

GARMAN TURNER GORDON LLP  
 GREGORY E. GARMAN  
 Nevada Bar No. 6654  
 E-mail: ggarman@gtg.legal  
 GABRIELLE A. HAMM  
 Nevada Bar No. 11588  
 E-mail: ghamm@gtg.legal  
 MARK M. WEISENMILLER  
 Nevada Bar No. 12128  
 E-mail: mweisenmiller@gtg.legal  
 650 White Drive, Suite 100  
 Las Vegas, Nevada 89119  
 Telephone (725) 777-3000  
 Facsimile (725) 777-3112  
*Attorneys for Debtors*

COZEN O'CONNOR  
 THOMAS J. FRANCELLO  
 Delaware Bar No. 3835 (admitted *pro hac vice*)  
 E-mail: tfrancella@cozen.com  
 1201 North Market Street, Suite 1001  
 Wilmington, DE 19801  
 Tel: 302.295.2000 / Fax: 302.295.2013  
 FREDERICK E. SCHMIDT, JR.  
 New York Bar No. 2674489 (admitted *pro hac vice*)  
 E-mail: eschmidt@cozen.com  
 277 Park Avenue  
 New York, NY 10172  
 Tel: 212-883-4948 / Fax: 646-588-1552  
*Attorneys for Debtors*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE DISTRICT OF NEVADA**

In re:  
 Jagged Peak, Inc., a Nevada corporation,  
☒ Affects this Debtor.

Case No.: BK-S-19-15959-MKN  
 Chapter 11

**LEAD CASE**

**Jointly Administered with:**

In re:  
 TradeGlobal, LLC, a Delaware limited liability  
 company,  
☐ Affects this Debtor.

Case No.: BK-S-19-15960-MKN  
 Chapter 11

In re:  
 TradeGlobal North America Holding, Inc., a  
 Delaware corporation,  
☐ Affects this Debtor.

Case No.: BK-S-19-15961-MKN  
 Chapter 11

**OST REQUESTED  
 OST REQUESTED**

**MOTION OF JAGGED PEAK, INC. TO EXTEND DEADLINE PURSUANT TO  
 11 U.S.C. § 365(d)(4) TO ASSUME OR REJECT UNEXPIRED LEASE FOR REAL  
 PROPERTY LOCATED AT 201 17th STREET SOUTH., ST. PETERSBURG, FLORIDA**

Debtor and debtor-in-possession Jagged Peak, Inc. ("Jagged Peak" or "Debtor"), by and through its counsel of record, hereby moves for entry of an order, substantially in the form attached hereto as **Exhibit 1**, extending for 90 days the time period within which it must assume or reject the unexpired lease of nonresidential real property located at 201 17th Street S., St.

Petersburg, Florida 33712 (the “Lease”), under Section<sup>1</sup> 365(d)(4)(B)(ii) of the Bankruptcy Code, without prejudice to its right to seek additional extensions of time to assume or reject the Lease or any other unexpired lease of nonresidential real property as permitted under Section 365(d)(4) of the Bankruptcy Code (the “Motion”).

This Motion is made and based upon the following Memorandum of Points and Authorities, the accompanying Declaration of Jeremy Rosenthal, the *Omnibus Declaration of Jeremy Rosenthal in Support of Petitions First Day Motions*, as supplemented [ECF Nos. 14 and 26] (the “First Day Declaration”), the papers and pleadings on file herein, judicial notice of which is hereby respectfully requested, and the argument of counsel entertained by the Court at the time of the hearing on the Motion.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334, and Local Rule 1001(b)(1). This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).

2. Pursuant to LR 9014.2, Jagged Peak consents to the entry of final orders and judgments by the bankruptcy judge on the matters presented in this Motion.

3. The statutory basis for the relief sought is 11 U.S.C. § 365(d)(4).

### II. BACKGROUND

#### A. The Chapter 11 Cases and the Sales.

4. On September 16, 2019 (the “Petition Date”), Jagged Peak, TradeGlobal, LLC (“TradeGlobal”), and TradeGlobal North America Holding, Inc. (“TGNA,” and collectively with Jagged Peak and TradeGlobal, the “Debtors”), each filed voluntary petitions for relief under

---

<sup>1</sup> Unless otherwise stated, all references to “Chapter” and “Section” herein shall be to title 11 of the U.S. Code (the “Bankruptcy Code”); all references to a “Bankruptcy Rule” shall refer to the Federal Rules of Bankruptcy Procedure; and all references to “LR” shall refer to the Local Rules of Bankruptcy Practice of the U.S. District Court for the District of Nevada.

Chapter 11 of the Bankruptcy Code in this Court (the “Chapter 11 Cases”). The Chapter 11 Cases are jointly administered pursuant to Bankruptcy Rule 1015(b). See ECF No. 50.

5. The Debtors remain in possession of their property and continue in the operation and management of their businesses as debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code.

6. On November 27, 2019, the Bankruptcy Court entered an order, which was thereafter amended on December 2, 2019 (as amended, the “Jagged Peak Sale Order”), approving a sale by Jagged Peak of substantially all of its assets (the “Purchased Assets”) and the assumption and assignment of certain executory contracts and unexpired leases (the “Assumed Contracts”) to ID Logistics US, Inc. (the “Purchaser”) on the terms set forth in the *Asset Purchase Agreement* by and between Jagged Peak, Inc. and ID Logistics US, Inc. dated November 11, 2019 (the “Jagged Peak APA”). See ECF No. 345.

7. On December 2, 2019, the Bankruptcy Court entered an order (the “TradeGlobal Sale Order”), approving a sale by TradeGlobal of substantially all of its assets and the assumption and assignment of certain executory contracts and unexpired leases to Visible Supply Chain Management, LLC (“VSCM”) on the terms set forth in the *Asset Purchase Agreement* by and between TradeGlobal, LLC and Visible Supply Chain Management, LLC dated November 18, 2019 (the “TradeGlobal APA,” and together with the Jagged Peak APA, the “Purchase Agreements”). See ECF No. 346.

8. As contemplated by the Purchase Agreements, in connection with the closing of the transactions approved by the Jagged Peak and TradeGlobal Sale Orders, the Debtors, the Purchaser, and VSCM entered into a Transitional Services Agreement dated December 11, 2019 (the “TSA”), setting forth terms and conditions for the provision of various services by each of them for varying lengths of time to facilitate the transfer of assets sold under the Purchase Agreements.

9. Under the Jagged Peak APA, Jagged Peak and the Purchaser agreed, *inter alia*, that the Purchaser would be entitled, at its sole discretion and at its sole expense, to request that Jagged Peak maintain in effect any Excluded Contract (as defined therein) for up to three months

1 after the closing for the purpose of passing through the benefits of such Excluded Contract to the  
2 Purchaser, subject to the Purchaser's timely payment of any costs associated with such Excluded  
3 Contract, and that Jagged Peak would consider in good faith any such request and use  
4 commercially reasonable efforts to maintain in effect any such Excluded Contract and not reject  
5 any such Excluded Contract. See Jagged Peak APA, ECF No. 254, at § 5.18.

6 **B. The Lease of the St. Petersburg Premises and the Purchaser's Temporary Use**  
7 **Under the TSA.**

8 10. Jagged Peak is party to an unexpired lease agreement dated November 15, 2017  
9 with GSFT 201 17th Street, LLC (the "Landlord") relating to the operation of a warehouse and  
10 logistics facility on the real property commonly known as at 201 17th Street S., St. Petersburg,  
11 Florida 33712 (the "St. Petersburg Premises"). A copy of the Lease is attached to this Motion as  
12 **Exhibit 2.**

13 11. The Lease is not an Assumed Contract under the Jagged Peak APA, and has not  
14 been assumed or assigned to the Purchaser. See ID Logistics US, Inc.'s *Supplemental Notice to*  
15 *Counterparties to Executory Contracts and Unexpired Leases Regarding Non-Assumption and*  
16 *Assignment to Purchaser*, ECF No. 389. Jagged Peak contemplates that the Lease will be  
17 rejected, and an escrow account was established and funded by the Purchaser on the Closing  
18 Date in the amount of \$700,000 for payment of rejection damages claims up to that amount,  
19 including the Landlord's projected rejected damages claim. Any balance remaining in the  
20 escrow account will be returned to the Purchaser in accordance with the provisions of the Jagged  
21 Peak APA. However, in order to accomplish the transfer of the Purchased Assets as authorized  
22 by the Sale Order, facilitate the purposes of the sale transaction, and assist with the transition of  
23 Jagged Peak's business to the Purchaser, the Purchaser requested the temporary use of the St.  
24 Petersburg Premises through no later than March 31, 2020.

25 12. Jagged Peak considered the Purchaser's request in good faith and negotiated an  
26 arrangement for the purpose of passing through the benefits of the Lease to the Purchaser in  
27 accordance with the Jagged Peak APA, which arrangement is set forth in a Services Agreement  
28

1 between Jagged Peak and the Purchaser under the TSA (the "Lease Exhibit"), attached hereto as

2 **Exhibit 3.** Pursuant to the TSA and the Lease Exhibit, Jagged Peak has agreed, *inter alia*,

3 (i) not to reject or cause the effective date of the rejection of the Lease to occur  
4 before March 31, 2020,

5 (ii) to file a motion prior to January 1, 2020, seeking an extension of the deadline  
6 imposed by Section 365(d)(4) of the Bankruptcy Code and to use its  
7 commercially reasonable best efforts to have an appropriate order entered by the  
8 Court before January 14, 2020, extending its deadline to reject the Lease to a date  
9 that is not sooner than March 31, 2020;

10 (iii) to allow ID Logistics to use and occupy the St. Petersburg Premises during the  
11 period commencing on the Closing Date and ending March 31, 2010, and use its  
12 reasonable best efforts to ensure that ID Logistics is permitted to use and occupy  
13 the premises in a manner consistent with Jagged Peak's historical practice; and

14 (iv) that the Purchaser may terminate the Lease Exhibit and the services to be  
15 provided thereunder upon ten (10) days' prior written notice to Jagged Peak.

16 13. In exchange, the Purchaser will reimburse Jagged Peak for all costs and expenses  
17 incurred in connection with maintaining the Lease, including all rent and other out-of-pocket  
18 costs payable by Jagged Peak under the Lease in respect of, or allocable to, the period  
19 commencing on the Closing Date and ending on March 31, 2020.<sup>2</sup> The Purchaser will pay rent  
20 and other known amounts in advance, without the necessity of invoicing by Jagged Peak. To the  
21 extent Jagged Peak receives any invoice from the Landlord, Jagged Peak shall, within ten (10)  
22 days of its receipt thereof, forward the same to the Purchaser and the Purchaser shall pay the  
23 amounts due on such invoice within the terms thereof.

---

24  
25  
26 <sup>2</sup> The Purchaser's obligation to pay such costs excludes capital expenditures not required under the Lease or which  
27 can be delayed or avoided without terminating the lease during the period the premises are to be occupied by the  
28 Purchaser, and the Purchaser shall only be required to reimburse Jagged Peak for capital expenditures to the extent  
Jagged Peak would not have been obligated in respect of such Capital Expenditures had the Lease been rejected at  
the same time all other Excluded Contracts (as defined in the Jagged Peak APA) are rejected.

14. In order to facilitate the Purchaser's access to and use of the St. Petersburg Premises during this period, Jagged Peak must remain a tenant of the St. Petersburg Premises.

### III. LEGAL AUTHORITY

Section 365(d)(4) provides in pertinent part that:

(A) [s]ubject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of--

(i) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.

(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

11 U.S.C. § 365(d)(4). Thus, the Lease will be deemed rejected pursuant to 11 U.S.C. § 365(d)(4) if it is not assumed or rejected by January 14, 2020 absent an order from this Court extending the deadline for "cause" by January 14, 2020.

Section 365(d)(4) of the Bankruptcy Code grants courts substantial discretion to extend the time for a debtor to assume or reject unexpired nonresidential real property leases for "cause." Courts consider various factors in determining whether such "cause" exists, including, but not limited to,

(A) whether the lease is the debtor's primary asset;

(B) whether the debtor has had sufficient time to intelligently appraise its financial situation and potential value of its assets in terms of the formulation of a plan of reorganization;

(C) whether the lessor continues to receive rent for the use of the property;

(D) whether the debtor's continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code;

(E) whether the case is exceptionally complex and involves a large number of leases;

(F) whether the debtor has failed or is unable to formulate a plan when it has had sufficient time to do so; and

(G) any other factors bearing on whether the debtor has had a reasonable amount of time in which to decide whether to assume or reject the lease.

See In re Ernst Home Ctr., Inc., 209 B.R. 974, 980 (Bankr. W.D.Wash. 1997) (enumerating nine non-exclusive factors for determining whether cause exists to grant extension) (citing Theatre Holding Corp. v. Mauro, 681 F.2d 102 (2d Cir.1982); In re Victoria Station, Inc., 88 B.R. 231, 236 (9th Cir. BAP 1988), aff'd, 875 F.2d 1380 (9th Cir.1989); In re Wedtech Corporation, 72 B.R. 464, 471–473 (Bankr. S.D.N.Y. 1987)); see also In re Panaco, Inc., 2002 WL 31990368, at \*5 (Bankr. S.D.Tex. Dec. 10, 2002) (similar factors); South St. Seaport Ltd. P'ship v. Burger Boys, Inc. (In re Burger Boys, Inc.), 94 F.3d 755, 761 (2d Cir.1996) (same); In re Beautyco, Inc., 307 B.R. 225, 231 (Bankr. N.D.Okla. 2004) (same); In re Adelphia Commc'ns Corp., 291 B.R. 283, 293 (Bankr. S.D.N.Y. 2003) (same); In re Svc. Merch. Co., Inc., 256 B.R. 744, 748 (Bankr. M.D.Tenn. 2000) (same).

