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10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **LOS ANGELES DIVISION**

13 In re:

14 RAMLA USA, INC.,

15 Debtor.

Case No. 2:17-bk-24318 BR

Chapter 11

DEBTOR'S MOTION FOR ENTRY OF AN ORDER:

(1) AUTHORIZING THE SALE OF THE CENTRAL KITCHEN LOCATED IN IRWINDALE, CALIFORNIA;

(2) APPROVING OVERBID PROCEDURES;

(3) FINDING THAT BUYER IS ENTITLED TO A GOOD FAITH DETERMINATION PURSUANT TO 11 U.S.C. § 363(m); AND

(4) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF THE UNEXPIRED NON-RESIDENTIAL REAL PROPERTY LEASE PURSUANT TO 11 U.S.C. § 365 AS PART OF THE SALE; MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF YUJI UENO IN SUPPORT THEREOF

Hearing:

Date: June 12, 2018

Time: 2:00 p.m.

Place: Courtroom 1668

U.S. Bankruptcy Court

255 E. Temple Street

Los Angeles, CA 90012

1 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE TWENTY LARGEST UNSECURED CREDITORS, THE OFFICE OF THE UNITED**
3 **STATES TRUSTEE, ET LEGG & ASSOCIATES, SUMMER ROLLS LLC AND ALL**
4 **OTHER INTERESTED PARTIES:**

5 Ramla USA, Inc., the debtor (the “**Debtor**”) in the above captioned in the bankruptcy case
6 identified as *In re Ramla USA, Inc.*, Bankruptcy Case Number 2:17-bk-24318-BR (the “**Bankruptcy**
7 **Case**”), hereby moves this Court (the “**Motion**”) for an order authorizing the sale of the business
8 located at 2300 Central Ave. Units A&B, Irwindale, CA 91010 which is a fully equipped functional
9 food factory with enhanced security and a private office and includes the leasehold interest for the
10 premises (“**Central Kitchen**”) and the assumption and assignment of the related leasehold interest in
11 accordance with the terms of the “*Debtor’s First Amended Chapter 11 Plan of Reorganization*”
12 [Docket No. 141] as modified by the “*Debtor’s First Non-Material Modification To the Debtor’s*
13 *First Amended Chapter 11 Plan of Reorganization*” [Docket No. 154] (collectively, “**Plan**”) which
14 was confirmed by order of this Court on March 28, 2018 (the “**Sale**”).

15 The Debtor seeks to sell the Central Kitchen to Summer Rolls LLC (“**Buyer**”). The Buyer
16 will purchase the Central Kitchen for \$188,888 (“**Purchase Price**”). The Buyer has offered to
17 purchase for cash so there are no contingencies. The terms of the sale are set forth in the Asset
18 Purchase Agreement attached hereto as **Exhibit 1** and incorporated herein by this reference
19 (“**APA**”). The Sale includes the assumption of the unexpired non-residential real property lease
20 between the Debtor and ET Legg & Associates (“**ET Legg**”) entered into on or about September 18,
21 2012 for certain premises located at 2300 Central Ave. Units A&B, Irwindale, CA 91010 (the
22 “**Central Kitchen Lease**”) and the assignment of the Central Kitchen Lease to the Buyer. ET Legg
23 has been provided a copy of this Motion. The Debtor is current on the Central Kitchen Lease. A
24 true and correct copy of the Central Kitchen Lease is attached to the annexed Declaration of Yuji
25 Ueno (“**Ueno Decl.**”) as **Exhibit 2** and incorporated herein by this reference.

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1 The Plan provides for the Sale with the sale proceeds to be placed in the GUC Distribution
2 Fund.¹ Docket No. 154, p. 20. The Debtor seeks approval of the Sale to the Buyer or a successful
3 overbidder free and clear of all liens, claims, interests and encumbrances, with such liens, claims,
4 interests, and encumbrances to attach to the Sale proceeds. The Debtor additionally seeks approval
5 of overbid procedures, and requests that the Court determine that the Buyer or any successful
6 overbidder is entitled to a good faith determination pursuant to 11 U.S.C. § 363(m).

7 This Motion is brought pursuant to sections 363 and 365 of Title 11 of the United States
8 Code (beginning at 11 U.S.C. § 101, *et seq.*, the “**Bankruptcy Code**”), Rules 2002, 6004 and 6006
9 of the Federal Rules of Bankruptcy Procedure (“**Rules**”), and Rules 6004-1 and 9013-1 of the Local
10 Bankruptcy Rules of the Central District of California (**L.B.R.**) on the grounds that the Sale of the
11 Central Kitchen is (i) within the Debtor’s sound business judgment; and (ii) in the best interest of the
12 Estate and its creditors; and (iv) is an important component to the Debtor’s successful reorganization
13 in this Bankruptcy Case as the Plan provides for the Sale.

14 The Motion is based on the attached Memorandum of Points and Authorities, the
15 concurrently-filed Declaration of Yuji Ueno, Chief Executive Officer for the Debtor and
16 representative for the Reorganized Debtor, the concurrently-filed notice of Motion, the arguments of
17 counsel, and such other admissible evidence as is properly brought before this Court at or before the
18 hearing on this Motion.

19 **PLEASE TAKE NOTICE** that, pursuant to L.B.R. 9013-1(f), any opposition to the Motion
20 must be filed and served at least fourteen (14) days prior to the hearing on the Motion. Any
21 opposition or other response to the Motion must be a “complete written statement of all reasons in
22 opposition thereto or in support, declarations and copies of all evidence on which the responding
23 party intends to rely, and any responding memorandum of points and authorities.” L.B.R. 9013-1(f).
24 Pursuant to L.B.R. 9013-1(h), a failure to timely file and serve responsive documents to the Motion
25 may be deemed to be consent to the relief requested herein.

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¹ All initial capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

1 **WHEREFORE**, the Debtor respectfully requests that the Court enter an order:

2 (1) Granting the Motion in its entirety;

3 (2) Approving the Sale to the Buyer or the successful overbidder and finding the
4 Purchase Price is fair and reasonable and that the Sale is in the best interests of the Estate and
5 Allowed Claimants under the Plan;

6 (3) Authorizing the Sale to the Buyer on an **AS-IS, WHERE-IS** basis, without any
7 representations or warranties by the Debtor or Reorganized Debtor;

8 (4) Approving the proposed overbid procedures;

9 (5) Approving the form and manner of notice provided by the Debtor;

10 (6) Authorizing the Debtor and Reorganized Debtor to execute any and all documents
11 that may be necessary or convenient to consummate the Sale;

12 (7) Authorizing the Sale free and clear of liens, interests, and encumbrances pursuant to
13 11 U.S.C. § 363(b) and (f), with such liens, claims, interests, and encumbrances to attach to the Sale
14 proceeds with the same priority and rights of enforcement as previously existed;

15 (8) Finding the Buyer or the successful overbidder is a good-faith purchaser of the
16 Central Kitchen pursuant to 11 U.S.C. § 363(m) and entitled to all benefits and protections provided
17 thereby;

18 (9) Authorizing the assumption of the Central Kitchen Lease by the Debtor and the
19 Assignment of the Central Kitchen Lease to the Buyer or the successful overbidder.

20 (10) Waiving the 14-day stay imposed by F.R.B.P. 6004(h); and

21 (11) Granting such other and further relief as this Court deems just and proper under the
22 circumstances.

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24 DATED: May 22, 2018

BRUTZKUS GUBNER

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/s/ Robyn B. Sokol
By: _____
ROBYN B. SOKOL
Counsel for Debtor

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By the Motion, the Debtor proposes to sell the Central Kitchen for a purchase price of \$188,888, payable in cash according to the terms of the APA. The Motion proposes a sale of the Central Kitchen subject to overbid and pursuant to the overbid procedures set forth herein. The Debtor requests that the Court find that the Buyer or successful overbidder is a good faith purchaser within the meaning of 11 U.S.C. § 363(m) and entitled to the protections thereof. The Sale also provides for the assumption of the Central Kitchen Lease and the assignment of the Central Kitchen Lease to the Buyer. The Plan provides for the proposed Sale.

Specifically, the Plan provides for the liquidation of the Central Kitchen as a going concern and that any sale is subject to Bankruptcy Court approval and the sale order will provide for the assumption and assignment of the Central Kitchen Lease. Docket No. 134, p. 20.

