

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: November 4, 2024

SUBJECT: Approval of lease for storm recovery warehouse

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Proposed lease, with addendum of additional terms

SUMMARY OF REQUEST:

This is a proposed lease with the owners of the McAbee Court facility which has been used as a warehouse for storm recovery after Tropical Storm Helene.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the lease.

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the proposed lease

LEASE

This instrument is an indenture of lease (this “Lease”), by and between ASHEVILLE INDUSTRIAL OWNER LLC, a Delaware limited liability company (the “Landlord”), and the COUNTY OF HENDERSON, a body corporate and politic of the State of North Carolina (the “Tenant”).

The parties to this instrument hereby agree with each other as follows:

ARTICLE I
SUMMARY OF BASIC LEASE PROVISIONS

1.1 INTRODUCTION

As further supplemented in the balance of this instrument and its Exhibits, the following sets forth the basic terms of this Lease, and, where appropriate, constitutes definitions of certain terms used in this Lease.

1.2 BASIC DATA

Execution Date:	October __, 2024
Effective Date:	September 28, 2024
Present Mailing Address of Landlord:	Asheville Industrial Owner LLC 500 Boylston Street, 21 st Floor Boston, MA 02116 Attn: Joseph Goldman and Fred Borges With a copy to: Asheville Industrial Owner LLC Woodlawn Hall at Old Parkland 3953 Maple Avenue, Suite 300 Dallas, TX 75219 Attn: General Counsel
Address for Payment of Rent:	Asheville Industrial Owner LLC Woodlawn Hall at Old Parkland 3953 Maple Avenue, Suite 300 Dallas, TX 75219 Attn: Veronica Williams
Present Mailing Address of Tenant:	County of Henderson 1 Historic Courthouse Square, Suite 5 Hendersonville, NC 28792
Building:	The building known as “Building 2”, which contains approximately 143,192 rentable square feet, with an address of 118 Mcabee

	Court, Blue Ridge Commerce Center, Hendersonville, NC 28731, and to be located on the Land.
Premises:	The interior of the Building.
Lease Term or Term:	The period of time commencing on the Commencement Date and expiring on the Expiration Date, unless earlier terminated in accordance with the provisions of this Lease.
Commencement Date:	The Effective Date. Notwithstanding, however, no rent otherwise due under the terms of this Lease shall be due until the fifteenth (15 th) day after the Execution Date.
Expiration Date:	March 31, 2025.
Base Rent:	
<u>Period of Time</u>	<u>Monthly Base Rent</u>
Commencement Date – Expiration Date	\$132,000.00
Permitted Use:	Lawfully-permitted storage of products and materials for distribution by Tenant to the people of Henderson County, and for such other lawful purposes as may be incidental thereto, including for direct distribution of such products and materials from the Premises, and for no other use or purpose.
Business Days:	All days during the Term except Saturdays, Sundays, and days observed in the state in which the Property is located as legal holidays.

1.3 ENUMERATION OF EXHIBITS

EXHIBITS

A Rules and Regulations

ARTICLE II
LEASE OF PREMISES AND APPURTENANT RIGHTS

2.1 LEASE OF PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term of this Lease, the Premises located in the Building, subject to and in accordance with the terms and conditions of

this Lease. The Term of this Lease shall commence on the Commencement Date and unless sooner terminated or extended as hereinafter provided, the Term shall end on the Expiration Date. The parcel or parcels of land on which the Building is located is sometimes referred to herein as the “Lot.” The Building, the Lot and all improvements, parking areas, facilities and equipment located within the Building and/or on the Lot or otherwise appurtenant thereto are sometimes referred to herein collectively as the “Property.”

2.2 RESERVATIONS

Not included in the Premises are the roof or ceiling, the floor and all perimeter walls, except the inner surfaces thereof and the perimeter doors and windows, or those areas designated for the performance of Landlord’s Work (defined below). Landlord reserves the right to install, use, maintain, repair and replace in the Premises (but in such manner as not unreasonably to interfere with Tenant’s use of the Premises) utility lines, shafts, pipes, and the like, in, over and upon the Premises. Landlord will repair any damage to the Premises or to the personal property or fixtures of Tenant to the extent caused by the installation of any such items. Such utility lines, shafts, pipes and the like shall not be deemed part of the Premises under this Lease. Landlord also reserves the right to alter or relocate any common facility.

ARTICLE III CONDITION OF PREMISES

3.1 CONDITION

Tenant has inspected the Premises and agrees (a) to accept possession of the Premises in vacant condition, free of other tenants and occupants and in all other respects in the condition existing on the Commencement Date in its “as is,” “where is” condition, (b) that neither Landlord nor Landlord’s agents have made any representations or warranties with respect to the Premises or the Building, and (c) Landlord has no obligation to perform any other work, supply any materials, incur any expense or make any alterations or improvements to prepare the Premises for Tenant’s occupancy. Tenant’s occupancy of any part of the Premises shall be conclusive evidence, as against Tenant, that Tenant has accepted possession of the Premises in its then current condition and at the time such possession was taken, and the Premises and the Building were in a good and satisfactory condition as required by this Lease.

3.2 LANDLORD’S WORK

Tenant acknowledges that during the Term Landlord may perform work in the Premises (any such work, “Landlord’s Work”), which work may include, without limitation, constructing office space and/or restrooms. Tenant further acknowledges that any Landlord’s Work will be performed while Tenant is in occupancy of the Premises and may be performed during the normal business hours of the Building, and Tenant shall provide Landlord and Landlord’s contractor with access to the Premises during such hours. Landlord shall direct its contractor to use reasonable efforts to coordinate such access and its activities within the Premises with Tenant and to use reasonable efforts to minimize, to the extent practicable, any interference with Tenant’s use of the Premises. Tenant agrees to cooperate with Landlord and Landlord’s contractor and to follow all reasonable directions given by Landlord in connection with the performance of Landlord’s Work. Without limiting the foregoing, Tenant agrees to remove Tenant’s furniture, equipment, products, materials and other personal property from the work area within the Premises promptly upon receiving a request to do so from Landlord or Landlord’s contractor. Tenant shall determine what measures are necessary to protect Tenant’s products, materials, equipment, furnishings and other personal property in the Premises from dirt and dust caused by the construction of Landlord’s Work, and Tenant shall be fully responsible for taking such measures. There shall be no Rent abatement or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from

any of Tenant's other obligations under this Lease, and no liability on the part of Landlord, by reason of inconvenience, annoyance or injury to business arising from the performance of Landlord's Work or the storage of any materials in connection therewith. Tenant shall not have any right to use those areas of the Building designated for the performance of Landlord's Work.

ARTICLE IV RENT

4.1 RENT PAYMENTS

(a) The Base Rent (at the rates specified in Section 1.2 hereof), and the additional rent and other charges payable pursuant to this Lease (collectively the "Rent") shall be payable by Tenant to Landlord in good funds at the applicable Address for Payment of Rent as set forth in Section 1.2 above or such other place as Landlord may from time to time designate by notice to Tenant, on the first day of each and every calendar month after the Execution Date, without any demand, and without any counterclaim, offset or deduction, of any kind, whatsoever.

(b) Commencing on the Commencement Date and thereafter throughout the term of this Lease, Tenant shall pay Base Rent. If the Commencement Date falls on a day other than the first day of a calendar month, the first payment which Tenant shall make shall be made on the Commencement Date and shall be equal to the sum of (a) a proportionate part of such Base Rent for the partial month from the Commencement Date to the first day of the next succeeding calendar month, and (b) the Base Rent for such succeeding calendar month. Additional rent and other charges payable pursuant to this Lease shall be payable at the times and in the manner set forth in this Lease. Notwithstanding the foregoing, Base Rent for the period of time between the Effective Date and the last day of the month in which the Execution Date occurs shall not be due and payable until the day which occurs fifteen (15) days after the Execution Date.

(c) Base Rent for any partial month shall be paid by Tenant to Landlord at such rate on a pro rata basis. Any other charges payable by Tenant on a monthly basis, as hereinafter provided, shall likewise be prorated.

(d) Rent not paid within five (5) days of the date due shall incur a late charge equal to the sum of: (a) five percent (5%) of the outstanding amount for administration and bookkeeping costs associated with the late payment and (b) interest on the outstanding amount from the due date through and including the date such payment or installment is received by Landlord, at a rate equal to the lesser of (i) the rate announced by Bank of America, N.A. (or its successor) from time to time as its prime or base rate (or if such rate is no longer available, a comparable rate reasonably selected by Landlord), plus two percent (2%), or (ii) the maximum applicable legal rate, if any. Such interest shall be additional rent and shall be paid by Tenant to Landlord upon demand.

ARTICLE V USE OF PREMISES

5.1 PERMITTED USE

Tenant agrees that the Premises shall be used and occupied by Tenant only for the purposes specified as the Permitted Use thereof in Section 1.2 of this Lease, and for no other purpose or purposes. In no event shall Tenant use or permit the primary use of the Premises for manufacturing of any type whatsoever; automobile/truck/forklift maintenance, repair or fueling; chemical (organic or inorganic)

storage or use; drum recycling; dry cleaning; electroplating and metal finishing; explosives use or storage; hazardous waste treatment, storage, or disposal; leather production, tanning or finishing; metal shredding, recycling or reclamation; metal smelting and refining; mining; paint, pigment and coating operations; petroleum refining; solvent reclamation; above- and/or underground storage tanks; fertilizer storage; residential use or occupancy; the overnight storage of perishable goods; auctions of any type; tire storage; an employment agency or similar enterprise; the retail sale of merchandise or auction of merchandise, goods or property of any kind to the general public; the rendering of medical, dental or other therapeutic or diagnostic services; or any illegal purposes or any activity constituting a nuisance.

Tenant shall comply and shall cause its employees, agents, and invitees to comply with the rules and regulations attached hereto as Exhibit A, and such additional reasonable rules and regulations as Landlord shall from time to time establish for the proper regulation of the Building and the Lot, provided that Landlord gives Tenant reasonable advance notice thereof and that such additional rules and regulations shall be of general application to all the tenants in the Building, except where different circumstances justify different treatment.

