's Authority.** Trustee or any person acting in its stead shall have, at its discretion, authority to employ all proper agents and attorneys in the execution of this Deed of Trust, and pay for such services rendered out of the proceeds of the sale of the Property conveyed hereby, should any be realized; and if no sale be made, then Grantor hereby undertakes and agrees to pay to Trustee the cost of such services rendered. If from time to time more than one Trustee or Substitute Trustee shall have been appointed hereunder, then any one Trustee or Substitute Trustee may act for all such Trustees and/or Substitute Trustee(s).
- 16. **Governing Law.** This Deed of Trust, without regard for the place of contract, advance of funds or payment, shall be governed, construed and enforced according to the laws of the Commonwealth of Virginia, with reference to Articles 2 and 3, Chapter Four, Title 55 of the Code of Virginia of 1950, as amended, and with such further understandings in short form as provided therein, including the following provisions:
 - a. **Advertising Required:** Advertisement of the time, place and terms of sale for three days, in consecutive issues of a newspaper having general circulation in the city or county where the Property or some part thereof is located, after the giving of prior notice as proscribed by law.
 - b. **Exemptions waived.**
 - c. **Subject to all upon default.**
 - d. **Renewal, extensions or reinstatement permitted.**
 - e. **Fire and extended coverage insurance required: \$850,000.00.**
 - f. **Substitution of Trustee permitted with or without cause.**
 - g. **Any Trustee may act.**
- 17. **Severability of Provisions.** In the event any one or more of the provisions hereof or of any Note or Agreement shall for any reason be held to be invalid, illegal, or unenforceable, in whole or in part or in any respect, or in the event any one or more of the provisions hereof or of any Note or Agreement operate or would prospectively operate to invalidate this Deed of Trust, then and in any of those events, at the option of SunTrust, such provision or provisions shall be severable and shall not affect any other provision hereof or of such Note or Agreement or the validity of Grantor's or Debtor's other obligation and the remaining provisions hereof or of the Note or Agreement shall remain operative and in full force and effect and shall in no way be affected, prejudiced, or disturbed thereby.
- 18. **Waiver of Notice of Future Advances and Consent or Extensions, Modifications and Release.** If Grantor (or any one or more of the parties constituting Grantor) is not the Debtor, then Grantor expressly (a) waives notice of any and all loans and/or advances made, from time to time during the continuance of this Deed of Trust by the SunTrust to Debtor (or any one or more of the parties constituting Debtor); (b) agrees that modifications of the terms of any Note or Agreement, including without limitation, modifications extending the term for payment or adjusting the interest rate applicable to any Obligations, may be made from time to time between SunTrust and Debtor without notice to or consent of Grantor; (c) agrees that SunTrust, without notice to or further consent of Grantor, may grant extension of time and other indulgences to and renew any of the obligations of Debtor without regard to the number and length of such extensions, renewals or other indulgences. Grantor further agrees that SunTrust without notice or further consent of Grantor, may release or discharge any persons who are or may be liable for the payment of any Note or Agreement or release or discharge any collateral for payment of the Obligations and that any such release or discharge shall not alter, modify, release or limit the liability of Grantor (or any one or more of the parties constituting

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Grantor) or the validity or the enforceability of this Deed of Trust; and (d) agrees that SunTrust may exercise its rights under this Deed of Trust prior to taking any action against the Debtor.

- 19. **Time Is of the Essence.** Time shall be of the essence for each and every provision of any Note, any Agreement, this Deed of Trust and all other documents, agreements and contracts evidencing, securing, or governing the obligations secured hereby.
- 20. **References; Applicability; Collateral Agent.** All references in the foregoing covenants to SunTrust shall apply equally to any subsequent holder or assignee of any Note or any Agreement. SunTrust Bank shall serve as collateral agent on behalf of itself and present and future affiliates.
- 21. **Titles.** The paragraph titles contained in this Deed of Trust are for reference purposes only and shall not affect the meaning or interpretation of this Deed of Trust.
- 22. **Designations.** In any designation hereunder, the use of one gender shall include any other gender wherever same may be appropriate, and the plural shall be substituted for the singular or the singular for the plural in any place herein in which the context may require such substitution.
- 23. **Transfer of Loan.** SunTrust may, at any time, sell, transfer or assign the Deed of Trust, Note and any related loan documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). SunTrust may forward to each purchaser, transferee, assignee, servicer, participant, or investor in such Securities or any Rating Agency (as hereinafter defined) rating such Securities (collectively, the "Investor") and each prospective Investor, all documents and information which SunTrust now has or may hereafter acquire relating to the Grantor or Debtor, any loan to Grantor or Debtor, any guarantor or the Property, whether furnished by Grantor or Debtor, any guarantor or otherwise, as SunTrust determines necessary or desirable. The term "Rating Agency" shall mean each statistical rating agency that has assigned a rating to the Securities.

By signing below under seal, the undersigned accept and agree to terms and provisions contained herein as of October 26, 2011.

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120521107768

Dominion Paving & Sealing, Inc.

By: James Garland Johnston
James Garland Johnston, President

Non-Individual Acknowledgment

Jurisdiction: Commonwealth of Virginia

County of Chesterfield To Wit:

Stephanie J. Oliver, a Notary Public in

and for the aforesaid Jurisdiction, do certify that James Garland Johnston whose name is signed to the foregoing instrument as President of Dominion Paving & Sealing, Inc.

has acknowledged the same before me in the jurisdiction aforesaid.

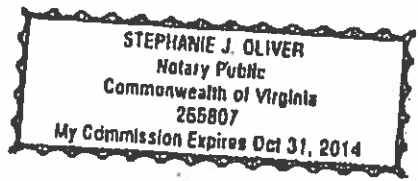
Given under my hand this 25 day of October 2011

Stephanie J. Oliver
Notary Public
Name: Stephanie J. Oliver

My Commission Expires: 10-31-14

Notary Registration No: 265807

(Notary Seal)



[This space intentionally left blank]

0000 5000 PAUL 1631

Exhibit A

See Attached

120321107759

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12052119770

PARCEL 1:

Tract A:

All that certain piece or parcel of land together with improvements thereon and appurtenances thereto containing one acre as shown on that plat entitled "Plat Showing 1.000 acre of land lying on the north line of Paulbrook Drive being a portion of 360 Commercial Park West, Clover Hill District, Chesterfield County, Virginia", dated May 23, 1991, prepared by Mark B. Beall, Land Surveyor, Balzer and Associates, Inc., a copy of which is recorded along with the Deed in Deed Book 2182, page 1091.

BEGINNING at a point which is 673.75' west of where the west line of Speeks Drive, extended intersects the north line Paulbrook Drive, thence S. 64 degrees 30' 15" W. a distance of 14.79 feet to a point; thence along a curve to the right having a radius of 40 feet a distance of 27.19 feet to a point; thence along a curve having a radius of 50 feet a distance of 63.83 feet thence N. 59 degrees 41' 41" W. a distance of 80.14 feet to a rod set; thence N. 25 degrees 29' 45" W a distance of 246.74 feet to a rod set; thence N. 65 degrees 48' 12" E a distance of 144.54 feet to a rod; thence S. 25 degrees 29' 45" E a distance of 321.10 feet to a rod; to the point of beginning.

Tract B:

All that certain piece or parcel of land together with improvements thereon and appurtenances thereto containing one acre as shown on that plat entitled "Plat Showing 1.000 acres of land lying on the North line of Paulbrook Drive being a portion of 360 Commercial Park West, Clover Hill District, Chesterfield County, Virginia", dated May 23, 1991, prepared by Mark B. Beall, Land Surveyor, Balzer and Associates, Inc., a copy of which is recorded along with the Deed in Deed Book 2182, page 1091.

BEGINNING at a point which is 673.75' west of where the west line of Speeks Drive, extended intersects with the north line of Paulbrook Drive, thence N. 25 degrees 29' 45" W a distance of 321.10 feet to a rod; thence N. 65 degrees 48' 12" E a distance of 136.35 feet to a rod; thence S. 25 degrees 29' 45" E a distance of 318.01 feet to a rod; thence S. 64 degrees 30' 15" W a distance of 136.31 feet to the point of beginning.

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BEING the same real estate conveyed to Maughan Construction Co., Inc., a Virginia corporation by Deed from Commercial Park Property, a Virginia general partnership dated July 18, 1991, recorded October 9, 1991, in the Clerk's Office, Circuit Court, County of Chesterfield, Virginia, in Deed Book 2182, page 1091.

PARCEL 2:

ALL that certain piece or parcel of land with the improvements thereon and appurtenances thereto belonging, lying and being in Clover Hill District of Chesterfield County, Virginia, containing 2.153 acres of land as is more particularly described in that certain plat of survey entitled "PLAT SHOWING A 16' DRAINAGE EASEMENT ACROSS THE PROPERTY OF COMMERCIAL PARK PROPERTY TAX MAP NUMBER 49-6(12)1, CLOVER HILL DISTRICT, CHESTERFIELD COUNTY, VIRGINIA", prepared by Balzer and Associates, Inc., and dated September 9, 1991, a copy of which is attached and recorded with the Deed in Deed Book 2902, page 133 for a more particular description of the property hereby conveyed.

BEING the same real estate conveyed to Maughan Construction Company, Inc., a Virginia Corporation by Deed from William T. Cantrell, Inc., a Virginia Corporation dated January 12, 2001, recorded January 18, 2001, in the Clerk's Office, Circuit Court, County of Chesterfield, Virginia, in Deed Book 3983, page 492.

INSTRUMENT #36576
RECORDED IN THE CLERK'S OFFICE OF
CHESTERFIELD ON
OCTOBER 26, 2011 AT 01:27PM
JUDY L. WORTHINGTON, CLERK
RECORDED BY: JAS

Instrument Control Number

[Redacted Box]

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2889.33

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

11 OCT 26 13 27

036576

[ILS Cover Sheet Agent Online 1.1.6]

CHESTERFIELD COUNTY
CHESTERFIELD CO

T
A
X
P
R
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Date of Instrument [10/26/2011]
Instrument Type [DTCL]
Number of Parcels [1]
Number of Pages [12]

(Box for Deed Stamp Only)

City County [Chesterfield County]

First and Second Grantors

Last Name	First Name	Middle Name	Suffix
<input checked="" type="checkbox"/>	Dominion Paving and Sealing, Inc., Corporation		

First and Second Grantees

Last Name	First Name	Middle Name	Suffix	
<input type="checkbox"/>	Jacob	Clay	R	TR
<input type="checkbox"/>	Zachry	Thomas	S	TR

Grantee Address (Name) [Clay R. Jacobs and Thomas S. Zachry]
(Address 1) [7818 Parham Road]
(Address 2)
(City, State, Zip) [Richmond] [VA] [23294]

Consideration [850,000.00] Existing Debt [0.00] Assumption Balance [0.00]

Prior Instr. Recorded at: City County [Chesterfield County] Percent. in this Juris.(%) [100]

Book [] Page [] Instr. No []

Parcel Identification No (PIN) [74468593600000, 74468578600000]

Tax Map Num. (if different than PIN) [74468593600000, 74468578600000]

Short Property Description [See attached Legal]

Current Property Addr.(Address 1) [10900 Paulbrook Dr., 10910 Pau]

(Address 2)

(City, State, Zip) [Midlothian] [VA] [23112]

Instrument Prepared by [SunTrust Bank]

Recording Paid for by [Kanawha Land Title]

Return Recording to (Name) [Kanawha Land Title]

(Address 1) [1802 Bayberry Ct. Ste. 305]

(Address 2)

(City, State, Zip) [Richmond] [VA] [23226]

Customer Case ID [] [CS-476351]

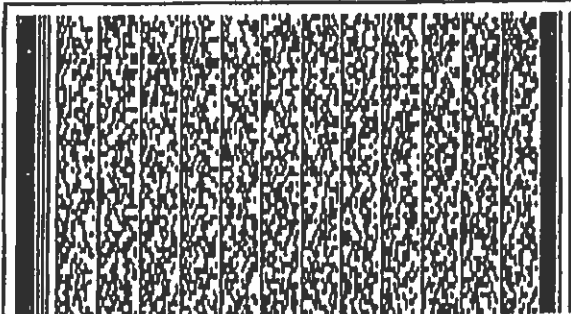


EXHIBIT C
(Purchase Agreement)

Central Virginia Regional MLS
Commercial Purchase Agreement

Each commercial transaction is different. This form may not address your specific purpose. This is a legally binding document. If not understood, seek competent advice before signing.

This Commercial Purchase Agreement (the "Agreement") is dated October 7, 2016, between Dominion Paving & Sealing, Inc. ("Seller") and Milmar Holdings, LLC & Hazard Investments, LLC ("Purchaser"). The parties acknowledge that Chesterfield Commercial Realty ("Listing Broker") represents Seller and that Hometown Realty Services ("Selling Broker") represents [select one]: Seller Purchaser. The parties further acknowledge that disclosure of the brokerage relationships was made to them by the real estate licensees involved in this transaction when specific assistance was first rendered and confirmed in writing.

