

|  |   |  |
|--|---|--|
| <b>UNITED STATES BANKRUPTCY COURT</b> District of Delaware, Wilmington Division  |   | <b>PROOF OF CLAIM</b>  |
| Name of Debtor:<br><b>GDC LOGISTICS, LLC</b>   |   | Case Number:<br><b>14-10321-KJC</b>  |
| NOTE: <i>Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.</i>   |   | E-Filed on 11/06/2014<br>Claim # 331   |
| Name of Creditor (the person or other entity to whom the debtor owes money or property):<br><b>Griffin Capital Corporation</b>   |   | <b>COURT USE ONLY</b>  |
| Name and address where notices should be sent:<br><b>Griffin Capital Corporation<br/>Attn: Bryan Cave LLP, Leslie A. Bayles<br/>161 N. Clark St. Ste. 4300,<br/>Chicago Illinois 60601</b><br>Telephone number: <b>(312) 602-5000</b> email: <b>leslie.bayles@bryancave.com</b>  |   | <input type="checkbox"/> Check this box if this claim amends a previously filed claim.<br><br><b>Court Claim Number:</b> _____<br>(If known)<br><br>Filed on: _____  |
| Name and address where payment should be sent (if different from above):<br><br>Telephone number: _____ email: _____   |   | <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.  |
| <b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>2,156,350.35</u>  |   |  |
| If all or part of the claim is secured, complete item 4.<br>If all or part of the claim is entitled to priority, complete item 5.<br><input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.   |   |  |
| <b>2. Basis for Claim:</b> <u>guaranty of 2 leases</u><br>(See instruction #2)   |   |  |
| <b>3. Last four digits of any number by which creditor identifies debtor:</b><br>____ _  | <b>3a. Debtor may have scheduled account as:</b><br>_____<br>(See instruction #3a)  | <b>3b. Uniform Claim Identifier (optional):</b><br>_____<br>(See instruction #3b)  |
| <b>4. Secured Claim</b> (See instruction #4)<br>Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.<br><br><b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other<br><b>Describe:</b><br><br><b>Value of Property:</b> \$ _____<br><br><b>Annual Interest Rate</b> _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable<br>(when case was filed) |   | <b>Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:</b><br>\$ _____<br><br><b>Basis for perfection:</b> _____<br><br><b>Amount of Secured Claim:</b> \$ _____<br><br><b>Amount Unsecured:</b> \$ _____ |
| <b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</b>   |   |  |
| <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).  | <input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4). | <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).<br><br><b>Amount entitled to priority:</b><br>\$ _____  |
| <input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).   | <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).  | <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).<br><b>Amount entitled to Administrative Expense under 11 U.S.C. §503(b)(9)</b><br>\$ _____   |
| *Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.   |   |  |
| <b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)  |   |  |

**7. Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

**8. Signature:** (See instruction #8)

Check the appropriate box.

- I am the creditor.     I am the creditor's authorized agent.     I am the trustee, or the debtor, or their authorized agent.     I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)  
(See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Faisal Delawalla

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

Company: Bryan Cave LLP

Address and telephone number (if different from notice address above): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

Faisal Delawalla

(Signature)

11/06/2014

(Date)

*Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.*

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.*

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**3b. Uniform Claim Identifier:**

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

**4. Secured Claim:**

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).**

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

**8. Date and Signature:**

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

Attachment 1 - GDC Claim.PDF

Description -

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

|                                     |   |                         |
|-------------------------------------|---|-------------------------|
| In re:                              | ) |                         |
|                                     | ) | Chapter 11              |
| QUANTUM FOODS, LLC, <u>et al.</u> , | ) | Case No. 14-10318 (KJC) |
|                                     | ) |                         |
| Debtors.                            | ) | Jointly Administered    |
|                                     | ) |                         |

**ADDENDUM TO PROOF OF CLAIM  
OF GRIFFIN CAPITAL CORPORATION**

Griffin Capital Corporation (“Griffin”), in its capacity as authorized asset manager for the former fee owners<sup>1</sup> of the real property commonly known as 750 South Schmidt Road, Bolingbrook, Illinois (the “Foods Facility”) and the real property commonly known as 525 Crossroads Parkway, Bolingbrook, Illinois (the “Culinary Facility” and, collectively with the Foods Facility, the “Facilities”), hereby files its claim against debtors Quantum Culinary, LLC (“Culinary LLC”), Quantum Foods 213-D, LLC (“213-D”), Quantum Foods, LLC (“Foods LLC”), GDC Logistics, LLC (“GDC”), and Choice One Foods, LLC (“Choice One”; together with Culinary LLC, 213-D, Foods LLC, and GDC, the “Obligors”), arising from (i) that certain Industrial Building Lease dated as of July 19, 2006 (a copy of which is attached hereto as **Exhibit A**) (the “Foods Facility Lease”), by and between 213-D and First Industrial Development Services, Inc. (the “Original Landlord”) for 213-D’s lease of the Foods Facility;

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<sup>1</sup> The fee owners are Griffin Capital (Bolingbrook) Investors, LLC, Griffin Capital (Bolingbrook) Investor -1, LLC, Griffin Capital (Bolingbrook) Investor -2, LLC, Griffin Capital (Bolingbrook) Investor -3, LLC, Griffin Capital (Bolingbrook) Investor -4, LLC, Griffin Capital (Bolingbrook) Investor -5, LLC, Griffin Capital (Bolingbrook) Investor -6, LLC, Griffin Capital (Bolingbrook) Investor -7, LLC, Griffin Capital (Bolingbrook) Investor -8, LLC, Griffin Capital (Bolingbrook) Investor -9, LLC, Griffin Capital (Bolingbrook) Investor -10, LLC, Griffin Capital (Bolingbrook) Investor -11, LLC, Griffin Capital (Bolingbrook) Investor -12, LLC, Griffin Capital (Bolingbrook) Investor -13, LLC, Griffin Capital (Bolingbrook) Investor -14, LLC, Griffin Capital (Bolingbrook) Investor -15, LLC, Griffin Capital (Bolingbrook) Investor -16, LLC, Griffin Capital (Bolingbrook) Investor -17, LLC, Griffin Capital (Bolingbrook) Investor -18, LLC, Griffin Capital (Bolingbrook) Investor -19, LLC, Griffin Capital (Bolingbrook) Investor -20, LLC, Griffin Capital (Bolingbrook) Investor -21, LLC, Griffin Capital (Bolingbrook) Investor -22, LLC, Griffin Capital (Bolingbrook) Investor -23, LLC (collectively, the “Fee Owners”).

and (ii) that certain Industrial Building Lease dated as of July 19, 2006 (a copy of which is attached hereto as **Exhibit B**) (the “Culinary Facility Lease” and, collectively with the Foods Facility Lease, the “Leases”), by and between Culinary LLC and the Original Landlord for Culinary LLC’s lease of the Culinary Facility.

The full, timely, and complete performance of all covenants, terms, conditions, obligations, and agreements to be performed by the respective lessee under the Leases is absolutely, unconditionally, and irrevocably guaranteed, as primary obligors, by Foods LLC, GDC, Choice One, 213-D, and Culinary LLC, pursuant to those certain Guarantees of Lease dated as of July 19, 2006 (collectively, the “Guarantees”). Attached hereto as **Exhibit C** is a copy of the Guaranty of Lease of the debtor for which this Proof of Claim is filed.

A summary of the Leases and Guarantees is as follows:

| <b>Lease</b>      | <b>Tenant</b> | <b>Guarantors</b>                              |
|-------------------|---------------|--|
| Foods Facility    | 213-D         | Foods LLC<br>GDC<br>Choice One<br>Culinary LLC |
| Culinary Facility | Culinary LLC  | Foods LLC<br>GDC<br>Choice One<br>213-D        |

On June 19, 2007, the Original Landlord’s interest in the Facilities was acquired by 750 Schmidt Road, LLC and Bolingbrook 525, LLC, respectively. On September 16, 2007, Bolingbrook 525, LLC merged into 750 Schmidt Road, LLC, and the corporate name of the surviving entity was amended to Griffin Capital (Bolingbrook) Investors, LLC. The Fee Owners subsequently acquired undivided interests in the Facilities as tenants in common.

Pursuant to the Order entered on August 14, 2014 [Docket No. 606], this Court approved the respective debtor’s rejection of the Leases and deemed the Leases rejected as of June 30,

2014. On or around September 25, 2014, the Fee Owners sold their interest in the Facilities for a total sale price of \$28,933,000.00 (the “Sale”).

The amount due and owing Griffin from each of the Obligor is no less than \$2,156,350.35, which includes pre-petition arrearages under the Leases in the amount of \$165,421.31 and damages as a result of the rejection of the Leases in the amount of \$1,990,929.04, as further explained herein.

**PRE-PETITION ARREARAGE**

The amount due and owing Griffin from each of the Obligor as a result of the respective lessee’s pre-petition use and possession of the Facilities under the Leases is no less than \$165,421.31, which includes the following:

| <b>Item</b>   | <b>Rate</b>                               | <b>Total</b>        |
|---|---|---------------------|
| <u>Foods Facility Lease</u><br>Late Charge for Base Rent for Jan. 1 – Jan. 31, 2014 ( <i>para. 2.2</i> )    | 5% of delinquent installment of Base Rent | \$8,179.14          |
| Base Rent for Feb. 1 – 18, 2014 ( <i>para. 2.2</i> )  | (18 / 28) * Base Rent                     | \$105,160.35        |
| Late Charge for Base Rent for Feb. 1 – 18, 2014 ( <i>para. 2.2</i> )  | 5% of delinquent installment of Base Rent | \$5,258.02          |
|   | <b><u>TOTAL</u></b>                       | <b>\$118,597.51</b> |
| <u>Culinary Facility Lease</u><br>Late Charge for Base Rent for Jan. 1 – Jan. 31, 2014 ( <i>para. 2.2</i> ) | 5% of delinquent installment of Base Rent | \$3,229.23          |
| Base Rent for Feb. 1 – 18, 2014 ( <i>para. 2.2</i> )  | (18 / 28) * Base Rent                     | \$41,518.64         |
| Late Charge for Base Rent for Feb. 1 – 18, 2014 ( <i>para. 2.2</i> )  | 5% of delinquent installment of Base Rent | \$2,075.93          |
|   | <b><u>TOTAL</u></b>                       | <b>\$46,823.80</b>  |

LEASE REJECTION

The amount due and owing Griffin from each of the Obligors as a result of the rejection of the Leases is no less than \$9,877,949.43, which equals the difference in rental value between the Leases and the Sale:

| Lease             | Total Rents <sup>2</sup> | Mitigating Rents | Differential        | Present Value of Differential |
|-------------------|--------------------------|------------------|---------------------|-------------------------------|
| Foods Facility    | \$27,921,174.45          | \$17,182,355.92  | \$10,738,818.53     | \$7,081,918.35                |
| Culinary Facility | \$11,023,633.99          | \$6,783,812.41   | \$4,239,821.58      | \$2,796,031.08                |
|                   |                          |                  | <b><u>TOTAL</u></b> | <b><u>\$9,877,949.43</u></b>  |

Pursuant to 11 U.S.C. § 502(b)(6)(A), Griffin will limit its damages related to rejection of the Leases to one year of the total rents due under the Leases beginning on the petition date, February 18, 2014, which equals \$1,990,929.04. The calculations required by 11 U.S.C. § 502(b)(6) are as follows:

ONE YEAR:

| Time Period                   | Rate                          | Total Amount Due             |
|-------------------------------|-------------------------------|------------------------------|
| <u>Foods Facility Lease</u>   |                               |                              |
| Feb. 18, 2014 – July 31, 2014 | \$163,582.77/month            | \$882,178.51                 |
| Aug. 1, 2014 – Sept. 30, 2014 | \$167,672.34/month            | \$335,344.68                 |
| Oct. 1, 2014 – Feb. 17, 2014  | Present Value of Differential | \$211,511.45                 |
|                               | <b><u>TOTAL</u></b>           | <b><u>\$1,429,034.64</u></b> |

|                                |                               |                            |
|--------------------------------|-------------------------------|----------------------------|
| <u>Culinary Facility Lease</u> |                               |                            |
| Feb. 18, 2014 – July 31, 2014  | \$64,584.55/month             | \$345,988.66               |
| Aug. 1, 2014 – Sept. 30, 2014  | \$66,199.17/month             | \$132,398.34               |
| Oct. 1, 2014 – Feb. 17, 2014   | Present Value of Differential | \$83,507.40                |
|                                | <b><u>TOTAL</u></b>           | <b><u>\$561,894.40</u></b> |

<sup>2</sup> Beginning July 1, 2014, through the end of the respective term of the Leases.

15 PERCENT OF TOTAL RENTS DUE:

| <b>Time Period</b>            | <b>Rate</b>                   | <b>Total Amount Due</b>      |
|-------------------------------|-------------------------------|------------------------------|
| <u>Foods Facility Lease</u>   |                               |                              |
| Feb. 18, 2014 – June 30, 2014 | \$163,582.77/month            | \$718,595.74                 |
| July 1, 2014 – July 31, 2026  | Present Value of Differential | \$7,081,918.35               |
|                               | <b>TOTAL</b>                  | 7,800,514.09                 |
|                               | <b><u>15% of TOTAL</u></b>    | <b><u>\$1,170,077.11</u></b> |

|                                |                            |                            |
|--------------------------------|----------------------------|----------------------------|
| <u>Culinary Facility Lease</u> |                            |                            |
| Feb. 18, 2014 – June 30, 2014  | \$64,584.55/month          | \$283,710.70               |
| Present Value of Differential  | Calculated Above           | \$2,796,031.08             |
|                                | <b>TOTAL</b>               | \$3,079,741.78             |
|                                | <b><u>15% of TOTAL</u></b> | <b><u>\$461,961.27</u></b> |

THREE YEARS:

| <b>Time Period</b>            | <b>Rate</b>                   | <b>Total Amount Due</b>      |
|-------------------------------|-------------------------------|------------------------------|
| <u>Foods Facility Lease</u>   |                               |                              |
| Feb. 18, 2014 – July 31, 2014 | \$163,582.77/month            | \$882,178.51                 |
| Aug. 1, 2014 – Sept. 30, 2014 | \$167,672.34/month            | \$335,344.68                 |
| Oct. 1, 2014 – Feb. 17, 2017  | Present Value of Differential | \$1,292,012.96               |
|                               | <b><u>TOTAL</u></b>           | <b><u>\$2,509,536.15</u></b> |

|                                |                               |                            |
|--------------------------------|-------------------------------|----------------------------|
| <u>Culinary Facility Lease</u> |                               |                            |
| Feb. 18, 2014 – July 31, 2014  | \$64,584.55/month             | \$348,295.25               |
| Aug. 1, 2014 – Sept. 30, 2014  | \$66,199.17/month             | \$132,398.34               |
| Oct. 1, 2014 – Feb. 17, 2017   | Present Value of Differential | \$510,102.89               |
|                                | <b><u>TOTAL</u></b>           | <b><u>\$990,796.48</u></b> |



SUMMARY:

| <b>Lease</b>                        | <b>One Year</b>       | <b>15%</b>     | <b>Three Years</b> |
|-------------------------------------|-----------------------|----------------|--------------------|
| Foods Facility                      | <b>\$1,429,034.64</b> | \$1,170,077.11 | \$2,509,536.15     |
| Culinary Facility                   | <b>\$561,894.40</b>   | \$461,961.27   | \$990,796.48       |
| <b>Total: <u>\$1,990,929.04</u></b> |                       |                |                    |

*Reservation of Rights*

Griffin reserves its right to amend, update and/or supplement this Proof of Claim at any time and in any respect and to assert any and all other claims of whatever kind or nature that it has, or it may have, against the Obligor. The filing of this Proof of Claim shall not be deemed a waiver or release of any claims or rights of Griffin against the Obligor or any third party.

# **EXHIBIT A**

## INDUSTRIAL BUILDING LEASE

1. **BASIC TERMS.** This Section 1 contains the Basic Terms of this Lease between Landlord and Tenant, named below. Other Sections of the Lease referred to in this Section 1 explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

- 1.1. Effective Date of Lease: July 19, 2006
- 1.2. Landlord: First Industrial Development Services, Inc.
- 1.3. Tenant: Quantum Foods 213-D, LLC, a Delaware limited liability company
- 1.4. Premises: Approximately 10 acres of land on which the Building (the "Building") commonly known as 750 South Schmidt Road, Bolingbrook, Illinois is located, which Building contains approximately 187,000 rentable square feet, as legally described on Exhibit A attached hereto.
- 1.5. Lease Term: Twenty (20) years ("Term"), commencing July 19, 2006 ("Commencement Date") and ending, subject to Section 2.3 below, on July 31, 2026 ("Expiration Date").
- 1.6. Permitted Uses: (See Section 4.1) Food manufacturing, processing, storage, and distribution
- 1.7. Tenant's Guarantor: Quantum Foods, LLC, a Delaware limited liability company, Quantum Foods, Inc., a Delaware corporation, Quantum Culinary, LLC, an Illinois limited liability company, Choice One Foods, LLC, a Delaware corporation, and GDC Logistics, LLC, a Delaware limited liability company.
- 1.8. Brokers: None.
- 1.9. Security/Damage Deposit: None initially, but see Section 4.4.
- 1.10. Exhibits to Lease: The following exhibits are attached to and made a part of this Lease. Exhibit A (legal description); Exhibit B (Tenant Operations Inquiry Form); Exhibit C (Broom Clean Condition and Repair Requirements), Exhibit D (Termination Value), and Exhibit E (Tenant's Property).

2. **LEASE OF PREMISES; RENT.**

2.1. **Lease of Premises for Lease Term.** Landlord hereby leases the Premises to Tenant, and Tenant hereby rents the Premises from Landlord, for the Term and subject to the conditions of this Lease.

2.2. **Types of Rental Payments.** Tenant shall pay net base rent to Landlord in monthly installments, in advance, on the first day of each and every calendar month during the Term of this Lease (the "Base Rent") in the amounts and for the periods as set forth below:

|                     | <u>Rental Payments</u>  |                          |
|---------------------|-------------------------|--------------------------|
| <u>Lease Period</u> | <u>Annual Base Rent</u> | <u>Monthly Base Rent</u> |
| 7/19/06-7/31/07     | \$1,735,000.00          | \$144,583.33             |
| 8/1/07-7/31/08      | \$1,735,000.00          | \$144,583.33             |
| 8/1/08-7/31/09      | \$1,735,000.00          | \$144,583.33             |
| 8/1/09-7/31/10      | \$1,778,375.00          | \$148,197.92             |
| 8/1/10-7/31/11      | \$1,822,834.38          | \$151,902.86             |
| 8/1/11-7/31/12      | \$1,868,405.23          | \$155,700.44             |
| 8/1/12-7/31/13      | \$1,915,115.37          | \$159,592.95             |
| 8/1/13-7/31/14      | \$1,962,993.25          | \$163,582.77             |
| 8/1/14-7/31/15      | \$2,012,068.08          | \$167,672.34             |

| <u>Lease Period</u> | <u>Annual Base Rent</u> | <u>Monthly Base Rent</u> |
|---------------------|-------------------------|--------------------------|
| 8/1/15-7/31/16      | \$2,062,369.78          | \$171,864.15             |
| 8/1/16-7/31/17      | \$2,113,929.03          | \$176,160.75             |
| 8/1/17-7/31/18      | \$2,166,777.25          | \$180,564.77             |
| 8/1/18-7/31/19      | \$2,220,946.68          | \$185,078.89             |
| 8/1/19-7/31/20      | \$2,276,470.35          | \$189,705.86             |
| 8/1/20-7/31/21      | \$2,333,382.11          | \$194,448.51             |
| 8/1/21-7/31/22      | \$2,391,716.66          | \$199,309.72             |
| 8/1/22-7/31/23      | \$2,451,509.58          | \$204,292.46             |
| 8/1/23-7/31/24      | \$2,512,797.32          | \$209,399.78             |
| 8/1/24-7/31/25      | \$2,575,617.25          | \$214,634.77             |
| 8/1/25-7/31/26      | \$2,640,007.68          | \$220,000.64             |

Tenant shall also pay all Operating Expenses (defined below) and any other amounts owed by Tenant hereunder (collectively, "Additional Rent"). In the event any monthly installment of Base Rent or Additional Rent, or both, is not paid within 5 days of the date when due, a late charge in an amount equal to 5% of the then delinquent installment of Base Rent and/or Additional Rent (the "Late Charge"; the Late Charge, Default Interest, as defined in Section 21.3 below, Base Rent and Additional Rent shall collectively be referred to as "Rent") shall be paid by Tenant to Landlord, 75 Remittance Drive, Suite 1066, Chicago, Illinois 60675-1066, or if sent by overnight courier, The Northern Trust Co., 350 N. Orleans Street, Receipt & Dispatch, 8<sup>th</sup> Floor, Chicago, Illinois 60654, Attention: FR Development Services, Inc., Suite 1066 (or such other entity designated as Landlord's management agent, if any, and if Landlord so appoints such a management agent, the "Agent"), or pursuant to such other directions as Landlord shall designate in this Lease or otherwise in writing.

**2.3. Covenants Concerning Rental Payments: Initial and Final Rent Payments.** Tenant shall pay the Rent promptly when due, without notice or demand, and without any abatement, deduction or setoff. No payment by Tenant, or receipt or acceptance by Agent or Landlord, of a lesser amount than the correct Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord or satisfaction, and Agent or Landlord may accept such payment without prejudice to its right to recover the balance due or to pursue any other remedy available to Landlord. If the Commencement Date occurs on a day other than the first day of a calendar month, the Rent due for the first calendar month of the Term shall be prorated on a per diem basis (based on a 360 day, 12 month year) and paid to Landlord on the Commencement Date, and the Term will be extended to terminate on the last day of the calendar month in which the Expiration Date stated in Section 1.5 occurs. In the event of any failure by Tenant to pay or discharge any such amount, Landlord shall have all rights, powers and remedies provided for herein or by law or otherwise in the case of nonpayment of Rent.