5.2 COMPLIANCE WITH LAWS

Tenant agrees that no trade or occupation shall be conducted in the Premises or use made thereof which will be unlawful, improper, or contrary to any law, ordinance, by-law, code, rule, regulation or order any governmental or quasi-governmental authority (collectively, "Requirements") applicable in the municipality in which the Premises are located. Without limiting the general application of the foregoing, Tenant shall be responsible for compliance of the Premises, including, without limitation, any Alterations (as hereinafter defined) it may make to the Premises, with applicable Requirements, including the requirements of the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, as the same may be amended from time to time (collectively, the "ADA"). Tenant's inability to obtain or delay in obtaining any such approval shall in no event reduce, delay, or terminate Tenant's rental, payment, and performance obligations hereunder. Without limiting the generality of the foregoing, Tenant shall, at its own cost and expense, (i) make all installations, repairs, alterations, additions, or improvements to the Premises required by any Requirements; (ii) keep the Premises equipped with all required safety equipment and appliances; and (iii) comply with all Requirements and the requirements of Landlord's and Tenant's insurers applicable to the Premises, Building and Lot. Tenant shall not place a load upon any floor in the Premises exceeding the lesser of (a) the floor load per square foot of area which such floor was designed to carry as certified by Landlord's architect and (b) the floor load per square foot of area which is allowed by law. Landlord reserves the right to prescribe the weight and position of all business machines and mechanical equipment, including safes, which shall be placed in the Premises so as to distribute the weight.

5.3 INSURANCE RISKS

Tenant shall not permit any use of the Premises which will make voidable or, unless Tenant pays the extra insurance premium attributable thereto as provided below, increase the premiums for any insurance on the Building or which shall be contrary to any law or regulation from time to time established or which shall require any alteration or addition to the Building. Tenant shall, within thirty (30) days after written demand therefor, reimburse Landlord and all other tenants for the costs of all extra insurance premiums caused by Tenant's use of the Premises. Any such amounts shall be deemed to be additional rent hereunder.

5.4 ELECTRICAL EQUIPMENT

Tenant shall not, without Landlord's written consent in each instance, which consent will not be unreasonably withheld, conditioned or delayed, connect to the electrical distribution system any fixtures, appliances, or equipment which will operate individually or collectively at a wattage in excess of the capacity of the electrical system serving the Premises as the same may be reasonably determined by Landlord, and Landlord may audit Tenant's use of electric power to determine Tenant's compliance herewith. If Landlord, in its reasonable discretion, permits such excess usage, Tenant will pay, as additional rent, for the cost of power necessary to accommodate such usage, together with the cost of installing any additional risers, meters, and/or other facilities that may be required to furnish and/or measure such excess power to the Premises. As of the Execution Date, Tenant obtains and maintains internet and wireless services through a Starlink system (the "Starlink System"). Notwithstanding anything to the contrary contained in this Lease, subject to Section 5.5(c) below, nothing herein shall be construed to impair Tenant's right to continue to maintain the Starlink System for the Premises and maintain internet and wireless services to the Premises through such Starlink System.

5.5 TENANT'S OPERATIONAL COVENANTS

(a) General Covenants

In regard to the use and occupancy of the Premises, Tenant will at its expense keep the inside and outside of all glass in the doors and internal windows of the Premises reasonably clean and replace promptly any cracked or broken glass with glass of similar or like quality and keep all mechanical apparatus free of vibration and loud noise which may be transmitted beyond the Premises. Tenant will not: (1) place or maintain any trash, refuse or other articles in any vestibule or entry of the Premises, on the sidewalks or corridors adjacent thereto or elsewhere so as to obstruct any corridor, stairway, sidewalk or common area; (2) permit undue accumulations of garbage, trash, rubbish or other refuse within or without the Premises; (3) cause or permit objectionable odors, noise, smoke, dust, gas, substances or vibrations to emanate or to be dispelled from the Premises; (4) commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Building, or use or permit the use of any portion of the Premises for any unlawful purpose; or (5) park trucks or other vehicles in a manner that will block access to the loading docks serving the Building, except when Tenant is actively using such loading docks.

(b) Cleaning

Tenant shall, at its sole cost and expense, (i) cause the Premises to be cleaned, in a manner reasonably satisfactory to Landlord, (ii) cause the Premises to be exterminated with such frequency and in such manner as to prevent the existence of vermin or other infestation, (iii) cause all portions of the Premises used for the storage, preparation or consumption of food or beverages, if any, to be cleaned daily in a manner reasonably satisfactory to Landlord, and (iv) cause Tenant's garbage and other refuse to be removed from the Premises, at such times and from such place as Landlord shall designate. Until removed, Tenant's garbage and trash shall be kept in a neat and orderly condition, properly bagged or in the case of packing boxes and cartons, securely tied, in such place designated by Landlord. Tenant shall cause its employees, agents, contractors and business visitors to observe such additional rules and regulations regarding rubbish removal and/or recycling as Landlord may, from time to time, reasonably impose. Without limiting the foregoing, if Tenant fails to perform the foregoing obligations, then Landlord may elect, to cause a contractor or contractors employed by Landlord to perform the same at Tenant's sole cost and expense, such payment to be additional rent payable by Tenant within thirty (30) days after rendition of a bill therefor by Landlord.

(c) Yield Up

On or before the expiration or earlier termination of this Lease, Tenant shall surrender the Premises, together with all keys and security codes, to Landlord in good, neat and broom-clean order, repair and condition, reasonable wear and tear accepted, free of all occupants, and with all Alterations (if any), the Starlink System, and all of Tenant's Property removed from the Premises. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear." Tenant shall also repair all damage to the Premises, the Building and the Property caused by the installation or removal of any Alterations or Tenant's Property or in any way in connection with the surrender of the Premises. Any Alterations or Tenant's Property not so removed shall be deemed abandoned and, if Landlord so elects, deemed to be Landlord's property, and may be retained or removed and disposed of by Landlord in such manner as Landlord shall determine. Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in effecting such removal and disposition, and in making any repairs and replacements to the Premises after surrender thereof by Tenant.

5.6 SIGNS

(a) Tenant may, at Tenant's sole cost and expense install a sign (including Tenant's logo) on the exterior door to the Premises. In connection therewith, Tenant shall, at its sole cost and expense, be responsible for all costs and expenses of constructing, installing, maintaining, repairing, replacing and removing such signs.

(b) Landlord shall have no obligations or liabilities with respect to the design of such signs, the obtaining of any required permits or approvals with respect thereto, or the construction, installation, maintenance, repair or replacement thereof, all of which shall be at the sole risk, and sole cost and expense of Tenant. Tenant shall maintain and repair any such signs installed by or on behalf of Tenant in first-class order, condition and repair at its sole cost and expense in accordance with all Requirements and all rules, regulations and directives of Landlord; provided, however, if Tenant fails to repair and maintain such signs and such failure continues for more than thirty (30) days after written notice from Landlord, then Landlord may elect to perform such maintenance and repairs, in which event Tenant shall, within thirty (30) days after receipt of an invoice therefor, reimburse Landlord for all reasonable costs and expenses incurred by Landlord in connection therewith. Upon the expiration or termination of the Term of the Lease, Tenant shall, at its sole cost and expense, remove all such signs and repair any damage resulting therefrom.

5.7 HAZARDOUS MATERIALS

(a) Tenant shall not use, handle, transport, store, or dispose of any Hazardous Materials (defined below) in, under, on or about the Premises, the Building and/or the Lot except for (i) gasoline and/or other customary fuel used to operate fork lifts, and (ii) usual and customary commercially available cleansers, office supplies and products which contain Hazardous Materials; provided, that (x) such cleansers, office supplies and products are ordinarily and customarily used in the ordinary course of business offices, and (y) any such use, including the use of gasoline and/or other customary fuel for the operation of fork lifts, is used and stored in strict compliance with all applicable Requirements. Any gasoline, other customary fuel, and cleansers, office supplies and products used or stored by Tenant in the Premises shall be deemed to be part of Tenant's Property and shall be removed at the end of the Term in accordance with Section 5.5(c) above and in accordance with all applicable Requirements. Without limiting the foregoing, any Hazardous Materials in the Premises, and all containers therefor, shall be used, kept, stored and disposed of with due care and in conformity with all applicable Requirements. If the transportation, storage, use, handling, or disposal of Hazardous Materials in the Premises, the Building, the Lot or anywhere on the Property arising out of or resulting from the acts or omissions of Tenant or its agents, employees, contractors, invitees, guests or others acting by, through or under Tenant, or Tenant's

use of the Premises, results in (1) contamination of the soil, air, surface or ground water or (2) loss or damage to person(s) or property, then Tenant agrees (I) to notify Landlord immediately of any contamination, claim of contamination, loss or damage, (II) after consultation with and approval by Landlord, to clean up all contamination in full compliance with all applicable statutes, regulations and standards, and (III) to indemnify, defend and hold Landlord harmless from and against any claims, suits, causes of action, costs and fees, including, without limitation, attorneys' fees, arising from or connected with any such contamination, claim of contamination, loss or damage.

(b) As used in this Lease, the term "Hazardous Materials" shall mean any flammable items, explosives, radioactive materials, oil, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable Requirements, including without limitation petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

(c) The provisions of this Section 5.7 shall survive the expiration or termination of this Lease. No consent or approval of Landlord shall in any way be construed as imposing upon Landlord any liability for the means, methods, or manner of removal, containment or other compliance with applicable law for and with respect to the foregoing. The terms of this Section 5.7 shall apply to any transportation, handling, storage, use or disposal of Hazardous Materials irrespective of whether Tenant has obtained Landlord's consent therefor.

5.8 MOLD PREVENTION

Tenant acknowledges the necessity of adequate housekeeping, ventilation, and moisture control for mold prevention. Tenant agrees to notify Landlord promptly if it observes any water leaks, excessive moisture conditions, or evidence of apparent mold growth in the Premises, and to allow Landlord and its representatives to evaluate such conditions and make recommendations for corrective action. At Landlord's election, in spite of having no obligation whatsoever to do so under this Lease, Landlord may take appropriate corrective action to address any such conditions. Tenant waives any claim against Landlord related to liability for bodily injury or damages to property caused by or associated with moisture or the growth of or occurrence of mold on the Premises. Execution of this Lease constitutes acknowledgement by Tenant that control of moisture and mold prevention in the Premises are integral to its Lease obligations.

ARTICLE VI INSTALLATIONS, ALTERATIONS, AND ADDITIONS

6.1 (a) Tenant shall not make any alterations, additions, improvements, or other physical changes in, about or to the Premises (collectively, "Alterations") without Landlord's prior consent in each instance, which consent may be granted or withheld in Landlord's sole discretion.