The Sale proposed herein will provide the highest and best price for the Central Kitchen and as a result the maximum benefit to creditors of the Debtor. The Plan provides that all proceeds from the sale of the Central Kitchen shall be placed in the GUC Distribution Fund to be distributed to Allowed Claimants in Classes 3 and 4 in accordance with the Plan. As discussed more fully below, the Purchase Price provides the best return to Creditors. Thus, the Debtor submits that this proposed Sale is in the best interest of the Estate because the consideration for the Sale is reasonable, and the Estate will benefit as a result of the Sale.

II. FACTUAL BACKGROUND

On November 20, 2017, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Through the Effective Date, April 13, 2018, the Debtor operated its business and managed its affairs as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or committee has been appointed in the Debtor's Chapter 11 case as of the filing of this Sale Motion. On the Effective Date, in accordance with the Plan, all assets of the Debtor except the Liquidated Assets, which include the Central Kitchen, vested in the Reorganized Debtor. The Plan provides that the Liquidated Assets (which include the Central Kitchen) will be sold for the benefit of Allowed Claimants in Classes 3 and 4.

Prior to the Effective Date, the Debtor owned and operated traditional Japanese/Izakaya-style restaurants. By Bankruptcy Court *Order Confirming Debtor's First Amended Plan of Reorganization* entered on March 29, 2018 [Docket No. 160] the Plan was confirmed. The Plan provides for the sale of the Central Kitchen as proposed herein. On or about March 8, 2018 this Court authorized the employment of Restaurant Realty Company ("**Restaurant Realty**") as its business broker to market and sell the Debtor's operating restaurant in Palm Springs, Gyoro Gyoro Izakaya Japonaise, located at 105 South Palm Canyon Drive ("**Palm Springs Restaurant**") and the Debtor's central kitchen located at 2300 Central Avenue Units A&B, in Irwindale, California – the Central Kitchen. Docket No. 146. Thereafter, Restaurant Realty commenced aggressively marketing both the Central Kitchen and the Palm Springs Restaurant.

On or about May 14, 2018, Restaurant Realty presented the Debtor with an offer to purchase the Central Kitchen for \$188,888 cash. The Debtor accepted the offer. Ueno Decl. and **Exhibit 1**.

In accordance with the Plan, the Debtor and the Reorganized Debtor now seek Court approval of the Sale.

III. TERMS OF PROPOSED SALE

The Debtor has received an offer from the Buyer to purchase the Central Kitchen for \$188,888. The Debtor and the Buyer have negotiated a sale of the Central Kitchen as set forth in the APA, attached hereto as **Exhibit 1**.

A. Terms of Sale

The salient terms of the proposed sale are as follows:

1. Sale Price: The Debtor proposes to sell the Central Kitchen, subject to Court approval, for \$188,888. The Purchase Price shall be deposited in full into escrow by the Buyer within 3 business days before the closing date of the sale. A deposit of \$18,888 will be placed into escrow upon the signing of the escrow instructions. It is anticipated that the closing date will be June 30, 2018. *See* **Exhibit 1**.

2. Sale Subject to Overbid: The proposed Sale to the Buyer is subject to overbid, according to the terms proposed herein.

3. No Representations or Warranties: The Debtor is selling the Central Kitchen to the Buyer on an **AS-IS, WHERE-IS** basis, without any representations or warranties by the Debtor or Reorganized.

4. Bankruptcy Court Jurisdiction: The United States Bankruptcy Court for the Central District of California shall have exclusive jurisdiction to interpret and enforce over any case or controversy arising from the Sale.

B. Proposed Overbid Procedures

While the Debtor is prepared to consummate the Sale to the Buyer pursuant to the terms of the Purchase Agreement, it is obliged to seek the maximum price for the Central Kitchen. Accordingly, the Debtor requests that the Court authorize it to implement an overbid procedure regarding the Sale on the following terms (the “**Bid Procedures**”):

1. Present at Hearing: The Buyer and each Qualified Bidder (as defined below), must be either physically present at the hearing on the Motion or represented by an individual or individuals who is/are physically present at the hearing and have the authority to participate in the overbid process;

2. Notice of Overbid: Any party wishing to participate in the overbid process must notify the Debtor in writing directed to Robyn Sokol by email addressed to rsokol@bg.law of his/her/its intention to do so no later than close of business two (2) calendar days before the date of the hearing on the Motion;

3. Earnest Money Deposit: To be a qualified overbidder (“**Qualified Bidder**”), each party participating in the bidding must remit to the Debtor’s counsel, at or prior to the hearing on the Motion, payment in the form of a cashier’s check (no other form of payment shall be accepted) made payable to “Champion Escrow” (payment made payable to any other party may, in the sole discretion of the Debtor, be deemed inadequate and rejected) in a deposit amount of **\$18,888** (“**Overbid Deposit**”) and proof of available liquid funds in the amount of **\$180,000**.

4. Initial Overbid: The initial overbid for the Liquor License shall be **\$10,000.00**, with subsequent overbids being made in minimum increments of **\$5,000.00**;

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5. Successful Overbidder Subject to Terms of Escrow Instructions. In the event that the Buyer is not the successful bidder for the Central Kitchen, the successful bidder (“**Successful Bidder**”) shall then become the buyer under the same terms and conditions as set forth in the Escrow Instructions (with the exception of the price to be paid for the Central Kitchen). Under these circumstances, the Escrow Instructions with the Buyer will no longer be effective and the Buyer will be entitled to full refund of the \$18,888.

IV. DISCUSSION

A. The Court Should Authorize the Sale

The Debtor submits that the Sale is in the best interest of the Estate and should be approved. Section 363 of the Bankruptcy Code authorizes the Debtor to sell estate property, following notice and a hearing, on terms that are fair and reasonable and the result of an arms-length transaction. Specifically, Section 363(b)(1) states in pertinent part that: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1); *see also* 11 U.S.C. § 1107(a) (giving a debtor in possession the same powers as a trustee). Additionally, the Plan provides for the Sale.

In determining whether the sale of assets outside of the ordinary course of business should be approved, bankruptcy courts generally consider: (1) whether a sufficient business reason exists for the sale; and (2) whether the proposed sale is in the best interest of the estate, which in turn consists of the following factors: (a) that terms of the sale are fair and reasonable; (b) that the proposed sale has been adequately marketed; (c) that the proposed sale terms have been properly negotiated and proposed in good faith; and (d) that the purchaser is involved in an arms-length transaction with the seller. *See In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991) (“In approving any sale outside the ordinary course of business, the court must not only articulate a sufficient business reason for the sale, it must further find it is in the best interest of the estate, *i.e.*, it is fair and reasonable, that it has been given adequate marketing, that it has been negotiated and proposed in good faith, and that it is an ‘arms-length’ transaction.”); *Matter of Phoenix Steel Corp.*, 82 B.R. 334, 335-56 (Bankr. D. Del. 1987) (In determining whether a proposed sale of equipment is proper under § 363, courts should consider whether the proposed sale is fair and equitable, whether

1 there was a good business reason for completing the sale, and whether the transaction is proposed in
2 good faith.); *In re Alves*, 52 B.R. 353, 355 (Bankr. D.R.I. 1985) (whether to approve a sale under
3 § 363 depends upon the integrity of sale and the best interest of bankruptcy estate).

4 In the instant case, the Debtor has satisfied all of the applicable elements discussed above
5 concerning the proposed Sale, and the Debtor has sound reasons for the Sale, specifically, to
6 maximize return to the Estate by liquidation of the Central Kitchen, which is not otherwise being
7 utilized by the Debtor or the Estate for business operations. The Debtor submits that the Purchase
8 Price for the Central Kitchen offered by the Buyer is fair and reasonable and that the Central Kitchen
9 was adequately marketed. Based upon the Debtor's review of comparable sales, the Debtor believes
10 that the Purchase Price is a reasonable offer given the current market conditions. In addition, the
11 proposed overbid procedures and auction process are specifically designed to ensure that the highest
12 price possible is obtained for this asset. Given that there are no secured liens asserted against the
13 Central Kitchen, the Debtor submits that the proposed Sale will provide the Estate with a significant
14 benefit. In accordance with the Plan, all proceeds from the Sale will be placed in the GUC
15 Distribution Fund to be disbursed to Holders of Allowed General Unsecured Claims and Allowed
16 Employee Claims. Furthermore, the Plan provides for the Sale as described herein.