**2.4. Net Lease: Nonterminability.**

**2.4.1.** This Lease is a complete "bond net lease" and Tenant's obligations arising or accruing during the Term of this Lease to pay all Base Rent, Additional Rent, and all other payments hereunder required to be made by Tenant shall be absolute and unconditional, and Tenant shall pay all Base Rent, Additional Rent and all other payments hereunder required to be made by Tenant without notice, demand, counterclaim, set-off, deduction, or defense and without abatement, suspension, deferment, diminution or reduction, free from any charges, assessments, impositions, expenses or deductions of any and every kind and nature whatsoever. All costs, expenses and obligations of every kind and nature whatsoever relating to the Premises and the appurtenances thereto and the use and occupancy thereof which may arise or become due during the Term (whether or not the same shall become payable during the Term of this Lease or thereafter) shall be paid by Tenant, and Landlord is not responsible for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Premises or the use or occupancy thereof except to the extent expressly provided herein. Tenant assumes the sole responsibility for the condition, use, operation, maintenance, underletting and management of the Premises, and Tenant shall indemnify, defend and hold Landlord, Agent, Landlord's mortgagee or lender and their respective employees, shareholders, officers, directors, members, managers, trustees, partners or principals, disclosed or undisclosed, and their respective employees, shareholders, officers, directors, members, managers, trustees, partners, invitees, agents

or principals, disclosed or undisclosed and all of their respective successors and assigns (hereinafter collectively referred to as the "Indemnitees" and each individually as an "Indemnitee") harmless from and against any and all Losses (as defined in Section 17.2) actually incurred to the extent of matters which arise or accrue with respect to the Term of this Lease (whether or not the same shall become payable during the Term), and the Indemnitees shall have no responsibility in respect thereof and shall have no liability for damage to the property of Tenant or any subtenant of Tenant on any account or for any reason whatsoever other than by reason of such Indemnitee's willful misconduct or gross negligence. It is the purpose and intention of the parties to this Lease that the Base Rent due hereunder shall be absolutely net to the Landlord and that this Lease shall yield, net to the Landlord, the Rent and all other payments hereunder required to be made by Tenant as provided in this Lease.

2.4.2. Except as otherwise expressly provided in Sections 18 and 21 of this Lease, this Lease shall not terminate, nor shall Tenant have any right to terminate this Lease or to be released or discharged from any obligations or liabilities hereunder for any reason, including, without limitation: (i) any damage to or destruction of the Premises; (ii) any restriction, or any interference with, any use or the occupancy of the Premises not caused by any act or omission of Landlord (whether due to any default in or failure of Landlord's title to the Premises or otherwise); (iii) any condemnation, requisition or other taking or sale of the use, occupancy or title of or to the Premises; (iv) the inadequacy or failure of the description of the Premises to demise and let to Tenant the property intended to be leased hereby; (v) any sale or other disposition of the Premises by Landlord;; (vi) any action of any court, administrative agency or other governmental authority; or (ix) any other cause, whether similar or dissimilar to the foregoing, any present or future law notwithstanding. Nothing in this paragraph shall be construed as an agreement by Tenant to perform any illegal act or to violate the order of any court, administrative agency or other governmental authority.

2.4.3. Tenant will remain obligated under this Lease in accordance with its terms, and will not take any action to terminate (except in accordance with the provisions of Sections 18 and 21 of this Lease), rescind or avoid this Lease for any reason, notwithstanding any bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Landlord or any assignee of Landlord, or any action with respect to this Lease which may be taken by any receiver, trustee or liquidator or by any court. Tenant waives all rights at any time conferred by statute or otherwise to quit, terminate or surrender this Lease or the Premises, or to any abatement or deferment of any amount payable by Tenant hereunder, or for claims against any Indemnitee for damages, loss or expense suffered by Tenant on account of any cause referred to in this Section 2.4 or otherwise (except claims arising out of the gross negligence or willful misconduct by such Indemnitee).

### 3. OPERATING EXPENSES.

3.1. Definitional Terms Relating to Additional Rent. For purposes of this Section and other relevant provisions of the Lease:

3.1.1. Operating Expenses. The term "Operating Expenses" shall mean all costs, expenses and charges of every kind or nature relating to, or incurred in connection with, the ownership, maintenance and operation of the Premises, including, but not limited to Taxes, as hereinafter defined in Section 3.1.2.

3.1.2. Taxes. The term "Taxes" shall mean all governmental taxes, assessments, fees and charges of every kind or nature (other than Landlord's income taxes), whether general, special, ordinary or extraordinary, due at any time or from time to time, or that accrue, during the Term and any extensions thereof, in connection with the ownership, leasing, or operation of the Premises, or of the personal property and equipment located therein or used in connection therewith. Tenant, on its own or on Landlord's behalf (or in Landlord's name), but at Tenant's expense, may contest, by appropriate legal proceedings, conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Taxes payable by Tenant hereunder (or assessments of the Premises in connection therewith) and Landlord agrees not to pay, settle or otherwise compromise any such item, provided that (i) in the case of an unpaid Tax, the commencement and continuation of such proceedings shall suspend the collection thereof from Landlord and from the Premises, (ii) neither the Premises nor any Rent therefrom nor any part thereof or interest therein would be reasonably likely to be in danger of being sold, forfeited, attached or lost, (iii) Tenant shall indemnify and hold harmless Landlord and the Indemnitees, from and against any Losses incurred by Landlord or the Indemnitees in connection with any such contest or as a result thereof, (iv) Tenant shall give such security as may be reasonably requested by Landlord to insure ultimate payment of, or compliance with, the same and to prevent any sale or forfeiture of the Premises or the Rent by reason of such non-payment or non-compliance; provided, however, the provisions of this Section 3.1.2 shall not be construed to permit Tenant to contest the payment of Rent or any other sums payable by Tenant to Landlord hereunder, and (v) if such contest is resolved against Landlord or Tenant, Tenant shall, as Additional Rent due hereunder, pay to the appropriate payee the amount required to be paid, together with all interest and penalties accrued thereon, within ten (10) business days after such determination (or within such shorter period as may be required by the terms of such determination), and comply, within any cure period allowed therefor by the applicable agency or

authority (or if no such cure period shall be allowed or specified by the applicable agency or authority, promptly and diligently following the effective date of such determination); provided, however, that this subsection (v) is not intended, and shall not be construed, to afford Tenant any cure or grace period beyond the effective date of any final unappealable determination. For purposes hereof, Tenant shall be responsible for any Taxes that are due and payable at any time or from time to time during the Term and for any Taxes that are assessed, become a lien, or accrue during any Operating Year, which obligation shall survive the termination or expiration of this Lease. Upon the termination or expiration of the Lease, Tenant shall pay to Landlord, in addition to any other amounts payable to Landlord hereunder, the amount of any accrued and unpaid Taxes, prorated based on the most currently available final tax information on an accrual basis for the calendar year in which the expiration or termination occurs, such that Tenant shall pay all such Taxes attributable to the period prior to such expiration or termination and Landlord shall be responsible for all such Taxes attributable to the period thereafter. Such prorated amount shall be calculated on the basis of the most recent final bills and shall be re-prorated as soon as reasonably practicable after final tax bills for the periods being prorated are issued. The terms of this Section 3.1.2 shall survive the expiration or termination of this Lease.

**3.1.3. Operating Year.** The term "Operating Year" shall mean the calendar year commencing January 1st of each year (including the calendar year within which the Commencement Date occurs) during the Term.

**3.2. Payment of Operating Expenses.** Tenant shall directly pay, to the appropriate entity, all Operating Expenses.

#### **4. USE OF PREMISES AND COMMON AREAS; TANGIBLE NET WORTH REQUIREMENT.**

**4.1. Use of Premises.** The Premises shall be used by the Tenant for the purpose(s) set forth in Section 1.6 above and for any other use permitted by applicable law. Tenant shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises, in any manner that may (a) violate any Certificate of Occupancy for the Premises; (b) cause, or be liable to cause, injury to, or in any way impair the value or proper utilization of, all or any portion of the Premises (including, but not limited to, the structural elements of the Premises) or any equipment, facilities or systems therein; (c) constitute a violation of the laws and requirements of any public authority, including any covenant, condition or restriction affecting the Premises; (d) exceed the load bearing capacity of the floor of the Premises; (e) impair or tend to impair the character, reputation or appearance of the Premises; or (f) have any detrimental environmental effect on the Premises which (i) arises out of a violation or violations of Environmental Laws or (ii) results in any material increased risk of liability to Landlord, in Landlord's reasonable judgment. On or prior to the date hereof, Tenant has completed and delivered for the benefit of Landlord a "Tenant Operations Inquiry Form" in the form attached hereto as Exhibit B describing the nature of Tenant's proposed business operations at the Premises, which form is intended to, and shall be, relied upon by Landlord. From time to time during the Term (but no more often than once in any twelve month period unless Tenant is in default hereunder or unless Tenant assigns this Lease or subleases all or any portion of the Premises, whether or not in accordance with Section 8), Tenant shall provide an updated and current Tenant Operations Inquiry Form upon Landlord's request.

**4.2. Signage.** Any and all signage must at all times fully comply with all applicable laws, regulations and ordinances. Tenant shall remove all signs of Tenant upon the expiration or earlier termination of this Lease and immediately repair any damage to the Premises caused by, or resulting from, such removal.

**4.3. Liens.** During the Term, Tenant will promptly, but no later than forty-five (45) days after notice to Tenant of the filing thereof, or such shorter period as shall prevent the forfeiture of the Premises, remove and discharge of record, by bond or otherwise (or provide Landlord with title insurance coverage insuring against any loss related to from a title insurance company acceptable to Landlord in its reasonable discretion), any charge, lien, security interest or encumbrance upon the Premises, or any Base Rent, or Additional Rent which arises for any reason, including all liens which arise out of the possession, use, occupancy, construction, repair or rebuilding of the Premises or by reason of labor or materials furnished or claimed to have been furnished to Tenant for the Premises, but not including any charge, lien, security interest or encumbrance which arises from any act or, where a duty to act exists, omission of Landlord. Nothing contained in this Lease shall be construed as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to or for the performance of any contractor, laborer, materialman, or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Premises or any part thereof. Notice is hereby given that during the Term Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding an interest in the Premises or any part thereof through or under Tenant, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to the Premises. In the event of the failure of Tenant to discharge or insure over any charge, lien, security interest or encumbrances as aforesaid, Landlord may, if not discharged by Tenant within three (3) business days after written notice to Tenant,

discharge such items by payment or bond or both, and Section 23.4 hereof shall apply. Provided Tenant is diligently contesting any such lien or encumbrance in accordance with applicable law, in lieu of a bond Tenant shall have the option to deposit cash with Landlord in an amount sufficient to fully discharge such lien or encumbrance (as reasonably determined by Landlord, the "Lien Deposit"), which Lien Deposit may be used by Landlord to discharge, settle or otherwise satisfy the applicable lien or encumbrance at any time after the commencement of foreclosure proceedings or before forfeiture of the Premises or any portion thereof.

**4.4. Tangible Net Worth Requirement.** If the combined Tangible Net Worth (as defined below) of Quantum Foods, LLC, GDC Logistics, LLC, and subsidiaries (the "Quantum Parties") is less than \$40,000,000 as reflected on any Annual Financial Statements (as defined in Section 23.11 below), then Tenant shall, not later than ten (10) business days after its delivery to Landlord of the Annual Financial Statement that evidences such Tangible Net Worth that is less than \$40,000,000, deposit with Landlord an irrevocable letter of credit ("L/C") issued by a national U.S. banking institution reasonably acceptable to Landlord, and in form and substance reasonably satisfactory to Landlord, in the amount of the annual Base Rent then in effect hereunder. The L/C shall constitute security for the performance by Tenant of the covenants and obligations hereunder (the "Security"). In addition to any other items that Landlord may reasonably require, the L/C shall: (a) name Landlord as its beneficiary; (b) have an initial term of no less than one year; (c) automatically renew for one year periods unless the issuer provides Landlord with at least 60 days' advance written notice that the L/C will not be renewed; (d) permit partial draws; (e) state that the sole and exclusive condition to any draw on the L/C shall be that Landlord certifies to the issuer that either or both of the following is/are true: (i) Tenant is the debtor in a pending bankruptcy proceeding; and (ii) Tenant is not in compliance with any of the terms of this Lease; and (f) be transferable to Successor Landlords (defined below) on as many occasions as desired. Notwithstanding the foregoing, in the event that: (x) the expiration date of any L/C occurs before the Expiration Date, (y) the issuer has advised Landlord that the issuer will not automatically renew the L/C; and (z) Tenant fails to deliver to Landlord at least forty-five (45) days prior to the expiration of such L/C either (A) an amendment thereto extending the expiration date of such L/C for not less than twelve (12) months, or (B) a new L/C, in form and substance in accordance with (a) through (f) above and otherwise satisfactory to Landlord (in its reasonable discretion), then Landlord may draw on such L/C and thereafter (in addition to any other remedies available to Landlord under this Lease) apply the proceeds to Rent and/or any other sums due from Tenant hereunder in whatever manner or for whatever purpose Landlord reasonably deems appropriate in the event that Tenant fails to timely comply with any or all of the covenants and obligations imposed on Tenant under this Lease. If Tenant fails to comply with any or all of its covenants or obligations hereunder, Landlord or Agent may, without notice to Tenant, draw on the L/C and apply the proceeds to Rent and/or any other sums due from Tenant hereunder in whatever manner Landlord deems appropriate, in addition to any and all other remedies available to Landlord under this Lease. In the event Landlord draws against the L/C, Tenant shall, upon demand, at Tenant's option, immediately either (aa) deposit with Landlord or Agent a sum equal to amount drawn under the L/C or (bb) deliver to Landlord an additional L/C in an amount equal to the amount drawn. If Tenant fully and faithfully complies with all the covenants hereunder, the Security (or any balance thereof) together with Landlord's written consent to the cancellation of any and all outstanding L/Cs constituting part of the Security shall be delivered to Tenant within thirty (30) days after the earlier to occur of (1) delivery to Landlord of Annual Financial Statements reflecting that the combined Tangible Net Worth of Quantum Foods, LLC, GDC Logistics, LLC, and subsidiaries is greater than \$45,000,000 and (2) delivery to Landlord of possession of the Premises (in accordance with the requirements of Section 19 below) following the expiration or termination of this Lease. Landlord may deliver the Security to any purchaser of Landlord's interest in the Premises or any Successor Landlord, if applicable, whereupon Landlord and Agent shall be discharged from any further liability with respect to the Security. In the event that Landlord exercises its right under the preceding sentence, Tenant shall fully cooperate with Landlord, in all reasonable respects, to cause the L/C to be assigned and conveyed to, or reissued to, such purchaser or Successor Landlord, as the case may be, and Tenant shall bear any expenses incurred in connection therewith. "Tangible Net Worth" of an entity shall mean the Net Worth of the entity, less the following intangible assets: (a) all unamortized debt discount and expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, organizational and development expenses, unamortized operating rights, unamortized licenses, unamortized leasehold rights and other intangible assets; or any write-up resulting from a reversal of a reserve for bad debts or depreciation and any write-up resulting from a change in methods of accounting or inventory; and (b) the amount of any investment in an affiliate. The "Net Worth" of an entity is its total assets minus its total liabilities, shown (with respect to the Quantum Parties) on the most recent of the Annual Financial Statements or (with respect to any other entity) on the entity's most recent audited annual financial statements prepared in accordance with U.S. generally accepted accounting principles.

**5. CONDITION AND DELIVERY OF PREMISES.** Tenant agrees that Tenant is familiar with the condition of the Premises, and Tenant hereby accepts the foregoing on an "AS-IS," "WHERE-IS" basis. Tenant acknowledges that neither Landlord nor Agent, nor any representative of Landlord, has made any representation as to the condition of the foregoing or the suitability of the foregoing for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of the foregoing. Neither Landlord nor Agent shall be obligated to make any repairs, replacements or improvements (whether structural or otherwise) of any kind or nature to the foregoing in connection with, or in consideration of, this Lease.

6. **SUBORDINATION; ESTOPPEL CERTIFICATES; ATTORNMENT.**

6.1. **Subordination and Attornment.** Provided Tenant is provided with a customary subordination, non-disturbance and attornment agreement by the holder of any mortgage or deed of trust of Landlord, this Lease is and shall be subject and subordinate at all times to (a) all ground leases or underlying leases that may now exist or hereafter be executed affecting the Premises and (b) any mortgage or deed of trust that may now exist or hereafter be placed upon, and encumber, any or all of (x) the Premises; (y) any ground leases or underlying leases for the benefit of the Premises; and (z) all or any portion of Landlord's interest or estate in any of said items. Tenant shall execute and deliver, within ten (10) days of Landlord's request, and in the form reasonably requested by Landlord (or its lender), any documents evidencing the subordination of this Lease. Tenant hereby covenants and agrees that Tenant shall attorn to any successor to Landlord.

6.2. **Estoppel Certificate.** Each of Landlord and Tenant agree, from time to time and within 10 days after request by the other, to deliver to the other, or their designee, an estoppel certificate stating such matters pertaining to this Lease as may be reasonably requested by Landlord or Tenant (as the case may be). Failure by Tenant to timely execute and deliver such certificate shall constitute an acceptance of the Premises and acknowledgment by Tenant that the statements included therein are true and correct without exception.

6.3. **Transfer by Landlord.** In the event of a sale or conveyance by Landlord of the Premises and the express assumption by the successor entity of all of Landlord's obligations and liabilities hereunder, the same shall operate to release Landlord from any future liability for any of the covenants or conditions, express or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to Landlord's successor in interest ("Successor Landlord") with respect thereto and agrees to attorn to such successor.

7. **QUIET ENJOYMENT.** Subject to the provisions of this Lease, so long as Tenant pays all of the Rent and performs all of its other obligations hereunder, Tenant shall not be disturbed in its possession of the Premises by Landlord, Agent or any other person lawfully claiming through or under Landlord.

8. **ASSIGNMENT AND SUBLETTING.** Tenant shall not (a) assign (whether directly or indirectly), in whole or in part, this Lease, or (b) allow this Lease to be assigned, in whole or in part, by operation of law or otherwise, including, without limitation, by transfer of a controlling interest (i.e. greater than a 50% interest) of stock, membership interests or partnership interests, or by merger or dissolution, which transfer of a controlling interest, merger or dissolution shall be deemed an assignment for purposes of this Lease, or (c) mortgage or pledge the Lease, or (d) sublet the Premises, in whole or in part, without (in the case of any or all of (a) through (d) above) the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Notwithstanding any contrary language in this Lease, however, Tenant may, without the necessity of consent from Landlord, assign this Lease or sublease a portion of the Premises to Quantum Foods, LLC, or to any wholly-owned direct or indirect subsidiary of Tenant or Quantum Foods, LLC, provided that (x) Tenant advises Landlord, in writing, in advance, and (y) otherwise complies with the succeeding provisions of this Section 8. Notwithstanding any contrary language in this Lease, however, Tenant may also, without the necessity of consent from Landlord, (a) assign this Lease to any buyer of all or substantially all of the business conducted by Tenant at the Premises, and (b) allow this Lease to be assigned, in whole or in part, by operation of law or otherwise, by transfer of a controlling interest (i.e. greater than a 50% interest) of stock, membership interests or partnership interests, or by merger, provided that, in the case of (a) or (b), (A) the buyer/transferee/successor has a Tangible Net Worth of at least Fifty Million Dollars (\$50,000,000), (B) immediately following such transaction, the Quantum Parties have a combined Tangible Net Worth of at least Fifty Million Dollars (\$50,000,000), and (C) Tenant advises Landlord, in writing, at least thirty (30) days in advance, and otherwise complies with the succeeding provisions of this Section 8. In no event shall any assignment or sublease ever release Tenant from any obligation or liability hereunder, except with the express written agreement of Landlord. Notwithstanding any contrary language in this Section 8, Tenant may, without the necessity of consent from Landlord, permit the transfer of stock, membership interests or partnerships in Tenant among members of the family of Edward B. Bleka, and trusts for the sole benefit of members of the family of Edward B. Bleka. Except as provided in the preceding two sentences, any purported assignment, mortgage, transfer, or pledge made without the prior written consent of Landlord shall be absolutely null and void. No assignment of this Lease shall be effective and valid unless and until the assignee executes and delivers to Landlord any and all documentation reasonably required by Landlord in order to evidence assignee's assumption of all obligations of Tenant hereunder. Regardless of whether or not an assignee or sublessee executes and delivers any documentation to Landlord pursuant to the preceding sentence, any assignee or sublessee shall be deemed to have automatically attorned to Landlord in the event of any termination of this Lease. If this Lease is assigned, or if the Premises (or any part thereof) are sublet or used or occupied by anyone other than Tenant, whether or not in violation of this Lease, Landlord or Agent may (without prejudice to, or waiver of its rights), collect Rent from the assignee, subtenant or occupant. In the event of an assignment of this Lease and the payment of consideration from the assignee to the Tenant in connection therewith, 100% of such



consideration shall be paid to Landlord. With respect to the allocable portion of the Premises sublet, in the event that the total rent and any other considerations received under any sublease by Tenant is greater than the total Rent required to be paid, from time to time, under this Lease, Tenant shall pay to Landlord (which amounts shall be deemed a component of the Additional Rent) fifty percent (50%) of such excess as received from any subtenant. Landlord acknowledges that subletting shall not include activities conducted by Tenant in the ordinary course of its business, including without limitation the rental of pallet and rack space in Tenant's warehousing operations.