1. Sale of Property. Purchaser agrees to buy and Seller agrees to sell the land, all improvements thereon, and all rights and appurtenances thereto belonging, located in the City/County of Chesterfield, Virginia, with a tax parcel no. of see paragraph 15 and a street address of 10900, 10910 & 10920 Paulbrook Dr. Seller discloses that [select one]: there are no tenants or other parties in possession of the Property OR there are tenants or persons who are in possession of the Property as set forth on SCHEDULE A attached hereto.

2. Purchase Price. The purchase price for the Property is One Million One Hundred Fifty Thousand Dollars (\$ 1,150,000.00) (the "Purchase Price") and shall be paid to Seller at Settlement, subject to the prorations and adjustments described herein, as follows:

A. Deposit. Purchaser shall make a deposit of \$ 10,000.00 (the "Deposit") to be held by Hometown Realty Services (the "Escrow Agent"). Purchaser [select one]: has paid the Deposit to the Escrow Agent OR will pay the Deposit to the Escrow Agent within days after this Agreement is fully executed by both parties. If Purchaser fails to pay the Deposit as set forth herein, then Seller may terminate this Agreement by written notice to Purchaser and neither party shall have any further obligation hereunder. The Deposit may be held in an interest bearing account and the parties waive claim to any such interest. The Deposit shall be applied towards the Purchase Price at Settlement. If Settlement does not occur, the Deposit shall be paid as provided herein.

B. Balance. The balance of the Purchase Price shall be paid by Purchaser at Settlement in certified funds or bank wire (inclusive of any loan obtained by Purchaser to purchase the Property).

3. Settlement

A. Settlement of Property. Settlement of the purchase and sale of the Property shall be made at Purchaser's attorney's office on 01/16/17 ("Settlement"). Possession of the Property shall be delivered to Purchaser at Settlement.

B. Deliveries by Seller at Settlement. At Settlement, Seller shall deliver to Purchaser the following:

(i) A general warranty deed with ~~full English covenants of title~~ ^{special} (the "Deed") conveying to the Purchaser good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, conditions and restrictions, except any lien for real estate taxes not yet due and payable, and any Title Objections for which Purchaser has no objection and/or has waived such objection pursuant to Paragraph 5;

(ii) An affidavit for the benefit of Purchaser and its title insurer, satisfactory to Purchaser's title company (the "Affidavit") stating that (i) no right to a mechanic's or materialman's lien has accrued with respect to the Property as a result of any act or omission by the Seller and (ii) there are no outstanding leases or agreements with regard to, or other parties in or entitled to possession of, the Property except as disclosed in SCHEDULE A attached hereto;

(iii) A Certificate of Non-Foreign Status as required by Section 1445 of the Internal Revenue Code of 1986 and any other certificates required by any governmental authority or agency;

(iv) If the Property is leased, a tenant estoppel certificate and an assignment of lease (including the transfer of the security deposit at Settlement) for each and every tenant of the Property, in forms acceptable to Purchaser; and

(v) Such other Seller certifications as Purchaser's lender or title company may reasonably require.

C. Costs and Prorations. Seller shall pay the costs of preparing the Deed, the Grantor's tax thereon and any other expenses incurred by Seller. Purchaser shall pay for the title search, title insurance premiums, survey expenses, lender fees, Grantee's tax and all other settlement expenses incurred by Purchaser. Real estate taxes, rent, CAM and assessments, as applicable, shall be prorated between Seller and Purchaser as of the date of the Settlement. Each party shall pay its own legal, accounting and other expenses incurred in connection with this Agreement or Settlement.

D. Condition of Property. Purchaser agrees to accept the Property at Settlement in its physical condition at the time this Agreement is fully executed by all parties, except as otherwise provided herein. Seller agrees to maintain the Property in good condition and repair until Settlement. At Settlement, Seller agrees to transfer to Purchaser all existing warranties, if any, on the Property's roof, structural components, HVAC, mechanical, electrical, security and plumbing systems.

4. Feasibility Period. N/A

A. For a period of _____ (___) days following execution of this Agreement by all parties (the "Feasibility Period"), Purchaser, its agents and contractors, shall have the right to: (i) enter the Property for the purpose of inspecting the Property and performing tests as are desirable to Purchaser in its sole and absolute discretion; (ii) seek zoning information from the local governing authority concerning Purchaser's intended use of the Property; and/or (iii) apply for lender financing to acquire the Property.

B. Within five (5) days after Seller's receipt of a fully executed copy of this Agreement, if not previously delivered, Seller shall deliver to Purchaser copies of the following materials related to the Property if in Seller's possession: (i) any Phase I or other environmental studies; (ii) a current survey; (iii) the most current owner's title insurance policy; and (iv) all leases and rent rolls for each tenant identified in SCHEDULE A (including without limitation, the base monthly rental and all taxes, insurance, and other pass-throughs paid by the tenant), and all contracts affecting the Property that are not terminable at will. Items (i) through (iv) are collectively referred to as the "Materials".



C. If Purchaser is not satisfied in its sole and absolute discretion with all aspects of the Property (including zoning) or the Materials, or has not obtained financing upon terms and conditions satisfactory to Purchaser, then Purchaser shall have the right, upon written notice to Seller prior to the expiration of the Feasibility Period, to terminate this Agreement, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11. Purchaser acknowledges that the Feasibility Period will not be extended for any reason, regardless of whether Purchaser has completed its inspections or zoning inquiry, or has obtained financing.

D. If Purchaser fails to acquire the Property, Purchaser agrees: (i) to repair any damage arising as a result of its exercise of the right of access granted in this Paragraph 4; (ii) to indemnify and hold Seller harmless from any and all liability of any kind or nature whatsoever as a result of the exercise of such right of access, other than as a result of Seller's negligence or misconduct or the negligence or misconduct of Seller's agents, employees or contractors; and (iii) upon demand to return the Materials to Seller.

5. Title and Survey Objections. Purchaser may, at its sole expense, obtain a title insurance commitment and a survey for the Property. Prior to the expiration of the Feasibility Period, Purchaser shall notify the Seller in writing as to any title or survey objections regarding the Property that the Purchaser is unwilling to accept (collectively the "Title Objections"). Seller shall advise Purchaser in writing within ten (10) days after receipt of such notice, which if any of the Title Objections will not be cured by Seller at or prior to Settlement. If Seller fails to respond to Purchaser within such ten (10) day period or if Seller's response indicates that it does not intend to cure one or more of the Title Objections, then Purchaser may, at its option either (i) terminate this Agreement by

giving written notice to Seller; (ii) cure such Title Objections at its own expense and proceed to Settlement with no reduction in the Purchase Price; or (iii) waive such Title Objections and proceed to Settlement, with no reduction in the Purchase Price. If Purchaser elects to terminate this Agreement, the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

6. Conditions Precedent to Obligation of Purchaser. This Agreement and all of Purchaser's obligations hereunder are further subject to Purchaser determining in its sole and absolute discretion that all of the conditions set forth in this Paragraph 6 have been satisfied or waived in writing by Purchaser. In the event that any of the following conditions are not satisfied or waived by Purchaser, Purchaser may give written notice to Seller terminating this Agreement on or before Settlement, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

A. Seller's Representations and Warranties. All the representations and warranties of Seller made herein shall have been true when made and shall be true and correct as of Settlement, with no material changes therein.

B. Seller's Deliveries. As of Settlement, Seller shall have taken all action and delivered all documents and materials required by this Agreement.

C. No Litigation. As of Settlement, there shall be no litigation, proceeding or investigation pending, or to the knowledge of Purchaser or Seller threatened, which might prevent or adversely affect the intended use of the Property or which questions the validity of any action taken or to be taken by Seller or Purchaser hereunder, or which threatens the continued operation of the Property for commercial purposes.

7. Representations and Warranties of the Seller. Seller, jointly and severally (if more than one Seller), represents and warrants unto Purchaser as of the date hereof and on the Settlement date that:

A. Authority and Marketable Title. Seller is the owner of the Property, possesses the requisite authority to enter into and perform this Agreement, and has the absolute right to sell, assign, and transfer the Property to Purchaser at Settlement.

B. No Pending Litigation or Bankruptcy. There are no actions, suits or proceedings at law or in equity pending, threatened against, or affecting the Property before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality. ~~No bankruptcy or similar action, whether voluntary or involuntary, is pending or is threatened against Seller, and Seller has no intention of filing or commencing any such action within ninety (90) days following Settlement.~~



C. No Outstanding Purchase Option. No option, right of first refusal or other contractual opportunity to purchase the Property has been granted to, or executed with, a third-party that is enforceable against Seller and/or the Property giving such third-party a right to purchase an interest in the Property or any party thereof.

D. No Notice of Repairs. Seller has received no written notice from any governmental agency that repairs, alterations or corrections that must be made to the Property.

E. Utilities. The Property is connected to [select one]: a municipal water and sewer system and has utility meters installed within the Property OR a well and septic system located on the Property. Seller makes no representation on whether the capacities of such utilities are sufficient for Purchaser's intended use of the Property.

F. Hazardous Materials. To the best of Seller's actual knowledge, no toxic or hazardous materials (as said terms are defined in any applicable federal or state laws) have been used, discharged or stored on or about the Property in violation of said laws, and to the best of Seller's knowledge, no such toxic or hazardous materials are now or will be at Settlement located on or below the surface of the Property. There are no petroleum storage tanks located on or beneath the surface of the Property.

G. Parties in Possession. As of the Settlement date, there will be no adverse or other parties in possession of the Property or any part thereof, nor has any party been granted any license, lease or other right or interest relating to the use or possession of the Property or any part thereof, except for the Leases attached hereto and made a part hereof as SCHEDULE A.

H. Other Contracts. Seller is not a party to any contracts relating to the Property that is not terminable at will, except as disclosed on SCHEDULE B, which is attached hereto and made a part hereof. Between the date of this Agreement and the Settlement date, Seller will not, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, enter into any contract relating to the Property that is not terminable at will.

I. No Undisclosed Restrictions. Seller has not, nor to the best of Seller's knowledge or belief has any predecessor in title, executed or caused to be executed any document with or for the benefit of any governmental authority restricting the development, use or occupancy of the Property that has not specifically been disclosed to Purchaser or wouldn't be revealed by a title report.

8. Risk of Loss. The risk of loss or damage to the Property by fire or other casualty prior to Settlement shall be on the Seller. If such loss or damage materially and adversely affects the use of the Property as of Settlement, Purchaser shall be entitled to terminate this Agreement by written notice to Seller, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

9. Condemnation. If, prior to Settlement, any taking pursuant to the power of eminent domain is proposed or occurs, as to all or any portion of the Property intended to be acquired at Settlement by the Purchaser, or sale occurs in lieu thereof, the Purchaser shall be entitled to terminate this Agreement by written notice to Seller, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

10. Access/Cooperation. During the term of this Agreement, Purchaser and his duly authorized agents shall be entitled to reasonable access to the Property for the purpose of surveying, appraising and making other findings related to the Property. Purchaser agrees to indemnify and hold the Seller harmless from any and all liability of any kind or nature whatsoever as a result of the exercise of such right of access, other than as a result of the Seller's gross negligence or willful misconduct.

11. Agents and Brokers. Each party represents and warrants that it did not consult or deal with any broker or agent with regard to this Agreement or the transaction contemplated hereby, except for the Listing Broker and the Selling Broker, and each party hereto agrees to indemnify and hold harmless the other party from all liability, expense, loss, cost or damage, including reasonable attorneys' fees, that may arise by reason of any claim, demand or suit of any agent or broker arising out of facts constituting a breach of the foregoing representation and warranty. Listing Broker shall be paid a brokerage fee by Seller of ~~3~~ 3 % of the Purchase Price. Selling Broker shall be paid by Seller a fee of ~~3~~ 3 % of the Purchase Price. The fees to the Listing Broker and the Selling Broker shall be paid in cash at settlement.

12. Notices. Any notice, request or demand required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if, delivered by hand or messenger at the address of the intended recipient, sent prepaid by Federal Express (or a comparable guaranteed overnight delivery service), or deposited in the United States first class mail (registered or certified, postage prepaid, with return receipt requested), addressed to the intended recipient, at the intended recipient's address set forth below, or at such other address as the intended recipient may have specified by written notice to the sender given in accordance with the requirements of this Paragraph. Any such notice, request or demand so given shall be deemed given on the day it is received by the recipient.