17 **B. The Court Should Authorize the Proposed Sale Free and Clear of All Liens,**
18 **Interests, and Encumbrances Pursuant to 11 U.S.C. § 363(f)**

19 Pursuant to 11 U.S.C. § 363(f), the Debtor may sell the Central Kitchen including any and all
20 equipment, furniture and fixtures associated with the Central Kitchen free and clear of liens,
21 interests, claims, and encumbrances, with such liens, interests, claims, and encumbrances to attach to
22 the Sale proceeds, with the same priority and rights of enforcement as previously existed.

23 As discussed above, the Debtor is not aware of any liens, interests, claims or encumbrances
24 asserted against the Central Kitchen or any of the assets located at the Central Kitchen. Thus, the
25 Debtor submits the Court may authorize the Sale free and clear of all liens, interests, claims, and
26 encumbrances pursuant to 11 U.S.C. § 363(f).

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1 **c. The Court Should Find that the Buyer is a Good Faith Purchaser**

2 Additionally, pursuant to 11 U.S.C. § 363(m), the Court should make a finding that the Buyer
3 is a good faith purchaser. A purchaser of property is protected from the effects of reversal on appeal
4 of the authorization to sell or lease as long as the Court finds that the purchaser acted in good faith
5 and the appellant fails to obtain a stay of the sale. *See* 11 U.S.C. § 363(m). Although the
6 Bankruptcy Code does not define “good faith,” courts have provided guidance as to the appropriate
7 factors to consider. *See In re Pine Coast Enterprise, Ltd.*, 147 B.R. 30, 33 (Bankr. N.D. Ill. 1992)
8 (“The requirement that a purchaser act in good faith speaks to the integrity of its conduct in the
9 course of the sale proceeding.”); *Kham and Nate’s Shoes No. 2 v. First Bank*, 908 F.2d 1351, 1355
10 (7th Cir. 1990) (The purpose of § 363(m) is to disable courts from backtracking on promises with
11 respect to bankruptcy sales in the absence of bad faith). In *T.C. Investors v. Joseph (In re M Capital*
12 *Corp.)*, 290 B.R. 743 (B.A.P. 9th Cir. 2003), the Bankruptcy Appellate Panel held that a bankruptcy
13 court may not make a finding of good faith in the absence of evidence, but may make such a finding
14 if appropriate evidence is presented. *T.C. Investors*, 290 B.R. at 746–47.

15 In the instant case, the Debtor requests that the Court make a finding that the Buyer is a good
16 faith purchaser within the meaning of Section 363(m). The Debtor has no relation to the Buyer or
17 the Buyer’s broker, and did not know the Buyer prior to its involvement in this Bankruptcy Case.
18 The Debtor has reviewed its internal records and the claims register in this Bankruptcy Case. Based
19 on this review, the Debtor has determined that neither the Buyer nor the Buyer’s broker are creditors
20 of this Estate. The Debtor submits that the Sale was negotiated at arms-length, and the proposed
21 Purchase Price is fair consideration for the Central Kitchen. The property was marketed through
22 Restaurant Realty and the Buyer was located through such marketing efforts. As such, a finding of
23 good faith within the meaning of Section 363(m) is appropriate.

24 **d. The Court Should Authorize the Assumption and Assignment of the Central**
25 **Kitchen Lease**

26 Except in certain situations not relevant here, section 365(a) of the Bankruptcy Code
27 authorizes a debtor in possession, “subject to the Court’s approval... [to] assume or reject any
28 executory contract or unexpired lease of the debtor.” A debtor in possession may assume or reject

1 executory contracts for the benefit of the estate. *In re Pomona Valley Med. Grp., Inc.*, 476 F.3d 665,
2 669 (9th Cir. 2007); *In re Locke*, 180 B.R. 245, 251 (Bankr. C.D. Cal. 1995); *In re Klein Sleep*
3 *Products, Inc.*, 78 F.3d 18, 25 (2d Cir. 1996). In reviewing a debtor in possession's decision to
4 assume or reject an executory contract or unexpired non-residential real property lease, a bankruptcy
5 court should apply the "business judgment test" to determine whether it would be beneficial to the
6 Estate to assume it. *In re Pomona Valley Med. Grp., Inc.*, 476 F.3d 665, 669 (9th Cir. 2007); *In re*
7 *G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000); *NLRB v. Bildisco*, 682 F.2d 72, 79 (3d Cir.
8 1982).

9 An executory contract or unexpired lease must be assumed before it may be assigned. *In re*
10 *Quintex Entertainment, Inc.*, 950 F.2d 1492 (9th Cir. 1991), *see, also*, 11 U.S.C. § 365(f)(2). The
11 Court's approval of lease assumption of contracts is governed by the debtor in possession's business
12 judgment. *See, e.g., In re Huang*, 23 B.R. 798, 800-01 (9th Cir. 1982). Accordingly, courts approve
13 the assumption or rejection of an executory contract or unexpired lease unless evidence is presented
14 that the debtor's decision to assume or reject was "so manifestly unreasonable that it could not be
15 based on sound business judgment, but only on bad faith, or whim or caprice." *In re Richmond Metal*
16 *Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986). Indeed, to
17 impose more exacting scrutiny would slow a debtor's reorganization, thereby increasing its cost and
18 undermining the "Bankruptcy Code's provisions for private control" of the estate's administration.
19 *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

20 Moreover, a debtor may assign an executory contract or unexpired lease if (i) the contract
21 was assumed in accordance with the terms of section 365(b) of the Bankruptcy Code, and (ii)
22 adequate assurance of future performance is provided. 11 U.S.C. § 365(f)(2). Here, the Debtor
23 submits that the assumption and assignment is appropriate because the lease amounts are current
24 (thus there is no prerequisite cure amount pursuant to 11 U.S.C. § 363 (b)(1)). Additionally, the
25 Buyer has the financial wherewithal to satisfy the monthly lease payments. ET Legg was provided
26 financial information by the Debtor regarding the financial ability of the Buyer to satisfy obligations
27 under the Central Kitchen Lease. Ueno Decl. To protect the privacy of the Buyer, these financials
28 are not attached hereto but if necessary will be available for inspection at the hearing.

1 The Plan provides for the Debtor to assume the Central Kitchen Lease and assign the Central
2 Kitchen Lease to the Buyer after Confirmation. The Sale which includes the assumption and
3 assignment of the Central Kitchen Lease is contemplated by the Plan and was already determined to
4 satisfy the business judgment test. The Sale will provide \$188,888 to the Debtor which will be
5 placed in the GUC Distribution Fund for the benefit of Class 3 and Class 4 Allowed Claimants under
6 the Plan.

7 ET Legg was provided notice of the assumption and assignment when it was served with the
8 Plan and the Disclosure Statement as well as this Motion. Accordingly, the Debtor submits that
9 assumption and assignment of the Central Kitchen Lease is in the best interests of the Estate.

10 **I. NOTICE**

11 The Debtor submits that adequate notice of the proposed Sale has been given. Concurrently
12 with the filing hereof, notice on the Court-approved form F 6004-2 was submitted to the Court's
13 clerk for publication on the Court's website pursuant to Local Bankruptcy Rule 6004-1(f). Notice of
14 the Sale was also posted on the Danning, Gill, Diamond, & Kollitz LLP website. Notice of this Sale
15 Motion has been provided to the Office of the United States Trustee and all other interested parties
16 pursuant to Federal Rule of Bankruptcy Procedure 2002(a).

17 **II. CONCLUSION**

18 Based on the foregoing, the Debtor respectfully requests that the Court enter an order:

- 19 (1) Granting the Motion in its entirety;
- 20 (2) Approving the Sale to the Buyer or the successful overbidder and finding that the
21 Purchase Price is fair and reasonable and that the Sale is in the best interests of the Allowed
22 Claimants under the Plan;
- 23 (3) Authorizing the Sale to the Buyer on an **AS-IS, WHERE-IS** basis, without any
24 representations or warranties by the Debtor or Reorganized Debtor;
- 25 (4) Approving the proposed overbid procedures;
- 26 (5) Approving the form and manner of notice provided by the Debtor;
- 27 (6) Authorizing the Debtor and Reorganized Debtor to execute any and all documents
28 that may be necessary or convenient to consummate the Sale;

1 (7) Authorizing the Sale free and clear of liens, interests, and encumbrances pursuant to
2 11 U.S.C. § 363(b) and (f), with such liens, claims, interests, and encumbrances to attach to the Sale
3 proceeds with the same priority and rights of enforcement as previously existed;

4 (8) Finding that the Buyer or the successful overbidder is a good-faith purchaser of the
5 Central Kitchen pursuant to 11 U.S.C. § 363(m) and entitled to all benefits and protections provided
6 thereby;

7 (9) Authorizing the assumption of the Central Kitchen Lease by the Debtor and the
8 Assignment of the Central Kitchen Lease to the Buyer or the successful overbidder.

