ASSET PURCHASE AGREEMENT

among


and

VALCAMBI SA (“BUYER”)

dated as of January 9, 2019
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE 1 Definitions</td>
<td>2</td>
</tr>
<tr>
<td>1.1 Definitions</td>
<td>2</td>
</tr>
<tr>
<td>1.2 Other Definitions and Interpretive Matters</td>
<td>11</td>
</tr>
<tr>
<td>ARTICLE 2 Purchase and Sale</td>
<td>12</td>
</tr>
<tr>
<td>2.1 Purchase and Sale</td>
<td>12</td>
</tr>
<tr>
<td>2.2 Excluded Assets</td>
<td>14</td>
</tr>
<tr>
<td>2.3 Assumed Liabilities</td>
<td>16</td>
</tr>
<tr>
<td>2.4 Excluded Liabilities</td>
<td>16</td>
</tr>
<tr>
<td>2.5 Assignments, Cure Amounts</td>
<td>18</td>
</tr>
<tr>
<td>2.6 Further Assurances</td>
<td>18</td>
</tr>
<tr>
<td>ARTICLE 3 Purchase Price</td>
<td>18</td>
</tr>
<tr>
<td>3.1 Purchase Price</td>
<td>18</td>
</tr>
<tr>
<td>3.2 Allocation of Purchase Price</td>
<td>19</td>
</tr>
<tr>
<td>ARTICLE 4 Closings</td>
<td>19</td>
</tr>
<tr>
<td>4.1 Closing Date</td>
<td>19</td>
</tr>
<tr>
<td>4.2 Closing Date Payment of Purchase Price</td>
<td>19</td>
</tr>
<tr>
<td>4.3 Buyer’s Closing Deliveries</td>
<td>19</td>
</tr>
<tr>
<td>4.4 Sellers’ Closing Deliveries</td>
<td>20</td>
</tr>
<tr>
<td>ARTICLE 5 Representations and Warranties of Sellers</td>
<td>21</td>
</tr>
<tr>
<td>5.1 Authority; Validity; Consents</td>
<td>21</td>
</tr>
<tr>
<td>5.2 Subsidiaries</td>
<td>21</td>
</tr>
<tr>
<td>5.3 No Conflicts; Consents</td>
<td>21</td>
</tr>
<tr>
<td>5.4 Encumbrances; Title to Assets; Real Property</td>
<td>22</td>
</tr>
<tr>
<td>5.5 Taxes</td>
<td>23</td>
</tr>
<tr>
<td>5.6 Intellectual Property</td>
<td>23</td>
</tr>
<tr>
<td>5.7 Insurance</td>
<td>23</td>
</tr>
<tr>
<td>5.8 Compliance with Laws</td>
<td>23</td>
</tr>
<tr>
<td>5.9 Permits</td>
<td>23</td>
</tr>
<tr>
<td>5.10 Consents and Approvals</td>
<td>23</td>
</tr>
<tr>
<td>5.11 Legal Proceedings; Government Orders</td>
<td>24</td>
</tr>
<tr>
<td>5.12 Employees</td>
<td>24</td>
</tr>
<tr>
<td>5.13 Environmental Matters</td>
<td>24</td>
</tr>
<tr>
<td>5.14 Brokers or Finders</td>
<td>26</td>
</tr>
<tr>
<td>ARTICLE 6 Representations and Warranties of Buyer</td>
<td>26</td>
</tr>
<tr>
<td>6.1 Organization and Good Standing</td>
<td>26</td>
</tr>
<tr>
<td>6.2 Authority; Validity; Consents</td>
<td>26</td>
</tr>
<tr>
<td>6.3 No Conflict</td>
<td>27</td>
</tr>
<tr>
<td>6.4 Availability of Funds</td>
<td>27</td>
</tr>
<tr>
<td>6.5 Litigation</td>
<td>27</td>
</tr>
</tbody>
</table>
6.6 Brokers or Finders..........................................................................................27

ARTICLE 7 ACTIONS PRIOR TO THE CLOSING DATE ........................................27
  7.1 Operations Prior to the Closing Date...............................................................27
  7.2 Commercially Reasonable Efforts ..................................................................29
  7.3 Bankruptcy Court Approval .........................................................................29
  7.4 Bidding Procedures ......................................................................................29
  7.5 Bankruptcy Filings .......................................................................................29
  7.6 Access to Buyer Documentation ..................................................................30

ARTICLE 8 ADDITIONAL AGREEMENTS ...........................................................30
  8.1 Governmental Approvals and Consents .......................................................30
  8.2 Taxes ...........................................................................................................31
  8.3 Bulk Sales ....................................................................................................32
  8.4 Payments Received ......................................................................................32
  8.5 Assigned Contracts and Assigned Leases ...................................................32
  8.6 Employee Matters .......................................................................................33
  8.7 Permits .........................................................................................................33
  8.8 Post-Closing Books and Records, Personnel and Services .........................34
  8.9 Post-MAE Insurance Proceeds ..................................................................35
  8.10 No Other Representations or Warranties; Disclaimers .............................35

ARTICLE 9 CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE .........................................................36
  9.1 Sellers’ Performance ....................................................................................36
  9.2 No Order ......................................................................................................36
  9.3 Sellers’ Deliveries ........................................................................................36
  9.4 Assigned Contracts and Assigned Leases ....................................................36
  9.5 Permits .........................................................................................................36
  9.6 Sale Order ....................................................................................................37

ARTICLE 10 CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE ...........................37
  10.1 Sale Order in Effect ....................................................................................37
  10.2 Buyer’s Performance ..................................................................................37
  10.3 No Order ....................................................................................................37
  10.4 Buyer’s Deliveries ......................................................................................37

ARTICLE 11 TERMINATION ..............................................................................38
  11.1 Termination Events ....................................................................................38
  11.2 Effect of Termination ................................................................................39

ARTICLE 12 GENERAL PROVISIONS ...............................................................40
  12.1 Survival ......................................................................................................40
  12.2 Confidentiality ............................................................................................40
  12.3 Public Announcements ..............................................................................40
  12.4 Notices .......................................................................................................41
  12.5 Waiver, Waiver of Damages .....................................................................42
  12.6 Entire Agreement; Amendment ..................................................................43
12.7 Assignment. ...........................................................................................................43
12.8 Severability. ...........................................................................................................43
12.9 Expenses. ...............................................................................................................43
12.10 Time of Essence. ....................................................................................................44
12.11 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver. ..........44
12.12 Counterparts. ..........................................................................................................44
12.13 Parties in Interest; No Third Party Beneficiaries. ....................................................45
12.14 Non-Recourse. .......................................................................................................45
12.15 Headings. ...............................................................................................................45
12.16 Disclosure Schedules; Materiality. ........................................................................45
SCHEDULES

Schedule 3.2  Purchase Price Allocation Methodology
Disclosure Schedules
Schedule 7.1  Operations Prior to the Closing Date
Schedule 8.5  Security Arrangements
Schedule 8.6  Potential Transferred Employees

EXHIBITS

Exhibit A  Assigned Real Property
Exhibit B  Assigned Leases
Exhibit C  Assigned Contracts
Exhibit D  Assigned Inventory
Exhibit E  Additional Excluded Assets
Exhibit F  Form of Assignment and Assumption Agreement
Exhibit G  Additional Assumed Liabilities
Exhibit H  Bidding Procedures Order
Exhibit I  Form of Deed
Exhibit J  Form of Assignment and Bill of Sale
Exhibit K-1 Form of New Leases
Exhibit K-2 Form of New Leases

ANNEXES

Annex 1  Subsidiary Sellers
ASSET PURCHASE AGREEMENT

PREAMBLE

This Asset Purchase Agreement (this “Agreement”), dated as of January 9, 2019, is entered into among Republic Metals Corporation, a Florida corporation (“RMC”), and Republic Metals Refining Corporation, a Florida corporation (together with RMC, the “Parent Companies”), and the subsidiaries of the Parent Companies listed on Annex 1 (collectively with the Parent Companies, each a “Seller” and collectively, the “Sellers”) and Valcambi SA, a Swiss company (“Buyer”); provided, however, subject to Buyer’s continuing guaranty of all of its obligations hereunder, Buyer shall be entitled with prior written notice to Sellers and the Bankruptcy Court, to assign its rights hereunder to a newly created United States-domiciled subsidiary of Buyer.

RECITALS

WHEREAS, certain terms used in this Agreement are defined in Section 1.1;

WHEREAS, the Sellers have filed voluntary petitions for relief under Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (as amended, the “Bankruptcy Code”), on either November 2, 2018 or November 21, 2018, as applicable (collectively, the “Petition Date”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) (such cases, collectively, the “Bankruptcy Cases”);

WHEREAS, the Sellers are engaged in the business of owning and operating facilities that offer gold, silver or other precious metals or high-technology metals refining or minting and all currently conducted business activities that are ancillary thereto (the “Business”); and

WHEREAS, subject to the terms and conditions hereof and of the Transaction Documents provided for herein, the Sellers desire to sell, transfer and assign to Buyer, and Buyer desires to purchase, acquire and assume from the Sellers, all of the Assets and Assumed Liabilities (as each such term is defined below);

WHEREAS, the board of managers, managing member, sole shareholder, sole member, or applicable governing body of each Seller has determined that a sale of the assets of its applicable Seller is necessary to maximize value and it is advisable and in the best interests of their respective estates and the beneficiaries of such estates to consummate the transactions provided for herein and has approved this Agreement; and

WHEREAS, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Bidding Procedures Order and, if Buyer is the Successful Bidder, in accordance with the Bidding Procedure Order, the Sale Order to be entered by the Bankruptcy Court in the Bankruptcy Cases.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the Parties hereby agree as follows:
ARTICLE 1

DEFINITIONS

1.1 Definitions.

The following terms have the meanings specified or referred to in this ARTICLE 1:

“Action” means (i) any claim, action, cause of action, demand, lawsuit, arbitration, notice of violation, proceeding, litigation, citation or summons or (ii) to the Sellers’ Knowledge, any inquiry, investigation or audit, in each case, whether civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Alternative Transaction” means a sale of all or substantially all of the Assets to a Person or Persons other than Buyer or an Affiliate of Buyer pursuant to the Auction.

“Asset Taxes” has the meaning set forth in Section 8.2(b).

“Assets” has the meaning set forth in Section 2.1(b).

“Assigned Contracts” has the meaning set forth in Section 2.1(b)(v).

“Assigned Leases” has the meaning set forth in Section 2.1(b)(ii).

“Assigned Real Property” has the meaning set forth in Section 2.1(b)(i).

“Assignment and Assumption Agreement(s)” means the Assignment and Assumption Agreement(s) in substantially the form attached hereto as Exhibit F, evidencing the assignment to and assumption by Buyer of all rights and obligations under the Assigned Contracts.

“Assignment(s) and Bill(s) of Sale” means the Assignment(s) and Bill(s) of Sale in substantially the form attached hereto as Exhibit J, evidencing the sale, assignment, conveyance, transfer and delivery to Buyer all of Sellers’ right, title and interest in and to the Assets and Buyer’s assumption of all Assumed Liabilities with respect to such Assets.

"Assumed Liabilities" has the meaning set forth in Section 2.3.

“Auction” means the auction as contemplated by the Bidding Procedures Order.
“Avoidance Actions” means all rights, lawsuits, claims, rights of recovery, objections, causes of action, avoidance actions and other similar rights of any Seller arising under Chapter 5 of the Bankruptcy Code (whether or not asserted as of the Closing Date) or comparable state law and all proceeds thereof.

“Backup Bidder” has the meaning set forth in the Bidding Procedures Order.

“Bankruptcy Cases” has the meaning set forth in the Recitals hereto.

“Bankruptcy Code” has the meaning set forth in the Recitals hereto.

“Bankruptcy Court” has the meaning set forth in the Recitals hereto.

“Bidding Procedures Order” means the bidding procedures order of the Bankruptcy Court, to be entered in the Bankruptcy Cases substantially and in all material respects in the form attached hereto as Exhibit H.

“Business” has the meaning set forth in the recitals.

“Business Day” means any day except Saturday, Sunday or any other day on which commercial banks located in New York, New York are authorized or required by Law to be closed for business.

“Buyer” has the meaning set forth in the preamble.

“Buyer Termination Notice” has the meaning set forth in Section 11.1(c)(i).


“Claims” means any claims, damages, actions, suits, causes of action, rights, liens, demands, obligations and/or liabilities, of any nature whatsoever, whether known or unknown, asserted or unasserted, that existed or that may have existed at any time up until the Closing Date.

“Closing” has the meaning set forth in Section 4.1.

“Closing Date” has the meaning set forth in Section 4.1.


“Confidentiality Agreement” has the meaning set forth in Section 12.2.

“Contract” means any contract, indenture, note, bond, lease for personal property or other lease, license, purchase or sale order, warranties, commitments, or other written or oral agreement, but excluding the Leases.
“Cure Amounts” means all amounts, costs and expenses necessary to cure any monetary default as required by Section 365 of the Bankruptcy Code with respect to an Assigned Contract.

“Deed” means the special warranty deed substantially in the form attached hereto as Exhibit I.

“Deposit” has the meaning set forth in Section 3.1(a).

“DIP Account” means the segregated debtor-in-possession account opened by Sellers solely for the purpose of the sale of the Assets contemplated by this Agreement.

“Disclosure Schedules” means the Schedules referred to in ARTICLE 5.

“Dollars or $” means the lawful currency of the United States.

“Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Environmental Attributes” means any emissions and renewable energy credits, energy conservation credits, benefits, offsets and allowances, emission reduction credits or words of similar import or regulatory effect (including emissions reduction credits or allowances under all applicable emission trading, compliance or budget programs, or any other federal, state or regional emission, renewable energy or energy conservation trading or budget program) that have been held, allocated to or acquired for the development, construction, ownership, lease, operation, use or maintenance of any of the Sellers as of: (i) the date of this Agreement; and (ii) future years for which allocations have been established and are in effect as of the date of this Agreement.

“Environmental Claim” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including

“Environmental Notice” means any written inquiry, written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

“Equipment” has the meaning set forth in Section 2.1(b)(iii).

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Contract” has the meaning set forth in Section 2.2(b).

“Excluded Leases” has the meaning set forth in Section 2.2(c).

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Final” means, with respect to an order, judgment or other decree of the Bankruptcy Court or other court of competent jurisdiction, in full force and effect, as to which no appeal is pending and which has not been, and is not subject to being, reversed, stayed, modified or amended; provided, however, that any potential for modification or amendment pursuant to Federal Rules of Bankruptcy Procedure 9023 and/or 9024 or request for stay pending appeal pursuant to Federal Rule of Bankruptcy Procedure 8007 or other similar rule shall not be considered in determining whether an order is Final.

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, any agency or instrumentality of such government or political subdivision, any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), any arbitrator (public or private), court or tribunal of competent jurisdiction, or any instrumentality or agency of any of the foregoing.
“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

“Indebtedness” of any Person means, without duplication, (i) the principal, interest and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property (other than for services or goods acquired in the Ordinary Course of Business), all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“Insider” has the meaning set forth in Section 101(31) of the Bankruptcy Code.

“Insurance Policies” has the meaning set forth in Section 5.7.

“Intellectual Property” means any and all of the following in any jurisdiction throughout the world: (a) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (b) copyrights, including all applications and registrations, and works of authorship, whether or not copyrightable; (c) trade secrets and confidential know-how; (d) patents and patent applications; (e) websites and internet domain name registrations; and (f) all other intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing.

“Intellectual Property Agreements” means all licenses, sublicenses and other agreements by or through which any Person grants to any Seller or any Seller grants to any other Person any exclusive or non-exclusive rights or interests in or to any Intellectual Property that is used in connection with the Business.

“Intellectual Property Assets” means all Intellectual Property that is owned by any Seller and used in connection with the Business, including the Intellectual Property Registrations set forth on Schedule 5.6(a).
“Intellectual Property Registrations” means all Intellectual Property Assets that are subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction.

“Inventory” means all of the Sellers’ inventory (including, without limitation, finished goods, merchandise, work in progress, residual by-products, samples, supplies, spare parts, shipping materials, packaging materials, raw materials and other consumables) owned and maintained, held or stored by or for any of the Sellers as of the Closing Date.

“Knowledge of Sellers” or “Sellers’ Knowledge” or any other similar knowledge qualification, means the knowledge of any of Jason Rubin, David Comite, Zachary Shair, James Gavilan, Luis Pena, Alan Silverstein, Robert Lani, Alex Galguera, JR Rao or Rafael Carbonell, after reasonable inquiry and investigation.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“Leases” has the meaning set forth in Section 5.4(b).

“Leased Real Property” means the parcels of real property of which any Seller is the lessee or sublessee (together with all Structures thereon), including without limitation parcels of real property that a Seller occupies pursuant to a verbal or at-will lease or arrangement.

“Liability” means any debt, loss, claim (as defined in Bankruptcy Code Section 101(5)), damage, demand, fine, judgment, penalty, liability, or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability, successor liability, or otherwise), and including all costs and expenses related thereto (including expenses of legal counsel, experts, engineers and consultants, and costs of investigations).

“Material Adverse Effect” means any fact, condition, change, violation, inaccuracy, circumstance, effect, event, or occurrence that individually or in the aggregate has had, or would be reasonably likely to have, a material adverse change in or material adverse effect on the Assets (excluding the Excluded Assets and the Excluded Liabilities), in each case taken as a whole, but excluding (a) any change or effect to the extent that it results from or arises out of (i) the pendency of the Bankruptcy Case or the financial condition of Sellers; (ii) the execution and delivery of this Agreement or the announcement thereof or consummation of the transactions contemplated hereby; (iii) changes in (or proposals to change) Law, generally accepted accounting principles, or other accounting regulations or principles, or (iv) any action contemplated by this Agreement or taken at the request of Buyer; (b) any change or effect generally applicable to (i) the industries and markets in which Sellers operate or (ii) economic or political conditions or the securities or financial markets in any country or region; (c) any outbreak or escalation of hostilities or war or any act of terrorism; (d) any objections in the Bankruptcy Court to (i) this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby, (ii) the reorganization of Sellers and any related plan of reorganization or disclosure statement, or (iii) the Bidding Procedures Order or the Sale
Motion; (e) the assumption or rejection of any Assigned Contract; (f) any Order of the Bankruptcy Court or any actions or omissions of Sellers in compliance therewith; (g) any loss of accreditation or certification with the London Bullion Market Association or Chicago Mercantile Exchange by any Seller; (h) any action taken by Sellers at the request of, or with the consent of, Buyer; and (i) any of the matters disclosed on any Exhibit, Annex, Schedule, or Disclosure Schedules to this Agreement.

“New Leases” means, collectively, (i) the leases (and related termination of Sellers’ leasehold interests) for the Seller Related Leased Real Property substantially in the forms attached hereto as Exhibit K-1 and Exhibit K-2 and (ii) all easement agreements, access agreements, parking agreements, license agreements and similar agreements requested by the Buyer to encumber Seller Related Leased Real Property (including the fee interest therein) for the benefit of a parcel or parcels of Real Property to the extent such agreements are reasonably necessary for the continued use of the Real Property in the manner most recently used prior to this Agreement.

“Ordinary Course of Business” means the ordinary and usual course of operations of the Business (including acts and omissions of Sellers in the ordinary and usual course) through the date hereof, consistent with past practice and operations in a bankruptcy.

“Outside Date” has the meaning set forth in Section 11.1(a)(iii).

“Owned Real Property” has the meaning set forth in Section 5.4(a).

“Parent Companies” has the meaning set forth in the Preamble hereto.

“Party” or “Parties” means, individually or collectively, Buyer and Sellers.

“Paying Party” has the meaning set forth in Section 8.2(c).

“Permits” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“Permitted Encumbrances” means any (i) items set forth on Schedule 1.1; (ii) liens for Taxes not yet due and payable or which are being contested in good faith and by appropriate proceedings; (iii) mechanics, carriers’, workmen’s, repairmen’s or other like liens arising or incurred in the Ordinary Course of Business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business; (iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the Business; or (v) other than with respect to Owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the Ordinary Course of Business consistent with past practice which are not, individually or in the aggregate, material to the Business.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.
“Petition Date” has the meaning set forth in the recitals.

“Post-Closing Tax Period” means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“Previously Omitted Contract” has the meaning set forth in Section 2.1(b)(v).

“Previously Omitted Contract Notice” has the meaning set forth in Section 2.1(b)(v)(1).

“Purchase Price” has the meaning set forth in Section 3.1.

“Real Property” means the Leased Real Property and the Owned Real Property.

“Records” has the meaning set forth in Section 2.1(b)(vii).

“Recovered Insurance Proceeds” has the meaning set forth in Section 8.9.

“Reimbursing Party” has the meaning set forth in Section 8.2(c).

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Sale Motion” means the motion or motions, in form and substance reasonably satisfactory to Buyer, filed by Sellers pursuant to, inter alia, Sections 105, 363, and 365 of the Bankruptcy Code seeking entry of the Sale Order and approval of the transactions contemplated by this Agreement.

“Sale Order” means an Order of the Bankruptcy Court, in form and substance approved by Buyer (such approval not to be unreasonably withheld or conditioned so long as the Order is not inconsistent with, and does not limit the rights of Buyer under, this Agreement or the Bidding Procedures Order), pursuant to, inter alia, Sections 105, 363, and 365 of the Bankruptcy Code (a) authorizing and approving, inter alia, the sale of the Assets to Buyer on the terms and conditions set forth herein, free and clear of all Liabilities and Encumbrances (except for the Assumed Liabilities and Permitted Encumbrances), and the assumption and assignment of the Assigned Contracts and Assigned Leases to Buyer, and (b) containing certain findings that (i) Buyer has acted in “good faith” within the meaning of Section 363(m) of the Bankruptcy Code, (ii) the terms of the sale of the Assets are commercially reasonable, (iii) all notification requirements
under the Bankruptcy Code have been met, and (iv) the Parties have effectuated a legal transfer of record or title of the Assets. Sellers will cause a proposed version of the Sale Order to be filed with the Bankruptcy Court no later than ten (10) days prior to the hearing on the Sale Motion.

“Security Arrangements” has the meaning set forth in Section 8.5(c).

“Seller Related Leased Real Property” means the Leased Real Property of which any Seller Related Party is (i) the lessor or the sublessor, or (ii) the owner in the case of parcels of real property that a Seller occupies pursuant to a verbal or at-will lease or arrangement with such a Seller Related Party.

“Seller Related Party” means, with respect to any Seller, (i) any member, shareholder, employee, manager or director, (ii) any estate, spouse, former spouse, parent, sibling, descendant of such member, employee, manager or director, and (iii) any trust, general or limited partnership, limited liability company or similar entity for the benefit of such member, employee, manager or director and/or such member, employee, manager or director’s estate, spouse, former spouse, parent, sibling or descendant, in each case other than another Seller.

“Seller Termination Notice” has the meaning set forth in Section 11.1(c)(i).

“Seller(s)” has the meaning set forth in the preamble.

“Sellers’ Obligations” has the meaning set forth in Section 8.5(c).

“Straddle Period” has the meaning set forth in Section 8.2(b).

“Structures” means, collectively, buildings, structures and fixtures on, and other improvements to, the Real Property, to which any Seller has a fee or leasehold, as applicable, interest.

“Successful Bidder” has the meaning set forth in the Bidding Procedures Order.

“Taxes” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“Tax Return” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Third Party Consents” have the meaning set forth in Section 5.10.
“Transaction Documents” means this Agreement, the Assignment and Assumption Agreements, the Deed, the Assignments and Bills of Sale, the New Leases and any other agreements, instruments, or documents that are to be entered into pursuant to this Agreement.

“Transfer Taxes” has the meaning set forth in Section 8.2(a).

“Transferred Employees” has the meaning set forth in Section 8.6(a).

“Treasury Regulations” means the regulations issued by the IRS and the regulations under Title 26 of the Code of Federal Regulations.

“WARN Act” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

1.2 Other Definitions and Interpretive Matters.

Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day.

Exhibits/Annexes/Schedules/Disclosure Schedules. All Exhibits, Annexes, Schedules and Disclosure Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit, Annex, Schedules or Disclosure Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender includes all genders, and words imparting only the singular number include the plural and vice versa.

Headings. The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any “Section” or “Article” are to the corresponding Section or Article of this Agreement unless otherwise specified.

Herein. Words such as “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires.

Including. The word “including” or any variation thereof means “including, without limitation,” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.
No Strict Construction. Buyer, on the one hand, and Sellers, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on the one hand, and Sellers, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsperson shall be applied against any Person with respect to this Agreement.

ARTICLE 2

PURCHASE AND SALE

2.1 Purchase and Sale.

(a) Upon the terms and subject to the conditions of this Agreement and the Sale Order, on the Closing Date, Sellers (as applicable) shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase from Sellers, free and clear of all Liabilities and Encumbrances (other than the Assumed Liabilities and Permitted Encumbrances), all of Sellers’ right, title, and interest in, to, or under the Assets.

(b) The “Assets” shall include all right, title, and interest of Sellers in, to, or under all properties (other than the Excluded Assets) of every kind and description, wherever located, real, personal or mixed, tangible or intangible, owned, leased or licensed, used or held for use in or relating to the Business including, but not limited to, the following:

(i) the Real Property and Structures thereon more specifically identified on Exhibit A attached hereto (the “Assigned Real Property”);

(ii) the leases for the Leased Real Property and Structures thereon described on Exhibit B attached hereto (collectively, the “Assigned Leases”);

(iii) all equipment, machinery, furniture, fixtures, Computers and automation equipment, apparatus, appliances, signage, supplies, trucks, trailers, vehicles and other rolling stock not described below in Section 2.2, and other tangible personal property and Structures located on the Assigned Real Property, or used or held for use or obtained in connection with the ownership, operation, use, maintenance or repair of the Business or the Assets, including, without limitation, tanks, plants, buildings, field offices and other structures, fixtures, and other refining facilities (whether installed or not), or processing systems or facilities, meters, machinery, power and other utility lines, telecommunications equipment, central processing equipment, tools, spare parts, warehouse stock, and other appurtenances (collectively, the “Equipment”);

(iv) to the extent transferable pursuant to applicable Law, all Permits required for Sellers to conduct the Business as currently conducted or for the ownership, operation, use, maintenance or repair of the Assets;
those certain Contracts described on Exhibit C attached hereto, insofar as they relate to any other Asset, except for any Contracts Buyer, in its sole discretion, instructs Sellers to remove from Exhibit C prior to any hearing before the Bankruptcy Court to approve the Sale Order (collectively, the “Assigned Contracts”). If prior to or following Closing, it is discovered that a Contract should have been listed on Exhibit C but was not listed on Exhibit C (any such Contract, a “Previously Omitted Contract”), Sellers shall, promptly following the discovery thereof notify Buyer in writing of such Previously Omitted Contract. Buyer shall thereafter deliver written notice to Sellers, no later than five (5) Business Days following notification of such Previously Omitted Contract from Sellers, designating such Previously Omitted Contract as “Assumed” or “Rejected.”