## 9. COMPLIANCE WITH LAWS.

9.1. Compliance with Laws. Tenant shall, at its sole expense (regardless of the cost thereof), comply with all local, state and federal laws, rules, regulations and requirements now or hereafter in force and all judicial and administrative decisions in connection with the enforcement thereof (collectively, "Laws"), whether such Laws (a) pertain to either or both of the Premises and Tenant's use and occupancy thereof; (b) concern or address matters of an environmental nature; (c) require the making of any structural, unforeseen or extraordinary changes; and (d) involve a change of policy on the part of the body enacting the same, including, in all instances described in (a) through (d), but not limited to, the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*). If any license or permit is required for the conduct of Tenant's business in the Premises, Tenant, at its expense, shall procure such license prior to the Commencement Date, and shall maintain such license or permit in good standing throughout the Term. Tenant shall give prompt notice to Landlord of any written notice it receives of the alleged violation of any Law or requirement of any governmental or administrative authority with respect to the Premises and/or the ownership, occupancy, or maintenance thereof.

9.2. Hazardous Materials. If, at any time or from time to time (a) prior to the Commencement Date, but during Tenant's, or its affiliate's, as the case may be, period of ownership or occupancy of the Premises, or (b) during the Term (or any extension thereof), any Hazardous Material (defined below) is (was) generated, transported, stored, used, treated or disposed of at, to, from, on or in the Premises by, or as a result of any act or omission of, any or all of Tenant and any or all of Tenant's Parties (defined below): (i) Tenant shall, at its own cost, at all times comply (and cause all others to comply) with all Laws relating to Hazardous Materials, and Tenant shall further, at its own cost, obtain and maintain in full force and effect at all times all permits and other approvals required in connection therewith; (ii) Tenant shall promptly provide Landlord or Agent with complete copies of all communications, permits or agreements with, from or issued by any governmental authority or agency (federal, state or local) or any private entity relating in any way to the presence, release, threat of release, or placement of Hazardous Materials on or in the Premises or any portion of the Premises, or the generation, transportation, storage, use, treatment, or disposal at, on, in or from the Premises, of any Hazardous Materials; (iii) Landlord, Agent and their respective agents and employees shall have the right to either or both (x) enter the Premises and (y) conduct appropriate tests for the purposes of ascertaining Tenant's compliance with all applicable Laws or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of the Premises; and (iv) upon written request by Landlord or Agent if Landlord has a reasonable basis for believing that Hazardous Materials are present at the Premises in violation of this Lease, Tenant shall provide Landlord with the results of reasonably appropriate tests of air, water or soil to demonstrate that Tenant complies with all applicable Laws or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of the Premises. This Section 9.1 does not authorize the generation, transportation, storage, use, treatment or disposal of any Hazardous Materials at, to, from, on or in the Premises in contravention of this Section 9. Tenant covenants to investigate, clean up and otherwise remediate, at Tenant's sole expense, any release of Hazardous Materials caused, contributed to, or created by any or all of (A) Tenant and (B) any or all of Tenant's officers, directors, members, managers, partners, invitees, agents, employees, contractors or representatives ("Tenant's Parties") either or both (A) prior to the Commencement Date, but during Tenant's, or its affiliate's, as the case may be, period of ownership or occupancy of the Premises, and (B) during the Term (and any extension thereof). Such investigation and remediation shall be performed only after Tenant has obtained Landlord's prior written consent; provided, however, that Tenant shall be entitled to respond immediately to an emergency without first obtaining such consent. All remediation shall be performed in strict compliance with Laws and to the reasonable satisfaction of Landlord. Tenant shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Materials in any way connected to the Premises without first obtaining Landlord's written consent (which consent may be given or withheld in Landlord's sole, but reasonable, discretion) and affording Landlord the reasonable opportunity to participate in any such proceedings. As used herein, the term, "Hazardous Materials," shall mean any waste, material or substance (whether in the form of liquids, solids or gases, and whether or not airborne) that is or may be deemed to be or include a pesticide, petroleum, asbestos, polychlorinated biphenyl, radioactive material, urea formaldehyde or any other pollutant or contaminant that is or may be deemed to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious, or that presents a risk to public health or to the environment, and that is or becomes regulated by any Law. The undertakings, covenants and obligations imposed on Tenant under this Section 9.1 shall survive the termination or expiration of this Lease.

## 10. INSURANCE.

10.1. Policies. Tenant shall purchase, at its own expense, and keep in force at all times during this Lease the policies of insurance set forth below (collectively, "Tenant's Policies"). All Tenant's Policies shall (a) be issued by an insurance company with a Best rating of A or better and otherwise reasonably acceptable to Landlord and shall be licensed to do business in the state in which the Premises is located; (b) provide that said insurance shall not be canceled or materially modified unless 30 days' prior written notice shall have been given to Landlord; (c) provide for deductible amounts that are reasonably acceptable to Landlord (and its lender, if applicable) and (d) otherwise be in such form, and include such coverages, as Landlord may reasonably require. The Tenant's Policies described in Section 10.2 (i) and (ii) below shall (1) provide coverage on an occurrence basis; (2) name Landlord and First Industrial, L.P. (and its lender, if applicable) as additional insureds; (3) provide coverage, to the extent insurable, for the indemnity obligations of Tenant under this Lease; (4) contain a separation of insured parties provision; (5) be primary, not contributing with, and not in excess of, coverage that Landlord may carry; and (6) provide coverage for a pollution incident arising from a hostile fire with a sublimit of no less than \$1,000,000 (in excess of deductions). All Tenant's Policies (or, at Landlord's option, Certificates of Insurance and applicable endorsements, including, without limitation, an "Additional Insured-Managers or Landlords of Premises" endorsement) shall be delivered to Landlord prior to the Commencement Date and renewals thereof shall be delivered to Landlord's Corporate and Regional Notice Addresses at least 30 days prior to the applicable expiration date of each Tenant's Policy. In the event that Tenant fails, at any time or from time to time, to comply with the requirements of the preceding sentence, Landlord may (i) order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant to Landlord upon demand, as Additional Rent or (ii) impose on Tenant, as Additional Rent, a monthly delinquency fee, for each month during which Tenant fails to comply with the foregoing obligation, in an amount equal to five percent (5%) of the monthly Base Rent then in effect. Tenant shall give prompt notice to Landlord and Agent of any bodily injury, death, personal injury, advertising injury or property damage occurring in and about the Premises.

10.2. Coverages. Tenant shall purchase and maintain, throughout the Term, a Tenant's Policy(ies) of (i) "all-risk" commercial property insurance covering the improvements constructed, installed or located on the Premises (but excluding Tenant's Property) against all loss or damage caused by fire, ice, hurricane, flood, windstorm, terrorism and such other risks of physical loss or damage as are covered by a causes of loss special form insurance policy, which coverage shall, at all times, be in an amount equal to 100% of the then "full replacement cost" of the Premises subject to a deductible not to exceed \$100,000.00 ("Full Replacement Cost" shall be interpreted to mean the cost of replacing the Premises without deduction for depreciation or wear and tear, less the cost of footings, foundations and other structures below grade); (ii) commercial general or excess liability insurance, including personal injury and property damage, in the amount of not less than \$2,000,000.00 per occurrence, and \$5,000,000.00 annual general aggregate; (iii) comprehensive automobile liability insurance covering Tenant against any personal injuries or deaths of persons and property damage based upon or arising out of the ownership, use, occupancy or maintenance of a motor vehicle at the Premises and all areas appurtenant thereto in the amount of not less than \$1,000,000, combined single limit; (iv) commercial property insurance covering the Tenant's personal property (at their full replacement cost); (v) workers' compensation insurance per the applicable state statutes covering all employees of Tenant; (vi) rent loss insurance for the benefit of Landlord; and (vii) during any period of construction or during which any Alterations are being made, builder's risk coverage in an amount sufficient for such Alterations or other work or improvements performed on the Premises by Tenant. Notwithstanding anything to the contrary contained in this Section 10, Landlord shall have the right, upon not less than ten (10) days' prior written notice to Tenant, to purchase the aforementioned Tenant's Policies on Tenant's behalf and charge the cost thereof to Tenant, which amounts shall be payable by Tenant to Landlord, upon demand as Additional Rent; provided, however, in any such instance where Landlord elects to so provide insurance and charge the premiums therefor to Tenant, as Additional Rent, Landlord agrees that it may not pass through to Tenant, as Additional Rent, the amount of any such insurance premium in excess of the premium that Tenant reasonably evidences to Landlord would be charged to Tenant, if Tenant were to procure the same insurance coverage as then in question (with the same deductible), from an insurer with a Best's rating that equals or exceeds the then-applicable Best's rating of Landlord's insurer.

10.3. Waiver of Subrogation. Notwithstanding anything to the contrary in this Lease, Landlord and Tenant mutually waive their respective rights of recovery against each other and each other's officers, directors, constituent partners, members, agents and employees, and Tenant further waives such rights against (a) each lessor under any ground or underlying lease encumbering the Premises and (b) each lender under any mortgage or deed of trust or other lien encumbering the Premises (or any portion thereof or interest therein), to the extent any loss is insured against or required to be insured against under this Lease, including, but not limited to, losses, deductibles or self-insured retentions covered by Landlord's or Tenant's commercial property, general liability, automobile liability or workers' compensation policies described above. This provision is intended to waive, fully and for the benefit of each party to this Lease, any and all rights and claims that might give rise to a right of subrogation by any insurance carrier. Each party shall cause its respective insurance policy(ies) to be endorsed to evidence compliance with such waiver.

## 11. ALTERATIONS.

11.1. Non-Structural Alterations. Tenant may, from time to time at its sole expense, make alterations or improvements in and to the Premises (hereinafter collectively referred to as "Alterations") provided that:

- (i) such Alterations comply with applicable law and do not adversely affect the value of the Premises and Tenant delivers prior written notice thereof to Landlord; and
- (ii) Tenant, in every instance, complies with the terms and conditions of Section 11.3 below.

11.2. Consent to Alterations. In addition: (a) the Alterations shall not adversely affect the structural integrity of the Premises; (b) the proper functioning of the mechanical, electrical, heating, ventilating, air-conditioning ("HVAC"), sanitary and other service systems of the Premises shall not be adversely affected; (c) Tenant shall have appropriate insurance coverage, reasonably satisfactory to Landlord, regarding the performance and installation of the Alterations; and (d) Tenant shall have provided Landlord with reasonably detailed plans for such Alterations in advance of beginning the Alterations. With respect to any structural Alterations, Tenant may request that Landlord finance the cost of such Alterations upon terms and conditions acceptable to Landlord in its sole but reasonable discretion (including, without limitation, an increase in Base Rent to reflect such financing).

11.3. Other Requirements. Before proceeding with any Alterations and, with respect to (ii) below, not later than thirty (30) days prior to proceeding with any Alterations, Tenant shall (i) at Tenant's expense, obtain all necessary governmental permits and certificates for the commencement and prosecution of Alterations; (ii) submit to Landlord, working drawings, plans and specifications and all permits for the work to be done; and (iii) cause those contractors, materialmen and suppliers engaged to perform the Alterations to deliver to Landlord certificates of insurance (in a form reasonably acceptable to Landlord) evidencing policies of builders risk, commercial general liability insurance (providing the same coverages as required in Section 10 above) and workers' compensation insurance. If Landlord delivers written notice to Tenant following delivery of the items required to be delivered pursuant to item (ii) above that Landlord believes the proposed Alterations could adversely affect the structural integrity of the Premises, then Tenant shall not commence such Alterations until such items have been revised to Landlord's reasonable satisfaction. Such insurance policies shall satisfy the obligations imposed under Section 10. Tenant shall cause the Alterations to be performed in compliance with all applicable permits, Laws and requirements of public authorities, and with Landlord's reasonable rules and regulations or any other reasonable restrictions that Landlord may impose on the Alterations. Tenant shall cause the Alterations to be diligently performed in a good and workmanlike manner, using materials and equipment at least equal in quality and class to the standards for the Premises reasonably established by Landlord. Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, governmental permits and certificates and proof of payment for all labor and materials, including, without limitation, copies of paid invoices and final lien waivers. If Landlord's consent to any Alterations is required, and Landlord provides that consent, then at the time Landlord so consents, Landlord shall also advise Tenant whether or not Landlord shall require that Tenant remove such Alterations at the expiration or termination of this Lease. If Landlord requires Tenant to remove the Alterations, then, during the remainder of the Term, Tenant shall be responsible for the maintenance of appropriate commercial property insurance (pursuant to Section 10) therefor; however, if Landlord shall not require that Tenant remove the Alterations, such Alterations shall constitute Landlord's Property. The parties do not intend that the making of Alterations shall: (A) constitute income to Landlord; or (B) result in some or all of the federal, state or municipal income tax deductions which Landlord would otherwise be permitted to report with respect to the Premises or this Lease being deferred or denied; or (C) cause this Lease not to be a true lease for federal income tax purposes. Notwithstanding anything herein to the contrary, Landlord reserves the right to withhold its consent to any proposed Alteration (or the financing of any such improvement) if Landlord concludes that the making or financing or such improvements would result in some or all of federal, state or municipal income tax deductions which Landlord would otherwise be permitted to report with respect to the Premises or this Lease being deferred or denied or cause this Lease not to be a true lease for federal income tax purposes.

12. LANDLORD'S AND TENANT'S PROPERTY. All fixtures, machinery, equipment, improvements and appurtenances attached to, or built into, the Premises, at the commencement of or during the Term, principally used for the operation of the Building or of the electrical, HVAC, gas and water utilities serving the Building, whether or not placed there by or at the expense of Tenant, but expressly excluding the machinery and equipment specified on Exhibit E attached hereto, shall become and remain a part of the Premises; shall be deemed the property of Landlord (the "Landlord's Property"), without compensation or credit to Tenant; and shall not be removed by Tenant at the Expiration Date unless Landlord requires their removal (including, but not limited to, Alterations pursuant to Section 11) by notifying Tenant, in writing, or before the Expiration Date or earlier termination date of this Lease. In no event shall Tenant remove any of the following materials or equipment without Landlord's prior written consent (which consent may be given or withheld in Landlord's sole discretion): any power wiring or power panels, lighting or lighting

fixtures, wall or window coverings, carpets or other floor coverings, heaters, air conditioners or any other HVAC equipment, fencing or security gates, or other similar Building decorations. At or before the Expiration Date, or the date of any earlier termination, Tenant, at its expense, shall remove from the Premises all of Tenant's personal property and any Alterations that Landlord requires be removed pursuant to Section 11 (including, without limitation the personal property listed on Exhibit C and that listed on Exhibit E), and Tenant shall repair (to Landlord's reasonable satisfaction) any damage to the Premises resulting from such installation and/or removal. Any other items of Tenant's personal property that shall remain in the Premises after the Expiration Date, or following an earlier termination date, may, at the option of Landlord, be deemed to have been abandoned, and in such case, such items may be retained by Landlord as its property or be disposed of by Landlord, in Landlord's sole and absolute discretion and without accountability, at Tenant's expense.

**13. REPAIRS AND MAINTENANCE.** Tenant acknowledges that, with full awareness of its obligations under this Lease, Tenant has accepted the condition, state of repair and appearance of the Premises. Except for events of damage, destruction or casualty to the Premises (to the extent addressed in Section 18 below), Tenant agrees that, at its sole expense, it shall put, keep and maintain the Premises, including any Alterations and any altered, rebuilt, additional or substituted Buildings, structures and other improvements thereto or thereon, in the condition required pursuant to Section 19(a) below (reasonable wear and tear excepted), and in a safe condition, repair and appearance (collectively, the "Required Condition") and shall make all repairs and replacements necessary therefor. Without limiting the foregoing, Tenant shall promptly make all structural and nonstructural, foreseen and unforeseen, ordinary and extraordinary changes, replacements and repairs of every kind and nature (including, without limitation, to the roof structure and roof covering, sidewalks, driveways, curbs, loading areas, landscaped areas and parking lot, and the electrical, mechanical, HVAC, and plumbing systems), and correct any patent or latent defects in the Premises, which may be required to put, keep and maintain the Premises in the Required Condition. Tenant expressly acknowledges its obligation to repair and, as necessary, replace the roof structure and roof covering in order to put, keep and maintain the roof structure and roof covering in the Required Condition. Tenant will keep the Premises orderly and free and clear of rubbish. Tenant covenants to perform or observe all terms, covenants and conditions of any easement, restriction, covenant, declaration or maintenance agreement (collectively, "Easements") to which the Premises are currently subject or become subject pursuant to this Lease, whether or not such performance is required of Landlord under such Easements, including, without limitation, payment of all amounts due from Landlord or Tenant (whether as assessments, service fees or other charges) under such Easements. Tenant shall deliver to Landlord promptly, but in no event later than five (5) business days after receipt thereof, copies of all written notices received from any party thereto regarding the non-compliance of the Premises or Landlord's or Tenant's performance of obligations under any Easements. Tenant shall, at its expense, use reasonable efforts to enforce compliance with the material terms of any Easements benefiting the Premises by any other person or entity or property subject to such Easement. Landlord shall not be required to maintain, repair or rebuild, or to make any alterations, replacements or renewals of any nature to the Premises, or any part thereof, whether ordinary or extraordinary, structural or nonstructural, foreseen or not foreseen, or to maintain the Premises or any part thereof in any way or to correct any patent or latent defect therein. Tenant hereby expressly waives any right to make repairs at the expense of Landlord which may be provided for in any Law in effect at the Commencement Date or that may thereafter be enacted. If Tenant shall vacate or abandon the Premises, it shall give Landlord immediate written notice thereof.

**14. UTILITIES.** Tenant shall purchase all utility services and shall provide for garbage, cleaning and extermination services. Tenant shall pay the utility charges for the Premises directly to the utility or municipality providing such service, all charges shall be paid by Tenant before they become delinquent. Tenant shall be solely responsible for the repair and maintenance of any meters necessary in connection with such services. Tenant's use of electrical energy in the Premises shall not, at any time, exceed the capacity of either or both of (x) any of the electrical conductors and equipment in or otherwise servicing the Premises; and (y) the HVAC systems of the Premises.

**15. INVOLUNTARY CESSATION OF SERVICES.** If and to the extent Landlord directly provides any such services to Tenant, Landlord reserves the right, without any liability to Tenant and without affecting Tenant's covenants and obligations hereunder, to stop service of any or all of the HVAC, electric, sanitary, elevator (if any), and other systems serving the Premises, or to stop any other services provided by Landlord under this Lease, whenever and for so long as may be necessary by reason of (i) accidents, emergencies, strikes, or (ii) any other cause beyond Landlord's reasonable control. Further, it is also understood and agreed that Landlord or Agent shall have no liability or responsibility for a cessation of any services to the Premises that occurs as a result of causes beyond Landlord's or Agent's reasonable control. No such interruption of any service shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord or Agent liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Lease, including, but not limited to, the obligation to pay Rent.

**16. LANDLORD'S RIGHTS.** Upon reasonable prior notice to Tenant (which may be delivered telephonically) and as long as Landlord does not unreasonably interfere with Tenant's operations, Landlord, Agent and their respective agents, employees and representatives shall have the right to enter and/or pass through the Premises at any time or times (except in the event of emergency, for which no reasonable prior notice is required) to examine and inspect the Premises and to show them to actual and prospective lenders, prospective purchasers or mortgagees of the Premises or providers of capital to Landlord and its affiliates; and in connection with the foregoing, to install a sign at or on the Premises to advertise the Premises for lease or sale; during the period of six months prior to the Expiration Date (or at any time, if Tenant has vacated or abandoned the Premises or is otherwise in default under this Lease), Landlord and its agents may exhibit the Premises to prospective tenants. Additionally, Landlord and Agent shall have the following rights with respect to the Premises, exercisable without notice to Tenant, without liability to Tenant, and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for setoff or abatement of Rent: (i) to have pass keys, access cards, or both, to the Premises; and (ii) to decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time after Tenant vacates or abandons the Premises for more than 45 consecutive days and without notice to Landlord of Tenant's intention to reoccupy the Premises.

**17. NON-LIABILITY AND INDEMNIFICATION.**

**17.1. Non-Liability.** Except to the extent directly caused by the willful misconduct or gross negligence of Landlord or Agent, none of Landlord, Agent, any other managing agent, or their respective affiliates, owners, partners, directors, officers, agents and employees shall be liable to Tenant for any loss, injury, or damage, to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss. Further, except to the extent directly caused by the willful misconduct or gross negligence of Landlord or Agent, none of Landlord, Agent, any other managing agent, or their respective affiliates, owners, partners, directors, officers, agents and employees shall be liable to Tenant (a) for any damage caused by other persons in, upon or about the Premises, or caused by operations in construction of any public or quasi-public work; (b) with respect to matters for which Landlord is liable, for consequential or indirect damages purportedly arising out of any loss of use of the Premises or any equipment or facilities therein by Tenant or any person claiming through or under Tenant; (c) for any defect in the Premises; (d) for injury or damage to person or property caused by fire, or theft, or resulting from the operation of heating or air conditioning or lighting apparatus, or from falling plaster, or from steam, gas, electricity, water, rain, snow, ice, or dampness, that may leak or flow from any part of the Premises, or from the pipes, appliances or plumbing work of the same.