(b) Prior to making any Alterations, Tenant, at its expense, shall, and shall cause its contractors to (i) submit to Landlord for its written approval, detailed plans and specifications (including layout, architectural, mechanical, electrical, plumbing, sprinkler and structural drawings) of each proposed Alteration, (ii) obtain all permits, approvals and certificates required by any governmental authorities, (iii) furnish to Landlord duplicate original policies or certificates of worker's compensation insurance (covering all persons to be employed by Tenant, and Tenant's contractors and subcontractors in connection with such Alteration), comprehensive public liability (including property damage coverage) and builder's risk

insurance coverage (issued on a completed value basis) all in such form, with such companies, for such periods and in such amounts as Landlord may reasonably require, naming Landlord, Landlord's managing agent, and their respective employees and agents, any mortgagee as additional insureds, and (iv) furnish to Landlord such other evidence of Tenant's ability to complete and to fully pay for such Alterations as is reasonably satisfactory to Landlord. Upon Tenant's request, Landlord shall exercise reasonable efforts to cooperate with Tenant in obtaining any permits, approvals or certificates required to be obtained by Tenant in connection with any permitted Alteration (if the provisions of the applicable Requirements require that Landlord join in such application), provided Landlord shall incur no cost, expense or liability in connection therewith.

(c) Intentionally Omitted.

(d) All Alterations shall be performed (a) in a good and first-class workmanlike manner and free from defects, (b) in accordance with the plans and specifications approved by Landlord, and by contractors reasonably approved by Landlord, (c) excepting only decorative Alterations, under the supervision of a licensed architect reasonably satisfactory to Landlord, and (d) in compliance with all Requirements, the terms of this Lease, all procedures and regulations then prescribed by Landlord for coordinating all work performed in the Building. All materials and equipment to be used in the Premises shall be of first quality and at least equal to the applicable standards for the Building then established by Landlord, and no such materials or equipment shall be subject to any lien or other encumbrance. Tenant shall not take any action which would violate Landlord's labor contracts or which would cause a work stoppage, picketing, labor disruption or dispute, or interfere with Landlord's or any other tenant's or occupant's business or with the rights and privileges of any person lawfully in the Building ("Labor Disruption"). Tenant shall take the actions necessary to resolve the Labor Disruption, and shall have pickets removed and, at the request of Landlord, immediately terminate any work in the Premises that gave rise to the Labor Disruption, until Landlord gives its written consent for the work to resume. Tenant shall have no claim for damages against Landlord, nor shall the date of the commencement of the Term be extended as a result of the above actions.

(e) All personal property, trade fixtures and other movable machinery and equipment ("Tenant's Property") shall be and remain the property of Tenant and Tenant may remove the same at any time on or before the expiration date. Tenant shall repair and restore, in a good and workmanlike manner, any damage to the Premises or the Building resulting from or caused by Tenant's removal of any Tenant's Property and if Tenant fails to do so, Tenant shall reimburse Landlord, on demand, for Landlord's cost of repairing and restoring such damage. Any Tenant's Property not so removed shall be deemed abandoned and Landlord may remove and dispose of same, and repair and restore any damage caused thereby, at Tenant's cost and without liability to or recourse by Tenant or anyone claiming by, through or under Tenant. The foregoing provisions shall survive the expiration or earlier termination of this Lease. In no event, however, shall Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property): any power wiring or wiring panels; lighting or lighting fixtures; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating or air conditioning equipment; fencing or security gates; or other similar building operating equipment.

(f) Tenant, at its expense, shall discharge any lien or charge filed against the Premises and/or the Property (or any part thereof) arising out of or resulting from any work claimed to have been done by or on behalf of, or materials claimed to have been furnished to, Tenant, within ten (10) days after Tenant's receipt of notice thereof.

(g) Intentionally Omitted.

(h) The approval of plans or specifications, or consent by Landlord to the making of any Alterations, shall not constitute Landlord's agreement or representation that such plans, specifications or Alterations comply with any applicable Requirements. Landlord shall have no liability to Tenant or any other party in connection with Landlord's approval of any plans and specifications for any Alterations, or Landlord's consent to Tenant's performing any Alterations.

ARTICLE VII ASSIGNMENT AND SUBLETTING

Notwithstanding any other provision of this Lease, Tenant shall not, directly or indirectly, assign, mortgage, pledge or otherwise transfer, voluntarily or involuntarily, this Lease or any interest herein or sublet (which term without limitation, shall include granting of concessions, licenses, and the like) or allow any other person or entity to occupy the whole or any part of the Premises. Any assignment, mortgage, pledge, transfer of this Lease or subletting of the whole or any part of the Premises by Tenant without Landlord's express consent shall be invalid, void and of no force or effect.

ARTICLE VIII REPAIRS AND MAINTENANCE

8.1 TENANT OBLIGATIONS

From and after the Effective Date and until the end of the Lease Term, Tenant shall keep the Premises and every part thereof, including, without limitation, all plumbing, electrical and mechanical systems, as well as heating, cooling, ventilating, and air conditioning systems that are located within and/or exclusively serving the Premises, loading docks, roll up doors and ramps; floors, subfloors and floor coverings; walls and wall coverings (excluding painting of exterior walls); doors, door frames, locks and other locking devices, windows, glass and plate glass; ceilings, skylights, and lighting systems; all fixtures installed by or for Tenant at the Premises; and wiring, appliances and devices using or containing refrigerants, or otherwise attached to or part of Tenant's trade-fixtures and/or equipment, in good order, condition, and repair, reasonable wear and tear and damage by casualty, as a result of condemnation only excepted; and shall return the Premises to Landlord at the expiration or earlier termination of the Lease Term in such condition. Without limiting the foregoing, Tenant shall, at Tenant's sole expense, (i) immediately replace all broken glass in the Premises with glass aesthetically satisfactory to Landlord, which glass shall be equal to or in excess of the specification and quality of the original glass, and (ii) repair any area damaged by Tenant or its employees, agents or contractors. All repairs and replacements by Tenant shall be made and performed: (1) at Tenant's cost and expense and at such time and in such manner as Landlord may designate, (2) by contractors or mechanics reasonably approved by Landlord, (3) so that same shall be at least equal in quality, value and utility to the original work or installation, (4) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the Building or any of the mechanical, electrical, plumbing or other systems in the Building or the Property, and (5) in accordance with the rules and regulations and all applicable Requirements.

8.2 LANDLORD OBLIGATIONS

Except as may be provided in Articles XII and XIII, Landlord agrees to keep in good order, condition, and repair the structural components and the roof of the Building and the common areas, provided, however, that Tenant shall reimburse Landlord, as additional rent hereunder, within thirty (30) days after receipt of Landlord's invoice therefor, for the reasonable costs of maintaining, repairing, or otherwise correcting any condition caused by or arising out of an act, omission, neglect or default under

this Lease of Tenant or any employee, agent, or contractor of Tenant or any other party for whose conduct Tenant is responsible. Without limitation, Landlord shall not be responsible to make any improvements or repairs other than as expressly provided in this Section 8.2. In addition, Landlord shall not be liable for any failure to make such repairs unless and until Tenant has given notice to Landlord of the need to make such repairs and Landlord has failed to commence to make such repairs within a reasonable time thereafter.

8.3 CAUSES BEYOND CONTROL OF LANDLORD

(a) Landlord shall in no event be liable for failure to perform or any delay in performance of any of its obligations under this Lease when prevented from doing so by causes beyond its reasonable control (“Force Majeure”), including, without limitation, labor dispute, breakdown, accident, order or regulation of or by any governmental authority, epidemic, pandemic or other health emergency or exigency, or failure of supply, or inability by the exercise of reasonable diligence to obtain supplies, parts, or employees necessary to furnish services required under this Lease, or because of war or other emergency, or for any cause due to any act, neglect, or default of Tenant or Tenant’s servants, contractors, agents, employees, licensees or any person claiming by, through or under Tenant. Without limiting the foregoing, in no event shall Landlord ever be liable to Tenant for any indirect, special or consequential damages under the provisions of this Section 8.3(a) or any other provision of this Lease.

(b) Landlord shall not be liable for any damage to property of Tenant or of others entrusted to employees of the Building, or for the loss or damage to any property of Tenant by theft or otherwise. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, rain, snow, or other of the elements, water or leaks from any part of the Building or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature.

ARTICLE IX SERVICES TO BE FURNISHED BY LANDLORD; UTILITIES

9.1 UTILITIES

Tenant shall have the right to use the existing utilities and services serving the Premises as of the Effective Date. Landlord shall not in any way be liable or responsible to Tenant for any loss, damage or expense which Tenant may sustain or incur if the quantity, character, or supply of any such utilities or services is changed or is no longer available or suitable for Tenant’s requirements.

9.2 COMMON AREAS

Landlord shall provide customary maintenance, repair, and janitorial services with respect to the common areas of the Property and the parking areas, including snow and ice removal.

9.3 INTERRUPTION

Landlord shall not be liable to Tenant, nor shall Tenant have a claim for any compensation or reduction of Rent, arising out of or resulting from interruptions or shortages of utilities or building services, or from Landlord’s entering the Premises for any of the purposes authorized by this Lease or for repairing the Premises, or any portion of the Building and/or the Property. If Landlord is prevented or delayed from making any repairs, alterations or improvements, or furnishing any utility or service or performing any other obligation to be performed on Landlord’s part, by reason of any cause, Landlord shall not be liable to Tenant therefor, nor shall Tenant be entitled to any abatement or reduction of rent by reason thereof, nor

shall the same give rise to any claim by Tenant that such failure constitutes actual or constructive, total or partial, eviction from the Premises. Landlord reserves the right to stop any service or utility system when necessary by reason of accident or emergency or until necessary repairs have been completed. Except in case of emergency repairs, Landlord will give Tenant not less than twenty-four (24) hours advance notice of any contemplated stoppage and will use diligent efforts to avoid unreasonable inconvenience to Tenant by reason thereof. Landlord also reserves the right to institute such policies, programs and measures as may be necessary, required or expedient for the conservation or preservation of energy or energy services or as may be necessary or required to comply with applicable codes, rules, regulations or standards. In so doing, Landlord shall make diligent efforts to avoid unreasonable inconvenience to Tenant by reason thereof.

9.4 NO OTHER SERVICES.

Except as otherwise expressly provided in this Article IX, Landlord shall not be required to furnish any other services to the Premises or Property.