(1) If Buyer designates a Previously Omitted Contract as “Assumed” prior to entry of the Sale Order, (A) Exhibit C shall be amended to include such Previously Omitted Contract and (B) Sellers shall serve a notice (the “Previously Omitted Contract Notice”) on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Amounts with respect to such Previously Omitted Contract and Sellers’ intention to assume and assign such Previously Omitted Contract in accordance with this Agreement. The Previously Omitted Contract Notice shall provide the counterparties to such Previously Omitted Contract with ten (10) Business Days to object, in writing to Sellers and Buyer, to the Cure Amounts or the assumption of its Contract; and

(2) If the counterparties, Sellers and Buyer are unable to reach a consensual resolution with respect to such objection, or if Buyer designates a Previously Omitted Contract as “Assumed” after entry of the Sale Order, Sellers will file all pleadings required to seek a timely hearing before the Bankruptcy Court to determine the applicable Cure Amounts and approve such assumption and to obtain an order of the Bankruptcy Court fixing the applicable Cure Amounts and approving the assumption of the Previously Omitted Contract and payment by Buyer of such applicable Cure Amount;

(vi) all Intellectual Property Assets (including goodwill associated therewith);

(vii) all books, records, files, invoices, inventory records, product specifications, advertising materials, customer lists, cost and pricing information, supplier lists, business plans, catalogs, customer literature, quality control records and manuals, research and development files, records and laboratory books and credit records of customers (including all data and other information stored on discs, tapes or other media) to the extent used in or to the extent relating to the Assets (including Intellectual Property Assets), Business or operations of the Business of Sellers (collectively, the “Records”);

(viii) all rights of Sellers under or pursuant to all warranties, representations, indemnities, and guarantees made by suppliers, manufacturers, and contractors to the extent relating to property or property sold, or services provided, to Sellers affecting the Assigned Real Property, Assigned Leases, Assigned Contracts, Equipment or Intellectual Property Assets, excluding only any warranties, representations, indemnities, and guarantees relating to any Excluded Assets;
(ix) all rights of Sellers to rebates and discounts payable by manufacturers, vendors, suppliers, or others in connection with the Assets, except for currently due and payable amounts excluded by Section 2.2;

(x) all other goodwill and other intangible assets associated with the Assets or the Business of Sellers;

(xi) the Inventory specifically identified on Exhibit D attached hereto; and

(xii) all confidentiality, non-compete, non-disclosure, invention assignment, non-disparagement and similar agreements in favor of any of the Sellers with current or former employees or agents of any such Seller or with third parties; provided, however, that Buyer shall not be deemed to assume any such agreements except to the extent they explicitly become Assigned Contracts under the terms of this Agreement.

provided, however, none of the Parties hereto intends that Buyer, or any of its Affiliates, shall be deemed to be a successor to Sellers with respect to the Assets.

2.2 Excluded Assets.

Notwithstanding the foregoing, the Assets shall not include, and there is excepted, reserved and excluded from the transaction contemplated hereby, the following (collectively, the “Excluded Assets”):

(a) the Purchase Price delivered to Sellers pursuant to this Agreement;

(b) all Real Property and Structures thereon that are not listed on Exhibit A attached hereto (the “Excluded Real Property”);

(c) all Leases related to the Assets or the business of Sellers that are not listed on Exhibit B attached hereto (the “Excluded Leases”), including without limitation the leases for facilities in Toronto, Canada and Shanghai, China;

(d) all Contracts and agreements related to the Assets or the Business of Sellers that are not listed on Exhibit C attached hereto (the “Excluded Contracts”);

(e) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit, bank accounts and other bank deposits as of the Closing Date;

(f) all trade credits, accounts receivable, note receivables, and other receivables with respect to any period of time prior to the Closing Date;

(g) all Inventory consisting of or containing precious metals, all hydroxides and all ores and all other Inventory that is not listed on Exhibit D attached hereto;

(h) any shares of capital stock or other equity interest of Sellers or any of Sellers’ Affiliates or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest of Sellers or any of Sellers’ Affiliates;
(i) any confidential personnel and medical records pertaining to any employee of any Seller and its Affiliates, pertaining to any employee who is not a Transferred Employee;

(j) all employee benefit plans;

(k) all minute books, stock ledgers, corporate seals and stock certificates of Sellers;

(l) all (i) corporate, financial, Tax and legal records of Sellers that relate to Sellers’ business generally (excepting the same to the extent relating to the Assumed Liabilities and the Assets), and (ii) books, records and files that relate to any Excluded Assets;

(m) all rights to any refunds, credits, or rebates of or relating to Taxes (or other related costs or expenses) that are borne by or the responsibility of Sellers or attributable to any Tax asset of Sellers;

(n) any refunds due to any Seller by a third party for any overpayment attributable to the Assets with respect to any period of time on or prior to the Closing Date;

(o) all insurance policies and rights to proceeds thereof and unearned premiums related thereto;

(p) all prepayments, good faith, and other bid deposits submitted by any third party under the terms of the Bidding Procedures Order;

(q) all security deposits;

(r) all Claims other than those specifically constituting Assets; provided, however, that Claims consisting of rights of set-off, rights of indemnity, contribution or recoupment, counter-claims, cross-claims and defenses of Sellers pursuant to any Assigned Contract shall not be Excluded Assets;

(s) all Claims against any current or former equityholder, any other Seller or Affiliate of any Seller, or any director, officer, Insider, auditor, insurer, accountant or other retained professional of any Seller (including without limitation any such Claims arising out of or related to any Assigned Contracts, Assigned Leases, or Assigned Real Property);

(t) all Avoidance Actions;

(u) all Claims against any Person arising out of or in connection with any act or omission made by a party identified in Section 2.2(s) prior to the Closing Date;

(v) all Claims relating to rights of the Sellers arising under this Agreement or any other Transaction Document;

(w) all Claims arising under any antitrust laws;

(x) all rights of Sellers to rebates and discounts that have accrued and are currently due and payable by manufacturers, vendors, suppliers, or others in connection with the Assets; and
2.3 Assumed Liabilities.

Upon the terms and subject to the conditions of this Agreement and the Sale Order, on the Closing Date, Buyer shall execute and deliver to Sellers the Assignment and Assumption Agreements, pursuant to which Buyer shall assume and agree to discharge, when due (in accordance with their respective terms and subject to the respective conditions thereof), only the following Liabilities (collectively, the “Assumed Liabilities”) and no others:

(a) all Transfer Taxes;

(b) any Cure Amounts;

(c) the Liabilities specifically identified on Exhibit G hereto; and

(d) all other Liabilities related to, or associated with the Assets, but only to the extent arising after the Closing Date.

The assumption by Buyer of the Assumed Liabilities shall not, in any way, enlarge the rights of any third parties relating thereto.

2.4 Excluded Liabilities.

Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform, or otherwise discharge any Liability of Sellers, and Sellers shall be solely and exclusively liable with respect to all Liabilities of Sellers, other than the Assumed Liabilities (such Liabilities other than Assumed Liabilities, collectively, the “Excluded Liabilities”), nor shall Buyer be deemed a successor of Sellers with respect to the foregoing. For purposes of clarity, and without limitation of the generality of the foregoing, the Excluded Liabilities shall include, without limitation, each of the following:

(a) any Liability of Sellers and their respective Affiliates arising out of, or relating to, this Agreement or the transactions contemplated by this Agreement, whether incurred prior to, at or subsequent to the Closing Date, including, without limitation, all finder’s or broker’s fees and expenses and any and all fees and expenses of any Representatives of Sellers;

(b) any Liability of Sellers and their respective Affiliates relating to (i) events or conditions occurring or existing in connection with, or arising out of, the business of Sellers as operated prior to the Closing Date, or (ii) the ownership, possession, use, operation, or sale or other disposition prior to the Closing Date of any of the Assets;

(c) any (i) Liability of Sellers or any member of any consolidated, affiliated, combined, or unitary group of which any Seller is or has been a member, for Taxes related to any Pre-Closing Tax Period, and (ii) Taxes related to any Pre-Closing Tax Period of any other Person pursuant to an agreement or otherwise;
(d) Asset Taxes that are the responsibility of Sellers pursuant to Section 8.2;

(e) any Liability incurred by Sellers or its directors, officers, stockholders, managers, members, agents, or employees (acting in such capacities) after the Closing Date;

(f) any Liability of Sellers and its Affiliates to any Person on account of any Action;

(g) any Liability of Sellers and their respective Affiliates relating to or arising out of an Excluded Asset, including Inventory consisting of or containing hydroxides;

(h) any Liability or obligation of Sellers and their respective Affiliates under any Indebtedness, including, without limitation, any Indebtedness owed to any stockholder or other Affiliate of Sellers, and any Contract evidencing any such financing arrangement unless such Contract is an Assigned Contract;

(i) any Liability of Sellers and their respective Affiliates (i) arising under Environmental Laws attributable to or incurred as a result of any acts, omissions, or conditions occurring or in existence prior to the Closing Date, including, but not limited to, any Liability with respect to the Release, handling, discharge, treatment, storage, generation, disposal, or presence of Hazardous Materials at any location, (ii) claims relating to employee health and safety, including claims for injury, sickness, disease, or death of any Person, or (iii) compliance with any Laws relating to any of the foregoing;

(j) any fees or expenses of Sellers and their respective Affiliates incurred with respect to the transactions contemplated herein;

(k) any Liability of Sellers and their respective Affiliates relating to any employee or consultant, including, but not limited to any liabilities associated with any compensation plans, wages, benefit plans, pension plans, deferred compensation plans, welfare plans, or similar benefits applicable to any Seller’s employees (whether arising prior to or after the Closing); and

(l) any Liability of any Seller under any guarantees of third party obligations by any such Seller (other than Sellers’ Obligations or security deposits required with respect to any Assigned Lease) and reimbursement obligations to guarantors of Sellers’ obligations or under letters of credit;

(m) all accrued expenses and accounts payables;

(n) drafts or checks outstanding at the Closing;

(o) any Liability for claims of employees;

(p) any Liability or claim based on the WARN Act; and

(q) any Liability to the extent related to the Excluded Assets.
2.5 Assignments, Cure Amounts.

(a) Sellers shall transfer and assign to Buyer all Assigned Contracts and Assigned Leases (and such other Contracts and Leases intended to be Assigned Contracts and Assigned Leases subsequently identified by Buyer after the Closing Date), and Buyer shall assume all Assigned Contracts and Assigned Leases from Sellers, as of the Closing Date pursuant to the Sale Order. In connection with such assignment and assumption, Buyer shall, on or prior to the Closing, pursuant to Section 365 of the Bankruptcy Code and the Sale Order, pay any and all Cure Amounts attributable to such Assigned Contracts and Assigned Leases (and such other Contracts and Leases intended to be Assigned Contracts and Assigned Leases subsequently identified by Buyer after the Closing Date).

(b) The Sale Order shall provide that as of the Closing, Sellers shall assign to Buyer the Assigned Contracts and the Assigned Leases, and the Assigned Contracts and Assigned Leases shall be identified by the name and date (if available), the counter-party to the Assigned Contract or Assigned Lease, as the case may be, and the address of such counter-party for notice purposes, all included on an exhibit attached to either the motion filed in connection with the Sale Order or a motion for authority to assume and assign such Assigned Contracts and Assigned Leases. Such exhibit shall also (i) set forth the Cure Amounts, and (ii) delineate a procedure for transferring to Buyer the rights to any security deposits in the form of cash or letters of credit on deposit with the counter-party to any Assigned Lease or Assigned Contract.

2.6 Further Assurances.

The Parties agree, prior to and after the Closing, to (a) furnish upon request to each other such further information, (b) execute, acknowledge, and deliver to each other such other documents, and (c) do such other acts and things, all as the other Party may reasonably request, for the purpose of vesting in Buyer title to the Assets, free and clear of all Liabilities and Encumbrances (other than the Assumed Liabilities and Permitted Encumbrances), and for Buyer to assume the Assumed Liabilities, including the Cure Amounts, and reasonably necessary to carrying out the intent of this Agreement and the Transaction Documents; provided, however, that nothing in this Section 2.6 shall prohibit any Seller from ceasing operations or winding up its affairs following the Closing.

ARTICLE 3

PURCHASE PRICE

3.1 Purchase Price.

The purchase price for the purchase, sale, assignment, and conveyance of Sellers’ right, title, and interest in, to, and under the Assets shall consist of the following (collectively, the “Purchase Price”):

(a) cash in an aggregate amount equal to Sixteen Million Dollars ($16,000,000), including a cash deposit of Three Million Two Hundred Thousand Dollars ($3,200,000) (the “Deposit”) that shall be deposited by Buyer into a sub-escrow account for the DIP Account not later than three Business Days following the execution of this Agreement; plus
(b) the assumption of the Assumed Liabilities, including the Cure Amounts.

The cash components of the Purchase Price shall be delivered by Buyer at Closing as set forth in Section 4.2.

3.2 Allocation of Purchase Price.

The Purchase Price shall be allocated among the various Assets, in accordance with the methodology set forth on Schedule 3.2. Sellers and Buyer shall (a) use such allocation for the purpose of making the requisite filings under Section 1060 of the Code, and the regulations thereunder, (b) report, and to cause their respective Affiliates to report, the federal, state and local income and other Tax consequences of the transactions contemplated herein, and in particular to report the information required by Section 1060(b) of the Code, and to jointly prepare Form 8594 (Asset Acquisition Statement under Section 1060 of the Code) as promptly as possible following the Closing Date and in a manner consistent with such allocation, and (c) promptly notify the other of the existence of any Tax audit, controversy or litigation related to such allocation. Notwithstanding the allocation of the Purchase Price agreed between Sellers and Buyer pursuant to this Section 3.2 for the aforementioned Tax purposes, nothing in the foregoing shall be determinative of values ascribed to the Purchased Assets or the allocation of the value of the Purchased Assets for any other purpose.

ARTICLE 4

CLOSING

4.1 Closing Date.

Upon the terms and subject to the conditions hereof, the closing of the sale of the Assets and the assumption of the Assumed Liabilities contemplated hereby (the “Closing”) shall take place at 9:00 a.m., local time at the offices of Akerman LLP, Three Brickell City Centre, 98 Southeast Seventh Street, Suite 1100, Miami, FL 33131, no later than three (3) Business Days following the date on which the conditions set forth in ARTICLE 9 and ARTICLE 10 have been satisfied or, if permissible, waived, excepting the conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or, if permissible, waiver of such conditions. The date and time at which the Closing actually occurs is hereinafter referred to as the “Closing Date.”

4.2 Closing Date Payment of Purchase Price.

Subject to satisfaction or, if permissible, waiver of the conditions set forth in ARTICLE 9 and ARTICLE 10, at the Closing, Buyer shall pay, or cause to be paid, the cash components of the Purchase Price less the Deposit by wire transfer of immediately available funds to the DIP Account for the benefit of Sellers.

4.3 Buyer’s Closing Deliveries.

At the Closing, Buyer shall deliver or cause to be delivered to Sellers (or such other Persons where so designated):
4.3  **Buyer’s Closing Deliveries.**

At the Closing, Buyer shall deliver to Sellers:

(a) a certificate of the corporate secretary or other applicable officer of Buyer, dated the Closing Date, in form and substance reasonably satisfactory to Sellers, as to (i) Buyer’s authorization to execute and perform its obligations under the Transaction Documents to which Buyer is a party; and (ii) incumbency and signatures of the CEO or other authorized officers of Buyer executing the Transaction Documents;

(b) each other Transaction Document to which Buyer is a party, duly executed (and acknowledged, where applicable) by Buyer;

(c) the certificate of Buyer to be received by Sellers pursuant to Section 10.2; and

(d) such other assignments and other good and sufficient instruments of assumption and transfer, in form reasonably satisfactory to Sellers, as Sellers may reasonably request to transfer and assign the Assumed Liabilities to Buyer.

4.4  **Sellers’ Closing Deliveries.**

At the Closing, Sellers shall deliver to Buyer:

(a) the Assignment and Assumption Agreements, duly executed by the applicable Sellers;

(b) the Assignments and Bills of Sale, duly executed by the applicable Sellers;

(c) the Deed, duly executed (and acknowledged) by the applicable Sellers;

(d) the New Leases, duly executed by all applicable counterparties to such New Leases;

(e) the certificate of Sellers to be received by Buyer pursuant to Section 9.1;

(f) a non-foreign affidavit by each applicable Seller dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Code Section 1445, stating that such Seller is not a “foreign person” as defined therein;

(g) evidence of receipt of the Third Party Consents to the extent such consents are not provided for or satisfied in the Sale Order, that have been obtained prior to the Closing Date;

(h) the Records; and

(i) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer, as Buyer may reasonably request to vest in Buyer all the right, title and interest of Sellers in, to or under any or all the Assets, each duly executed (and acknowledged, where applicable) by Sellers.
ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the correspondingly numbered section and subsection of the Disclosure Schedules, Sellers, jointly and severally, represent and warrant to Buyer that the statements contained in this ARTICLE 5 are true and correct as of the date hereof, and will be true and correct in all material respects as of the Closing Date:

5.1 Authority; Validity; Consents.

Each of the Parent Companies is a corporation duly organized, validly existing and in good standing under the Laws of the state of Florida and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Each of the other Sellers is an entity of the type and domicile indicated on Schedule 5.1 and is duly organized, validly existing and in good standing under the Laws of its state of domicile and has full power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Subject to requisite Bankruptcy Court approval, each Seller has full power and authority to enter into this Agreement and the other Transaction Documents to which such Seller is a party, to carry out its respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Subject to requisite Bankruptcy Court approval, the execution and delivery by each Seller of this Agreement and any other Transaction Document to which such Seller is a party, the performance by Sellers of their respective obligations hereunder and thereunder and the consummation by Sellers of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Sellers. This Agreement has been duly executed and delivered by Sellers, and (assuming due authorization, execution and delivery by Buyer and subject to requisite Bankruptcy Court approval) this Agreement will constitute a legal, valid and binding obligation of each Seller enforceable against such Seller in accordance with its terms. When each other Transaction Document to which any Seller is or will be a party has been duly executed and delivered by such Seller (assuming due authorization, execution and delivery by each other party thereto and subject to requisite Bankruptcy Court approval), such Transaction Document will constitute a legal and binding obligation of such Seller enforceable against it in accordance with its terms.

5.2 Subsidiaries.

The Sellers do not own or have any interest in any shares or have an ownership interest in any other Person except for other Sellers that are a party hereto or as set forth on Schedule 5.2 which identifies all subsidiaries of each Seller and which indicates the particular parent corporation and their respective jurisdictions of organization for each such subsidiary.

5.3 No Conflicts; Consents.

Subject to requisite Bankruptcy Court approval, to Sellers’ Knowledge, except (a) for entry of the Sale Order, (b) for notices, filings and consents required in connection with the
Bankruptcy Case and (c) for the notices, filings and consents set forth on Schedule 5.3, Sellers are not required to give any notice to, make any filing with or obtain any consent from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents or the consummation or performance of any of the transactions contemplated hereby and thereby.

5.4 Encumbrances; Title to Assets; Real Property.

(a) Schedule 5.4 sets forth the legal description and address of each parcel of real property owned by any Seller and used in connection with the Business (such owned parcel of real estate together with all Structures located thereon, the “Owned Real Property”).

(b) Schedule 5.4 includes a true, correct and complete list of the Leased Real Property, including the Seller Related Leased Real Property, and the leases under which such Leased Real Property is leased, subleased or licensed, including all amendments or modifications to such leases, and including without limitation any verbal or at-will lease or arrangement (the “Leases”). The Sellers have delivered to the Buyer true, correct and complete copies of all written Leases and a summary in Schedule 5.4 of the material terms of any verbal lease or arrangement under which any Leased Real Property is occupied.

(c) Except as set forth on Schedule 5.4, there are no existing or pending or, to the Knowledge of the Sellers, threatened, condemnation or eminent domain proceedings relating to or affecting any portion of the Real Property.

(d) Except as set forth on Schedule 5.4, to the Knowledge of the Sellers, all Structures on the Real Property (i) comply with valid and current certificates of occupancy or similar permits to the extent required by Law for the use thereof and (ii) conform in all material respects to all applicable Laws. Each parcel of Real Property is zoned for the purposes for which the real estate and Structures thereon have been used in connection with the normal operation of the Business.

(e) No Seller is obligated under or bound by any option, obligation, right of first refusal, purchase contract or other contractual right to sell, lease or purchase any real property or any portions thereof or interests therein. Except as set forth on Schedule 5.4, there are no leases, subleases, licenses, concessions or other Contracts (written or oral) granting any Person or Persons the right to use, possess or occupy any parcel or portion of the Real Property, other than the Leases, easements of record or other Permitted Encumbrances.

(f) Sellers have, and, upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by ARTICLE 4, and subject to the terms of the Sale Order, Sellers will thereby transfer to Buyer, good and marketable title to (or, (i) in the case of the Real Property, insurable fee simple title to, or, (ii) in the case of property leased or licensed by Sellers, a valid and subsisting leasehold interest in, or a legal, valid and enforceable licensed interest in or right to use) all of the Assets, free and clear of all Liabilities and Encumbrances, except for the Assumed Liabilities and Permitted Encumbrances.
5.5 Taxes.

(a) Sellers have delivered to Buyer copies of all federal, state, local and non-U.S. income and franchise Tax Returns for all Tax periods ending after December 31, 2015.

(b) Schedule 5.5 sets forth all non-U.S. jurisdictions in which any Seller is subject to Tax, is engaged in business or has a permanent establishment.

5.6 Intellectual Property.

(a) Schedule 5.6(a) lists (i) all Intellectual Property Registrations and (ii) all Intellectual Property Agreements, other than any (a) non-disclosure agreements entered into in the Ordinary Course of Business; (b) non-exclusive licenses of commercially available Intellectual Property licensed to any Seller for internal use on standard terms; and (c) non-exclusive licenses to software and materials licensed as open-source, public-source or freeware. Except as set forth on Schedule 5.6(a), or as would not have a Material Adverse Effect, Sellers own or have the right to use all Intellectual Property Assets and the Intellectual Property licensed to Sellers under the Intellectual Property Agreements.

(b) Except as set forth on Schedule 5.6(b), or as would not have a Material Adverse Effect, to Sellers’ Knowledge: (i) the conduct of the Business as currently conducted does not infringe or otherwise violate the Intellectual Property of any Person; and (ii) no Person is infringing, misappropriating or otherwise violating any Intellectual Property Assets.

5.7 Insurance.

Schedule 5.7 sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors’ and officers’ liability, fiduciary liability and other casualty and property insurance maintained by any of the Sellers and relating to the assets, business, operations, employees, officers and directors of any such Seller (collectively, the “Insurance Policies”) and true and complete copies of such Insurance Policies have been made available to Buyer.

5.8 Compliance with Laws.

To Sellers’ Knowledge, each Seller is in material compliance with all material Laws applicable to such Seller, or to the conduct or operation of its Business, or the ownership or use of any of its assets.

5.9 Permits.

To Sellers’ Knowledge, Schedule 5.9 contains a complete and accurate list of all material Permits required for Sellers to conduct the Business as currently conducted or for the ownership and use of the Assets.

5.10 Consents and Approvals.
To Sellers’ Knowledge, each material consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any such Governmental Authority, that is required in connection with the execution and delivery of this Agreement and the Transaction Documents by Sellers or the performance by Sellers of their obligations thereunder (the “Third Party Consents”) is set forth accurately and completely on Schedule 5.3.

5.11 Legal Proceedings; Government Orders.

(a) Except for the Bankruptcy Cases and as set forth on Schedule 5.11(a), there are no Actions pending or, to Sellers’ Knowledge, threatened (a) against or by any Seller affecting any of its properties or assets (or by or against any Sellers or any Affiliate thereof and relating to any Seller); or (b) against or by any Seller or any Affiliate of any Seller that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

(b) Except as set forth on Schedule 5.11(b), there are no outstanding Governmental Orders specifically applicable to any Seller against or affecting any Seller or any of its properties or assets. Each such Seller is in compliance with the terms of each Governmental Order set forth on Schedule 5.11(b). No event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

5.12 Employees.

Schedule 5.12 contains a list of all persons who are employees, independent contractors or consultants of any Seller as of the date hereof, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof.

5.13 Environmental Matters.

(a) Except as set forth on Schedule 5.13(a), each Seller is currently and has been in material compliance with all Environmental Laws and has not received from any Person and there is no: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Except as set forth on Schedule 5.13(b), each Seller has obtained and is in compliance with all material Environmental Permits (each of which is disclosed on Schedule 5.13(b)) necessary for the ownership, lease, operation or use of the Business or assets of such Seller and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by Sellers through the Closing Date in accordance with Environmental Law, and there is no condition, event or circumstance that might materially prevent or impede, after the Closing Date, the ownership, lease, operation or use of the business or assets of any Seller as currently conducted.
(c) Except as set forth on Schedule 5.13(c), none of the Owned Real Property or the Leased Real Property or, to the Knowledge of the Sellers, any real property formerly owned, operated or leased by any Seller is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) Except as set forth on Schedule 5.13(d), there has been no Release of Hazardous Materials in material violation of Environmental Law with respect to the Business or assets of any Seller or the Owned Real Property or the Leased Real Property or any real property formerly owned, operated or leased by any Seller, and neither any such Seller nor Sellers have received an Environmental Notice that any such real property (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material, which could reasonably be expected to result in an Environmental Claim, or a material violation of Environmental Law or the termination or suspension of any Environmental Permit.

(e) Schedule 5.13(e) contains a complete and accurate list of all active, abandoned or removed aboveground or underground storage tanks owned or operated by any Seller.

(f) Schedule 5.13(f) contains a complete and accurate list, to the Knowledge of Sellers’, of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by any Seller or Sellers and any predecessors. Except as set forth on Schedule 5.13(f), (i) none of these facilities or locations has been placed or proposed for placement on the National Priorities List (or CERCLIS) under CERCLA, or any Governmental Authority list, and (ii) neither Sellers nor any such Seller has received any Environmental Notice regarding potential liabilities with respect to such off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by a Company or Sellers.