These factors are not exclusive, “nor should a Court be required to consider particular factors that have no application to the request for extension at issue.” In re Ernst Home Ctr., Inc., 209 B.R. at 980-81. The bankruptcy court has broad discretion to weigh all factors relevant to a requested extension under Section 364(d)(4). Id. at 981; Theatre Holding, 681 F.2d at 105.

Ample cause exists to grant an extension of the deadline for ninety days under Section 365(b)(4)(B). The Purchaser requires the temporary use of the St. Petersburg Premises through March 31, 2020 in order to implement the sale transaction and facilitate the transfer of the Purchased Assets and therefore, the Lease is critical to Jagged Peak’s ongoing reorganization. See, e.g., Ernst Home Ctr., 209 B.R. at 981-82 (finding “cause” to grant 14-month extension to assume or reject its commercial leases, except as to any lessor who could demonstrate particularized harm, where the extension was prerequisite to the debtor’s completion of transaction involving its leasehold interests which would fall within the debtor’s business judgment under Section 363(b), the extension would give the potential purchaser of those interests sufficient time to decide whether there was market for these interests, the transaction would result in a payment to debtor of at least \$12 million, the potential purchaser would pay all carrying costs until the leases were either rejected or assumed and assigned to the potential



1 purchaser or its designees, and no evidence was presented that the lessors would be damaged  
2 beyond the compensation available to them under the Bankruptcy Code).

3 Furthermore, Jagged Peak is current with respect to its obligations under the Lease, and  
4 the Landlord will continue to be compensated under the terms of the Lease. Extension of the  
5 time for Jagged Peak to assume or reject the Lease will not subject the Landlord to any  
6 additional risk; indeed, the Debtor's obligations under the terms of the Lease will be timely paid  
7 under Section 365(d)(3) for an extended period, while the funds available to pay the Landlord's  
8 projected rejection damages claim will continue to be held in escrow. The estate will not bear  
9 the costs incurred as a result of the extension, which will be paid by the Purchaser. Therefore,  
10 neither the Landlord nor Jagged Peak's estate will be prejudiced by a short extension of time to  
11 assume or reject the Lease. See Matter of Am. Healthcare Mgmt., Inc., 900 F.2d 827, 832 (5th  
12 Cir.1990) ("an order extending the time for a debtor to assume or reject a lease merely preserves  
13 the status quo, and ... is entered in the routine administration of the court.") (quoting Victoria  
14 Station, 875 F.2d at 1386); see also In re Klein Sleep Products, Inc., 78 F.3d 18, 29 (2d Cir.1996)  
15 (discussing the potential consequences of forcing a debtor to assume or reject a long-term  
16 nonresidential real property lease and determining that under Section 365(d)(4), cause should  
17 nearly always be found).

18 Accordingly, Jagged Peak respectfully submits that "cause" exists to grant an extension  
19 of 90 days pursuant to section 365(d)(4)(B) and the proposed extension of time is necessary,  
20 appropriate, and in the best interest of Jagged Peak's estate and the Motion should be granted.

#### 21 **IV. RESERVATION OF RIGHTS**

22 The Debtors expressly reserve their right to seek further extensions to assume or reject  
23 the Lease or any other unexpired lease of nonresidential real property to which any of the  
24 Debtors is a party to the extent permitted by the Bankruptcy Code.

25 ...

26 ...

27 ...

28



**V. CONCLUSION**

WHEREFORE, Jagged Peak respectfully requests entry of an order substantially in the attached form attached hereto as Exhibit 1, extending the time within which Jagged Peak must assume or reject the Lease by ninety (90) days, through April 13, 2020, and granting such other and further relief which is just and proper.

Dated December 20, 2019

GARMAN TURNER GORDON LLP

By: /s/ Gabrielle A. Hamm

GREGORY E. GARMAN, ESQ.

GABRIELLE A. HAMM, ESQ.

MARK M. WEISENMILLER, ESQ.

650 White Drive, Ste. 100

Las Vegas, Nevada 89119

COZEN O'CONNOR

THOMAS J. FRANCELLA, ESQ.

FREDERICK E. SCHMIDT, JR., ESQ.

1201 North Market Street, Suite 1001

Wilmington, DE 19801

*Attorneys for Debtors*

4817-7350-8527, v. 4

# **EXHIBIT 1**

# **EXHIBIT 1**

GARMAN TURNER GORDON LLP  
 GREGORY E. GARMAN  
 Nevada Bar No. 6654  
 E-mail: ggarman@gtg.legal  
 GABRIELLE A. HAMM  
 Nevada Bar No. 11588  
 E-mail: ghamm@gtg.legal  
 MARK M. WEISENMILLER  
 Nevada Bar No. 12128  
 E-mail: mweisenmiller@gtg.legal  
 650 White Drive, Suite 100  
 Las Vegas, Nevada 89119  
 Telephone (725) 777-3000  
 Facsimile (725) 777-3112  
*Attorneys for Debtors*

COZEN O'CONNOR  
 THOMAS J. FRANCELLA  
 Delaware Bar No. 3835 (admitted *pro hac vice*)  
 E-mail: tfrancella@cozen.com  
 1201 North Market Street, Suite 1001  
 Wilmington, DE 19801  
 Tel: 302.295.2000 / Fax: 302.295.2013  
 FREDERICK E. SCHMIDT, JR.  
 New York Bar No. 2674489 (admitted *pro hac vice*)  
 E-mail: eschmidt@cozen.com  
 277 Park Avenue  
 New York, NY 10172  
 Tel: 212-883-4948 / Fax: 646-588-1552  
*Attorneys for Debtors*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE DISTRICT OF NEVADA**

In re:  
 Jagged Peak, Inc., a Nevada corporation,  
☒ Affects this Debtor.

In re:  
 TradeGlobal, LLC, a Delaware limited liability  
 company,  
☐ Affects this Debtor.

In re:  
 TradeGlobal North America Holding, Inc., a  
 Delaware corporation,  
☐ Affects this Debtor.

Case No.: BK-S-19-15959-MKN  
 Chapter 11

**LEAD CASE**

**Jointly Administered with:**

Case No.: BK-S-19-15960-MKN  
 Chapter 11

Case No.: BK-S-19-15961-MKN  
 Chapter 11

Hearing Date:  
 Hearing Time:

1                   **ORDER GRANTING MOTION OF JAGGED PEAK, INC.**  
2                   **TO EXTEND DEADLINE PURSUANT TO 11 U.S.C. § 365(d)(4) TO**  
3                   **ASSUME OR REJECT UNEXPIRED LEASE FOR REAL PROPERTY**  
                  **LOCATED AT 201 17th STREET SOUTH., ST. PETERSBURG, FLORIDA**

4           Upon consideration of the motion (the “Motion”) of Jagged Peak, Inc. (“Jagged Peak” or  
5           “Debtor”) for entry of an order extending for 90 days the time period within which it must  
6           assume or reject the unexpired lease of nonresidential real property located at 201 17th Street S,  
7           St. Petersburg, Florida 33712 (the “Lease”) under 11 U.S.C. § 365(d)(4)(B)(ii), and good cause  
8           appearing therefor;

9                   **IT IS HEREBY ORDERED:**

- 10           1.       The Motion is granted;
- 11           2.       The Debtor’s deadline to assume or reject the Lease pursuant to 11 U.S.C.  
12           § 365(d)(4) shall be extended through and including April 13, 2020;
- 13           3.       The extension as set forth in this Order is without prejudice to potential further  
14           extensions as the Court may order hereafter;
- 15           4.       This Order is effective as of January 14, 2020, notwithstanding the date of the  
16           entry of this Order on the docket, and the Court waives any and all stays upon the effectiveness  
17           of this Order, which shall be effective and enforceable immediately upon its entry; and
- 18           5.       The Court reserves jurisdiction over the interpretation and implementation of this  
19           Order.

20                   **IT IS SO ORDERED.**  
21  
22  
23  
24  
25  
26  
27  
28

Prepared and submitted by:

GARMAN TURNER GORDON LLP

By: /s/

GREGORY E. GARMAN

GABRIELLE A. HAMM

MARK M. WEISENMILLER

650 White Drive, Ste. 100

Las Vegas, Nevada 89119

-and-

COZEN O'CONNOR

THOMAS J. FRANCELLA

FREDERICK E. SCHMIDT, JR.

1201 North Market Street, Suite 1001

Wilmington, Delaware 19801

*Counsel for the Debtors*

**LR 9021 CERTIFICATION**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court waived the requirement of approval under LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated above.

☐ I certify that this is a case under chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objection to the form or content of the order.

4842-5719-1855, v. 1

# **EXHIBIT 2**

# **EXHIBIT 2**

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (this “**Lease**”) is made and entered into as of the Date of the Lease (as defined below) by and between **GSFT 201 17th Street, LLC**, a Florida limited liability company (“**Landlord**”), and **Jagged Peak, Inc.**, a Nevada corporation (“**Tenant**”).

**I. Basic Terms**

- A. Date of Lease: November 15, 2017.
- B. Landlord’s Address for Notices: GSFT 201 17th Street, LLC  
600 Brickell Avenue, 16<sup>th</sup> Floor,  
Miami, Florida 33131
- Landlord’s Address For Rent Payments: GSFT 201 17th Street, LLC  
600 Brickell Avenue, 16<sup>th</sup> Floor,  
Miami, Florida 33131
- C. Tenant’s Address for Notices: Jagged Peak, Inc.  
7650 Courtney Campbell Causeway,  
Suite 1200  
Tampa, Florida 33607
- D. Property: The real property commonly known as  
201 17th Street S, St. Petersburg, Florida  
33712 and legally described in **Exhibit A**, attached hereto and made a part hereof.
- E. Intentionally Omitted
- F. Premises: Those certain premises located on the  
Property. The Premises is described and  
depicted in **Exhibit B**, attached hereto  
and made a part hereof.
- G. Schedule of Base Rent:

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
Rent Commencement Date	\$422,500.00	\$35,208.33
Second Lease Year	\$430,950.00	\$35,912.50
Third Lease Year	\$439,569.00	\$36,630.75
Fourth Lease Year	\$448,360.38	\$37,363.37



confidential  
 Renee Albarano  
 Aug 09, 2019 13:35

- |    |                               |   |             |
|----|-------------------------------|---|-------------|
|    | Fifth Lease Year              | \$457,327.59  | \$38,110.63 |
| H. | Intentionally Omitted         |   |             |
| I. | Intentionally Omitted         |   |             |
| J. | Tenant's Proportionate Share: | One hundred percent (100.00%)   |             |
| K. | Rent Commencement Date:       | Possession Date (defined below)   |             |
| L. | Term:                         | <p>The period of time commencing upon Rent Commencement Date and expiring on the last day of the 60th calendar month in which the Rent Commencement Date occurs, unless sooner terminated as may be herein provided ("Term"). The first "Lease Year" shall be the period from the Rent Commencement Date to the last day of the twelfth (12th) full calendar month following the calendar month in which the Rent Commencement Date occurs. Thereafter, each consecutive twelve (12) calendar month period shall constitute one (1) Lease Year.</p> |             |
| M. | Security Deposit:             | \$240,624.99 (subject to adjustment pursuant to Paragraph 3 hereof).  |             |
| N. | Permitted Uses:               | <p>Tenant shall use and occupy the Premises only for operating a warehouse and logistics facility and for no other purpose.</p>   |             |
| O. | Broker(s):                    | None  |             |
| P. | Building:                     | <p>The improvements located on the Property.</p>  |             |

Attachments to Lease

- Exhibit A: Legal Description
- Exhibit B: Depiction of Premises
- Exhibit C: Roof Report

## II. Premises and Term

A. In consideration of the obligation of Tenant to pay rent and the other terms, provisions, and covenants hereof, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the Premises for the Term.

B. Tenant agrees to accept the Premises on the date upon which Landlord becomes the owner of the Property (the "**Possession Date**"). Tenant acknowledges that no representations as to the repair of the Premises, nor promises to alter, remodel or improve the Premises, have been made by Landlord, except as expressly set forth in this Lease.

## III. Base Rent and Security Deposit

A. Commencing on the Rent Commencement Date, but subject to the provisions of this Lease, Tenant agrees to pay to Landlord in lawful money of the United States Base Rent from and after the Rent Commencement Date during the Term at the rates set forth above per month, in advance. Each monthly installment of Base Rent shall be due and payable without demand on or before the first day of each calendar month commencing on the Rent Commencement Date. If the Rent Commencement Date is not the first day of a calendar month, the rental payment for such fractional calendar month shall be prorated based upon the actual number of days in such month and shall be due on the Rent Commencement Date. Tenant hereby acknowledges and agrees that the obligation to pay Base Rent and all other amounts under this Lease commences upon the Rent Commencement Date.