For the Seller:

Steve Pirham
10900 Paulbrook Drive
Middleton, VA 23112

For Purchaser:

Wayne Hazard
11237 Two Pond Lane
Glenn Allen, VA 23059

13. Default.

A. Default by Purchaser. If Purchaser defaults under this Agreement, the damages suffered by Seller would be difficult to ascertain. Therefore, Seller and Purchaser agree that, in the event of a default by Purchaser, Seller's sole and exclusive remedy, in lieu of all other remedies, shall be to terminate this Agreement and retain the Deposit as full and complete liquidated damages. If the Deposit is retained as liquidated damages, Seller agrees to pay one-half of the Deposit to the Listing Broker to compensate Broker for his brokerage services in the transaction. Such payment shall have no effect on the payment due in any subsequent transaction. Seller hereby specifically waives the right to seek specific performance of this Agreement by Purchaser or any other remedy at law or in equity, provided that Seller reserves the right to all remedies available at law and in equity solely in order to enforce the indemnification obligations of Purchaser under Paragraphs 4D., 10 and 11 herein.

B. Default by Seller. If Seller defaults under this Agreement, Purchaser shall have the option to (i) seek specific performance of this Agreement, or (ii) terminate this Agreement, in which event the Deposit shall be promptly refunded to Purchaser. Seller shall be liable for Purchaser's expenses in the filing of any specific performance action, including reasonable attorney's fees and court costs.

C. Right to Cure Default. Prior to any termination of this Agreement as provided in Subparagraphs 13A. and 13B., the non-defaulting party shall provide written notice of any default(s) to the defaulting party (the "Default Notice") permitting the defaulting party ten (10) days to cure any such default(s). If defaulting party does not cure the default(s) or does not respond to the Default Notice, then the non-defaulting party may terminate the Agreement by written notice to the defaulting party. Nothing herein shall prevent either party from seeking a judicial determination regarding any default; provided however, the court shall award the expenses of attorney's fees and court costs to the prevailing party in any such action.

D. Brokerage Fees. Notwithstanding the remedies set forth in Subparagraphs 13A., 13B, and 13C, if either Seller or Purchaser defaults under this Agreement, the defaulting party shall be liable for the full amount of the brokerage fees set forth in Paragraph 11 and any brokerage fees set forth in Seller's listing agreement with the Listing Broker for the Property (which document is hereby incorporated herein by this reference) as if this Agreement and Seller's listing agreement had been performed, and for any damages and all expenses incurred by the Listing Broker and the Selling Broker in connection with this transaction and the enforcement of this Agreement and Seller's listing agreement, including, without limitation, attorney's fees and court costs. Payment of a real estate broker's fee as the result of a transaction relating to the Property which occurs subsequent to a default under this Agreement shall not relieve the defaulting party of liability for any brokerage fees due under this Agreement or Seller's listing agreement.

14. Miscellaneous

A. Final Agreement. This Agreement contains the entire agreement between the parties hereto relating to the Property and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties hereto.

B. Virginia Law Applicable. This Agreement shall be construed, performed and enforced in accordance with the laws of the Commonwealth of Virginia and shall not be amended or modified and no waiver of any provision hereof shall be effective unless set forth in a written instrument executed with the same formality as this Agreement.

C. Assignment. This Agreement shall not be assigned by one party without the written consent of the other party, except the assignment of this Agreement to an entity owned by Purchaser or the principals of Purchaser shall not require the consent of Seller, but Purchaser shall provide written notice to Seller of such assignment. This Agreement shall inure to the benefit of the parties hereto and their respective and permitted successors and assigns.

D. Counterparts. This Agreement may be signed in one or more counterparts, each of which is deemed to be an original and all of which shall together constitute the same instrument. The parties agree that a fax of any signed original document shall have the same effect as an original.

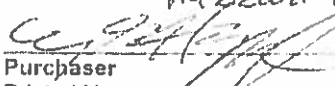
E. Tax-Deferred Exchange. Either party may elect to include the conveyance of the Property in an IRS Section 1031 Like Kind Exchange (a tax-deferred exchange). In the event that a party makes such an election, the non-exchanging party agrees to execute such documents necessary to effectuate such an exchange (at no cost to the exchanging party), but in no event shall such exchange affect the terms of the transaction or a party's responsibilities to the other party under this Agreement. The exchanging party shall bear the sole costs of its exchange.

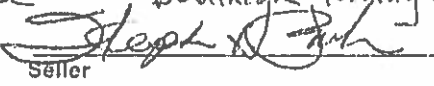
15. Additional Provisions:
 Tax parcel #s: 744-68-59-36-600-000, 744-68-57-86-000-000, 744-68-56-74-300-000


Seller to provide existing environmental studies to Purchaser that are in Seller's possession.

16. Acceptance. To be effective this Agreement must be executed by Purchaser and Seller and an original copy of this Agreement returned to Purchaser no later than 5:00 p.m. on 10/25/16, or this Purchase Agreement shall be deemed withdrawn.

Each of the parties has executed this Agreement in its name pursuant to due authority as of the dates set forth below.

Hazzard Investments, LLC

 Purchaser 10-07-16 Date
 Printed Name: Wayne T. Hazzard
 Title (if applicable): _____

Downman Fencing & Sealing, Inc.

 Seller 10/10/16 Date
 Printed Name: Stephen H. Parham
 Title (if applicable): President


 Purchaser 10-7-16 Date
 Printed Name: John Miller
 Title (if applicable): Milmar Holdings, LLC

 Seller _____ Date
 Printed Name: _____
 Title (if applicable): _____

Listing Company's Name and Address

Chesterfield Commercial Realty
5102 W. Village Green Dr., Ste. 107
Midlothian VA 23112

Agent's Name Terry Earnest
 Agent's tel. no. 804-744-9290
 Fax no. 804-744-9290
 Agent's email terry@ccrealtyllc.com

Selling Company's Name and address

Hometown Realty Services
111 S. Railroad Ave.
Ashland VA 23005

Agent's Name Hank Lowry
 Agent's tel. no. 804-347-8556
 Fax no. 804-752-4998
 Agent's email Hank.Lowry@hometownrealtyservices.com

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SCHEDULE A

**LEASES, AGREEMENTS AND CONTRACTS
FOR TENANTS AND OTHER PARTIES
IN POSSESSION OF THE PROPERTY**

List below each such tenant or other party in possession of the Property, and provide Purchaser with a copy of each lease, license or other agreement. If verbal agreement, summarize terms below.

Also provide Purchaser with any contract affecting the Property that is not terminable at will. Seller is in possession of the Property and will do a sale / leaseback with the Purchaser by separate agreement.

SCHEDULE B

**CONTRACTS RELATING TO THE PROPERTY
(Not terminable at will)**

None

EXHIBIT D
(Draft Lease)

LEASE AGREEMENT

This LEASE (this "**Lease**") is entered into and dated as of January __, 2017 (the "**Execution Date**") between Landlord and Tenant.

WITNESSETH THAT, in consideration of the rents, covenants and agreements hereinafter set forth, Landlord and Tenant covenant, warrant and agree as follows:

ARTICLE I FUNDAMENTAL LEASE PROVISIONS

The provisions of this **Article I** summarize certain terms of this Lease which are more fully described in the balance of this Lease. The provisions of this Article constitute a part of this Lease for purposes of providing specific information for incorporation into this Lease within the cross-referenced provisions as provided in this Article. In the event of a conflict between the provisions of this **Article I** and any other portion of this Lease, the latter shall control. Capitalized terms used in this Lease shall have the meanings set forth in **Article II** or otherwise defined in any other part of this Lease.

Section 1.01 "Landlord" shall mean _____, a Virginia limited liability company.

Section 1.02 "Tenant" shall mean Dominion Paving & Sealing, Inc., a Virginia corporation.

Section 1.03 "Premises" shall mean that certain real property consisting of approximately 4.15 +/- acres located at 10900, 10910, & 10920 Paulbrook Drive, Midlothian, Virginia 23112 including the Improvements located thereon, consisting of a building of approximately 10,280 sq ft. The Premises are described in Exhibit A.

Section 1.04 "Commencement Date" shall mean January __, 2017. The Commencement Date shall also be deemed to be the "**Rent Commencement Date**".

Section 1.05 "Expiration Date" shall mean December 31, 2021 or such earlier date on which this Lease is terminated pursuant to any of the terms, conditions or covenants of this Lease or pursuant to law.

Section 1.06 "Minimum Annual Rent" shall mean:

<u>Lease Year</u>	<u>Annual</u>	<u>Monthly</u>
January __, 2017-December 31, 2017	\$96,000.00	\$8,000.00
January 1, 2018-December 31, 2018	\$97,920.00	\$8,160.00
January 1, 2019-December 31, 2019	\$99,878.40	\$8,323.20
January 1, 2020-December 31, 2020	\$101,875.97	\$8,489.66
January 1, 2021-December 31, 2021	\$103,913.49	\$8,659.46

Section 1.07 "Security Deposit" shall mean \$8,000.00.

Section 1.08 Permitted Use: Tenant shall occupy and operate the Premises solely for the purpose of operating a general contractor’s office, shop, paving company, and outdoor storage yard of trucks, trailers, and equipment to be used in such operation (the "**Permitted Use**"). Tenant shall not use or permit or suffer the use of the Premises for any other business or purpose.

Section 1.09 Addresses for Notices:

To Landlord: _____, LLC

 Attn: _____

To Tenant: Dominion Paving & Sealing, Inc.
 10900 Paulbrook Drive
 Midlothian, VA 23112
 Attn: Stephen H. Parham

and to: Christopher L. Perkins, Esq.
 LeClairRyan
 919 East Main Street
 Twenty-Fourth Floor
 Richmond, VA 23219
 (804)783-7550
 Christopher.perkins@leclairryan.com

**ARTICLE II
 DEFINED TERMS**

Section 2.01 Defined Terms. Unless otherwise indicated, all references to Articles and Sections shall be deemed to refer to Articles and Sections of this Lease.

"**Additional Rent**" means all sums of money required to be paid by Tenant under this Lease with the exception of Minimum Annual Rent.

"**Affiliates**" means such party's partners, joint venturers, shareholders, parent company, subsidiaries, and property managers, and their respective officers, directors, employees, and agents.

"**Building**" means the building located on the Premises.

"**Change of Control**" means the transfer by sale, assignment, incompetency, mortgage, deed of trust, trust, operation of law, or otherwise of any shares, voting rights or ownership interests which will result in a change in the identity of the person or persons exercising, or who may exercise, effective control of Tenant. The following shall constitute a Change of Control for the purposes of this Lease: (a) the merger, consolidation or reorganization of the corporation; and/or (b) the sale, issuance, or transfer, cumulatively or in one transaction, of a majority of voting stock, by Tenant or the stockholders of record of Tenant as of the date of this Lease, which results in a change in the voting control of Tenant, except any such transfer by inheritance or testamentary disposition to Tenant's heirs at law.

"**Claims**" means any claim, demand, investigation, proceeding, action, suit, judgment, award, fine, lien, loss, damage, expense, charge or cost of any kind or character and liability (including reasonable attorneys' fees and court costs).

"**Commencement Date**" is defined in **Section 1.04**.

"**Encumbrance**" means any conditional, contingent, collateral or deferred assignment, sublease or conveyance voluntarily made by Tenant of some or all of Tenant's interest, rights or duties in this Lease or the Premises, or any portion thereof, including Tenant's right to use, occupy or possess the Premises, in whole or in part, including, without limitation, any mortgage, deed of trust, pledge, hypothecation, lien, franchise, license, concession or other security arrangement.

"**Execution Date**" means that date set forth in the first paragraph of this Lease upon which this Lease is fully executed by Landlord and Tenant.

"**Expiration Date**" is defined in **Section 1.05**.

"**Extension Term**" is defined in **Article XXV**.

"**Governmental Authority**" means any federal, state, county, city or local governmental board, body or agency having jurisdiction over the Premises or any part thereof.

"Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is defined as a hazardous substance, hazardous material or waste, or toxic substance under any Hazardous Materials Law; (b) is regulated, controlled or governed by any Hazardous Materials Law or other Legal Requirement; (c) is petroleum or a petroleum product; or (d) is asbestos, formaldehyde, radioactive material, drug, bacteria, virus, or other injurious or potentially injurious material (by itself or in combination with other materials).

"Hazardous Materials Laws" means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, any other Legal Requirement concerning hazardous or toxic substances, and any amendments to the foregoing.

"Improvements" shall mean any additions, improvements, alterations and/or installations made to the Premises (except Personal Property) performed by or on behalf of Landlord or Tenant.

"Insured Casualty" means damage or destruction the repair of which is fully covered by insurance proceeds received by or made available to Landlord pursuant to any insurance policy required to be carried under the terms of this Lease.

"Interest Rate" means the lesser of: (a) the maximum lawful rate permitted by usury or similar law in the State in which the Premises is located to be charged by Landlord to Tenant; or (b) eighteen percent (18.00%) whichever is lower.

"Landlord" is defined in **Section 1.01**.

"Lease" is defined in the first paragraph of this Lease.

"Lease Term" is defined in **Section 4.01**.

"Lease Year" is defined in **Section 4.01**.

"Legal Requirement" means, to the extent applicable: (a) any law, statute, ordinance, regulation, code, rule, requirement, order, court decision or procedural requirement of any Governmental Authority; and/or (b) the rules and regulations of the applicable governmental insurance authority or any similar body. References herein to "law" or "lawful" include Legal Requirements or the full and strict compliance with Legal Requirements, as applicable.