(g) Except as set forth on Schedule 5.13(g), neither Sellers nor any Seller has retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(h) Sellers have provided or otherwise made available to Buyer and listed on Schedule 5.13(h): (i) any and all material, non-attorney-client-privileged environmental reports, studies, audits, records, sampling data, site assessments, risk assessments and other similar documents with respect to the business or assets of any Seller or any currently or formerly owned, operated or leased real property, which are in the possession or control of the Sellers or any Seller, related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution and/or emissions, manage waste or otherwise cause or ensure compliance with current or reasonably anticipated future Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes).

(i) Except as set forth on Schedule 5.13(i), to Sellers’ Knowledge, there is no condition, event or circumstance concerning the Release or regulation of Hazardous Materials
that might, after the Closing Date, materially prevent, impede or increase the costs associated
with the ownership, lease, operation, performance or use of the Business or assets of any of the
Sellers as currently conducted.

(j) One or more of the Sellers owns and controls all Environmental Attributes (a complete and accurate list of which is set forth on Schedule 5.13(j)) and no such Seller has entered into any contract or pledge to transfer, lease, license, guarantee, sell, mortgage, pledge or otherwise dispose of or encumber any Environmental Attributes as of the date hereof. There is no condition, event or circumstance that might materially prevent, impede or increase the costs associated with the transfer (if required) to Buyer of any Environmental Attributes after the Closing Date.

5.14 Brokers or Finders.

Except with regard to SSG Capital Advisors, LLC as provided in Section 12.9, Sellers have not incurred any obligation or liability, contingent or otherwise, for brokerage or finders’ fees or agents’ commissions or other similar payment in connection with this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby for which Buyer is or will become liable, and Sellers shall indemnify and hold harmless Buyer from any claims with respect to any such fees or commissions.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers as follows:

6.1 Organization and Good Standing.

Buyer is a company, duly organized, validly existing and in good standing under the laws of Switzerland. Buyer has the requisite power and authority to own or lease and to operate and use its properties and to carry on its business as now conducted.

6.2 Authority; Validity; Consents.

Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement, and the other Transaction Documents to which it is a party, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement by Buyer, and the consummation by Buyer of the transactions contemplated herein, have been duly and validly authorized by all requisite limited liability company or corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer, and each other Transaction Document to which Buyer is a Party will be duly and validly executed and delivered by Buyer, as applicable, at the Closing. This Agreement, and the other Transaction Documents to which Buyer is a party, constitute the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except in each case as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws now or hereafter in effect relating to creditors’ rights generally or general principles of equity. Buyer is not or will not be required to give any notice.
to or obtain any consent from any Person in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a Party, or the consummation or performance of any of the transactions contemplated hereby or thereby, except for such notices, filings and consents, the failure of which to provide, make or obtain, would not, individually or in the aggregate, affect Buyer’s ability to perform its obligations under this Agreement, or any other Transaction Documents, or to consummate the transactions contemplated hereby or thereby.

6.3 No Conflict.

When the consents and other actions described in Section 6.2 have been obtained and taken, the execution and delivery of this Agreement, and the other Transaction Documents, and the consummation of the transactions provided for herein and therein will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Buyer under (a) any agreement, indenture, or other instrument to which it is bound, (b) the certificate of formation of Buyer, as applicable, (c) any Order, or (d) any Law.

6.4 Availability of Funds.

As of the Closing, Buyer will have sufficient cash in immediately available funds (without giving effect to any unfunded financing, regardless of whether any such financing is committed) to pay the Purchase Price, all costs, fees, and expenses to be paid by Buyer that are necessary to consummate the transactions contemplated by this Agreement and the other Transaction Documents, and assume the Assumed Liabilities.

6.5 Litigation.

There are no Actions pending or, to the Knowledge of Buyer, threatened, that would affect Buyer’s ability to perform its obligations under this Agreement, or any other Transaction Documents, or to consummate the transactions contemplated hereby or thereby.

6.6 Brokers or Finders.

Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which any Sellers is or will become liable, and Buyer shall hold harmless and indemnify Sellers from any claims with respect to any such fees or commissions.

ARTICLE 7

ACTIONS PRIOR TO THE CLOSING DATE

7.1 Operations Prior to the Closing Date.

Sellers covenant and agree that, except (v) as expressly contemplated by this Agreement, (w) as disclosed on Schedule 7.1, (x) with the prior written consent of Buyer (which
consent shall not be unreasonably withheld, conditioned or delayed), and (y) as otherwise required by Law, after the execution of this Agreement and prior to the Closing Date:

(a) Each Seller shall:

(i) use commercially reasonable efforts, taking into account Sellers’ status as debtor-in-possession, to maintain the Assets;

(ii) maintain its books, accounts, and Records in accordance with past custom and practice;

(iii) maintain the personal property comprising part of the Assets operated by any Seller in at least as good a condition as it is on the date hereof, subject to ordinary wear and tear;

(iv) use commercially reasonable efforts, taking into account Sellers’ status as debtor-in-possession, to obtain all Third Party Consents to the extent such consents are not provided for or satisfied by the Sale Order;

(v) maintain (including necessary renewals thereof) insurance policies against risk and Liabilities, to the extent and in the manner, and at the levels maintained by Sellers as of the date hereof, with respect to its business and the Assets; and

(vi) use commercially reasonable efforts, taking into account Sellers’ status as debtor-in-possession, to (A) retain its employees who are in good standing and are necessary to conduct the business as it is currently being conducted immediately prior to the date hereof and (B) maintain their relationships with and preserve the goodwill of its key service providers.

(b) Sellers shall not:

(i) abandon any Asset, other than Excluded Assets;

(ii) terminate, reject, cancel, or materially amend or modify any Assigned Contract or Assigned Lease;

(iii) sell, lease, encumber, or otherwise dispose of all or any portion of any Assets, other than Excluded Assets;

(iv) grant to any Transferred Employee any increase in compensation;

(v) propose, approve, or support dismissal or conversion to chapter 7 of any of the Bankruptcy Cases or any parts thereof; or

(vi) enter into any agreement or commitment to take any action prohibited by this Section 7.1.
7.2 Commercially Reasonable Efforts.

Sellers, on the one hand, and Buyer, on the other hand, shall, before and after Closing, use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary, proper, or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby, including using commercially reasonable efforts to accomplish the following: (a) the taking of all reasonable acts necessary to cause the conditions precedent set forth in ARTICLE 9 and ARTICLE 10 to be satisfied, (b) the obtaining, at the earliest practicable date, of all necessary approvals and authorizations from Governmental Authorities, and the making of all necessary registrations, declarations, and filings (including registrations, declarations and filings with Governmental Authorities, if any), and the taking of all reasonable steps as may be necessary to avoid any Action by any Governmental Authority, and (c) the execution or delivery of any additional instruments necessary to consummate the transactions contemplated hereby and to fully carry out the purposes of this Agreement.

7.3 Bankruptcy Court Approval.

(a) Sellers and Buyer acknowledge that this Agreement, the sale of the Assets, and the assumption and assignment of the Assigned Contracts and the Assigned Leases are subject to Bankruptcy Court approval as set forth in the Bidding Procedures Order.

(b) In the event an appeal is taken or a stay pending appeal or reconsideration is requested regarding either the Bidding Procedures Order or the Sale Order, Sellers shall promptly notify Buyer of such appeal or stay or reconsideration request and shall provide to Buyer promptly a copy of the related pleadings. Sellers shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from or request for reconsideration of either of such Orders.

7.4 Bidding Procedures.

The bidding procedures to be employed with respect to this Agreement shall be those reflected in the Bidding Procedures Order. Buyer agrees and acknowledges that Sellers and their respective Representatives and Affiliates are and may continue soliciting inquiries, proposals, or offers from third parties (the “Potential Bidders”) for any and all of the Assets in connection with any Alternative Transaction pursuant to the terms of the Bidding Procedures Order.

7.5 Bankruptcy Filings.

From and after the date of execution of this Agreement and until the Closing Date, Sellers shall use commercially reasonable efforts to deliver to Buyer copies of all pleadings, motions, notices, statements, schedules, applications, reports, and other papers that relate, in whole or in part, to this Agreement and the transactions contemplated hereby, or to Buyer or its respective agents or Representatives, that are to be filed by Sellers in the Bankruptcy Case in advance of their filing, in each case, if reasonably practicable under the circumstances before the filing of such papers. Notwithstanding the foregoing, neither Sellers’ inadvertent failure to comply with this Section 7.5, nor Sellers’ unintentional failure to comply with this Section 7.5, shall constitute a breach under this Agreement.
7.6 Access to Buyer Documentation.

On or before five (5) Business Days prior to the Auction, Buyer shall have delivered to Sellers true and complete, fully-executed copies of (a) Buyer’s certificate of formation, and (b) any agreements with a third Person relating to, directly or indirectly, the Auction and/or Buyer’s (or Buyer’s Representatives’) participation therein. All such information obtained or reviewed by Sellers shall be maintained confidential by Sellers and shall be governed by the terms of the Confidentiality Agreement.

ARTICLE 8

ADDITIONAL AGREEMENTS

8.1 Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals.

(b) Sellers and Buyer shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are described in the Disclosure Schedules.

(i) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all commercially reasonable efforts to:

(ii) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any Transaction Document;

(iii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Transaction Document; and

(iv) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Transaction Document has been issued, to have such Governmental Order vacated or lifted.

(c) If any consent, approval or authorization necessary to preserve any right or benefit under any Contract to which any Seller is a party is not obtained prior to the Closing, Sellers shall, subsequent to the Closing, use commercially reasonable efforts to cooperate with Buyer to obtain such consent, approval or authorization as promptly thereafter as practicable.
(d) Notwithstanding the foregoing, nothing in this Section 8.1 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer, any Seller or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

8.2 Taxes.

(a) Any transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement (collectively, the “Transfer Taxes”) shall be borne by Buyer. Sellers and Buyer shall use commercially reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Assets from any Transfer Taxes, including under Section 1146(a) of the Bankruptcy Code. Buyer will, at its own expense, file all necessary Tax Returns and other documentation with respect to all Transfer Taxes, and, if required by applicable law, the Parties will, and will cause their Affiliates to, join in the execution of any such Tax Returns and other documentation.

(b) Sellers shall retain responsibility for, and shall bear and pay, all real and personal property ad valorem, property, excise or similar Taxes based upon operation or ownership of the Assets (but excluding, for the avoidance of doubt, Transfer Taxes) (collectively, the “Asset Taxes”) assessed with respect to the Assets for any period ending on or prior to the Closing Date. Buyer shall assume responsibility for, and shall bear and pay, all Asset Taxes assessed with respect to the Assets for any period after the Closing Date. All Asset Taxes for any taxable period that includes the Closing Date and ends after the Closing Date (a “Straddle Period”) shall be borne and prorated between Sellers and Buyer based on a fraction (a) the numerator of which is (i) in the case of Sellers, the number of days in the Straddle Period through and including the Closing Date, or (ii) in the case of Buyer, the number of days in the Straddle Period beginning 12:01 a.m. (local Miami, Florida time) on the day after the Closing Date, and (b) the denominator of which is the total number of days in the entire Straddle Period. Buyer will, at its own expense, file all necessary Tax Returns and other documentation with respect to all Asset Taxes for Straddle Periods with the prior consent of Sellers (not to be unreasonably withheld, conditioned or delayed) and, if required by applicable law, the Sellers and Buyer will, and will cause their Affiliates to, join in the execution of any such Tax Returns and other documentation. If the exact amount of any Asset Taxes is not known as of the Closing Date, the apportionment shall be based upon a reasonable amount agreed to by the Parties without subsequent adjustment.

(c) Sellers, on the one hand, or Buyer, on the other hand, as the case may be (the “Reimbursing Party”), shall provide reimbursement for any Tax paid by the other (the “Paying Party”) all or a portion of which is the responsibility of the Reimbursing Party in accordance with the terms of this Section 8.2 or which represents an overpayment for Taxes by the Paying Party. Within a reasonable time prior to the payment of any such Tax, the Paying Party shall
give notice to the Reimbursing Party of the Tax payable and the Paying Party’s and Reimbursing Party’s respective Liability therefor, although failure to do so will not relieve the Reimbursing Party from its Liability hereunder except to the extent the Reimbursing Party is prejudiced thereby. Any amounts which may become payable from any Seller to Buyer pursuant to this Section 8.2 shall constitute a super priority administrative expense of Sellers under Section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code.

(d) Buyer and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Assets (including access to books and records and Tax Returns and related working papers dated before Closing) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, the prosecution or defense of any claims, suit or proceeding relating to any Tax, and the claiming by Buyer of any federal, state or local business tax credits or incentives that Buyer may qualify for in any of the jurisdictions in which any of the Assets are located; provided, however, that neither Buyer nor Sellers shall be required to disclose the contents of its income Tax Returns to any Person. Any expenses incurred in furnishing such information or assistance pursuant to this Section 8.2 shall be borne by the Party requesting it.

8.3 Bulk Sales.

Buyer and Sellers hereby waive compliance with all “bulk sales,” “bulk transfer,” and similar laws that may otherwise be applicable with respect to the sale and transfer of any or all of the Assets to Buyer.

8.4 Payments Received.

Sellers, on the one hand, and Buyer, on the other hand, each agree that, after the Closing, each will hold and will promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using their commercially reasonable efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which properly belongs to the other and will account to the other for all such receipts.

8.5 Assigned Contracts and Assigned Leases.

(a) With respect to each Assigned Contract and each Assigned Lease, Buyer shall provide adequate assurance as required under the Bankruptcy Code of the future performance by Buyer of each such Assigned Contract and Assigned Lease. Buyer and Sellers agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Contracts and Assigned Leases, such as furnishing timely requested and factually accurate affidavits, non-confidential financial information, and other documents or information for filing with the Bankruptcy Court and making Buyer’s and Sellers’ employees and Representatives available to testify before the Bankruptcy Court.
(b) Buyer shall pay, perform or satisfy the Assumed Liabilities from time to time, and as such Assumed Liabilities become due and payable or are required to be performed or satisfied in accordance with their respective terms.

(c) Without limiting the provisions of this Section 8.5, Buyer acknowledges that various bonds, surety bonds, letters of credit, guarantees, and/or cash deposits have been provided by Sellers and/or their respective Affiliates to secure the payment and/or performance of certain of Sellers’ obligations related to the Assets or Assigned Contracts as set forth on Schedule 8.5 (collectively the “Security Arrangements”). Buyer acknowledges that Sellers have no duty to maintain any such Security Arrangements for the benefit of Buyer after the Closing. To the extent Sellers and/or any of their respective Affiliates have any obligations pursuant to any Security Arrangement or have pledged or otherwise provided any property that secures any such Security Arrangement related to the Assets or Assigned Contracts (collectively, the “Sellers’ Obligations”), Buyer shall take such actions as are necessary to cause the Sellers’ Obligations arising under the Security Arrangements set forth on Schedule 8.5 (and such Security Arrangements) to be released and terminated, and any of Sellers’ property pledged or otherwise provided to secure such Security Arrangements returned to Sellers, concurrent with the Closing.

8.6 Employee Matters.

(a) Buyer shall offer employment effective as of the Closing Date to those employees whose jobs are listed on Schedule 8.6 (if any) at the same or similar location, with the same title and job responsibilities. The employees who accept Buyer’s offer of employment made pursuant to this Section 8.6 and commence working for Buyer on the Closing Date are referred to herein as “Transferred Employees.” Buyer shall have no obligation or Liability for any back pay, accrued benefits, or similar claims of any Transferred Employees. Each other employee of Sellers and their Affiliates, including those who are not active employees as of the Closing Date, shall remain the sole responsibility of Sellers, and their Affiliates, as applicable. All Buyer’s decisions to offer or not offer employment to employees listed on Schedule 8.6 shall be in accordance with all applicable Laws.

(b) Buyer shall have no obligation to provide any severance, payments, or benefits to any employees of Sellers and their Affiliates. Sellers acknowledge that Sellers and their Affiliates, as applicable, are alone responsible for (i) issuing, serving, and delivering all orders and notices required, if any, pursuant to applicable Laws, in connection with the termination of employees or contractors, and (ii) any financial obligations and Liabilities in connection therewith or otherwise required in connection with the termination of such employees or contractors.

8.7 Permits.

Sellers shall use commercially reasonable efforts prior to and after the Closing to assist Buyer in transferring the Permits, to the extent permitted by applicable Laws. Sellers agree to use commercially reasonable efforts to assist Buyer to obtain such Permits after Closing.
8.8 Post-Closing Books and Records, Personnel and Services.

(a) Until the later of (i) five (5) years after the Closing Date or (ii) the date of entry of a final decree closing each Bankruptcy Case (or such longer period as may be required by any Governmental Authority or ongoing claim), (a) Buyer shall, at its own expense, preserve and not dispose of or destroy any of the Records, files, or other information received from Sellers, and (b) Buyer shall allow Sellers, any trust established under a chapter 11 plan of Sellers or otherwise, or any other successor of a Seller (each a “Seller or Successor”) and any of their directors, officers, employees, counsel, representatives, accountants and auditors reasonable access during normal business hours, upon reasonable advance notice, to all employees and any files, books, Records and other materials, for purposes relating to the Bankruptcy Case, the wind-down of the operations of Sellers, the marketing and sale of the Excluded Assets, reconciling claims filed in the Bankruptcy Case, prosecuting or defending any Claims or insurance claims, the filing of tax returns, or any other reasonable purposes (collectively, the “Winddown Requirements”), and any Seller or Successor and such directors, officers, employees, counsel, representatives, accountants and auditors shall have the right to make copies of any such files, books, Records and other materials at such Person’s expense. Until the closing of the Bankruptcy Case or the liquidation and winding up of Sellers’ estates, Sellers shall preserve and keep the records relating to the Business that were not part of the Assets and shall make such records and Sellers’ personnel available to Buyer as may be reasonably required by Buyer in connection with, among other things, any insurance claims by, Actions or Tax audits against, or governmental investigations of, Buyer or any of its Affiliates or in order to enable Buyer to comply with its obligations under this Agreement and each other Transaction Document. In the event any Party desires to destroy any such records during or after the time during which they must be maintained pursuant to this Section 8.8, such Party shall seek, on written notice to the other Party, and obtain an Order of the Bankruptcy Court; provided, however, that such Order will provide that the other Party shall have the right at its option and its expense to take possession of the records within one hundred and eighty (180) days after the date of such Order.

(b) Until the later of (i) five (5) years after the Closing Date or (ii) the date of entry of a final decree closing each Bankruptcy Case (or such longer period as may be required by any Governmental Authority or ongoing claim), Buyer, at Buyer’s expense (other than with respect to documented reasonable out-of-pocket expenses incurred by Buyer), agrees to make personnel reasonably available to any Seller or Successor (or their agents or representatives) as may be requested by the Seller or Successor at reasonable times, with reasonable prior notice, and with the Seller or Successor using reasonable efforts to minimize any disruptions to Buyer’s business, in connection with, among other things, the Winddown Requirements or in order to enable Sellers to comply with their obligations under this Agreement and the other Transaction Documents. Notwithstanding the foregoing, (a) Buyer shall not be required to pay any out-of-pocket expenses from its own funds in order to provide the service contemplated by this Section 8.8(b) and (b) to the extent any Seller or Successor pays the amount of such out-of-pocket expenses to Buyer in advance of incurring such expenses, Buyer shall pay, or cause to be paid, such amounts to the applicable service provider. Buyer understands that making personnel reasonably available to any Seller or Successor pursuant to this Section 8.8(b) includes making personnel reasonably available to respond to participate in interviews and/or to provide testimony (including deposition testimony).
8.9 Post-MAE Insurance Proceeds.

In the event that the parties hereto agree in writing that a Material Adverse Effect consisting of casualty damage or loss from fire, storm, earthquake, criminal or negligent acts or similar events affecting in a material fashion a substantial portion of the Assets (excluding the Excluded Assets and Excluded Liabilities) has occurred following the date of this Agreement and, notwithstanding such Material Adverse Effect, the Buyer agrees to close the transactions contemplated hereby, then (a) the Buyer shall be entitled to any insurance proceeds actually received by the Sellers in connection therewith less any proportionate share of collection costs related to such proceeds (such aggregate net amount, the “Recovered Insurance Proceeds”), and (b) the Recovered Insurance Proceeds shall be promptly paid over by the Sellers to the Buyer.

8.10 No Other Representations or Warranties; Disclaimers.

(a) Notwithstanding anything to the contrary contained in this Agreement, except as and to the extent expressly set forth in this Agreement and in the Transaction Documents, Sellers make no representations or warranties whatsoever, and disclaims all liability and responsibility for any representation, warranty, statement or information made or communicated (orally or in writing) to Buyer (including any opinion, information, or advice that may have been provided to Buyer by any respective Affiliate or Representative of any Seller or by any investment bank or investment banking firm, Sellers’ counsel, or any other agent, consultant, or Representative of Sellers). Without limiting the generality of the foregoing, except as and to the extent expressly set forth in this Agreement and in the Transaction Documents, Sellers expressly disclaims and negates any representation or warranty, express, implied, at common law, by statute, or otherwise, relating to (i) the title to any of the Assets, (ii) the condition of the Assets (including any implied or express warranty of merchantability, fitness for a particular purpose, or conformity to models or samples of materials), it being distinctly understood that the Assets are being sold “As Is,” “Where Is,” and “With All Faults As To All Matters,” (iii) any infringement by Sellers of any patent or proprietary right of any third party, (iv) any information, data, or other materials (whether written or oral) furnished to Buyer by or on behalf of Sellers, and (v) the environmental condition and other condition of the Assets and any potential liability arising from or related to the Assets.

(b) Buyer acknowledges and affirms that it has made its own independent investigation, analysis, and evaluation of the transactions contemplated hereby and the Assets. Buyer acknowledges that in entering into this Agreement, it has relied only on the aforementioned investigation and the express representations and warranties of Sellers contained in this Agreement and the Transaction Documents. Buyer hereby irrevocably covenants to refrain from, directly or indirectly, asserting any claim, or commencing, instituting, or causing to be commenced, any Action of any kind against Sellers or their respective Affiliates, alleging facts contrary to the foregoing acknowledgment and affirmation.
ARTICLE 9

CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

9.1 Sellers’ Performance.

(a) Since the date hereof, there shall not have occurred any Material Adverse Effect consisting of casualty damage or loss from fire, storm, earthquake, criminal or negligent acts or similar events affecting in a material fashion a substantial portion of the Assets (excluding the Excluded Assets and Excluded Liabilities); and

(b) The representations and warranties of Sellers contained in Article 5 shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality or Material Adverse Effect, which representations and warranties shall be true in all respects) both when made and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date). The covenants and agreements that Sellers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects, and Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof.

9.2 No Order.

No Governmental Authority shall have enacted, issued, promulgated or entered any Governmental Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or could cause any of such transactions to be rescinded following the Closing.

9.3 Sellers’ Deliveries.

Each of the deliveries required to be made by Sellers pursuant to Section 4.4 shall have been so delivered.

9.4 Assigned Contracts and Assigned Leases.

The Bankruptcy Court shall have approved and authorized the assumption and assignment of the Assigned Contracts and the Assigned Leases.

9.5 Permits.

Buyer shall have received by assignment or by new issue all necessary Permits, so that Buyer would not be prevented from continuing the operations of Sellers without any material interruption following the Closing; provided, however, that such condition shall be deemed
waived if Buyer fails to deliver to Seller satisfactory evidence that applications for all such Permits were prepared and, if permissible pursuant to applicable Law, submitted to the applicable Governmental Authorities no later than January 25, 2019.

9.6 Sale Order.

The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be Final and in full force and effect.

ARTICLE 10

CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE

Sellers’ obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

10.1 Sale Order in Effect.

The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be Final and in full force and effect.

10.2 Buyer’s Performance.

The representations and warranties of Buyer contained in ARTICLE 6 shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality or Material Adverse Effect, which representations and warranties shall be true in all respects) both when made and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date). The covenants and agreements that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects, and Sellers shall have received a certificate of Buyer to such effect signed by a duly authorized officer thereof.

10.3 No Order.

No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and which has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or could cause any of such transactions to be rescinded following the Closing.

10.4 Buyer’s Deliveries.

Each of the deliveries required to be made by Buyer pursuant to Section 4.2 and Section 4.3 shall have been so delivered.
ARTICLE 11

TERMINATION

11.1 Termination Events.

Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing:

(a) by either Sellers or Buyer:

(i) if a Governmental Authority issues a final, non-appealable ruling or Governmental Order prohibiting the transactions contemplated hereby where such ruling or Governmental Order was not requested, encouraged or supported by any of Sellers or Buyer;

(ii) by mutual written consent of Sellers and Buyer;

(iii) if the Closing shall not have occurred by the close of business on February 28, 2019 (the “Outside Date”); provided, however, that if the Closing has not occurred by such date, but on such date all of the conditions set forth in ARTICLE 9 and ARTICLE 10 have been satisfied or waived (to the extent such conditions may be waived) other than the conditions set forth in Sections 9.5 and 10.1, then the Outside Date shall automatically be extended until one (1) month after such date (and such date shall be deemed to be the “Outside Date” for all purposes hereunder); provided, further, that (A) Buyer shall be permitted to terminate this Agreement pursuant to this Section 11.1(a)(iii) only if (x) Buyer is not itself in material breach of any of its representations, warranties, covenants or agreements contained herein and (y) Buyer has provided written notice to Sellers of its intention to exercise its rights under this Section 11.1(a)(iii) and Sellers have not provided written notice to Buyer that it is ready, willing and able to close the transactions contemplated by this Agreement on or before the date that is five (5) Business Days after the date of such notice from Buyer, and (B) Sellers shall be permitted to terminate this Agreement pursuant to this Section 11.1(a)(iii) only if (x) no Seller is itself in material breach of any of its representations, warranties, covenants or agreements contained herein and (y) Sellers have provided written notice to Buyer of their intention to exercise their rights under this Section 11.1(a)(iii) and Buyer has not provided written notice to Sellers that it is ready, willing and able to close the transactions contemplated by this Agreement on or before the date that is five (5) Business Days after the date of such notice from Sellers;

(iv) if the Bankruptcy Court enters an order dismissing, or converting into cases under chapter 7 of the Bankruptcy Code, any of the cases commenced by Sellers under chapter 11 of the Bankruptcy Code and comprising part of the Bankruptcy Cases and such order is Final; or

(v) if Sellers enter into (or provides written notice to Buyer of its intent to enter into, or otherwise publicly announces) one (1) or more Alternative Transactions or other agreements to sell, transfer, or otherwise dispose of any of the Assets in a transaction or series of transactions other than in the Ordinary Course of Business with one (1) or more Persons other than Buyer or the Successful Bidder at the Auction;
(b) by Buyer:

(i) in the event of any breach by Sellers of any of Sellers’ agreements, covenants, representations, or warranties contained herein (provided such breach would result in the failure of a condition set forth in Section 9.1 to be satisfied) or (if such breach is material) in the Bidding Procedures Order or Sale Order, and the failure of Sellers to cure such breach within ten (10) days after receipt of the Buyer Termination Notice; provided, however, that (A) Buyer is not itself in material breach of any of its representations, warranties, covenants or agreements contained herein or in the Bidding Procedures Order or the Sale Order, (B) Buyer notifies Sellers in writing (the “Buyer Termination Notice”) of its intention to exercise its rights under this Section 11.1(b) as a result of the breach, and (C) Buyer specifies in the Buyer Termination Notice the representation, warranty, covenant or agreement contained herein or in the Bidding Procedures Order or Sale Order of which Sellers is allegedly in breach and a description of the specific factual circumstances to support the allegation; or

(ii) if Buyer is not the Successful Bidder or the Backup Bidder at the Auction;

(c) by Sellers:

(i) in the event of any breach by Buyer of any of Buyer’s agreements, covenants, representations or warranties contained herein (provided such breach would result in the failure of a condition set forth in Section 10.1 to be satisfied) or (if such breach is material) in the Bidding Procedures Order or Sale Order, and the failure of Buyer to cure such breach within ten (10) days after receipt of the Seller Termination Notice; provided, however, that Sellers (A) are not themselves in material breach of any of its representations, warranties, covenants or agreements contained herein or in the Bidding Procedures Order or the Sale Order, (B) notifies Buyer in writing (the “Seller Termination Notice”) of its intention to exercise its rights under this Section 11.1(c)(i) as a result of the breach, and (C) specifies in the Seller Termination Notice the representation, warranty, covenant or agreement contained herein or in the Bidding Procedures Order or Sale Order of which Buyer is allegedly in breach and a description of the specific factual circumstances to support the allegation; or

(ii) if Buyer is not the Successful Bidder or the Backup Bidder at the Auction.