B. Tenant's initial Security Deposit shall be as set forth in Section I above. Landlord shall receive from Tenant the Security Deposit on or prior to the Date of Lease, and the Security Deposit shall be held by Landlord, without liability for interest except as required by law, as security for the performance of Tenant's obligations under this Lease. The Security Deposit is not an advance payment of Base Rent or Additional Rent or a measure of Tenant's liability for damages. Notwithstanding anything to the contrary in this Lease, an amount equal to \$135,000.00 of the Security Deposit (the "**Roof Deposit**") shall be held in escrow by Landlord until such time as Tenant completes the installation of the Replacement Roof (as defined below). The Roof Deposit shall be released to Tenant for the payment of all costs, materials, and labor for such Replacement Roof within five (5) days after Tenant's delivery of the following materials to Landlord: (i) sufficient evidence that the installation of the Replacement Roof has been completed in accordance with the specifications outlined in Section VIII(F) below, (ii) lien waivers related to all such work, and (iii) written evidence of all costs incurred by Tenant and final payment by Tenant of all such costs in connection with the Replacement Roof. Landlord may, from time to time, without prejudice to any other remedy, use all or a portion of the Security Deposit to satisfy past due Base Rent or Additional Rent or to cure any uncured Event of Default by Tenant. If Landlord uses the Security Deposit, Tenant shall, within ten (10) days after receipt of written demand, restore the Security Deposit to the amount required under this Lease. To the extent the Security Deposit is not applied in accordance with this Section III(B), the Security Deposit or any balance thereof shall be returned to Tenant (or at Landlord's option to the last assignee of Tenant's interest hereunder) within thirty (30) days after the later of: (i) the expiration of the Term or (ii) Tenant's vacation of the Premises. The Security Deposit shall be delivered in cash, or at Tenant's option, in lieu of cash, Tenant may provide Landlord with a

letter of credit in the full amount of the Security Deposit naming Landlord as the beneficiary ("**Letter of Credit**"). The Letter of Credit (if applicable) shall be "evergreen", irrevocable, fully transferable by Landlord without fees or penalties, have a term of not less than one (1) year, shall be issued by and drawable upon a bank reasonably acceptable to Landlord, and shall be otherwise reasonably acceptable in form and substance to Landlord. The Letter of Credit (if applicable) shall also provide that it shall be deemed automatically renewed, without amendment, for consecutive periods of one (1) year each during the Term unless the issuing bank sends a notice ("**Non-Renewal Notice**") to Landlord in accordance with the notice provisions of this Lease, not less than forty-five (45) days prior to the then expiration date of the Letter of Credit, stating that the issuing bank has elected not to renew the Letter of Credit. In the event that Landlord receives a Non-Renewal Notice and Tenant fails to issue a replacement Letter of Credit to Landlord prior to the expiration date of the then current Letter of Credit, Landlord shall have the right to draw the full amount of the Letter of Credit and shall thereafter hold or apply the cash proceeds of the Letter of Credit pursuant to the terms of this Lease, until Tenant delivers to Landlord a replacement letter of credit meeting the requirements of this Article III(B). The issuing bank shall agree with all drawers, endorsers, and bona fide holders that drafts drawn under and in compliance with the terms of the Letter of Credit will be duly honored upon presentation to the issuing bank at an office location in Pinellas County, Florida. Any draft hereunder shall be accompanied by a written certification by the Landlord that Tenant has failed to pay past due Base Rent or Additional Rent or to cure an uncured Event of Default, and that any applicable notice and cure periods have passed.

C. For purposes of this Lease, "**Additional Rent**" shall mean all amounts other than Base Rent required or provided to be paid by Tenant under this Lease, and the failure to pay the same continuing beyond any applicable notice, cure and/or grace periods shall be treated in all events as the failure to pay Base Rent. If Landlord pays any monies or incurs any expense to correct an uncured breach of this Lease by Tenant or to do anything in this Lease required to be done by Tenant, all amounts so paid or incurred plus a five (5) percent fee for overhead and costs shall, on notice to Tenant, be considered Additional Rent payable by Tenant, to be paid by Tenant with the later to occur of: (i) the first monthly installment of Monthly Base Rent thereafter becoming due and payable and (ii) thirty (30) days following Tenant's receipt of written notice from Landlord to Tenant, and may be collected as by law provided in the case of rent.

D. Intentionally Omitted

E. Tenant will deliver to Landlord within sixty (60) days of the expiration of each calendar year, Tenant's balance sheet and income statement and any other reasonably requested financial statements pertaining to the Premises, with such financial statements being certified by the managing member, manager or an officer of Tenant.

#### IV. Taxes; Triple Net Lease

A. Tenant shall pay, prior to delinquency, all taxes coming due which accrue during or after the Term of this Lease against Tenant's interest in this Lease, as well as all taxes levied against Tenant's personal property, fixtures and improvements in the Premises.

confidential  
Renee Albarano  
Aug 09, 2019 13:35

B. Tenant agrees to pay to Landlord Tenant's Proportionate Share of the Real Estate Taxes assessed against the Premises, with it being understood and agreed that certain expenses related to the Building as set forth below may be allocated to the Premises and those expenses set forth below shall be deemed Real Estate Taxes for purposes of this Lease. The term "**Real Estate Taxes**" for the purpose of the Lease means: real estate taxes, general or special (including interest paid with any installments) any other such taxes, charges and assessments, in each case, which are to be paid with respect to the Building, and any improvements thereto; and reasonable legal fees, expenses or costs incurred by Landlord on a contingent basis in protesting or consulting with regard to protesting any assessments, levies or the tax rate, but, with respect to such legal fees, expenses and costs, only if and to the extent the same actually result in a decrease of Real Estate Taxes. "Real Estate Taxes" shall specifically exclude any inheritance and gift taxes, capital levy, franchise, estate, income, profit, transfer or recordation taxes, capital levies, late payment charges and penalties, provided (in the case of late payment charges and penalties). Tenant shall pay Landlord Tenant's Proportionate Share of such Real Estate Taxes within the time period provided in this Lease, and special assessments levied against or allocated to the Property, which shall be reduced by any refunds, abatements, reductions or credits received by Landlord. Tenant's Proportionate Share of the Real Estate Taxes payable hereunder for the first and last Lease Years of the Term shall be prorated on the basis of a 365-day year, with Tenant's obligation to commence as of the Rent Commencement Date and terminate as of the expiration of the Term.

In furtherance of the above, Tenant's estimated Proportionate Share of Real Estate Taxes shall be paid by Tenant to Landlord in equal monthly installments on the first day of each calendar month during the Term in an amount of one-twelfth (1/12th) of the amount reasonably and consistently estimated by Landlord (based upon 110% of the most recently available tax bills) to be Tenant's Proportionate Share of Real Estate Taxes for such year.

Within thirty (30) business days after the date that Landlord receives a tax bill for Real Estate Taxes or the allocation of such taxes to the Building, Landlord shall deliver to Tenant a statement showing in detail for such year the amount of such Real Estate Taxes payable by Tenant and the amount of the monthly payments previously made by Tenant on account thereof. If the Real Estate Taxes for such year, shown in such statement, whenever delivered to Tenant, exceed the payments on account made by Tenant, Tenant shall pay Landlord the deficiency within fifteen (15) days after receipt of such statement. If such statement shows that the payments on account made by Tenant exceed the Real Estate Taxes payable by Tenant, Landlord shall apply such excess on any amounts next falling due or, if no payments are next due by Tenant, such excess shall be refunded by Landlord to Tenant simultaneously with such statement (and the foregoing provisions shall survive the expiration or sooner termination of this Lease).

C. Upon termination of this Lease, Tenant shall deposit with Landlord the amount, as reasonably estimated by Landlord based upon actual tax bills if available, and if not available, on 110% of the most recently available tax bills, that will be due from Tenant for any Real Estate Taxes accruing during the Term but not yet payable, and upon issuance of any such bills each party shall pay to or reimburse to the other party, as the case may be, the appropriate amount necessary such that Tenant pays its Proportionate Share of the Real Estate Taxes.



D. In the event any contest or appeal of the Real Estate Taxes for any given year shall result in a refund, abatement, reduction or credit of Real Estate Taxes previously paid by Tenant, Tenant will receive a credit against the next installment of Base Rent then due in the amount of Tenant's Proportionate Share of the net refund, abatement, reduction or credit, inclusive of any interest received by Landlord by reason of the refund, abatement, reduction or credit of Real Estate Taxes (i.e., the net amount remaining after paying all costs and expenses of securing the refund, abatement, reduction or credit, including reasonable attorney's fees). In the event Landlord actually receives such refund, abatement, reduction or credit after the Term, Landlord shall promptly pay to Tenant Tenant's Proportionate Share of such refund, abatement, reduction or credit. Tenant's obligation to pay Real Estate Taxes shall in no event include penalties or interest imposed for late payment of Real Estate Taxes or late or non-filing of income and expense reports, unless attributable to Tenant's failure to pay Landlord Tenant's Proportionate Share of such taxes.

E. It is the intention of the parties and they hereby agree that this is an absolutely triple net Lease, and Landlord will have no obligation to provide any services, perform any acts or pay any expenses, charges, obligations or costs of any kind whatsoever with respect to the Premises, including the Building's share of all such payments made in connection with any adjoining properties that are operated, maintained and repaired in connection with the Property under any reciprocal easement agreement, operating agreement or other such agreement providing for the joint or shared operation of the Property and adjoining property. Should Landlord be entitled and elect to provide any services, perform any acts or pay any expenses which Tenant is responsible for under this Lease, Tenant hereby agrees to reimburse Landlord for its out-of-pocket expenses in addition to a fee of five (5) percent of the total cost of such expenses. Tenant hereby agrees to pay one hundred percent (100%) of any and all Operating Expenses as hereafter defined for the entire Term when due and payable. The term "**Operating Expenses**" includes, but is not limited to, the total costs and expenses incurred in operating, maintaining, protecting, managing, replacing and repairing (i) the exterior and interior of the building, roof, slab and all building facilities and mechanical and electrical equipment and systems on the Premises; (ii) the parking, paved, landscaped, sidewalk and other exterior portions of the Premises; (iii) all lighting, electrical, plumbing, drainage and other mechanical and utility systems; (iv) planting, replanting and replacing decorations, flowers and landscaping; (v) signage; (vi) security systems; (vii) fire protection systems, including sprinkler system; (viii) water, power and sewerage charges; (ix) net premiums for all insurance carried by Landlord in connection with the Building (or any such insurance costs allocated to the Building by the Building's owner); (x) personal property taxes, if any; and (xi) fees for required licenses and permits. It is specifically understood and agreed that Landlord will have no obligation to expend any monies with regard to the Premises during the Term other than income taxes and any financing associated with the Premises.

F. Neither Landlord nor any company, firm or individual operating, maintaining, managing or supervising the Premises, nor any of their respective agents or employees, shall be liable to Tenant or any of Tenant's employees, agents, customers or invitees or anyone claiming through or under Tenant, for any damages, injuries, losses, expenses, claims or causes of action because of any interruption or discontinuance at any time for any reason in the furnishing of any services, nor shall any such interruption or discontinuance be deemed an eviction or disturbance

of Tenant's use or possession of the Premises or any part thereof; nor shall any such interruption or discontinuance relieve Tenant from full performance of Tenant's obligations under this Lease.

## V. Signs

Tenant may, at its sole cost and expense, install and maintain identifying signage on the exterior of the Building and at the entrance to the Premises to the maximum extent permitted by the City of St. Petersburg, Florida. Tenant's signage shall be professionally designed and manufactured and subject to Landlord's prior written approval as to design, size, location and manner of attachment, which approval shall not be unreasonably withheld, conditioned or delayed, provided however that all Tenant signage existing at the Premises as of the Possession Date is hereby deemed authorized, subject to all applicable laws (as defined below). Notwithstanding the foregoing, but subject to governmental approval, the entrance signage will be permitted to include Tenant's logo and full trade name. The installation and maintenance of any and all signs by or on behalf of Tenant shall be in full compliance with all applicable laws, ordinances, regulations, rules and orders of any governmental authority having jurisdiction ("**Laws**"), and Tenant shall obtain all necessary licenses and permits in connection therewith. Tenant shall install and promptly repair, maintain and service all such signs in accordance with proper techniques and procedures, and shall indemnify, hold harmless and defend Landlord from all loss, cost, damage or expense, including reasonable attorney's fees, arising out of any claim relating to the installation, existence, operation, maintenance, repair, removal or condition of any such sign. On or before the termination of this Lease, Tenant shall, at its sole expense, remove all such signs in a manner reasonably satisfactory to Landlord and repair, at Tenant's sole cost and expense, any injury or damage caused by said removal to the same or better condition existing as of the Possession Date. All costs and expenses relating to all such signs shall be borne solely and exclusively by Tenant.

## VI. Premises Alterations

Any alterations, additions or replacements to the Premises (except for interior, nonstructural, cosmetic and decorative alterations which do not affect the mechanical, electrical, plumbing or HVAC systems ("**Cosmetic Alterations**")), require the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Whenever Tenant proposes to do any construction work within the Premises (other than Cosmetic Alterations), Tenant shall first furnish to Landlord plans and specifications covering such work, and, upon completion of such work, Tenant shall furnish to Landlord as-built plans and specifications. In no event shall any construction work (other than Cosmetic Alterations) be commenced within the Premises without Landlord's written approval of such plans and specifications. All Tenant's Work and all other work in connection with any alterations, improvements, changes, additions or repairs in the Premises or the Building made by or for the benefit of Tenant shall be performed in full compliance with all laws, ordinances, regulations, rules and requirements of all governmental entities having jurisdiction and in full compliance with all insurance rules, orders, directions, regulations and requirements, and Tenant shall be responsible for all such compliance. If Landlord or Tenant makes any alterations to the Premises which affect compliance with the Americans With Disabilities Act ("**ADA**"), Landlord or Tenant, as the case may be, shall be responsible for any costs of compliance with the ADA resulting from such alterations.