**17.2. Tenant Indemnification.** Except for the Landlord's gross negligence or willful misconduct, Tenant hereby indemnifies, defends, and holds the Indemnitees harmless from and against any and all Losses arising from or in connection with any or all of: (a) the conduct or management of the Premises or any business therein, or any work or Alterations done, or any condition created by any or all of Tenant and Tenant's Parties in or about the Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant is given access to the Premises; (b) any act, omission or negligence of any or all of Tenant and Tenant's Parties; (c) any accident, injury or damage whatsoever occurring in, at or upon the Premises and caused by any or all of Tenant and Tenant's Parties; (d) any breach by Tenant of any or all of its warranties, representations and covenants under this Lease; (e) any actions necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under the Bankruptcy Code relating to the Tenant; (f) the creation or existence of any Hazardous Materials in, at, on or under the Premises, if and to the extent brought to the Premises or caused by Tenant or any party within Tenant's control (whether (x) prior to the Commencement Date, but during the period of time during which Tenant, or its affiliate, as the case may be, owned or occupied the Premises, or (y) from time to time during the Term and any extension thereof); (g) any violation or alleged violation by any or all of Tenant and Tenant's Parties of any Law; and (h) all costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Premises or the use or occupancy thereof during the Term (collectively, "Tenant's Indemnified Matters"). In case any action or proceeding is brought against any or all of the Indemnitees by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from any or all of Landlord, Agent or any Holder (defined below), shall resist and defend such action or proceeding by counsel reasonably satisfactory to, or selected by, Landlord. The term "Losses" shall mean all claims, demands, expenses, actions, judgments, damages (actual, but not consequential), penalties, fines, liabilities, losses of every kind and nature, suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by any applicable indemnity provided by Tenant under the terms of this Lease. The provisions of this Section 17.2 shall survive the expiration or termination of this Lease.

**18. CASUALTY AND CONDEMNATION.**

**18.1. Casualty.** If the Building and/or other improvements on the Premises shall be damaged or destroyed by fire or other casualty (each, a "Casualty"), Tenant, at Tenant's sole cost and expense, shall promptly and diligently repair, rebuild or replace such Building and other improvements, so as to restore the Premises to the condition in which they were immediately prior to such damage

or destruction, irrespective of whether any insurance proceeds are adequate or available to repair, rebuild or replace such Building. The net proceeds of any insurance (other than rent loss insurance) recovered by reason of such damage to or such destruction of the Building and/or other improvements on the Premises in excess of the cost of adjusting the insurance claim and collecting the insurance proceeds (such excess being hereinafter called the "net insurance proceeds") shall be held in trust by Landlord or held by any holder of an interest in the Premises which may be superior to Tenant's interest under this Lease (a "Holder") and released for the purpose of paying the fair and reasonable cost of restoring such Building and other improvements. Such net insurance proceeds shall be released from time to time as the work progresses to Tenant or to Tenant's contractors. Prior to the commencement of the work, Tenant shall deliver to Landlord reasonable proof that such net insurance proceeds are adequate to pay the cost of such restoration. If such net insurance proceeds are not adequate, Tenant shall pay, out of funds other than such net insurance proceeds, the amount by which such cost will exceed such net insurance proceeds and shall furnish proof to Landlord of the payment of such excess for work performed, before Landlord or any such Holder shall release any part of such net insurance proceeds. If such net insurance proceeds are more than adequate, the amount by which such net insurance proceeds exceed the cost of restoration will be paid to Tenant. If a Holder shall decline to make the net insurance proceeds available for the restoration provided herein and Landlord does not elect to substitute other funds for such insurance proceeds, Landlord shall have the right to terminate this Lease unless Tenant pays Landlord, within thirty (30) days after written notice from Landlord to Tenant, an amount sufficient to fully complete such restoration (as reasonably calculated by Landlord).

## **18.2. Condemnation.**

**18.2.1. Condemnation of Entire Premises.** If all or substantially all of the Premises is taken or condemned for a public or quasi-public use ("Condemnation"), the provisions of Section 18.3 shall apply.

**18.2.2. Partial Condemnation.** If less than all or substantially all of the Premises is subject to a Condemnation, Tenant shall restore the Building and other improvements upon the Premises to a condition and size as nearly comparable as reasonably possible to the condition and size thereof immediately prior to the Condemnation, and there shall be an equitable abatement of the minimum rent according to the value of the Premises before and after the Condemnation. In the event that the parties are unable to agree upon the amount of such abatement, either party may submit the issue for arbitration pursuant to the rules then obtaining of the American Arbitration Association and the determination or award rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and not subject to appeal, and judgment thereon may be entered in any court of competent jurisdiction.

**18.2.3. Award.** Tenant shall have the right to make a claim against the condemnor for moving and related expenses which are payable to tenants under applicable law without reducing the awards otherwise payable to Landlord and the Holders. Except as aforesaid, Tenant hereby waives all claims against Landlord and all claims against the condemnor, and Tenant hereby assigns to Landlord all claims against the condemnor including, without limitation, all claims for leasehold damages and diminution in the value of Tenant's leasehold interest. If only part of the Premises is Condemned, the net proceeds of any Condemnation award recovered by reason of any taking or Condemnation of the Premises in excess of the cost of collecting the award and in excess of any portion thereof attributable to the then-current market value of the land taken or Condemned (such excess being hereinafter called the "net condemnation proceeds") shall be held in trust by Landlord or any Holder and released for the purpose of paying the fair and reasonable cost of restoring the Building or Buildings and other improvements damaged by reason of the taking or Condemnation. Such net condemnation proceeds shall be released from time to time as the work progresses to Tenant or to Tenant's contractors. Prior to the commencement of the work, Tenant shall deliver to Landlord reasonable proof that such net condemnation proceeds are adequate to pay the cost of such restoration. If such net condemnation proceeds are not adequate, Tenant shall pay, out of funds other than such net condemnation proceeds, the amount by which such cost will exceed such net condemnation proceeds and shall furnish proof to Landlord of the payment of such excess for work performed before Landlord or any such Holder shall release any part of such net condemnation proceeds. If such net condemnation proceeds are more than adequate, the amount by which such net condemnation proceeds exceed the cost of restoration will be retained by Landlord or applied to repayment of any mortgage loan secured by the Premises. In the event that the parties are unable to agree upon the portion of the award attributable to the then-current market value of the land taken or Condemned, either party may submit the issue for arbitration pursuant to the rules then obtaining of the American Arbitration Association and the determination or award rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and not subject to appeal, and judgment thereon may be entered in any court of competent jurisdiction.

**18.2.4. Temporary Taking.** If the condemnor should take only the right to possession for a fixed period of time or for the duration of an emergency or other temporary condition (a "Temporary Taking"), then, notwithstanding anything hereinabove provided, this Lease shall continue in full force and effect without any abatement of rent, but the amounts payable by the condemnor with respect to any period of time prior to the expiration or sooner termination of this Lease shall be paid by the

condemnor to Landlord and the condemnor shall be considered a subtenant of Tenant. Landlord shall apply the condemnation award, to the extent actually received, or as much thereof as may be necessary for the purpose, toward the amount of Rent due from Tenant as rent for that period, and Tenant shall pay to Landlord any deficiency between the amount thus paid by the condemnor and the amount of the Rent, while Landlord shall pay over to Tenant any excess of the amount of the award over the amount of the Rent.

**18.3. Termination of Lease Following Major Casualty or Major Condemnation.**

**18.3.1.** If a (1) Casualty or (2) Condemnation shall affect all or a substantial portion of the Premises, and:

**18.3.1.1.** in the case of a Casualty, such Casualty shall be deemed a "total loss" for insurance purposes or shall be determined to be a loss of such dimension that the Premises cannot be completely restored or rebuilt within two hundred seventy (270) days computed after the hypothetical date of commencement of such construction (a "Major Casualty"); or

**18.3.1.2.** in the case of a Condemnation (other than a Temporary Taking), such Condemnation shall, in Tenant's and Landlord's reasonable judgment, render the Premises unsuitable for restoration for continued use and occupancy of Tenant's business;

then Tenant may, at its option, exercisable not later than sixty (60) days after the date of such Major Casualty or Condemnation, deliver to Landlord each of the following: (A) notice (a "Termination Notice") of its intention to terminate this Lease on the next rental payment date that occurs not less than ninety (90) days after the delivery of such notice (the "Termination Date"); (B) in the case of a Condemnation, a certificate of an authorized officer of Tenant describing the event giving rise to such termination; (C) in the case of a Major Casualty, (x) the certificate of an architect licensed in the state in which the Premises is located stating that the architect has determined, in its good faith judgment, that the Premises cannot be completely restored or rebuilt for continued use and occupancy in Tenant's business within a building construction period of two hundred seventy (270) days computed from the hypothetical date of commencement of such construction or (y) written confirmation from the issuer of the applicable insurance policy that it will treat the damage to the Building or Buildings as a "total loss"; and (D) an irrevocable offer (a "Event of Loss Purchase Offer") by Tenant to Landlord to purchase the Premises on the Termination Date. Landlord shall, within fifteen (15) business days of any request by Tenant, provide Tenant with the then current calculation of the purchase price, as determined in accordance with Exhibit D hereto.

If Landlord shall reject the Event of Loss Purchase Offer by written notice given to Tenant not later than fifteen (15) days prior to the Termination Date, this Lease shall terminate on the Termination Date, except with respect to obligations and liabilities of Tenant or Landlord hereunder, actual or contingent, which have arisen on or prior to the Termination Date, upon payment by Tenant of all of the Base Rent, Additional Rent and other sums then due and payable or accrued hereunder to and including the Termination Date, and the net condemnation proceeds or net insurance proceeds (as the case may be) shall belong to Landlord. Tenant shall, on or before the Termination Date, execute and deliver to Landlord an outright assignment of such proceeds in form and substance reasonably acceptable to Landlord and pay to Landlord an amount equal to any applicable insurance deductible or self-insurance amounts. Unless Landlord shall have rejected the Event of Loss Purchase Offer in accordance with this Section 18.3.1, Landlord shall be conclusively considered to have accepted the Event of Loss Purchase Offer. In the event Landlord accepts (or is deemed to have accepted) the Event of Loss Purchase Offer, then, on the Loss Closing Date (as defined in Section 18.3.2.1 below) (1) Tenant shall pay to Landlord a purchase price determined pursuant to Exhibit D attached hereto, (2) Landlord shall convey to Tenant or its designee the Premises, and (3) Landlord shall assign to Tenant or its designee all of Landlord's interest in the net condemnation proceeds or net insurance proceeds (as the case may be), by assignment in form and substance reasonably acceptable to Tenant or, if Landlord has already received all or a portion of such net condemnation proceeds or net insurance proceeds (as the case may be), then Landlord shall pay the same to Tenant or Tenant's designee after deducting Landlord's costs payable by Tenant hereunder. Such sale shall otherwise be consummated in accordance with the terms set forth in Section 18.3.2 below. In the event Tenant fails to deliver the Termination Notice and the Event of Loss Purchase Offer in accordance with the time deadlines set forth in this Section 18.3, then, at Landlord's election, Tenant shall have no right to terminate this Lease or right to make an offer to purchase the Premises, and the Lease will continue in full force and effect.

**18.3.2. Closing/Conveyance Procedures.** In the event, pursuant to the terms and conditions of Section 18.3.1 above, Landlord is to convey its interest in the Premises to Tenant as a result of an Event of Loss Purchase Offer, the following provisions shall apply:



**18.3.2.1.** The purchase of the Premises contemplated herein shall be consummated at a closing ("Loss Closing") to take place at the offices of Landlord or Landlord's counsel. The Loss Closing shall occur on the date (the "Loss Closing Date") which is no later than sixty (60) days after Landlord's receipt of a timely Termination Notice or such other date as the parties shall mutually agree in writing. The Loss Closing shall be effective as of 11:59 p.m. on the Loss Closing Date. Time is of the essence.

**18.3.2.2.** The total purchase price to be paid to Landlord by Tenant at the Loss Closing for the sale hereunder shall be an amount equal to the applicable purchase price set forth on Exhibit D attached hereto. In the event of a Loss Closing hereunder, Tenant shall not have the right to escrow or hold back any portion of the purchase price hereunder. The purchase price shall be paid to Landlord at the Loss Closing, by federal wire transfer of immediately available funds.

**18.3.2.3.** At the Loss Closing, Landlord shall convey fee simple title to the Premises to Tenant (or its assignee or designee) pursuant to a quitclaim deed, subject only to (a) Taxes; (b) those matters and exceptions shown in Landlord's existing owner's policy of title insurance effective on or about the date hereof, issued by First American Title Insurance Company (File No. NCS-226179) and the survey prepared by Millman Surveying, Inc. dated on or about July 13, 2006 as MSI Site Number 7897; (c) those matters that may be otherwise specifically approved, in writing, by Tenant or otherwise deemed approved or accepted by Tenant, or that otherwise result from the construction of any improvements or Alterations by Tenant; (d) matters arising out of any act of Tenant or any or all of its affiliates, representatives, lenders, agents, contractors, employees or invitees; and (e) any lien, claim or encumbrance or other matter, except liens, claims, or adverse encumbrances directly caused by any act of Landlord or its affiliates, representatives, lenders, agents, contractors or employees.

**18.3.2.4.** The sale of the Premises as provided for herein shall be made on a strictly "AS IS," "WHERE-IS" basis as of the Loss Closing Date, without any representations or warranties, of any nature whatsoever from Landlord. Landlord hereby specifically disclaims any warranty (oral or written) concerning: (i) the nature and condition of the Premises and the suitability thereof for any and all activities and uses that Tenant may elect to conduct thereon, (ii) the manner, construction, condition and state of repair or lack of repair of any improvements located thereon, (iii) the nature and extent of any right-of-way, lien, encumbrance, license, reservation, or condition, (iv) the compliance of the Premises or its operation with any laws, rules, ordinances, or regulations of any government or other body; and (v) any other matter whatsoever. Tenant expressly acknowledges that, in consideration of the agreements of Landlord herein, LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES, ANY IMPROVEMENTS LOCATED THEREON, OR ANY SOIL CONDITIONS RELATED THERETO. TENANT SPECIFICALLY ACKNOWLEDGES THAT TENANT IS NOT RELYING ON (AND LANDLORD HEREBY DISCLAIMS AND RENOUNCES) ANY REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF LANDLORD OF ANY KIND OR NATURE WHATSOEVER.

**18.3.2.5.** If Tenant fails to timely perform or satisfy any of its obligations imposed under this Section 18.3, including its obligation to timely close on the purchase of the Premises, then such failure shall constitute a default by Tenant under this Lease (for which there is no cure period), and Landlord shall have all rights and remedies available to it under this Lease, at law or in equity (including, without limitation the right to file an action to specifically enforce the terms of this Section 18.3), with respect to such default.

**18.3.2.6.** Upon the purchase of the Premises pursuant to Section 18.3.1 above, this Lease shall terminate except for provisions under this Lease that by their terms specifically survive.

**18.3.2.7.** Landlord and Tenant each hereby indemnify, protect and defend and hold the other harmless from and against all Losses resulting from the claims of any broker, finder, or other such party claiming by, through or under the acts or agreements of the indemnifying party. The obligations of the parties pursuant to this Section 18.3 shall survive any termination of this Lease.

**18.3.2.8.** There shall be no prorations of any cost items relating to the Premises, whether Taxes, Operating Expenses or otherwise; provided, however, that if and to the extent that, as of the Loss Closing, Landlord has paid any bills for any ownership expenses incurred (prior to Closing) in connection with the ownership and operation of the Premises and, under the terms of this Lease, Tenant would be required to reimburse Landlord for some or all of such expenses, then at Closing, Tenant shall be required to pay to Landlord, in addition to the purchase price set forth above, any such accrued Operating Expenses (including, but not limited to, Taxes) for which Tenant is responsible under this Lease.



**18.3.2.9.** Provided the Loss Closing is consummated in accordance with this Section 18.3, Tenant shall pay for all closing costs, including, but not limited to, the cost to record the deed, any transfer taxes, any closing escrow fees, the costs of any title insurance policy and the cost of the survey. Tenant shall be solely responsible for procuring the title insurance policy and the survey and in no event shall the procurement of those items be a condition precedent to Tenant's obligation to acquire the Premises (but it shall be a condition precedent to Tenant's obligation to close that Landlord conveys title in compliance with Section 18.3.2.3 hereof). All other costs shall be paid in accordance with local custom. Each of Landlord and Tenant shall be responsible for their respective attorneys' fees.

**19. SURRENDER AND HOLDOVER.** On the last day of the Term, or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Premises: (a) Tenant shall quit and surrender the Premises to Landlord "broom-clean" (as defined by Exhibit C, attached hereto and incorporated herein by reference), and in a condition that would reasonably be expected with normal and customary use in accordance with prudent operating practices and in accordance with the covenants and requirements imposed under this Lease, subject only to ordinary wear and tear (as is attributable to deterioration by reason of time and use, in spite of Tenant's reasonable care) and such damage or destruction as Landlord is required to repair or restore under this Lease; provided, however, that, notwithstanding any contrary language in this Section 19(a), upon Tenant's surrender of the Premises to Landlord, the roof structure and roof covering of the Premises shall be in good condition at the time of surrender without the need for replacement or extraordinary repair; (b) Tenant shall remove all of Tenant's personal property therefrom, except as otherwise expressly provided in this Lease, and (c) Tenant shall surrender to Landlord any and all keys, access cards, computer codes or any other items used to access the Premises. Upon prior notice (which may be delivered telephonically), Landlord shall be permitted to inspect the Premises in order to verify compliance with this Section 19 at any time prior to (x) the Expiration Date, (y) the effective date of any earlier termination of this Lease, or (z) the surrender date otherwise agreed to in writing by Landlord and Tenant. The obligations imposed under the first sentence of this Section 19 shall survive the termination or expiration of this Lease. If Tenant remains in possession after the Expiration Date hereof or after any earlier termination date of this Lease or of Tenant's right to possession: (i) Tenant shall be deemed a tenant-at-will; (ii) Tenant shall pay 150% of the aggregate of all Rent last prevailing hereunder, and also shall pay all actual damages sustained by Landlord, directly by reason of Tenant's remaining in possession after the expiration or termination of this Lease; (iii) there shall be no renewal or extension of this Lease by operation of law; and (iv) the tenancy-at-will may be terminated by either party hereto upon 30 days' prior written notice given by the terminating party to the non-terminating party. The provisions of this Section 19 shall not constitute a waiver by Landlord of any re-entry rights of Landlord provided hereunder or by law.

**20. EVENTS OF DEFAULT.**

**20.1. Bankruptcy of Tenant.** It shall be a default by Tenant under this Lease ("Default" or "Event of Default") if Tenant makes an assignment for the benefit of creditors, or files a voluntary petition under any state or federal bankruptcy (including the United States Bankruptcy Code) or insolvency law, or an involuntary petition is filed against Tenant under any state or federal bankruptcy (including the United States Bankruptcy Code) or insolvency law that is not dismissed within 90 days after filing, or whenever a receiver of Tenant, or of, or for, the property of Tenant shall be appointed, or Tenant admits it is insolvent or is not able to pay its debts as they mature.

**20.2. Default Provisions.** In addition to any Default arising under Section 20.1 above, each of the following shall constitute a Default: (a) if Tenant fails to pay Rent or any other payment when due hereunder within five (5) days after written notice from Landlord of such failure to pay on the due date; provided, however, that if, in any consecutive 12 month period, Tenant shall, on two (2) separate occasions, fail to pay any installment of Rent on the date such installment of Rent is due, then, on the third such occasion within such twelve month period on which Tenant shall fail to pay an installment of Rent on the date such installment of Rent is due, Landlord shall be relieved from any obligation to provide notice to Tenant, and Tenant shall then no longer have a five day period in which to cure any such failure; (b) if Tenant fails, whether by action or inaction, to timely comply with, or satisfy, any or all of the obligations imposed on Tenant under this Lease (other than the obligation to pay Rent) for a period of 30 days after Landlord's delivery to Tenant of written notice of such default under this Section 20.2(b); provided, however, that if the default cannot, by its nature, be cured within such 30 day period, but Tenant commences and diligently pursues a cure of such default promptly within the initial 30 day cure period, then, as long as Tenant continues to diligently pursue such a cure, Landlord shall not exercise its remedies under Section 21 unless such default remains uncured for more than 120 days after the initial delivery of Landlord's original default notice; and, at Landlord's election; and (c) if Tenant vacates or abandons the Premises during the Term for more than 45 consecutive days; and (d) if Guarantor defaults under, or otherwise fails to timely satisfy, any or all of its obligations under the guaranty into which Guarantor enters with Landlord on the date of this Lease.

**21. RIGHTS AND REMEDIES.**

**21.1. Landlord's Cure Rights Upon Default of Tenant.** If a Default occurs, then Landlord may (but shall not be obligated to) cure or remedy the Default for the account of, and at the expense of, Tenant, but without waiving such Default.

**21.2. Landlord's Remedies.** In the event of any Default by Tenant under this Lease, Landlord, at its option, may, in addition to any and all other rights and remedies provided in this Lease or otherwise at law or in equity do or perform any or all of the following:

**21.2.1.** Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession to Landlord. In such event, Landlord shall be entitled to recover from Tenant all of: (i) the unpaid Rent that is accrued and unpaid as of the date on which this Lease is terminated; (ii) the worth, at the time of award, of the amount by which (x) the unpaid Rent that would otherwise be due and payable under this Lease (had this Lease not been terminated) for the period of time from the date on which this Lease is terminated through the Expiration Date exceeds (y) the amount of such rental loss that the Tenant proves could have been reasonably avoided; and (iii) any other amount necessary to compensate Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of events, would be likely to result therefrom, including but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Landlord in connection with this Lease applicable to the unexpired Term (as of the date on which this Lease is terminated). The worth, at the time of award, of the amount referred to in provision (ii) of the immediately preceding sentence shall be computed by discounting such amount at the per annum discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award, plus one percent per annum. Efforts by Landlord to mitigate damages caused by Tenant's Default shall not waive Landlord's right to recover damages under this Section 21.2. If this Lease is terminated through any unlawful entry and detainer action, Landlord shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable in such action, or Landlord may reserve the right to recover all or any part of such Rent and damages in a separate suit; or

**21.2.2.** Continue the Lease and Tenant's right to possession and recover the Rent as it becomes due. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Landlord's interests shall not constitute a termination of the Tenant's right to possession; or

**21.2.3.** Pursue any other remedy now or hereafter available under the laws of the state in which the Premises are located.