11.2 Effect of Termination.

(a) Except as provided below in Sections 11.2(c) through (e), in the event of termination of this Agreement by Buyer or Sellers pursuant to this ARTICLE 11, all rights and obligations of the Parties under this Agreement shall terminate without any Liability of any Party to any other Party; provided, however, that nothing herein shall relieve any Party from liability for breach of this Agreement prior to such termination. The provisions of this Section 11.2 (and, to the extent applicable to the interpretation or enforcement of such provisions, ARTICLE 1 and ARTICLE 12), shall expressly survive the termination of this Agreement.

(b) Each Party acknowledges that the agreements contained in this Section 11.2 are an integral part of the transactions contemplated by this Agreement, that without these
agreements such Party would not have entered into this Agreement, and that such agreements shall survive the Closing.

(c) If Sellers close an Alternative Transaction (or Alternative Transactions), or if Buyer terminates this Agreement as permitted by Sections 11.1(a)(iii), 11.1(a)(v), 11.1(b)(i), or 11.1(b)(ii), or if Seller terminates this Agreement pursuant to Section 11.1(c)(ii), or if at the time of termination of this Agreement for any other reason Buyer would be entitled to terminate this Agreement pursuant to these aforementioned Sections, then Buyer shall be entitled to return of the entire Deposit (without interest thereon), which shall be returned to the Buyer, plus a break-up and expense reimbursement fee (the “Break-up Fee”) in the amount of Four Hundred Eighty Thousand Dollars ($480,000).

(d) If Sellers terminate this Agreement as permitted by Sections 11.1(a)(iii) or 11.1(c)(i) and Buyer would not otherwise be entitled to the Break-up Fee and return of the Deposit under Section 11.2(c), then Buyer shall forfeit the Deposit to the Sellers and the Deposit shall be paid to the Sellers pursuant to the Bidding Procedures Order (without interest thereon).

(e) If the Agreement is terminated by any Party pursuant to Sections 11.1(a)(i) or 11.1(a)(iv) or if the Agreement is terminated by mutual written consent pursuant to Section 11.1(a)(ii), then Buyer shall be entitled to recover the Deposit and the Deposit shall be paid to Buyer pursuant to the Bidding Procedures Order (without interest thereon).

ARTICLE 12

GENERAL PROVISIONS

12.1 Survival.

All covenants and agreements contained herein which by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall, solely to the extent such covenants and agreements are to be performed, or prohibit actions, subsequent to the Closing, survive the Closing in accordance with their terms, as shall all representations and warranties.

12.2 Confidentiality.

The Parties agree that the Non-Disclosure Agreement entered into by them and their Affiliates, dated July 3, 2018 (the “Confidentiality Agreement”), shall continue in full force and effect notwithstanding the execution and delivery by the Parties of this Agreement; provided, however, that (a) disclosure of matters that become a matter of public record as a result of the Bankruptcy Case and the filings related thereto shall not constitute a breach of such Confidentiality Agreement, and (b) disclosures permitted under this Agreement shall not constitute a breach of such Confidentiality Agreement.

12.3 Public Announcements.

Unless otherwise required by applicable Law or by obligations of Buyer or Sellers or their respective Affiliates pursuant to any listing agreement with or rules of any securities
exchange, Buyer, on the one hand, and Sellers, on the other hand, shall consult with each other before issuing any press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby or the activities and operations of the other and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

12.4 Notices.

All notices, consents, waivers and other communications under this Agreement must be in writing and shall be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) received by the addressee, if sent by a delivery service (prepaid, receipt requested), or (c) received by the addressee, if sent by registered or certified mail (postage prepaid, return receipt requested), with a copy of such notice simultaneously provided by email, in each case to the appropriate addresses and representatives (if applicable) set forth below (or to such other addresses and representatives as a Party may designate by notice to the other Parties):

(i) If to Sellers, then to:

Republic Metals Corp.
12900 N.W. 38th Avenue
Miami, FL 33054
Attention: Scott Avila, CRO
Email: savila@paladinmgmt.com

with a copy (which shall not constitute notice) to:

Akerman LLP
2001 Ross Avenue
Suite 3600
Dallas, TX 75201
Attention: John Mitchell
Email: john.mitchell@akerman.com

and

Akerman LLP
98 Southeast Seventh Street
Suite 1100
Miami, FL 33131
Attention: Martin Burkett
Email: martin.burkett@akerman.com

and

SSG Capital Advisors
300 Barr Harbor Drive, Suite 420
West Conshohocken, PA 19428
Attention: Mark E. Chesen and Michael Goodman  
Email: mgoodman@ssgca.com  
mchesen@ssgca.com

and

Luskin, Stern & Eisler, LLP  
Eleven Times Square  
New York, NY 10036  
Attention: Richard Stern  
Email: stern@lsellp.com

(ii) If to Buyer:

Valcambi SA  
Via Passeggiata, 3  
CH-6828 Balerna  
Switzerland

with a copy (which shall not constitute notice) to:

Dykema Gosset PLLC  
Comerica Bank Tower  
1717 Main Street, Suite 4200  
Dallas, TX 75201  
E-mail: mandrews@dykema.com  
Attention: Mark Andrews, Esq.

12.5 Waiver, Waiver of Damages.

Neither the failure nor any delay by any Party in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF, ASSOCIATED WITH, OR RELATING TO THIS AGREEMENT (INCLUDING LOSS OF PROFIT OR BUSINESS INTERRUPTIONS, HOWEVER SAME MAY BE CAUSED) AND THE PARTIES HEREBY WAIVE ALL CLAIMS FOR ANY SUCH DAMAGES.
12.6 **Entire Agreement; Amendment.**

This Agreement (including the Exhibits, Annexes, Schedules and Disclosure Schedules) and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to their subject matter. This Agreement may not be amended except by a written agreement executed by all of the Parties.

12.7 **Assignment.**

(a) Except as expressly permitted in this Agreement, the rights and obligations of the Parties under this Agreement shall not be assignable by a Party without the written consent of the other Party. Notwithstanding the foregoing, Buyer shall have the unrestricted right to assign this Agreement as collateral, and in connection therewith to delegate all or any part of its obligations hereunder to any lender in connection with any financing or to any Affiliate of Buyer, but in such event Buyer shall remain fully liable for the performance of all of such obligations in the manner prescribed in this Agreement; furthermore, subject to Buyer’s continuing guaranty of all of its obligations hereunder, Buyer shall be entitled with prior written notice to Sellers and the Bankruptcy Court, to assign its rights hereunder to a newly created United States-domiciled subsidiary of Buyer.

(b) This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, consolidation, liquidation (including successive mergers, consolidations or liquidations) or otherwise). Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any Person other than the Parties and successors and assigns permitted by this Section 12.7 any right, remedy or claim under or by reason of this Agreement.

12.8 **Severability.**

The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provisions shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

12.9 **Expenses.**

Whether or not the transactions contemplated by this Agreement are consummated, except as provided in Sections 11.2(c) through 11.2(e), the Parties shall bear their own respective expenses (including all compensation and expenses of counsel, financial advisors, consultants, actuaries and independent accountants) incurred in connection with this Agreement and the transactions contemplated hereby; *provided, however,* Sellers shall pay all amounts payable to
SSG Capital Advisors, LLC, in accordant with an order of the Bankruptcy Court.

12.10 Time of Essence.

Time shall be of the essence with respect to all time periods and notice periods set forth in this Agreement.

12.11 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of New York applicable hereto.

(b) Without limitation of any Party’s right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action; provided, however, that, if the Bankruptcy Case is closed, all Actions arising out of or relating to this Agreement shall be heard and determined in a New York state court or a federal court sitting in New York, New York, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action. The Parties consent to service of process by mail (in accordance with Section 12.4) or any other manner permitted by law.

(c) The Parties hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based in contract, tort or otherwise) arising out of or relating to this Agreement or the actions of Sellers, Buyer or their respective Representatives in the negotiation or performance hereof.

12.12 Counterparts.

This Agreement and any amendment hereto may be executed in two (2) or more counterparts, each of which shall be deemed to be an original of this Agreement or such amendment and all of which, when taken together, shall constitute one and the same instrument. Notwithstanding anything to the contrary in Section 12.4, delivery of an executed counterpart of a signature page to this Agreement or any amendment hereto by telecopier or email attachment shall be effective as delivery of a manually executed counterpart of this Agreement or such amendment, as applicable.
12.13 **Parties in Interest; No Third Party Beneficiaries.**

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

12.14 **Non-Recourse.**

No past, present or future director, officer, employee, incorporator, member, partner or equity holder of Buyer or any Seller shall have any Liability for any obligations or liabilities of such Party under this Agreement or any other Transaction Document, for any claim based on, in respect of, or by reason of the transactions contemplated hereby and thereby.

12.15 **Headings.**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

12.16 **Disclosure Schedules; Materiality.**

The disclosure of any particular fact or item in any Disclosure Schedule shall not be deemed an admission as to whether the fact or item is “material” or would constitute a “Material Adverse Effect.”

[Signature page follows.]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the day and year first above written.

BUYER

Valcambi SA

By: _____________________________  
Name:___________________________  
Title:____________________________

SELLERS

Republic Metals Corporation

By: _____________________________  
Name:___________________________  
Title:____________________________

Republic Metals Refining Corporation

By: _____________________________  
Name:___________________________  
Title:____________________________

Republic High Tech Metals, LLC

By: _____________________________  
Name:___________________________  
Title:____________________________
Republic Carbon Company, LLC

By: _____________________________  
Name:___________________________  
Title:____________________________

RMC Diamonds LLC

By: _____________________________  
Name:___________________________  
Title:____________________________

Richard Dennis Rubin Enterprises LLC

By: _____________________________  
Name:___________________________  
Title:____________________________

RMC 2 LLC

By: _____________________________  
Name:___________________________  
Title:____________________________

J & L Republic, LLC

By: _____________________________  
Name:___________________________  
Title:____________________________

R & R Metals, LLC

By: _____________________________  
Name:___________________________  
Title:____________________________
Republic Trans Mexico Metals, S.R.L.

By: _____________________________
Name: ___________________________
Title: ___________________________
ANNEX 1

SUBSIDIARY SELLERS

1. Republic High Tech Metals, LLC, a Florida limited liability company
2. Republic Carbon Company, LLC, a Florida limited liability company
3. RMC Diamonds LLC, a Florida limited liability company
4. Richard Dennis Rubin Enterprises LLC, a Florida limited liability company
5. RMC 2 LLC, a Florida limited liability company
6. J & L Republic, LLC, a Florida limited liability company
7. R & R Metals, LLC, a Florida limited liability company
8. Republic Trans Mexico Metals, S.R.L., a Mexican limited liability company
Exhibit A

Assigned Real Property

1. Lots 7 and 8, Block 1, LeJeune Douglas Industrial Park, according to the plat thereof as recorded in Plat Book 115, Page 99, Public Records of Miami-Date County, Florida. 12800 NW 38th Avenue, Opa Locka, FL 33054.
Exhibit B

Assigned Leases

1. Lease Agreement, dated September 1, 2017, between Sacal Micha Jaime and Republic Trans Mexico Metals, S. De L.R. de C.V., for the property located at D-106-107 located in Building No. 55, De La Av. FCO. I. Madero, CP. 06000 Mexico D.F.


3. Lease, dated on or around January 5, 2018, between 15 West 47 St. LLC and Republic Metals Refining Corporation, for the premises located at 15 West 47th Street, Suite 206 and 209, New York NY 10036.
Exhibit C

Assigned Contracts

[To be determined prior to Closing]
Exhibit D

Assigned Inventory

None.
Exhibit E

Additional Excluded Assets

None.
Exhibit F

Form of Assignment and Assumption Agreement

(See attached)
ASSIGNMENT AND ASSUMPTION OF CONTRACTS AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS AGREEMENT (this “Agreement”), is made effective as of _____, 2019 (the “Effective Date”), by and between Republic Metals Corporation, a Florida corporation and Republic Metals Refining Corporation, a Florida corporation (collectively, “Sellers”), and Valcambi SA, a Swiss company (“Buyer”) pursuant to that certain Asset Purchase Agreement dated January __, 2019 (the “Purchase Agreement”), by and between Buyer and Sellers. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Purchase Agreement.

WHEREAS, on the Effective Date, and subject to and in accordance with the terms of the Purchase Agreement, Sellers wish to assign to Buyer, and Buyer wishes to assume all of the applicable Sellers’ respective right, title and interest in and certain obligations under the Assigned Contracts, pursuant to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth in the Purchase Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment. Sellers irrevocably (a) assign to Buyer all of their respective right, title and interest in, to and under the Assigned Contracts and (b) delegate to Buyer certain of their liabilities, obligations, duties and covenants under the Assigned Contracts as set forth in Section 2 of this Agreement.

2. Assumption. Buyer unconditionally accepts all of Sellers’ respective right, title, and interest in, to and under the Assigned Contracts, and assumes and agrees to be bound by, fulfill, perform and discharge all of the liabilities, obligations, duties and covenants under or arising out of the Assigned Contracts accruing from and after the Effective Date.

3. Binding Effect. This Agreement is binding upon the successors and assigns of Buyer and inures to the benefit of the successors and assigns of Sellers.

4. Subject to Purchase Agreement. Notwithstanding anything herein to the contrary, the provisions of this Agreement are subject, in all respects, to the terms and conditions of the Purchase Agreement and all of the representations and warranties, covenants and agreements contained therein. Furthermore, nothing in this Agreement will be deemed to supersede, enlarge or modify any of the rights or obligations of Buyer or Sellers under the Purchase Agreement.

5. Entire Agreement; Modification. This Agreement is executed and delivered pursuant to the Purchase Agreement and together such agreements constitute the entire agreement and understanding between the parties with respect to the subject matter hereof, which supersedes all prior oral or written negotiations and agreements between the parties with respect to the subject matter hereof. In the event of any inconsistency between this Agreement and Purchase Agreement, the Purchase Agreement shall control. No modification, variation or amendment of this Agreement shall be effective unless made in writing and signed by all parties hereto.
6. **Further Assurances.** Buyer and Sellers agree to cooperate with each other to effectuate this Agreement and to execute any and all additional documents or take any additional action as may be reasonable, necessary or appropriate to carry out the transactions contemplated hereby.

7. **Counterparts.** This Agreement may be executed in counterparts, including facsimile copies and signatures, each of which when so executed shall constitute a complete and original instrument, and all of which when taken together shall constitute one and the same Agreement.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption of Contracts Agreement to be executed as of the date first above written.

BUYER

Valcambi SA

By: _____________________________
Name:___________________________
Title:____________________________

By: _____________________________
Name:___________________________
Title:____________________________

SELLERS

Republic Metals Corporation

By: _____________________________
Name:___________________________
Title:____________________________

Republic Metals Refining Corporation

By: _____________________________
Name:___________________________
Title:____________________________
Exhibit G

Additional Assumed Liabilities

None.
Exhibit H

Bidding Procedures Order

(See attached)
ORDER (A) AUTHORIZING AND APPROVING PROCEDURES FOR THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS AND INTERESTS; (B) SCHEDULING A SALE HEARING; (C) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE OF DEBTORS' ASSETS; (D) APPROVING THE FORM OF NOTICE FOR THE SALE OF DEBTORS' ASSETS; AND (E) GRANTING RELATED RELIEF

Upon the Debtors' Motion for an Order: (I) authorizing and approving procedures for the sale of the Debtors' assets free and clear of all liens and interests; (II) scheduling a sale hearing; (III) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the sale of Debtors' assets; (IV) approving the sale of the Debtors' property free and clear, and (V) approving form of notice of sale, dated December 21, 2018 [Doc. No. 358], as supplemented by the Notice of Designation of Stalking Horse Bidder

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtors' federal tax identification number, include: Republic Metals Refining Corporation, 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194), Republic Metals Corporation, 12900 NW 38th Avenue, Miami, FL 33054 (4378), Republic Carbon Company, LLC, 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833), Republic High Tech Metals, LLC, 13001 NW 38 Avenue, Miami, FL 33054 (6102), RMC Diamonds, LLC, 12900 NW 38th Avenue, Miami, FL 33054 (1507), RMC2, LLC, 12900 NW 38th Avenue, Miami, FL 33054 (4696), J & L Republic LLC, 12900 NW 38th Avenue, Miami, FL 33054 (7604); R & R Metals, LLC, 12900 NW 38th Avenue, Miami, FL 33054 (7848); Republic Metals Trading (Shanghai) Co., Ltd., 276 Ningbo Road, Huangpu District, Shanghai, P.R. 200001 China (1639), and Republic Trans Mexico Metals, S.R.L., Francisco I. Madero No. 55 Piso 5, Local 409, Centro Joyero Edificio Central, Delegación Cuauhtémoc, Mexico DF 6000 (2942).

2 All capitalized times not defined in this Order shall have the meanings ascribed to them in the Motion.
[Doc. No. XXX] (the "Motion"); notice of the Motion being proper and sufficient and all interested parties having been afforded an opportunity to be heard with respect to the Motion; after a hearing conducted on January 9, 2019, and upon review and consideration of the relief sought in the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Debtors', their estates, creditors, and other parties in interest:

THE COURT FINDS THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 37052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The bases for the relief requested in the Motion are: (i) sections 105, 363, and 365 of the Bankruptcy Code; (ii) Bankruptcy Rules 2002(a)(2), 6004, 6006, 9007, and 9014; (iii) Local Rules 2002-1, 6004-1, 6006-1, and 9006-1(b), and (iv) the Sale Guidelines.

D. Notice of the Motion has been given to: (i) the United States Trustee for the Southern District of New York; (ii) proposed counsel to the Committee; (iii) counsel for the Senior Lenders; (iv) the Debtors' 30 largest unsecured creditors; (v) the United States Attorney's Office for the Southern District of New York; (vi) the Internal Revenue Service; (vii) the office of the attorneys general for the states in which the Debtors operate; (viii) all parties who have expressed a written interest in some or all of the Assets; (ix) each governmental agency that is an

---

3 Capitalized terms not otherwise defined herein are used as defined in the Motion.
interested party with respect to the Sale; (x) all parties which, to the best of the Debtors’
knowledge, information, and belief, had asserted or then may have asserted a lien in any of the
Debtors’ Assets, (xi) all parties to executory contracts and unexpired leases proposed to be
assumed and assigned, or rejected, as part of the proposed transaction; and (xii) all parties who
have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rules
2002 and 9010(b).

E. Notice of the Motion was adequate and sufficient under the circumstances of
these cases, and such notice complied with all of the requirements of the Bankruptcy Code, the
Bankruptcy Rules, the Local Rules, and the Sale Guidelines.

F. The Debtors have articulated good and sufficient reasons for this Court to: (i)
approve the Bid Procedures; (ii) approve the selection of Valcambi, SA, as Stalking Horse
Bidder and the 3% break-up fee and Overbid requirement related thereto; (iii) schedule the
Auction and Sale Hearing and approve the manner of notice of the Auction and Sale Hearing;
and (iii) approve the Assumption and Assignment Procedures regarding the Contracts and
Leases, including notice of proposed cure amounts. The relief granted herein is in the best
interests of the Debtors, their estates and creditors, and other parties in interest.

G. The Motion, this Order, and the Assumption and Assignment Procedures are
reasonably calculated to provide counterparties to any Contracts and Leases to be assumed by the
Debtors and assigned to the Successful Bidder with proper notice of the intended assumption and
assignment of its Contracts, the procedures in connection therewith, and establishment of any
cure amounts relating thereto.

H. The Sale Notice, substantially in the form attached hereto as Addendum 3, is
reasonably calculated to provide interested parties with timely and proper notice of the proposed
sale, including, without limitation: (i) the date, time, and place of the Auction; (ii) the Bid
Procedures; (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the
date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the Assets to
be sold; (vi) a description of the Sale as being free and clear of liens, claims, encumbrances, and
other interests, with all such liens, claims, encumbrances, and other interests attaching with the
same validity and priority to the Sale proceeds; (vii) notice of the proposed assumption and
assignment of Contracts and Leases to the Successful Bidder, and no other or further notice of
the Sale shall be required.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent set forth in this Order, and solely with
   respect to establishment of the Bid Procedures.

2. All objections to the relief requested in the Motion, with respect to establishment
   and approval of the Bid Procedures, that have not been withdrawn, waived, or settled as
   announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are
   overruled.

3. The Bid Procedures, substantially in the form attached hereto as Addendum 1,
   are approved in their entirety, as supplemented by Paragraph 4 below, and the Bid Procedures
   shall govern the submission, receipt, and analysis of all bids relating to the proposed Sale or sales
   of the Assets. Any party desiring to bid on any of the Assets shall comply with the Bid
   Procedures and this Order. The Debtors are authorized to take any and all actions necessary to
   implement the Bid Procedures.

4. Stalking Horse. Valcambi SA ("Valcambi") is approved as the stalking horse
   bidder. Valcambi's opening bid of $16,000,000 shall serve as the opening bid at the Auction.
   Valcambi shall be entitled to a break-up fee of 3% of its opening bid, or $480,000, if it is not the
   successful bidder at the Auction. Potential purchasers of the Assets must submit an initial
minimum overbid of at least $16,580,000, in order to be considered a "Qualified Bid." Subsequent minimum overbids at the Auction shall be in increments of $100,000.

5. **Bid Deadline.** The deadline by which all bids for the Debtors' Assets must be **actually received** by the parties specified in the Bid Procedures is **January 28, 2019 at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline").

6. **Auction.** If multiple Qualified Bids are received by the Debtors on or before the Bid Deadline, then the Debtors shall conduct an auction on **January 31, 2019, at 1:00 p.m. (prevailing Eastern Time)** at the offices of Akerman LLP, 666 Fifth Avenue, 20th Floor, New York, NY 10103, or such later time on such day or other place as the Debtors shall notify the Noticed Parties.

7. If the Debtors receive one or more Qualified Bids from Qualified Bidders, then the Debtors shall conduct the Auction in accordance with the Bid Procedures. Valcambi shall be deemed a qualified bidder.

8. Each bidder participating at the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale, as set forth in the Bid Procedures, the Auction shall be conducted openly, and the Auction shall be transcribed or videotaped.

9. The Debtors, in consultation with the Consultation Parties, may (a) determine which Qualified Bid is the highest or otherwise best offer; (b) reject at any time before entry of an Order of the Bankruptcy Court approving the Successful Bid, any Bid that, in the discretion of the Debtors, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bid Procedures, or (iii) contrary to the best interests of the Debtors' estate and their creditors; and (c) at or before the conclusion of the Auction, may impose such
other terms and conditions upon Qualified Bidders as the Debtors, in consultation with the Consultation Parties, determine to be in the best interests of the Debtors' estate in this cases.

10. **Sale Objection Deadline.** Objections, if any, to the Sale must be made **on or before January 28, 2019 at 5:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline"). Objections must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be **actually received** no later than the Sale Objection Deadline by the following parties: (i) counsel to the Debtors; (ii) proposed counsel to the Committee; (iii) the United States Trustee; and (iv) counsel to the Senior Lenders.

11. A party's failure to timely file or make an objection in accordance with this Order by the Sale Objection Deadline shall forever bar the assertion of any objection to the Motion, entry of the Sale Order, and/or consummation of the Sale with the Successful Bidder, including the assumption and assignment of any Contracts or Leases to the Successful Bidder pursuant to the applicable Purchase Agreement, and shall be deemed to constitute any such party's consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto, including, without limitation, such assumption and assignment.

12. The Sale Hearing shall commence on or before **February [4-8], 2019 at [a.m/p.m. (prevailing Eastern Time)]** before the Honorable Sean H. Lane at Courtroom No. 701, United States Bankruptcy Court, One Bowling Green, New York, New York 10004. Upon entry of this Order, the Debtors are authorized to perform any obligations of the Debtors set forth in any applicable asset purchase agreement that are intended to be performed prior to the Sale Hearing or entry of the Sale Order. The Sale Hearing may be
adjourned by the Debtor by announcement in open Court or on the Court's calendar without any further notice required.

13. The Assumption and Assignment Procedures as set forth in the Motion and herein are approved and the Debtor is authorized to take any and all actions necessary and/or appropriate to implement the Assumption and Assignment Procedures. The Form Assignment Notice attached hereto as Addendum 2 is hereby approved as sufficient.