## **VII. Utilities**

A. From and at all times after the Possession Date, Tenant shall obtain in its name and provide for and promptly pay all charges, including, but not limited to, an account set, meter, or new account fees or charges, for electricity, water, sewer, telephone, cable, garbage disposal, gas (where applicable), chilled water service (where applicable) and any other necessary or desired utilities furnished to the Premises. Landlord shall be under no obligation to furnish any utility services to Tenant.

B. Landlord shall not be liable nor shall any rent be abated in the event of any interruption in the supply of any utilities, unless such interruption is due to the gross negligence or willful misconduct of Landlord or Landlord's employees, agents or independent contractors. Tenant agrees that it will not install any equipment, which will exceed or overload the capacity of any utility facilities serving the Premises and that if any equipment installed by Tenant shall require additional utility facilities, installation of the same shall be at Tenant's expense, but only after Landlord's written approval of same, which shall not be unreasonably withheld, conditioned or delayed.

## **VIII. Use of Premises**

A. The Premises shall be used for the Permitted Use and for no other purpose. Tenant will not occupy or use, nor permit any portion of Premises to be occupied or used, for any use or purpose which is unlawful in part or in whole, or extra hazardous on account of fire, nor permit anything to be done which will render void or in any way increase the rate of fire insurance on the Building or its contents, and Tenant, shall immediately cease and desist from such use, paying all costs and expenses resulting therefrom. Tenant will conduct its business and control its agents, employees and invitees in such a manner as not to create any unreasonable nuisance, nor unreasonably interfere with other tenants or Landlord in the management of the Building.

B. Tenant shall comply with all laws applicable to the use and its occupancy of the Premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of any violations or nuisances in or upon, or connected with, the use of the Premises for the Permitted Use, all at Tenant's sole expense.

C. Tenant shall maintain and repair in a commercially reasonable clean and safe condition the exterior walls, structural columns, and any roof of the Building, and shall use commercially reasonable efforts (i) to maintain and repair the portions of the Building to be maintained or repaired, and (ii) to maintain the Common Areas of the Building that are under its control in a commercially reasonable, clean and safe condition. Tenant will make all needed (in Tenant's reasonable discretion, for Tenant's Permitted Use) maintenance and repairs to the Premises, including, but not limited to, the heating, ventilating and air conditioning systems exclusively serving the Premises, all fixtures installed by Tenant, the exterior and interior portion of all doors, windows, window frames, plate glass, door closures, door frames and store fronts, all plumbing and sewage within and for the exclusive use of the Premises, all electrical systems within and exclusively serving the Premises, all sprinkler systems within and exclusively serving the Premises, all interior walls, floors and ceilings.



D. Tenant shall pay within twenty (20) days of receipt of demand, as Additional Rent, the full cost of repairing any damage to the Premises, the Building, or related facilities resulting from and/or caused in whole or in part by the negligence or misconduct of Tenant, its agents, servants, employees, patrons, customers, or any other person entering upon the Property as a result of Tenant's business activities or resulting from Tenant's default hereunder, provided that Tenant shall be given the opportunity to first make such repairs within thirty (30) days from receipt of Landlord's demand.

E. Tenant agrees that Tenant, its agents and contractors, licensees, or invitees shall not handle, use, manufacture, store or dispose of any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, asbestos, PCB's, petroleum products or derivatives or other similar substances (collectively "**Hazardous Materials**") on, under, or about the Premises against the applicable laws; provided that Tenant may handle, store, use or dispose of products containing small quantities of Hazardous Materials, which products are of a type customarily found in retail businesses and households (such as cleaning supplies normally used in warehouses and logistics facilities) or used for Tenant's Permitted Use; provided further that Tenant shall handle, store, use and dispose of any such Hazardous Materials in a safe and lawful manner and shall not allow such Hazardous Materials to contaminate the Premises, the Building, and/or Property, or the environment. Tenant further agrees that Tenant will not permit any substance to come into contact with groundwater under the Premises. Without limiting the above, Tenant shall reimburse, defend, indemnify and hold Landlord harmless from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with the use, manufacture, storage, or disposal of Hazardous Materials by Tenant, its agents or contractors on, under or about the Premises including, without limitation, the costs of any required or necessary investigation, repair, cleanup or detoxification and the preparation of any closure or other required plans in connection therewith, compelled by governmental authority. The indemnity obligations of Tenant under this clause shall survive any termination of the Lease. Any of Tenant's insurance insuring against claims of the type dealt with in this Paragraph shall be considered primary coverage for claims against the Premises arising out of or under this Paragraph.

F. On or before the final day of the Third Lease Year, Tenant shall, at Tenant's sole cost and expense, furnish and install a water tight roof on that portion of the roof depicted as "Roof B" on Exhibit C attached hereto (the "**Replacement Roof**"), which Replacement Roof shall substantially comply with the requirements listed by Isaacs Roofing (provided that Tenant may select another contractor for the work) in the attached Exhibit C and which shall be completed in a good and workmanlike manner. Tenant shall furnish Landlord with plans and specifications for the Replacement Roof for Landlord's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant's construction of the Replacement Roof shall comply with all applicable Laws, including fire, health, and safety codes, and all required permits for the Replacement Roof shall be diligently pursued and obtained and fees paid therefor by Tenant.

## **IX. Inspections**

Landlord shall have the right to enter the Premises during Tenant's business hours following reasonable advance notice (except in the case of emergencies), for the following purposes: (a) to ascertain the condition of the Premises; (b) to determine whether Tenant is diligently fulfilling Tenant's responsibilities under this Lease; (c) to clean and to make such repairs and maintenance as may be required or permitted to be made by Landlord under the terms of this Lease; or (d) to do any other act or thing reasonable or advisable to preserve and maintain the Premises and the Building, provided that in each such case Landlord shall conduct such entry in such a manner and at such times as to minimize interference with the conduct of Tenant's business. During the last six (6) months of the Term and at any time upon the occurrence and continuation of a Tenant Event of Default, Landlord shall have the right to enter the Premises at any reasonable time during business hours for the purpose of showing the Premises. Tenant shall supply Landlord with keys or entry codes and with the instructions for arming and disarming Tenant's security alarm system, if any.

## **X. Assignment and Subletting**

A. Tenant shall not have the right to assign or pledge this Lease or to sublet the whole or any part of the Premises, or permit the use or occupancy of the Premises by anyone other than Tenant, without the prior written consent of Landlord, in its sole discretion, and such restrictions shall be binding upon any assignee or subtenant to which Landlord has consented. Landlord may object to such assignment, pledge or sublease for reasons including, but not limited to, the net worth, liquidity, or operational experience of such potential subtenant, third party, and/or any lease guarantor. In the event Tenant desires to sublet the Premises, or any portion thereof, or assign this Lease, Tenant shall give written notice thereof to Landlord not less than thirty (30) days prior to the proposed commencement date of such subletting or assignment, which notice shall set forth the name of the proposed subtenant or assignee, the relevant terms of any sublease and copies of financial reports and other relevant financial information of the proposed subtenant or assignee required by Landlord. Notwithstanding any permitted subletting, Tenant shall at all times remain directly, primarily and fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease. Upon a permitted assignment consented to in writing by Landlord, Tenant shall be released from all of its obligations under this Lease. Notwithstanding anything to the contrary contained herein, (i) any sale or transfer, in one or more transactions, of less than controlling interest of the capital stock or other ownership interests of Tenant, including redemption or issuance of additional stock or ownership interests of any class, or (ii) any assignment of this Lease to the purchaser of all or substantially all of the assets or ownership interest of Tenant or the new or surviving entity in the event of the merger or consolidation of Tenant (provided that (i) Tenant shall provide Landlord with the financial statements of such purchasing or surviving entity for review, and (ii) the financial condition of such purchasing or surviving entity is, in the sole judgment of Landlord, equal to or better than the financial condition of Tenant at the time of the execution of this Lease), will not be deemed an assignment, subletting, or any other transfer of the Lease or the Premises requiring Landlord's prior consent.

B. In addition to, but not in limitation of, Landlord's right to approve of any subtenant or assignee, Landlord shall have the option, in its sole discretion, in the event of any proposed assignment or subletting of the entire Premises for the remainder of the Term (that requires Landlord's consent pursuant to the provisions of this Lease), to terminate this Lease as of the date the subletting or assignment is to be effective. The option shall be exercised, if at all, by Landlord giving Tenant written notice thereof within twenty (20) days following Landlord's receipt of Tenant's written notice and accompanying information as required above. If this Lease shall be terminated the Term shall end on the date stated in Tenant's notice as the effective date of the sublease or assignment as if that date had been originally fixed in this Lease for the expiration of the Term.

## **XI. Fire and Casualty Damage**

A. If the Building or Premises are rendered partially or wholly untenable by fire or other casualty, Landlord shall deliver to Tenant a notice as soon as practicable, but in any event within thirty (30) days of such fire or other casualty, setting forth the time, as reasonably determined by Landlord, required to materially restore the Building or Premises. If such damage cannot, in Landlord's reasonable estimation, be materially restored within one hundred eighty (180) days of such damage, then either party may terminate this Lease. A party shall exercise its option by written notice to the other party within twenty (20) days of the receipt of Landlord's determination notice, such termination effective ten (10) days after receipt of such termination notice by the other party. For purposes hereof, the Building or Premises shall be deemed "materially restored" if they are in such condition as would not prevent or materially interfere with Tenant's use of the Premises for the purpose for which it was then being used. If this Lease shall be terminated pursuant to this Article XI, the Term shall end on the effective date of termination as if that date had been originally fixed in this Lease for the expiration of the Term and, if the Premises are untenable in whole or in part following the casualty, the rent payable during the period in which the Premises are untenable shall be reduced in proportion to the rentable square feet of the Premises rendered untenable, or abated completely if Tenant is unable to reasonably utilize the Premises for Tenant's Permitted Use.

B. If this Lease is not terminated pursuant to Paragraph XI.A, then Landlord shall proceed with all due diligence to repair and restore the Building or Premises, as the case may be (except that Landlord may elect not to rebuild if such damage occurs during the last year of the Term exclusive of any option which is unexercised at the date of such damage, unless Tenant agrees to exercise its option to extend the Term) to at least the same condition as existed on the day prior to the casualty. If this Lease shall not be terminated pursuant to this Article XI and if the Premises are untenable in whole or in part following the casualty, the rent payable during the period in which the Premises are untenable shall be reduced in proportion to the rentable square feet of the Premises rendered untenable.

C. In the event that Landlord should fail to complete such repairs and material restoration within one hundred eighty (180) days after the date of such damage, Tenant may at its option terminate this Lease by delivering written notice to Landlord, whereupon the Lease shall end on the date of such notice as if the date of such notice were the date originally fixed in this Lease for the expiration of the Term; provided however, that if construction is delayed because of changes, deletions, or additions in construction requested by Tenant or any force majeure

events, the period for restoration, repair or rebuilding shall be extended for the amount of time Landlord is so delayed, provided that Landlord shall deliver written notice to Tenant of any delay days and Landlord's resulting computation of the extended restoration period, failing which, the 180-day restoration shall not be adjusted. Force majeure delays shall not include delays resulting from changes in economic or market conditions, financial or internal problems of Landlord, nor problems that can be satisfied by the payment of money.

D. In no event shall Landlord be required to rebuild, repair, or replace any alterations which may have been placed in or about the Premises by Tenant. Any insurance which may be carried by Landlord or Tenant against loss or damage to the Building or Premises shall be for the sole benefit of the party carrying such insurance and under its sole control.

E. Notwithstanding anything herein to the contrary, in the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises, Building or Property requires that a material portion of insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease by delivering written notice to Tenant within fifteen (15) days after such requirement is made by any such holder, but not later than forty-five (45) days after the date of such casualty, whereupon the Lease shall end on the tenth (10<sup>th</sup>) day following receipt of such notice by Tenant as if such date were the date originally fixed in this Lease for the expiration of the Term.

F. Each of Landlord and Tenant hereby releases the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire, extended coverage perils, vandalism or malicious mischief, sprinkler leakage or any other perils insured in policies of insurance covering such property, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible, including any other tenants or occupants of the remainder of the Building; provided, however, that this release shall be applicable and in force and effect only to the extent that such release shall be lawful at that time and in any event only with respect to loss or damage occurring during such times as the releasor's policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder and then only to the extent of the insurance proceeds payable under such policies. Each of Landlord and Tenant agrees that it will require its insurance carriers to include in its policies such a clause or endorsement.

## **XII. Liability**

A. Landlord shall not be liable for and Tenant will indemnify and hold Landlord, Landlord's property manager (if any), or any of its or its property manager's officers, members, employees, agents, contractors, business invitees, licensees, customers, clients, family members and guests harmless from any loss, liability, costs and expenses, including reasonable attorney's fees, arising out of any claim of injury or damage on or about the Premises caused by the negligence or misconduct or breach of this Lease by Tenant, its employees, subtenants or invitees. Landlord shall not be liable to Tenant or Tenant's agents, employees, invitees or any person entering upon the Building, Premises, or Property in whole or in part because of Tenant's use of the Premises for any damage to persons or property due to condition, design, or defect in



the Building or its mechanical systems which may exist or occur unless to the extent that any of the foregoing is caused by the misrepresentation, negligence or misconduct of Landlord or breach of this Lease by Landlord, Landlord's property manager (if any), or any of its or its property manager's employees, agents, contractors, business invitees, licensees, customers, clients, family members and guests. Landlord shall not be liable or responsible for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or other matter beyond control of Landlord, or for any injury or damage or inconvenience, which may arise through repair or alteration of any part of the Building, or failure to make repairs, or from any cause whatever, except Landlord's intentional misconduct or gross negligence or the intentional misconduct or gross negligence of Landlord's property manager (if any), or any of its or its property manager's employees, agents, contractors, or licensees.