ARTICLE X INDEMNITY

10.1 INDEMNITY

To the maximum extent permitted by law, Tenant shall indemnify and save harmless Landlord and the members, managers, partners, directors, officers, agents, and employees of Landlord, against and from all claims, expenses, or liabilities of whatever nature (a) arising directly or indirectly from any default or breach by Tenant and/or Tenant's contractors, licensees, agents, servants, employees, invitees, and/or anyone claiming by, through, or under Tenant, under any of the terms or covenants of this Lease or the failure of Tenant or such persons to comply with any rule, order, regulation, or lawful direction now or hereafter in force of any public authority, in each case to the extent the same are related, directly or indirectly, to the Premises or the Building or Tenant's use thereof; or (b) arising directly or indirectly from any accident, injury, or damage, however caused, to any person or property, on or about the Premises; or (c) arising directly or indirectly from any accident, injury, or damage to any person or property occurring outside the Premises but within the Building or on the Lot, where such accident, injury, or damage results, or is claimed to have resulted, from any act, omission, or negligence on the part of Tenant, or Tenant's contractors, licensees, agents, servants, employees, or customers, or anyone claiming by, through, or under Tenant: provided, however, that in no event shall Tenant be obligated under this clause (c) to indemnify Landlord, the directors, officers, agents, employees of Landlord, to the extent such claim, expense, or liability results from any negligence or other misconduct of Landlord or the members, managers, officers, agents, or employees of Landlord on or about the Premises or the Building. The indemnification set forth in this Section 10.1 shall survive the expiration or termination of this Lease.

The foregoing indemnity and hold harmless agreement shall include, if permitted by law, without limitation, indemnity against all expenses, attorney's fees and liabilities incurred in connection with any such claim or proceeding brought thereon and the defense thereof with counsel acceptable to Landlord. At the request of Landlord, the Tenant shall defend any such claim or proceeding directly on behalf and for the benefit of Landlord.

10.2 TENANT'S RISK

Tenant agrees to use and occupy the Premises and to use such other portions of the Building and the Lot as Tenant is herein given the right to use at Tenant's sole risk; and Landlord shall have no

responsibility or liability for any loss or damage, however caused, to furnishings, fixtures, equipment, or other personal property of Tenant or of any persons claiming by, through, or under Tenant, excepting only to the extent caused by the gross negligence or willful misconduct of Landlord.

10.3 INJURY CAUSED BY THIRD PARTIES

Tenant agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through, or under Tenant, for any loss or damage resulting to Tenant or those claiming by, through, or under Tenant, or its or their property, that may be occasioned by or through the acts or omissions of persons occupying any part of the Building, or for any loss or damage from the breaking, bursting, crossing, stopping, or leaking of electric cables and wires, and water, gas, sewer, or steam pipes, or like matters.

10.4 SECURITY

Tenant agrees that, in all events, Tenant is responsible for providing security to, and installing locks and security systems serving, the Premises and Tenant's personnel and Landlord shall have no obligations or liabilities, of any kind, in connection therewith. Tenant shall provide Landlord with master keys, access cards and codes and all other necessary means of access to all locks and security systems for and with respect to the Premises.

ARTICLE XI INSURANCE

11.1 PUBLIC LIABILITY INSURANCE

Tenant agrees to maintain in full force from the date upon which Tenant first enters the Premises for any reason, throughout the Lease Term, and thereafter so long as Tenant is in occupancy of any part of the Premises, the following insurance:

(1) Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage, One Million U.S. Dollars (\$1,000,000) any one person or organization for personal and advertising injury, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) products completed operations aggregate covering: (i) property/operations liability; (ii) liquor liability if any liquor is sold, served or otherwise provided, (iii) products/completed operations liability; (iv) personal and advertising injury liability; (v) independent contractors liability; and (vi) broad form contractual liability. Tenant's policy shall be primary and non-contributory to any other insurance available to Landlord with respect to claims arising from Tenant's use and occupancy of the premises and it shall be endorsed to add Landlord as an additional insured.

(2) Commercial Property Insurance covering at replacement cost value the following property that is owned by, held by, or the legal responsibility of Tenant including but not necessarily limited to: (i) inventory; (ii) furniture, unattached fixtures, and equipment; (iii) improvements and betterments that are the responsibility of Tenant; and (iv) any other property in which Tenant retains the risk of loss including but not limited to electronic data processing equipment and employee personal property. Each policy shall provide coverage against those perils that are commonly included in an "all risk" or special causes of loss form, with no exclusions or other limitations of coverage for wind and hail or terrorism. Coverage for the perils of earthquake and flood shall be added by endorsement at Landlord's request. Policies shall also include (a) an "agreed amount" endorsement waiving any coinsurance requirement; (b) time element insurance covering business

interruption and extra expense resulting from loss or damage from the hazards specified above, to owned or non-owned property, which prevents normal operations from continuing; and (c) a loss payable endorsement providing that Tenant and Landlord are loss payees as their interests may appear.

(3) Workers' compensation insurance in accordance with statutory law and employers' liability insurance with a limit of not less than \$1,000,000 per accident, \$1,000,000 disease, policy limit and \$1,000,000 disease limit each employee.

(4) Automobile Liability Insurance covering the ownership, maintenance, and operations of any automobile or automotive equipment, whether such auto is owned, hired, and non-owned. Tenant shall maintain insurance with a combined single limit for bodily injury and property damage of not less than the equivalent of One Million Dollars (\$1,000,000) each accident. Such insurance shall insure Tenant and its subtenants against any and all claims for bodily injury, including death resulting there from, and damage to the property of others caused by accident and arising from Tenant's operations under the Agreement and whether such operations are performed by Tenant, Tenant's subtenants, or by any one directly or indirectly employed by any of them. Tenant's policy shall be primary and non-contributory to any other insurance available to Landlord and it shall be endorsed to add Landlord as an additional insured.

(5) Umbrella Liability Insurance providing excess liability coverage with respect to the commercial general liability, automobile liability and employers liability policies described above with limits of at least Five Million U.S. Dollars (USD \$5,000,000) per occurrence and Five Million US Dollars (\$5,000,000) general aggregate and products/completed operations aggregate. Such insurance shall be written as follow form or with a form that provides coverage that is at least as broad as the primary insurance policies.

(6) Such other insurance as Landlord deems necessary and prudent or required by Landlord's beneficiaries or mortgagees of any deed of trust or mortgage encumbering the Premises.

11.2 GENERAL PROVISIONS

All policies shall be issued to Tenant as the first named insured. Each policy evidencing insurance required to be carried by Tenant pursuant to this Section shall contain the following clauses and provisions: (i) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Landlord and that any coverage carried by Landlord be excess insurance; (ii) a waiver by the insurer of any right to subrogation against the indemnified parties which could arise by reason of any payment under such policy or by reason of any act or omission of any of the indemnified parties; (iii) a severability of interest clause or endorsement; (iv) a provision (in endorsement form if requested by Landlord) that the insurer or insured will not cancel or change the coverage provided by such policy without giving Landlord thirty (30) days' prior written notice.

Limits of liability specified herein can be satisfied through the maintenance of a combination of primary and umbrella policies.

Any and all of the deductibles and premiums associated with the policies providing the insurance coverage required herein shall be assumed by, for the account of, and at the sole risk of Tenant.

Each insurance company listed in the Certificates (as hereinafter defined) shall be (i) admitted to do business in the state in which the Property is located and (ii) rated by AM Best Company as having a

financial strength rating of “A-” or better and a financial size category of “VII” or greater or otherwise be satisfactory to Landlord.

All policies must be written on an occurrence basis and maintained without interruption.

Tenant shall furnish to Landlord prior to the date upon which Tenant first enters the Premises for any reason and thereafter within ten (10) days of the renewal of any policy required herein a Certificate of Liability Insurance on Acord 25 and a Certificate of Property Insurance on Acord 24 or substitute equivalent forms approved by Landlord (“Certificates”). Certificates shall evidence the following for each and every policy providing the insurance coverage required herein: (i) insurance company name, (ii) policy number, (iii) policy period, (iv) per occurrence and aggregate limits, (v) deductibles or self insured retentions, and (vi) any applicable additional insured or waiver of subrogation endorsements.

Tenant agrees to send to Landlord by certified mail or nationally recognized overnight delivery service at least thirty (30) days advance written notice of cancellation, non-renewal, or material change with respect to any of the policies required herein. Tenant shall also endorse its commercial general liability and commercial automobile liability policies to require the insurer to provide prior written notice of cancellation to Landlord as an additional insured. If any of the above insurance policies are canceled prior to expiration, Tenant shall immediately replace the insurance without lapse of coverage.

A lack of insurance coverage does not reduce or limit Tenant’s obligation to indemnify Landlord as set forth in this Lease.

In the event Tenant does not purchase the insurance required by this Lease or keep the same in full force and effect, Landlord may, but shall not be obligated to purchase the necessary insurance and pay the premium. Tenant shall pay to Landlord, as additional rent, the amount so paid by Landlord promptly upon demand. In addition, Landlord may recover from Tenant and Tenant agrees to pay, as additional rent, any and all reasonable expenses (including attorneys' fees) and damages which Landlord may sustain by reason of the failure to Tenant to obtain and maintain such insurance.

11.3 LANDLORD’S INSURANCE

Landlord shall maintain in full force throughout the Lease Term:

(1) Property Insurance providing coverage for Landlord’s owned real and personal property at the Property, in amounts and with coverages as determined reasonable by Landlord but is reasonable and customary in the area for similar properties.

(2) Landlord may maintain such additional insurance with respect to the Building and the Property, including, without limitation, earthquake insurance, terrorism insurance, flood insurance, liability insurance and/or rent insurance, as Landlord may in its sole discretion elect. Landlord may also maintain such other insurance as may from time to time be required by the holder of any mortgage on the Building.

11.4 WAIVER OF SUBROGATION

To the extent permitted by law, Landlord and Tenant each waives on behalf of itself and its insurer all rights to assert claims for any losses, damages, liabilities, and expenses, including but not limited to attorney’s fees, against the other party, its subsidiaries and affiliates, and their respective directors, officers, managers, tenants and employees, for damages to the extent proceeds realized from property insurance

policies maintained or required to be maintained under this Lease are applied to such losses, damages, liabilities, and expenses. Each property insurance policy required herein shall include an endorsement acknowledging such waiver of subrogation. Nothing contained in this Section 11.5 shall be deemed to modify or otherwise affect any releases elsewhere contained in this Lease.

ARTICLE XII CASUALTY

If the Premises (other than a de minimis portion) is damaged by fire or other casualty, Landlord shall have the option, within thirty (30) days of the occurrence of such event, to terminate this Lease by giving Tenant a notice of such termination. If Landlord elects to terminate this Lease as aforesaid, this Lease shall expire upon the tenth (10th) day after such notice is given and Tenant shall vacate the Premises and surrender same to Landlord. If Landlord does not exercise Landlord's option to terminate this Lease as aforesaid, Landlord shall promptly repair and restore the Premises to substantially the condition which existed on the Commencement Date, to the extent the same may be feasible, but Landlord shall have no obligation to expend more than the amount of insurance proceeds actually received by it, or to repair or restore any of Tenant's alterations, improvements, fixtures, equipment and personal property located in the Premises.