14. The following Assumption and Assignment Procedures shall govern the assumption and assignment of the Assumed Contracts and Assumed Leases in connection with the Sale of the Purchased Assets to the Successful Bidder:

a. Not later than fourteen (14) days prior to the Sale Hearing (as may be adjourned from time to time), the Debtor shall file with the Court a list (the "Cure Schedule") identifying such contracts and leases which may constitute Assumed Contracts and Assumed Leases in connection with the Sale and the amounts necessary to cure defaults and/or provide compensation or adequate assurance of compensation for actual pecuniary loss resulting from a default at the time of assumption as determined by the Debtor (such amounts, "Cure Payment Liability"), with the Purchaser to pay any such Cure Payment Liabilities for any Assumed Contracts and any Assumed Leases. The Debtor shall serve all counterparties to such contracts and leases with the Assignment Notice, specifically stating that the Debtor is or may be seeking the sale, assumption and assignment of such contracts and leases and notifying such parties of the deadline for objecting (a "Cure/Assignment Objection") to the amount of any Cure Payment Liability related thereto, which deadline shall be three (3) business days prior to the Sale Hearing, so as to enable any such party to object to the proposed Cure Payment Liability and the Court to determine such Cure Payment Liability as promptly as is reasonably possible.

b. In cases in which the Debtor is unable to establish that a default exists, the relevant Cure Payment Liability shall be set at $0.00 in the Assignment Notice.

c. Notwithstanding anything herein to the contrary, the Debtor may, from time to time, modify the Cure Schedule to add or remove a contract or lease, counterparty, or to modify the proposed Cure Payment Liability with respect to any counterparty. The non-Debtor counterparty to any such contract or lease will be provided written notice of any such modification and at least fourteen (14) days advance notice of its deadline to object to such modification, and the Debtor will seek to set any such objection for hearing before the Court as promptly as is reasonably possible.
15. Objections to any cure amount proposed by the Debtor in the Cure Schedule, except as such schedule may be modified subsequent to the Auction, in connection with the Assumption and Assignment Procedures shall be filed on or before January 28, 2019 at 5:00 p.m. (prevailing Eastern Time). A hearing on any such objections shall take place on February [4-8], 2019 at a.m/p.m. (prevailing Eastern Time), in conjunction with the Sale Hearing.

16. The form of Sale Notice attached hereto as Addendum 3 is hereby approved as sufficient.

17. Within two (2) business days after entry of this Order, the Debtors’ Claims Agent: (a) shall provide a copy of the Sale Notice and this Order by first class mail to (i) the Notice Parties, (ii) each counterparty to an executory contract with the Debtor; (iii) each party identified by SSG or otherwise known to Debtors to be interested in purchasing all, or any portion of, the Assets; and (iv) all known creditors of the Debtors.

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

19. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

20. This Court shall retain jurisdiction to resolve any dispute relating to the interpretation of the Bid Procedures, the Assumption and Assignment Procedures, and this Order. To the extent any provisions of this Order are inconsistent with the Motion, the terms of this Order shall control.

21. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
22. The Debtors are not required to comply with any state or local bulk transfer laws or requirements in connection with the Sale.

23. This Order shall be binding on the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the Debtors' estates.

24. To the extent any of the deadlines set forth in this Bid Procedures Order do not comply with the Local Rules, such Local Rules are waived and the terms of this Bid Procedures Order shall govern.

Dated: January ___, 2019
New York, New York

Proposed ____________________________
Honorable Sean H. Lane
United States Bankruptcy Judge
Exhibit I

Form of Deed

(See attached)
SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made and effective as of the _____ day of ___________2019 by REPUBLIC METALS CORPORATION, a Florida corporation, whose address is _________________________ (hereinafter referred to as "Grantor") to VALCAMBI SA, a _____________________________ , whose address is ___________________________ (hereinafter referred to as "Grantee"): (Wherever used herein, the terms "Grantor" and "Grantee" shall be deemed to include all of the parties to this Special Warranty Deed and the successors and assigns of each party. The singular shall be deemed to include the plural, and vice versa, where the context so permits.)

WITNESSETH

THAT, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Grantor hereby grants, bargains, sells, conveys and confirms unto Grantee all that certain land situate in Miami - Dade County, Florida, more particularly described on Exhibit "A" attached hereto and made a part hereof;

SUBJECT TO the matters set forth in Exhibit "B" attached hereto and made a part hereof without the intention to reimpose same.
TO HAVE AND TO HOLD the same in fee simple forever.

AND the Grantor hereby covenants with Grantee that Grantor is lawfully seized of the land in fee simple; that Grantor has good right and lawful authority to sell and convey said land; that Grantor hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the Grantor, but against none other.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]
IN WITNESS WHEREOF the Grantor has caused this Special Warranty Deed to be executed as of the day and year first above written.

GRANTOR:

Signed, sealed and delivered in the presence of:

REPUBLIC METALS CORPORATION, a Florida corporation

By: __________________________
Name: _______________________
Its: _______________________

Name: _______________________

Name: _______________________

STATE OF FLORIDA

COUNTY OF ___________

The foregoing instrument was acknowledged before me this ______ day of ______, 2019 by __________________, as _________________ of Republic Metals Corporation, a Florida corporation, who [ ] is personally known to me or [ ] has produced ______________________________________ as identification.

(Notary Stamp)

Signature of Notary Public
Exhibit "A"

Legal Description of the Land

Lots 7 and 8, Block 1, LeJeune-Douglas Industrial Park, according to the map or plat thereof, as recorded in Plat Book 115, Page(s) 99, of the Public Records of Miami-Dade County, Florida.
Exhibit "B"
Permitted Exceptions

1. Taxes and assessments for the year 2019 and subsequent years, which are not yet due and payable.

2. Restrictions, covenants, conditions, easements and other matters as contained on the Plat of LeJeune-Douglas Industrial Park, recorded in Plat Book 115, Page 99, of the Public Records of Miami-Dade County, Florida.

3. Reservations in favor of (governmental entity that was the Grantor on the Deed), of an undivided three-fourths interest in and to all phosphates, minerals and metals, together with an undivided one-half interest in and to all petroleum, in, on or under the surface of the insured land, as contained in that certain Deed, recorded in Deed Book 176, Page 339, created pursuant to Section 270.11, Florida Statutes.

4. Easement(s) as set forth in instrument(s) recorded in Official Records Book 3498, Page 209.

5. Restrictions, covenants, and conditions as set forth in those instruments recorded in Official Records Book 10867, Page 69, as may be subsequently amended.

6. Easement(s) as set forth in instrument(s) recorded in Official Records Book 14610, Page 2131.

7. Rights of tenants occupying all or part of the insured land under unrecorded leases or rental agreements.

8. Any claim that any portion of the insured land is sovereign lands of the State of Florida, including submerged, filled or artificially exposed lands accreted to such land.
Exhibit J

Form of Assignment and Bill of Sale

(See attached)
ASSIGNMENT AND ASSUMPTION AND BILL OF SALE

This ASSIGNMENT AND ASSUMPTION AND BILL OF SALE, is dated as of [___], 2019 (this “Assignment and Bill of Sale”), and entered into by and between [●] (the “Assignor”), and Valcambi SA, a Swiss company (the “Assignee”). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Purchase Agreement (as defined below).

WHEREAS, the Assignor and the Assignee are parties to that certain Asset Purchase Agreement, dated as of [___], 2019 (the “Purchase Agreement”), pursuant to which Assignor has agreed, to sell, assign, transfer, convey and deliver to Assignee all of Assignee’s right, title and interest in and to the Assets, and Assignee has agreed to assume the Assumed Liabilities with respect to such Assets, on the terms and conditions set forth in the Purchase Agreement; and

WHEREAS, the execution and delivery of this Assignment and Bill of Sale by the Assignor is a condition to the obligations of the Assignee to consummate the transactions contemplated by the Purchase Agreement; and

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth in the Purchase Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Sale and Assignment of Assets.** The Assignor hereby sells, assigns, transfers, conveys, and delivers unto the Assignee and its successors and assigns, forever, the entire right, title and interest of the Assignor, free and clear of any Encumbrances other than Permitted Encumbrances, in, to and under any and all of the Assets, as more fully described in the Purchase Agreement.

2. **Assumption of Liabilities.** The Assignee hereby irrevocably assumes and agrees to pay and discharge, when due, the Assumed Liabilities as more fully described in the Purchase Agreement. The Assignor shall retain all of its other liabilities (including the Excluded Liabilities).

3. **Power of Attorney.** Assignor hereby constitutes and appoints Assignee and its successors and assigns as the attorney-in-fact of the Assignee, with full power of substitution, to institute and prosecute, in the name of Assignee or Assignor, but on behalf of and for the benefit of Assignee, all proceedings which Assignee may deem desirable to collect, assert or enforce any claim, right or title of any kind in or to the Assets.

4. **Amendment and Assignment.** This Assignment and Bill of Sale may not be amended except by a written agreement executed by all of the parties hereto. This Assignment and Bill of Sale may not be assigned by the Assignor by operation of law or otherwise without the express written consent of the Assignee. This Assignment and Bill of Sale shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

5. **No Third Party Beneficiaries.** This Assignment and Bill of Sale shall inure solely to the benefit of the parties hereto and their respective successors and assigns and nothing herein,
express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever.

6. **Purchase Agreement.** This Assignment and Bill of Sale is subject to the terms and conditions of the Purchase Agreement, and in the event of a conflict or inconsistency between the terms of the Purchase Agreement and this Assignment and Bill of Sale, the terms of the Purchase Agreement shall govern.

7. **Counterparts.** This Assignment and Bill of Sale may be executed and delivered (including by electronic or facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

8. **Governing Law.** This Assignment and Bill of Sale will be governed by and construed in accordance with the laws of the State of New York, without giving effect to any choice of law principles.

9. **Jurisdiction.** Each of the parties submits to the exclusive jurisdiction of any state or federal court sitting in New York, New York, County of New York, Borough of Manhattan, in any action or proceeding arising out of or relating to this Assignment and Bill of Sale and agrees that all claims in respect of the action or proceeding may be heard and determined exclusively in any such court. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other party with respect thereto.

10. **Severability.** If any provision of this Assignment and Bill of Sale or the application of any provision hereof to any person or circumstances is held invalid, the remainder of this Assignment and Bill of Sale and the application of such provisions to other persons or circumstances shall not be affected unless the provision held invalid shall substantially impair the benefits of the remaining portions of this Assignment and Bill of Sale.

11. **WAIVER OF JURY TRIAL.** EACH PARTY HERETO IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS ASSIGNMENT AND BILL OF SALE OR ANY TRANSACTION CONTEMPLATED HEREBY.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Bill of Sale to be executed by their duly authorized representatives as of the date first above written.

ASSIGNOR:

[Seller]

By: ________________________________
   Name: ____________________________
   Title: ______________________________

ASSIGNEE:

Valcambi SA

By: ________________________________
   Name: ____________________________
   Title: ______________________________

By: ________________________________
   Name: ____________________________
   Title: ______________________________
Exhibit K-1

Form of New Leases

(See attached)
LEASE

[LEGAL NAME OF LANDLORD ENTITY],
LANDLORD,

AND

[LEGAL NAME OF TENANT],
TENANT

DATED: ________________,
PREMISES: _____________
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE 1:</td>
<td>PREMISES</td>
<td>1</td>
</tr>
<tr>
<td>1.01</td>
<td>Lease of Premises</td>
<td></td>
</tr>
<tr>
<td>1.02</td>
<td>Acceptance of the Premises</td>
<td></td>
</tr>
<tr>
<td>1.03</td>
<td>Permitted Encumbrances</td>
<td></td>
</tr>
<tr>
<td>1.04</td>
<td>Security Deposit</td>
<td></td>
</tr>
<tr>
<td>ARTICLE 2:</td>
<td>LEASE TERM</td>
<td>2</td>
</tr>
<tr>
<td>2.01</td>
<td>Lease Term</td>
<td></td>
</tr>
<tr>
<td>2.02</td>
<td>Option to Extend</td>
<td></td>
</tr>
<tr>
<td>2.03</td>
<td>Holding Over</td>
<td></td>
</tr>
<tr>
<td>2.04</td>
<td>Covenant of Quiet Enjoyment</td>
<td></td>
</tr>
<tr>
<td>ARTICLE 3:</td>
<td>USE OF PREMISES</td>
<td>3</td>
</tr>
<tr>
<td>3.01</td>
<td>Manner of Use</td>
<td></td>
</tr>
<tr>
<td>3.02</td>
<td>Landlord’s Access</td>
<td></td>
</tr>
<tr>
<td>ARTICLE 4:</td>
<td>RENT</td>
<td>3</td>
</tr>
<tr>
<td>4.01</td>
<td>Base Rent</td>
<td></td>
</tr>
<tr>
<td>4.02</td>
<td>Additional Rent</td>
<td></td>
</tr>
<tr>
<td>4.03</td>
<td>Interest</td>
<td></td>
</tr>
<tr>
<td>4.04</td>
<td>Late Charge</td>
<td></td>
</tr>
<tr>
<td>4.05</td>
<td>Operating Expenses</td>
<td></td>
</tr>
<tr>
<td>ARTICLE 5:</td>
<td>TAXES</td>
<td>6</td>
</tr>
<tr>
<td>5.01</td>
<td>Real Property Taxes</td>
<td></td>
</tr>
<tr>
<td>5.02</td>
<td>Definition of Real Property Taxes</td>
<td></td>
</tr>
<tr>
<td>5.03</td>
<td>Personal Property Taxes</td>
<td></td>
</tr>
<tr>
<td>5.04</td>
<td>Sales Tax</td>
<td></td>
</tr>
<tr>
<td>ARTICLE 6:</td>
<td>UTILITIES</td>
<td>7</td>
</tr>
<tr>
<td>6.01</td>
<td>Utilities</td>
<td></td>
</tr>
<tr>
<td>ARTICLE 7:</td>
<td>COMPLIANCE WITH LAW</td>
<td>7</td>
</tr>
<tr>
<td>7.01</td>
<td>Use</td>
<td></td>
</tr>
<tr>
<td>7.02</td>
<td>Legal Compliance</td>
<td></td>
</tr>
<tr>
<td>7.03</td>
<td>REA Compliance</td>
<td></td>
</tr>
<tr>
<td>7.04</td>
<td>Changes to Fire Suppression System</td>
<td></td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

**ARTICLE 8:** INSURANCE/INDEMNITY ................................................................. 8

8.01  Tenant’s Insurance .......................................................................................... 8
8.02  Landlord’s Insurance .......................................................................................... 9
8.03  General Insurance Provisions ............................................................................ 9
8.04  Tenant’s Damage Waiver .................................................................................. 10
8.05  Landlord’s Damage Waiver .............................................................................. 10
8.06  Indemnity ......................................................................................................... 10
8.07  Business Interruption ....................................................................................... 10
8.08  Environmental Insurance ............................................................................... 10

**ARTICLE 9:** CONDITION AND MAINTENANCE OF PREMISES ..................... 11

9.01  Existing Condition .......................................................................................... 11
9.02  Limitations ....................................................................................................... 11
9.03  Landlord’s Obligations ..................................................................................... 11
9.04  Tenant’s Obligations ....................................................................................... 11
9.05  Tenant’s Alterations ......................................................................................... 12
9.06  Surrender ......................................................................................................... 13
9.07  Exemption of Landlord from Liability ............................................................ 13
9.08  Lease Governs .................................................................................................. 13

**ARTICLE 10:** HAZARDOUS MATERIALS ......................................................... 13

10.01 Hazardous Materials and Tenant’s Permitted Use .......................................... 13
10.02 Duty to Inform Landlord ................................................................................ 14
10.03 Tenant Remediation ...................................................................................... 14
10.04 Tenant Indemnification .................................................................................. 14
10.05 Investigations and Remediation .................................................................... 14
10.06 Landlord Representations and Warranties .................................................... 15
10.07 Notification ..................................................................................................... 15

**ARTICLE 11:** CASUALTY AND CONDEMNATION ........................................ 15

11.01 Damage to Premises ..................................................................................... 15
11.02 Condemnation ............................................................................................... 16

**ARTICLE 12:** ASSIGNMENT AND SUBLETTING ........................................ 16

12.01 Landlord’s Consent Required .................................................................... 16
12.02 No Release of Tenant .................................................................................... 16

**ARTICLE 13:** DEFAULTS AND REMEDIES ................................................. 17
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.01</td>
<td>Covenants and Conditions</td>
<td>17</td>
</tr>
<tr>
<td>13.02</td>
<td>Defaults</td>
<td>17</td>
</tr>
<tr>
<td>13.03</td>
<td>Remedies</td>
<td>17</td>
</tr>
<tr>
<td>13.04</td>
<td>Damages</td>
<td>19</td>
</tr>
<tr>
<td>13.05</td>
<td>Cumulative Remedies</td>
<td>19</td>
</tr>
<tr>
<td>13.06</td>
<td>Notice to Landlord</td>
<td>19</td>
</tr>
<tr>
<td>13.07</td>
<td>Landlord’s Right to Cure</td>
<td>19</td>
</tr>
<tr>
<td>13.08</td>
<td>No Lien for Rent</td>
<td>19</td>
</tr>
<tr>
<td><strong>ARTICLE 14:</strong></td>
<td><strong>PROTECTION OF LENDERS AND OWNERS</strong></td>
<td>20</td>
</tr>
<tr>
<td>14.01</td>
<td>Subordination</td>
<td>20</td>
</tr>
<tr>
<td>14.02</td>
<td>Estoppel Certificates</td>
<td>20</td>
</tr>
<tr>
<td>14.03</td>
<td>Tenant’s Financial Condition</td>
<td>21</td>
</tr>
<tr>
<td>14.04</td>
<td>Landlord’s Liability</td>
<td>21</td>
</tr>
<tr>
<td><strong>ARTICLE 15:</strong></td>
<td><strong>PURCHASE OPTION</strong></td>
<td>21</td>
</tr>
<tr>
<td>15.01</td>
<td>Option and Price</td>
<td>21</td>
</tr>
<tr>
<td>15.02</td>
<td>Closing</td>
<td>22</td>
</tr>
<tr>
<td>15.03</td>
<td>Title and Survey</td>
<td>22</td>
</tr>
<tr>
<td>15.04</td>
<td>Landlord Covenants</td>
<td>23</td>
</tr>
<tr>
<td>15.05</td>
<td>Closing Documents</td>
<td>24</td>
</tr>
<tr>
<td>15.06</td>
<td>Pro Rations</td>
<td>24</td>
</tr>
<tr>
<td>15.07</td>
<td>Closing</td>
<td>26</td>
</tr>
<tr>
<td>15.08</td>
<td>Memorandum of Lease and Purchase Option</td>
<td>26</td>
</tr>
<tr>
<td><strong>ARTICLE 16:</strong></td>
<td><strong>SIGNS</strong></td>
<td>26</td>
</tr>
<tr>
<td>16.01</td>
<td>Signs</td>
<td>26</td>
</tr>
<tr>
<td><strong>ARTICLE 17:</strong></td>
<td><strong>MISCELLANEOUS PROVISIONS</strong></td>
<td>26</td>
</tr>
<tr>
<td>17.01</td>
<td>Radon Disclosure</td>
<td>26</td>
</tr>
<tr>
<td>17.02</td>
<td>Security of Premises</td>
<td>26</td>
</tr>
<tr>
<td>17.03</td>
<td>Tenant’s Property</td>
<td>26</td>
</tr>
<tr>
<td>17.04</td>
<td>Signal Enhancing Device</td>
<td>27</td>
</tr>
<tr>
<td>17.05</td>
<td>Satellite Dish</td>
<td>27</td>
</tr>
<tr>
<td>17.06</td>
<td>Tenant’s Right to Vacate the Premises</td>
<td>27</td>
</tr>
<tr>
<td>17.07</td>
<td>Quiet Enjoyment</td>
<td>27</td>
</tr>
<tr>
<td>17.08</td>
<td>Force Majeure</td>
<td>27</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>17.09</td>
<td>Legal Requirements and Sales Taxes</td>
<td>28</td>
</tr>
<tr>
<td>17.10</td>
<td>Parking</td>
<td>28</td>
</tr>
<tr>
<td>17.11</td>
<td>Termination of Existing Lease</td>
<td>28</td>
</tr>
<tr>
<td>17.12</td>
<td>Representation of Authority; No Other Lease</td>
<td>28</td>
</tr>
<tr>
<td>17.13</td>
<td>Interpretation</td>
<td>28</td>
</tr>
<tr>
<td>17.14</td>
<td>Incorporation of Prior Agreements; - Modifications</td>
<td>29</td>
</tr>
<tr>
<td>17.15</td>
<td>Notices</td>
<td>29</td>
</tr>
<tr>
<td>17.16</td>
<td>Waivers</td>
<td>29</td>
</tr>
<tr>
<td>17.17</td>
<td>Memorandum of Lease and Purchase Option</td>
<td>30</td>
</tr>
<tr>
<td>17.18</td>
<td>Binding Effect; Choice of Law</td>
<td>30</td>
</tr>
<tr>
<td>17.19</td>
<td>Execution of Lease</td>
<td>30</td>
</tr>
<tr>
<td>17.20</td>
<td>Survival</td>
<td>30</td>
</tr>
<tr>
<td>17.21</td>
<td>No Brokers</td>
<td>30</td>
</tr>
<tr>
<td>17.22</td>
<td>Attorney Costs</td>
<td>30</td>
</tr>
<tr>
<td>17.23</td>
<td>Severability</td>
<td>30</td>
</tr>
<tr>
<td>17.24</td>
<td>Rules and Regulations; Patriot Act</td>
<td>31</td>
</tr>
<tr>
<td>17.25</td>
<td>Additional Provisions</td>
<td>31</td>
</tr>
<tr>
<td>17.26</td>
<td>Time of Essence</td>
<td>31</td>
</tr>
</tbody>
</table>
Exhibits
A Legal Description of Land
B Memorandum of Lease and Purchase Option
LEASE

THIS LEASE (the “Lease”) is made and entered into as of this _____ day of ______________ (the “Effective Date”), by and between _____________________________, a __________________________________ ("Landlord”), and _________________________, a __________________________________ ("Tenant”). This Lease replaces in its entirety any and all prior leases of the Premises (defined herein), oral or written.

ARTICLE 1: PREMISES

1.01 Lease of Premises. For and in consideration of the rents, covenants and agreements herein contained, Landlord hereby leases to Tenant and Tenant leases from Landlord for the Term (as defined in Section 2.01), upon and subject to all of the terms, conditions and provisions of this Lease, the tract of the land legally described on Exhibit A attached hereto and incorporated herein (the “Land”), the [industrial/warehouse] facility located thereon, known as ________________________________ (the “Building”), having an address of ________________________________, together with the parking areas, landscaping, walkways and all other improvements related to the Building and located on the Land (collectively, the “Premises”). If the Premises is part of a larger complex of structures owned by Landlord and used by Landlord and/or leased to other tenants (such complex being referred to herein, as the “Project”), Landlord hereby grants to Tenant during the Term, for the benefit of the Premises, non-exclusive easements over the Common Area for ingress, egress and parking, and for the use, maintenance, repair and, if necessary, replacement of utility lines and related facilities serving the Premises. In no event shall Tenant or its employees, customers or invitees be charged any fee to access or park in the Project. As used herein, the term “Common Area” shall mean the access drives, parking areas, landscaped areas and sidewalks, as they exist from time to time located within the Project (but situated outside of the Premises) that are made available for the joint use and benefit of Landlord and all owners and occupants of the Project and their respective customers, employees and invitees, together with the utility lines and storm water management facilities located in or serving the Project that serve multiple occupants of the Project, including Tenant, and/or that exclusively serve the Project. The storm water management facilities may be located off site. The “Common Area” does not include individual utility lines, any buildings or any areas or facilities available for use by only a limited number of owners or occupants, such as, but not limited to, loading docks, drive-thru lanes, porte-cocheres and dumpsters.

1.02 Acceptance of the Premises. The Premises are demised and let subject to the (a) Permitted Encumbrances (defined in Section 1.03); (b) the requirements of all present and future laws applicable to the Premises and this Lease; (c) the provisions of this Lease; (d) the condition of the Premises as of the Commencement Date (defined in Section 2.01), and (e) subject to the Landlord Disclaimers (defined in Section 9.02). Tenant has fully inspected the Premises and accepts the Premises and all improvements thereon as suitable for Tenant’s business purposes in their present condition.

1.03 Permitted Encumbrances. As used herein, the term “Permitted Encumbrances” means (i) those covenants, restrictions, reservations, liens, conditions, encroachments, easements, encumbrances and other matters of record, and (ii) all rights and interests (whether or not of
record) that would be shown by a current survey or by an inspection of the Premises; to the extent any of the foregoing affect the Premises as of the date hereof, or arise due to the acts or omissions of Tenant after the date hereof, or arise due to the acts or omissions of Landlord with Tenant’s consent, after the date hereof.

1.04 Security Deposit. Tenant, concurrently with the execution of this Lease, has deposited with Landlord an amount equal to one (1) month of Base Rent in the amount of $_______ as the security deposit (“Security Deposit”). The Security Deposit shall be retained by Landlord as security for the payment by Tenant of the Rent herein agreed to be paid by Tenant and for the faithful performance by Tenant of the Lease terms and covenants. Landlord shall not be required to pay Tenant any interest on said Security Deposit and may commingle it with other funds of Landlord.

ARTICLE 2: LEASE TERM

2.01 Lease Term. The term of this Lease shall be for five (5) years and zero (0) months (the “Initial Lease Term”), shall commence on _____________, 2019 (the “Commencement Date”), and shall expire absolutely and without notice, at 11:59 p.m. on _____________, 2024, unless sooner terminated as herein provided.

2.02 Option to Extend. Provided Tenant is not in default under any of the terms and conditions of this Lease, Tenant will have the option to extend the term of this Lease for an additional term of five (5) years (the “Extension Term”). Tenant shall exercise the option by giving Landlord notice of its intent to exercise the option at least six (6) months prior to the expiration of the Initial Lease Term (hereinafter referred to as an “Extension Notice”). The term shall include the Initial Lease Term and the Extension Term, if any (the “Term”).

If Tenant exercises its option to extend the term of the Lease for the Extension Term then the Extension Term shall be upon all of the same terms and conditions of this Lease except for Base Rent, which shall be calculated in the same manner as detailed in Section 4.01 herein.

2.03 Holding Over. If Tenant does not vacate the Premises and surrender the Premises in the condition required hereby upon the expiration or earlier termination of this Lease, (i) Tenant will indemnify Landlord against all damages, costs, liabilities and expenses, including attorneys’ fees, which Landlord incurs on account of Tenant’s failure to vacate and surrender, and (ii) the Base Rent (defined in Section 4.01) will increase to one hundred fifty percent (150%) of the Base Rent then in effect and Tenant’s obligation to pay Additional Rent (defined in Section 4.02) will continue. Any holdover by Tenant shall constitute a tenancy at sufferance, subject to termination by Landlord at any time, and shall not constitute an extension of the Lease or recognition by Landlord of any right of Tenant to remain in the Premises.