**21.2.4.** Without limitation of any of Landlord's rights in the event of a Default by Tenant, Landlord may also exercise its rights and remedies with respect to any security held or maintained by Landlord.

Any and all personal property of Tenant that may be removed from the Premises by Landlord pursuant to the authority of this Lease or of law may be handled, removed or stored by Landlord at the sole risk, cost and expense of Tenant, and in no event or circumstance shall Landlord 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 for such property of Tenant so long as the same shall be in Landlord's possession or under Landlord's control. Any such property of Tenant not removed from the Premises as of the Expiration Date or any other earlier date on which this Lease is terminated shall be conclusively presumed to have been conveyed by Tenant to Landlord under this Lease as in a bill of sale, without further payment or credit by Landlord to Tenant. Neither expiration or termination of this Lease nor the termination of Tenant's right to possession shall relieve Tenant from its liability under the indemnity provisions of this Lease.

**21.3. Additional Rights of Landlord.** All sums advanced by Landlord or Agent on account of Tenant under this Section, or pursuant to any other provision of this Lease, and all Base Rent and Additional Rent, if delinquent or not paid by Tenant and received by Landlord when due hereunder, shall bear interest at the Default Interest (defined below) rate from the due date thereof until paid, and such Default Interest shall be and constitute Additional Rent and be due and payable upon Landlord's or Agent's submission of an invoice therefor. The various rights, remedies and elections of Landlord reserved, expressed or contained herein are cumulative and no one of them shall be deemed to be exclusive of the others or of such other rights, remedies, options or elections as are now or may hereafter be conferred upon Landlord by law.

**21.4. Event of Bankruptcy.** In addition to, and in no way limiting the other remedies set forth herein, Landlord and Tenant agree that if Tenant ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar type proceeding under the federal bankruptcy laws, as now enacted or hereinafter amended, then: (a) "adequate assurance of future performance" by Tenant pursuant to Bankruptcy Code Section 365 will include (but not be limited to) payment of an additional/new security deposit in the amount of the then current Base Rent payable hereunder; (b) any person or entity to which this Lease is assigned, pursuant to the provisions of the Bankruptcy Code, shall be deemed, without further act or deed, to have assumed all of the obligations of Tenant arising under this Lease on and after the effective date of such assignment, and any such assignee shall, upon demand by Landlord, execute and deliver to Landlord an instrument confirming such assumption of liability; (c) notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as "Rent", shall constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code; and (d) if this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Landlord or Agent (including Base Rent, Additional Rent and other amounts hereunder), shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord or Agent shall be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and shall be promptly paid to or turned over to Landlord.

**22. BROKER.** Tenant covenants, warrants and represents that no brokers represented Tenant in the negotiation of this Lease. Landlord covenants, warrants and represents that no brokers represented Landlord in the negotiation of this Lease. Each party agrees to and hereby does defend, indemnify and hold the other harmless against and from any brokerage commissions or finder's fees or claims therefor by a party claiming to have dealt with the indemnifying party and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing. The foregoing indemnification shall survive the termination or expiration of this Lease.

**23. MISCELLANEOUS.**

**23.1. Merger.** All prior understandings and agreements between the parties are merged in this Lease, which alone fully and completely expresses the agreement of the parties. No agreement shall be effective to modify this Lease, in whole or in part, unless such agreement is in writing, and is signed by the party against whom enforcement of said change or modification is sought.

**23.2. Notices.** Any notice required to be given by either party pursuant to this Lease, shall be in writing and shall be deemed to have been properly given, rendered or made only if personally delivered, or if sent by Federal Express or other comparable commercial overnight delivery service, addressed to the other party at the addresses set forth below each party's respective signature block (or to such other address as Landlord or Tenant may designate to each other from time to time by written notice), and shall be deemed to have been given, rendered or made on the day so delivered or on the first business day after having been deposited with the courier service.

**23.3. Non-Waiver.** The failure of either party to insist, in any one or more instances, upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the Lease shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt and acceptance by Landlord or Agent of Base Rent or Additional Rent with knowledge of breach by Tenant of any obligation of this Lease shall not be deemed a waiver of such breach.

**23.4. Advances by Landlord.** If Tenant shall fail to make or perform any payment or act required by this Lease within any applicable cure period, then Landlord may at its option make such payment or perform such act for the account of Tenant, and Landlord shall not thereby be deemed to have waived any default or released Tenant from any obligation hereunder. Landlord shall give Tenant five (5) days notice (except in the case of an emergency) prior to Landlord making such payment or protective advance. All amounts so paid by Landlord and all incidental costs and expenses (including reasonable attorneys' fees and expenses) actually incurred in connection with such payment or performance, together with interest at the annual rate equal to (a) the greater of (i) twelve percent (12%) and (ii) three percent (3%) above the prime rate as announced from time to time in New York City by Citibank, N.A., or its successor or (b) at the highest rate not prohibited by applicable law, whichever of (a) or (b) is less ("Default Interest") from and including the date of the making of such payment or of the incurring of such costs and expenses to and including the date of repayment, shall be paid by Tenant to Landlord on demand.

**23.5. Parties Bound.** Except as otherwise expressly provided for in this Lease, this Lease shall be binding upon, and inure to the benefit of, the successors and assignees of the parties hereto. Tenant hereby releases Landlord named herein from any obligations of Landlord for any period subsequent to the conveyance and transfer of Landlord's ownership interest in the Premises. In the event of such conveyance and transfer, Landlord's obligations shall thereafter be binding upon each transferee (whether Successor Landlord or otherwise). No obligation of Landlord shall arise under this Lease until the instrument is signed by, and delivered to, both Landlord and Tenant.

**23.6. Recordation of Lease.** Tenant shall not record or file this Lease (or any memorandum hereof) in the public records of any county or state.

**23.7. Governing Law; Construction.** This Lease shall be governed by and construed in accordance with the laws of the state in which the Premises is located. If any provision of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected but shall be enforced to the extent permitted by law. The captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation, or other provision of this Lease to be performed by Tenant, shall be construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. This Lease may be executed in counterpart and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument.

**23.8. Time.** Time is of the essence for this Lease. If the time for performance hereunder falls on a Saturday, Sunday or a day that is recognized as a holiday in the state in which the Premises is located, then such time shall be deemed extended to the next day that is not a Saturday, Sunday or holiday in said state.

**23.9. Authority of Parties.** Each of Tenant and Landlord hereby represents, warrants, and covenants with and to the other as follows: the individual(s) acting as signatory on behalf of such party is(are) duly authorized to execute this Lease; such party has procured (whether from its members, partners or board of directors, as the case may be), the requisite authority to enter into this Lease; this Lease is and shall be fully and completely binding upon such party; and such party shall timely and completely perform all of its obligations hereunder.

**23.10. WAIVER OF TRIAL BY JURY.** THE LANDLORD AND THE TENANT, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY ANY PARTY TO THIS LEASE WITH RESPECT TO THIS LEASE, THE PREMISES, OR ANY OTHER MATTER RELATED TO THIS LEASE OR THE PREMISES.

**23.11. Financial Information.** Within 60 days after the end of each of the first three fiscal quarters of each fiscal year of Quantum Foods, LLC, Tenant shall deliver to Landlord consolidated and consolidating unaudited financial statements of Quantum Foods, LLC and subsidiaries, and GDC Logistics, LLC and subsidiaries, including balance sheets as of the close of such fiscal quarter and statements of income and members equity and of cash flows for such fiscal quarter and for the period from the beginning of the applicable fiscal year to the end of such fiscal quarter, all prepared in accordance with U.S. generally accepted accounting principles (except for exclusion of footnotes and subject to normal year-end audit adjustments), and certified by the chief executive officer or the chief financial officer of Quantum Foods, LLC, and of GDC Logistics, LLC, respectively ("Financial Statements"). Within 120 days after the end of each fiscal year of Quantum Foods, LLC, and GDC Logistics, LLC, Tenant shall deliver to Landlord the consolidated and consolidating financial statements of Quantum Foods, LLC and subsidiaries, and GDC Logistics, LLC and subsidiaries, for such fiscal year, including consolidated and consolidating balance sheets as of the end of such fiscal year and consolidated and consolidating statements of income and members equity and of cash flows for such fiscal year, all prepared in accordance with U.S. generally accepted accounting principles consistently applied (except for the application of Financial Accounting Standards Board Interpretation No. 46 or similar principles that would require the consolidation of the results and operations of Quantum Foods, LLC, and its subsidiaries with the results and operations of its parent), together with audit opinions of independent auditors with respect to the consolidated financial statements ("Annual Financial Statements"). No later than thirty (30) days prior to the expiration of each fiscal year of Quantum Foods, LLC, Tenant shall deliver to Landlord financial projections of each of Quantum Foods, LLC and subsidiaries, and GDC Logistics, LLC and subsidiaries, for at least the following fiscal year. These projections shall include an annual income statement and balance sheet of the Tenant and Guarantor. Not less frequently than each fiscal quarter, Tenant shall also provide Landlord any covenant calculations then required to be sent to any lenders to Quantum Foods, LLC and subsidiaries, or GDC Logistics, LLC and subsidiaries, or both.

**23.12. Confidential Information.** With respect to any of Tenant's non-public business or financial information, Landlord agrees to maintain such information in confidence and not disclose such information to any third party whatsoever, provided, however, that, notwithstanding the foregoing, Landlord may disclose such information (a) to Landlord's employees, agents, officers, directors, representatives, brokers, third party consultants, engineers, lenders, accountants and attorneys (collectively, "Landlord's Representatives") to the extent that such Landlord's Representatives reasonably need to know such information in order to assist, and perform services on behalf of, Landlord or evaluate the transactions contemplated by this Lease; (b) to the extent required by any applicable statute, law, regulation, governmental or judicial authority; and (c) in connection with any litigation that may arise between the parties in connection with the transactions contemplated by this Lease. The provisions of this Section 23.12 shall survive the termination of this Lease.

**23.13. Submission of Lease.** Submission of this Lease to Tenant for signature does not constitute a reservation of space or an option to lease. This Lease is not effective until execution by and delivery to both Landlord and Tenant.

**23.14. Landlord's Waiver.** Landlord shall, within fifteen (15) business days of written request by Tenant therefor, execute and deliver to Tenant and its lender a so-called "Landlord's waiver" waiving any interest of Landlord in Tenant's Property and Tenant's personal property to the extent such instrument contains commercially reasonable terms, as determined by Landlord in its sole, but reasonable, judgment.

[Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

**LANDLORD:**

FIRST INDUSTRIAL DEVELOPMENT SERVICES,  
INC., a Maryland corporation

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

**TENANT:**

QUANTUM FOODS 213-D, LLC, a Delaware limited  
liability company

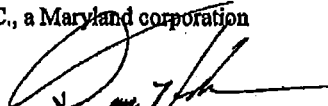
By: \_\_\_\_\_  
Its: \_\_\_\_\_

|   |  |
|---|--|
| <u>Landlord's Addresses for Notices:</u><br><br>First Industrial Development Services, Inc.<br>311 South Wacker Drive, Suite 4000<br>Chicago, Illinois 60606<br>Attn: Executive Vice President-Operations | <u>Tenant's Addresses for Notices:</u><br><br>c/o Quantum Foods, LLC<br>750 South Schmidt Road<br>Bolingbrook, Illinois 60440<br>Attn: President |
| <u>With a copy to:</u><br><br>First Industrial Realty Trust, Inc.<br>9450 West Bryn Mawr Avenue<br>Suite 750<br>Rosemont, Illinois 60018<br>Attn: Lease Administration                                    | <u>With a copy to:</u><br><br>Quantum Rosa Mystica Enterprises, LLC<br>1011 State Street<br>Lemont, Illinois 60439<br>Attn: President            |
| <u>With a copy to:</u><br><br>Barack Ferrazzano Kirschbaum Perlman & Nagelberg LLP<br>333 West Wacker Drive<br>Suite 2700<br>Chicago, Illinois 60606<br>Attn: Suzanne Bessette-Smith                      |  |

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

**LANDLORD:**

FIRST INDUSTRIAL DEVELOPMENT SERVICES,  
INC., a Maryland corporation

By:   
Its: Executive Director of Investments

**TENANT:**

QUANTUM FOODS 213-D, LLC, a Delaware limited  
liability company

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

| <u>Landlord's Addresses for Notices:</u>   | <u>Tenant's Addresses for Notices:</u>  |
|--|---|
| First Industrial Development Services, Inc.<br>311 South Wacker Drive, Suite 4000<br>Chicago, Illinois 60606<br>Attn: Executive Vice President-Operations                        | c/o Quantum Foods, LLC<br>750 South Schmidt Road<br>Bolingbrook, Illinois 60440<br>Attn: President                                |
| <u>With a copy to:</u><br>First Industrial Realty Trust, Inc.<br>9450 West Bryn Mawr Avenue<br>Suite 750<br>Rosemont, Illinois 60018<br>Attn: Lease Administration               | <u>With a copy to:</u><br>Quantum Rosa Mystica Enterprises, LLC<br>1011 State Street<br>Lemont, Illinois 60439<br>Attn: President |
| <u>With a copy to:</u><br>Barack Ferrazzano Kirschbaum Perlman & Nagelberg LLP<br>333 West Wacker Drive<br>Suite 2700<br>Chicago, Illinois 60606<br>Attn: Suzanne Bessette-Smith |   |

**EXHIBIT A**

**PREMISES**

**[ATTACH APPROPRIATE LEGAL DESCRIPTION]**



File No.:NCS-226179-CHI1

**Legal Description:**

**LOT 1 IN CROSSROADS BUSINESS PARK RESUBDIVISION NO. 4, BEING A RESUBDIVISION OF LOTS 4 AND 5 IN BLOCK 2 IN CROSSROADS BUSINESS PARK RECORDED AS DOCUMENT NO. R90-43649, BEING PART OF SECTION 22, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 5, 1996 AS DOCUMENT NO. R96-079882, IN WILL COUNTY, ILLINOIS.**

**EXHIBIT B**

**TENANT OPERATIONS INQUIRY FORM**

1. Name of Company/Contact \_\_\_\_\_
2. Address/Phone \_\_\_\_\_  
\_\_\_\_\_
3. Provide a brief description of your business and operations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Will you be required to make filings and notices or obtain permits as required by Federal and/or State regulations for the operations at the proposed facility? Specifically:

- a. SARA Title III Section 312 (Tier II) reports YES NO  
(> 10,000 lbs. of hazardous materials STORED at any one time)
- b. SARA Title III Section 313 (Tier III) Form R reports YES NO  
(> 10,000 lbs. of hazardous materials USED per year)
- c. NPDES or SPDES Stormwater Discharge permit YES NO  
(answer "No" if "No-Exposure Certification" filed)
- d. EPA Hazardous Waste Generator ID Number YES NO

5. Provide a list of chemicals and wastes that will be used and/or generated at the proposed location. Routine office and cleaning supplies are not included. Make additional copies if required.

| Chemical/Waste | Approximate Annual Quantity Used or Generated | Storage Container(s)<br>(i.e. Drums, Cartons, Totes, Bags, ASTs, USTs, etc) |
|----------------|---|---|
|                |   |   |
|                |   |   |
|                |   |   |

## EXHIBIT C

### BROOM CLEAN CONDITION AND REPAIR REQUIREMENTS

- All lighting is to be placed into good working order. This includes replacement of bulbs, ballasts, and lenses as needed.
- All truck doors and dock levelers should be serviced and placed in good operating order (including, but not limited to, overhead door springs, rollers, tracks and motorized door operator). This would include the necessary (a) replacement of any dented truck door panels, broken panels and cracked lumber, and (b) adjustment of door tension to insure proper operation. All door panels that are replaced shall be painted to match the building standard.
- All structural steel columns in the warehouse and office should be inspected for damage, and must be repaired. Repairs of this nature shall be pre-approved by the Landlord prior to implementation.
- HVAC system shall be in good working order, including the necessary replacement of any parts to return the unit to a well-maintained condition. This includes, but is not limited to, filters, thermostats, warehouse heaters and exhaust fans. Upon move-out, Landlord will have an exit inspection performed by a certified mechanical contractor to determine the condition of the HVAC system.
- All holes in the sheet rock walls shall be repaired prior to move-out. All walls shall be clean.
- The carpets and vinyl tiles shall be in a clean condition and shall not have any holes or chips in them. Flooring shall be free of excessive dust, dirt, grease, oil and stains.
- Facilities shall be returned in a clean condition, including, but not limited to, the cleaning of the coffee bar, restroom areas, windows, and other portions of the Premises.
- There shall be no protrusion of anchors from the warehouse floor and all holes shall be appropriately patched. If machinery/equipment is removed, the electrical lines shall be properly terminated at the nearest junction box.
- All exterior windows with cracks or breakage shall be replaced. All windows shall be clean.
- Tenant shall provide keys for all locks on the Premises, including front doors, rear doors, and interior doors.
- All mechanical and electrical systems shall be left in a safe condition that conforms to code. Bare wires and dangerous installations shall be corrected to Landlord's reasonable satisfaction.
- All plumbing fixtures shall be in good working order, including, but not limited to, the water heater. Faucets and toilets shall not leak.
- All dock bumpers shall be left in place and well-secured.
- Drop grid ceiling shall be free of excessive dust from lack of changing filters. No ceiling tiles may be missing or damaged.
- All trash shall be removed from both inside and outside of the Building.
- All signs in front of Buildings and on glass entry door and rear door shall be removed.
- Remove all pads for machinery and repair and seal any roof penetrations.

**EXHIBIT D**

**TERMINATION VALUES**

In the event Tenant has the right to purchase the Premises pursuant to Section 18.3.1, the purchase price shall be an amount equal to the product of (A) 1.10, multiplied by (B) the sum of the following: (i) the amount of the current Landlord's equity investment in the Premises (including all related acquisition costs, including, but not limited to, legal fees, brokerage commissions, environmental consultants and engineering consultants and any unreimbursed improvements and capital expenditures), (ii) the amount of any then-outstanding debt on the Premises, and (iii) the amount of any yield maintenance or defeasance fees or other fees or premiums due in connection with the pre-payment of any then-outstanding debt.

The determination of the purchase price under this Exhibit D shall be determined by Landlord in its sole, but reasonable, discretion and shall be conclusive absent manifest error.

**EXHIBIT E**

**TENANT'S PROPERTY**

1. Any racking, machinery and equipment in the Building, except any machinery and equipment that is (i) part of the HVAC, electrical, water, or natural gas systems and utilities or (ii) structures, systems, machinery, and equipment used in connection with cooling the Building's cooler and freezer rooms.
2. CO<sub>2</sub>, nitrogen, ammonia and other gas and compressed gas tanks, except to the extent that any of such tanks are required for the operation of any or all of the items described in 1(i) or (ii) above.

# **EXHIBIT B**

## INDUSTRIAL BUILDING LEASE

1. **BASIC TERMS.** This Section 1 contains the Basic Terms of this Lease between Landlord and Tenant, named below. Other Sections of the Lease referred to in this Section 1 explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

- 1.1. Effective Date of Lease: July 19, 2006
- 1.2. Landlord: First Industrial Development Services, Inc.
- 1.3. Tenant: Quantum Culinary, LLC, an Illinois limited liability company
- 1.4. Premises: Approximately 4.3 acres of land on which the Building (the "Building") commonly known as 525 Crossroads Parkway, Bolingbrook, Illinois is located, which Building contains approximately 78,870 rentable square feet, as legally described on Exhibit A attached hereto.
- 1.5. Lease Term: Twenty (20) years ("Term"), commencing July 19, 2006 ("Commencement Date") and ending, subject to Section 2.3 below, on July 31, 2026 ("Expiration Date").
- 1.6. Permitted Uses: (See Section 4.1) Food manufacturing, processing, storage, and distribution
- 1.7. Tenant's Guarantor: Quantum Foods, LLC, a Delaware limited liability company, Quantum Foods, Inc., a Delaware corporation, Quantum Foods 213-D, LLC, a Delaware limited liability company, Choice One Foods, LLC, a Delaware corporation, and GDC Logistics, LLC, a Delaware limited liability company.
- 1.8. Brokers: None.
- 1.9. Security/Damage Deposit: None initially, but see Section 4.4.
- 1.10. Exhibits to Lease: The following exhibits are attached to and made a part of this Lease. Exhibit A (legal description); Exhibit B (Tenant Operations Inquiry Form); Exhibit C (Broom Clean Condition and Repair Requirements), Exhibit D (Termination Value), and Exhibit E (Tenant's Property).

## 2. LEASE OF PREMISES; RENT.

2.1. **Lease of Premises for Lease Term.** Landlord hereby leases the Premises to Tenant, and Tenant hereby rents the Premises from Landlord, for the Term and subject to the conditions of this Lease.