9 (10) Waiving the 14-day stay imposed by F.R.B.P. 6004(h); and

10 (11) Granting such other and further relief as this Court deems just and proper under the
11 circumstances.

12
13 DATED: May 22, 2018

BRUTZKUS GUBNER

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15 By: /s/ Robyn B. Sokol
16 ROBYN B. SOKOL
17 Counsel for Debtor
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DECLARATION OF YUJI UENO

I, Yuji Ueno, declare as follows under penalty of perjury:

1. I was the Chief Executive Officer of debtor and debtor-in-possession Ramla USA Inc., a California corporation. I now serve as a consultant to Ramla USA, Inc., the reorganized debtor ("Reorganized Debtor") and I am assisting the Reorganized Debtor with the transition to new corporate management. I have personal knowledge of the facts contained herein, or have gained such knowledge from my review of records I normally maintain in the ordinary course of business of the Debtor, and if called as a witness, I could and would competently testify to these facts under oath.

2. I submit this declaration in support of the Motion to which it is annexed. Unless otherwise defined, all capitalized terms shall have the same meaning as in the Motion.

3. On November 20, 2017, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor operated its business and managed its affairs as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code through the Effective Date. No trustee, examiner, or committee has been appointed in the Debtor's Chapter 11 case as of the filing of this Motion.

4. Prior to Confirmation, the Debtor owned and operated traditional Japanese/Izakaya-style restaurants. On the Effective Date, in accordance with the Plan, all assets of the Debtor except the Liquidated Assets (which include the Central Kitchen) vested in the Reorganized Debtor.

5. By Bankruptcy Court *Order Confirming Debtor's First Amended Plan of Reorganization* entered on March 29, 2018 [Docket No. 160] the Plan was confirmed. The Plan provides for the sale of the Central Kitchen as proposed herein. On or about March 8, 2018, this Court authorized the employment of Restaurant Realty as its business broker to market and sell the Debtor's operating restaurant in Palm Springs, Gyoro Gyoro Izakaya Japonaise, located at 105 South Palm Canyon Drive and the Central Kitchen. Docket No. 146. Thereafter, Restaurant Realty commenced aggressively marketing the Central Kitchen.

6. On or about May 14, 2018, Restaurant Realty presented me with an offer from the Buyer for the purchase of the Central Kitchen. A true and correct copy of the APA is attached

1 hereto as **Exhibit 1** and incorporated herein by this reference. On or about May 21, 2018, a counter
2 offer was presented to the Buyer through Restaurant Realty. **Exhibit 1.** I on behalf of the Debtor
3 executed the APA and all addendums thereto.

4 7. The salient terms of the proposed sale are as follows:

- 5 a. Sale Price: \$188,888. The Purchase Price shall be deposited in full into
6 escrow by the Buyer within 3 business days before the closing date of the sale.
7 A deposit of \$18,888 will be placed into escrow upon the signing of the
8 escrow instructions. It is anticipated that the closing date will be June 30,
9 2018. *See Exhibit 1.*
- 10 b. Sale Subject to Overbid: The Sale to the Buyer is subject to overbid.
- 11 c. No Representations or Warranties: The Debtor is selling the Central Kitchen
12 to the Buyer on an AS-IS, WHERE-IS basis, without any representations or
13 warranties by the Debtor or Reorganized Debtor.
- 14 d. Bankruptcy Court Jurisdiction: The Sale is subject to the approval of this
15 Court and this Court shall have exclusive jurisdiction to interpret and enforce
16 over any case or controversy arising from the Sale.

17 8. Based upon my review and analysis of the claims filed in this Bankruptcy Case and
18 the Debtor's books and records, I am informed and believe that there are no secured liens asserted
19 against the Central Kitchen and any and all equipment, furniture and fixtures located at and used by
20 the Central Kitchen.

21 9. The Debtor has no relation to the Buyer or the Buyer's broker, and did not know the
22 Buyer prior receiving the offer to purchase. The Debtor has reviewed its internal records and the
23 claims register in this Bankruptcy Case. Based on this review, the Debtor has determined that
24 neither the Buyer nor the Buyer's broker are creditors of this Estate. The Debtor submits that the
25 Sale was negotiated at arms-length, and the proposed Purchase Price is fair consideration for the
26 Central Kitchen. The property was marketed through Restaurant Realty and the Buyer was located
27 through such marketing efforts.
28

10. It is my business judgment that the Purchase Price for the Central Kitchen offered by the Buyer is fair and reasonable and that the sale of the Central Kitchen was adequately marketed. Based on my knowledge of the industry, the current market, and my conversations with Restaurant Realty, the brokers employed to market and sell the Central Kitchen, the Purchase Price is fair and reasonable. In accordance with the Plan, all proceeds from the Sale will be placed in the GUC Distribution Fund to be disbursed to Holders of Allowed General Unsecured Claims and Allowed Employee Claims.

11. The Sale includes the assumption of the unexpired non-residential real property lease between the Debtor and ET Legg entered into on or about September 18, 2012 for certain premises located at 2300 Central Ave. Units A&B, Irwindale, CA 91010, the Central Kitchen Lease, and the assignment of the Central Kitchen Lease to the Buyer. The Debtor and the Reorganized Debtor are current on the Central Kitchen Lease. A true and correct copy of the Central Kitchen Lease is attached hereto and incorporated herein by this reference as **Exhibit 2**. The monthly rent for the Central Kitchen Lease is currently \$2,320 through November 2018. The Central Kitchen Lease provides for yearly rent increases and two options to extend for 5 year periods. **Exhibit 2**.

12. In accordance with the Plan, the Sale includes the assumption of the Central Kitchen Lease and the assignment of the Central Kitchen Lease to the Buyer.

13. Prior to filing this Motion, ET Legg was provided financial information regarding the Buyer for the purpose of demonstrating that ET Legg has the financial wherewithal to satisfy ongoing lease payments under the Central Kitchen Lease.

I declare under penalty of perjury that the foregoing is true and correct and executed this 22nd day of May 2018, at Monrovia, California.

Yuji Ueno



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Bkr	Date
CLJ	5/11/18

Asset Purchase Agreement

INTRODUCTION: This is an offer and an agreement to buy and sell business assets, dated 5/11/18

1. DEFINITIONS: The following definitions and designations shall apply regardless of number or gender:

BUSINESS Central Kitchen

Address 2300 Central Ave. Inlandia, CA 91010

BUYER Summer Rails Inc.

SELLER Ramita USA Inc.

SIGNING: Signing of this Agreement by both Buyer and Seller.

CLOSING: Transfer of ownership of business assets from Seller to Buyer.

COP: Change of possession of business assets from Seller to Buyer.

DAYS: Calendar days.

INVENTORY: Current raw material, work in process, saleable finished goods and consumable supplies valued at lower of cost or market. Work in process and finished goods shall be valued at the actual cost of material and direct labor incurred by Seller.

ASSETS: Assets of the Business include, but are not limited to, inventory, equipment, trade fixtures, leasehold, leasehold improvements, contract rights, business records (with Seller retaining a reasonable right of inspection), software and software licenses, transferable governmental licenses and permits, other licenses, franchises, goodwill, covenant not to compete, trade secrets, patents, intellectual property, trade name, customer lists, marketing materials, telephone and fax numbers, web sites, URL's, email addresses, sales order backlog and n/a.

Assets being sold shall not include bank accounts, deposits, cash, accounts receivable (unless specified in paragraph 4), financial records (but Buyer shall have a right to make copies prior to Closing), or n/a.

2. SALE OF BUSINESS ASSETS: Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Assets for the price and on the terms and conditions set forth below.