"Minimum Annual Rent" means the minimum annual rental payable by Tenant for the use and occupancy of the Premises and is more specifically set forth in **Section 1.06**.

"Mortgage" means any mortgage, deed of trust, assignment, security agreement, conditional sale contract or other encumbrance or hypothecation of any of Landlord's interest in the real and personal property comprising the Premises (including all subsequent renewals, modifications, consolidations, replacements, amendments, modifications, extensions and advances thereto), including an assignment or encumbrance of Landlord's interest in this Lease and the rents and profits derived therefrom.

"Mortgagee" means the holder, beneficiary (or trustee acting on behalf of the beneficiary) or assignee of any Mortgage.

"Permitted Use" means the permitted use of the Premises as set forth in **Section 1.08**.

"Personal Property" means trade fixtures, furniture, furnishings, equipment, appliances, goods, inventory, chattels, signs and other personal property not permanently affixed to the Premises.

"Premises" is described in **Section 1.03**.

"Real Estate Taxes" or "Taxes" is defined in **Section 6.01(a)**.

"Reconstruction" means demolition, stabilization, repair, reconstruction, and restoration of the Premises resulting from an Insured Casualty or Uninsured Casualty.

"Rent" means all amounts of Minimum Annual Rent and Additional Rent required to be paid by Tenant under this Lease.

"Rent Commencement Date" means that date determined as set forth in **Section 1.04**.

"Security Deposit" means the amount specifically set forth in **Section 1.07**.

"Tax Year" is defined in **Section 6.01(a)**.

"Tenant" is defined in **Section 1.02**

"Transfer" means any voluntary, unconditional, and present: (a) assignment of some or all of Tenant's interest, rights, and duties in this Lease and the Premises, including Tenant's right to use, occupy, and possess the Premises, or any portion thereof;

or (b) sublease of Tenant's right to use, occupy, and possess the Premises, in whole or in part.

"Transferee" means the proposed assignee, sublessee, mortgagee, beneficiary, pledgee or other recipient of Tenant's interest, rights or duties in this Lease or the Premises.

"Uninsured Casualty" means damage or destruction resulting from any flood, earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or any other casualty of any kind or nature whatsoever which is not an Insured Casualty.

"Utilities" means the services of sewage treatment and removal, treatment and delivery of water, electricity, natural gas (if permitted by Landlord), telephone service and other services such as satellite data transmission, cable systems, and security systems.

"Utilities Charges" is defined in **Section 7.01(a)**.

"Utility Installations" means any and all systems, machinery, facilities, installations, supply lines, transformers, pipes, conduits, ducts, penetrations, components, appurtenances, and equipment used in or in connection with the Premises for the generation or supply of Utilities.

ARTICLE III PREMISES

Section 3.01 Premises. Landlord hereby leases to Tenant and Tenant hereby rents from Landlord, the Premises as described on Exhibit A.

Section 3.02 Condition. Except as otherwise set forth herein, Tenant has inspected the Premises and shall accept the Premises in its current "AS IS, WHERE IS" condition. Tenant's taking possession of the Premises shall be conclusive evidence of Tenant's acceptance thereof in good order and satisfactory condition. Tenant agrees that Landlord has made no representations as to conformance with applicable laws with respect to the condition of the Premises or the presence or absence of Hazardous Materials in, at, under or abutting the Premises. Tenant also agrees that no representations with respect to the condition of the Premises, no warranties or guaranties, expressed or implied, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, with respect to workmanship or any defects in material, and no promise to decorate, alter, repair or improve the Premises either before or after the execution hereof, have been made by Landlord or its agents to Tenant unless the same are contained herein.

Section 3.03 Title of Premises. Tenant acknowledges that Tenant's leasehold interest in the Premises is subject to: (a) covenants, conditions, restrictions, easements, Mortgages, and other matters of record; (b) the effect of all Legal Requirements, including any local zoning laws; and (c) general and special taxes not delinquent.

Section 3.04 Right to Enter. Landlord and its authorized representatives shall have the right to enter the Premises at all reasonable times during reasonable business hours for the purpose of showing the Premises to prospective purchasers or lenders. Tenant additionally shall permit Landlord, or its authorized representatives, to enter the Premises at all times during usual business hours (except in the case of an emergency, in which case Landlord may enter as reasonably necessary) to inspect the Premises, to perform its duties under this Lease, and to perform any work therein: (a) that may be necessary to comply with Legal Requirements; (b) that Landlord may deem reasonably necessary to prevent waste or deterioration of the Premises; (c) that Landlord may deem necessary in connection with the repairs, maintenance, expansion, reduction, remodeling or renovation of any portion of the Premises; (d) that may be reasonably necessary in connection with the installation, maintenance and modification of any Utility Installations located within the Premises; and (e) any combination of the above. Nothing herein contained shall be deemed to impose upon Landlord any obligation, responsibility or liability whatsoever, for any care, maintenance or repair except as otherwise herein expressly provided.

ARTICLE IV LEASE TERM

Section 4.01 Lease Term. This Lease shall become fully effective and binding as of the Execution Date. The term "**Lease Term**" means that period commencing on the Commencement Date and continuing through the Expiration Date. The Lease Term shall be approximately five (5) Lease Years. The term "**Lease Year**" means a period of twelve (12) consecutive calendar months during the Lease Term, the first Lease Year will commence on the Commencement Date and continue through December 31st of that calendar year. The remaining Lease Years will commence on January 1st and end on December 31st of the same year.

Section 4.02 Surrender of the Premises. At the Expiration Date, Tenant shall remove all Personal Property from the Premises and surrender possession of the Premises to Landlord vacant and broom clean except ordinary wear and tear, condemnation, damage or destruction covered by **Article XVI** and **Article XVII**, and any repair Landlord is obligated to perform pursuant to this Lease. Tenant shall indemnify and hold Landlord harmless from and against all claims, loss or liability (direct, indirect, foreseeable or unforeseeable) resulting from the delay by Tenant in surrendering the Premises, including, without limitation, any claims made by any succeeding occupant

based upon Landlord's inability to deliver the Premises to any such succeeding occupant. Tenant's obligations to perform and observe the covenants set forth in this **Section 4.02** shall survive the Expiration Date.

Section 4.03 Holdover. Landlord and Tenant acknowledge and agree that any failure of Tenant to surrender possession of the Premises on the Expiration Date shall result in substantial damages to Landlord, and that those damages are and will be impossible or impracticable to measure. Accordingly, if Tenant does not surrender possession of the Premises to Landlord as set forth herein, in addition to any other rights or remedies Landlord may have hereunder or at law, Tenant, at the option of Landlord, shall be deemed to be occupying the Premises from month to month, subject to such occupancy being terminated by either party upon at least thirty (30) days written notice. In such event, Tenant shall pay to Landlord an amount equal to two (2) times the portion of the Minimum Annual Rent payable during the last month of the Lease Term, plus an amount equal to the Additional Rent which was payable by Tenant in the last full calendar year prior to the Expiration Date, with such Minimum Annual Rent and Additional Rent, prorated on the basis of a 365-day year. No provision of this Lease shall be deemed to permit Tenant to retain possession of the Premises after the Expiration Date. Except as otherwise specifically stated in this Lease, all of the terms and conditions of this Lease shall remain in effect following any extension, renewal or holdover of the original Lease Term. Notwithstanding anything to the contrary set forth above, neither the Minimum Annual Rent, Additional Rent, nor any of the other charges set forth hereunder shall be increased by virtue of Tenant's holding over beyond the Expiration Date, provided that the parties are proceeding in good faith to negotiate a renewal Lease. Negotiations for renewal may be terminated by either party at any time by written notice, and the increased rent imposed by the holdover provision of this Lease shall thereafter apply.

ARTICLE V RENT

Section 5.01 Rent Commencement Date. Tenant's obligation to pay Minimum Annual Rent and Additional Rent shall commence upon the Rent Commencement Date.

Section 5.02 Minimum Annual Rent. Tenant shall pay to Landlord the Minimum Annual Rent set forth in **Section 1.06** in twelve (12) equal monthly installments in advance upon the first day of each and every month of the Lease Term, without, except as otherwise set forth herein, setoff, deduction, prior notice or demand.

Section 5.03 Additional Rent. Tenant shall pay all Additional Rent without, except as otherwise set forth herein, setoff, deduction, prior notice or demand in the

amounts and in the manner set forth in this Lease. Tenant's payments of Additional Rent pursuant to **Article VI** shall be payable in the following manner:

(a) **Estimate.** Commencing on the Rent Commencement Date and continuing through the end of the Lease Term, subject to the limitations set forth herein, Tenant shall pay Landlord, on the first day of each calendar month, those amounts Landlord reasonably estimates to be the Real Estate Taxes. Subject to the limitations set forth herein, Landlord may adjust such monthly estimates from time to time during any Lease Year on the basis of Landlord's experience and reasonably anticipated costs.

(b) **Reconciliation.** Within thirty (30) days after the end of each calendar year or Tax Year, as applicable, Landlord shall furnish Tenant separate statements for the Additional Rent payable by Tenant pursuant to **Article VI**. Such statements shall cover the billing period showing the total of the applicable Additional Rent expenses, Tenant's share of such expenses for such billing period, and the total prior amounts payable by Tenant with respect to such period in accordance with **Section 5.03(a)**. If Tenant's share of the Additional Rent expenses exceeds the total of Tenant's payments with respect thereto, Tenant shall pay Landlord the deficiency within thirty (30) days after receipt of such statement. If said payments exceed Tenant's share of the specified Additional Rent expenses, such excess shall be offset against the payments next due Landlord for Minimum Annual Rent and/or Additional Rent. Failure of Landlord to provide the statements required by this **Section 5.03(b)** shall not relieve Tenant of its obligation hereunder. Upon the Expiration Date, if either party shall owe monies to the other (for purposes of example and not of limitation, year-end adjustments owing to Landlord or Tenant), the payment of said sums shall not be a condition precedent to the termination of this Lease, but the obligations of Landlord and Tenant, respectively, for such payments shall survive the Expiration Date.

Section 5.04 Proration of Rent for Partial Month. Rent payable by Tenant for any partial calendar month at the beginning or end of the Lease Term which is calculated on the basis of a full calendar year or Tax Year, as applicable, shall be computed on a daily basis to reflect the actual number of days in said partial month at an amount equal to one-three hundred sixty-fifths (1/365th) of such annual Rent for each day of said partial month. If the Rent Commencement Date is other than the first day of a month, Tenant shall pay on the Rent Commencement Date a prorated partial Minimum Annual Rent applicable to that month for the period prior to the first day of the next calendar month, and thereafter, Minimum Annual Rent payments shall be made on a monthly basis not later than the first day of each calendar month.

Section 5.05 Landlord's Right to Offset. If any sums are payable by Landlord to Tenant pursuant to any provision of this Lease, Landlord shall have the right to first offset from such sum any amounts that are currently payable by Tenant to Landlord pursuant to any provision contained in this Lease.

Section 5.06 Late Charge. If Tenant shall fail to pay any amount of Minimum Annual Rent or Additional Rent within ten (10) days following the date same became due and payable as provided in this Lease, Tenant shall pay to Landlord a late charge equal to five percent (5.00%) of such delinquent payment. Landlord and Tenant agree that such late charge represents a reasonable estimate of additional administrative expenses incurred by Landlord in processing the delinquency. Provision herein for payment of the late charge shall not be construed to extend the date for payment of any sums required to be paid by Tenant hereunder or relieve Tenant of its obligation to pay all such sums at the times herein stipulated.

Section 5.07 Priority of Payments. Notwithstanding anything to the contrary contained in this Lease, to the extent that Tenant is in default of its obligations under this Lease beyond the expiration of any notice, grace or cure periods, all payments made by Tenant and received by Landlord during such time may be applied, in Landlord's sole and absolute discretion, to any outstanding arrearages owed by Tenant to Landlord, irrespective of any payment characterization Tenant may designate for any such payment.

Section 5.08 Address for Payments. All payments of Rent shall be made to Landlord when due, in lawful money of the United States of America, which shall be legal tender in payment of any debts and dues public and private, at the time of payment by good and sufficient check subject to collection and drawn on a bank or trust company in the United States of America which is a member of the Federal Reserve System. Tenant shall pay all Rent and other payments due Landlord at such address is set forth in **Section 1.09** of this Lease, or at such other place as Landlord may from time to time designate.

ARTICLE VI REAL ESTATE TAXES

Section 6.01 Real Estate Taxes.