B. Tenant shall procure and maintain throughout the term of this Lease a policy of insurance (Commercial General Liability Coverage), in form and substance reasonably satisfactory to Landlord, at Tenant's sole cost and expense, insuring both Landlord and its lenders (each as an additional insured or loss payee thereunder, as applicable) and Tenant against all claims, demands or actions arising out of or in connection with: (a) the Premises; (b) the condition of the Premises after the Possession Date; (c) Tenant's operations in and maintenance and use of the Premises to the extent of Tenant's obligations under this Lease; (d) Tenant's indemnity contained in this Article XII. The limits of such policy to be in the amount provided in Article XII.E. below. Tenant shall also maintain property insurance for the full replacement value of Tenant's personal property including its merchandise, inventory, contents, furniture, fixtures, equipment, tenant improvements (subject to a deductible not to exceed \$10,000), and any additions, alterations or improvements made to the Premises during the Term by Tenant or on behalf of Tenant, protecting Landlord and Tenant from damage or other loss caused by fire or other casualty, including, but not limited to, vandalism and malicious mischief, perils covered by extended coverage, theft, sprinkler leakage, water damage (however caused), explosion, malfunction or failure of heating and cooling or similar apparatus, but excluding damage or loss caused by flood or earthquake.

C. Landlord agrees to keep in force and effect property insurance on the Building against fire and such other risks as may be included in extended coverage insurance from time to time on an agreed amount full repair and replacement cost basis. Landlord shall carry such insurance on a Special Cause of Loss Form (All Risk) for the replacement cost value. Such policy shall contain a replacement cost endorsement and a clause pursuant to which the insurance carriers waive all rights of subrogation against the Tenant with respect to losses payable under such policies. Landlord shall also maintain a policy or policies of insurance insuring Landlord for the loss of rental/business and utility interruption in the Property, flood coverage, and coverage for the increase costs of construction due to change in Building ordinance; all of which coverage premiums shall be paid to Landlord as Operating Expenses.

Under this Lease, Landlord and Tenant intend that the risk of loss or damage as described in this Article XII be borne by responsible insurance carriers to the extent above provided, and Landlord and Tenant hereby agree to look solely to, and to seek recovery only from, their respective insurance carriers in the event of a loss of a type described above to the extent that such coverage is agreed to be provided hereunder. For this purpose, any applicable deductible

amount shall be treated as though it were recoverable under such policies. Subject to the provisions of Article XI, Landlord and Tenant agree that application portions of all monies collected from such insurance shall be used for the full compliance of the obligations of Landlord and Tenant under this Lease in connection with damage resulting from fire or other casualty, subject to approval, if appropriate, of Landlord's lender(s), which at the time hold(s) a lien on the property, with respect to restoration of the Building.

D. Tenant shall not be liable for and Landlord agrees to indemnify and hold Tenant, and Tenant's employees, subtenants, invitees, agents, contractors, licensees, customers, and clients harmless from any and all loss, liability, costs and expenses, including reasonable attorney's fees, arising out of any claim of injury or damage on or about the Premises, and/or the Building caused by the negligence or intentional misconduct or breach of this Lease by Landlord, its employees, agents or invitees.

E. Tenant shall, at Tenant's sole cost and expense, maintain, during the Term, Commercial General Liability insurance on an occurrence basis, under policies issued by insurers with an A-VII or better rating per A.M. Best and reasonably approved by Landlord, for personal injury, bodily injury, sickness, disease or death or for damage or injury to or destruction of property (including the loss of use thereof). Commercial General Liability insurance coverage includes:

- 1) Premises Operation;
- 2) Blanket Contractual;
- 3) Independent Contractors;
- 4) Completed Operations; and
- 5) Broad Form Property Damage.

Minimum limits of liability for such Commercial General Liability coverage shall be not less than \$1,000,000 each occurrence; \$1,000,000 Products and Completed Operations; \$2,000,000 General Aggregate; and \$1,000,000 Personal and Advertising Injury.

Tenant's policy or policies shall name Landlord, its agents, servants and employees as additional insureds. Tenant shall deliver such policies or certificates of insurance evidencing such coverage to Landlord upon execution hereof and thereafter not less than thirty (30) days prior to the expiration date of any such policy. Tenant shall use commercially reasonable efforts to cause Tenant's policy or policies to contain an agreement by the insurer that such policy or policies shall not be canceled without at least thirty (30) days written notice to Landlord. Tenant's insurance should be made primary over any other valid and collectible insurance available to such additional insured.

Tenant shall maintain worker's compensation coverage for at least the statutory limits.

F. Anything to the contrary herein notwithstanding, no general or limited partner of Landlord, or any general or limited partner of any partner of Landlord, or any shareholder of any corporate partner of any partner of Landlord, or any other holder of any equity interest in Landlord, or in any entity comprising Landlord or its partners, shall be personally liable with respect to any of the terms, covenants, conditions and provisions of this Lease, or the

performance of Landlord's obligations under this Lease, nor shall Landlord, Tenant or any of either party's said constituent parties have any liability to the other for any consequential damages. The liability of Landlord for Landlord's obligations under this Lease shall be limited to Landlord's interest in the Premises, and Tenant shall look solely to the interest of Landlord, its successors and assigns, in the Premises, for the satisfaction of each and every remedy of Tenant against Landlord.

### **XIII. Condemnation**

A. If any substantial part of the Property, Building or Premises should be taken for any public or quasi-public use under Laws (a "**Taking**") and the Taking would prevent or materially interfere with the use of the Building or Premises for the purpose for which it is then being used, Landlord or Tenant may terminate this Lease by giving at least sixty (60) days' written notice of termination to Tenant or Landlord, as applicable, within thirty (30) days after such condemnation and this Lease shall terminate on the date specified in such notice. If a substantial part of the Property, Building or Premises shall be subject to a Taking which would prevent or materially interfere with Tenant's use of the Premises for the Permitted Use, Tenant may terminate this Lease by giving at least sixty (60) days' written notice of termination to Landlord no later than thirty (30) days after the Taking and this Lease shall terminate on the date specified in such notice as if that date were set for the expiration of the full term of this Lease.

B. If part of the Building or Premises shall be taken in a Taking, and this Lease is not terminated as provided in Article XIII.A, this Lease shall not terminate but the rent payable hereunder from the date of the Taking: (i) to the extent, during the restoration Tenant is unable to continue business operations at the Premises for the Permitted Use and (ii) during the unexpired portion of this Lease shall be reduced in proportion to the rentable square feet of the Premises rendered unsuitable to Tenant. Landlord shall, as soon as is practicable, restore the Building and Premises to a condition suitable for Tenant's use, as near to the condition thereof immediately prior to such Taking as is reasonably feasible under all the circumstances. Any repair and/or restoration work shall be made in compliance with all applicable laws, rules and regulations then in effect.

C. In the event of any such Taking, Landlord and Tenant shall each be entitled to receive and retain such separate awards and/or portion of lump sum awards as may be allocated to their respective interests in any condemnation proceedings. The foregoing notwithstanding, Tenant shall be entitled to claim, prove and receive in the condemnation proceedings such awards as may be allowed for relocation expenses and for fixtures and other equipment installed by it which shall not, under the terms of this Lease, be or become the property of Landlord at the termination hereof, but only if such awards shall be made by the condemnation court in addition to and not in diminution of the award to Landlord and is stated separately from the award made by the condemnation court for the Building or part thereof so taken.

### **XIV. Holding Over**

Tenant will, at the termination of this Lease by lapse of time or otherwise, yield up immediate possession of the Premises to Landlord. If Tenant retains possession of the Premises or any part thereof after such termination, then Landlord may, at its option, serve written notice



upon Tenant that such holding over constitutes any one of (a) creation of a tenancy at sufferance, or (b) creation of a month to month tenancy provided, however, that the Base Rent shall, in addition to all other sums which are to be paid by Tenant hereunder, be equal to 150% of the Base Rent being paid under this Lease immediately prior to such termination. If no such notice is served, then a tenancy at sufferance shall be deemed to be created at the Base Rent in the preceding sentence.

#### **XV. Quiet Enjoyment**

Landlord represents and warrants that Tenant, while paying the rental and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Premises for the Term without hindrance or molestation from Landlord subject to the terms and provisions of this Lease. Any time that Landlord or its agents enters the Premises pursuant to the terms of this Lease or otherwise takes any action permitted to be taken pursuant to this Lease, that interferes with Tenant's quiet enjoyment of the Premises, all reasonable efforts shall be made to minimize such interference.

#### **XVI. Events of Default.**

Each of the following events shall be deemed to be an "**Event of Default**" by Tenant under this Lease:

A. Tenant shall fail to pay when due any un-disputed sum of money due to be paid to Landlord, with such failure continuing for more than five (5) days after receipt of written notice of such delinquency from Landlord, which notice and five (5) day cure period shall be provided no more than twice every twelve (12) months during the Term, whether such sum be any installment of the Base Rent, any other amount treated as Additional Rent hereunder, or any other un-disputed payment or reimbursement to Landlord required herein, whether or not treated as Additional Rent hereunder;

B. Tenant shall fail to comply with any term, provision or covenant of this Lease other than by failing to pay when or before due any un-disputed sum of money becoming due to be paid to Landlord hereunder (all disputed sums shall be paid by Tenant into an escrow account to be held by a third party mutually acceptable to Landlord and Tenant until such dispute is resolved), and such failure shall continue for thirty (30) days after Tenant's receipt of written notice from Landlord (except that such thirty (30) day period shall be extended for such additional period of time as may reasonably be necessary to cure such default, provided such default, by its nature, cannot be cured within such thirty (30) day period, and provided further that Tenant commences to cure such default within such thirty (30) day period and is, at all times thereafter, in the process of diligently curing the same);

C. Tenant shall become insolvent, admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency statute, make an assignment for the benefit of creditors, make a transfer in fraud of creditors, apply for or consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement

under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable law or statute of the United States or any state thereof;

D. A court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant a bankrupt, or appointing a receiver of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof.

## **XVII. Remedies**

A. Upon the occurrence and during the continuation of an Event of Default, Landlord shall have the option to pursue any one or more of the following remedies:

i. Landlord may, at its election, terminate this Lease or terminate Tenant's right to possession only, without terminating the Lease, in each case, upon not less than seven (7) days written notice to Tenant;

ii. Upon any termination of this Lease or upon any termination of Tenant's right to possession without termination of the Lease, Tenant shall surrender possession and vacate the Premises, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Premises in such event under any required process of law and to repossess Landlord of the Premises as of Landlord's former estate and to expel or remove Tenant and any others who may be occupying or within the Premises and to remove any and all property therefrom, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without incurring any liability for any damage resulting therefrom, Tenant hereby waiving any right to claim damage for such reentry and expulsion, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law or in equity;

iii. Upon any termination of this Lease Landlord shall be entitled to recover as damages: (y) all Base Rent, including any amounts treated as Additional Rent hereunder, and other sums, in each case, due and payable by Tenant on the date of termination, an amount equal to (A) the sum of (1) an amount equal to the then present value of the Base Rent, including any amounts treated as Additional Rent hereunder, and other sums provided herein to be paid by Tenant for the residue of the Term, less the then present value of the fair rental value of the Premises for such residue (taking into account the time and expense necessary to obtain a replacement tenant or tenants, including expenses hereinafter described relating to recovery of the Premises, preparation for reletting and for reletting itself), and (2) the cost of performing any other covenants which would have otherwise been performed by Tenant less (B) the net proceeds received by Landlord from any reletting prior to the date this Lease would have expired if it had not been terminated, and (z) reasonable attorneys' fees and costs incurred by Landlord;

iv. Upon any termination of Tenant's right to possession only without termination of the Lease, Landlord may, at Landlord's option, enter into the Premises, remove Tenant's signs

confidential  
Renee Albarano  
Aug 09, 2019 13:35

and other evidences of tenancy, and take and hold possession thereof as provided above, without such entry and possession terminating the Lease or releasing Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay the Base Rent, including any amounts treated as Additional Rent, hereunder for the full term;

v. Landlord shall use reasonable efforts to relet the Premises or any part thereof for such rent and upon such terms as Landlord, in its sole discretion, shall determine (including the right to relet the Premises for a greater or lesser term than that remaining under this Lease, the right to relet the Premises as a part of a larger area, and the right to change the character or use made of the Premises). In any such case, Landlord may, but shall not be required to, make repairs, alterations and additions in or to the Premises and redecorate the same to the extent Landlord deems necessary or desirable, and Tenant shall, upon demand, pay the reasonable cost thereof, together with Landlord's reasonable expenses of reletting, including, without limitation, any broker's commission incurred by Landlord. Landlord agrees to make commercially reasonable efforts to mitigate damages under this Lease.

vi. Any and all property which may be removed from the Premises by Landlord pursuant to the authority of the Lease or of law, to which Tenant is or may be entitled, may be handled, removed and stored, as the case may be, by or at the direction of Landlord at the risk, cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control.