ARTICLE XIII INTENTIONALLY OMITTED

ARTICLE XIV DEFAULT

14.1 TENANT'S DEFAULT

(a) If at any time any one or more of the following events (herein referred to as a "Default of Tenant") shall occur:

(i) Tenant shall fail to make payment of rent or any other monetary amount when due under this Lease; or

(ii) Tenant shall fail to perform or observe some term or condition of this Lease which, because of its character, would immediately jeopardize Landlord's interest (such as, but without limitation, failure to maintain general liability insurance, or the employment of labor and contractors within the Premises in violation of this Lease), and such failure continues for three (3) days after notice from Landlord to Tenant thereof; or

(iii) Tenant shall fail to perform or observe any other covenant or provision herein contained on Tenant's part to be performed or observed and Tenant shall fail to remedy the same within thirty (30) days after notice to Tenant specifying such neglect or failure, or, if such failure is of such a nature that Tenant cannot reasonably remedy the same within such thirty (30) day period, Tenant shall fail to commence promptly to remedy the same and diligently to prosecute such remedy to completion within not more than ninety (90) days after notice to Tenant; or

(iv) except as otherwise provided by applicable law, if the estate hereby created shall be taken on execution or by other process of law, or if Tenant shall be judicially declared bankrupt or insolvent according to law, or if any assignment shall be made of the property of Tenant for the

benefit of creditors, or if a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of Tenant's property by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of Tenant under any provisions of law now or hereafter enacted, and such proceeding is not dismissed within sixty (60) days after it is begun, or if Tenant shall file a petition for such reorganization, or for arrangements under any provisions of such laws providing a plan for a debtor to settle, satisfy, or extend the time for the payment of debts; or

(v) Tenant shall abandon the Premises,

then, in any such case, Landlord may, in addition to any remedies otherwise available to Landlord, immediately or at any time thereafter, and without demand or notice, enter into and upon the Premises or any part thereof in the name of the whole and repossess the same as of Landlord's former estate, and expel Tenant and those claiming by, through or under it and remove its or their effects (forcibly if necessary) without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and/or Landlord may terminate this Lease by notice to Tenant and this Lease shall come to an end on the date of such notice as fully and completely as if such date were on the date herein originally fixed for the expiration of the term of this Lease and Tenant will then quit and surrender the Premises to Landlord, but Tenant shall remain liable as herein provided. To the extent permitted by law, Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws, in the event of Tenant being evicted or dispossessed, or in the event of Landlord obtaining possession of the Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease. In the event of any such termination, entry or re-entry, Landlord shall have the right to remove and store Tenant's property and that of persons claiming by, through or under Tenant at the sole risk and expense of Tenant and, if Landlord so elects, (x) to sell such property at public auction or private sale and apply the net proceeds to the payment of all sums due to Landlord from Tenant and pay the balance, if any, to Tenant, or (y) to dispose of such property in any manner in which Landlord shall elect, Tenant hereby agreeing to the fullest extent permitted by law that it shall have no right, title or interest in any property remaining in the Premises after such termination, entry or re-entry.

(b) Tenant covenants and agrees, notwithstanding any termination of this Lease as aforesaid or any entry or re entry by Landlord, whether by summary proceedings, termination, or otherwise, to pay and be liable for on the days originally fixed herein for the payment thereof, amounts equal to the several installments of Rent and other charges reserved as they would become due under the terms of this Lease if this Lease had not been terminated or if Landlord had not entered or re entered, as aforesaid, and whether the Premises be relet or remain vacant, in whole or in part, or for a period less than the remainder of the Term, or for the whole thereof; but in the event the Premises be relet by Landlord, Tenant shall be entitled to a credit in the net amount of rent received by Landlord in reletting, after deduction of all expenses incurred in reletting the Premises (including, without limitation, remodeling costs, brokerage fees, attorneys' fees and the like), and in collecting the rent in connection therewith. As an alternative, at the election of Landlord, Tenant will upon such termination pay to Landlord, as damages, such a sum as at the time of such termination represents the amount of the excess, if any, of the then value of the total Rent and other benefits which would have accrued to Landlord under this Lease for the remainder of the Lease Term if the lease terms had been fully complied with by Tenant over and above the then cash rental value (in advance) of the Premises for what would be the then unexpired Lease Term if the same remained in effect.

(c) In case of any Default of Tenant, re-entry, entry, expiration and dispossession by summary proceedings or otherwise, Landlord may (i) re-let the Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms which may at Landlord's option be equal to or less than or exceed the period which would otherwise have constituted the balance of the Lease Term and may grant concessions or free rent to the extent that Landlord considers advisable or necessary to re-let the Premises

and (ii) make such alterations, repairs and decorations in the Premises as Landlord, in its sole judgment, considers advisable or necessary for the purpose of reletting the Premises; and no action by Landlord in accordance with the foregoing shall operate or be construed to release Tenant from liability hereunder as aforesaid. It is specifically understood and agreed that Landlord shall be entitled to take into account in connection with any reletting of the Premises all relevant factors which would be taken into account by a sophisticated developer in securing a replacement tenant for the Premises, such as, but not limited to, the first class quality of the Building and the financial responsibility of any such replacement tenant. Landlord shall in no event be liable in any way whatsoever for failure to re-let the Premises, or, in the event that the Premises are re-let, for failure to collect the rent under such re-letting, and Tenant hereby waives, to the extent permitted by applicable law, any obligation Landlord may have to mitigate Tenant's damages. Landlord agrees to list the Premises with a broker in the event of a termination, entry or re-entry under this ARTICLE XIV, provided that Landlord's obligation to list the Premises as provided herein is independent of Tenant's obligations under this ARTICLE XIV and shall not be construed to entitle Tenant to set-off against any amounts payable by Tenant hereunder in the event of a breach or alleged breach by Landlord of such obligation. In no event shall Landlord be obligated to give priority to the re-letting of the Premises over any other Premises in the Building or any other building owned by Landlord.

(d) If there is at any time a guarantor or assignee of this Lease or any interest of Tenant herein or any sublessee, franchisee, concessionee, or licensee of all or any portion of the Premises, the happening of any of the events described in paragraph (a)(iv) of this Section with respect to such guarantor, assignee, sublessee, franchisee, concessionee, or licensee shall constitute a Default of Tenant hereunder.

(e) The specified remedies to which Landlord may resort hereunder are not intended to be exclusive of any remedies or means of redress to which Landlord may, at any time, be entitled lawfully and Landlord may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for.

(f) All costs and expenses incurred by or on behalf of Landlord (including, without limitation, attorneys' fees and expenses) in enforcing its rights hereunder or occasioned by any Default of Tenant shall be paid by Tenant.

(g) Tenant and Landlord each hereby waives any and all rights under the laws of any state to the right, if any, to trial by jury.

Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy, insolvency, or like proceedings by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater than, equal to, or less than the amount of the loss or damages referred to above.

14.2 LANDLORD'S DEFAULT

Landlord shall in no event be in default in the performance of any of Landlord's obligations hereunder unless Landlord shall have failed to perform such obligations within thirty (30) days (or such additional time as is reasonably required to correct any such default) after notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation. Without limitation, in no event shall Tenant have the right to terminate or cancel this Lease or to withhold Rent or to set-off or deduct any claim or damages against Rent as a result of any default by Landlord or breach by Landlord of its covenants or any warranties or promises hereunder, except in the case of a wrongful eviction of Tenant from the Premises (constructive or actual) by Landlord continuing after notice to Landlord thereof and a reasonable opportunity for Landlord to cure the same as set forth above. In addition, Tenant shall not assert

any right to deduct the cost of repairs or any monetary claim against Landlord from Rent thereafter due and payable under this Lease, but shall look solely to the interests of Landlord in the Property for satisfaction of any such claim.

ARTICLE XV
LANDLORD'S ACCESS TO PREMISES

15.1 LANDLORD'S RIGHT OF ACCESS

Landlord and its agents, contractors, and employees shall have the right to enter the Premises at all reasonable hours upon reasonable advance notice (except in exigent circumstances or any time in case of emergency, in which event no such notice shall be required), for the purpose of inspecting or of making repairs or alterations, to the Premises or the Building or additions to the Building, or for the purpose of performing any obligation of Landlord under this Lease, or exercising any right or remedy reserved to Landlord in this Lease or otherwise available at law or in equity, or to erect, install, use, maintain, repair and replace pipes, ducts and conduits in and through the Premises, or to make such decorations, repairs, alterations, improvements or additions, or to perform such maintenance, including, but not limited to, the maintenance of all heating, air conditioning, elevator, plumbing, electrical and other mechanical facilities, as Landlord may deem necessary or desirable. Landlord shall also have the right to make access available at all reasonable hours to prospective or existing investors, mortgagees, purchasers or tenants of any part of the Building. To assure access by Landlord to the Premises, Tenant shall provide Landlord with duplicate copies of all keys used by Tenant in providing access to the Premises.

ARTICLE XVI
SUBORDINATION

This Lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which the Premises is a part, and to all renewals, modifications, consolidations, replacements and extensions of such leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required.

ARTICLE XVII
MISCELLANEOUS PROVISIONS

17.1 CAPTIONS

The captions throughout this Lease are for convenience or reference only and shall in no way be held or deemed to define, limit, explain, describe, modify, or add to the interpretation, construction, or meaning of any provision of this Lease.

17.2 BIND AND INURE

Except as herein otherwise expressly provided, the obligations of this Lease shall run with the land, and this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The reference herein to successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances in which Landlord may later give consent to a particular assignment as required by the provisions of Article VII. Neither the assignment by Landlord of its interest in this Lease as security to a lender holding a mortgage on the

Building, nor the acceptance thereof by such lender, nor the exercise by such lender of any of its rights pursuant to said assignment shall be deemed in any way an assumption by such lender of any of the obligations of Landlord hereunder unless such lender shall specifically otherwise elect in writing or unless such lender shall have completed foreclosure proceedings under said mortgage.

17.3 NO WAIVER; INDEPENDENT COVENANTS

The failure of Landlord or of Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease shall not be deemed to be a waiver of such violation or to prevent a subsequent act, which would originally have constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of Rent or additional rent with knowledge of the breach of any covenant of this Lease shall not be deemed to be a waiver of such breach by Landlord unless such waiver be in writing signed by Landlord. No consent or waiver, express or implied, by Landlord or Tenant to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty. It is the express understanding and agreement of Landlord and Tenant and it is a condition of Landlord's agreement to execute this Lease that the obligations of Landlord under this Lease are independent covenants from Tenant's obligation to pay Rent hereunder and to continue its occupancy of the Premises for the Term of this Lease.