3. CONSIDERATION: The Consideration shall be \$ 188,886 paid or credited as follows:

- a. \$ 5,000 as a deposit by Buyer upon signing this Agreement and included as part of the down payment. Broker is authorized to:
☐ hold deposit check uncashed until escrow instructions are signed, or
☒ deposit check into escrow trust account or broker trust account upon acceptance of offer.

- b. \$ 13,858 additional cash deposited in escrow upon signing of escrow instructions.

- c. \$ 170,000 additional cash deposited in escrow 3 days before Closing.

- d. \$ 0 additional down payment provided from third party financing as described in paragraph 5.d.

- e. \$ 188,886 Total down payment ☐ See attached addendum for details of the down payment.
(a + b + c + d)

- f. \$ 0 assumption of specified liabilities, as detailed in attached addendum. If the actual balance differs at Closing, the ☐ Seller note, or ☐ down payment, shall be adjusted accordingly.

- g. \$ 0 approximate balance of a non-negotiable Seller note payable in equal monthly installments, including n/a % per annum interest computed from COP, so as to fully amortize over n/a months (i.e., \$ n/a per month), with payments to begin one month from COP. Note shall be secured by a security agreement on the Assets, contain a right to prepay without penalty and be assumable with Seller's consent, which shall not be unreasonably withheld. Seller note shall be subordinated to any third-party financing described in 5.d. If Buyer is a corporation or other entity, its owners shall personally guarantee this note.
☐ See attached addendum for details of the Seller note.

- h. \$ 188,886 Total
(e + f + g)

Buyer Buyer 40
Buyer Buyer Seller Seller

Business: Central Kitchen

Buyer: Summer Rolls Inc.

Date: 5/11/18

4. INVENTORY AND ACCOUNTS RECEIVABLE:

☐ The Consideration shall include inventory of \$ n/a and collectable accounts receivable of \$ n/a. If the actual amount of inventory and accounts receivable at COP is less than the total of these figures, the Consideration and down payment shall be decreased accordingly, and if the actual amount is more than these figures, then the Consideration and Seller note shall be increased accordingly. If the amount has increased and there is not a Seller note, Buyer shall execute a promissory note to Seller, payable in equal monthly installments, including n/a % per annum interest computed from COP, so as to fully amortize over n/a months, with payments to begin one month from COP. This note shall otherwise contain the same provisions as the note described in 3.g. above, or

☐ At Closing, the Consideration and ☒ cash down payment or ☐ Seller note, shall be increased by the cost of inventory.

Notwithstanding the above, the inventory shall not exceed \$ n/a (and Buyer can reject any part of the inventory over that amount) or be less than \$ n/a. The inventory count shall be made on COP ☐ by Buyer and Seller, or ☐ by an independent inventory service with the fees to be divided equally between Buyer and Seller.

5. CONDITIONS: This Agreement is subject to the following conditions:

a. Buyer's due diligence:

- i. Within 7 days of Signing, Buyer shall request in writing any and all information and appointment(s) for access to inspect the premises as may reasonably be required to evaluate the Business.
- ii. Within 7 days of Buyer's request, Seller shall provide all requested information and access.
- iii. Within 3 days of Buyer's receipt, Buyer shall review and approve in writing the information requested and provided, and the condition of the Assets and premises.

b. Seller's due diligence:

- i. Within 3 days of Signing, Seller shall request in writing any and all information as may reasonably be required to evaluate Buyer's qualifications to purchase and operate the Business.
- ii. Within 3 days of Seller's request, Buyer shall provide all requested information.
- iii. Within 3 days of Seller's receipt, Seller shall review and approve in writing information requested and provided.

Should either party not approve in writing, as provided in 5.a.iii or 5.b.iii, as applicable, within 30 days from Signing, the other party may terminate this Agreement with written notice and failure to cure within 48 hours of such notice, and the Buyer's deposit will be returned less any escrow costs.

c. Lease contingency: Within 21 days from Signing or upon COP if sooner,

- ☒ Written consent of the landlord to assignment of the existing premises lease or
☐ The making of a new lease between the landlord and Buyer which is acceptable to Buyer.

d. Financing contingency:

- i. Buyer submitting complete loan application(s) to n/a lenders within n/a days from Signing.
 - ii. Buyer receiving a commitment letter for third party financing in the amount of \$ n/a within n/a days from Signing.
 - iii. Buyer receiving funding in the amount indicated in 5.d.ii within n/a days after Signing.
- Buyer shall use its best efforts to obtain said financing and Seller shall fully and promptly comply with lender requests for information and access to the Business.

e. Licensee: Closing is contingent upon the transfer or issuance of any necessary permits and licenses.

f. Other contingencies: Signing is defined here as mutual execution AND bankruptcy court approval.

If Buyer is unable to satisfy conditions 5.c, 5.d, 5.e or 5.f within the specified time limits, either party may terminate this Agreement by giving written notice to the other party or his or her Broker, and the Buyer's deposit will be returned less any escrow costs.

6. ESCROW: The Consideration, closing costs and closing adjustments shall be paid through an escrow to be established with Jacqueline Cheou Champion Escrow, Temple City, Escrow Officer, the escrow holder. Upon removal of conditions 5.a, 5.b and 5.c, Buyer and Seller agree to sign separate escrow instructions that define the duties of the parties and the escrow holder. All parties shall cooperate with the escrow holder in completing any documents and performing any acts necessary to complete the transfer of the Business Assets, including compliance with the Bulk Sale law if applicable. The Broker(s) is/are a party to the escrow as to the payment of any broker's fees and an irrevocable assignee(s) of the sale proceeds to the extent of such fees.

7. CLOSING: The estimated date for Closing is June 30, 20 18. Buyer and Seller shall make their best efforts to complete Closing on or before that date. COP shall occur at Closing.

[Signature] Buyer [Signature] Buyer [Signature] Seller [Signature] Seller

Business Central Kitchen

Buyer Summit Rolla Inc

Date 5/11/18

8. **PURCHASE PRICE ALLOCATION:** Before Closing, Buyer and Seller shall endeavor to allocate the purchase price among the Assets purchased and submit the allocation to escrow.

9. **SELLER AND BUYER DISCLOSURE STATEMENTS:**

- a. ☐ Buyer has received and read the completed Seller's Disclosure Statement, or
☒ Seller shall provide to Buyer the completed Seller's Disclosure Statement within 3 days from Signing.
- b. ☐ Seller has received and read the completed Buyer's Disclosure Statement, or
☒ Buyer shall provide to Seller the completed Buyer's Disclosure Statement within 3 days from Signing.

The parties warrant the accuracy and completeness of their respective Disclosure Statements. The parties warrant that these representations are true, shall be true as of Closing and shall survive Closing.

10. **SELLER REPRESENTATIONS & WARRANTIES:** Except as noted in paragraph 10.J, Seller and its owner's acknowledge and represent as follows:

- a. Seller is operating the Business in compliance with all applicable laws and environmental regulations. This compliance will not be violated by this sale and the Business will pass all applicable inspections upon COP. If any inspection by a government agency is required to complete Closing, Seller shall make whatever remedies are required to satisfy said inspection, and if remedies are not complete and paid for by Closing, then sufficient monies shall be held in Escrow to pay for the completion of such remedies.
- b. There are no claims, legal proceedings or investigations pending which would affect the Business or Assets being sold.
- c. The Business is in compliance with all material contracts relevant to the ownership and operation of the Business. All such contracts have been furnished to Buyer and are complete and in effect, and there are no undisclosed amendments.
- d. All financial information and statements furnished or to be furnished to Buyer are complete, accurate, prepared in a manner consistent with prior statements and fairly present the financial condition of the Business as of the dates stated on them. Since the date of the last financial statements furnished, there have been no material adverse changes in the aggregate in the assets, liabilities, revenues, expenses or any other items shown on such statements.
- e. All accounts receivable of the Business, if included in the sale, arose from the normal course of business, none have been previously assigned and they are fully collectable.
- f. All inventory of the Business is marketable and in good condition.
- g. All Assets currently used in the Business are owned by Seller free from liens and encumbrances, and they are in good working condition, except as otherwise noted in 10.J.
- h. Seller does not guarantee that all current employees will remain employed in the Business after Closing, but Seller has no knowledge indicating that any employee who is not an owner would leave in the event of a sale.
- i. There are no liabilities of the Business for which Buyer will be liable, except as stated herein or in a further written agreement of the parties. Seller will honor and discharge when due, all excluded liabilities.
- j. Exceptions: _____

Seller warrants that these representations are true, shall be true as of Closing and shall survive Closing. Prompt notice will be given to Buyer of any event which materially alters the accuracy of the above Seller Representations & Warranties or the Seller's Disclosure Statement. Seller shall indemnify and hold Buyer and Broker harmless from any damage resulting from their falsity.