Upon Tenant's failure to pay any installment of rent, including any amount treated as Additional Rent, or other un-disputed sums hereunder within five (5) days of when such installment or other charge is due (and within any notice and cure period, if applicable), Tenant shall pay to Landlord within seven (7) days following Tenant's receipt of a written demand from Landlord a late charge in an amount equal to five percent (5%) of such installment or other charge overdue in such month. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law or in equity and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or in equity (all such remedies being cumulative), nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained.

#### **XVIII. Intentionally Deleted.**

#### **XIX. Mortgages**

This Lease and all rights of Tenant hereunder are hereby subject and subordinate to any mortgages and deeds of trust now or at any time hereafter constituting a lien or charge upon the Property, or the improvements situated thereon and to all amendments, modifications, replacements or renewals thereof. This provision shall be self-operative without the execution of

confidential  
Renee Albarano  
Aug 09, 2019 13:35

confidential  
Renee Albarano  
Aug 09, 2019 13:35

any further instruments. Notwithstanding the foregoing, if a mortgagee, trustee, or holder of any such mortgage or deed of trust ("**Mortgagee**") elects, in its sole discretion, to have this Lease be superior to any such mortgage or deed of trust instrument, then by written notice of such election by Mortgagee to Tenant, this Lease shall be deemed superior to such lien whether this Lease was executed before or after said mortgage or deed of trust. In furtherance of the foregoing, Tenant shall, within ten (10) days receipt of written demand by Landlord, execute any instruments, releases or other documents which may be reasonably requested by a Mortgagee for the purpose of evidencing the subordination (or, if applicable, the superiority) of this Lease to the lien of any mortgage or deed of trust in favor of such Mortgagee, so long as any such instrument or document provides that this Lease and all rights of Tenant hereunder shall not be disturbed in the event that any such Mortgagee, or any assignee or affiliate of Mortgagee, becomes owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise (each a "**Mortgagee Conveyance**") so long as Tenant is not in default under this Lease beyond any applicable notice or cure period. Tenant agrees that upon the occurrence of a Mortgagee Conveyance, Tenant shall attorn to and recognize the resulting fee simple of the Property as the landlord under this Lease for the remainder of the term of this Lease.

## **XX. Mechanic's and Other Liens; Construction Liens**

A. Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord in the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs, and each such claim shall affect and each such lien shall attach to, if at all, only the leasehold interest granted to Tenant by this Lease. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises or the improvements thereon and that it will save and hold Landlord harmless from any and all loss, liability, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of the Landlord in the Premises or under the terms of this Lease. Tenant will take commercially reasonable efforts not to permit any mechanic's lien or liens or any other liens which may be imposed by law affecting Landlord's or its Mortgagees' interest in the Premises or the Building to be placed upon the Premises or the Building arising out of any action. If any such lien shall remain in force and effect for ten (10) days after receipt of written notice thereof from Landlord to Tenant, which Tenant has not bonded over or discharged, Landlord shall have the right and privilege of paying and discharging the same or any portion thereof, and any amounts so paid, including expenses and interest, shall be so much Additional Rent hereunder due from Tenant to Landlord and shall be paid to Landlord on rendition of bill therefor.

B. Pursuant to Florida Statutes 713.10, Landlord shall not be liable for, nor shall any interest of Landlord in the Premises, be subject to any liens, including liens for any work, labor, services, tools, materials, fixtures, equipment, furnishings or appliances heretofore or hereafter performed, provided or furnished on or for the benefit of the Premises or by or at the request of Tenant or any of Tenant's subtenants, such as, but not limited to, the construction, installation and furnishing of the Premises and any alterations, additions, maintenance or repairs thereto. No

confidential  
Renee Albarano  
Aug 09, 2019 13:35



confidential  
Renee Albarano  
Aug 09, 2019 13:35

construction or other lien, including any lien for any such work, labor, services, tools, materials, fixtures, equipment, furnishings or appliances, shall attach to, or in any manner encumber Landlord's interest in the Premises, but, instead, shall attach and encumber only to the interests of Tenant under this Lease or any subleasehold interest of Tenant's subtenants, as applicable. Tenant shall not have the authority to bind Landlord or its Premises, property, rights or interests in any oral, written, express or implied contract to be liable for, or to pay for, any work, labor, services, tools, materials, fixtures, equipment, furnishings or appliances heretofore or hereafter performed, provided or furnished on or for the benefit of the Premises or by or at the request of Tenant or any of Tenant's subtenants. In advance of the performance or furnishing of any goods, services, licenses or rights by any person, Tenant shall, in writing, notify all contractors, suppliers and other persons or entities providing any such work, labor, services, tools, materials, fixtures, equipment, furnishings or appliances of this provision.

#### **XXI. Notices**

Any notice or document required or permitted to be delivered under this Lease shall be addressed to the intended recipient, shall be transmitted by fully prepaid registered or certified United States Mail return receipt requested, or by reputable independent overnight delivery service furnishing a written record of delivery, and shall be deemed to be delivered when delivered, attempted to be delivered, or delivery is refused at the address set forth in Article I, or at such other address as addressee has then last specified by written notice delivered in accordance with this Article XXI. All parties included within the terms "Landlord" and "Tenant," respectively, shall be bound by notices given in accordance with the provisions of this Article to the same effect as if each had received such notice.

#### **XXII. Certain Rights Reserved To The Landlord**

The Landlord reserves and may exercise the following rights without affecting Tenant's obligations hereunder:

- A. to change the name or street address of the Building;
- B. to install and maintain a sign or signs on the exterior of the Building;
- C. to have access for the Landlord and the other tenants of the Building to any mail chutes located on the Premises according to the rules of the United States Post Office; and
- D. to take any and all measures, including inspections, repairs, alterations, additions and improvements to the Premises or Building, as may be necessary for the safety, protection or preservation of the Premises or Building or the Landlord's interests, or as may be necessary in the operation of the Building, provided that no such change shall unreasonably interfere with Tenant's Permitted Use of the Premises. Subject to Article IX, Landlord may enter upon the Premises and may exercise any or all of the foregoing rights hereby reserved without being deemed guilty of an eviction or disturbance of Tenant's use or possession and without being liable in any manner to Tenant and without abatement of rent or affecting any of Tenant's obligations hereunder..

#### **XXIII. Parking.**

Tenant shall have the right at all times during the Term to use, at Tenant's option, any parking, drive and loading spaces at the Property. Tenant leases additional parking spaces from the City of St. Petersburg which are adjacent to the Premises (as amended, the "**City Lease**"), and Tenant shall pay all amounts due and payable under the City Lease and perform all tenant obligations thereunder. It is understood by and between Landlord and Tenant that, upon the expiration or earlier termination of this Lease and to the extent required by Landlord, Tenant shall use commercially reasonable efforts to cooperate with Landlord on, after, or prior to such expiration or earlier termination of this Lease as requested by Landlord, to facilitate the City of St. Petersburg agreeing to assign or sublet the City Lease to Landlord, its successors and assigns. The City Lease shall not be amended without the prior written consent of Landlord, in its sole discretion. This provision shall survive the expiration or earlier termination of this Lease.

#### **XXIV. Miscellaneous**

A. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

B. The terms, provisions and covenants and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise expressly provided herein.

C. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof.

D. Intentionally omitted.

E. Tenant shall at any time and from time to time within twenty (20) days after receipt of written request from Landlord execute and deliver to Landlord or any prospective Landlord or Mortgagee or prospective Mortgagee a sworn and acknowledged estoppel certificate, in form reasonably satisfactory to Landlord and/or Landlord's Mortgagee or prospective Mortgagee certifying and stating as follows: (1) this Lease has not been modified or amended (or if modified or amended, setting forth such modifications or amendments); (2) this Lease (as so modified or amended) is in full force and effect (or if not in full force and effect, the reasons therefor); (3) the Tenant has no offsets or defenses to its performance of the terms and provisions of this Lease, including the payment of rent (or if there are any such defenses or offsets, specifying the same); (4) Tenant is in possession of the Premises if such be the case; (5) if an assignment of rents or leases has been served upon Tenant by a Mortgagee or prospective Mortgagee, Tenant has received such assignment and agrees to be bound by the provisions thereof; and (6) any other accurate statements reasonably required by Landlord or its Mortgagee or prospective Mortgagee. It is intended that any such statement delivered pursuant to this subsection may be relied upon by any prospective purchaser or Mortgagee and their respective successors and assigns.

F. Intentionally Omitted

confidential  
Renee Albarano  
Aug 09, 2019 13:35

G. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto.

H. If any clause, phrase, provision or portion of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable under applicable laws, such event shall not affect, impair or render invalid or unenforceable the remainder of this Lease nor any other clause, phrase, provision or portion hereof, nor shall it affect the application of any clause, phrase, provision or portion hereof to other persons or circumstances, and it is also the intention of the parties to this Lease that in lieu of each such clause, phrase, provision or portion of this Lease that is invalid or unenforceable, there be added as a part of this Lease a clause, phrase, provision or portion as similar in terms to such invalid or unenforceable clause, phrase, provision or portion as may be possible and be valid and enforceable.

I. If there be more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several.

J. It is understood and agreed that there are no oral agreements between the parties hereto affecting this Lease and this Lease (including all exhibits and addenda) supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This Lease and any separate agreement executed by Landlord and Tenant in connection with this Lease and dated of even date herewith (a) contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, and (b) shall be considered to be the only agreement between the parties hereto and their representatives and agents. This Lease may not be modified, deleted or added to except by a writing signed by the parties hereto. All negotiations and oral agreements have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease. The parties acknowledge that (i) each party and/or its counsel have reviewed and revised this Lease, and (ii) no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation or enforcement of this Lease or any amendments or exhibits to this Lease or any document executed and delivered by either party in connection with this Lease.

K. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way related to this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises or the Building, and/or any claim of injury, loss or damage.

L. Any provisions of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions hereof and such other provisions shall remain in full force and effect. This Lease shall be enforced, governed by and construed in accordance with the laws of the State of Florida.



confidential  
Renee Albarano  
Aug 09, 2019 13:35

M. Landlord may disclose on its website the name and symbol of the Tenant or any name that such Tenant operates under in the Premises.

N. 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 were exposed 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.

O. Each party irrevocably agrees that this Lease shall not be recorded against the Property under any circumstance. Each party shall indemnify, hold harmless and defend the other party from all loss, cost, damage or expense, including reasonable attorney's fees and expenses, arising out of any claim relating to this Section XXIV(O).

P. Except as provided below, Tenant represents and warrants to Landlord that Tenant has had no dealings with any broker or agent in connection with this Lease, and Tenant agrees to indemnify and hold Landlord harmless from and against any and all claims, liabilities and expenses, (including, but not limited to, reasonable attorneys' fees) imposed upon, asserted against or incurred by Landlord as a consequence of any inaccuracy or breach of this representation. The parties represent that they are represented by the following brokers and any commission or fee due hereunder shall be paid by Landlord pursuant to a separate agreement:

**Landlord's Broker: None.**

**Tenant's Broker: None.**

Landlord represents and warrants to Tenant that Landlord has had no dealings with any broker or agent in connection with this Lease, and Landlord agrees to indemnify and hold Tenant harmless from and against any and all claims, liabilities and expenses, (including, but not limited to, reasonable attorneys' fees) imposed upon, asserted against or incurred by Tenant as a consequence of any inaccuracy or breach of this representation.

Q. If either party files suit against the other in order to enforce any of its rights under this Lease, then the party which prevails in such suit shall be entitled to collect from the other party all costs of such suit, including reasonable attorneys' fees and court costs incurred at all tribunal levels, including, without limitation, appeals and bankruptcy. A party shall be deemed to have prevailed if: (i) it initiated the litigation or counterclaim and substantially obtained the relief it sought, either through a judgment or the losing party's voluntary action before arbitration (after it is scheduled), trial, or judgment (except in the case of formal settlement, the terms of which shall control) or (ii) it did not initiate the litigation or counterclaim and the judgment is entered for either party, but without substantially granting the relief sought by the other party. This section shall survive expiration or earlier termination of this Lease.

R. This Lease may be executed in multiple counterparts, and notwithstanding that all of the parties do not execute the same counterpart, each executed counterpart shall be deemed an original, and all such counterparts together shall constitute one and the same Lease binding all of the parties hereto. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this Lease to physically form one document.

confidential  
Renee Albarano  
Aug 09, 2019 13:35

confidential  
Renee Albarano  
Aug 09, 2019 13:35

Electronic or facsimile copies of this Lease fully executed shall be deemed an original for all purposes, and the parties hereto waive the “best evidence” rule or any similar law or rule in any proceeding in which this Lease shall be presented as evidence.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

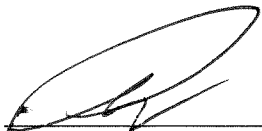
[SIGNATURE PAGES FOLLOW]

confidential  
Renee Albarano  
Aug 09, 2019 13:35

confidential  
Renee Albarano  
Aug 09, 2019 13:35

IN WITNESS WHEREOF, the parties have caused this Lease to be executed on the date first above written.