2.04 Covenant of Quiet Enjoyment. Tenant, on paying the Rent (defined in Section 4.02) and performing its obligations hereunder, will peacefully and quietly have, hold and enjoy the Premises throughout the Term without any manner of hindrance from Landlord, subject however to all the terms and provisions hereof.
ARTICLE 3: USE OF PREMISES

3.01 Manner of Use. Tenant may use the Premises for any lawful commercial or industrial use with no obligation to operate or continuously operate (the “Permitted Use”). Tenant will not cause or permit the Premises to be used in any way which (i) constitutes a violation of any Legal Requirements (as defined below), or (ii) constitutes a nuisance or waste or will invalidate any insurance carried by Landlord. The term “Legal Requirements” means all applicable Federal, State or local laws, statutes, ordinances, rules, regulations, recorded declarations or covenants, orders and other requirements of any government or public authority now in force or which may hereafter be in force. The term “Legal Requirements” includes, but is not limited to, all requirements of any board of fire underwriters or other similar body now or hereafter constituted, and all directions and certificates of occupancy issued pursuant to any law by any governmental agency or officer, insofar as any of the foregoing relate to or are required by the condition, use or occupancy of the Premises, by the operation, use or maintenance of any personal property, fixtures, machinery, equipment or improvements in the Premises, or by the Permitted Use or other use of the Premises by Tenant and the regulation thereof, including, without limitation, the Occupational Safety and Health Act and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and regulations and guidelines promulgated thereunder, (collectively referred to herein as the “ADA”). Landlord represents and warrants that all Permitted Encumbrances, applicable zoning and Legal Requirements in effect as of the date hereof and as of the Commencement Date permit the Premises to continue to be used for all purposes consistent with the historical use of the Premises immediately prior to the Commencement Date and area uses accessory and incidental thereto.

The parties agree that (A) Landlord will be responsible for ADA compliance for all areas outside of the Building and (B) Tenant will be responsible for ADA compliance inside the Building, including any leasehold improvements or other work to be performed inside the Building under or in connection with the Lease, except to the extent such work is required by this Lease to be performed by Landlord.

3.02 Landlord’s Access. Landlord or its agents shall have the right to enter the Premises during all reasonable hours, upon seventy two (72) hours prior written notice to Tenant (except in the case of an emergency when no notice is required), to show the Premises to potential buyers, investors, or lenders when accompanied by a Tenant representative (at Tenant’s option), for property inspections, for maintenance or for any other purpose Landlord deems reasonably necessary. During the last nine (9) months of the Term, Landlord may place customary “For Lease” signs on the Premises.

ARTICLE 4: RENT

4.01 Base Rent. Commencing on the Commencement Date, and thereafter on the first day of each calendar month during the Term, Tenant will pay to Landlord as base rent (the “Base Rent”) the sum of $_______________ in monthly installments, together with applicable sales taxes thereon in lawful money of the United States, in advance and without offset, deduction, prior notice or demand, except as otherwise provided herein. If the first day of the Term does not commence on the first day of the month, a prorated amount of Base Rent shall be paid on the first day of the Term, using the percentage number of days in said month. The obligation of
Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. The Base Rent is payable at Landlord’s Rent Payment Address, as defined in Section 17.15, or at such other place or to such other person as Landlord may designate in writing from time to time. Payments of Base Rent for any partial calendar month will be prorated.

[Base Rent shall be calculated as follows:

i. Tenant shall designate in writing a person to act as its broker for the purpose of establishing the Fair Market Rent of the Premises, and shall give notice in writing of such designation to the Landlord. Within ten (10) calendar days after Tenant gives such notice, Landlord shall either (A) accept Tenant’s designee as the sole broker, in which event such broker’s determination of the Fair Market Rent shall be conclusive or (B) designate in writing a person to act as a second broker for establishing the Fair Market Rent and shall give notice thereof in writing to Tenant, and the failure by Landlord to timely designate a second broker shall be deemed an election by Landlord to accept Tenant’s designee as the sole broker.

ii. Each broker so appointed shall promptly analyze the fair market rent of the Premises based upon the current use of the Premises as if vacant and unencumbered by the Lease or any other lease (the “Fair Market Rent”). If both Tenant and Landlord designate a broker, the Fair Market Rent shall be deemed to be the average of the two market analyses, unless the market analyses differ by more than ten percent (10%), in which case the two brokers shall together select a third broker and obtain market analysis from the third broker, and the Fair Market Rent shall be deemed to be the average of the two closest in value. Landlord and Tenant shall cause the brokers to render a prompt, written decision within thirty (30) days after the selection of broker to be appointed by the Landlord hereunder.

iii. No broker shall have any personal or financial interest as would disqualify such broker from exercising an independent and impartial judgment as to the matter under analysis. Each broker shall be a Certified Commercial Investment Member (CCIM) (or any successor association or body of comparable standing if such institute is not then in existence), shall have at least ten (10) years’ experience in the market analysis of real estate and shall be familiar with property values in the metropolitan area in which the Premises is located. Each party shall pay the fees and expenses of the broker appointed or selected by it and the fees and expenses of the third broker, if any, shall be paid equally by Landlord and Tenant.

iv. In the event of the failure, refusal or inability of any broker to act, a new broker shall be appointed as his replacement, which appointment shall be made in the same manner as provided above for the appointment of such broker so failing, refusing or being unable to act. The decision of the brokers shall be final, conclusive and binding on Landlord and Tenant. Landlord and Tenant shall have the right to submit written information, arguments, supporting data, and other relevant matters to the brokers in writing.]

Once calculated as detailed in this Section 4.01, the Fair Market Rent shall equal the Base Rent for purposes of this Lease.
4.02 **Additional Rent.** All sums payable to Landlord by Tenant under this Lease other than Base Rent are "**Additional Rent**." The term "**Rent**" includes both Base Rent and Additional Rent. It is the specific intention of the Landlord and the Tenant that this Lease is a “triple net lease” (except as otherwise expressly set forth herein), that the Rent shall be absolutely net to the Landlord, and that, except for any obligations under this Lease specifically assigned to the Landlord without the right to reimbursement from Tenant, the Tenant shall pay all costs and expenses (in whatever form) related in any way to the Premises or their upkeep and maintenance, which expenses are attributable to any period during the Term. Landlord will estimate in advance and charge to Tenant the following costs, which Tenant will pay with the Base Rent on a monthly basis throughout the Occupancy Period (defined below): all Operating Expenses under Section 4.05 of this Lease, including Real Property Taxes (defined in Section 5.02), and all insurance premiums maintained by Landlord for which Tenant is responsible under Article 8. "**Occupancy Period**" means the period from the Commencement Date (or the time Tenant first enters the Premises pursuant to this Lease, if earlier), throughout the Term and for as long as Tenant remains in the Premises thereafter.

4.03 **Interest.** Any Rent or other amount due to Landlord, if not paid when due, will bear interest from the date due until paid at the annual rate equal to the lesser of eight and one-half percent (8.5%) per annum or the highest rate legally permitted ("**Default Interest**").

4.04 **Late Charge.** If any installment of Rent or any other sums due from Tenant is not received by Landlord within ten (10) days following the due date, Tenant will pay to Landlord a late charge equal to the lesser of (i) five percent (5%) of such overdue amount or (ii) $500.00; provided, however, Landlord will not charge any late charge for the first time in each calendar year that such payment is not made within ten (10) days of the due date if payment is received within five (5) days of receipt of notice. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant.

4.05 **Operating Expenses.**

(a) **Operating Expenses.** Tenant will pay to Landlord all Operating Expenses incurred by Landlord and allocable to the Occupancy Period. “**Operating Expenses**” means all costs and expenses incurred by Landlord with respect to the ownership, maintenance and operation of the Premises, including, but not limited to, the following: Real Property Taxes (defined in Section 5.02), maintenance; all insurance premiums maintained by Landlord for which Tenant is responsible under Article 8 of this Lease; repair and replacement of the items for which Landlord is responsible for repairing under Section 9.03 of this Lease; personal property taxes; rentals or lease payments paid by Landlord for rented or leased personal property used in connection with Landlord’s maintenance obligations for the Premises; any deductible portion of an insured loss concerning the Premises; fees for required licenses and permits; costs and expenses required by any governmental or quasi-governmental authority or by Legal Requirements, for any reason, including capital improvements, whether capitalized or not, and the cost of any capital improvements incurred in connection with Premises. To the extent any such expenditure by Landlord constitutes a capital expenditure as determined by Landlord in accordance with generally acceptable accounting principles (GAAP), then such capital expenditure shall be amortized, including interest on the unamortized cost at a rate of five percent (5%) per annum,
over its useful life as reasonably determined by Landlord in accordance with GAAP, and such amortized amount shall be included in the Operating Expenses charged to Tenant each month. Operating Expenses shall not include: (a) debt service under mortgages or ground rent under ground leases; (b) costs of restoration to the extent of net insurance proceeds received by Landlord; (c) leasing commissions and tenant improvement costs; (d) any/all management/administrative fees; and (e) Landlord’s general corporate overhead costs. Additionally, and notwithstanding anything in this Lease to the contrary, Landlord covenants, acknowledges and agrees that Tenant shall have the absolute right to approve any and all capital Lease expenditures in excess of Five Thousand and No/100 U.S. Dollars ($5,000.00) on a fiscal year basis. GAAP shall be used to determine if a Lease expense item is a capital or repair expense.

Landlord shall inform Tenant of Landlord’s best estimate of Tenant’s proportionate share of the Operating Expenses and Tenant shall pay one-twelfth (1/12) thereof monthly in advance (beginning on the Commencement Date and continuing on the first day of each and every calendar month thereafter during the Term), together with the payment of Base Rent. Tenant covenants and agrees that Tenant shall remain liable for and shall pay its proportionate share of Operating Expenses in the amounts and times as set forth herein, notwithstanding the expiration or earlier termination of this Lease. Operating Expenses shall increase by no more than two percent (2.0%) each fiscal year during the Term.

(b) Year-End Reconciliation. After the end of each fiscal year during the Term, Landlord will deliver to Tenant a statement setting forth, in reasonable detail, the Operating Expenses paid or incurred by Landlord during the preceding fiscal year. Within thirty (30) days after Tenant’s receipt of such statement, there will be an adjustment between Landlord and Tenant, with payment to or credit given by Landlord (as the case may be).

ARTICLE 5: TAXES

5.01 Real Property Taxes. Tenant will pay to Landlord all Real Property Taxes incurred by Landlord and allocable to the Occupancy Period. Tenant shall have the right to contest in good faith the validity of the amount of any Real Property Taxes by appropriate proceedings in the appropriate jurisdiction, and may defer payments of such obligations, pay the same under protest, or take such other steps as Tenant may deem reasonably appropriate, provided Tenant’s exercise of the foregoing right does not subject Landlord to any penalties or materially adversely affect Landlord’s interest in or financing of the Premises. Landlord will cooperate with the institution and prosecution of any such proceedings and will execute any documents required therefor without cost or expense to Tenant. The expense of such proceedings will be borne by Tenant and any refunds or rebates secured will belong to Tenant. If any tax proceedings result in a reduction of Real Property Taxes, whether or not the proceedings are brought by Landlord or Tenant, Landlord will promptly return to Tenant, Tenant’s proportionate share of the excess of the Real Property Taxes, including any equitable portion of refunds received after the expiration date of this Lease which are attributable to Real Property Taxes paid during the Term. If Landlord receives a refund of any Real Property Taxes that Tenant has paid, Landlord will refund to Tenant such refund after deducting therefrom all related costs and expenses.
5.02 Definition of Real Property Taxes. “Real Property Taxes” means all taxes (other than inheritance, personal income or estate taxes), assessments (special, betterment, or otherwise), levies, fees, rent taxes, excises, impositions, charges, water and sewer rents and charges, and all other government levies and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are imposed or levied upon or assessed against any legal or equitable interest of Landlord in the Premises, or any Rent or other sums payable by any tenants or occupants thereof, or Landlord’s business of leasing, including without limitation gross receipts and gross rental taxes. Real Property Taxes include Landlord’s costs and expenses of review and contesting any Real Property Tax. If at any time during the Term the present system of ad valorem taxation of real property is changed so that in lieu of the whole or any part of the ad valorem tax on real property, or in lieu of increases therein, Landlord is assessed a capital levy or other tax on the gross rents received with respect to the Premises or a federal, state, county, municipal, or other local income, franchise, excise or similar tax, assessment, levy, or charge (distinct from any now in effect) measured by or based, in whole or in part, upon gross rents or any similar substitute tax or levy, then all of such taxes, assessments, levies or charges, to the extent so measured or based, will be deemed to be a Real Property Tax.

5.03 Personal Property Taxes. Tenant will pay directly all taxes charged against trade fixtures, furnishings, equipment, inventory or any other personal property belonging to Tenant. Tenant will use its best efforts to have personal property taxed separately from the Premises. If any of Tenant’s personal property is taxed with the Premises, Tenant will pay Landlord the taxes for such personal property within fifteen (15) days after Tenant receives a written statement from Landlord for such personal property taxes.

5.04 Sales Tax. Payment of all sales taxes (“Sales Taxes”) shall be made by Tenant on a monthly basis, concurrently with payment of the Rent.

ARTICLE 6: UTILITIES

6.01 Utilities. Tenant shall be solely responsible for and shall promptly pay, directly to the appropriate supplier, the cost of all natural gas, heat, cooling, energy, light, power, sewer service, telephone, water, refuse disposal and other utilities and services supplied to the Premises, together with any related installation or connection charges or deposits (collectively, “Utility Costs”) incurred during the Occupancy Period. Upon Tenant’s failure to pay any such Utility Costs, Landlord shall have the right, at Landlord’s option, to pay the same, in which event Tenant shall repay such amount to Landlord upon demand, together with Default Interest thereon from the date of demand until paid. If utilities are not separately metered, Landlord shall provide Tenant with a reasonable estimate thereof based upon the size and use of the Premises. Landlord agrees to work diligently to separately meter the Premises for all utilities.

ARTICLE 7: COMPLIANCE WITH LAW

7.01 Use. Except as specifically detailed herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Premises or the suitability of the Premises or the Premises for Tenant’s intended use. Tenant shall be responsible for obtaining all permits and approvals required by the Legal Requirements in connection with Tenant’s specific manner of use, and specific character of, operations at the Premises and if
requested, shall provide a copy of the same to Landlord upon receipt of such, if and as applicable.

7.02 Legal Compliance. Tenant, at its expense, shall comply with all Legal Requirements (including any Environmental Laws) with respect to the Premises and Tenant’s use, occupancy and operations at the Premises, including any Legal Requirements that may require alterations, repairs or replacements, whether structural or nonstructural, exterior or interior to the Premises. Upon Landlord’s request, Tenant shall evidence to Landlord Tenant’s compliance with such Legal Requirements, including, without limitation, by providing to Landlord copies of all operating permits and other approvals, licenses, registrations and the like required by Legal Requirements in connection with Tenant’s operations at the Premises.

7.03 REA Compliance. Without limiting the foregoing Section or any other provisions of this Lease, Tenant agrees that Tenant is obligated to and shall perform all obligations of the owner of the Premises under and pay all expenses which the owner of the Premises may be required to pay in accordance with any reciprocal easement agreement or any other agreement or document of record now affecting the Premises, if any, herein referred to collectively as the “REAs”, and that Tenant shall comply with all of the terms and conditions of any REA during the Term of this Lease.

7.04 Changes to Fire Suppression System. If any bureau, department or official of the state or city government having jurisdiction shall require or recommend that any changes, modifications, alterations, additional sprinkler heads or other equipment be made or supplied to the fire suppression system by reason of Tenant’s business, or any changes in the Premises after initial occupancy or if any such changes, modifications, alterations, additional sprinkler heads or other equipment become necessary to prevent the imposition of a penalty or charge against the full allowance for a fire suppression system in the initial insurance rate as fixed by the appropriate board or authority, or by a fire insurance company, then, in any such event, Tenant shall be liable for the cost of installing, repairing, or replacing as the case may be, any such equipment, and the cost of any such changes, modifications, alterations, additional sprinkler heads or such other equipment.

ARTICLE 8: INSURANCE/INDEMNITY

8.01 Tenant’s Insurance. Tenant, at its expense, will maintain the following insurance coverages during the Occupancy Period:

(a) Liability Insurance. Commercial general liability insurance insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury at the Premises, including contractual liability. Such insurance will name Landlord, its property manager (if any), any mortgagee, and such other parties as Landlord may designate, as additional insureds (the additional insured status under the commercial general liability insurance policy will be provided by additional insured endorsement on ISO Form CG 2026 0413 and provide contractual liability coverage). The initial amount of such insurance will be Three Million Dollars ($3,000,000) per occurrence and will be subject to periodic increases reasonably specified by Landlord based upon inflation, increased liability awards, recommendations of Landlord’s professional insurance advisers, and other relevant factors. The liability insurance
obtained by Tenant under this Section 8.01 will (i) be primary and (ii) insure Tenant’s obligations to Landlord under Section 8.06. The amount and coverage of such insurance will not limit Tenant’s liability nor relieve Tenant of any other obligation under this Lease.

(b) **Worker’s Compensation Insurance.** Worker’s Compensation Insurance in the statutory amount (and Employers’ Liability Insurance) covering all employees of Tenant employed or performing services at the Premises, in order to provide the statutory benefits required by the laws of the state in which the Premises are located.

(c) **Automobile Liability Insurance.** Automobile Liability Insurance, including but not limited to, passenger liability, on all owned, non-owned, and hired vehicles used in connection with the Premises, with a combined single limit per occurrence of not less than Three Million Dollars ($3,000,000) for injuries or death of one or more persons or loss or damage to property.

(d) **Personal Property Insurance.** Personal Property Insurance covering leasehold improvements paid for and owned by Tenant and Tenant’s personal property and fixtures owned by Tenant from time to time in, on, or at the Premises, in an amount not less than 100% of the full replacement cost, without deduction for depreciation, providing protection against events protected under a Causes of Loss–Special Form property insurance policy as well as against sprinkler damage, vandalism, and malicious mischief. Any proceeds from the Personal Property Insurance will be used for the repair or replacement of the property damaged or destroyed, unless the Term is terminated under an applicable provision herein. If the Premises are not repaired or restored in accordance with this Lease, Landlord will receive any proceeds from the personal property insurance allocable to Tenant’s leasehold improvements.

8.02 **Landlord’s Insurance.** During the Term, Landlord will maintain in effect a Causes of Loss–Special Form property insurance policy covering loss of or damage to the Premises in the amount of its replacement value with such endorsements and deductibles as Landlord determines from time to time. Landlord will also obtain flood, and windstorm insurance for the Premises. Landlord will not insure Tenant’s Property. Landlord may obtain commercial general liability insurance in an amount and with coverage determined by Landlord insuring Landlord against liability with respect to the Premises. The liability insurance policy obtained by Landlord, if any, will not provide primary insurance, will not be contributory and will be excess over any liability insurance maintained by Tenant. Landlord may also maintain a rental income insurance policy, with loss payable to Landlord. Tenant will reimburse Landlord for the cost of premiums for the insurance policies maintained by Landlord and related to the Premises. Tenant shall reasonably approve all underwriters issuing Landlord-required insurance under this Lease. At Tenant’s option, Tenant may obtain and maintain during the Term, at Tenant’s expense, the Landlord’s required insurance under this Lease, and if so, Landlord shall reasonably approve the underwriters issuing the same.

8.03 **General Insurance Provisions.** Any insurance which Tenant or Landlord is required to maintain under this Lease will include a provision which requires the insurance carrier to give Landlord or Tenant, respectively, not less than thirty (30) days’ written notice prior to any cancellation or modification of such coverage. Not less than thirty (30) days prior to the expiration or termination of any such insurance, the party required to obtain the insurance shall deliver to the other party renewal certificates therefor. Each party will provide the other party
with copies of the policies it has obtained in accordance with this Lease promptly upon request from time to time.

8.04 **Tenant’s Damage Waiver.** Tenant shall, on or before the earlier of the Commencement Date or the date on which Tenant first enters the Premises for any purpose, at its sole cost and expense, obtain and keep in full force and effect at all times thereafter a waiver of subrogation from its insurer with respect to the property insurance maintained by Tenant in connection with the Premises and Tenant’s Property located therein.

8.05 **Landlord’s Damage Waiver.** Landlord shall, at its sole cost and expense, obtain and keep in full force and effect at all times a waiver of subrogation from its insurer with respect to the Premises, Landlord’s owned property located therein and Landlord’s rent loss insurance, if any.

8.06 **Indemnity.** Tenant shall indemnify, defend, and hold harmless Landlord and Landlord’s employees, agents, contractors and manager (collectively, the “**Landlord Indemnitees**”) from and against any and all loss, damage, claim, demand, liability or expense (including reasonable attorneys’ fees) resulting from claims by third parties and based on (i) any acts or omissions of Tenant, its employees, agent or contractors, or (ii) any personal injury or property damage occurring within the Premises or arising out of Tenant’s operations at the Premises, (BUT NOT TO THE EXTENT SUCH CLAIMS ARE BASED UPON THE INTENTIONAL MISCONDUCT OF THE LANDLORD INDEMNITEES). Tenant shall have the right to assume the defense of any claim covered by this indemnity on behalf of both itself and the Landlord Indemnitees and the Landlord Indemnitees may not settle such claim without the consent of Tenant, provided (a) Tenant acknowledges to the Landlord Indemnitees in writing that it is responsible for such claim under the terms of this paragraph and (b) the lawyers selected by Tenant to handle such defense are reasonably satisfactory to the Landlord Indemnitees and such representation does not result in a conflict of interest for such lawyers. The Landlord Indemnitees may participate in the defense of such claim at their own expense unless Tenant is not representing the Landlord Indemnitees in which case the reasonable expense of the Landlord Indemnitees in defending against such claim shall be paid by Tenant. The provisions of this indemnity shall survive the expiration or earlier termination of this Lease.

8.07 **Business Interruption.** Landlord shall not be responsible for, and Tenant releases and discharges Landlord from, and Tenant further waives any right of recovery from Landlord for, any loss for or from business interruption or loss of use of the Premises suffered by Tenant in connection with Tenant’s use or occupancy of the Premises. Tenant shall, on or before the earlier of the Commencement Date or the date on which Tenant first enters the Premises for any purpose, at its sole cost and expense, obtain and keep in full force and effect at all times thereafter a waiver of subrogation from its insurer with respect to any business interruption insurance maintained by Tenant in connection with the Premises.

8.08 **Environmental Insurance.** Tenant may obtain and maintain environmental insurance in connection with the Premises.
ARTICLE 9: CONDITION AND MAINTENANCE OF PREMISES

9.01 Existing Condition. Except as specifically limited in this Lease, Tenant hereby accepts the Premises in their present “AS-IS” condition. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Premises or the suitability of the Premises for Tenant’s intended use. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition of the Premises and is not relying on any representations or warranties (express or implied) of Landlord or any broker with respect thereto.

9.02 Limitations. Except as specifically limited in this Lease, Tenant agrees to the following (the “Landlord Disclaimers”): TENANT HEREBY ACKNOWLEDGES AND AGREES THAT TENANT HAS LEASED AND TAKES THE PREMISES “AS IS”, “WHERE-IS” AND “WITH ALL FAULTS”.

9.03 Landlord’s Obligations. Subject to the provisions of Article 11 (Casualty and Condemnation), to Tenant’s express obligations hereunder, and to Tenant’s obligation to pay Additional Rent pursuant to Section 4.02, and except for damage caused by any act or omission of Tenant or Tenant’s employees, agents, contractors or invitees, Landlord, at Landlord’s sole costs and expense, will keep the foundation, roof, structural supports and exterior walls of the improvements on the Premises in good order, condition and repair and in compliance with all Legal Requirements. Landlord will not be obligated to maintain or repair windows, doors or plate glass, or to paint the exterior walls, which will be Tenant’s responsibility. Tenant will promptly report in writing to Landlord any defective or damage condition known to it which Landlord is required to repair under this Lease. Landlord will repair, at Tenant’s expense as an Operating Expense, any damage to the Premises caused by Tenant’s acts or omissions which is Landlord’s maintenance responsibility under this Section 9.03. Notwithstanding anything herein to the contrary, in the event Landlord fails to timely fulfill any of Landlord’s maintenance, repair, and replacement obligations under this Paragraph 9.03 and/or under the Lease, Tenant may exercise “self-help” remedies to cause any such maintenance, repair and/or replacement obligation to be fulfilled and off-set the cost of the same against the next occurring Base Rent with proof of payment therefor.

9.04 Tenant’s Obligations. Subject to the provisions of Article 11 (Casualty and Condemnation), Tenant, at its sole cost and expense, will keep all portions of the Premises (including without limitation, all systems and equipment, i.e., HVAC systems, dock levelers, bumpers, doors and floors including slabs and slab repairs, crack filling and joint repairs but specifically excluding the foundation and structural supports) in good order, condition and repair (including repainting and refinishing, as needed). If any portion of the Premises or any system or equipment in the Premises which Tenant is obligated to repair can not be fully repaired or restored, Tenant will promptly replace such portion of the Premises or system or equipment. Tenant will maintain and pay for a preventive maintenance contract providing for the regular inspection and maintenance of the heating and air conditioning system that exclusively serves the Premises by a heating and air conditioning contractor.
9.05 **Tenant’s Alterations.**

(a) **Tenant’s Work.** Tenant may, at its own cost and expense, without Landlord’s prior consent, make interior, non structural changes, alterations, additions or improvements to the Premises ("Alterations") and install Tenant personal property in the Premises as will, in the judgment of Tenant, best adapt the Premises for its needs, provided that Tenant complies with the following provisions:

(i) The Alterations will not result in a violation of or require a change in the certificate of occupancy applicable to the Building.

(ii) The outside appearance of the Building will not be adversely affected; such Alterations will not weaken or impair the structure of the Building, or lessen the value of the Premises or the Building.

(iii) No part of the Building outside of the Premises will be physically affected.

(iv) The functioning of the building equipment will not be adversely affected.

(v) Tenant will not install any materials, fixtures or articles or make any other alterations (other than such as would constitute Tenant’s Property) which are subject to liens, conditional sales contracts, chattel mortgages or security interests, other than Tenant’s use of equipment leased by Tenant for computers, office equipment, etc.

(b) Tenant agrees that all Alterations will at all times comply with all applicable Legal Requirements and that Tenant, at its expense, will (i) obtain all necessary municipal and other governmental permits, authorizations, approvals and certificates for the commencement and prosecution of such Alterations, (ii) deliver copies of all governmental permits, authorizations, approvals and certificates to Landlord and (iii) cause all improvements to be performed in a good and workmanlike manner. Tenant, at its expense, will promptly procure the cancellation or discharge of all notices of violation arising from or otherwise connected with Alterations issued by any public authority having or asserting jurisdiction.