11. **CONTINUITY:** Pending Closing, Seller shall continue to operate the Business in the usual way, protect and preserve its Assets and goodwill, maintain the equipment in good working order, maintain good relations with suppliers, customers and employees and allow Buyer to make reasonable inspections.

12. **PRORATIONS, CREDITS, TAXES and EXPENSES:**

- a. Except as otherwise noted in this Agreement, each party shall pay when due all operating costs and taxes incurred while that party is in possession and hold the other party harmless therefrom.
- b. Seller shall pay all wages, salaries and benefits, including without limitation, vacation, sick leave and other paid time off, payable to its employees prior to COP.
- c. Prorations: Utilities, personal property taxes, other taxes, insurances, rents, and other prepaid and accrued expenses of the Business transferred to Buyer shall be prorated to COP.
- d. Credits: Buyer shall credit Seller at Closing for lease deposits and other deposits transferred to Buyer, and Seller shall credit Buyer at Closing for customer deposits, unredeemed gift certificates and warranty claims assumed by Buyer.
- e. Buyer shall pay any transfer or issue fees for permits and licenses required.
- f. Franchise transfer fee, if applicable, shall be paid by n/a, and training fee, if applicable, by n/a.

At yan Buyer yu Seller

Business Central Kitchen

Buyer Summer Rolls Inc.

Date 5/11/18

- g. Each party shall pay its own accountants, attorneys and other advisors.
- h. Buyer shall pay at Closing any sales taxes assessed on the sale of the Business Assets.
- i. Seller shall obtain and pay for any smog certificates needed and Buyer shall pay DMV fees assessed on registered vehicles included in the sale.
- j. Buyer and Seller shall pay equally all escrow fees and costs and other transfer costs except n/a.
- k. Warranty obligations on products/services sold prior to COP, if applicable, shall be governed by the attached addendum. In the absence of a signed addendum, there is no warranty reimbursement by Seller.
- l. After COP, Buyer shall remit to Seller upon receipt any refund or overpayments of worker's compensation premiums, taxes, trade payables or the like which relate to the period prior to COP.
- m. Seller shall defend and indemnify Buyer from any liability to the California Employment Development Department, the California Franchise Tax Board or the California State Board of Equalization arising from the operation of the Business until COP. Prior to the receipt by the escrow holder of releases of transferee liability from these agencies, the Buyer shall be protected from the possible imposition of transferee liability by a reserve set by the taxing agencies or approved by the Buyer and retained in escrow until such releases are obtained.
13. MATERIAL CONTRACTS: Seller shall transfer to Buyer the following contracts used in the operation of the Business, and the Buyer shall assume obligation for them:
- | | |
|--|--|
| <input type="checkbox"/> Advertising contracts, including yellow pages | <input type="checkbox"/> Vehicle agreements |
| <input type="checkbox"/> Alarm system agreements | <input type="checkbox"/> Web site agreements |
| <input type="checkbox"/> Copier agreements | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Telephone agreements | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Other equipment leases | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Other equipment service agreements | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Software maintenance agreements | <input type="checkbox"/> _____ |
14. BROKER: Buyer acknowledges that Broker has furnished to Buyer financial and other information obtained from Seller and other sources, the accuracy and completeness of which have not been verified by Broker, and that Buyer is relying solely on his own inspection of the Business, its Assets, financial statements, business records, contracts, any assumed liabilities, operational history, future profitability and the representations by the Seller, and not on any representations of the Broker. Seller acknowledges that he is relying solely on his own investigation of the Buyer's creditworthiness and ability to complete this transaction and to successfully operate the Business, and not on any representations of the Broker. Should any such representations of Seller or Buyer be untrue, Buyer and Seller agree to look solely to each other for relief and shall release, hold harmless, indemnify and defend the Broker from any such claims. Buyer and Seller acknowledge and agree that Broker may receive a referral fee from an institutional lender.
15. AGENCY RELATIONSHIP CONFIRMATION: The following agency relationships are hereby confirmed for this transaction, and supersede any prior agency relationships:
- | | |
|--|---|
| BUYER'S BROKER <u>ReMax Advanced Realty</u> | SELLER'S BROKER <u>Restaurant Realty Company</u> |
| Agent for <input checked="" type="checkbox"/> Buyer only or <input type="checkbox"/> both Buyer and Seller | Agent for <input checked="" type="checkbox"/> Seller only or <input type="checkbox"/> both Buyer and Seller |
| Phone <u>626 988 8808</u> Fax _____ | Phone <u>858 997 4565</u> Fax <u>415-645-9702</u> |
| Email <u>Jeanneyhai@hotmail.com</u> CalBRE # <u>01193034</u> | Email <u>Craig@restaurantreality.com</u> CalBRE # <u>01970292</u> |
| Broker's Agent <u>Jeanne Hai</u> | Broker's Agent <u>Craig Johnson</u> |
16. TRAINING: Seller and _____, individually, shall train Buyer in the operation of the Business for a period of n/a consecutive weeks from COP, for n/a hours per week, without additional cost to Buyer.
17. COVENANT NOT TO COMPETE: Seller and _____, individually, shall not directly or indirectly carry on a similar business ☐ within a radius of n/a miles of the present location of the Business, or ☐ within _____, attempt to hire any existing employees of the Business, solicit any customers of the Business or assist anyone else except the Buyer to do so within these limits, or have any interest, directly or indirectly, in such business, except as an employee of the Buyer, for a period of n/a consecutive years from COP. This covenant shall become an asset of the Business and may be transferred as part of any future transfer of the Business.
18. MEDIATION OF DISPUTES: Except as reasonably necessary for a party to seek equitable relief from a Court, such as an injunction or other expedited relief (writ of attachment, specific performance, appointment of a receiver or similar remedies), as a condition precedent to initiation of any legal action or arbitration proceeding by either party, Buyer and Seller shall mediate any dispute or claim between them arising out of this Agreement or any resulting relationship or transaction between such parties. Either party may demand mediation by notice to the other party, which notice shall state the nature

Buyer Buyer Seller Seller

Business: Garrett's

Buyer: Summit Realty Inc.

Date: 5/11/18

of the dispute to be resolved. From the date such notice is given, the parties shall agree upon a mediator not later than the tenth business day thereafter. If the parties cannot agree upon a mediator, the matter shall be submitted to the American Arbitration Association ("AAA") for appointment of a mediator and to conduct the mediation. Mediation shall occur in the county in which the Seller's Broker's office is located. The parties shall have 45 days from the selection of the mediator to commence the first mediation session. The parties shall share all mediation costs equally. The parties agree that any mediated settlement agreement may be converted to an arbitration award or judgment (or both) and enforced according to the governing rules of civil procedure. Should either party fail to participate timely and in good faith in the selection process for the mediator, or in the mediation process, such party will be deemed to have refused mediation, and that party shall not be entitled to attorney fees that might be otherwise available to it in any subsequent court action or arbitration.

19. **BROKER FEE:** The Broker(s) identified in paragraph 15 has/have acted as the only Broker(s) for this sale and earned a broker fee for services as follows:

- ☒ 5 percent of the Consideration to Restaurant Realty Company Broker, and
☒ 5 percent of the Consideration to ReMax Advanced Realty Broker, or
☐ As per representation agreement between Seller and Seller's Broker.
☐ As per agreement between Buyer and Buyer's Broker.

Broker's fee shall be payable (a) at Closing, or (b) by Seller, if Closing is prevented by default of Seller, upon Seller's default, with the deposit returned to Buyer.

20. **LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Buyer shall relinquish and Seller shall retain, as liquidated damages, the entire sum of deposits paid under 3.a and 3.b, payable first to the Broker Fees and any remaining amount released to Seller. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to default under this Agreement. In any action, proceeding or arbitration relating to the payment of such a fee, the prevailing party shall be entitled to reasonable attorney's fees and costs.