17.4 NO ACCORD AND SATISFACTION

No acceptance by Landlord of a lesser sum than the entire Rent then due shall be deemed to be other than on account of the earliest installment of such Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent or any part thereof be deemed to be an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy in this Lease or at law or in equity provided.

17.5 CUMULATIVE REMEDIES

The specific remedies to which Landlord may resort under the terms of this Lease are cumulative and not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by Tenant of any provisions of this Lease. In addition to the other remedies provided in this Lease, Landlord shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this Lease or to a decree compelling specific performance of any such covenants, conditions or provisions. Except as otherwise set forth herein, any obligations of Tenant as set forth herein (including, without limitation, rental and other monetary obligations, repair obligations and obligations to indemnify Landlord) shall survive the expiration or earlier termination of this Lease, and Tenant shall immediately reimburse Landlord for any expense incurred by Landlord in curing Tenant's failure to satisfy any such obligation (notwithstanding the fact that such cure might be effected by Landlord following the expiration or earlier termination of this Lease).

17.6 PARTIAL INVALIDITY

If any term or provision of this Lease or any portion thereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Lease and of such term or provision and the application of this Lease and of such term and provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

17.7 LANDLORD'S RIGHT TO CURE

If Tenant shall at any time default in the performance of any obligation under this Lease which default remains uncured after the expiration of any applicable grace period, Landlord shall have the right, but not the obligation, to enter upon the Premises and/or to perform such obligation, notwithstanding the fact that no specific provision for such substituted performance by Landlord is made in this Lease with respect to such default. In performing any such obligations, Landlord may make any payment of money or perform any other act. All sums so paid by Landlord (together with interest at the Lease Interest Rate) and all necessary incidental costs and expenses in connection with the performance of any such act by Landlord, shall be deemed to be additional rent under this Lease and shall be payable to Landlord immediately on demand. Landlord may exercise the foregoing rights without waiving any other of its rights or releasing Tenant from any of its obligations under this Lease.

17.8 ESTOPPEL CERTIFICATES

Tenant agrees on the Commencement Date and from time to time thereafter, within not more than ten (10) days after receipt of written request by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing, certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been any modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (b) that Tenant has no defenses, offsets or counterclaims against its obligations to pay rent and other charges required under this Lease and to perform its other covenants under this Lease and that there are no uncured defaults of Landlord or Tenant under this Lease (or, if there are any defenses, offsets, counterclaims or defaults, setting them forth in reasonable detail), (c) the dates to which the Rent and other charges have been paid, (d) that Tenant has not used, generated, released, discharged, stored or disposed of any Hazardous Materials on, under, in or about the Building or the Lot and Tenant has no actual knowledge that any Hazardous Substance is present, or has been used, generated, released, discharged, stored or disposed of by any party, on, under, in or about such Building or Lot, and (e) any other information reasonably requested by Landlord. Any such statement delivered pursuant to this Section 17.8 may be relied upon by any prospective purchaser or mortgagee of the property which includes the Premises, or any prospective assignee of any such mortgagee, or any lessor under any ground lease affecting the Building or any portion thereof. If Tenant does not deliver to Landlord the foregoing statement signed by Tenant within such required time period, Landlord, Landlord's Mortgagee and any prospective purchaser or mortgagee, may conclusively presume and rely upon the following facts: (1) this Lease is in full force and effect; (2) the terms and provisions of this Lease have not been modified except as otherwise represented by Landlord; (3) not more than one monthly installment of Base Rent and other charges have been paid in advance; (4) there are no claims against Landlord nor any defenses or rights of offset against collection of Rent or other charges; and (5) Landlord is not in default under this Lease. In such event, Tenant shall be estopped from denying the truth of the presumed facts.

17.9 BROKERAGE

Each party hereto warrants and represents that it has dealt with no real estate broker or agent in connection with this transaction and agrees to defend, indemnify and save the other party harmless from and against any and all claims for commissions or fees arising out of this Lease which, as to the respective parties, are inconsistent with such party's warranties and representations.

17.10 ENTIRE AGREEMENT

All negotiations, considerations, representations, and understandings between Landlord and Tenant are incorporated herein and this Lease expressly supersedes any proposals or other written documents relating hereto. This Lease may be modified or altered only by written agreement between Landlord and

Tenant, and no act or omission of any employee or agent of Landlord shall alter, change, or modify any of the provisions hereof.

17.11 HOLDOVER

If Tenant remains in the Premises after the termination of this Lease, by its own terms or for any other reason, such holding over shall not be deemed to create any tenancy, but Tenant shall be a tenant at sufferance only, at a rental rate (on a per month basis without reduction for any partial months during any such holdover) equal to two hundred percent (200%) of the Rent applicable immediately prior to such termination. Tenant shall also pay to Landlord all damages, direct, consequential, or indirect, sustained by Landlord by reason of any such holding over. Otherwise, such holding over shall be on the terms and conditions set forth in this Lease as far as applicable.

17.12 COUNTERPARTS; ELECTRONIC SIGNATURE

This Lease is executed in any number of counterparts, each copy of which is identical, and any one of which shall be deemed to be complete in itself and may be introduced in evidence or used for any purpose without the production of the other copies. This Lease may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, in addition to electronically produced signatures, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

17.13 CONSTRUCTION AND GRAMMATICAL USAGE

This Lease shall be governed, construed and interpreted in accordance with the laws of the state in which the Property is located, and Tenant agrees to submit to the personal jurisdiction of any court (federal or state) in said state for any dispute, claim or proceeding arising out of or relating to this Lease. In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so admits or requires. The use of the word "including" shall mean "including, without limitation." If there be more than one party tenant, the covenants of Tenant shall be the joint and several obligations of each such party and, if Tenant is a partnership, the covenants of Tenant shall be the joint and several obligations of each of the partners and the obligations of the firm.

17.14 WHEN LEASE BECOMES BINDING

Employees or agents of Landlord have no authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both Landlord and Tenant.

17.15 COOPERATION

Tenant hereby agrees to use good faith efforts to cooperate with Landlord and/or any affiliate of Landlord in connection with the any projects for which Landlord or any affiliate of Landlord seeks to obtain permits or approvals pursuant to any applicable Requirements. The terms of this Section 17.15 shall survive the expiration or earlier termination of this Lease.

17.16 ENFORCEMENT EXPENSES

In any action or proceeding brought by either party against the other under this Lease, after the final judicial determination of the dispute on the merits, the prevailing party shall be entitled to recover from the other party its reasonable professional fees for attorneys, appraisers and accountants, its reasonable investigation costs, and any other reasonable legal expenses and actual court costs incurred by the prevailing party in such action or proceeding.

17.17 NO SURRENDER

The delivery of keys to any employee of Landlord or to Landlord's agents or employees shall not operate as a termination of this Lease or a surrender of the Premises.

17.18 COVENANT OF QUIET ENJOYMENT

Subject to the terms and provisions of this Lease and on payment of the Rent, and other sums due hereunder and compliance with all of the terms and provisions of this Lease, Tenant shall lawfully, peaceably, and quietly have, hold, occupy, and enjoy the Premises during the term hereof, without hindrance or ejection by Landlord or by any persons claiming under Landlord. The foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied.

17.19 NO PERSONAL LIABILITY OF LANDLORD

Tenant agrees to look solely to Landlord's then-equity interest in the Building and the Lot at the time owned, for recovery of any judgment from Landlord; it being specifically agreed that neither Landlord (whether Landlord be a manager, member, individual, partnership, firm, corporation, limited liability company, trustee, fiduciary, or other entity) nor any partner, member, officer, trustee, manager, fiduciary, beneficiary, shareholder or director of Landlord, nor any trust of which any person holding Landlord's interest is trustee nor any successor in interest to any of the foregoing shall ever be personally liable for any such judgment, or for the payment of any monetary obligation to Tenant. The covenants of Landlord contained in this Lease shall be binding upon Landlord and Landlord's successors only with respect to breaches occurring during Landlord's and Landlord's successors' respective periods of ownership of Landlord's interest hereunder. If Tenant shall request Landlord's consent or approval pursuant to any of the provisions of this Lease or otherwise, and Landlord shall fail or refuse to give, or shall delay in giving such consent or approval, or shall unreasonably condition its consent or approval, Tenant shall in no event make, or be entitled to make, any claim for damages (nor shall Tenant assert, or be entitled to assert, any such claim by way of defense, set-off, or counterclaim) based upon any claim or assertion by Tenant that Landlord unreasonably withheld or delayed its consent or approval, or that the conditions thereof are unreasonable, and Tenant hereby waives any and all rights that it may have, from whatever source derived, to make or assert any such claim. Tenant's sole remedy for any such failure, refusal, or delay, or for any unreasonable conditions, shall be an action for a declaratory judgment, specific performance, or injunction solely for a determination of whether Landlord unreasonably withheld its consent, imposed unreasonable conditions to its consent or is unreasonably delaying its consent, and such remedy shall be available only

in those instances where Landlord has expressly agreed in writing not to unreasonably withhold, condition or delay its consent or approval.

17.20 NOTICES

Whenever, by the terms of this Lease, notice shall or may be given either to Landlord or to Tenant, such notice shall be in writing and shall be delivered by hand or sent by registered or certified mail, postage prepaid and return receipt requested or by a recognized overnight courier service (such as Federal Express or U.S. Postal Service Express Mail):

If intended for Landlord, addressed to at the address set forth in Section 1.2, or to such other addresses as may from time to time hereafter be designated by Landlord by like notice.

If intended for Tenant, addressed to Tenant at the address set forth on the first page of this Lease, or to such other address or addresses as may from time to time hereafter be designated by Tenant by like notice.

All such notices shall be effective upon delivery, attempted delivery, or refusal, whichever occurs first, at the address or addresses of the intended recipient, as set forth above.

17.21 OFAC COMPLIANCE

(a) Tenant represents and warrants that (a) Tenant and each person or entity owning an interest in Tenant is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury (“OFAC”) and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the “List”), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (b) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), (c) no Embargoed Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (d) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that this Lease is in violation of law, and (e) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term “Embargoed Person” means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law.