(a) Tenant agrees to pay to Landlord all taxes, rates and assessments, general or special, levied or imposed for any reason on, or attributable to, or with respect to, the use, occupancy or possession of the Premises and/or the realty underlying the Premises and costs associated with reviewing, negotiating or contesting such taxes and assessments (hereinafter referred to as "**Real Estate Taxes**" or "**Taxes**") for each Tax Year, or portion thereof, during the Lease Term. If the system of real estate taxation shall be altered or varied or any new tax or levy shall be levied or imposed on said realty and/or the Premises, and/or Landlord in substitution for Real Estate Taxes levied or imposed on immovables in the jurisdiction where the Premises is located, then any such new tax or levy shall be included within the term "Real Estate Taxes" or "Taxes." If any governmental taxing authority acting under any regulation, levies, assesses or imposes a

tax, excise and/or assessment however described (other than income or franchise tax) upon, against, on account of or measured by, in whole or in part, the rent expressly reserved hereunder, or upon the rent expressly reserved under any other leases or leasehold interest in the Premises, as a substitute (in whole or in part) or in addition to any existing real estate taxes on the realty or otherwise, such tax or excise on rents shall be included in the term "Real Estate Taxes" or "Taxes." "**Tax Year**" shall mean each twelve (12) month period established as the real estate tax year by the governmental taxing authorities having lawful jurisdiction over the Premises. Landlord shall have the sole authority to conduct a contest or enter into negotiations with governmental taxing authorities regarding the imposition of Real Estate Taxes; provided, however, Landlord shall have no obligation to contest, object to or litigate the levying or imposition of any Real Estate Taxes and may settle, compromise, consent to, waiver or otherwise determine in its sole discretion to abandon any contest with respect to the amount of any Real Estate Taxes without consent or approval of Tenant.

(b) Tenant shall pay before delinquency all taxes (including sales and use taxes), assessments, license fees, and public charges levied, assessed or imposed upon its business operation as well as upon its merchandise and Personal Property.

(c) The anticipated Real Estate Taxes for the Premises for the first Lease Year are \$9,373.00. To be paid in equal monthly installments of 1/12th of the annual Real Estate Taxes due on the 1st of the month along with the Minimum Annual Rent.

ARTICLE VII UTILITIES

Section 7.01 Payments By Tenant.

(a) Tenant shall be solely responsible for and promptly pay all charges for heat, water, electricity, sewer rents or charges, and any other utility used or consumed in the Premises or in providing heating and air-conditioning to the Premises, including in each instance, all sales and other taxes applicable to the sale or supply of such utilities, said responsibility commencing on the Rent Commencement Date (such charges shall hereafter be referred to as "**Utility Charges**").

(b) In the event that the local authority, municipality, utility or other body collects for the water and/or sewerage or sanitary service and/or consumption, as aforesaid, Tenant covenants and agrees to pay the water and sewer rent charge (both minimum and otherwise) and any other tax, rent, levy, connection fee or meter or other charge which now or hereafter is assessed, imposed or may become a lien upon the Premises, or the realty of which they are a part, pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, or the water or sewerage connection or system. Except as otherwise provided herein, Tenant agrees that it shall be Tenant's responsibility (at Tenant's sole cost and expense, including

all deposits, charges, connections, hook-up fees, testing fees and the like) to contract directly with the local utility companies for all utility services required for the Premises.

(c) Except as otherwise provided herein, in no event shall Landlord be liable to Tenant for damages or otherwise as a result of any interruption, curtailment or suspension of any of the foregoing utilities or services, whether or not furnished by Landlord, resulting from an Event of Default by Tenant under this Lease, repair or maintenance activity at the Premises, actions of third party not controlled by Landlord, accident, action of Governmental Authority, strikes, acts of God or public enemy, or any cause beyond Landlord's reasonable control, nor shall any such termination relieve Tenant of any of its obligations under this Lease.

ARTICLE VIII USE

Section 8.01 Permitted Use. Tenant shall use and occupy the Premises solely for the Permitted Use, and for no other use or purpose.

Section 8.02 Duties and Prohibited Conduct. Except as otherwise provided herein and except to the extent that Landlord is responsible for same hereunder (including, without limitation, under **Section 10.02** herein), Tenant shall, at its sole expense, comply at all times with all Legal Requirements arising from or out of Tenant's business or use or occupation of the Premises and Tenant's construction of any Improvements at the Premises, including, without limitation, procuring, maintaining, and making available for Landlord's inspection any required governmental licenses or permits. Tenant shall not use the Premises, or permit or fail to prevent the Premises to be used: (a) for any purpose or in any manner that violates any Legal Requirement and/or the requirements of the insurance underwriter(s) for the Premises; (b) for any purpose that alters the classifications or increases the rate of any insurance on the Premises; or (c) to violate the certificate of occupancy issued for the Premises. Tenant shall keep the Premises, and every part thereof, in a clean and reputable condition.

Section 8.03 Hazardous Materials.

(a) **In General.** Tenant shall not, without the prior written consent of Landlord, cause or permit, knowingly or unknowingly, any Hazardous Material to be used, generated, manufactured, produced, stored, transported, treated, disposed of or permitted to escape or released on, under, about or from the Premises, or any part thereof. If Tenant's Permitted Use requires the use and/or storage of any Hazardous Materials on, under or about the Premises, Tenant shall fully and promptly comply with all Hazardous Materials Laws at all times during the Lease Term, and at the Expiration Date, Tenant shall remove and dispose of all Hazardous Materials that were caused or permitted by Tenant, its agents, employees, suppliers, contractors, subtenants, successors, or assigns to

be brought or remain upon or kept or used in or about the Premises or regardless of whether such removal is required by any Hazardous Materials Law.

(b) **Indemnity.** Tenant shall indemnify, protect, defend, and hold Landlord, Landlord's Affiliates, and any Mortgagee harmless from and against any and all Claims arising out of, in connection with, or directly or indirectly arising out of the use, generation, manufacture, production, storage, treatment, release, disposal or transportation of Hazardous Materials by Tenant, or any successor, assignee or sublessee of Tenant, or their respective agents, contractors, employees, or licensees, on, under, about or from the Premises, including, but not limited to, all foreseeable and unforeseeable costs, expenses, and liabilities related to any testing, repair, cleanup, removal costs, detoxification or decontamination and the preparation and implementation of any closure, remedial action, site assessment costs or other required plans in connection therewith deemed required, necessary or advisable by Landlord or any Governmental Authority, and any foreseeable or unforeseeable consequential damages. Any defense of Landlord pursuant to the foregoing indemnity shall be by counsel reasonably acceptable to Landlord. Neither the consent by Landlord to the use, generation, storage, release, disposal or transportation of Hazardous Materials, nor Tenant's strict compliance with all Hazardous Materials Laws, shall excuse Tenant from Tenant's indemnification obligations hereunder. The foregoing indemnity shall be in addition to and not a limitation of the other indemnification provisions of this Lease. Tenant's obligations hereunder shall survive the Expiration Date.

(c) **Reporting.** Tenant shall notify Landlord in writing, immediately after any of the following: (i) Tenant has knowledge, or has reasonable cause to believe, that any Hazardous Materials have been released, discharged or located on, under or about the Premises, whether or not the same is in quantities that would otherwise be reportable to a public agency; (ii) Tenant receives any warning, notice of inspection, notice of violation or alleged violation, or Tenant receives notice or knowledge of any proceeding, investigation, order or enforcement action, under any Hazardous Materials Law concerning the Premises; or (iii) Tenant becomes aware of any Claims made or threatened by any third party concerning the Premises respecting Hazardous Materials.

ARTICLE IX IMPROVEMENTS

Section 9.01 Tenant Improvements.

(a) Tenant shall not make alterations or changes, structural or otherwise, to any part of the Premises, exterior or interior, without Landlord's written consent, except as otherwise set forth herein. In the event of any such approved changes, Tenant shall have all work done at its own expense. Request for consent shall be accompanied by plans stating what is to be done. Tenant shall comply with all Legal Requirements, including, without limitation, building codes, regulations and laws now or hereafter to be

made or enforced in the municipality, county and/or state in which the Premises are located and which pertain to such work.

Section 9.02 Mechanics' Liens.

(a) **General.** THE INTEREST OF LANDLORD IN AND TO THE PREMISES SHALL NOT BE SUBJECT TO LIENS FOR IMPROVEMENTS MADE BY TENANT. Nothing contained in this Lease shall be construed as consent on the part of Landlord to subject Landlord's estate in the Premises to any lien or liability under the lien laws of the State where the Premises is located. Tenant shall pay or cause to be paid all costs of labor, services, and materials supplied in the prosecution of any work done in the Premises by Tenant, and Tenant shall keep the Premises free and clear of all mechanics' liens and other liens arising out of any work done by Tenant or persons claiming under Tenant, excepting, however, work done by Landlord. Tenant shall promptly notify Landlord of any Claim or lien filed against the Premises or the commencement of any action affecting the title thereto, in each case, to the extent that Tenant has received written notice of same. Tenant's obligation to observe and perform any of the provisions of this **Section 9.02** shall survive the Expiration Date.

(b) **Contest of Lien.** If Tenant desires to contest the claim of any mechanic's lien for which Tenant is responsible hereunder, Tenant may contest same in good faith.

(c) **Landlord's Right to Cure.** In the event Tenant fails to release of record any such lien and is not pursuing a good faith contest as contemplated in Section 9.02(b) above, Landlord may (but shall not be obligated to), in addition to any other rights or remedies it may have, remove said lien by: (i) paying the claimant an amount sufficient to settle and discharge the claim; (ii) posting a bond; or (iii) taking such action as Landlord shall deem reasonably appropriate, and Tenant shall, within thirty (30) days after receipt of written demand therefor, pay to Landlord all amounts paid by Landlord in settling and discharging such lien, together with interest thereon at the Interest Rate and reasonable expenses incurred in connection therewith, including reasonable attorneys' fees, which amounts are due and payable Landlord as Additional Rent on the first day of the next following month.

**ARTICLE X
REPAIRS; MAINTENANCE**

Section 10.01 Tenant's Obligations. Tenant shall at all times from and after the Commencement Date, at its own cost and expense, keep the Premises (including all entrances and vestibules) and all partitions, windows and window frames and moldings, floor coverings, glass, store fronts, doors, door openers, fixtures, equipment and appurtenances thereof (including Utility Installations and other mechanical equipment and appurtenances located within and exclusively serving the Premises) and all parts of the Premises, not required herein to be maintained by Landlord, in good order, condition

and repair and clean, orderly, sanitary and safe, damage by unavoidable casualty excepted, (including but not limited to doing such things as are necessary to cause the Premises to comply with Legal Requirements). All replacements made by Tenant shall be of like size, kind, and quality to the items replaced as they existed when originally installed. Tenant shall repair all damages done in or by such replacement.

Section 10.02 Landlord's Obligations. Landlord shall keep the roof, exterior walls, and structural parts of the Premises (including the structural floor), foundation, floorslab, exterior, steel frame, and all Utility Installations serving the Premises (to the extent not maintained by Tenant) in good order, repair and condition except for damage thereto due to the acts or omissions of Tenant, its agents, employees or invitees. Landlord shall make all such repairs and replacements without, to the extent practicable, materially interfering with the conduct of Tenant's business. Landlord shall also be responsible for any repairs necessitated by the acts or negligence of Landlord, its agents, employees or contractors. In no event shall Landlord be required to make repairs necessitated by the negligence or willful acts of Tenant or anyone claiming under Tenant, because of the failure of Tenant to perform or observe any term or condition of this Lease, or because of Improvements made by Tenant. Landlord shall be under no obligation to repair, replace or maintain the portions of the Premises to be maintained by Tenant pursuant to **Section 10.01** at any time, except as this Lease expressly provides.

Section 10.03 Performance of Work By Landlord. If Tenant refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, as required hereunder in a manner reasonably satisfactory to Landlord, Landlord shall have the right but not the obligation, upon giving Tenant not less than thirty (30) days prior written notice of its election to do so, to enter the Premises and make such repairs or perform such maintenance or replacements on behalf of and for the account of Tenant. Nothing herein contained shall imply any duty of Landlord to do any work that, under any provision of this Lease, Tenant is required to do, nor shall Landlord's performance of any repairs on behalf of Tenant constitute a waiver of Tenant's default in failing to do the same. No exercise by Landlord of any rights herein reserved shall entitle Tenant to any compensation, damages or abatement of Rent from Landlord for any injury or inconvenience occasioned thereby excepting Landlord's gross negligence and willful acts. If Landlord performs any maintenance or other obligations that Tenant is required to perform under the terms of this Lease, Tenant shall within thirty (30) days after receipt of written demand therefor, pay to Landlord the reasonable costs and expenses incurred by Landlord in doing the same.

ARTICLE XI
INSURANCE OBLIGATIONS

Section 11.01 Tenant's Insurance Obligations. At all times from and after the Commencement Date, Tenant shall procure and maintain, at its sole cost and expense, the following policies of insurance:

(a) **Liability.** Commercial general liability insurance with broad form contractual liability coverage and with coverage limits of not less than \$1,000,000.00 combined single limit, per occurrence, and \$2,000,000.00 general aggregate.