(c) Throughout the making of all Alterations (other than mere decorations), Tenant, at its sole cost and expense, will carry or cause its contractors and subcontractors to carry (i) workers’ compensation insurance in statutory limits covering all persons employed in connection with such Alterations, (ii) comprehensive liability insurance covering any occurrence in or about the Premises in connection with such Alterations which complies with the requirements of Paragraph 8.

(d) Tenant will not subject Landlord’s interest in the Premises to any mechanic’s lien or any other lien whatsoever. If any mechanic’s lien or other lien, charge or order for payment of money will be filed as a result of the act or omission of Tenant, Tenant will cause such lien, charge or order to be discharged or appropriately bonded or otherwise reasonably secured ("Secured") within sixty (60) days after notice from Landlord thereof. If Tenant will fail to cause the lien or encumbrance to be Secured within the sixty (60) day period, then Landlord will be entitled, but not obligated to, discharge or bond same. Tenant will indemnify and save Landlord harmless from all liabilities and costs to the extent resulting directly from Tenant’s
failure to timely secure same. If Tenant fails to cause any such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may discharge the same either by paying the amount claimed to be due or by deposit or bonding proceedings. Any amount so paid by Landlord, and all costs and expenses incurred by Landlord in connection therewith, will be payable by Tenant within thirty (30) days of demand.

9.06 **Surrender.** Upon the expiration or earlier termination of the Lease, Tenant will surrender the Premises to Landlord broom clean and in the condition which Tenant is required to maintain the Premises under this Lease. Tenant will not be obligated to repair any damage which Landlord is required to repair under Article 11 (Casualty and Condemnation). Landlord may require Tenant, at its expense, to remove any of Tenant’s alterations, additions or improvements prior to the expiration or earlier termination of the Lease and to restore the Premises to their prior condition. With respect to any alterations, additions or improvements which require Landlord’s approval, Landlord will specify if Tenant will be required to remove the same at the time of such approval. Any work which Tenant is not required to remove will, at Landlord’s option, become Landlord’s property and will be surrendered to Landlord upon the expiration or earlier termination of the Lease, except that Tenant may remove any of Tenant’s Property which can be removed without damage to the Premises so long as Tenant repairs any damage caused by such removal. Landlord shall have the right to remove and dispose of, at Tenant’s expense, Tenant’s Property remaining in the Premises upon the expiration or earlier termination of this Lease.

9.07 **Exemption of Landlord from Liability.** Landlord will not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Tenant, Tenant’s employees, invitees, customers or any other person on or about the Premises, whether such damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or rain; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising in or about the Premises, or from other sources or places; or (d) any curtailment or interruption in utility services. Tenant will give Landlord prompt notice upon the occurrence of any accident or casualty at the Premises. Notwithstanding Landlord’s negligence or breach of this Lease, Landlord shall under no circumstances be liable for injury to Tenant’s business or for any loss of income or profit therefrom.

9.08 **Lease Governs.** This Lease governs the parties’ respective obligations for repair and maintenance of the Premises, and the parties waive the benefit of any existing or future statute that is inconsistent with the provisions hereof or affords Tenant the right to terminate the Lease or make repairs at the expense of Landlord.

**ARTICLE 10: HAZARDOUS MATERIALS**

10.01 **Hazardous Materials and Tenant’s Permitted Use.** The term “Hazardous Materials” as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials, is either: (i) injurious to the public health, safety or welfare, the environment, or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability from any governmental agency or third party under any applicable statute or common law theory. Hazardous Materials shall include, but not be limited to, hazardous substances,
hazardous wastes, toxic substances, toxic wastes, polychlorinated biphenyls, asbestos, asbestos containing materials, hydrocarbons, petroleum, and/or crude oil or any products, by-products or fractions thereof. Landlord acknowledges, understands and agrees that Tenant’s Permitted Use of the Premises as of the Commencement Date, including the use of Hazardous Materials, is acceptable to Landlord in all respects. Notwithstanding the foregoing, throughout the Term Tenant shall not use or cause the Premises to be used in any manner as to create an environmental violation.

10.02 Duty to Inform Landlord. If Tenant knows that Hazardous Materials have come to be located in, on, under or about the Premises during the Term of this Lease, other than as previously consented to by Landlord and other than in accordance with Legal Requirements, Tenant shall immediately give written notice of such fact to Landlord, and provide Landlord with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Materials.

10.03 Tenant Remediation. During the Term of this Lease, Tenant shall not cause or permit any Hazardous Materials to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) except in accordance with Legal Requirements and shall promptly, at Tenant’s cost and expense, undertake investigatory and/or remedial action for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises that was caused by Tenant, or pertaining to or involving any Hazardous Materials brought onto the Premises during the Term of this Lease, by or for Tenant, in contravention of the Legal Requirements.

10.04 Tenant Indemnification. Tenant shall indemnify, defend and hold Landlord, its agents, employees and lenders, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys’ and consultants’ fees arising out of or involving any Hazardous Materials brought onto the Premises during the Term of this Lease in contravention of Legal Requirements (provided, however, that Tenant shall have no liability under this Lease with respect to migration of any Hazardous Materials over, under, on or about the Premises from adjacent properties). Tenant’s obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease for two (2) years.

10.05 Investigations and Remediation. With respect to the existence of Hazardous Materials on the Premises prior to the Commencement Date, if any, Landlord shall defend, indemnify, and hold Tenant, its agents, employees and lenders, if any, harmless from and against any and all liabilities, damages, losses, costs, assessments, penalties, fines, judgments, claims, expenses, and fees, including but not limited to attorneys’ and consultants’ fees, arising out of or involving any Hazardous Materials on the Premises prior to the Term of the Lease (including, without limitation, any Hazardous Materials existing on the Premises prior to the Commencement Date, except to the extent, if any, that the same were introduced (or worsened) by Tenant (or Tenant’s) except to the extent, if any, that the same were introduced (or worsened) by Tenant (or by Tenant’s agents, employees, contractors); provided, however, the mere discovery by Tenant of existing Hazardous Materials at or near the Premises shall not be deemed to be an introduction (or worsening) by Tenant (or by Tenant’s agents, employees or contractors), and Tenant shall
have no liability or obligation therefor) and Landlord shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction. Tenant shall cooperate fully in any such activities at the request of Landlord, including allowing Landlord and Landlord’s agents to have reasonable access to the Premises at reasonable times in order to carry out Landlord’s investigative and remedial responsibilities.

10.06 Landlord Representations and Warranties. Landlord represents, warrants and agrees that: (i) the Premises and its uses and operations complies, and will comply, with all Legal Requirements pertaining to Hazardous Materials, (ii) the Premises have never been the subject to any Federal or State Hazardous Materials related list; (iii) the Premises has never required closure or clean-up of Hazardous Materials; (iv) there have never been any release or storage of Hazardous Materials on the Premises in contravention of Legal Requirements; and (v) no asbestos, no asbestos containing materials, polychlorinated biphenyls or underground storage tanks exist or have existed on the Premises. Landlord covenants that it will be solely liable for the clean-up and removal of Hazardous Materials now and in the future existing on the Premises except to the extent generated, used and brought onto to the Premises by Tenant during the Term of this Lease. Landlord will defend, indemnify and hold Tenant, its agents, employees and lenders, if any, harmless from and against any and all liabilities, damages, losses, costs, assessments, penalties, fines, judgments, claims, expenses, and fees, including attorneys’ and consultants’ fees, related to Tenant, its agents, employees and lenders, if any, and Landlord’s breach of any of the above representations and warranties.

10.07 Notification. Landlord and Tenant agree that should it receive notice of (i) any violation of any Legal Requirements related to Hazardous Materials in, on, at, under or near the Premises, or (ii) the escape or release of any Hazardous Materials in, on, at, under or near the Premises, such party shall promptly notify the other thereof in writing.

ARTICLE 11: CASUALTY AND CONDEMNATION

11.01 Damage to Premises.

(a) If the Premises are so damaged by fire, other casualty, acts of God or the elements (a “Casualty”) so that they cannot be restored or made suitable for Tenant’s business needs within ninety (90) days from the date of the Casualty (“Substantial Damage”), either Landlord or Tenant may terminate this Lease by written notice given to the other party within thirty (30) days after the date of the Casualty. If the Lease is so terminated, the termination will be effective as of the date of the Casualty and the Rent will abate from that date, and any Rent paid for any period beyond such date will be refunded to Tenant.

(b) If this Lease is not terminated as provided in subparagraph (a) of this Paragraph, then Landlord will, at its sole cost and expense, restore the Premises as soon as practical to the condition existing prior to the Casualty. During the restoration period, the Rent will abate for the period during which the Premises are not suitable for Tenant’s business needs. If only a portion of the Premises is damaged then the Rent will abate proportionately. If Landlord fails to complete such restoration within one hundred twenty (120) days from the date of the Casualty, Tenant shall have the right to terminate this Lease, provided (i) Tenant gives Landlord not less
than thirty (30) days prior written notice, and (ii) Landlord does not complete the restoration during such thirty (30) day period.

(c) Notwithstanding the foregoing provisions of this Paragraph, in the event that (x) any portion of the Premises is damaged during the last six (6) months of the Term or (y) any other portion of the Property is damaged during the last six (6) months of the Term and such damage materially and adversely interferes with the conduct of Tenant’s business, as reasonably determined by Tenant, then Tenant shall have the option to terminate this Lease upon thirty (30) days’ prior written notice to Landlord.

(d) In the event of the termination of this Lease pursuant to this Paragraph, Base Rent and Additional Rent shall be prorated as of the date of such termination.

(e) The provisions of this Article 11 will govern the rights and obligations of Landlord and Tenant in the event of any damage or destruction of or to the Premises. Tenant waives the protection of any statute, code or judicial decision which grants a tenant the right to terminate a lease in the event of the damage or destruction of the leased property.

11.02 Condemnation. If more than twenty percent (20%) of the floor area of the Building is taken by eminent domain, then Landlord may terminate the Lease as of the date the condemning authority takes title or possession, by delivering notice to Tenant within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). In addition, if more than twenty percent (20%) of the floor area of the Building or more than twenty five percent (25%) of the parking on the Premises is taken by eminent domain, either Landlord or Tenant may terminate the Lease as of the date the condemning authority takes title or possession, by delivering notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If neither party terminates the Lease, this Lease will remain in effect as to the portion of the Premises not taken, except that the Base Rent will be reduced in proportion to the reduction in the floor area of the Building. Any condemnation award or payment will be paid to Landlord. Tenant will have no claim against Landlord for the value of the unexpired Term or otherwise; provided, however, Tenant may make a separate claim with the condemning authority for its personal property and/or moving costs so long as Landlord’s award is not reduced thereby. Notwithstanding anything herein to the contrary, Landlord shall notify Tenant in writing immediately upon receipt of any notice regarding any proposed condemnation of all or any part of the Premises.

ARTICLE 12: ASSIGNMENT AND SUBLETTING

12.01 Landlord’s Consent Required. Tenant shall have the right at any time to assign or transfer this Lease or sublease the Premises or any part thereof or interest therein, or mortgage, pledge or hypothecate its leasehold interest, with Landlord’s prior written consent, which such consent shall not be unreasonably withheld or delayed.

12.02 No Release of Tenant. Notwithstanding any assignment or subletting, Tenant will at all times remain fully responsible and primarily liable for the payment of Rent and compliance with
all of Tenant’s obligations under this Lease. If Tenant’s assignee or transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the assignee or transferee.

ARTICLE 13: DEFAULTS AND REMEDIES

I. Tenant’s Default; Rights and Remedies.

13.01 Covenants and Conditions. Each of Tenant’s obligations under this Lease is a covenant and a condition. Tenant’s right to continue in possession of the Premises is conditioned upon such performance. Time is of the essence in the performance by Tenant of all covenants and conditions.

13.02 Defaults. Each of the following constitutes an “Event of Default” under this Lease:

(a) Tenant fails to pay Rent or any other sum payable under this Lease within ten (10) days after it is due; provided, however, with respect to the first such nonpayment in any calendar year, Tenant will have ten (10) days after receipt of notice that Rent is due to pay such amount;

(b) Tenant fails to perform any of Tenant’s other obligations under this Lease and such failure continues for a period of thirty (30) days after notice from Landlord; provided that if more than thirty (30) days are reasonably required to complete such performance, Tenant will not be in default if Tenant commences such performance within the thirty (30) day period and thereafter diligently pursues its completion as soon as reasonably possible; or

(c) Tenant becomes insolvent or bankrupt, has a receiver or trustee appointed for any part of its property, makes an assignment for the benefit of its creditors, or any proceeding is commenced either by Tenant or against it under any bankruptcy or insolvency laws, which proceeding is not dismissed within sixty (60) days.

13.03 Remedies. Upon each occurrence of an Event of Default and so long as such Event of Default shall be continuing, Landlord may at any time thereafter at its election:

(a) Terminate Lease. Landlord may terminate this Lease. If Landlord terminates this Lease, Landlord may recover from Tenant the sum of: all Base Rent and all other amounts accrued hereunder to the date of such termination; the value of any free or reduced rent provided for in this Lease; the cost of removing and storing Tenant’s or any other occupant’s property, and all reasonable expenses incurred by Landlord in pursuing its remedies, including reasonable attorneys’ fees and court costs; and the excess of the then present value of the Base Rent and other amounts payable by Tenant under this Lease as would otherwise have been required to be paid by Tenant to Landlord during the period following the termination of this Lease measured from the date of such termination to the expiration date stated in this Lease, over the present value of any net amounts which Landlord can reasonably expect to recover by reletting the Premises for such period, taking into consideration the availability of acceptable tenants, the time period to secure future tenants (and the commencement of the payment of rents), and other market conditions affecting leasing. Such present values shall be calculated at a discount rate equal to the ninety (90)-day U.S. Treasury bill rate at the date of such termination.
(b) **Terminate Right of Possession.** Landlord may terminate Tenant’s right of possession of the Premises without terminating this Lease. If Landlord terminates Tenant’s right of possession (but not this Lease), Landlord may relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord without thereby releasing Tenant from any liability hereunder and without demand or notice of any kind to Tenant. For the purpose of such reletting Landlord is authorized to make any repairs, changes, alterations, or additions in or to the Premises as Landlord deems reasonably necessary or desirable. If the Premises are not relet, then Tenant shall pay to Landlord as damages a sum equal to the amount of the rental reserved in this Lease for such period or periods, plus the cost of recovering possession of the Premises (including attorneys’ fees and costs of suit), the unpaid Base Rent and other amounts accrued hereunder at the time of repossession, and the costs incurred in any attempt by Landlord to relet the Premises. If the Premises are relet and a sufficient sum shall not be realized from such reletting to satisfy the Rent provided for in this Lease to be paid, then Tenant shall immediately satisfy and pay any such deficiency. Any such payments due Landlord shall be made upon demand therefor from time to time and Tenant agrees that Landlord may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting, or termination of Tenant’s right of possession, without termination, Landlord may at any time thereafter elect in writing to terminate this Lease for such previous breach. With respect to any reletting by Landlord, Landlord and Tenant agree that, in addition to the provisions of Section 13.02(f): (i) Landlord shall not be obligated to lease the Premises for any use which is not commonly found at similar properties or for any use which, in Landlord’s reasonable opinion, would be inappropriate for the Premises; and (ii) any proposed tenant or proposed use must meet all of Landlord’s leasing criteria, including, without limitation, financial strength and operating experience.

(c) **Right to Re-Enter.** Upon the termination of this Lease or termination of Tenant’s right of possession as provided in this Lease: (i) Tenant must immediately vacate and surrender the Premises to Landlord in the condition required by this Lease upon a termination; (ii) Landlord may enter and take custodial possession of the Premises in accordance with applicable law; and (iii) upon reentering the Premises, Landlord shall have the right to keep in place and use, or remove and store, at Tenant’s expense, all Tenant’s Property at the Premises, and if said Tenant’s Property remaining on the Premises is not claimed by Tenant within forty five (45) days after such entry, title to the same shall vest in Landlord.

(d) **Waiver.** Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same. Tenant and Landlord further agree that forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity, shall not be a waiver of Landlord’s right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord.
(e) **Additional Remedies.** Landlord may pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Premises is located.

(f) **Mitigation.** In connection with the exercise by Landlord of its rights and remedies in respect of any Event of Default, Landlord shall use reasonable efforts to mitigate its damages.

13.04 **Damages.** On any termination, Landlord’s damages will include all costs and fees, including reasonable attorneys’ fees that Landlord incurs in connection with any bankruptcy court or other court proceeding with respect to the Lease, the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant, or the pursuing of any action with respect to Landlord’s right to possession of the Premises. All such damages suffered (apart from Rent payable hereunder) will constitute pecuniary damages which will be paid to Landlord prior to assumption of the Lease by Tenant or any successor to Tenant in any bankruptcy or other proceedings.

13.05 **Cumulative Remedies.** Except as otherwise expressly provided herein, any and all rights and remedies which Landlord may have under this Lease and at law and equity are cumulative and will not be deemed inconsistent with each other, and any two or more of all such rights and remedies may be exercised at the same time to the greatest extent permitted by law.

13.06 **Notice to Landlord.** Tenant will give written notice of any failure by Landlord to perform any of its obligations under this Lease to Landlord and to any ground lessor, mortgagee or beneficiary under any Security Document (as defined in Section 14.01) encumbering the Premises whose name and address have been furnished to Tenant. Landlord will not be in default under this Lease unless Landlord (or such ground lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Tenant’s notice or such longer period as may be required to diligently complete such matter. If Landlord (or such ground lessor, mortgagee or beneficiary) cannot perform any of its obligations due to events beyond its reasonable control, the time provided for performing such obligations will be extended by a period of time equal to the duration of such events. Events beyond Landlord’s reasonable control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty or weather conditions, shortages of labor or material, and Legal Requirements.

13.07 **Landlord’s Right to Cure.** If Tenant defaults in the performance of any obligation under this Lease, Landlord will have the right (but is not required) to perform such obligation and, if necessary, to enter upon the Premises. All costs incurred by Landlord in connection with such performance, together with Default Interest thereon from the date incurred by Landlord, will be deemed to be Additional Rent under this Lease and will be payable to Landlord immediately on demand. Landlord may exercise the foregoing rights without waiving any of its other rights or releasing Tenant from any of its obligations under this Lease.

13.08 **No Lien for Rent.** Landlord hereby waives any and all statutory and/or contractual liens for Rent in Landlord’s favor, including, without limitation, those arising under the Uniform Commercial Code in the State in which the Premises is located and under Florida law.

II. **Landlord's Default; Rights and Remedies.**
(a) Landlord Default. Each of the following also constitutes an “Event of Default” under this Lease: Landlord fails to observe or perform any covenant, agreement, condition or provision of this Lease, and such failure continues for thirty (30) days after receipt of written notice from Tenant to Landlord, except that if such failure cannot be cured within such thirty (30) day period, this period will be extended, provided that Landlord commences to cure such failure within such thirty (30) day period and proceeds diligently thereafter to seek to effect such cure, provided that in a situation requiring immediate response, Tenant need only give Landlord such notice as is reasonable under the circumstances.

(b) Tenant’s Right to Cure; Interest. Tenant will have the right, but not the obligation, to cure any Landlord Event of Default. If Tenant spends any money to cure such Landlord Event of Default, then Tenant will also be entitled to interest on such expenditure, at the highest rate of interest allowed by law (but not to exceed eighteen percent (18%) per annum) from the date due until paid unless otherwise specifically provided herein.

(c) Tenant’s Right to Offset. If an Event of Default by Landlord occurs, Tenant will have all rights and remedies available at law or in equity, including, but not limited to, the right to set off against Rent the amount required to cure any Event of Default on the part of Landlord, plus interest.

ARTICLE 14: PROTECTION OF LENDERS AND OWNERS

14.01 Subordination. This Lease will subordinate to any mortgage which from time to time may encumber all or part of the Premises; provided, however, that every mortgagee now existing or hereafter created intending to be superior in right must (a) recognize the validity of the Lease and be bound (or bind any successor in foreclosure) in the event of a foreclosure of Landlord’s interest; and (b) not affect or disturb Tenant’s peaceful and quiet use and enjoyment of the Premises so long as Tenant is not in default of this Lease. The parties agree to execute, and Landlord (i) agrees to make best efforts to promptly furnish as to any existing mortgagee and (ii) will furnish immediately to Tenant as to any future mortgagee of the Premises, a subordination, non-disturbance and attornment agreement in form and content reasonably acceptable to Tenant.

14.02 Estoppel Certificates. Within thirty (30) days after Landlord’s request, Tenant will execute, acknowledge and deliver to Landlord a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been canceled or terminated; (iii) the last date of payment of the Base Rent, Additional Rent and other charges and the time period covered by such payment; (iv) that Landlord is not in default under this Lease (or if Landlord is claimed to be in default, setting forth such default in reasonable detail); and (v) such other information with respect to Tenant or this Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Premises may require. Landlord may deliver any such statement by Tenant to any prospective purchaser or encumbrancer of the Premises, and such purchaser or encumbrancer may rely conclusively upon such statement as true and correct. If Tenant does not deliver such statement to Landlord within such 30-day period, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon (and Tenant will be estopped from denying): (a) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (b) that this Lease has not been
canceled or terminated except as otherwise represented by Landlord; (c) that not more than one month’s Base Rent, Additional Rent or other charges have been paid in advance; and (d) that Landlord is not in default under this Lease. Landlord hereby agrees to provide to Tenant an estoppel certificate signed by Landlord, containing the same types of information, and within the same periods of time, as set forth above, with such changes as are reasonably necessary to reflect that the estoppel certificate is being granted and signed by Landlord to Tenant, rather than from Tenant to Landlord or a lender, and shall also contain any other factual information reasonably requested by Tenant.

14.03 Tenant’s Financial Condition. Within twenty (20) days after request from Landlord from time to time, but no more often than once in any calendar year, Tenant will deliver to Landlord Tenant’s financial statements (audited, if available) for the most recent two fiscal years. Such financial statements may be delivered to Landlord’s mortgagees, lenders and investors and prospective mortgagees, lenders, purchasers and investors. Landlord shall exercise commercially reasonable efforts to keep all non-public financial statements confidential to Landlord and such mortgagees and lenders or prospective mortgagees, lenders, purchasers and investors, and their respective attorneys, accountants and representatives, and Landlord will use them only in connection with the Premises and this Lease.

14.04 Landlord’s Liability. No owner of the Premises shall be liable under this Lease except for breaches of Landlord’s obligations occurring while owner of the Premises. Any liability of Landlord for a default by Landlord under this Lease, or a breach by Landlord of any of its obligations under the Lease, shall be limited solely to its interest in the Premises, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord, and Tenant shall not seek recourse against the individual partners or members of Landlord, nor its or their individual partners, directors, officers, managers, members, or shareholders, nor any of their personal assets. The terms of this Section 14.05 shall also apply in the event the holder of any ground lease, deed of trust or mortgage encumbering the Premises, or any purchaser or transferee pursuant to the foreclosure or transfer of the Premises under any such instrument becomes the Landlord.

ARTICLE 15: PURCHASE OPTION

15.01 Option and Price. Upon not less than one hundred twenty (120) days prior written notice to Landlord (“PO Notice”), Tenant shall have the option (the “Purchase Option”) to purchase the Premises from Landlord upon a purchase price to be determined as follows:

i. Tenant shall designate in writing a person to act as its appraiser for the purpose of establishing the Fair Market Value of the Premises, and shall give notice in writing of such designation to the Landlord. Within ten (10) calendar days after the Tenant gives such notice, the Landlord shall either (A) accept Tenant’s designee as the sole broker, in which event such broker’s determination of the Fair Market Rent shall be conclusive or (B) designate in writing a person to act as a second appraiser for establishing the Fair Market Value and shall give notice thereof in writing to Tenant, and the failure by Landlord to timely designate a second broker shall be deemed an election by Landlord to accept Tenant’s designee as the sole broker.
ii. Each appraiser so appointed shall promptly appraise the fair market value of the Premises based upon the current use of the Premises as if vacant and unencumbered by the Lease (the “Fair Market Value”). If both Tenant and Landlord designate an appraiser, the Fair Market Value shall be deemed to be the average of the two appraisals, unless the appraisals differ by more than ten percent (10%), in which case the two appraisers shall together select a third appraiser and obtain an appraisal from the third appraiser, and the Fair Market Value shall be deemed to be the average of the two closest in value. Landlord and Tenant shall cause the appraisers to render a prompt, written decision within thirty (30) days after the selection of appraiser to be appointed by the Landlord hereunder.

iii. No appraiser shall have any personal or financial interest as would disqualify such appraiser from exercising an independent and impartial judgment as to the matter under appraisal. Each appraiser shall be a member of the American Institute of Real Estate Appraisers (or any successor association or body of comparable standing if such institute is not then in existence), shall have at least ten (10) years’ experience in the appraisal of real estate and shall be familiar with property values in the metropolitan area in which the Premises is located. Each party shall pay the fees and expenses of the appraiser appointed or selected by it and the fees and expenses of the third appraiser, if any, shall be paid equally by Landlord and Tenant.

iv. In the event of the failure, refusal or inability of any appraiser to act, a new appraiser shall be appointed as his replacement, which appointment shall be made in the same manner as provided above for the appointment of such appraiser so failing, refusing or being unable to act. The decision of the appraisers shall be final, conclusive and binding on Landlord and Tenant. Landlord and Tenant shall have the right to submit written information, arguments, supporting data, and other relevant matters to the appraisers in writing. As used herein, the “Fair Market Value” of the Premises shall be the “Purchase Price” of the Premises.

15.02 Closing. Once exercised, the Purchase Option must be closed and Tenant must complete its purchase of the Premises within ninety (90) days of Tenant’s PO Notice to Landlord.

15.03 Title and Survey.

(a) Within ten (10) days of determination of the Purchase Price, Landlord, at Landlord’s sole cost and expense, shall cause a title company mutually acceptable to Landlord and Tenant (“Title Company”) to furnish to Tenant a commitment for an owner’s policy of title insurance (“Owner’s Policy”) covering the Premises in the amount of Purchase Price (the “Commitment”), and complete, legible copies of all instruments shown by the Commitment as exceptions.

(b) Within ten (10) days after the determination of the Purchase Price, Landlord, at Landlord’s expense, shall provide to Tenant a copy of any existing survey of the Premises (the “Survey”). Tenant, at Tenant’s expense, may order an update of the Survey or a new survey of the Premises (the “New Survey”).