2.2. **Types of Rental Payments.** Tenant shall pay net base rent to Landlord in monthly installments, in advance, on the first day of each and every calendar month during the Term of this Lease (the "Base Rent") in the amounts and for the periods as set forth below:

| <b>Rental Payments</b> |                         |                          |
|------------------------|-------------------------|--------------------------|
| <u>Lease Period</u>    | <u>Annual Base Rent</u> | <u>Monthly Base Rent</u> |
| 7/19/06-7/31/07        | \$685,000.00            | \$57,083.33              |
| 8/1/07-7/31/08         | \$685,000.00            | \$57,083.33              |
| 8/1/08-7/31/09         | \$685,000.00            | \$57,083.33              |
| 8/1/09-7/31/10         | \$702,125.00            | \$58,510.42              |
| 8/1/10-7/31/11         | \$719,678.13            | \$59,973.18              |
| 8/1/11-7/31/12         | \$737,670.08            | \$61,472.51              |
| 8/1/12-7/31/13         | \$756,111.83            | \$63,009.32              |
| 8/1/13-7/31/14         | \$775,014.63            | \$64,584.55              |
| 8/1/014-7/31/15        | \$794,389.99            | \$66,199.17              |

| <u>Lease Period</u> | <u>Annual Base Rent</u> | <u>Monthly Base Rent</u> |
|---------------------|-------------------------|--------------------------|
| 8/1/15-7/31/16      | \$814,249.74            | \$67,854.15              |
| 8/1/16-7/31/17      | \$834,605.98            | \$69,550.50              |
| 8/1/17-7/31/18      | \$855,471.13            | \$71,289.26              |
| 8/1/18-7/31/19      | \$876,857.91            | \$73,071.49              |
| 8/1/19-7/31/20      | \$898,779.36            | \$74,898.28              |
| 8/1/20-7/31/21      | \$921,248.84            | \$76,770.74              |
| 8/1/21-7/31/22      | \$944,280.07            | \$78,690.01              |
| 8/1/22-7/31/23      | \$967,887.07            | \$80,657.26              |
| 8/1/23-7/31/24      | \$992,084.24            | \$82,673.69              |
| 8/1/24-7/31/25      | \$1,016,886.35          | \$84,740.53              |
| 8/1/25-7/31/26      | \$1,042,308.51          | \$86,859.04              |

Tenant shall also pay all Operating Expenses (defined below) and any other amounts owed by Tenant hereunder (collectively, "Additional Rent"). In the event any monthly installment of Base Rent or Additional Rent, or both, is not paid within 5 days of the date when due, a late charge in an amount equal to 5% of the then delinquent installment of Base Rent and/or Additional Rent (the "Late Charge"; the Late Charge, Default Interest, as defined in Section 21.3 below, Base Rent and Additional Rent shall collectively be referred to as "Rent") shall be paid by Tenant to Landlord, 75 Remittance Drive, Suite 1066, Chicago, Illinois 60675-1066, or if sent by overnight courier, The Northern Trust Co., 350 N. Orleans Street, Receipt & Dispatch, 8<sup>th</sup> Floor, Chicago, Illinois 60654, Attention: FR Development Services, Inc., Suite 1066 (or such other entity designated as Landlord's management agent, if any, and if Landlord so appoints such a management agent, the "Agent"), or pursuant to such other directions as Landlord shall designate in this Lease or otherwise in writing.

**2.3. Covenants Concerning Rental Payments: Initial and Final Rent Payments.** Tenant shall pay the Rent promptly when due, without notice or demand, and without any abatement, deduction or setoff. No payment by Tenant, or receipt or acceptance by Agent or Landlord, of a lesser amount than the correct Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord or satisfaction, and Agent or Landlord may accept such payment without prejudice to its right to recover the balance due or to pursue any other remedy available to Landlord. If the Commencement Date occurs on a day other than the first day of a calendar month, the Rent due for the first calendar month of the Term shall be prorated on a per diem basis (based on a 360 day, 12 month year) and paid to Landlord on the Commencement Date, and the Term will be extended to terminate on the last day of the calendar month in which the Expiration Date stated in Section 1.5 occurs. In the event of any failure by Tenant to pay or discharge any such amount, Landlord shall have all rights, powers and remedies provided for herein or by law or otherwise in the case of nonpayment of Rent.

**2.4. Net Lease: Nonterminability.**

**2.4.1.** This Lease is a complete "bond net lease" and Tenant's obligations arising or accruing during the Term of this Lease to pay all Base Rent, Additional Rent, and all other payments hereunder required to be made by Tenant shall be absolute and unconditional, and Tenant shall pay all Base Rent, Additional Rent and all other payments hereunder required to be made by Tenant without notice, demand, counterclaim, set-off, deduction, or defense and without abatement, suspension, deferment, diminution or reduction, free from any charges, assessments, impositions, expenses or deductions of any and every kind and nature whatsoever. All costs, expenses and obligations of every kind and nature whatsoever relating to the Premises and the appurtenances thereto and the use and occupancy thereof which may arise or become due during the Term (whether or not the same shall become payable during the Term of this Lease or thereafter) shall be paid by Tenant, and Landlord is not responsible for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Premises or the use or occupancy thereof except to the extent expressly provided herein. Tenant assumes the sole responsibility for the condition, use, operation, maintenance, underletting and management of the Premises, and Tenant shall indemnify, defend and hold Landlord, Agent, Landlord's mortgagee or lender and their respective employees, shareholders, officers, directors, members, managers, trustees, partners or principals, disclosed or undisclosed, and their respective employees, shareholders, officers, directors, members, managers, trustees, partners, invitees, agents



or principals, disclosed or undisclosed and all of their respective successors and assigns (hereinafter collectively referred to as the "Indemnitees" and each individually as an "Indemnitee") harmless from and against any and all Losses (as defined in Section 17.2) actually incurred to the extent of matters which arise or accrue with respect to the Term of this Lease (whether or not the same shall become payable during the Term), and the Indemnitees shall have no responsibility in respect thereof and shall have no liability for damage to the property of Tenant or any subtenant of Tenant on any account or for any reason whatsoever other than by reason of such Indemnitee's willful misconduct or gross negligence. It is the purpose and intention of the parties to this Lease that the Base Rent due hereunder shall be absolutely net to the Landlord and that this Lease shall yield, net to the Landlord, the Rent and all other payments hereunder required to be made by Tenant as provided in this Lease.

2.4.2. Except as otherwise expressly provided in Sections 18 and 21 of this Lease, this Lease shall not terminate, nor shall Tenant have any right to terminate this Lease or to be released or discharged from any obligations or liabilities hereunder for any reason, including, without limitation: (i) any damage to or destruction of the Premises; (ii) any restriction, or any interference with, any use or the occupancy of the Premises not caused by any act or omission of Landlord (whether due to any default in or failure of Landlord's title to the Premises or otherwise); (iii) any condemnation, requisition or other taking or sale of the use, occupancy or title of or to the Premises; (iv) the inadequacy or failure of the description of the Premises to demise and let to Tenant the property intended to be leased hereby; (v) any sale or other disposition of the Premises by Landlord;; (vi) any action of any court, administrative agency or other governmental authority; or (ix) any other cause, whether similar or dissimilar to the foregoing, any present or future law notwithstanding. Nothing in this paragraph shall be construed as an agreement by Tenant to perform any illegal act or to violate the order of any court, administrative agency or other governmental authority.

2.4.3. Tenant will remain obligated under this Lease in accordance with its terms, and will not take any action to terminate (except in accordance with the provisions of Sections 18 and 21 of this Lease), rescind or avoid this Lease for any reason, notwithstanding any bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Landlord or any assignee of Landlord, or any action with respect to this Lease which may be taken by any receiver, trustee or liquidator or by any court. Tenant waives all rights at any time conferred by statute or otherwise to quit, terminate or surrender this Lease or the Premises, or to any abatement or deferment of any amount payable by Tenant hereunder, or for claims against any Indemnitee for damages, loss or expense suffered by Tenant on account of any cause referred to in this Section 2.4 or otherwise (except claims arising out of the gross negligence or willful misconduct by such Indemnitee).

### 3. OPERATING EXPENSES.

3.1. Definitional Terms Relating to Additional Rent. For purposes of this Section and other relevant provisions of the Lease:

3.1.1. Operating Expenses. The term "Operating Expenses" shall mean all costs, expenses and charges of every kind or nature relating to, or incurred in connection with, the ownership, maintenance and operation of the Premises, including, but not limited to Taxes, as hereinafter defined in Section 3.1.2.

3.1.2. Taxes. The term "Taxes" shall mean all governmental taxes, assessments, fees and charges of every kind or nature (other than Landlord's income taxes), whether general, special, ordinary or extraordinary, due at any time or from time to time, or that accrue, during the Term and any extensions thereof, in connection with the ownership, leasing, or operation of the Premises, or of the personal property and equipment located therein or used in connection therewith. Tenant, on its own or on Landlord's behalf (or in Landlord's name), but at Tenant's expense, may contest, by appropriate legal proceedings, conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Taxes payable by Tenant hereunder (or assessments of the Premises in connection therewith) and Landlord agrees not to pay, settle or otherwise compromise any such item, provided that (i) in the case of an unpaid Tax, the commencement and continuation of such proceedings shall suspend the collection thereof from Landlord and from the Premises, (ii) neither the Premises nor any Rent therefrom nor any part thereof or interest therein would be reasonably likely to be in danger of being sold, forfeited, attached or lost, (iii) Tenant shall indemnify and hold harmless Landlord and the Indemnitees, from and against any Losses incurred by Landlord or the Indemnitees in connection with any such contest or as a result thereof, (iv) Tenant shall give such security as may be reasonably requested by Landlord to insure ultimate payment of, or compliance with, the same and to prevent any sale or forfeiture of the Premises or the Rent by reason of such non-payment or non-compliance; provided, however, the provisions of this Section 3.1.2 shall not be construed to permit Tenant to contest the payment of Rent or any other sums payable by Tenant to Landlord hereunder, and (v) if such contest is resolved against Landlord or Tenant, Tenant shall, as Additional Rent due hereunder, pay to the appropriate payee the amount required to be paid, together with all interest and penalties accrued thereon, within ten (10) business days after such determination (or within such shorter period as may be required by the terms of such determination), and comply, within any cure period allowed therefor by the applicable agency or

authority (or if no such cure period shall be allowed or specified by the applicable agency or authority, promptly and diligently following the effective date of such determination); provided, however, that this subsection (v) is not intended, and shall not be construed, to afford Tenant any cure or grace period beyond the effective date of any final unappealable determination. For purposes hereof, Tenant shall be responsible for any Taxes that are due and payable at any time or from time to time during the Term and for any Taxes that are assessed, become a lien, or accrue during any Operating Year, which obligation shall survive the termination or expiration of this Lease. Upon the termination or expiration of the Lease, Tenant shall pay to Landlord, in addition to any other amounts payable to Landlord hereunder, the amount of any accrued and unpaid Taxes, prorated based on the most currently available final tax information on an accrual basis for the calendar year in which the expiration or termination occurs, such that Tenant shall pay all such Taxes attributable to the period prior to such expiration or termination and Landlord shall be responsible for all such Taxes attributable to the period thereafter. Such prorated amount shall be calculated on the basis of the most recent final bills and shall be re-prorated as soon as reasonably practicable after final tax bills for the periods being prorated are issued. The terms of this Section 3.1.2 shall survive the expiration or termination of this Lease.

**3.1.3. Operating Year.** The term "Operating Year" shall mean the calendar year commencing January 1st of each year (including the calendar year within which the Commencement Date occurs) during the Term.

**3.2. Payment of Operating Expenses.** Tenant shall directly pay, to the appropriate entity, all Operating Expenses.

#### **4. USE OF PREMISES AND COMMON AREAS; TANGIBLE NET WORTH REQUIREMENT.**

**4.1. Use of Premises.** The Premises shall be used by the Tenant for the purpose(s) set forth in Section 1.6 above and for any other use permitted by applicable law. Tenant shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises, in any manner that may (a) violate any Certificate of Occupancy for the Premises; (b) cause, or be liable to cause, injury to, or in any way impair the value or proper utilization of, all or any portion of the Premises (including, but not limited to, the structural elements of the Premises) or any equipment, facilities or systems therein; (c) constitute a violation of the laws and requirements of any public authority, including any covenant, condition or restriction affecting the Premises; (d) exceed the load bearing capacity of the floor of the Premises; (e) impair or tend to impair the character, reputation or appearance of the Premises; or (f) have any detrimental environmental effect on the Premises which (i) arises out of a violation or violations of Environmental Laws or (ii) results in any material increased risk of liability to Landlord, in Landlord's reasonable judgment. On or prior to the date hereof, Tenant has completed and delivered for the benefit of Landlord a "Tenant Operations Inquiry Form" in the form attached hereto as Exhibit B describing the nature of Tenant's proposed business operations at the Premises, which form is intended to, and shall be, relied upon by Landlord. From time to time during the Term (but no more often than once in any twelve month period unless Tenant is in default hereunder or unless Tenant assigns this Lease or subleases all or any portion of the Premises, whether or not in accordance with Section 8), Tenant shall provide an updated and current Tenant Operations Inquiry Form upon Landlord's request.

**4.2. Signage.** Any and all signage must at all times fully comply with all applicable laws, regulations and ordinances. Tenant shall remove all signs of Tenant upon the expiration or earlier termination of this Lease and immediately repair any damage to the Premises caused by, or resulting from, such removal.

**4.3. Liens.** During the Term, Tenant will promptly, but no later than forty-five (45) days after notice to Tenant of the filing thereof, or such shorter period as shall prevent the forfeiture of the Premises, remove and discharge of record, by bond or otherwise (or provide Landlord with title insurance coverage insuring against any loss related to from a title insurance company acceptable to Landlord in its reasonable discretion), any charge, lien, security interest or encumbrance upon the Premises, or any Base Rent, or Additional Rent which arises for any reason, including all liens which arise out of the possession, use, occupancy, construction, repair or rebuilding of the Premises or by reason of labor or materials furnished or claimed to have been furnished to Tenant for the Premises, but not including any charge, lien, security interest or encumbrance which arises from any act or, where a duty to act exists, omission of Landlord. Nothing contained in this Lease shall be construed as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to or for the performance of any contractor, laborer, materialman, or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Premises or any part thereof. Notice is hereby given that during the Term Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding an interest in the Premises or any part thereof through or under Tenant, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to the Premises. In the event of the failure of Tenant to discharge or insure over any charge, lien, security interest or encumbrances as aforesaid, Landlord may, if not discharged by Tenant within three (3) business days after written notice to Tenant,

discharge such items by payment or bond or both, and Section 23.4 hereof shall apply. Provided Tenant is diligently contesting any such lien or encumbrance in accordance with applicable law, in lieu of a bond Tenant shall have the option to deposit cash with Landlord in an amount sufficient to fully discharge such lien or encumbrance (as reasonably determined by Landlord, the "Lien Deposit"), which Lien Deposit may be used by Landlord to discharge, settle or otherwise satisfy the applicable lien or encumbrance at any time after the commencement of foreclosure proceedings or before forfeiture of the Premises or any portion thereof.

4.4. **Tangible Net Worth Requirement.** If the combined Tangible Net Worth (as defined below) of Quantum Foods, LLC, GDC Logistics, LLC, and subsidiaries (the "Quantum Parties") is less than \$40,000,000 as reflected on any Annual Financial Statements (as defined in Section 23.11 below), then Tenant shall, not later than ten (10) business days after its delivery to Landlord of the Annual Financial Statement that evidences such Tangible Net Worth that is less than \$40,000,000, deposit with Landlord an irrevocable letter of credit ("L/C") issued by a national U.S. banking institution reasonably acceptable to Landlord, and in form and substance reasonably satisfactory to Landlord, in the amount of the annual Base Rent then in effect hereunder. The L/C shall constitute security for the performance by Tenant of the covenants and obligations hereunder (the "Security"). In addition to any other items that Landlord may reasonably require, the L/C shall: (a) name Landlord as its beneficiary; (b) have an initial term of no less than one year; (c) automatically renew for one year periods unless the issuer provides Landlord with at least 60 days' advance written notice that the L/C will not be renewed; (d) permit partial draws; (e) state that the sole and exclusive condition to any draw on the L/C shall be that Landlord certifies to the issuer that either or both of the following is/are true: (i) Tenant is the debtor in a pending bankruptcy proceeding; and (ii) Tenant is not in compliance with any of the terms of this Lease; and (f) be transferable to Successor Landlords (defined below) on as many occasions as desired. Notwithstanding the foregoing, in the event that: (x) the expiration date of any L/C occurs before the Expiration Date, (y) the issuer has advised Landlord that the issuer will not automatically renew the L/C; and (z) Tenant fails to deliver to Landlord at least forty-five (45) days prior to the expiration of such L/C either (A) an amendment thereto extending the expiration date of such L/C for not less than twelve (12) months, or (B) a new L/C, in form and substance in accordance with (a) through (f) above and otherwise satisfactory to Landlord (in its reasonable discretion), then Landlord may draw on such L/C and thereafter (in addition to any other remedies available to Landlord under this Lease) apply the proceeds to Rent and/or any other sums due from Tenant hereunder in whatever manner or for whatever purpose Landlord reasonably deems appropriate in the event that Tenant fails to timely comply with any or all of the covenants and obligations imposed on Tenant under this Lease. If Tenant fails to comply with any or all of its covenants or obligations hereunder, Landlord or Agent may, without notice to Tenant, draw on the L/C and apply the proceeds to Rent and/or any other sums due from Tenant hereunder in whatever manner Landlord deems appropriate, in addition to any and all other remedies available to Landlord under this Lease. In the event Landlord draws against the L/C, Tenant shall, upon demand, at Tenant's option, immediately either (aa) deposit with Landlord or Agent a sum equal to amount drawn under the L/C or (bb) deliver to Landlord an additional L/C in an amount equal to the amount drawn. If Tenant fully and faithfully complies with all the covenants hereunder, the Security (or any balance thereof) together with Landlord's written consent to the cancellation of any and all outstanding L/Cs constituting part of the Security shall be delivered to Tenant within thirty (30) days after the earlier to occur of (1) delivery to Landlord of Annual Financial Statements reflecting that the combined Tangible Net Worth of Quantum Foods, LLC, GDC Logistics, LLC, and subsidiaries is greater than \$45,000,000 and (2) delivery to Landlord of possession of the Premises (in accordance with the requirements of Section 19 below) following the expiration or termination of this Lease. Landlord may deliver the Security to any purchaser of Landlord's interest in the Premises or any Successor Landlord, if applicable, whereupon Landlord and Agent shall be discharged from any further liability with respect to the Security. In the event that Landlord exercises its right under the preceding sentence, Tenant shall fully cooperate with Landlord, in all reasonable respects, to cause the L/C to be assigned and conveyed to, or reissued to, such purchaser or Successor Landlord, as the case may be, and Tenant shall bear any expenses incurred in connection therewith. "Tangible Net Worth" of an entity shall mean the Net Worth of the entity, less the following intangible assets: (a) all unamortized debt discount and expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, organizational and development expenses, unamortized operating rights, unamortized licenses, unamortized leasehold rights and other intangible assets; or any write-up resulting from a reversal of a reserve for bad debts or depreciation and any write-up resulting from a change in methods of accounting or inventory; and (b) the amount of any investment in an affiliate. The "Net Worth" of an entity is its total assets minus its total liabilities, shown (with respect to the Quantum Parties) on the most recent of the Annual Financial Statements or (with respect to any other entity) on the entity's most recent audited annual financial statements prepared in accordance with U.S. generally accepted accounting principles.

5. **CONDITION AND DELIVERY OF PREMISES.** Tenant agrees that Tenant is familiar with the condition of the Premises, and Tenant hereby accepts the foregoing on an "AS-IS," "WHERE-IS" basis. Tenant acknowledges that neither Landlord nor Agent, nor any representative of Landlord, has made any representation as to the condition of the foregoing or the suitability of the foregoing for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of the foregoing. Neither Landlord nor Agent shall be obligated to make any repairs, replacements or improvements (whether structural or otherwise) of any kind or nature to the foregoing in connection with, or in consideration of, this Lease.

6. **SUBORDINATION; ESTOPPEL CERTIFICATES; ATTORNMENT.**

6.1. **Subordination and Attornment.** Provided Tenant is provided with a customary subordination, non-disturbance and attornment agreement by the holder of any mortgage or deed of trust of Landlord, this Lease is and shall be subject and subordinate at all times to (a) all ground leases or underlying leases that may now exist or hereafter be executed affecting the Premises and (b) any mortgage or deed of trust that may now exist or hereafter be placed upon, and encumber, any or all of (x) the Premises; (y) any ground leases or underlying leases for the benefit of the Premises; and (z) all or any portion of Landlord's interest or estate in any of said items. Tenant shall execute and deliver, within ten (10) days of Landlord's request, and in the form reasonably requested by Landlord (or its lender), any documents evidencing the subordination of this Lease. Tenant hereby covenants and agrees that Tenant shall attorn to any successor to Landlord.

6.2. **Estoppel Certificate.** Each of Landlord and Tenant agree, from time to time and within 10 days after request by the other, to deliver to the other, or their designee, an estoppel certificate stating such matters pertaining to this Lease as may be reasonably requested by Landlord or Tenant (as the case may be). Failure by Tenant to timely execute and deliver such certificate shall constitute an acceptance of the Premises and acknowledgment by Tenant that the statements included therein are true and correct without exception.

6.3. **Transfer by Landlord.** In the event of a sale or conveyance by Landlord of the Premises and the express assumption by the successor entity of all of Landlord's obligations and liabilities hereunder, the same shall operate to release Landlord from any future liability for any of the covenants or conditions, express or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to Landlord's successor in interest ("Successor Landlord") with respect thereto and agrees to attorn to such successor.

7. **QUIET ENJOYMENT.** Subject to the provisions of this Lease, so long as Tenant pays all of the Rent and performs all of its other obligations hereunder, Tenant shall not be disturbed in its possession of the Premises by Landlord, Agent or any other person lawfully claiming through or under Landlord.