(b) **Workers' Compensation.** Workers' compensation insurance in the amount required by the state in which the Premises is located for the benefit of Tenant's employees.

(c) **Tenant's Personal Property and Improvements.** Property insurance covering any peril generally included in the classification "special form coverage" covering all: (i) the Building; (ii) merchandise; (iii) Improvements made by Tenant; and (iv) Personal Property owned or leased by Tenant (or for which Tenant is legally liable), in an amount not less than the full replacement cost and with a commercially reasonable deductible. Such coverage shall include insurance against loss of business income, vandalism, malicious mischief, and sprinkler leakage or other sprinkler damage, boiler and pressure vessel insurance, and any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed, unless this Lease is terminated under the provisions of **Article XVI**.

Section 11.02 Policy Requirements; Right to Adjust Requirements. All policies of insurance provided for herein shall be issued by insurance companies that have a general policyholder's rating of not less than "A" and a financial rating of not less than "VII", as rated in the most current available "Best's" Insurance Reports, and that have been admitted, qualified or licensed to do business in the state where the Premises is located. Tenant's general liability policy as required in **Section 11.01(a)** shall contain cross liability endorsements. All policies of insurance provided for herein (with the exception of workers' compensation insurance) shall name Landlord, all Mortgagees and such other individuals or entities as Landlord may from time to time designate upon not less than thirty (30) days prior written notice to Tenant, as "additional insureds." Certificates of all insurance or, at Landlord's request, certified copies of the policies, required of Tenant hereunder shall be delivered to Landlord on or prior to the Commencement Date. Tenant shall provide to Landlord, at least fifteen (15) days prior to expiration, certificates of insurance to evidence any renewal or additional insurance procured by Tenant. Tenant shall provide notice to Landlord immediately upon receipt of any notice received by Tenant from its insurance carrier advising of non-renewal or cancelation of the policies required under this Lease. All certificates of insurance delivered to Landlord shall contain an agreement by the company issuing said policy to

give Landlord thirty (30) days' advance written notice of any cancellation, lapse, reduction or other adverse change respecting such insurance. All commercial general liability insurance, property damage or other casualty policies shall be written as primary policies, not contributory with or secondary to coverage that Landlord may carry. The insurance required to be maintained by Tenant under this Article may be provided under blanket policies of insurance covering both the Premises and other properties and locations of Tenant, provided such policies comply with all of the requirements of this **Article XI**.

Section 11.03 Hazardous Materials. Notwithstanding the provisions of **Section 11.01**, if Tenant after obtaining Landlord's prior written consent, does or intends to bring, possess, use, store, treat or dispose any Hazardous Material in or upon the Premises, Landlord shall have the right, as a condition to such consent, to require Tenant to purchase additional public liability insurance to insure that anything contaminated with or by the Hazardous Material be removed from the Premises and that the Premises and be restored to a clean, neat, attractive, healthy, sanitary and non-contaminated condition.

Section 11.04 Mutual Waivers of Subrogation Rights. Landlord (for itself and its insurer), waives any rights, including rights of subrogation, and Tenant (for itself and its insurer), waives any rights, including rights of subrogation, each may have against the other party (including such party's Affiliates), for compensation of any loss or damage occasioned to Landlord or Tenant, as applicable, arising from any risk generally covered by the "special form coverage" insurance required to be carried by Tenant. The foregoing waivers shall be operative only so long as available in the state where the Premises is located. The foregoing waivers shall be effective whether or not the parties maintain the insurance required to be carried pursuant to this Lease. Landlord and Tenant further agree to evidence such waiver by endorsement to the required insurance policies, provided that such release shall not operate in any case where the effect is to invalidate or increase the cost of such insurance coverage (provided that in the case of increased cost, the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost thereby keeping such release and waiver in full force and effect).

ARTICLE XII INDEMNITY

Tenant shall indemnify, protect, defend, and hold Landlord, its Affiliates and Mortgagee harmless from and against any and all Claims arising out of or in connection with loss of life, personal injury, property damage or otherwise arising from: (a) the use, occupation, improvement or maintenance of the Premises or any work or activity in or about the Premises by Tenant or its assignees or subtenants or their respective agents, employees, contractors, or licensees; (b) any activity, condition or occurrence in or about the Premises; (c) the filing or potential filing of any mechanic's or materialmen's lien

against the Premises in connection with any work done or caused to be done by Tenant; (d) any breach or failure to perform any obligation imposed on Tenant under this Lease; or (e) any act or omission of Tenant or its assignees or subtenants or their respective agents, contractors, employees, or licensees. Upon notice from Landlord, Tenant shall, at Tenant's sole expense and by counsel reasonably satisfactory to Landlord, defend any action or proceeding brought against Landlord by reason of any such Claim. If Landlord, its Affiliates or Mortgagee, are made a party to any litigation commenced against Tenant with respect to any Claims Tenant is obligated to indemnify the Landlord against pursuant to this Lease, then Tenant shall indemnify, protect, defend, and hold each of such persons harmless from and against any and all Claims arising out of such litigation or incurred or paid by any such person in connection with such litigation.

Landlord shall indemnify, protect, defend, and hold Tenant harmless from and against any and all Claims arising directly from or out of any breach by Landlord of any provision of this Lease, or otherwise occasioned by and neglect or willful misconduct of Landlord or its Affiliates. The obligations of this **Article XII** shall survive the Expiration Date.

ARTICLE XIII **ASSIGNMENT OR SUBLEASE**

Section 13.01 Consent Required. Tenant shall not enter into or consent to any assignment or sublease, without Landlord's prior written consent in each instance. Under no circumstances shall Tenant make, consent to, or suffer any Encumbrance. Consent by Landlord to any assignment or sublease shall not waive the necessity for consent to any subsequent assignment or sublease. If this Lease is assigned or the Premises or any part sublet or occupied by anybody other than Tenant, Landlord may collect rent from the Transferee and apply the same to the rent herein reserved, but no such assignment, subletting, occupancy or collection of rent shall be deemed a waiver of or a release of Tenant from the performance by Tenant of any covenants on the part of Tenant herein contained.

ARTICLE XIV **DEFAULTS BY TENANT; LANDLORD REMEDIES**

Section 14.01 Events of Default. The occurrence of any of the following shall constitute a default by Tenant and a breach of this Lease:

- (a) If Tenant defaults in paying any amount of Minimum Annual Rent or Additional Rent when due in accordance with the provisions of this Lease;
- (b) If Tenant defaults in performing any covenant, condition, term or provision of this Lease to be performed by Tenant, other than those specified in **Section**

14.01(a) above, and fails to cure such default within the grace or time period for cure specified in this Lease or, if no grace or time period for cure is specified, within fifteen (15) days after written notice thereof;

(c) A determination by Landlord that Tenant has submitted a false report required to be furnished hereunder;

(d) Other than as described and disclosed in Exhibit B, the bankruptcy or insolvency of Tenant or the filing by or against Tenant of a petition in bankruptcy or for reorganization or arrangement or for the appointment of a receiver or trustee of all or a portion of Tenant's property, or Tenant's assignment for the benefit of creditors;

(e) If Tenant abandons or vacates or does not conduct business in the Premises;

(f) This Lease or Tenant's interest herein or in the Premises or any improvements thereof or any property of Tenant are executed upon or attached;

(g) The Premises comes into the hands of any person other than expressly permitted under this Lease;

(h) Any claim or lien is asserted or recorded against the interest of Landlord in the Premises, or any portion thereof, on the account of, or extending from any improvement or work done by or at the instance, or for the benefit of Tenant, or any person claiming by, through or under Tenant or from any improvement or work the cost of which is the responsibility of Tenant; or

Section 14.02 Landlord's Rights and Remedies. Should Tenant default under this Lease and fail to cure within fifteen (15) days after written notice from Landlord, Landlord may exercise any of the following rights:

(a) Terminate this Lease by written notice to Tenant, whereupon this Lease shall end. Landlord shall have the right, after such termination, to reenter the Premises, take possession thereof and remove all persons and property therefrom, without notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby.

(b) Any other rights and/or remedies available under applicable state law or in equity.

All rights and remedies reserved by, or granted to, Landlord under this Lease, at law or in equity, are distinct, separate and cumulative, and the exercise of any one of them shall not be deemed to preclude, waive or prejudice Landlord's right to exercise any or all others.

In the event of the taking of possession of the Premises as aforesaid in **Section 14.02(a)**, Landlord shall have the right, but not the obligation, upon prior written notice

to Tenant, to remove therefrom all or any part of the merchandise, Improvements or Personal Property located therein and to place the same in storage at a public warehouse at the expense and risk of Tenant.

Section 14.03 Landlord's Damages. If Landlord terminates this Lease for any breach, or otherwise takes any action on account of Tenant's breach or default hereunder, in addition to any other remedies it may have, it may recover from all damages incurred by reason of such breach or default, including all of the following, all of which shall be immediately due and payable:

(a) Any unpaid Rent that was due and payable for periods prior to and at the time of such termination;

(b) Any other amount necessary to compensate Landlord for Tenant's failure to perform its obligations under this Lease, including, without limitation, any costs or expense incurred by Landlord in: (i) retaking possession of the Premises, including reasonable attorneys' fees therefor; (ii) maintaining or preserving the Premises after such default; (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting; (iv) leasing commissions; and (v) any other costs necessary or appropriate to relet the Premises;

In the event that Landlord, after Tenant vacates the Premises, leases the Premises to another party, such action shall be deemed an action in attempt to mitigate damages of Tenant and shall not be deemed an act in termination of this Lease, or to in any way to terminate, or the release of obligations of Tenant under this Lease, either before or after such releasing.

All Additional Rent shall, for the purposes of calculating any amount due under the provisions of **Article VI**, be computed on the basis of the average monthly amount thereof accruing during the immediately preceding twelve (12) month period, except that, if it becomes necessary to compute such Additional Rent before such a twelve (12) month period has occurred, then such Additional Rent shall be computed on the basis of the average monthly amount thereof accruing during such shorter period.

ARTICLE XV DEFAULT BY LANDLORD

Section 15.01 Default By Landlord. If Landlord fails to perform or observe any of the terms, covenants or conditions contained in this Lease on its part to be performed or observed within fifteen (15) days after written notice specifically describing such default from Tenant or, when more than fifteen (15) days shall be required because of the nature of the default, if Landlord shall fail to proceed diligently to cure such default after

written notice thereof from Tenant, said failure shall constitute a default by Landlord under this Lease.

Section 15.02 Notice to Mortgagees. If the Premises or any part thereof, or any interest of Landlord in this Lease or the Rent due hereunder, are at any time subject to any Mortgage and if Tenant is given written notice of the name and address of the Mortgagee, then Tenant shall give written notice of any Landlord's default to such Mortgagee for which Tenant has a termination right under this Lease, specifying the default in reasonable detail. If Landlord fails to cure such default within the applicable cure period, Tenant shall give written notice of such failure to such Mortgagee affording such Mortgagee the same opportunity to cure as provided Landlord in **Section 15.01**. If such Mortgagee does perform on behalf of Landlord, such default shall be deemed cured.

ARTICLE XVI RECONSTRUCTION

Section 16.01 Insured Casualty. In the event of an Insured Casualty to the Premises and provided Landlord has not terminated this Lease as provided in this **Section 16.01**, Landlord shall as soon as reasonably practicable after such occurrence commence Reconstruction of the Premises. Except for modifications required by Legal Requirements, Reconstruction shall be made to substantially the condition existing immediately prior to such casualty (excluding merchandise, any Improvements made by Tenant and Tenant's Personal Property) and prosecute the same diligently to completion. In such event, Tenant shall promptly commence any work desired by Tenant (including repairing or replacing its merchandise or any Improvements made by Tenant and its Personal Property) upon substantial completion of the Reconstruction and shall diligently prosecute the same to completion.

Notwithstanding the foregoing, Landlord shall have no obligation whatsoever to repair, reconstruct, or restore the Premises and/or the Building if any of the following occurs:

- (a) Fifty percent (50%) or more of the Building is damaged or destroyed;
- (b) The damage or destruction is not fully covered by insurance maintained by Landlord or for the Landlord's benefit;
- (c) The damage or destruction occurs during the last six (6) months of the Lease Term or any renewal or extension thereof; or

Upon the occurrence of any such event, Landlord may terminate this Lease effective as of the date of such damage or destruction by giving notice to Tenant within fifteen (15) days after the damage or destruction. If Landlord terminates this Lease

pursuant to the foregoing, neither party shall have any obligation to the other as a result of such termination.

For the avoidance of doubt, Landlord shall not be obligated to expend an amount in excess of the insurance proceeds received by Landlord therefor for any repair, reconstruction or restoration.

Section 16.02 Uninsured Casualty. Upon the occurrence of an Uninsured Casualty to the Premises, Landlord shall elect, by written notice to Tenant given within fifteen (15) days following the date of such damage, either to: (a) commence Reconstruction of the Premises and prosecute the same diligently to substantial completion, in which event this Lease shall continue in full force and effect; or (b) not perform Reconstruction of the Premises, in which event this Lease shall cease and terminate thirty (30) days after the date of Landlord's notice of its election to terminate, provided that Tenant may vitiate such termination by agreeing to perform such restoration at its sole cost and expense.