**WITNESSES:**



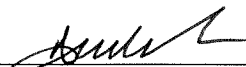
Printed Name: Gregory Haney



Printed Name: **Angela D. Fields**

**TENANT:**

Jagged Peak, Inc.,  
a Nevada corporation

By:   
Name: ALVARO NARVAZ  
Title: CEO + SENIOR VICE PRESIDENT

**LANDLORD:**

GSFT 201 17th Street, LLC,  
a Florida limited liability company

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

State of Florida  
County of Pinellas

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_, as an Authorized Officer of GSFT 201 17th Street, LLC, a Florida limited liability company, on behalf of the entity.

\_\_\_\_\_  
Notary Public

confidential  
Renee Albarano  
Aug 09, 2019 13:35

IN WITNESS WHEREOF, the parties have caused this Lease to be executed on the date first above written.

**WITNESSES:**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Benjamin Handell  
Printed Name: Benjamin Handell

ROBELIO LORENZO  
Printed Name: ROBELIO LORENZO

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

**TENANT:**

Jagged Peak, Inc.,  
a Nevada corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LANDLORD:**

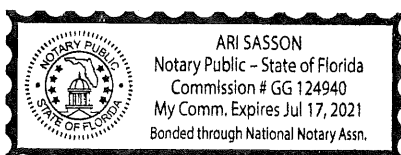
GSFT 201 17th Street, LLC,  
a Florida limited liability company

By: \_\_\_\_\_  
Name: Scott Sherman  
Title: Authorized Officer

By: \_\_\_\_\_  
Name: Joseph R. Furst  
Title: Authorized Officer

State of Florida  
County of Miami-Dade

The foregoing instrument was acknowledged before me this 13 day of November, 2017 by Scott Sherman, as an Authorized Officer of GSFT 201 17th Street, LLC, a Florida limited liability company, on behalf of the entity, who is (personally known to me) or who has produced \_\_\_\_\_ as identification.



Ari Sasson  
Notary Public

Print Name: Ari Sasson

My Commission Expires: 7/17/21

confidential  
Renee Albarano  
Aug 09, 2019 13:35

confidential  
Renee Albarano  
Aug 09, 2019 13:35

IN WITNESS WHEREOF, the parties have caused this Lease to be executed on the date first above written.

**WITNESSES:**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

**TENANT:**

Jagged Peak, Inc.,  
a Nevada corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LANDLORD:**

GSFT 201 17th Street, LLC,  
a Florida limited liability company

By: \_\_\_\_\_

Name: Scott Sherman

Title: Authorized Officer

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: RODOLFO PEREZ

\_\_\_\_\_  
Printed Name: RAMFIS VAZ

By: \_\_\_\_\_

Name: Joseph R. Furst

Title: Authorized Officer

State of Florida

County of Miami-Dade

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of November, 2017 by Scott Sherman, as an Authorized Officer of GSFT 201 17th Street, LLC, a Florida limited liability company, on behalf of the entity, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

confidential  
Renee Albarano  
Aug 09, 2019 13:35

confidential  
Renee Albarano  
Aug 09, 2019 13:35

State of Florida

County of ~~Pinellas~~ *Hillsborough*

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of November, 2017 by Albert Narvades, as Senior Vice President of Jagged Peak, Inc., a Nevada corporation, on behalf of the entity. *CFO*



Angela O. Fields  
Notary Public

confidential  
Renee Albarano  
Aug 09, 2019 13:35

confidential  
Renee Albarano  
Aug 09, 2019 13:35

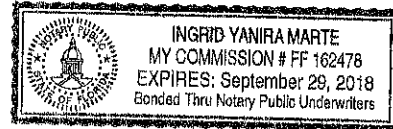
State of Florida  
County of Miami-Dade

The foregoing instrument was acknowledged before me this 13 day of November, 2017 by Joseph R. Furst, as an Authorized Officer of GSFT 201 17th Street, LLC, a Florida limited liability company, on behalf of the entity who is personally known to me or who has produced \_\_\_\_\_ as identification.

  
\_\_\_\_\_  
Notary Public

Print Name: Ingrid Y. Marte

My Commission Expires: 9/29/18



confidential  
Renee Albarano  
Aug 09, 2019 13:35

confidential  
Renee Albarano  
Aug 09, 2019 13:35

confidential  
Renee Albarano  
Aug 09, 2019 13:35

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

Lot 1, Block 1 of FULLER SUBDIVISION BLOCK 23 REPLAT, according to the Plat thereof as recorded in Plat Book 101, Page 50, of the Public Records of Pinellas County, Florida.

confidential  
Renee Albarano  
Aug 09, 2019 13:35



## 59622497.12

Confidential  
Renee Albarano  
Aug 09, 2019 13:35

## EXHIBIT C ROOF REPORT



### PROPOSAL

**SUBMITTED TO:**

Goldman Properties  
2214 NW 1 Pl  
Miami, Fl

**DATE:** 08-14-17

**PHONE:** (305) 531-4411

**FAX:**

**Email:** [victor@goldmanproperties.com](mailto:victor@goldmanproperties.com)

**JOB NAME:**

Roof Restoration

**JOB ADDRESS:**

201 17<sup>th</sup> St.  
St. Petersburg, Fl

**JOB NUMBER:**

17-0814-1135TPOREC

A Roof Inspection has been conducted to evaluate the current condition of the roof and identify any issues present. There are a total of 2 roof areas at this location. Both roofs are low slope single ply membrane over structural metal panels. The roofs have been identified as A, B, in Exhibit A. (see below)

**Roof A:**

Roof A is in fair condition. The roof is comprised of a single ply membrane over 4" ISO insulation over structural steel deck. The roof is approximately 972 SQS including parapets and has 12 RTUS and 2 refrigerant condensers. The roofing membrane is failing do due age. Several leaks were active during our site visit. A visual inspection of the corrugated steel deck from underneath was also conducted. Several areas near the RTUs were noted to be corroded. These areas will need replacement. A roof recover is recommended for roof section A. Isolated deck repair will be necessary and the time of recovery. See Exhibit B

**Roof B:**

Roof is in poor condition. The roof is comprised of a single ply membrane over 4" ISO insulation over structural steel deck. The roof is approximately 265 SQS including parapets and has 2 exhaust fans, 1 roof hatch. The structural steel deck is severely corroded and is giving way around the

P.O. BOX 973135, Miami, Florida 33197-3135 TEL: (305) 234-5234 FAX: (305) 234-5753

[www.isaacstroofing.com](http://www.isaacstroofing.com)

confidential  
Renee Albarano  
Aug 09, 2019 13:35

**SUBMITTED TO:**

Goldman Properties

08-14-17

Page 2 of 4

RE: 17-0814-1135TPOREC

---

hatch area. This is a life safety issue and must be repaired as soon as possible. The roofing membrane is failing do due age. Several leaks were active during our site visit. A visual inspection of the corrugated steel deck from underneath was not possible as it was covered with another corrugated metal panel. These areas will need replacement once the roof is being repaired/replaced. A roof recovery is recommended for roof section B unless the deck repair exceeds 25% of the roof area. Deck repairs will be necessary throughout. See Exhibit C

**SCOPE OF WORK: ROOF RECOVERY****PREPARATION OF SUBSTRATE**

1. Clean entire substrate and prepare to accept new roof.
2. Remove loose and failing sealants
3. Remove all incompatible materials
4. Open existing roof for venting purposes.
5. Remove and replace rotten/ water damaged structural steel panels as needed at \$28.75 sqft
6. Pull all necessary permits. Permit fees, engineering to be paid by owner.

**INSTALLATION OF NEW TPO RECOVERY SYSTEM**

1. Installation of 60 mil TPO mechanically fastened using screws and plates as per manufacturers and Building Code requirements.
2. Installation of aluminum termination bar field sheets before base flashing and to base flashing to terminate system.
3. Installation of all new *Galvalume* stucco stop metal flashing to be installed during the appropriate stage of roof assembly as per Dade County and Manufacturers specifications. Existing coping cap will be reused.
4. Installation of all TPO coated flashings as per manufacturer's specifications, including TPO wrapped penetrations for A/C stands/curbs, plumbing stacks, corners, T-joint, cut edge sealant, etc.
5. Premises to be left completely clean of roof debris.

P.O. BOX 973135, Miami, Florida 33197-3135 TEL: (305) 234-5234 FAX: (305) 234-5753

[www.isaacroofing.com](http://www.isaacroofing.com)

confidential  
Renee Albarano  
Aug 09, 2019 13:35

**SUBMITTED TO:**

Goldman Properties

08-14-17

Page 4 of 4

RE: 17-0814-1135TPOREC

---

In the event suit is commenced, customer shall be liable for reasonable attorney's fees, court costs and other costs reasonably necessary to collect the outstanding debts, including but not limited to filing of any construction lien. The above prices, specifications and conditions are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

ISAACS ROOFING

By: \_\_\_\_\_  
Alain Gonzalez, VP

**ACCEPTANCE OF PROPOSAL**

The above prices, specifications and conditions are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

By: \_\_\_\_\_

ACCEPTANCE DATE: \_\_\_\_\_

AG(Proposals17/Goldman

P.O. BOX 973135, Miami, Florida 33197-3135 TEL: (305) 234-5234 FAX: (305) 234-5753  
[www.isaacstroofing.com](http://www.isaacstroofing.com)

confidential  
Renee Albarano  
Aug 09, 2019 13:35

**SUBMITTED TO:**

Goldman Properties

08-14-17

Page 4 of 4

RE: 17-0814-1135TPOREC

---

In the event suit is commenced, customer shall be liable for reasonable attorney's fees, court costs and other costs reasonably necessary to collect the outstanding debts, including but not limited to filing of any construction lien. The above prices, specifications and conditions are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

**ISAACS ROOFING**

By: \_\_\_\_\_  
Alain Gonzalez, VP

**ACCEPTANCE OF PROPOSAL**

The above prices, specifications and conditions are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

By: \_\_\_\_\_

ACCEPTANCE DATE: \_\_\_\_\_

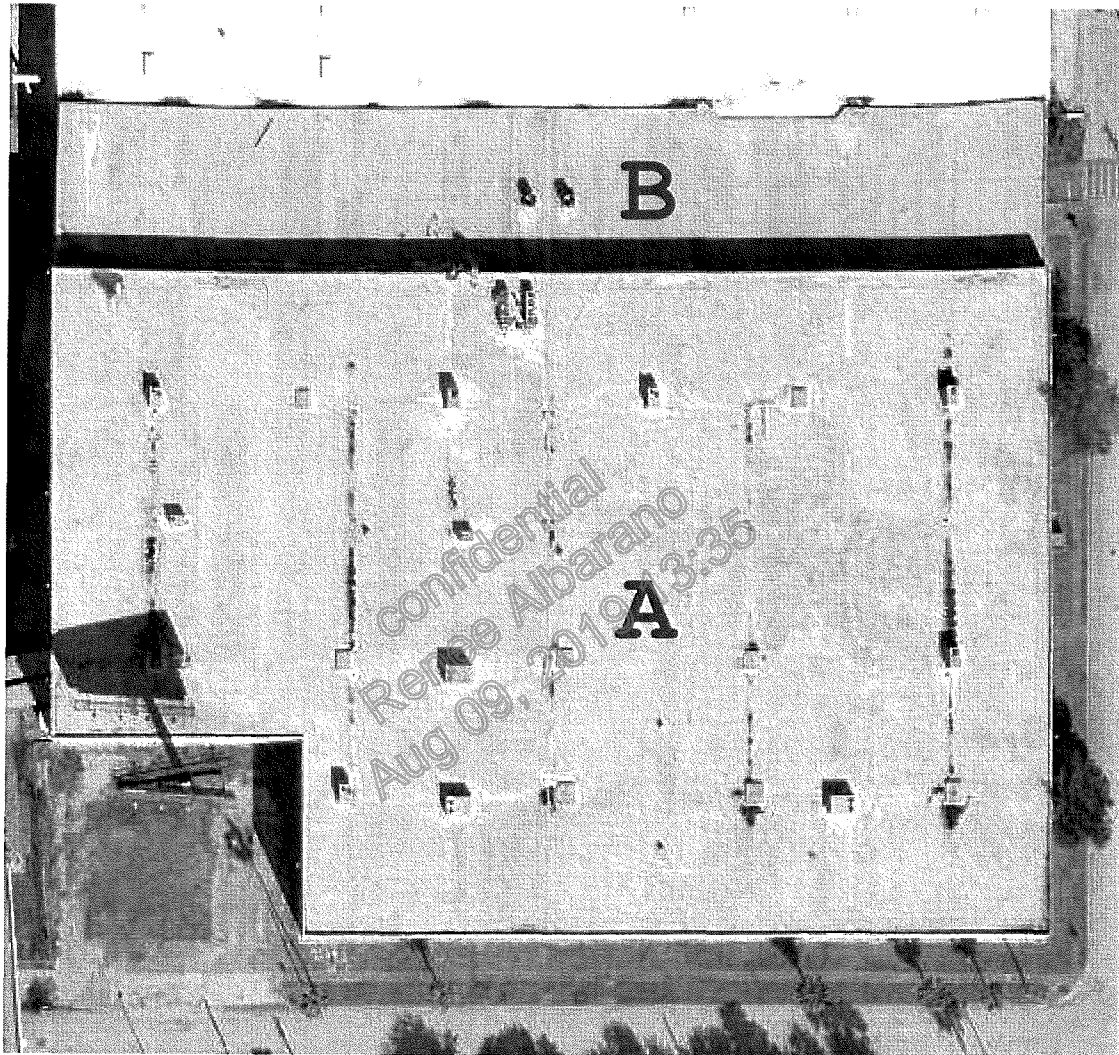
AG(Proposals17/Goldman

P.O. BOX 973135, Miami, Florida 33197-3135 TEL: (305) 234-5234 FAX: (305) 234-5753  
[www.isaacsroofing.com](http://www.isaacsroofing.com)