(b) Tenant covenants and agrees (a) to comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, (b) to immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer true or have been breached or if Tenant has a reasonable basis to believe that they may no longer be true or have been breached, (c) not to use funds from any “Prohibited Person” (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Landlord under the Lease and (d) at the request of Landlord, to provide such information as may be requested by Landlord to determine Tenant’s compliance with the terms hereof.

(c) Tenant hereby acknowledges and agrees that Tenant's inclusion on the List at any time during the Lease Term shall be a material default of this Lease. Notwithstanding anything herein to the contrary, Tenant shall not permit the Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall be a material default of this Lease.

17.22 CONFIDENTIALITY

Tenant agrees this Lease and the terms hereof, shall be treated as confidential and will not be disclosed to anyone in any fashion by Tenant or any its affiliates, lenders, employees, attorneys, accountants, other professionals and agents, unless specifically agreed to by Landlord in writing, other than disclosures to Tenant's third-party advisers who need to know of this Lease, and the terms hereof, for the evaluation of this Lease or the operation of Tenant's business. The provisions of this Section 17.22 shall survive the expiration or earlier termination of this Lease.

17.23 PARKING; LOADING

(a) During the Term, as an appurtenance to the Premises, (x) Tenant shall have the non-exclusive right to use all parking spaces in the parking areas serving the Building (the "Parking Area") in connection with the business operations of Tenant in the Premises on a first-come, first serve basis, (y) Tenant shall have the non-exclusive right to park trucks in the Parking Areas serving the Building on an unreserved basis, and (z) Tenant shall have the non-exclusive right to use the loading docks serving the Premises. Tenant shall not have the right to use any common drive lanes or parking areas associated with the building located at 117 Mcabee Court. Without Landlord's prior written consent, Tenant shall not (i) display, sell, lease, store or offer for sale or lease, any merchandise and/or services within the common areas, or (ii) permit any vehicle over which it has control to be parked in areas other than in areas designated for its parking. Landlord's failure or inability to provide any such parking spaces, whether because of casualty, eminent domain, or for any other reason beyond Landlord's control, shall not constitute a breach of any of Landlord's obligations under this Lease and shall in no event entitle Tenant to terminate this Lease or to any compensation, damages or other claim against Landlord.

(b) The Parking Area will be operated on a self-parking basis and no specific parking spaces will be reserved for use exclusively by Tenant. Landlord contemplates that each user of the Parking Area will have the right to park in any available stall or space in accordance with regulations of uniform applicability promulgated for all users of the Parking Area by Landlord. Notwithstanding the foregoing, Landlord reserves the right at any time and from time to time to elect to have some or all of such parking spaces on a reserved basis, whereupon Tenant shall only park its vehicles in the applicable location reserved for its use and in no other location.

(c) Tenant and its employees shall observe reasonable safety precautions in the use of the Parking Area and shall at all times abide by all rules and regulations promulgated by Landlord governing the use thereof, including the requirement that an identification or parking sticker shall be displayed at all times in all cars parked in the Parking Area. Any car not displaying such a sticker, if so required, may be towed away or booted at the car owner's expense.

(d) Notwithstanding the foregoing, in the event that all or any portion of the Parking Area is (a) totally or partially damaged or destroyed rendering the Parking Area totally or partially inaccessible or unusable; or (b) taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose, this Lease shall continue in force but Landlord shall be relieved of any obligations to provide parking to Tenant under this Section 17.23.

(e) Landlord does not assume any responsibility for, and shall not be held liable for, any damage or loss to any automobiles parked in the Parking Area or to any personal property located therein, or for any injury sustained by any person in or about the Parking Area, excepting only to the extent caused by the grossly negligent acts of Landlord, or its agents or employees.

17.24 REIT AND UBTI MATTERS

(a) Tenant recognizes and acknowledges that Landlord (and/or direct or indirect owners of Landlord) is or may from time to time seek to qualify as real estate investment trusts (each, a “REIT”) pursuant to Sections 856 et seq. of the Internal Revenue Code of 1986, as amended (the “Code”) or be subject to tax on unrelated business taxable income as defined in the Code. Tenant agrees to promptly provide such information in its possession or reasonably available to it as Landlord reasonably requests in order to determine whether Landlord’s receipt of any income derived or to be derived under any provision of this Lease may not constitute “rents from real property” as defined for purposes of Section 856(d) of the Code or for purposes of Section 512(b) of the Code, or otherwise adversely affect the status of Landlord or its direct or indirect owners under the real estate investment trust or unrelated business taxable income provisions of the Code (each an “Adverse Event”). If Landlord determines in good faith that this Lease or any document contemplated hereby presents an undue risk of an Adverse Event, Tenant agrees upon written notice from Landlord to reasonably cooperate with Landlord in avoiding such Adverse Event, including but not limited to entering into an amendment or modification of this Lease and entering into such other agreements (including with Landlord’s designees) as Landlord in good faith deems necessary to avoid or minimize the effect of an Adverse Event. Any such cooperation shall be structured so that equivalent payments (in economic terms) are paid by Tenant and so that Tenant does not, to more than a de minimis extent, have materially greater obligations or receive materially diminished services, or services of a materially lesser quality, than it was entitled to receive under the Lease without such cooperation.

(b) Without limiting the terms of Article VII, (i) Tenant expressly covenants and agrees not to enter into any sublease or assignment of the Premises which provides for rental or other payment for such use, occupancy, or utilization based in whole or in part on the net income or profits derived by any person from the property leased, used, occupied, or utilized (other than an amount based on a fixed percentage or percentages of receipts or sales), and that any such purported sublease or assignment shall be absolutely void and ineffective as a conveyance of any right or interest in the possession, use, occupancy, or utilization of any part of the Premises, and (ii) Landlord may waive the receipt of any amount payable to Landlord under this Lease and such waiver shall constitute an amendment or modification of this Lease with respect to such payment. The parties agree to execute such further instrument as may reasonably be required by Landlord in order to give effect to the foregoing provisions of this Section 17.24(b).

(Signatures on following page)

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date set forth in Section 1.2, above.

Landlord:

ASHEVILLE INDUSTRIAL OWNER LLC,
a Delaware limited liability company

By: _____

Name:

Its:

Tenant:

COUNTY OF HENDERSON, a body corporate
and politic of the State of North Carolina

By: _____

Name: John Mitchell

Its: County Manager

Hereunto duly authorized

Pre-audit certification:

EXHIBIT A

RULES AND REGULATIONS

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls or other parts of the Building not occupied by any tenant shall not be obstructed or encumbered by any tenant or used for any purpose other than ingress and egress to and from the Premises, and if the Premises are situated on the ground floor of the Building, the tenant thereof shall, at said tenant's own expense, keep the sidewalks and curb directly in front of said Premises clean and free from ice and snow. Landlord shall have the right to control and operate the public portions of the Building, and the facilities furnished for the common use of the tenants, in such a manner as Landlord deems best for the benefit of the tenants generally. No tenant shall permit the visit to its premises of persons in such numbers or under such conditions as to interfere with the use and enjoyment by other tenants of the entrances, corridors, elevators and other public portions or facilities of the Building.

2. No awnings or other projections shall be attached to the outside walls of the Building without the prior written consent of Landlord. No drapes, blinds, shades, or screens shall be attached to or hung in, or used in connection with any window or door of the Premises, without the prior written consent of Landlord. Such awnings, projections, curtains, blinds, shades, screens or other fixtures must be of a quality, type, design and color, and attached in the manner approved by Landlord. Drapes installed by the tenant for their use must be cleaned by the tenant. Landlord shall have the right to require Tenant to remove, in Landlord's reasonable discretion, any items placed on the windowsills of the Premises that are visible from outside of the Building.

3. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors or vestibules without the prior written consent of Landlord.

4. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees, shall have caused the same.

5. There shall be no marking, painting, drilling into or in any way defacing any part of the Premises or the Building. No boring, cutting or stringing of wires shall be permitted. Tenant shall not construct, maintain, use or operate within the Premises or elsewhere within or on the outside of the Building, any electrical device, wiring or apparatus in connection with a loud speaker system or other sound system. Notwithstanding, however, the Tenant shall be permitted to maintain the Starlink System installed in the Premises as of the Execution Date.

6. No bicycles, vehicles or animals, birds or pets of any kind (other than service animals providing assistance to persons with disabilities) shall be brought into or kept in or about the Premises, and no cooking shall cause or permit any unusual or objectionable odors to be produced upon or emanate from the Premises.

7. The Premises shall not be used for the sale of merchandise, goods or property of any kind at auction.

8. No tenant shall make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises of those having business with them whether by the use of any musical instrument, radio, talking machine, unmusical noise, whistling, singing, or in any other way. No tenant shall throw anything out of the doors or windows or down the corridors or stairs.

9. Except as expressly permitted in the Lease, No inflammable, combustible or explosive fluid, chemical or substance shall be brought or kept upon the Premises.

10. No additional locks or bolts of any kind shall be placed upon any of the doors, or windows by any tenant, nor shall any changes be made in existing locks or the mechanism thereof. The doors leading to the corridors or main halls shall be kept closed during Business Hours except as they may be used for ingress or egress. Each tenant shall, upon the termination of its tenancy, restore to Landlord all keys to stores, offices, storage, and toilet rooms either furnished to or otherwise procured by such tenant, and in the event of the loss of any keys, so furnished, such tenant shall pay to Landlord the cost thereof.

11. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's opinion, tends to impair the reputation of the Building, and upon written notice from Landlord, tenant shall refrain from or discontinue such advertising.

12. Any person employed by any tenant to do janitorial work within the Premises must obtain Landlord's consent and such person shall, while in the Building and outside of said Premises, comply with all instructions issued by the Superintendent of the Building. No tenant shall engage or pay any employees on the Premises, except those actually working for such tenant on said Premises.

13. Landlord reserves the right to exclude from the Building at all times any person who is not known or does not properly identify himself to the building management or watchman on duty. Each tenant shall be responsible for all persons for whom it authorizes entry into or exit out of the Building, and shall be liable to Landlord for all acts of such persons.

14. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purpose.

15. Each tenant, before closing and leaving the premises at any time, shall see that all windows are closed and all lights turned off.

16. The requirements of tenant will be attended to only upon application at the office of the Building, if any. Employees shall not perform any work or do anything outside of the regular duties, unless under special instruction from the management of the Building.

17. Canvassing, soliciting and peddling in the Building are prohibited, and each tenant shall cooperate to prevent the same.

18. Access plates to underfloor conduits shall be left exposed. Where carpet is installed, carpet shall be cut around access plates. Where tenant elects not to provide removable plates in their carpet for access into the underfloor duct system, it shall be the tenant's responsibility to pay for the removal and replacement of the carpet for any access needed into the duct system at any time in the future.