8. **ASSIGNMENT AND SUBLETTING.** Tenant shall not (a) assign (whether directly or indirectly), in whole or in part, this Lease, or (b) allow this Lease to be assigned, in whole or in part, by operation of law or otherwise, including, without limitation, by transfer of a controlling interest (i.e. greater than a 50% interest) of stock, membership interests or partnership interests, or by merger or dissolution, which transfer of a controlling interest, merger or dissolution shall be deemed an assignment for purposes of this Lease, or (c) mortgage or pledge the Lease, or (d) sublet the Premises, in whole or in part, without (in the case of any or all of (a) through (d) above) the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Notwithstanding any contrary language in this Lease, however, Tenant may, without the necessity of consent from Landlord, assign this Lease or sublease a portion of the Premises to Quantum Foods, LLC, or to any wholly-owned direct or indirect subsidiary of Tenant or Quantum Foods, LLC, provided that (x) Tenant advises Landlord, in writing, in advance, and (y) otherwise complies with the succeeding provisions of this Section 8. Notwithstanding any contrary language in this Lease, however, Tenant may also, without the necessity of consent from Landlord, (a) assign this Lease to any buyer of all or substantially all of the business conducted by Tenant at the Premises, and (b) allow this Lease to be assigned, in whole or in part, by operation of law or otherwise, by transfer of a controlling interest (i.e. greater than a 50% interest) of stock, membership interests or partnership interests, or by merger, provided that, in the case of (a) or (b), (A) the buyer/transferee/successor has a Tangible Net Worth of at least Fifty Million Dollars (\$50,000,000), (B) immediately following such transaction, the Quantum Parties have a combined Tangible Net Worth of at least Fifty Million Dollars (\$50,000,000), and (C) Tenant advises Landlord, in writing, at least thirty (30) days in advance, and otherwise complies with the succeeding provisions of this Section 8. In no event shall any assignment or sublease ever release Tenant from any obligation or liability hereunder, except with the express written agreement of Landlord. Notwithstanding any contrary language in this Section 8, Tenant may, without the necessity of consent from Landlord, permit the transfer of stock, membership interests or partnerships in Tenant among members of the family of Edward B. Bleka, and trusts for the sole benefit of members of the family of Edward B. Bleka. Except as provided in the preceding two sentences, any purported assignment, mortgage, transfer, or pledge made without the prior written consent of Landlord shall be absolutely null and void. No assignment of this Lease shall be effective and valid unless and until the assignee executes and delivers to Landlord any and all documentation reasonably required by Landlord in order to evidence assignee's assumption of all obligations of Tenant hereunder. Regardless of whether or not an assignee or sublessee executes and delivers any documentation to Landlord pursuant to the preceding sentence, any assignee or sublessee shall be deemed to have automatically attorned to Landlord in the event of any termination of this Lease. If this Lease is assigned, or if the Premises (or any part thereof) are sublet or used or occupied by anyone other than Tenant, whether or not in violation of this Lease, Landlord or Agent may (without prejudice to, or waiver of its rights), collect Rent from the assignee, subtenant or occupant. In the event of an assignment of this Lease and the payment of consideration from the assignee to the Tenant in connection therewith, 100% of such

consideration shall be paid to Landlord. With respect to the allocable portion of the Premises sublet, in the event that the total rent and any other considerations received under any sublease by Tenant is greater than the total Rent required to be paid, from time to time, under this Lease, Tenant shall pay to Landlord (which amounts shall be deemed a component of the Additional Rent) fifty percent (50%) of such excess as received from any subtenant. Landlord acknowledges that subletting shall not include activities conducted by Tenant in the ordinary course of its business, including without limitation the rental of pallet and rack space in Tenant's warehousing operations.

## 9. COMPLIANCE WITH LAWS.

9.1. Compliance with Laws. Tenant shall, at its sole expense (regardless of the cost thereof), comply with all local, state and federal laws, rules, regulations and requirements now or hereafter in force and all judicial and administrative decisions in connection with the enforcement thereof (collectively, "Laws"), whether such Laws (a) pertain to either or both of the Premises and Tenant's use and occupancy thereof; (b) concern or address matters of an environmental nature; (c) require the making of any structural, unforeseen or extraordinary changes; and (d) involve a change of policy on the part of the body enacting the same, including, in all instances described in (a) through (d), but not limited to, the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*). If any license or permit is required for the conduct of Tenant's business in the Premises, Tenant, at its expense, shall procure such license prior to the Commencement Date, and shall maintain such license or permit in good standing throughout the Term. Tenant shall give prompt notice to Landlord of any written notice it receives of the alleged violation of any Law or requirement of any governmental or administrative authority with respect to the Premises and/or the ownership, occupancy, or maintenance thereof.

9.2. Hazardous Materials. If, at any time or from time to time (a) prior to the Commencement Date, but during Tenant's, or its affiliate's, as the case may be, period of ownership or occupancy of the Premises, or (b) during the Term (or any extension thereof), any Hazardous Material (defined below) is (was) generated, transported, stored, used, treated or disposed of at, to, from, on or in the Premises by, or as a result of any act or omission of, any or all of Tenant and any or all of Tenant's Parties (defined below): (i) Tenant shall, at its own cost, at all times comply (and cause all others to comply) with all Laws relating to Hazardous Materials, and Tenant shall further, at its own cost, obtain and maintain in full force and effect at all times all permits and other approvals required in connection therewith; (ii) Tenant shall promptly provide Landlord or Agent with complete copies of all communications, permits or agreements with, from or issued by any governmental authority or agency (federal, state or local) or any private entity relating in any way to the presence, release, threat of release, or placement of Hazardous Materials on or in the Premises or any portion of the Premises, or the generation, transportation, storage, use, treatment, or disposal at, on, in or from the Premises, of any Hazardous Materials; (iii) Landlord, Agent and their respective agents and employees shall have the right to either or both (x) enter the Premises and (y) conduct appropriate tests for the purposes of ascertaining Tenant's compliance with all applicable Laws or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of the Premises; and (iv) upon written request by Landlord or Agent if Landlord has a reasonable basis for believing that Hazardous Materials are present at the Premises in violation of this Lease, Tenant shall provide Landlord with the results of reasonably appropriate tests of air, water or soil to demonstrate that Tenant complies with all applicable Laws or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of the Premises. This Section 9.1 does not authorize the generation, transportation, storage, use, treatment or disposal of any Hazardous Materials at, to, from, on or in the Premises in contravention of this Section 9. Tenant covenants to investigate, clean up and otherwise remediate, at Tenant's sole expense, any release of Hazardous Materials caused, contributed to, or created by any or all of (A) Tenant and (B) any or all of Tenant's officers, directors, members, managers, partners, invitees, agents, employees, contractors or representatives ("Tenant's Parties") either or both (A) prior to the Commencement Date, but during Tenant's, or its affiliate's, as the case may be, period of ownership or occupancy of the Premises, and (B) during the Term (and any extension thereof). Such investigation and remediation shall be performed only after Tenant has obtained Landlord's prior written consent; provided, however, that Tenant shall be entitled to respond immediately to an emergency without first obtaining such consent. All remediation shall be performed in strict compliance with Laws and to the reasonable satisfaction of Landlord. Tenant shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Materials in any way connected to the Premises without first obtaining Landlord's written consent (which consent may be given or withheld in Landlord's sole, but reasonable, discretion) and affording Landlord the reasonable opportunity to participate in any such proceedings. As used herein, the term, "Hazardous Materials," shall mean any waste, material or substance (whether in the form of liquids, solids or gases, and whether or not airborne) that is or may be deemed to be or include a pesticide, petroleum, asbestos, polychlorinated biphenyl, radioactive material, urea formaldehyde or any other pollutant or contaminant that is or may be deemed to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious, or that presents a risk to public health or to the environment, and that is or becomes regulated by any Law. The undertakings, covenants and obligations imposed on Tenant under this Section 9.1 shall survive the termination or expiration of this Lease.

## 10. INSURANCE.

**10.1. Policies.** Tenant shall purchase, at its own expense, and keep in force at all times during this Lease the policies of insurance set forth below (collectively, "Tenant's Policies"). All Tenant's Policies shall (a) be issued by an insurance company with a Best rating of A or better and otherwise reasonably acceptable to Landlord and shall be licensed to do business in the state in which the Premises is located; (b) provide that said insurance shall not be canceled or materially modified unless 30 days' prior written notice shall have been given to Landlord; (c) provide for deductible amounts that are reasonably acceptable to Landlord (and its lender, if applicable) and (d) otherwise be in such form, and include such coverages, as Landlord may reasonably require. The Tenant's Policies described in Section 10.2 (i) and (ii) below shall (1) provide coverage on an occurrence basis; (2) name Landlord and First Industrial, L.P. (and its lender, if applicable) as additional insureds; (3) provide coverage, to the extent insurable, for the indemnity obligations of Tenant under this Lease; (4) contain a separation of insured parties provision; (5) be primary, not contributing with, and not in excess of, coverage that Landlord may carry; and (6) provide coverage for a pollution incident arising from a hostile fire with a sublimit of no less than \$1,000,000 (in excess of deductions). All Tenant's Policies (or, at Landlord's option, Certificates of Insurance and applicable endorsements, including, without limitation, an "Additional Insured-Managers or Landlords of Premises" endorsement) shall be delivered to Landlord prior to the Commencement Date and renewals thereof shall be delivered to Landlord's Corporate and Regional Notice Addresses at least 30 days prior to the applicable expiration date of each Tenant's Policy. In the event that Tenant fails, at any time or from time to time, to comply with the requirements of the preceding sentence, Landlord may (i) order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant to Landlord upon demand, as Additional Rent or (ii) impose on Tenant, as Additional Rent, a monthly delinquency fee, for each month during which Tenant fails to comply with the foregoing obligation, in an amount equal to five percent (5%) of the monthly Base Rent then in effect. Tenant shall give prompt notice to Landlord and Agent of any bodily injury, death, personal injury, advertising injury or property damage occurring in and about the Premises.

**10.2. Coverages.** Tenant shall purchase and maintain, throughout the Term, a Tenant's Policy(ies) of (i) "all-risk" commercial property insurance covering the improvements constructed, installed or located on the Premises (but excluding Tenant's Property) against all loss or damage caused by fire, ice, hurricane, flood, windstorm, terrorism and such other risks of physical loss or damage as are covered by a causes of loss special form insurance policy, which coverage shall, at all times, be in an amount equal to 100% of the then "full replacement cost" of the Premises subject to a deductible not to exceed \$100,000.00 ("Full Replacement Cost" shall be interpreted to mean the cost of replacing the Premises without deduction for depreciation or wear and tear, less the cost of footings, foundations and other structures below grade); (ii) commercial general or excess liability insurance, including personal injury and property damage, in the amount of not less than \$2,000,000.00 per occurrence, and \$5,000,000.00 annual general aggregate; (iii) comprehensive automobile liability insurance covering Tenant against any personal injuries or deaths of persons and property damage based upon or arising out of the ownership, use, occupancy or maintenance of a motor vehicle at the Premises and all areas appurtenant thereto in the amount of not less than \$1,000,000, combined single limit; (iv) commercial property insurance covering the Tenant's personal property (at their full replacement cost); (v) workers' compensation insurance per the applicable state statutes covering all employees of Tenant; (vi) rent loss insurance for the benefit of Landlord; and (vii) during any period of construction or during which any Alterations are being made, builder's risk coverage in an amount sufficient for such Alterations or other work or improvements performed on the Premises by Tenant. Notwithstanding anything to the contrary contained in this Section 10, Landlord shall have the right, upon not less than ten (10) days' prior written notice to Tenant, to purchase the aforementioned Tenant's Policies on Tenant's behalf and charge the cost thereof to Tenant, which amounts shall be payable by Tenant to Landlord, upon demand as Additional Rent; provided, however, in any such instance where Landlord elects to so provide insurance and charge the premiums therefor to Tenant, as Additional Rent, Landlord agrees that it may not pass through to Tenant, as Additional Rent, the amount of any such insurance premium in excess of the premium that Tenant reasonably evidences to Landlord would be charged to Tenant, if Tenant were to procure the same insurance coverage as then in question (with the same deductible), from an insurer with a Best's rating that equals or exceeds the then-applicable Best's rating of Landlord's insurer.

**10.3. Waiver of Subrogation.** Notwithstanding anything to the contrary in this Lease, Landlord and Tenant mutually waive their respective rights of recovery against each other and each other's officers, directors, constituent partners, members, agents and employees, and Tenant further waives such rights against (a) each lessor under any ground or underlying lease encumbering the Premises and (b) each lender under any mortgage or deed of trust or other lien encumbering the Premises (or any portion thereof or interest therein), to the extent any loss is insured against or required to be insured against under this Lease, including, but not limited to, losses, deductibles or self-insured retentions covered by Landlord's or Tenant's commercial property, general liability, automobile liability or workers' compensation policies described above. This provision is intended to waive, fully and for the benefit of each party to this Lease, any and all rights and claims that might give rise to a right of subrogation by any insurance carrier. Each party shall cause its respective insurance policy(ies) to be endorsed to evidence compliance with such waiver.

**11. ALTERATIONS.**

**11.1. Non-Structural Alterations.** Tenant may, from time to time at its sole expense, make alterations or improvements in and to the Premises (hereinafter collectively referred to as "Alterations") provided that:

- (i) such Alterations comply with applicable law and do not adversely affect the value of the Premises and Tenant delivers prior written notice thereof to Landlord; and
- (ii) Tenant, in every instance, complies with the terms and conditions of Section 11.3 below.

**11.2. Consent to Alterations.** In addition: (a) the Alterations shall not adversely affect the structural integrity of the Premises; (b) the proper functioning of the mechanical, electrical, heating, ventilating, air-conditioning ("HVAC"), sanitary and other service systems of the Premises shall not be adversely affected; (c) Tenant shall have appropriate insurance coverage, reasonably satisfactory to Landlord, regarding the performance and installation of the Alterations; and (d) Tenant shall have provided Landlord with reasonably detailed plans for such Alterations in advance of beginning the Alterations. With respect to any structural Alterations, Tenant may request that Landlord finance the cost of such Alterations upon terms and conditions acceptable to Landlord in its sole but reasonable discretion (including, without limitation, an increase in Base Rent to reflect such financing).

**11.3. Other Requirements.** Before proceeding with any Alterations and, with respect to (ii) below, not later than thirty (30) days prior to proceeding with any Alterations, Tenant shall (i) at Tenant's expense, obtain all necessary governmental permits and certificates for the commencement and prosecution of Alterations; (ii) submit to Landlord, working drawings, plans and specifications and all permits for the work to be done; and (iii) cause those contractors, materialmen and suppliers engaged to perform the Alterations to deliver to Landlord certificates of insurance (in a form reasonably acceptable to Landlord) evidencing policies of builders risk, commercial general liability insurance (providing the same coverages as required in Section 10 above) and workers' compensation insurance. If Landlord delivers written notice to Tenant following delivery of the items required to be delivered pursuant to item (ii) above that Landlord believes the proposed Alterations could adversely affect the structural integrity of the Premises, then Tenant shall not commence such Alterations until such items have been revised to Landlord's reasonable satisfaction. Such insurance policies shall satisfy the obligations imposed under Section 10. Tenant shall cause the Alterations to be performed in compliance with all applicable permits, Laws and requirements of public authorities, and with Landlord's reasonable rules and regulations or any other reasonable restrictions that Landlord may impose on the Alterations. Tenant shall cause the Alterations to be diligently performed in a good and workmanlike manner, using materials and equipment at least equal in quality and class to the standards for the Premises reasonably established by Landlord. Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, governmental permits and certificates and proof of payment for all labor and materials, including, without limitation, copies of paid invoices and final lien waivers. If Landlord's consent to any Alterations is required, and Landlord provides that consent, then at the time Landlord so consents, Landlord shall also advise Tenant whether or not Landlord shall require that Tenant remove such Alterations at the expiration or termination of this Lease. If Landlord requires Tenant to remove the Alterations, then, during the remainder of the Term, Tenant shall be responsible for the maintenance of appropriate commercial property insurance (pursuant to Section 10) therefor; however, if Landlord shall not require that Tenant remove the Alterations, such Alterations shall constitute Landlord's Property. The parties do not intend that the making of Alterations shall: (A) constitute income to Landlord; or (B) result in some or all of the federal, state or municipal income tax deductions which Landlord would otherwise be permitted to report with respect to the Premises or this Lease being deferred or denied; or (C) cause this Lease not to be a true lease for federal income tax purposes. Notwithstanding anything herein to the contrary, Landlord reserves the right to withhold its consent to any proposed Alteration (or the financing of any such improvement) if Landlord concludes that the making or financing or such improvements would result in some or all of federal, state or municipal income tax deductions which Landlord would otherwise be permitted to report with respect to the Premises or this Lease being deferred or denied or cause this Lease not to be a true lease for federal income tax purposes.

**12. LANDLORD'S AND TENANT'S PROPERTY.** All fixtures, machinery, equipment, improvements and appurtenances attached to, or built into, the Premises, at the commencement of or during the Term, principally used for the operation of the Building or of the electrical, HVAC, gas and water utilities serving the Building, whether or not placed there by or at the expense of Tenant, but expressly excluding the machinery and equipment specified on Exhibit E attached hereto, shall become and remain a part of the Premises; shall be deemed the property of Landlord (the "Landlord's Property"), without compensation or credit to Tenant; and shall not be removed by Tenant at the Expiration Date unless Landlord requires their removal (including, but not limited to, Alterations pursuant to Section 11) by notifying Tenant, in writing, or before the Expiration Date or earlier termination date of this Lease. In no event shall Tenant remove any of the following materials or equipment without Landlord's prior written consent (which consent may be given or withheld in Landlord's sole discretion): any power wiring or power panels, lighting or lighting



fixtures, wall or window coverings, carpets or other floor coverings, heaters, air conditioners or any other HVAC equipment, fencing or security gates, or other similar Building decorations. At or before the Expiration Date, or the date of any earlier termination, Tenant, at its expense, shall remove from the Premises all of Tenant's personal property and any Alterations that Landlord requires be removed pursuant to Section 11 (including, without limitation the personal property listed on Exhibit C and that listed on Exhibit E), and Tenant shall repair (to Landlord's reasonable satisfaction) any damage to the Premises resulting from such installation and/or removal. Any other items of Tenant's personal property that shall remain in the Premises after the Expiration Date, or following an earlier termination date, may, at the option of Landlord, be deemed to have been abandoned, and in such case, such items may be retained by Landlord as its property or be disposed of by Landlord, in Landlord's sole and absolute discretion and without accountability, at Tenant's expense.

13. **REPAIRS AND MAINTENANCE.** Tenant acknowledges that, with full awareness of its obligations under this Lease, Tenant has accepted the condition, state of repair and appearance of the Premises. Except for events of damage, destruction or casualty to the Premises (to the extent addressed in Section 18 below), Tenant agrees that, at its sole expense, it shall put, keep and maintain the Premises, including any Alterations and any altered, rebuilt, additional or substituted Buildings, structures and other improvements thereto or thereon, in the condition required pursuant to Section 19(a) below (reasonable wear and tear excepted), and in a safe condition, repair and appearance (collectively, the "Required Condition") and shall make all repairs and replacements necessary therefor. Without limiting the foregoing, Tenant shall promptly make all structural and nonstructural, foreseen and unforeseen, ordinary and extraordinary changes, replacements and repairs of every kind and nature (including, without limitation, to the roof structure and roof covering, sidewalks, driveways, curbs, loading areas, landscaped areas and parking lot, and the electrical, mechanical, HVAC, and plumbing systems), and correct any patent or latent defects in the Premises, which may be required to put, keep and maintain the Premises in the Required Condition. Tenant expressly acknowledges its obligation to repair and, as necessary, replace the roof structure and roof covering in order to put, keep and maintain the roof structure and roof covering in the Required Condition. Tenant will keep the Premises orderly and free and clear of rubbish. Tenant covenants to perform or observe all terms, covenants and conditions of any easement, restriction, covenant, declaration or maintenance agreement (collectively, "Easements") to which the Premises are currently subject or become subject pursuant to this Lease, whether or not such performance is required of Landlord under such Easements, including, without limitation, payment of all amounts due from Landlord or Tenant (whether as assessments, service fees or other charges) under such Easements. Tenant shall deliver to Landlord promptly, but in no event later than five (5) business days after receipt thereof, copies of all written notices received from any party thereto regarding the non-compliance of the Premises or Landlord's or Tenant's performance of obligations under any Easements. Tenant shall, at its expense, use reasonable efforts to enforce compliance with the material terms of any Easements benefiting the Premises by any other person or entity or property subject to such Easement. Landlord shall not be required to maintain, repair or rebuild, or to make any alterations, replacements or renewals of any nature to the Premises, or any part thereof, whether ordinary or extraordinary, structural or nonstructural, foreseen or not foreseen, or to maintain the Premises or any part thereof in any way or to correct any patent or latent defect therein. Tenant hereby expressly waives any right to make repairs at the expense of Landlord which may be provided for in any Law in effect at the Commencement Date or that may thereafter be enacted. If Tenant shall vacate or abandon the Premises, it shall give Landlord immediate written notice thereof.

14. **UTILITIES.** Tenant shall purchase all utility services and shall provide for garbage, cleaning and extermination services. Tenant shall pay the utility charges for the Premises directly to the utility or municipality providing such service, all charges shall be paid by Tenant before they become delinquent. Tenant shall be solely responsible for the repair and maintenance of any meters necessary in connection with such services. Tenant's use of electrical energy in the Premises shall not, at any time, exceed the capacity of either or both of (x) any of the electrical conductors and equipment in or otherwise servicing the Premises; and (y) the HVAC systems of the Premises.

15. **INVOLUNTARY CESSATION OF SERVICES.** If and to the extent Landlord directly provides any such services to Tenant, Landlord reserves the right, without any liability to Tenant and without affecting Tenant's covenants and obligations hereunder, to stop service of any or all of the HVAC, electric, sanitary, elevator (if any), and other systems serving the Premises, or to stop any other services provided by Landlord under this Lease, whenever and for so long as may be necessary by reason of (i) accidents, emergencies, strikes, or (ii) any other cause beyond Landlord's reasonable control. Further, it is also understood and agreed that Landlord or Agent shall have no liability or responsibility for a cessation of any services to the Premises that occurs as a result of causes beyond Landlord's or Agent's reasonable control. No such interruption of any service shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord or Agent liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Lease, including, but not limited to, the obligation to pay Rent.