Buyer Initials: TV / Seller Initials: /

21. **SUMMARY:** The entire agreement of the parties relating to the sale of the Business is set forth in this Agreement and can only be modified in writing signed by the parties. There are no other representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. This Agreement shall bind and benefit the parties and their legal successors and shall supersede any prior written or oral agreements. Buyer may not assign any rights under this Agreement without prior consent of Seller, except to an entity owned and controlled by the Buyer. Any unauthorized assignment will be void and unenforceable. Any assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement. This Agreement may be signed in counterparts and faxed and electronic signatures may be considered as originals. Captions in this Agreement are for convenience only and shall not be considered in construing its meaning. This Agreement shall be governed by the laws of the State of California. In any action, proceeding or arbitration between Buyer and Seller arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, except as provided in paragraph 18. Venue shall be the county in which the Seller's Broker's office is located.

22. **NOTICES:** All notices or approvals required or permitted by this Agreement shall be in writing and shall be addressed to the parties at the respective addresses set forth below. Notice shall be sufficiently given for all purposes when: (a) personally delivered to the recipient; (b) delivered by an overnight delivery service, charges prepaid or charged to the sender's account; or (c) delivered by verifiable electronic transmission. Any party or Broker may change its address by giving written notice of the change to the other parties and Brokers in accordance with the provisions of this paragraph.

23. **ACKNOWLEDGMENT AND PERSONAL GUARANTEE:** By signing below, Buyer and Seller each acknowledge that they have carefully read and fully understand this Agreement and have received a copy of it. The undersigned warrant that their signatures are legally sufficient to bind the Buyer and Seller. If the Buyer and/or Seller is a corporation or other entity, the undersigned personally guarantee the performance of this Agreement and any other agreements necessary to complete the purchase.

24. **ACCEPTANCE:** This offer shall expire unless it is accepted in writing by Seller and that acceptance is delivered to Buyer or Buyer's agent by 5 ☐ a.m. ☒ p.m. on May 15, 2018. Any later acceptance shall constitute a counteroffer. Any offer can be withdrawn or revoked before acceptance is delivered to Buyer or Buyer's agent. The undersigned Seller accepts and agrees to sell the Business on the above terms and conditions.

TV Buyer Buyer YU Seller Seller

Business Central Kitchen Buyer Summer Rolls Inc. Date 5/11/18

THE CALIFORNIA ASSOCIATION OF BUSINESS BROKERS MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. A BUSINESS BROKER IS NOT LICENSED OR QUALIFIED TO PROVIDE LEGAL, ACCOUNTING OR TAX ADVICE. SELLER AND BUYER ARE ADVISED TO CONSULT WITH INDEPENDENT ATTORNEYS, ACCOUNTANTS AND OTHER COMPETENT PROFESSIONALS WHEN ENTERING INTO AND COMPLETING THE TRANSACTION.

☐ Subject to attached addendum

☒ Subject to attached counteroffer

BUYER

SELLER

T Ham Di Lam
Print Name
[Signature] 5-14-18
Signature Date

Yuji Hano
Print Name
[Signature] 5/21/18
Signature Date

Print Name

Print Name

Signature Date

Signature Date

Corporation (or other entity)

Corporation (or other entity)

by: _____
Print Name and Title Date

by: _____
Print Name and Title Date

Address

Address

City, State Zip

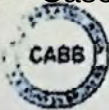
City, State Zip

Signature of Broker's Agent (for Buyer) Date

Signature of Broker's Agent (for Seller) Date

LIST OF ATTACHMENTS

- ☐ Equipment List
- ☐ Seller's Disclosure Statement
- ☐ Buyer's Disclosure Statement
- ☐ Agency Disclosure
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____


California Association of Business Brokers
 Professional Service since 1987

Buyer	Date

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 A list of current members is available at www.cabb.org.

Counter Offer #1

This Counter Offer is made ☒ to the Asset Purchase Agreement dated 05/11/18 or ☐ to Counter Offer # _____
 between Summer Rolls LLC (Buyer) and Ramla USA Inc. (Seller)
 for the business known as Central Kitchen located
 at 2300 Central Avenue, Irwindale, CA 91010

1. Definitions

DAYS: Business Days

5(c.) Lease Contingency period is removed. Assignment of lease is made through Court Order.

5(f.) Buyer due diligence to commence upon mutual execution of the Asset Purchase Agreement.
 Sale is subject to Bankruptcy Court approval.

10 (g.) Seller Representations and Warranties are removed. Sale is on an as-is, where-is basis without any representations or warranties by Seller.

All other terms and conditions of the ☒ Purchase Agreement ☐ (or Counter Offer # _____) remain the same. This Counter Offer shall expire unless it is accepted in writing and that acceptance is communicated to the other party by 9 ☐ AM ☒ PM on May 20, 2018. Any later acceptance shall constitute a new offer.

ACCEPTANCE: I/We accept the above Counter Offer (if initialed here Th) SUBJECT TO THE ATTACHED COUNTER OFFER # 1 and acknowledge receipt of a Copy.

BUYER

Thanh Di Lam
 Print Name
[Signature] 5/22/18
 Signature Date
Summer Rolls Inc.
 Corporation (or other entity)
 by: Thanh Di Lam President
 Print Name and Title
[Signature] _____
 Signature Date

SELLER

Yiji Ueno
 Print Name
[Signature] 5/24/18
 Signature Date
Ramla USA INC.
 Corporation (or other entity)
 by: _____
 Print Name and Title

 Signature Date

24

- ☐ a site plan depicting the Project;
☐ a current set of the Rules and Regulations for the Project;
☐ a current set of the Rules and Regulations adopted by the owners' association;
☐ a Work Letter;
☐ other (specify): _____

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver that portion of the Premises contained within the Building ("Unit") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7).

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Start Date ("Applicable Requirements"). Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.


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2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

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

- (a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.
- (b) Lessee shall not service or store any vehicles in the Common Areas.
- (c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

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

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

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

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

- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
- (d) To add additional buildings and improvements to the Common Areas;
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
- (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term.**

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

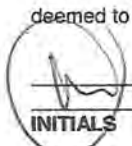
3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").


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~~4.2 Common Area Operating Expenses.~~ Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

~~(a) The following costs relating to the ownership and operation of the Project are defined as "Common Area Operating Expenses":~~

~~(i) Costs relating to the operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (e)), of the following:~~

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

~~(bb) Exterior signs and any tenant directories.~~

~~(cc) Any fire sprinkler systems.~~

~~(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.~~

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

~~(iii) The cost of trash disposal, pest control services, property management, security services, owner's association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.~~

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

~~(v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10).~~

~~(vi) Any "Insurance Cost Increase" (as defined in Paragraph 8).~~

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

~~(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.~~

~~(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.~~

~~(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.~~

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

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

~~(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.~~

~~(e) Common Area Operating Expenses shall not include the cost of replacing equipment or capital components such as the roof, foundations, exterior walls or Common Area capital improvements, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.~~

~~(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.~~

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

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

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to such

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Requirements, without regard to whether said Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

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

7.1 Lessee's Obligations.

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

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie. 1/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or

for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment of Premium Increases.

(a) As used herein, the term "**Insurance Cost Increase**" is defined as any increase in the actual cost of the insurance applicable to the Building and/or the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), ("**Required Insurance**"), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. The "**Base Premium**" shall be the annual premium applicable to the 12 month period immediately preceding the Start Date. If, however, the Project was not insured for the entirety of such 12 month period, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Start Date, assuming the most nominal use possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "**insured contract**" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

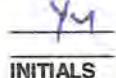
8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("**Rental Value Insurance**"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.


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

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

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

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

8.8 Exemption of Lessor and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

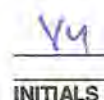
(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

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


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(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

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

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

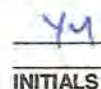
10.1 **Definitions.**

(a) **"Real Property Taxes."** As used herein, the term **"Real Property Taxes"** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term **"Real Property Taxes"** shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

(b) **"Base Real Property Taxes."** As used herein, the term **"Base Real Property Taxes"** shall be the amount of Real Property Taxes, which are assessed against the Premises, Building, Project or Common Areas in the calendar year during which the Lease is executed. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

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


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

10.4 Joint Assessment. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

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

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

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

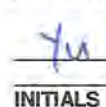
(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

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

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

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


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(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

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

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

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

13. Default; Breach; Remedies.

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

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

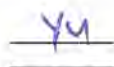
(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

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


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discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

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

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

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

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

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

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

15. Brokerage Fees.

15.1 Additional Commission. If a separate brokerage fee agreement is attached then in addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule attached to such brokerage fee agreement.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay

any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

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

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

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

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**


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(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: **To the Lessor.** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. **To the Lessee and the Lessor.** a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. **To the Lessee:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. **To the Lessee and the Lessor.** a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

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

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

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

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or


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to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

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

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

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

39.1 **Definition.** "**Option**" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

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

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

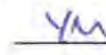
40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

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

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest"


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and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease

☐ is ☒ is not attached to this Lease.

49. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

50. Lessor shall install adequate HVAC in the entire premises.

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

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

1. **SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.**
2. **RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.**

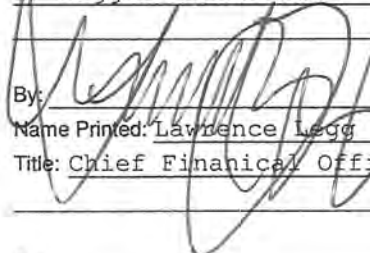
WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

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

Executed at: Hollywood, FL Executed: Monrovia, CA
On: 10/8/12 On: 9/27/2012

By LESSOR:

ET Legg & Associates

By: 
Name Printed: Lawrence Legg
Title: Chief Financial Officer

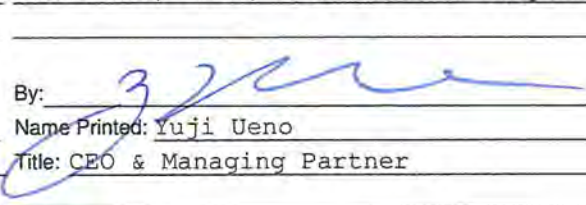
By: _____
Name Printed: _____
Title: _____

Address: 11684 Ventura Blvd., Suite 807
Studio City, CA 91604

Telephone: (323) 245.5567
Facsimile: (818) 246.0779
Email: sandra@etlegg.com
Email: _____

By LESSEE:

Ramla USA, Inc., a California Corporation

By: 
Name Printed: Yuji Ueno
Title: CEO & Managing Partner

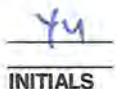
By: _____
Name Printed: _____
Title: _____

Address: 939A W. Huntington Dr.
Monrovia, CA 91016

Telephone: (626) 355.3968
Facsimile: ()
Email: yuji.ueno@ramlausa.com
Email: _____


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Federal ID No. _____	Federal ID No. _____
BROKER: NAI Capital, Inc.	BROKER: DUAL AGENCY
Att: Marie Taylor	Att: _____
Title: SVP	Title: _____
Address: 225 S. Lake Ave., Suite 1170	Address: _____
Pasadena, CA 91101	_____
Telephone: (626) 204.1520	Telephone: (____) _____
Facsimile: (626) 628.3022	Facsimile: (____) _____
Email: mtaylor@naicapital.com	Email: _____
Federal ID No. _____	Federal ID No. _____
Broker/Agent DRE License #: 01233430	Broker/Agent DRE License #: _____
_____	_____
_____	_____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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RENT ADJUSTMENT(S) STANDARD LEASE ADDENDUM

Dated September 18, 2012

By and Between (Lessor) ET Legg & Associates, Inc.

(Lessee) Ramla USA, Inc., a California Corporation

Address of Premises: 2300 Central Ave., Units A & B, Irwindale, CA

Paragraph 51

A. RENT ADJUSTMENTS:

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

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

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

a. On (Fill in COLA Dates): _____

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

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

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

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

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

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

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

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

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

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

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

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

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by

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~~one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.~~

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

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

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

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

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

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

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

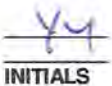
On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
November 15, 2013	\$2,060.00
November 15, 2014	\$2,122.00
November 15, 2015	\$2,186.00
November 15, 2016	\$2,252.00
November 15, 2017	\$2,320.00
November 15, 2018	\$2,390.00
November 15, 2019	\$2,462.00
November 15, 2020	\$2,536.00
November 15, 2021	\$2,612.00

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

C. BROKER'S FEE:
The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.


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OPTION(S) TO EXTEND STANDARD LEASE ADDENDUM

Dated September 18, 2012

By and Between (Lessor) ET Legg & Associates, LTD

By and Between (Lessee) Ramla USA, Inc., a California Corporation

Address of Premises: 2300 Central Ave., Units A&B, Irwindale, CA

Paragraph 52

A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this Lease for Two additional Five month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 6 but not more than 9 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:
(Check Method(s) to be Used and Fill in Appropriately)

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

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

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

b. The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): ☐ the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month"):-

The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment.

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

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

a. On (Fill in MRV Adjustment Date(s)) _____
the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

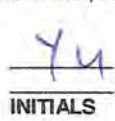
1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

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

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in


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writing, to arbitration in accordance with the following provisions:

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

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

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

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

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

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

- 1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and
- 2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

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

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

On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
November 15, 2022	\$2,690.00
November 15, 2023	\$2,771.00
November 15, 2024	\$2,854.00
November 15, 2025	\$2,940.00
November 15, 2026	\$3,028.00
November 15, 2027	\$3,119.00
November 15, 2028	\$3,213.00
November 15, 2029	\$3,309.00
November 15, 2030	\$3,408.00
November 15, 2031	\$3,510.00

B. NOTICE:

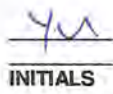
Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease or if applicable, paragraph 9 of the Sublease.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.


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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
21650 Oxnard Street, Suite 500, Woodland Hills, California 91367

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR'S MOTION FOR ENTRY OF AN ORDER: (1) AUTHORIZING THE SALE OF THE CENTRAL KITCHEN LOCATED IN IRWINDALE, CALIFORNIA; (2) APPROVING OVERBID PROCEDURES; (3) FINDING THAT BUYER IS ENTITLED TO A GOOD FAITH DETERMINATION PURSUANT TO 11 U.S.C. § 363(m); AND (4) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF THE UNEXPIRED NON-RESIDENTIAL REAL PROPERTY LEASE PURSUANT TO 11 U.S.C. § 365 AS PART OF THE SALE; MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF YUJI UENO IN SUPPORT THEREOF** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by ORDER court via NEF and hyperlink to the document. On (*date*) **May 22, 2018**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Douglas D Alani dalani@alanilaw.com, mmurray@alanilaw.com
- Sara Chenetz schenetz@perkinscoie.com, dlax@perkinscoie.com;cmallahi@perkinscoie.com;etherrien@perkinscoie.com
- Michael W Davis mdavis@bg.law, ecf@bg.law
- Amir Gamliel agamliel@perkinscoie.com, cmallahi@perkinscoie.com;DocketLA@perkinscoie.com
- Nina Z Javan njavan@bg.law, ecf@bg.law
- Yale K Kim ykim@allenmatkins.com, lpanderson@allenmatkins.com
- Ron Maroko ron.maroko@usdoj.gov
- Mary H Rose mrose@buchalter.com, salarcon@buchalter.com
- Robyn B Sokol ecf@bg.law, rsokol@bg.law
- Prince Altee Thomas pthomas@foxrothschild.com
- David A Tilem davidtilem@tilemlaw.com, DavidTilem@ecf.inforuptcy.com;malissamurguia@tilemlaw.com;joanfidelson@tilemlaw.com;JoanFidelson@ecf.inforuptcy.com;MalissaMurguia@ecf.inforuptcy.com;DianaChau@tilemlaw.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov
- Eric R Wilson kdwbankruptcydepartment@kelleydrye.com, MVicinanza@ecf.inforuptcy.com

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **May 22, 2018**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

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

May 22, 2018
Date

NIKOLA A. FIELDS
Printed Name

/s/ Nikola A. Fields
Signature

2. SERVED BY UNITED STATES MAIL:

Honorable Barry Russell
Edward R. Roybal Federal Building
255 E. Temple Street,
Ste 1660 / Ctrm 1668
Los Angeles, CA 90012

Summer Rolls
9016 Mission Dr.
Rosemead, CA 91770

Jeanne Hai
Broker Associate
RE/MAX ADVANCED REALTY
5823 Rosemead Blvd.
Temple City, CA 91780

Lawrence N. Legg
e.t. Legg & Associates, Ltd.
11684 Ventura Blvd, #807
Studio City, CA 91604

e.t. Legg & Company, Florida
3837 Hollywood Blvd, Ste B
Hollywood, FL 33021