19. Mats, trash or other objects shall not be placed in the public corridors.

20. Tenant shall comply with all workplace smoking Laws. There shall be no smoking in bathrooms, elevator lobbies, elevators, and other common areas, or anywhere in the Building or the Parking Area or within the no-smoking zones outside the Building as designated by Landlord, from time to time (Tenant acknowledging that the entire Building is smoke-free).

21. Prior to serving alcoholic beverages in the Premises, Tenant shall obtain from Landlord a copy of Landlord's then-current policies regarding alcoholic beverages, and shall comply therewith (including, without limitation, compliance with the insurance requirements set forth therein).

22. Storage of propane tanks, whether interior or exterior, shall be in secure and protected storage enclosures approved by the local fire department and, if exterior, shall be located in areas specifically designated by Landlord. Safety equipment, including eye wash stations and approved neutralizing agents, shall be provided in areas used for the maintenance and charging of lead-acid batteries. Tenant shall protect electrical panels and building mechanical equipment from damage from forklift trucks.

23. Machinery, equipment and apparatus belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building to such a degree as to be objectionable to Landlord or to cause harm to the Building shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate the transmission of such noise and vibration. Tenant shall cease using any such machinery which causes objectionable noise and vibration which cannot be sufficiently mitigated.

24. Forklifts which operate on asphalt paving areas shall not have solid rubber tires and shall use only tires that do not damage the asphalt. Tenant shall be responsible for the safe storage and removal of all pallets. Pallets shall be stored behind screened enclosures at locations approved by the Landlord.

25. Tenant shall be responsible for (a) keeping the exterior of the Premises, including, without limitation, truck court and parking areas, reasonably free of trash and refuse, and (b) the safe storage and removal of all trash and refuse. All such trash and refuse shall be contained in suitable receptacles stored behind screened enclosures at locations approved by Landlord. Landlord reserves the right to remove, at Tenant's expense and without further notice, any trash or refuse left elsewhere outside of the Premises.

26. No automobile, recreational vehicle or any other type of vehicle or equipment shall remain upon any common area longer than seventy-two (72) hours and no vehicle or equipment of any kind shall be dismantled or repaired or serviced on any common area. All vehicle parking shall be restricted to areas designated and marked for vehicle parking. The foregoing restrictions shall not be deemed to prevent temporary parking for loading or unloading of vehicles in designated areas.

27. No open storage shall be permitted in the Property.

28. Violation of these rules and regulations, or any amendments thereto, shall be a default under this Lease, entitling Landlord to all remedies therefor.

29. Landlord may upon request by any tenant, waive the compliance by such tenant of any of the foregoing rules and regulations, provided that (i) no waiver shall be effective unless signed by Landlord or Landlord's authorized Agent, (ii) any such waiver shall not relieve such tenant from the obligation to comply with such rule or regulation in the future unless expressly consented to by Landlord, and (iii) no waiver granted to any tenant shall relieve any other tenant from the obligation of complying with the foregoing rules and regulations unless such other tenant has received a similar waiver in writing from Landlord.

30. In the event of any conflict between any provisions in this Lease and these rules and regulations, the provisions set forth in this Lease shall control.

HENDERSON COUNTY CONTRACT ADDENDUM

The County of Henderson, hereafter the "County" anticipates that that certain Lease by and between the County and Contractor (defined below) dated as of the date hereof, with an Effective Date of September 28, 2024 (referred to herein as "Contract") will be financed in whole or in part with Federal funding. As such, Federal laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such Federal requirements, including any amendments made after the execution of this Contract, shall govern this Contract, unless the Federal Government determines otherwise. This Section identifies the Federal requirements that are applicable to this Contract. Asheville Industrial Owner LLC, a Delaware limited liability company (referred to herein as "Contractor") is responsible for complying with all applicable provisions.

To the extent applicable, the Federal requirements are deemed incorporated into this Contract by reference and shall be incorporated into any subcontract or subcontract executed by the Contractor pursuant to its obligations under this Contract. Anything to the contrary herein notwithstanding, all Federal awarding agency-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests, which would knowingly cause the County to be in violation of the Federal awarding agency's terms and conditions.

This Contract will be financed, in whole or in part, by funding provided by programs of the Federal Emergency Management Agency (FEMA). To the extent applicable, Contractor shall at all times comply with all applicable FEMA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

A. REMEDIES:

PERFORMANCE AND DEFAULT: If, through any cause, Contractor shall fail to fulfill in timely and proper manner the obligations under the Contract, the County shall have the right to terminate the Contract by giving written notice to the Contractor and specifying the effective date of such termination.

In the event of default by the Contractor under The Contract, or upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the County may immediately cease doing business with the Contractor, immediately terminate the Contract for cause, and may take action to debar the Contractor from doing future business with the County.

B. TERMINATION FOR CONVENIENCE:

The County may, for any reason within its sole discretion, terminate this contract at any time by providing 30 days' notice in writing from the County to the Contractor. If the Contract is terminated by the County as provided in this section, the County shall pay for rent owed to the date of termination, less any payment or compensation previously made.

C. Equal Employment Opportunity

During the performance of this contract, in the event Contractor has employees, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex,

sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order

unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

D. ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

To the extent applicable to Contractor's obligations under the Contract, Contractor and any subcontractor, or the successor, transferee, or assignee of Contractor or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Contract. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Contract.

E. OTHER NON-DISCRIMINATION STATUTES

Contractor acknowledges that the County is bound by and agrees, to the extent applicable to Contractor, to abide by the provisions contained in the federal statutes enumerated below, and any other federal statutes and regulations that may be applicable to the expenditure of Fiscal Recovery Funds:

- (1) The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- (2) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- (3) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- (4) Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or

instrumentalities or agencies thereto.

F. COMPLIANCE WITH THE DAVIS-BACON ACT- CONSTRUCTION. Not applicable.

G. COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

- (1) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.
- (2) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

H. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

In the event Contractor has any employees performing services under the Contract:

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under the Contract or any other Federal contract with the Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the Contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the

subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

I. RIGHTS TO INVENTIONS

Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

J. CLEAN AIR ACT

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

K. FEDERAL WATER POLLUTION CONTROL ACT

(1)The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2)The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3)The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

L. DEBARMENT AND SUSPENSION

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by FEMA. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County and FEMA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The bidder or proposer further agrees to include a

provision requiring such compliance in its lower tier covered transactions.”

M. Byrd Anti-Lobbying Amendment

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) requires that contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

N. PROCUREMENT OF RECOVERED MATERIALS

(1) In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.”

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

O. ACCESS TO RECORDS

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States, and that both parties will fully cooperate and comply with any lawful requests of the FEMA Administrator or the Comptroller of the United States.”

P. CONTRACT MODIFICATIONS

Changes to be allowable under a FEMA grant or cooperative agreement award, the cost of any Contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

Q. DHS SEAL, LOGO, AND FLAGS

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

R. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives applicable to the Contract.

S. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Contract.

T. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

U. DOMESTIC PREFERENCE CLAUSE. Not applicable.

V. CONFLICT OF INTEREST; GIFTS AND FAVORS

- a) Contractor understands that (1) The County will use Fiscal Recovery Funds to pay for the cost of this Contract, and (2) the expenditure of Fiscal Recovery Funds is governed by the [*Conflict of Interest Policy*] of the County, the Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and North Carolina law (including, without limitation, N.C. Gen. Stat. § 14-234(a)(1) and N.C. Gen. Stat. § 14-234.3(a)).
- b) Contractor certifies to the County that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of the County involved in the selection, award, or administration of this Contract (each, a "*Covered Individual*"), nor any member of a Covered Individual's immediate family, nor a Covered Individual's partner, nor an organization (including Contractor) which employs or is about to employ a Covered Individual, has a financial or other interest in or has received a tangible personal benefit from Contractor. Should Contractor obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to the County in writing.
- c) Contractor certifies to the County that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of the County. Should Contractor obtain knowledge of the provision, or offer of the provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to the County in writing.

W. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES. Not applicable.

X. SOLICITATION OF MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES

- (1) If Contractor intends to engage with any Subcontractors in support of the Contract, Contractor shall (1) place qualified small and minority businesses and women's business enterprises on its solicitation lists; (2) assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development

Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.

- (2) For the purposes of Section XII(a), an entity shall qualify (1) as a “minority business” or “women’s business enterprise” if it is currently certified as a North Carolina “historically underutilized business” under N.C. Gen. Stat. § 143-128.4(a), and (2) as a “small business” if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

Y. BUY AMERICA

If this project is subject to the Build America, Buy America Act (BABAA), the Contractor and its subcontractors shall certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractor and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirement.

Z. Increasing Seat Belt Use in the United

Pursuant to Executive Order 13043, 62 Fed. Reg. 19216 (Apr. 18, 1997), the County encourages Contractor to adopt and enforce on-the- job seat belt policies and programs for its employees when operating company-owned, rented or personally owned vehicles.

AA. Reducing Text Messaging While Driving

Pursuant to Executive Order 13513, 74 Fed. Reg. 51225 (Oct. 6, 2009), the County encourages Contractor to adopt and enforce policies that ban text messaging while driving.

BB. Conflicts and Interpretation

To the extent that any portion of this Addendum conflicts with any term or condition of the Contract expressed outside of this Addendum, the terms of this Addendum shall govern.

[Remainder of Page Intentionally Left Blank]

CONTRACTOR:

ASHEVILLE INDUSTRIAL OWNER LLC,
a Delaware limited liability company

By: _____
Name:
Its:

COUNTY OF HENDERSON:

By: _____
Name: _____
Title: _____

This instrument has been preaudited in the manner required by the Local Government Budget & Fiscal Control Act. N.C.G.S. 159-28(a).

Henderson County Finance Director

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY
EXCLUSION LOWER TIER COVERED TRANSACTION

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms
the truthfulness and
accuracy of this statement of its certification and disclosure, if any.

DATE

SIGNATURE

COMPANY

NAME

TITLE

State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 20___.

Notary Public _____

My Appointment Expires _____

[SEAL]

CERTIFICATION REGARDING LOBBYING

(To be submitted with all offers exceeding \$100,000; must be executed prior to Award)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into these transactions imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 1352, et seq., apply to this certification and disclosure, if any.

Signature of Contractor's
Authorized Official
Date _____

Printed Name and Title of Contractor's

Authorized Official State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 20___.

Notary Public _____

My Appointment Expires _____

[SEAL]