(c) Tenant shall notify Landlord of (i) any defects in or encumbrances upon Landlord’s title to the Premises unacceptable to Tenant and (ii) Tenant’s objections to matters shown by the Survey or New Survey (collectively, “Tenant’s Title Objections”) within ten (10) days after
Tenant’s receipt of the last of the Commitment, complete and legible copies of all instruments shown as exceptions in the Commitment, and the Survey or New Survey. Landlord shall have the right, but not the obligation, to remove, correct, and/or satisfy Tenant’s Title Objections prior to Closing. Landlord shall (A) notify Tenant within seven (7) days after receipt of Tenant’s Title Objections (“Landlord’s Response Period”) as to whether Landlord will seek to remove, correct, and/or satisfy the same (“Landlord’s Response”), and (B) keep Tenant reasonably apprised of Landlord’s progress toward removing, correcting, and/or satisfying the same (and the manner in which such will be removed, corrected, and/or satisfied). If Landlord fails to notify Tenant of Landlord’s Response within Landlord’s Response Period, then Landlord shall be deemed to have elected not to seek to remove, correct, and/or satisfy Tenant’s Title Objections. Title defects or encumbrances set forth on Schedule B of the Commitment to which Tenant does not object, shall be included within the term “Closing Permitted Exceptions”; provided that Monetary Liens (defined below) and Tenancy Rights (defined below), shall never be Closing Permitted Exceptions. If Landlord elects to so cure Tenant’s Title Objections, Landlord shall diligently pursue the same to completion. If there remains at Closing any of Tenant’s Title Objections, then Tenant may elect to: (1) consummate the Purchase Option transaction contemplated by this Lease without regard to such defects and encumbrances; or (2) terminate this Purchase Option and no party shall have any rights, duties, or obligations hereunder, except those specifically stated herein to survive termination of this Lease. Notwithstanding anything to the contrary contained herein, without the necessity of objection or request by Tenant, contemporaneous with the Closing Date, Landlord shall pay and obtain the release of all liens and encumbrances affecting the Premises which secure the payment of indebtedness of an ascertainable amount (“Monetary Liens”), excepting only the lien for ad valorem taxes for the year of Closing, if not then due and payable. In the event Tenant opts to terminate the Purchase Option prior to the termination of the Term, the Lease shall continue, at Tenant’s option, in full force and effect.

15.04 Landlord Covenants. From and after the PO Notice until Closing, or earlier termination of this Lease, the Landlord or the Landlord’s agents shall:

(a) Operation. Operate and maintain the Premises substantially in accordance with the Landlord’s past practices with respect to the Premises.

(b) Contracts. Not execute any new contract or amend or terminate any existing contract in connection with the Premises without Tenant’s prior written approval, which shall not be unreasonably withheld or delayed.

(c) Leases. Not execute any new lease or amend, terminate or accept the surrender of any lease without Tenant’s prior written approval, which shall not be unreasonably withheld or delayed.

(d) Litigation; Violations. Advise the Tenant promptly of any litigation, arbitration proceeding or administrative hearing (including condemnation, foreclosure or bankruptcy) before any governmental authority which affects the Landlord or the Premises. Deliver to Tenant promptly after receipt thereof copies of any notices of violations or other notices regarding the Premises received by the Landlord.
(e) **Sale of Personal Property.** Not transfer or dispose of, or permit to be sold, transferred or otherwise disposed of, any item or group of items constituting personal property associated with the Premises, except for the use and consumption of inventory, office and other supplies and spare parts, and the replacement of worn out, obsolete and defective tools, equipment and appliances, in the ordinary course of business.

(f) **Actions.** Not waive, release, assign, settle or compromise any material actions against the Landlord or the Premises.

(g) **Zoning.** Not initiate or consent to any material zoning reclassification of the Premises or any material change to any approved site plan, special use permit, planned unit development approval or other land use entitlement affecting the Premises.

15.05 **Closing Documents.** At or prior to Closing, each party shall deliver to the other party documents reasonably required by the other party to establish the authority of such party to enter into and perform the transactions contemplated by this Agreement. Landlord shall, at its own cost and expense, also deliver to Tenant at Closing the following: Landlord’s warranty deed, any required corporate resolutions or authorizations, affidavit(s) of non-foreign status (federal or state), bill of sale conveying to Tenant all personal property (both tangible and intangible) with respect to the Premises (if any), to the extent not already delivered to Tenant all leases affecting the Premises, an assignment of all existing contracts (to the extent that such contracts are acceptable to Tenant in its sole discretion), termination of all contracts that Tenant has elected, in Tenant’s sole discretion, not to assume, with Tenant being responsible for all termination costs applicable thereto, and assignment of all warranties relating the Premises, if any and Landlord’s proof of payment of Sales Taxes through Closing. The parties also shall deliver at Closing any other documents reasonably necessary to complete and evidence the acquisition of the Premises contemplated hereby, in a form reasonably satisfactory to the parties including, without limitation, a closing statement.

15.06 **Pro Rations.**

(a) **Transfer Taxes, Recording Fees and Other Fees.** Landlord shall pay any applicable grantor transfer taxes (including, without limitation, documentary transfer taxes), the cost to prepare the deed from Landlord, and the cost of recording all documents necessary to correct or remove defects in or encumbrances upon Landlord’s title to the Premises (if applicable) and the cost of a base premium for an Owner’s Policy of title insurance. Tenant shall pay the cost of any New Survey obtained by Tenant, the cost of any endorsements or extended title insurance coverage, the cost of preparing and/or recording all documents to be recorded other than those referred to in the preceding sentence, and any other reasonable and customary costs related to the Closing. Each party shall pay its own attorneys’ fees. The Landlord and Tenant shall each pay one-half (½) of the Title Company’s escrow fee to close the Purchase Option transaction.

(b) **Taxes.** Real Property Taxes and assessments ("Taxes") assessed against the Premises for the year in which Closing occurs shall be prorated as of 11:59 p.m. on the day preceding the Closing Date, and shall be based on the actual Taxes for the current year. If the actual Taxes for the current year are unavailable, then such pro-ration shall be based on the actual Taxes for the prior year, using the maximum discount, and shall be a final settlement at Closing. In either
event, if the Premises is in the tax records as a separate parcel on the Closing Date, the Taxes shall be prorated on the basis of time and applied as an adjustment of the Purchase Price due at Closing. Landlord shall promptly provide Tenant with all relevant documentation relating to the Taxes (including, without limitation, any tax bills) received by Landlord after Closing. If the Premises is part of a larger parcel during the calendar year or tax year of the Closing, the Taxes shall be prorated on the basis of acreage (and improvements on such acreage, if any) as well as time, and Tenant shall pay to Landlord Tenant’s resulting share of the Taxes at Closing. In the event the Premises are subject to reduced taxes pursuant to an agricultural or open land use exemption, then Landlord shall be responsible for any and all rollback taxes assessed against the Premises, which obligation shall survive Closing.

(c) **Personal Property and Other Taxes.** Landlord shall, at its own cost, be responsible for, and shall indemnify Tenant against, all personal property taxes attributable to personal property owned and/or leased by Landlord and other taxes and assessments with respect to the Premises (including all deferred taxes and all subsequent tax assessments, if any, for years prior to Closing due to change in land usage or ownership [whether such change is deemed to have occurred before or after Closing]) for the period of time prior to the Closing. Tenant shall be responsible for its personal property taxes throughout the Term. This covenant and indemnity shall survive Closing.

(d) **Sales Taxes.** Landlord shall, at its own cost, be responsible for, and shall indemnify Tenant against, all Sales Taxes with respect to the Premises (including all unpaid Sales Taxes, if any, for years prior to Closing) for the period of time prior to the Closing. This covenant and indemnity shall survive Closing.

(e) **Utilities.** If any utility services are presently being provided to or serving the Premises, Landlord will pay for such services up to and including the Closing Date, but thereafter any such services in the name of Landlord shall be terminated and/or transferred by Landlord at Tenant’s election. If necessary, the parties shall refund or repay such sums as shall be necessary to effect such apportionment. Tenant is responsible for obtaining its own utility account(s) for utility services to the Premises and for all utility charges associated therewith after the Closing Date. This [Section 15.06](#) shall survive Closing.

(f) **Rents and Other Amounts.** All rents, if any, with respect to the Premises for the month in which the Closing occurs shall be pro-rated to the Closing Date. For the purposes of calculating pro-rated amounts, Tenant shall be deemed to be entitled to the Premises, and therefore entitled to the income from the Premises, beginning as of the date of the Closing Date. At Closing, all security deposits, advance rentals, and other deposits, if any, made pursuant to leases and other contracts concerning the Premises shall be retained by Landlord and credited against the balance of the Purchase Price due at Closing. If the balance due at Closing is less than the sum of all deposits to be transferred, all deposits will be remitted to Tenant in cash at Closing. If there are any delinquent rents as of the Closing Date, Landlord shall have no right to pursue collection thereof. However, in the event Tenant receives such delinquent rents (after application of all funds received by Tenant to current charges due and not such delinquencies), Tenant shall remit the amount of such delinquent rents received by Tenant to Landlord. Tenant shall have no obligation to pursue collection of delinquent rents. This [Section 15.06](#) shall survive Closing.
15.07 **Closing.** The Closing (the “Closing”) of the acquisition shall occur, if at all, at the offices of the Title Company or at another place designated by Tenant and Landlord; provided, however, that neither party shall be obligated to attend Closing, as long as all documents and funds required to be delivered by such party at Closing have been delivered and are in the possession of the Escrow Agent. The date of Closing shall be on a date mutually selected by Landlord and Tenant that occurs prior to the Closing Date.

15.08 **Memorandum of Lease and Purchase Option.** Notwithstanding anything to the contrary in this Lease, Landlord may not terminate this Lease, whether as a result of a Default hereunder by Tenant or otherwise, unless (i) it has provided Tenant at least thirty (30) days prior written notice of its intent to terminate the Lease in accordance with the terms hereof and (ii) within such thirty (30) day period, Tenant has not delivered to Landlord a notice of Tenant’s election to exercise the Purchase Option. If Tenant does elect to exercise the Purchase Option within such thirty (30) day period, the Lease shall continue in effect for such additional period as is necessary for the Closing to occur in accordance with the terms of this Article 15.

**ARTICLE 16: SIGNS**

16.01 **Signs.** Tenant shall have the right to place an exterior sign on all sides of the Building, in accordance with the maximum signage allowed by the local authority. Tenant shall be entitled to use any monument and pylon sign space located on the Premises. Notwithstanding anything in this Lease to the contrary, Tenant has the right, without Landlord’s consent, to place any and all signage within the interior of the Premises, including, without limitation, exterior doors and windows of the Premises, as Tenant may desire.

**ARTICLE 17: MISCELLANEOUS PROVISIONS**

17.01 **Radon Disclosure.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

17.02 **Security of Premises.** Landlord and Tenant agree that Tenant shall have the right to secure the Premises with any and all means, including but not limited to, an alarm system, security gate, security grills, security shutters, electronic or laser locks, which in Tenant’s sole opinion will successfully secure the operations of Tenant.

17.03 **Tenant’s Property.** Notwithstanding anything stated in this Lease to the contrary, Landlord and Tenant expressly acknowledge that nothing in this Lease shall be deemed a grant by Tenant of a security interest, or other lien, in favor of Landlord, upon any goods or other Tenant’s Property situated in or upon the Premises. Landlord expressly waives any rights, whether statutory, contractual or otherwise, that it may have to any lien against Tenant’s Property, unless said lien is obtained pursuant to a final judgment by a court of competent jurisdiction. Tenant may remove Tenant’s Property from the Premises at any time during the Term. As used herein, “Tenant’s Property” shall mean Tenant’s personal property, furniture, furnishings, signs, telecommunications equipment, equipment and trade fixtures.
17.04 **Signal Enhancing Device.** Landlord hereby consents to the installation by Tenant, at Tenant’s sole cost and expense, of a signal enhancing antenna(s), or such technological evolution of the same (hereinafter the “Antenna” (whether one or more)) so that Tenant may provide adequate phone or other electronic device signal strength within the Premises. Tenant and Landlord will mutually agree on the location of the Antenna on the Building. Prior to any such installation, the specifications of such Antenna will be reviewed within fifteen (15) days of the submission thereof to Landlord, and approved by Landlord, which such approval will not be unreasonably withheld, delayed or conditioned. Landlord will permit Tenant to install wiring between the roof and Premises in appropriate locations and through conduits in the Building and access to the roof to service and maintain equipment. Tenant will be responsible to ensure that the installation, maintenance and removal and operation of the Antenna (i) complies with all Legal Requirements, and (ii) screening of the Antenna, if required by Landlord. Other than the foregoing, there will be no additional Lease costs associated with such rooftop rights. All other provisions of the Lease will apply to the Antenna.

17.05 **Satellite Dish.** Landlord hereby consents to the installation by Tenant, at Tenant’s sole cost and expense, of two satellite dishes or such technological evolution of the same (“Dishes”). Neither of the Dishes shall exceed three feet (3’) in diameter. The Dishes will be located on the roof of the Building, at the location mutually agreed upon by Tenant and Landlord. Prior to any such installation, the specifications of such Dishes will be reviewed and approved by Landlord, which approval will not be unreasonably withheld, delayed or conditioned, and in no event later than fifteen (15) days after its submission to Landlord. Other than the foregoing, there will be no additional Lease costs associated with such rooftop rights. All other provisions of the Lease will apply to the Dishes.

17.06 **Tenant’s Right to Vacate the Premises.** Notwithstanding anything herein to the contrary, Landlord and Tenant agree that the Tenant will not be in default of this Lease if the Tenant vacates the Premises so long as the Tenant continues to pay the Landlord the Rent and all other charges due under this Agreement.

17.07 **Quiet Enjoyment.** Landlord covenants that Tenant will have peaceful and quiet enjoyment and possession of the Premises for the Term, subject to the terms and conditions set forth in this Lease.

17.08 **Force Majeure.** Force Majeure means if Landlord or Tenant is delayed or prevented from performing any act which it is obligated to perform under this Lease for causes beyond its reasonable control (including, without limitation, repair, restoration and/or maintenance obligations) related to acts of God, war, governmental restrictions, or the inability to procure the necessary labor or materials, (“Force Majeure”).

Except as otherwise provided in this Lease, Landlord or Tenant’s time for performance of such obligation(s) hereunder will be reasonably extended by the period during which Landlord or Tenant was unable to perform, and the non-performing party will have no liability to the other party (nor will either party be entitled to terminate this Lease or claim any abatement under this Lease) on account of any such delay.
17.09 **Legal Requirements and Sales Taxes.** As of the Effective Date of this Lease, Landlord has paid all Sales Taxes applicable to the Premises and met all Legal Requirements related thereto. Landlord indemnifies and holds Tenant harmless from any and all unpaid Sales Taxes related to any prior lease of the Premises.

17.10 **Parking.** Landlord covenants that throughout the Term the Premises shall have adequate parking facilities for Tenant, its employees, contractors, representatives, customers and invitees. Landlord and Tenant agree that Tenant shall have the exclusive right to use ____ (___) parking spaces which are marked as “Tenant’s Exclusive Parking” on the attached site plan, Exhibit C. Tenant will have the right to designate Tenant’s Exclusive Parking by posting signs or marking the curb or the pavement. In addition, Tenant shall have the nonexclusive right to use all other parking on the Premises at no additional charge. In no event shall Tenant or any of Tenant’s customers, employees, contractors, representatives or invitees be charged for parking during the Term of the Lease. Landlord covenants that the nonexclusive parking on the Premises shall not be reduced below __________(___).

17.11 **Termination of Existing Lease.** Any and all existing leases related to the Premises between Landlord and Tenant, whether written or oral, including without limitation that certain lease listed on Exhibit D are hereby terminated upon the Commencement Date of this Lease. Landlord shall execute all additional documentation, if any, required by Tenant to with respect to such termination. In no event shall Tenant be liable for any costs, expenses, Taxes, insurance, Rent or any other charges with respect to the lease on Exhibit D, or with respect to any other prior written or oral leases for the Premises.

17.12 **Representation of Authority; No Other Lease.**

(a) Landlord hereby represents that it is the fee simple owner of the Premises, that there is no other outstanding lease of the Premises and that it has the full right, power and authority to enter into this Lease without the consent or approval of any other entity or person. Tenant represents and warrants to Landlord that it has full right, power and authority to enter into this Lease without the consent or approval of any other entity or person.

(b) The signatories on behalf of Landlord and Tenant further represent and warrant that they have full right, power and authority to act for and on behalf of Landlord and Tenant in entering into this Lease.

(c) Both Landlord and Tenant hereby agree that they are making the representations set forth in (a) and (b) above knowing that the other party will rely thereon.

17.13 **Interpretation.** The captions of the Articles or Sections of this Lease are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular includes the plural and the plural includes the singular. The masculine, feminine and neuter genders each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term “Tenant” includes Tenant, any others using or occupying the Premises or any portion thereof with Tenant’s express or implied permission, and their respective agents, employees, contractors, invitees and guests. This Lease does not, and nothing contained herein,
will create a partnership or other joint venture between Landlord and Tenant. A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable will not invalidate the remainder of such provision, which will remain in full force and effect.

17.14 Incorporation of Prior Agreements; - Modifications. This Lease is the only agreement between the parties pertaining to the lease of the Premises. All amendments to this Lease must be in writing and signed by all parties. Any other attempted amendment will be void.

17.15 Notices. All notices, requests and other communications required or permitted under this Lease will be in writing and personally delivered or sent by a national overnight delivery service which maintains delivery records. Notices will be delivered as follows to Tenant’s Notice Address or to Landlord’s Notice Address, as appropriate:

Tenant’s Notice Address
__________________________________________________
__________________________________________________
__________________________________________________

Tenant’s Billing Address (if different)
__________________________________________________
__________________________________________________
__________________________________________________

Landlord’s Notice Address
Mr. Jason Rubin
12900 NW 38th Avenue
Opa Locka, Florida 33054

With a copy to
Mr. Alan Silverstein, Esq.
700 Village Square Crossing, Suite 101
Palm Beach Gardens, Florida 33410

Landlord’s Rent Payment Address
Mr. Jason Rubin
12900 NW 38th Avenue
Opa Locka, Florida 33054

All notices will be effective upon delivery (or refusal to accept delivery). Either party may change its notice address upon ten (10) days prior written notice to the other party given in accordance with the terms of this Section 17.15.

17.16 Waivers. Any waiver, to be effective, must be in writing and signed by the waiving party. Landlord’s failure to enforce any provision of this Lease or its acceptance of Rent is not a waiver and will not prevent Landlord from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Tenant or in a letter accompanying a payment check will be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound by to the conditions of such statement.
17.17 Memorandum of Lease and Purchase Option. Landlord and Tenant agree that Tenant may record a Memorandum of Lease and Purchase Option.

17.18 Binding Effect; Choice of Law. This Lease will bind any party who legally acquires any rights or interest in this Lease from Landlord or Tenant, provided that Landlord will have no obligation to Tenant’s successor unless the rights or interests of Tenant’s successor are acquired in accordance with the terms of this Lease. The laws of the state in which the Premises is located govern this Lease. **THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY(IES) AGAINST ANY OTHER PARTY(IES) ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR THE RELATIONSHIP OF THE PARTIES HEREUNDER.**

17.19 Execution of Lease. This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts will constitute a single binding instrument. Landlord’s delivery of this Lease to Tenant is not to be deemed to be an offer to lease and will not be binding upon either party until executed and delivered by both parties.

17.20 Survival. Unless otherwise expressly provided in this Lease, all representations and warranties of Landlord and Tenant, Tenant’s indemnity under Sections 2.02 (Holding Over) and 8.06 (Indemnity), the provisions of Article 10 (Hazardous Materials), the covenant and indemnification provisions of Section 15.06(b), (c), (d), (e) and (f), the indemnification provisions of Section 17.21 (No Brokers), and all obligations of Tenant to pay Additional Rent hereunder, shall survive the termination of this Lease.

17.21 No Brokers. Except as specifically detailed herein, Landlord and Tenant each represent and warrant to the other that there are no agents, brokers, finders or other parties with whom it has dealt who may be entitled to any commission or fee with respect to this Lease or the Premises. Landlord and Tenant each agree to indemnify and hold the other party harmless from any such claim, demand, cost or liability for a commission or fee, including, without limitation, attorneys’ fees and expenses, asserted by any person or entity based upon dealings with the indemnifying party.

17.22 Attorney Costs. In any enforcement proceeding brought by either party with respect to this Lease, the non-prevailing party will pay to the prevailing party in such proceeding all costs, including reasonable attorneys’ fees and court costs, incurred by such other party with respect to said proceeding and any appeals therefrom.

17.23 Severability. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
17.24 **Rules and Regulations; Patriot Act.** Tenant agrees to abide by Landlord’s rules and regulations for the Premises as such rules and regulations shall be reasonably determined and modified by Landlord from time to time, and each of Landlord and Tenant shall be responsible for the compliance of such rules and regulations by their employees, agents, customers and invitees.

Each of Landlord and Tenant represent and warrant that on behalf of themselves and their respective affiliates that neither is nor any affiliate of Landlord or Tenant is in violation of the USA Patriot Act, Executive Order 13224 or any anti-terrorism laws, and each of Landlord and Tenant acknowledges that if Landlord or Tenant were to violate the provisions of this paragraph, or if Landlord or Tenant or any affiliate of either Landlord or Tenant were to become identified on any blocked persons list, either at the time of execution of this Lease or any time thereafter, that Landlord or Tenant shall thereupon be in default of this Lease.

17.25 **Additional Provisions.** The exhibits and riders, if any, attached hereto, are incorporated herein by reference.

17.26 **Time of Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor. All reference to “days” as used in this Lease will mean calendar days unless otherwise so designated in this Lease.

[Signatures on the Following Page]
IN WITNESS WHEREOF, this Lease has been executed by the duly authorized representatives of Landlord and Tenant on the respective dates set forth below, to be effective for all purposes, however, as of the Effective Date as set forth above.

LANDLORD:

[LANDLORD ENTITY]

By: ________________________________
Name: ______________________________
Title: ______________________________

Date: ______________________________

WITNESSES:

Name: ______________________________
Address: ____________________________

Name: ______________________________
Address: ____________________________

TENANT:

______________________________

By: ______________________________
Name: ______________________________
Title: ______________________________

Date: ______________________________
WITNESSES:

Name: ____________________________
Address: __________________________

Name: ____________________________
Address: __________________________
EXHIBIT A

Legal Description of the Land

[See attached]
EXHIBIT B

Memorandum of Lease and Purchase Option

THIS MEMORANDUM OF LEASE AND PURCHASE OPTION ("Memorandum") is entered into as of ________________, 2018, by and between __________________, a __________________, whose address is __________________, as Landlord, and __________________, a __________________, whose address is __________________, as Tenant.

WITNESSETH:

WHEREAS, Landlord and Tenant have heretofore entered into that certain Lease dated _________ (the "Lease"), covering certain Premises as more particularly described in the Lease herein, the "Premises"), which Premises are located in the City of _________, ________ County, Florida that is more particularly described on Exhibit A attached hereto, and

WHEREAS, it is the desire of both Landlord and Tenant to memorialize the Lease and set forth certain pertinent data with respect thereto,

NOW THEREFORE, with respect to the Lease, Landlord and Tenant hereby acknowledge and agree as follows:

1. Demise. The Premises have been and are hereby demised, let and leased by Landlord to Tenant, and taken and accepted by Tenant from Landlord, all pursuant to and in accordance with the Lease.

2. Term. The Term of the Lease is from the Commencement Date, until _________, unless extended by agreement of Landlord and Tenant.

3. Possession. Landlord has delivered possession of the Premises to Tenant and Tenant has accepted delivery and taken possession of the Premises from Landlord.

4. Purchase Option. Pursuant to the Lease, Tenant has been granted an option to purchase the Premises. Tenant’s Purchase Option (as defined in the Lease) is an integral part of the Lease and is a major inducement for Tenant to execute the Lease. Landlord will not convey, sell, encumber, mortgage or assign the Premises or any interest of Landlord in the Premises.

5. Inconsistent Provisions. The provisions of this Memorandum constitute only a general description of the content of the Lease with respect to matters set forth herein. Accordingly, third parties are advised that the provisions of the Lease itself shall be controlling with respect to all matters set forth herein. In the event of any discrepancy between the provisions of the Lease and this Memorandum, the provisions of the Lease shall take precedence and prevail over the provisions of this Memorandum.

6. Termination of Lease. All rights of Tenant in the Premises shall terminate upon the expiration or earlier termination of the Lease, upon the terms and conditions stated therein.
7. **Counterparts.** This Memorandum may be executed in one or more counterparts, and all such counterparts taken together shall for all purposes constitute one and the same.

[The remainder of this page intentionally left blank]
IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum to be duly executed effective as of the day and year first above written.

LANDLORD:

By: _________________________________
Name: _______________________________
Title: ________________________________

Date: ________________________________

WITNESSES:

Name: _______________________________
Address: ______________________________

Name: _______________________________
Address: ______________________________

TENANT:

_______________________________

By: _________________________________
Name: _______________________________
Title: ________________________________

Date: ________________________________

WITNESSES:

Name: _______________________________

Address: __________________________

Name: __________________________
Address: __________________________

After recording, return to:

Dykema Gossett PLLC
Attn: Teresa Ereon Giltner
1717 Main St #4200
Dallas, TX 75201
STATE OF ________________
COUNTY OF _____________

The foregoing instrument was acknowledged before me this ___ day of ____________, 2018, by ____________, as ____________ of ____________, as the sole member of ____________, a ____________, on behalf of the ____________. He/she is personally known to me or has produced __________________________ identification.

________________________________________
Print Name: ______________________________
Notary Public, State of _____________________
Commission #: ___________________________
My commission expires: ____________________
(NOTARY SEAL)

STATE OF ________________
COUNTY OF _____________

The foregoing instrument was acknowledged before me this ___ day of ____________, 2018, by ___________________________________, as _______________ of ____________, a ____________, on behalf of ____________. He/she is personally known to me or has produced __________________________ identification.

________________________________________
Print Name: ______________________________
Notary Public, State of _____________________
Commission #: ___________________________
My commission expires: ____________________
(NOTARY SEAL)
EXHIBIT A

LEGAL DESCRIPTION
EXHIBIT C

Parking
EXHIBIT D

Existing Lease
Exhibit K-2

Form of New Leases

[Form to be supplied by filing a notice on or prior to January 22, 2019. Such form of lease will be substantially in the form of Exhibit K-1, except that it will include additional language regarding reciprocal easements.]