confidential  
Renee Albarano  
Aug 09, 2019 13:35

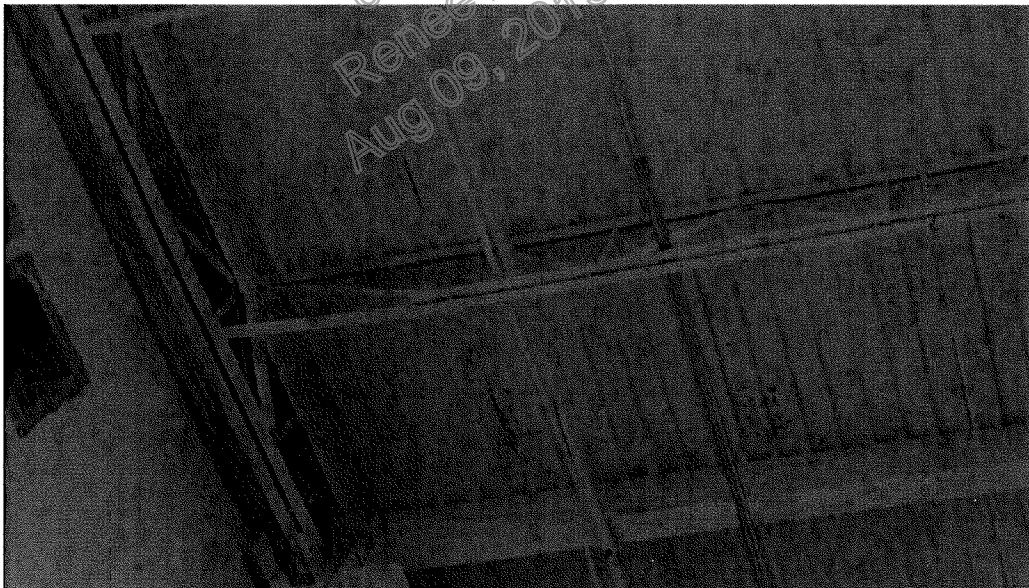
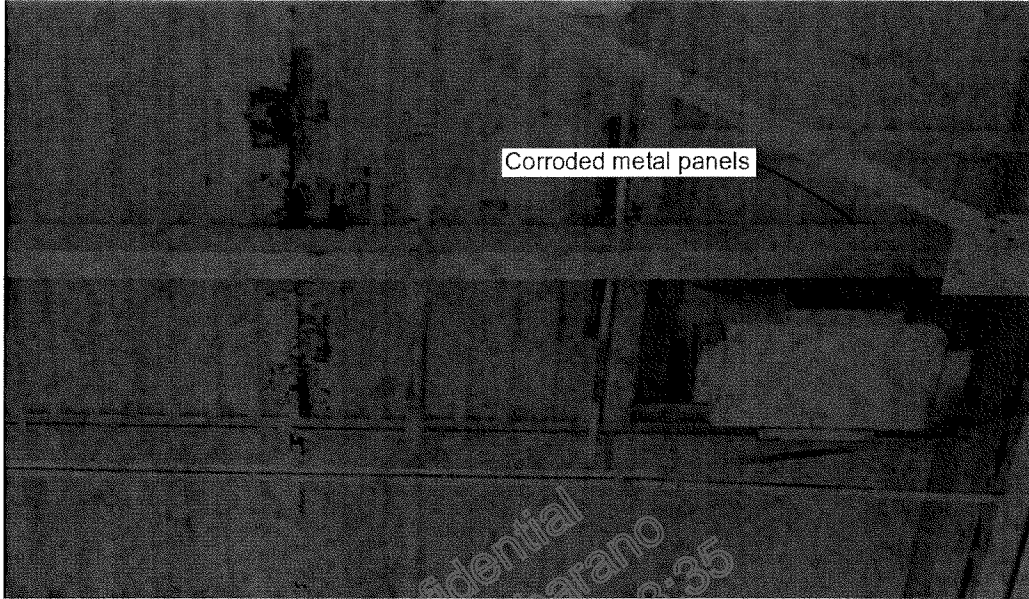
# EXHIBIT "A"





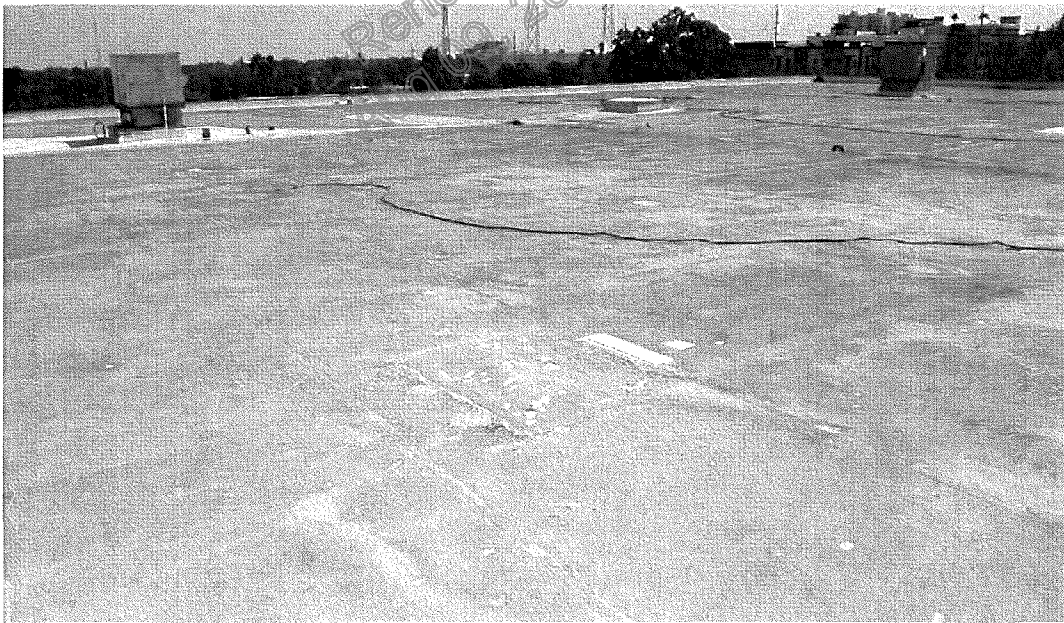
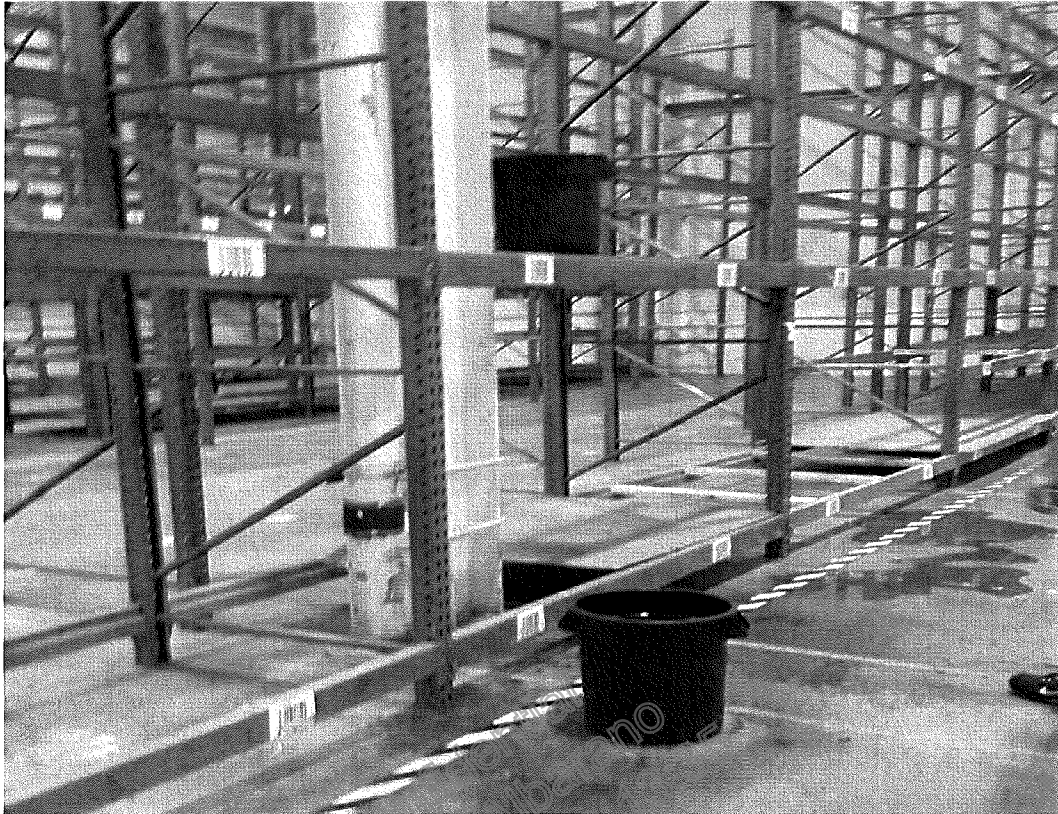
confidential  
Renee Albarano  
Aug 09, 2019 13:35

# EXHIBIT "B"





confidential  
Renee Albarano  
Aug 09, 2019 13:35





confidential  
Renee Albarano  
Aug 09, 2019 13:35

## EXHIBIT "C"



# **EXHIBIT 3**

# **EXHIBIT 3**

**EXHIBIT 2 TO TRANSITIONAL SERVICES AGREEMENT**

Use and Occupation of Premises at 201 17th Street S, St. Petersburg, Florida 33712

Provider:	Jagged Peak, Inc. (" <u>JPI</u> ")
Recipient:	ID Logistics US, Inc. (" <u>ID Logistics</u> ")
Commencement Date:	Closing Date
End Date:	March 31, 2020
Subject Lease:	" <u>Subject Lease</u> " means the lease agreement dated November 15, 2017, by and between GSFT 201 17th Street, LLC (the " <u>Landlord</u> ") and JPI relating to the operation of a warehouse and logistics facility on the real property commonly known as at 201 17th Street S, St. Petersburg, Florida 33712 (the " <u>Premises</u> ").
Fees and Other Compensation:	<p>ID Logistics will reimburse JPI for all costs and expenses incurred in connection with maintaining the Subject Lease, including all rent and other Out-of-Pocket Costs payable by JPI under the Subject Lease in respect of, or allocable to, the period commencing on the Closing Date and ending on the End Date (the "<u>Exhibit Term</u>"). In addition, ID Logistics shall reimburse JPI for all legal fees and related costs incurred in seeking an order extending the time to assume or reject the Subject Lease.</p> <p>Anything to the contrary notwithstanding, ID Logistics shall only be required to reimburse JPI for any Capital Expenditures (as defined below) that are required under the lease to be made or incurred after the Commencement Date and which Capital Expenditures cannot be delayed or avoided without terminating the lease during the period the premises are to be occupied by ID Logistics. JPI will provide ID Logistics with written notice of any proposed Capital Expenditures and will not agree to any Capital Expenditures without the prior written consent of ID Logistics.</p> <p>For the avoidance of doubt, ID Logistics shall only be required to reimburse JPI for Capital Expenditures to the extent that JPI would not have been obligated in respect of such Capital Expenditures had the Subject Lease been rejected under the Bankruptcy Code at the same time that all other Excluded Contracts (as defined in the JPI Purchase Agreement) are rejected.</p>

	<p>“<u>Capital Expenditures</u>” means any amount in respect of capital expenditures, leasehold improvements or similar expenses or charges (including in respect of any fire pumps) with respect to the Premises, including the Building’s (as defined in the Subject Lease) share of all such amounts in connection with any adjoining properties.</p> <p>All rent and other known amounts will be payable in advance by ID Logistics without necessity of any invoicing by JPI. To the extent JPI receives any invoicing from the Landlord, JPI shall, within ten (10) days of its receipt thereof, forward same to ID Logistics and ID Logistics shall pay the amounts due on such invoice within the terms thereof. All other amounts will be invoiced by JPI monthly in arrears. All such invoices will be payable within ten (10) days of receipt by ID Logistics.</p> <p>ID Logistics shall make its employees available to assist Provider in providing the Services, without any cost or charge to Provider and without any limitation in the amount of time such employees may spend in assisting with the provision of Services hereunder.</p>
Terms and Conditions of Use and Occupation:	<p>JPI and ID Logistics agree as follows:</p> <ol style="list-style-type: none"> <li>1. JPI shall not reject cause the effective date of the rejection of the Subject Lease under the Bankruptcy Code to occur before the End Date.</li> <li>2. JPI shall file a motion prior to January 1, 2020, seeking an extension of the deadline imposed by Section 365(d)(4) of the Bankruptcy Code, and shall use its commercially reasonable best efforts to have an appropriate order entered by the Court before January 14, 2020, extending its deadline to reject the Subject Lease to a date that is not sooner than the End Date.</li> <li>3. JPI shall allow ID Logistics to use and occupy the Premises during the Exhibit Term, and shall use its reasonable best efforts to ensure that ID Logistics is permitted to use and occupy the Premises in a manner consistent with JPI’s historical practice.</li> <li>4. ID Logistics may terminate this Exhibit and the Services to be provided hereunder upon ten (10)</li> </ol>



	days' prior written notice to JPI.
--	------------------------------------