Section 16.03 Construction Provisions. Landlord shall reconstruct the Premises to substantially the condition existing immediately prior to such casualty; Tenant, at its sole cost and expense, shall replace its merchandise and any Improvements made by Tenant and Personal Property.

Section 16.04 Release of Liability. In the event of termination under any of the provisions of this **Article XVI**, both Landlord and Tenant shall be released from any liability or obligation under this Lease, except for any provisions hereunder that expressly survive the expiration or earlier termination of this Lease. In the event of the termination of this Lease under this **Article XVI**, the Rent and other charges hereunder shall be adjusted as of the date of such termination. In no event shall Tenant be entitled to share in Landlord's insurance proceeds or to take any action which would result in a reduction of Landlord's insurance proceeds.

Section 16.05 Abatement of Rent. In the event of casualty, Rent payable by Tenant shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired, commencing from the date of destruction and continuing during the period of such Reconstruction. Tenant shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of Tenant's prudent business management. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises, the Building, Tenant's Personal Property, or any inconvenience or annoyance occasioned by such damage, Reconstruction or replacement. Notwithstanding anything to the contrary contained herein, Tenant shall not be entitled to any abatement of the

Minimum Annual Rent in the event any casualty is caused directly or indirectly by the negligence of Tenant or its Affiliates.

ARTICLE XVII
EMINENT DOMAIN

Section 17.01 Total Taking. If the entire Premises shall be appropriated or taken under the power of eminent domain by any public or quasi public authority or under threat of and in lieu of condemnation (hereinafter, "taken" or "taking"), this Lease shall terminate as of the date of such taking, and Rent and other charges shall be adjusted as of the date of such termination and Landlord and Tenant shall have no further liability or obligation, except for any provisions hereunder that expressly survive the expiration or earlier termination of this Lease.

Section 17.02 Partial Taking; Right to Terminate. If forty percent (40%) or more of the Premises is taken, or if by reason of any taking, regardless of the amount so taken, the remainder of the Premises is not one undivided space or is rendered unusable for the Permitted Use, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate the portion of the Premises taken, upon giving notice of such election to the other party within thirty (30) days after receipt by Tenant from Landlord of written notice that said Premises have been or will be so taken. In the event of such termination, Rent and other charges shall be adjusted as of the date of termination and both Landlord and Tenant shall be released from any liability or obligation under this Lease, except for any provisions hereunder that expressly survive the expiration or earlier termination of this Lease. Landlord and Tenant shall, immediately after learning of any taking, give notice thereof to each other.

Section 17.03 Restoration. In the event any portion of the Premises is taken and this Lease is not terminated pursuant to **Section 17.01** or **Section 17.02** above, then this Lease shall continue in full force and effect and Tenant shall continue to occupy that portion of the Premises not taken and the parties shall proceed as follows: (a) at Landlord's cost and expense and as soon as reasonably possible after the taking, Landlord shall restore the Premises remaining to a complete architectural unit of like quality and character as existed prior to such appropriation or taking as shall be reasonably practicable; and (b) Minimum Annual Rent and any Additional Rent shall be abated proportionally to the amount of the Premises taken.

Section 17.04 Award. Landlord shall be entitled to the entire condemnation award for any taking of the Premises, and Tenant assigns to Landlord all rights to damages on account of any taking or condemnation for which damages are payable. In furtherance of the foregoing, Tenant shall execute such instruments of assignment as

Landlord requires, join with Landlord in any action for recovery of damages, if requested by Landlord, and turn over to Landlord any damages recovered in a proceeding. If Tenant fails to execute instruments required by Landlord, or undertake such other steps as requested, Landlord shall be deemed the duly authorized irrevocable agent and attorney-in-fact of Tenant to execute such instruments and undertake such steps on behalf of Tenant.

ARTICLE XVIII
SUBORDINATION; ATTORNMENT; ESTOPPEL

Section 18.01 Subordination to Mortgage. This Lease and all of Tenant's rights hereunder are and shall be subject and fully subordinate to any Mortgage which may now or hereafter affect or encumber the real property of which the Premises form any part. The foregoing shall be self-operative without the execution of additional documentation. However, within fifteen (15) days after the receipt of a written request from Landlord or any Mortgagee, Tenant shall confirm such subordination by executing a recordable subordination agreement in form and content reasonably satisfactory to Landlord and Mortgagee. Tenant acknowledges that any Mortgagee has the right to subordinate at any time its Mortgage to this Lease and the leasehold estate, without Tenant's consent. Tenant shall, within fifteen (15) days after written request therefor, execute and deliver such documents as are reasonably requested by Mortgagee to confirm the subordination of the Mortgage to this Lease.

Section 18.02 Attornment. If Landlord sells, transfers, or conveys its interest in the Premises or this Lease, or if the same is foreclosed judicially or nonjudicially, or otherwise acquired, by a Mortgagee or any other person, upon the request and at the sole and absolute election of Landlord's successor, Tenant shall attorn to said successor, provided said successor accepts the Premises subject to this Lease. Tenant shall, within fifteen (15) days after receipt of written request therefor from Landlord or any Mortgagee, execute an attornment agreement confirming the same, in form and substance reasonably acceptable to Landlord or Landlord's successor. This **Section 18.02** shall in no way be deemed a waiver by Tenant of any Claims for any predecessor's failure or bad faith refusal to provide any Security Deposit to its successor or to notify its successor of any amendment prior to the date that such successor's lien or interest first arose.

Section 18.03 Estoppel Certificate. Within fifteen (15) days after receipt of written request from Landlord, Tenant shall execute and deliver to any person designated by Landlord an estoppel certificate in recordable form: (a) ratifying this Lease; (b) stating the commencement and termination dates; and (c) certifying: (i) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writings as shall be stated); (ii) that all conditions under this Lease to be performed by Landlord have been satisfied (stating exceptions, if any); (iii) that no

defenses or offsets against the enforcement of this Lease by Landlord exist (or stating those claimed); (iv) as to advance rent, if any, paid by Tenant; (v) the date to which rent has been paid; (vi) the amount of security deposited with Landlord; and (vii) such other information as Landlord reasonably requires. Persons receiving such statements shall be entitled to rely on them.

ARTICLE XIX
QUIET ENJOYMENT

Landlord agrees that so long as Tenant is not in default of any of its obligations hereunder, Tenant may quietly have, hold, and enjoy the Premises from and after Landlord's delivery of the Premises to Tenant and until the end of the Lease Term, subject, however, to those matters to which this Lease is or shall become subordinate as expressly provided herein.

ARTICLE XX
CONSENTS

Wherever in this Lease Landlord's consent, permission or approval (collectively referred to in this **Article XX** as "**consent**") is required, if Landlord shall delay or refuse such consent, Tenant shall neither be entitled to make, nor shall Tenant make, any Claim, and Tenant hereby waives any Claim, for money damages (nor shall Tenant claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Tenant that Landlord unreasonably withheld or unreasonably delayed its consent. Tenant's sole remedy shall be an action or proceeding to enforce any such provision, for specific performance, injunction or declaratory judgment and such remedy shall be available only in those instances where Landlord has expressly agreed in writing not unreasonably to withhold its consent or where as a matter of law Landlord may not unreasonably withhold its consent.

ARTICLE XXI
NOTICES

Wherever in this Lease it shall be required that any notice, request, report, communication or demand be given, served or transmitted by either party to this Lease to or on the other, such notice or demand shall be in writing and shall be personally delivered or forwarded by certified mail, return receipt requested, or by nationally recognized courier service providing written confirmation of delivery, to the addresses of the parties specified in **Section 1.09**. Notice shall be deemed to have been given or served on the delivery date indicated by the United States Postal Service or courier service on the return receipt or on the date such delivery is refused or marked "undeliverable," unless a party is served personally, in which event the date of personal delivery shall be

deemed the effective date of notice. Either party may at any time and from time to time change its address for notices by notifying the other party of a substitute address as specified herein; provided, however, that all addresses provided must be the actual street address of a residence or business establishment located in the United States of America. The foregoing method of service shall be exclusive, and the parties waive, to the fullest extent permitted under law, the right to any other method of service required by any statute or law now or hereafter in force. Whenever multiple notices are sent or multiple methods of transmitting any notice are utilized, any time period that commences upon the giving or deemed giving of such notice shall commence upon the earliest date such delivery is effectuated, and such time shall not be extended by operation of law or otherwise because of any later delivery of the same notice.

ARTICLE XXII ATTORNEY FEES

If either Landlord or Tenant institutes any action or proceeding against the other party, or such party's Affiliates, relating to the provisions of this Lease or any default hereunder beyond any applicable notice and cure periods, the non-prevailing party in such action or proceeding shall reimburse the prevailing party in a final, non-appealable judgment for the reasonable expenses of attorneys' fees and all costs and disbursements incurred therein by the prevailing party, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding. The prevailing party shall recover all such fees, costs or disbursements as costs taxable by the court in the action or proceeding itself without the necessity for a cross action by the prevailing party. In addition to the foregoing award of attorneys' fees, costs and disbursements to the prevailing party, the prevailing party shall be entitled to its reasonable attorneys' fees, costs and disbursements in any post judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the Expiration Date.

ARTICLE XXIII SECURITY DEPOSIT

Concurrently with the execution and delivery of this Lease, Tenant shall deposit with Landlord the amount (if any) shown in **Section 1.07** as the Security Deposit, to be held as collateral security for the payment of Rent and for the faithful performance by Tenant of all covenants and conditions herein contained. The Security Deposit shall be payable in four (4) equal monthly installments of \$2,000.00 due in the first four months of the Lease Term. If at any time during the Lease Term, any of the Rent herein reserved shall be overdue and unpaid, then Landlord may, at its option, appropriate and apply all or any portion of the Security Deposit to the payment of any such overdue Rent. In the event of the failure of Tenant to keep and perform any of the terms, covenants and

conditions of this Lease to be kept and performed by Tenant, then Landlord at its option may appropriate and apply all or any portion of the Security Deposit, to compensate Landlord for loss or damage sustained or suffered by Landlord due to such breach on the part of Tenant. Should the entire Security Deposit, or any portion thereof, be appropriated and applied by Landlord, then Tenant shall, upon the written demand of Landlord, forthwith remit to Landlord a sufficient amount to restore said Security Deposit to the original sum deposited, and Tenant's failure to do so within thirty (30) days after receipt of such demand shall constitute a default under this Lease.

If Tenant fully observes and performs every provision of this Lease to be observed and performed by Tenant, the Security Deposit, or any balance then remaining (less any amount which has been applied as permitted under this **Article XXIII**), shall be returned to Tenant at Tenant's last known address within thirty (30) of days after the later of: (a) the Expiration Date of the Lease; and (b) the date Tenant has fully satisfied Tenant's surrender obligations hereunder.

Any Mortgagee or successor to Landlord shall not be responsible for the return of the Security Deposit unless actually received by such Mortgagee or successor to Landlord.

ARTICLE XXIV GENERAL PROVISIONS

Section 24.01 Binding Effect. The parties hereto agree that all the provisions of this Lease are to be construed as covenants and agreements and, except as otherwise specified, that said provisions bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

Section 24.02 Signage. Tenant shall have the right to place a sign on or about the Premises, subject to Landlord approval which may not be unreasonably withheld, provided such sign shall be maintained in compliance with all applicable governmental laws and regulations, and Tenant shall be responsible for any damage caused by installation, use or maintenance of such sign. At the expiration or earlier termination of this Lease, Tenant shall remove any of its signs and shall repair any damages incidental to such removal.

Section 24.03 Representation By Tenant. The persons executing this Lease on behalf of Tenant hereby covenant and warrant that Tenant is a duly qualified entity authorized to do business in the State where the Premises is located, that all franchise and corporate taxes, if applicable, have been paid to date and all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due.

Tenant hereby represents and warrants that: (a) other than disclosed on Exhibit B, there are no proceedings pending or so far as Tenant knows threatened before any court or administrative agency that would materially adversely affect the financial condition of Tenant, the ability of Tenant to enter into this Lease or the validity or enforceability of this Lease; (b) there is no provision of any existing mortgage, indenture, contract or agreement binding on Tenant which would conflict with or in any way prevent the execution, delivery or performance of the terms of this Lease; (c) the financial statement of Tenant provided to Landlord in connection with this Lease is complete and correct and fairly presents the financial condition of Tenant as of the date and for the period referred to herein and has been prepared in accordance with generally accepted accounting principles consistently applied; and (d) there have been no material adverse changes in the financial condition of Tenant since the date of such financial statement and to the knowledge of Tenant, no such material adverse changes are pending or threatened. Tenant acknowledges that Landlord is executing this Lease in reliance upon the foregoing representation and warranty and that such representation and warranty is a material element of the consideration inducing Landlord to enter into and execute this Lease.

Section 24.04 Landlord's Rights. In addition to Landlord's rights of self-help set forth elsewhere in this Lease or as provided by law or equity, if Tenant at any time fails to perform any of its obligations under this Lease in a manner satisfactory to Landlord, Landlord shall have the right, but not the obligation, to perform or cause to be performed such obligations on behalf and at the expense of Tenant and to take all such action as Landlord deems appropriate to perform or cause to be performed such obligations. Landlord's costs and expenses incurred with respect to curing any default of Tenant, and any costs and expenses incurred by Landlord as a direct or indirect result of any default of Tenant (whether or not cured by Tenant) shall, upon demand, be paid for by Tenant as Additional Rent. In performing or causing the performance of any such obligations of Tenant, Landlord shall incur no liability for any loss or damage that may accrue to Tenant, the Premises or Tenant's Personal Property by reason thereof. The performance by Landlord of any such obligation shall not constitute a release or waiver of any of Tenant's obligations under this Lease. Tenant shall reimburse Landlord upon demand for any costs or expenses, including attorneys' fees, incurred by Landlord in connection with the enforcement of Tenant's obligations under this Lease or otherwise incurred by Landlord in connection with any judicial proceedings regarding the rights and obligations of Tenant under this Lease. Any and all costs or expenses incurred by Landlord pursuant to the provisions hereof shall be considered as Additional Rent hereunder.

Section 24.05 Claims By Brokers. Tenant and Landlord each warrants to the other that all negotiations with respect to this Lease (including, without limitation, preliminary consideration of the Premises, economics and Lease provisions) were handled without the aid, intervention or employment of any broker. Each of Tenant and Landlord agrees to defend, indemnify, and protect the other party and its Affiliates

against any claims (the term "claims" as used herein is defined as any claim, demand, judgment, award, fine or dispute involving a brokers' fee, commission or finders' fee) made by any person or entity for said brokers' fee, commission or finders' fee. In addition, it is expressly agreed and understood that the indemnification as provided in this **Section 24.05** shall include all costs of enforcing the indemnity against the other party. The provisions of this **Section 24.05** shall survive the Expiration Date.

Section 24.06 Entire Agreement; Amendments to Lease. There are no agreements, covenants, warranties, promises, conditions, undertakings or representations, oral or written, between the parties other than herein set forth. This Lease supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, displays, projections, estimates, agreements, and understandings, if any, made by, to, or between Landlord and Tenant and their respective agents and employees with respect to the subject matter thereof, and none shall be used to interpret, construe, supplement or contradict this Lease. This Lease, and all amendments thereto, shall be considered to be the only agreement between the parties hereto and their representatives and agents. To be effective and binding on Landlord and Tenant, any amendment to the provisions of this Lease must be in writing and executed by both parties in the same manner as this Lease itself. Any amendment to this Lease shall be prepared by Landlord.

Section 24.07 Force Majeure. The occurrence of any of the following events shall excuse such obligations of Landlord or Tenant as are thereby rendered impossible or reasonably impracticable for so long as such obligation remains impossible or reasonably impracticable to perform, provided such event is not the fault of the party delayed in performing the obligation under this Lease: strikes, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes therefor, failure of power, water, fuel, electricity or other utilities, governmental restrictions, regulations or controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform.

Section 24.08 Applicable Law; Venue. This Lease shall be governed by the laws of the Commonwealth of Virginia.

Section 24.09 Bankruptcy. Federal bankruptcy code shall govern with respect to this Lease and in no event shall any provision of this Lease be deemed to be a waiver by either party of its rights under such code.

Section 24.10 No Presumption. Landlord and Tenant understand, agree, and acknowledge that: (i) this Lease has been freely negotiated by both parties; and (ii) that, in the event of any controversy, dispute, or contest over the meaning, interpretation,

validity, or enforceability of this Lease, or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

Section 24.11 No Waiver. The waiver by Landlord or Tenant of any breach of any term, covenant or condition contained in this Lease shall not be deemed a waiver of such term, covenant or condition of any subsequent breach thereof, or of any other term, covenant or condition contained in this Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant. Landlord's subsequent acceptance of partial Rent or performance by Tenant shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease or of any right of Landlord to a forfeiture of this Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of Landlord's acceptance. No term, covenant or condition of this Lease shall be deemed to have been waived by Landlord or Tenant unless such waiver is in writing and executed by such party.

Section 24.12 Relationship of the Parties. Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, principal agent, or employer-employee relationship between Landlord and any other person or entity (including, without limitation, Tenant) or as causing Landlord to be responsible in any way for the debts or obligations of such other person or entity.

Section 24.13 Sale or Mortgage By Landlord. If Landlord, at any time, sells, conveys, transfers or otherwise divests itself or is divested of its interest (collectively referred to in this **Section 24.13** as a "**transfer**") in the Premises, other than a transfer for security purposes only, Landlord shall automatically be relieved of all obligations and liabilities accruing hereunder and which relate solely to the period from and after the effective date of said transfer, provided that any Security Deposit or other funds of Tenant then being held by Landlord are delivered to Landlord's successor. The obligations to be performed by Landlord hereunder shall be binding on Landlord's successors and assigns only during their respective periods of ownership.

Section 24.14 Financial Statements. From time to time, upon Landlord's written request but no more than once in a twelve (12) month period, Tenant shall promptly furnish to Landlord financial statements prepared by Tenant's independent certified public accountant setting forth Tenant's then current financial condition.

Section 24.15 Severability. If any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect

any other provision of this Lease, and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

Section 24.16 Waiver of Trial By Jury. To the extent permitted by law, Landlord and Tenant each hereby waive any and all rights to a trial by jury in any action, proceeding or counterclaim (including any claim for injury or damage and any emergency and other statutory remedy in respect thereof) brought by either against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, and/or Tenant's use or occupancy of the Premises.

Section 24.17 Warranty of Authority. The person or persons executing this Lease on behalf of each of Tenant and Landlord each represents, covenants and warrants to the other party as of the Execution Date that the signatories signing on behalf of the other party have the requisite authority to bind the other party.

Section 24.18 No Right to Record. In no event shall either party have the right to record this Lease unless otherwise expressly agreed to in writing by both parties.

Section 24.19 Counterparts. This Lease may be executed in any number of counterparts, each of which shall constitute an original, but all of which, when taken together shall constitute one and the same instrument. In addition, properly executed, authorized signatures may be transmitted via facsimile and upon receipt shall constitute an original signature.

ARTICLE XXV RENEWAL OPTION

Provided that Landlord has not given Tenant notice of default more than two (2) times preceding the Expiration Date, Tenant shall have the right and option to extend the Lease Term for two (2) additional periods of five (5) years, exercisable by giving Landlord prior written notice, at least six (6) months in advance of the then-applicable Expiration Date, of Tenant's election to extend the Term. Such extensions shall be under the same terms and conditions as provided in this Lease except as follows:

- (a) the additional periods (the "**Extension Term**") shall begin on the expiration dates of the Initial Term or the then applicable Extension Term;
- (b) there shall be no further options to extend; and

(c) the Minimum Rent payable by Tenant during the Extension Terms shall be as follows:

<u>First Extension Term</u>		
<u>Lease Year</u>	<u>Annual</u>	<u>Monthly</u>
January 1, 2022-December 31, 2022	\$105,991.80	\$8,832.65
January 1, 2023-December 31, 2023	\$108,111.60	\$9,009.30
January 1, 2024-December 31, 2024	\$110,273.88	\$9,189.49
January 1, 2025-December 31, 2025	\$112,479.36	\$9,373.28
January 1, 2026-December 31, 2026	\$114,728.88	\$9,560.74

<u>Second Extension Term</u>		
<u>Lease Year</u>	<u>Annual</u>	<u>Monthly</u>
January 1, 2027-December 31, 2027	\$117,023.52	\$9,751.96
January 1, 2028-December 31, 2028	\$119,363.88	\$9,946.99
January 1, 2029-December 31, 2029	\$121,751.16	\$10,145.93
January 1, 2030-December 31, 2030	\$124,186.20	\$10,348.85
January 1, 2031-December 31, 2031	\$126,669.96	\$10,555.83

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the last day and year written below.

LANDLORD:

_____,
LLC, a Virginia limited liability
company

By _____
Name:
Title:

TENANT:

Dominion Paving & Sealing, Inc., a
Virginia corporation

By _____
Name: Stephen H. Parham
Title:

EXHIBIT "A"

[DESCRIPTION OF THE PREMISES]

EXHIBIT "B"

[PENDING PROCEEDINGS]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

_____)	
In re:)	Chapter 11
)	
DOMINION PAVING & SEALING, INC.,)	Case No. 15-32966
)	
Debtor.)	
_____)	

ORDER AUTHORIZING DEBTOR TO SELL REAL PROPERTY FREE AND CLEAR OF LIENS AND INTERESTS

This matter came before the Court upon the Debtor’s Motion To Sell Real Property Free and Clear of Liens and Interests (the “**Sale Motion**”), whereby the Debtor seeks this Court’s authority, among other things, to certain real property (the “**Property**”) to Milmar Holdings, LLC and Hazzard Investments, LLC (collectively the “**Buyer**”) pursuant to sections 363(b) and (f) of title 11 of the United States Code (the “**Bankruptcy Code**”). Based upon the allegations in the Sale Motion, and notice having properly been given, the Court finds as follows:

- A. Sound and appropriate business reasons exist for the Debtor to effectuate the transaction described in the Sale Motion.
- B. A sale of the Property to the Buyer under the terms described in the Sale Motion is permitted under sections 363(b) and (f) of the Bankruptcy Code.
- C. The Buyer is a good faith purchaser for the purposes of section 363(m) of the Bankruptcy Code.

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D. The Debtor, its creditors, and the estate will benefit from the sale of the Property.

E. The Purchase Price is the best price reasonably attainable for the Property at this time.

F. Notice of the Sale Motion has been provided to all holders of any liens or interests and all other parties in interest, including the United States Trustee and all parties requesting notice, which notice constitutes proper and sufficient notice of the Sale Motion for the purposes of Rules 2002(a)(2) and 6004(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

Based upon the foregoing, it is hereby ORDERED as follows:

1. All capitalized terms used in this Order but not defined herein shall have the meanings ascribed to them in the Sale Motion.

2. The Sale Motion is granted and the terms of the Purchase Agreement are approved as provided herein.

3. The Debtor and the Buyer are hereby authorized, pursuant to section 363(b) of the Bankruptcy Code, to take such actions as may be necessary and appropriate to consummate the sale without the necessity of a further order of this Court.

4. The Debtor is authorized, pursuant to sections 105 and 363(b) and (f) of the Bankruptcy Code, to sell the Property to the Buyer upon delivery of the consideration specified in the Purchase Agreement and completion of all other deliveries required. All parties holding liens on the Property have received proper notice of the Sale Motion and have either affirmatively or impliedly consented to the sale.

5. All objections and responses concerning the Sale Motion are resolved in accordance with the terms of this Order. To the extent any such objection or response was not otherwise withdrawn, waived, settled, or otherwise provided herein, it, and all reservations and rights contained therein, is overruled and denied.

6. The sale of the Property shall vest the Buyer with good title to the Property, and shall be free and clear of any and all liens, claims, encumbrances, liabilities, obligations, licenses, covenants, pledges, security interests, charges, judgments, mortgages, conditional sales or title retention agreements, pledges, hypothecations and interests of any kind (including, without limitation, any and all “claims” as defined in section 101(5) of the Bankruptcy Code), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, disputed or undisputed, or known or unknown, whether arising prior to or subsequent to the petition date, whether imposed by agreement, understanding, law, equity or otherwise (collectively, the “Claims”), other than as provided in the Bill of Sale.

7. The consideration payable by the Buyer for the Property constitutes payment of “value,” as that term is used in section 363(m) of the Bankruptcy Code. The Buyer is a purchaser of the Property “in good faith” within the meaning of section 363(m) of the Bankruptcy Code.

8. The Purchase Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement of the Debtor and the Buyer without further action of the Court; provided, however, that any such waiver, modification, amendment, or supplement is

not material and substantially conforms to and effectuates the Bill of Sale and any related agreements.

9. The failure specifically to include any particular provisions of the Purchase Agreement or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtor and the Buyer that the Purchase Agreement and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order.

10. This Court shall retain exclusive jurisdiction to enforce the provisions of this Order and the Purchase Agreement, including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Property and all issues and disputes arising in connection with the relief authorized herein.

11. This Order shall take effect upon entry and shall not be automatically stayed pursuant to Bankruptcy Rules 6004(h) and/or 7062.

ENTERED:

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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Counsel for Debtor and Debtor-in-Possession

LOCAL RULE 9022-1 CERTIFICATION

Pursuant to LBR 9022-1, I hereby certify that a true copy of the foregoing was endorsed by all necessary parties.

Counsel

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