16. **LANDLORD'S RIGHTS.** Upon reasonable prior notice to Tenant (which may be delivered telephonically) and as long as Landlord does not unreasonably interfere with Tenant's operations, Landlord, Agent and their respective agents, employees and representatives shall have the right to enter and/or pass through the Premises at any time or times (except in the event of emergency, for which no reasonable prior notice is required) to examine and inspect the Premises and to show them to actual and prospective lenders, prospective purchasers or mortgagees of the Premises or providers of capital to Landlord and its affiliates; and in connection with the foregoing, to install a sign at or on the Premises to advertise the Premises for lease or sale; during the period of six months prior to the Expiration Date (or at any time, if Tenant has vacated or abandoned the Premises or is otherwise in default under this Lease), Landlord and its agents may exhibit the Premises to prospective tenants. Additionally, Landlord and Agent shall have the following rights with respect to the Premises, exercisable without notice to Tenant, without liability to Tenant, and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for setoff or abatement of Rent: (i) to have pass keys, access cards, or both, to the Premises; and (ii) to decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time after Tenant vacates or abandons the Premises for more than 45 consecutive days and without notice to Landlord of Tenant's intention to reoccupy the Premises.

17. **NON-LIABILITY AND INDEMNIFICATION.**

17.1. **Non-Liability.** Except to the extent directly caused by the willful misconduct or gross negligence of Landlord or Agent, none of Landlord, Agent, any other managing agent, or their respective affiliates, owners, partners, directors, officers, agents and employees shall be liable to Tenant for any loss, injury, or damage, to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss. Further, except to the extent directly caused by the willful misconduct or gross negligence of Landlord or Agent, none of Landlord, Agent, any other managing agent, or their respective affiliates, owners, partners, directors, officers, agents and employees shall be liable to Tenant (a) for any damage caused by other persons in, upon or about the Premises, or caused by operations in construction of any public or quasi-public work; (b) with respect to matters for which Landlord is liable, for consequential or indirect damages purportedly arising out of any loss of use of the Premises or any equipment or facilities therein by Tenant or any person claiming through or under Tenant; (c) for any defect in the Premises; (d) for injury or damage to person or property caused by fire, or theft, or resulting from the operation of heating or air conditioning or lighting apparatus, or from falling plaster, or from steam, gas, electricity, water, rain, snow, ice, or dampness, that may leak or flow from any part of the Premises, or from the pipes, appliances or plumbing work of the same.

17.2. **Tenant Indemnification.** Except for the Landlord's gross negligence or willful misconduct, Tenant hereby indemnifies, defends, and holds the Indemnitees harmless from and against any and all Losses arising from or in connection with any or all of: (a) the conduct or management of the Premises or any business therein, or any work or Alterations done, or any condition created by any or all of Tenant and Tenant's Parties in or about the Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant is given access to the Premises; (b) any act, omission or negligence of any or all of Tenant and Tenant's Parties; (c) any accident, injury or damage whatsoever occurring in, at or upon the Premises and caused by any or all of Tenant and Tenant's Parties; (d) any breach by Tenant of any or all of its warranties, representations and covenants under this Lease; (e) any actions necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under the Bankruptcy Code relating to the Tenant; (f) the creation or existence of any Hazardous Materials in, at, on or under the Premises, if and to the extent brought to the Premises or caused by Tenant or any party within Tenant's control (whether (x) prior to the Commencement Date, but during the period of time during which Tenant, or its affiliate, as the case may be, owned or occupied the Premises, or (y) from time to time during the Term and any extension thereof); (g) any violation or alleged violation by any or all of Tenant and Tenant's Parties of any Law; and (h) all costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Premises or the use or occupancy thereof during the Term (collectively, "Tenant's Indemnified Matters"). In case any action or proceeding is brought against any or all of the Indemnitees by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from any or all of Landlord, Agent or any Holder (defined below), shall resist and defend such action or proceeding by counsel reasonably satisfactory to, or selected by, Landlord. The term "Losses" shall mean all claims, demands, expenses, actions, judgments, damages (actual, but not consequential), penalties, fines, liabilities, losses of every kind and nature, suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by any applicable indemnity provided by Tenant under the terms of this Lease. The provisions of this Section 17.2 shall survive the expiration or termination of this Lease.

18. **CASUALTY AND CONDEMNATION.**

18.1. **Casualty.** If the Building and/or other improvements on the Premises shall be damaged or destroyed by fire or other casualty (each, a "Casualty"), Tenant, at Tenant's sole cost and expense, shall promptly and diligently repair, rebuild or replace such Building and other improvements, so as to restore the Premises to the condition in which they were immediately prior to such damage

or destruction, irrespective of whether any insurance proceeds are adequate or available to repair, rebuild or replace such Building. The net proceeds of any insurance (other than rent loss insurance) recovered by reason of such damage to or such destruction of the Building and/or other improvements on the Premises in excess of the cost of adjusting the insurance claim and collecting the insurance proceeds (such excess being hereinafter called the "net insurance proceeds") shall be held in trust by Landlord or held by any holder of an interest in the Premises which may be superior to Tenant's interest under this Lease (a "Holder") and released for the purpose of paying the fair and reasonable cost of restoring such Building and other improvements. Such net insurance proceeds shall be released from time to time as the work progresses to Tenant or to Tenant's contractors. Prior to the commencement of the work, Tenant shall deliver to Landlord reasonable proof that such net insurance proceeds are adequate to pay the cost of such restoration. If such net insurance proceeds are not adequate, Tenant shall pay, out of funds other than such net insurance proceeds, the amount by which such cost will exceed such net insurance proceeds and shall furnish proof to Landlord of the payment of such excess for work performed, before Landlord or any such Holder shall release any part of such net insurance proceeds. If such net insurance proceeds are more than adequate, the amount by which such net insurance proceeds exceed the cost of restoration will be paid to Tenant. If a Holder shall decline to make the net insurance proceeds available for the restoration provided herein and Landlord does not elect to substitute other funds for such insurance proceeds, Landlord shall have the right to terminate this Lease unless Tenant pays Landlord, within thirty (30) days after written notice from Landlord to Tenant, an amount sufficient to fully complete such restoration (as reasonably calculated by Landlord).

## **18.2. Condemnation.**

**18.2.1. Condemnation of Entire Premises.** If all or substantially all of the Premises is taken or condemned for a public or quasi-public use ("Condemnation"), the provisions of Section 18.3 shall apply.

**18.2.2. Partial Condemnation.** If less than all or substantially all of the Premises is subject to a Condemnation, Tenant shall restore the Building and other improvements upon the Premises to a condition and size as nearly comparable as reasonably possible to the condition and size thereof immediately prior to the Condemnation, and there shall be an equitable abatement of the minimum rent according to the value of the Premises before and after the Condemnation. In the event that the parties are unable to agree upon the amount of such abatement, either party may submit the issue for arbitration pursuant to the rules then obtaining of the American Arbitration Association and the determination or award rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and not subject to appeal, and judgment thereon may be entered in any court of competent jurisdiction.

**18.2.3. Award.** Tenant shall have the right to make a claim against the condemnor for moving and related expenses which are payable to tenants under applicable law without reducing the awards otherwise payable to Landlord and the Holders. Except as aforesaid, Tenant hereby waives all claims against Landlord and all claims against the condemnor, and Tenant hereby assigns to Landlord all claims against the condemnor including, without limitation, all claims for leasehold damages and diminution in the value of Tenant's leasehold interest. If only part of the Premises is Condemned, the net proceeds of any Condemnation award recovered by reason of any taking or Condemnation of the Premises in excess of the cost of collecting the award and in excess of any portion thereof attributable to the then-current market value of the land taken or Condemned (such excess being hereinafter called the "net condemnation proceeds") shall be held in trust by Landlord or any Holder and released for the purpose of paying the fair and reasonable cost of restoring the Building or Buildings and other improvements damaged by reason of the taking or Condemnation. Such net condemnation proceeds shall be released from time to time as the work progresses to Tenant or to Tenant's contractors. Prior to the commencement of the work, Tenant shall deliver to Landlord reasonable proof that such net condemnation proceeds are adequate to pay the cost of such restoration. If such net condemnation proceeds are not adequate, Tenant shall pay, out of funds other than such net condemnation proceeds, the amount by which such cost will exceed such net condemnation proceeds and shall furnish proof to Landlord of the payment of such excess for work performed before Landlord or any such Holder shall release any part of such net condemnation proceeds. If such net condemnation proceeds are more than adequate, the amount by which such net condemnation proceeds exceed the cost of restoration will be retained by Landlord or applied to repayment of any mortgage loan secured by the Premises. In the event that the parties are unable to agree upon the portion of the award attributable to the then-current market value of the land taken or Condemned, either party may submit the issue for arbitration pursuant to the rules then obtaining of the American Arbitration Association and the determination or award rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and not subject to appeal, and judgment thereon may be entered in any court of competent jurisdiction.

**18.2.4. Temporary Taking.** If the condemnor should take only the right to possession for a fixed period of time or for the duration of an emergency or other temporary condition (a "Temporary Taking"), then, notwithstanding anything hereinabove provided, this Lease shall continue in full force and effect without any abatement of rent, but the amounts payable by the condemnor with respect to any period of time prior to the expiration or sooner termination of this Lease shall be paid by the

condemnor to Landlord and the condemnor shall be considered a subtenant of Tenant. Landlord shall apply the condemnation award, to the extent actually received, or as much thereof as may be necessary for the purpose, toward the amount of Rent due from Tenant as rent for that period, and Tenant shall pay to Landlord any deficiency between the amount thus paid by the condemnor and the amount of the Rent, while Landlord shall pay over to Tenant any excess of the amount of the award over the amount of the Rent.

**18.3. Termination of Lease Following Major Casualty or Major Condemnation.**

**18.3.1.** If a (1) Casualty or (2) Condemnation shall affect all or a substantial portion of the Premises, and:

**18.3.1.1.** in the case of a Casualty, such Casualty shall be deemed a "total loss" for insurance purposes or shall be determined to be a loss of such dimension that the Premises cannot be completely restored or rebuilt within two hundred seventy (270) days computed after the hypothetical date of commencement of such construction (a "Major Casualty"); or

**18.3.1.2.** in the case of a Condemnation (other than a Temporary Taking), such Condemnation shall, in Tenant's and Landlord's reasonable judgment, render the Premises unsuitable for restoration for continued use and occupancy of Tenant's business;

then Tenant may, at its option, exercisable not later than sixty (60) days after the date of such Major Casualty or Condemnation, deliver to Landlord each of the following: (A) notice (a "Termination Notice") of its intention to terminate this Lease on the next rental payment date that occurs not less than ninety (90) days after the delivery of such notice (the "Termination Date"); (B) in the case of a Condemnation, a certificate of an authorized officer of Tenant describing the event giving rise to such termination; (C) in the case of a Major Casualty, (x) the certificate of an architect licensed in the state in which the Premises is located stating that the architect has determined, in its good faith judgment, that the Premises cannot be completely restored or rebuilt for continued use and occupancy in Tenant's business within a building construction period of two hundred seventy (270) days computed from the hypothetical date of commencement of such construction or (y) written confirmation from the issuer of the applicable insurance policy that it will treat the damage to the Building or Buildings as a "total loss"; and (D) an irrevocable offer (a "Event of Loss Purchase Offer") by Tenant to Landlord to purchase the Premises on the Termination Date. Landlord shall, within fifteen (15) business days of any request by Tenant, provide Tenant with the then current calculation of the purchase price, as determined in accordance with Exhibit D hereto.

If Landlord shall reject the Event of Loss Purchase Offer by written notice given to Tenant not later than fifteen (15) days prior to the Termination Date, this Lease shall terminate on the Termination Date, except with respect to obligations and liabilities of Tenant or Landlord hereunder, actual or contingent, which have arisen on or prior to the Termination Date, upon payment by Tenant of all of the Base Rent, Additional Rent and other sums then due and payable or accrued hereunder to and including the Termination Date, and the net condemnation proceeds or net insurance proceeds (as the case may be) shall belong to Landlord. Tenant shall, on or before the Termination Date, execute and deliver to Landlord an outright assignment of such proceeds in form and substance reasonably acceptable to Landlord and pay to Landlord an amount equal to any applicable insurance deductible or self-insurance amounts. Unless Landlord shall have rejected the Event of Loss Purchase Offer in accordance with this Section 18.3.1, Landlord shall be conclusively considered to have accepted the Event of Loss Purchase Offer. In the event Landlord accepts (or is deemed to have accepted) the Event of Loss Purchase Offer, then, on the Loss Closing Date (as defined in Section 18.3.2.1 below) (1) Tenant shall pay to Landlord a purchase price determined pursuant to Exhibit D attached hereto, (2) Landlord shall convey to Tenant or its designee the Premises, and (3) Landlord shall assign to Tenant or its designee all of Landlord's interest in the net condemnation proceeds or net insurance proceeds (as the case may be), by assignment in form and substance reasonably acceptable to Tenant or, if Landlord has already received all or a portion of such net condemnation proceeds or net insurance proceeds (as the case may be), then Landlord shall pay the same to Tenant or Tenant's designee after deducting Landlord's costs payable by Tenant hereunder. Such sale shall otherwise be consummated in accordance with the terms set forth in Section 18.3.2 below. In the event Tenant fails to deliver the Termination Notice and the Event of Loss Purchase Offer in accordance with the time deadlines set forth in this Section 18.3, then, at Landlord's election, Tenant shall have no right to terminate this Lease or right to make an offer to purchase the Premises, and the Lease will continue in full force and effect.

**18.3.2. Closing/Conveyance Procedures.** In the event, pursuant to the terms and conditions of Section 18.3.1 above, Landlord is to convey its interest in the Premises to Tenant as a result of an Event of Loss Purchase Offer, the following provisions shall apply:

**18.3.2.1.** The purchase of the Premises contemplated herein shall be consummated at a closing ("Loss Closing") to take place at the offices of Landlord or Landlord's counsel. The Loss Closing shall occur on the date (the "Loss Closing Date") which is no later than sixty (60) days after Landlord's receipt of a timely Termination Notice or such other date as the parties shall mutually agree in writing. The Loss Closing shall be effective as of 11:59 p.m. on the Loss Closing Date. Time is of the essence.

**18.3.2.2.** The total purchase price to be paid to Landlord by Tenant at the Loss Closing for the sale hereunder shall be an amount equal to the applicable purchase price set forth on Exhibit D attached hereto. In the event of a Loss Closing hereunder, Tenant shall not have the right to escrow or hold back any portion of the purchase price hereunder. The purchase price shall be paid to Landlord at the Loss Closing, by federal wire transfer of immediately available funds.

**18.3.2.3.** At the Loss Closing, Landlord shall convey fee simple title to the Premises to Tenant (or its assignee or designee) pursuant to a quitclaim deed, subject only to (a) Taxes; (b) those matters and exceptions shown in Landlord's existing owner's policy of title insurance effective on or about the date hereof, issued by First American Title Insurance Company (File No. NCS-226181) and the survey prepared by Millman Surveying, Inc. dated on or about July 13, 2006 as MSI Site Number 7896; (c) those matters that may be otherwise specifically approved, in writing, by Tenant or otherwise deemed approved or accepted by Tenant, or that otherwise result from the construction of any improvements or Alterations by Tenant; (d) matters arising out of any act of Tenant or any or all of its affiliates, representatives, lenders, agents, contractors, employees or invitees; and (e) any lien, claim or encumbrance or other matter, except liens, claims, or adverse encumbrances directly caused by any act of Landlord or its affiliates, representatives, lenders, agents, contractors or employees.

**18.3.2.4.** The sale of the Premises as provided for herein shall be made on a strictly "AS IS," "WHERE-IS" basis as of the Loss Closing Date, without any representations or warranties, of any nature whatsoever from Landlord. Landlord hereby specifically disclaims any warranty (oral or written) concerning: (i) the nature and condition of the Premises and the suitability thereof for any and all activities and uses that Tenant may elect to conduct thereon, (ii) the manner, construction, condition and state of repair or lack of repair of any improvements located thereon, (iii) the nature and extent of any right-of-way, lien, encumbrance, license, reservation, or condition, (iv) the compliance of the Premises or its operation with any laws, rules, ordinances, or regulations of any government or other body; and (v) any other matter whatsoever. Tenant expressly acknowledges that, in consideration of the agreements of Landlord herein, LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES, ANY IMPROVEMENTS LOCATED THEREON, OR ANY SOIL CONDITIONS RELATED THERETO. TENANT SPECIFICALLY ACKNOWLEDGES THAT TENANT IS NOT RELYING ON (AND LANDLORD HEREBY DISCLAIMS AND RENOUNCES) ANY REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF LANDLORD OF ANY KIND OR NATURE WHATSOEVER.

**18.3.2.5.** If Tenant fails to timely perform or satisfy any of its obligations imposed under this Section 18.3, including its obligation to timely close on the purchase of the Premises, then such failure shall constitute a default by Tenant under this Lease (for which there is no cure period), and Landlord shall have all rights and remedies available to it under this Lease, at law or in equity (including, without limitation the right to file an action to specifically enforce the terms of this Section 18.3), with respect to such default.

**18.3.2.6.** Upon the purchase of the Premises pursuant to Section 18.3.1 above, this Lease shall terminate except for provisions under this Lease that by their terms specifically survive.

**18.3.2.7.** Landlord and Tenant each hereby indemnify, protect and defend and hold the other harmless from and against all Losses resulting from the claims of any broker, finder, or other such party claiming by, through or under the acts or agreements of the indemnifying party. The obligations of the parties pursuant to this Section 18.3 shall survive any termination of this Lease.

**18.3.2.8.** There shall be no prorations of any cost items relating to the Premises, whether Taxes, Operating Expenses or otherwise; provided, however, that if and to the extent that, as of the Loss Closing, Landlord has paid any bills for any ownership expenses incurred (prior to Closing) in connection with the ownership and operation of the Premises and, under the terms of this Lease, Tenant would be required to reimburse Landlord for some or all of such expenses, then at Closing, Tenant shall be required to pay to Landlord, in addition to the purchase price set forth above, any such accrued Operating Expenses (including, but not limited to, Taxes) for which Tenant is responsible under this Lease.

**18.3.2.9.** Provided the Loss Closing is consummated in accordance with this Section 18.3, Tenant shall pay for all closing costs, including, but not limited to, the cost to record the deed, any transfer taxes, any closing escrow fees, the costs of any title insurance policy and the cost of the survey. Tenant shall be solely responsible for procuring the title insurance policy and the survey and in no event shall the procurement of those items be a condition precedent to Tenant's obligation to acquire the Premises (but it shall be a condition precedent to Tenant's obligation to close that Landlord conveys title in compliance with Section 18.3.2.3 hereof). All other costs shall be paid in accordance with local custom. Each of Landlord and Tenant shall be responsible for their respective attorneys' fees.

**19. SURRENDER AND HOLDOVER.** On the last day of the Term, or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Premises: (a) Tenant shall quit and surrender the Premises to Landlord "broom-clean" (as defined by Exhibit C, attached hereto and incorporated herein by reference), and in a condition that would reasonably be expected with normal and customary use in accordance with prudent operating practices and in accordance with the covenants and requirements imposed under this Lease, subject only to ordinary wear and tear (as is attributable to deterioration by reason of time and use, in spite of Tenant's reasonable care) and such damage or destruction as Landlord is required to repair or restore under this Lease; provided, however, that, notwithstanding any contrary language in this Section 19(a), upon Tenant's surrender of the Premises to Landlord, the roof structure and roof covering of the Premises shall be in good condition at the time of surrender without the need for replacement or extraordinary repair; (b) Tenant shall remove all of Tenant's personal property therefrom, except as otherwise expressly provided in this Lease, and (c) Tenant shall surrender to Landlord any and all keys, access cards, computer codes or any other items used to access the Premises. Upon prior notice (which may be delivered telephonically), Landlord shall be permitted to inspect the Premises in order to verify compliance with this Section 19 at any time prior to (x) the Expiration Date, (y) the effective date of any earlier termination of this Lease, or (z) the surrender date otherwise agreed to in writing by Landlord and Tenant. The obligations imposed under the first sentence of this Section 19 shall survive the termination or expiration of this Lease. If Tenant remains in possession after the Expiration Date hereof or after any earlier termination date of this Lease or of Tenant's right to possession: (i) Tenant shall be deemed a tenant-at-will; (ii) Tenant shall pay 150% of the aggregate of all Rent last prevailing hereunder, and also shall pay all actual damages sustained by Landlord, directly by reason of Tenant's remaining in possession after the expiration or termination of this Lease; (iii) there shall be no renewal or extension of this Lease by operation of law; and (iv) the tenancy-at-will may be terminated by either party hereto upon 30 days' prior written notice given by the terminating party to the non-terminating party. The provisions of this Section 19 shall not constitute a waiver by Landlord of any re-entry rights of Landlord provided hereunder or by law.

**20. EVENTS OF DEFAULT.**

**20.1. Bankruptcy of Tenant.** It shall be a default by Tenant under this Lease ("Default" or "Event of Default") if Tenant makes an assignment for the benefit of creditors, or files a voluntary petition under any state or federal bankruptcy (including the United States Bankruptcy Code) or insolvency law, or an involuntary petition is filed against Tenant under any state or federal bankruptcy (including the United States Bankruptcy Code) or insolvency law that is not dismissed within 90 days after filing, or whenever a receiver of Tenant, or of, or for, the property of Tenant shall be appointed, or Tenant admits it is insolvent or is not able to pay its debts as they mature.

**20.2. Default Provisions.** In addition to any Default arising under Section 20.1 above, each of the following shall constitute a Default: (a) if Tenant fails to pay Rent or any other payment when due hereunder within five (5) days after written notice from Landlord of such failure to pay on the due date; provided, however, that if, in any consecutive 12 month period, Tenant shall, on two (2) separate occasions, fail to pay any installment of Rent on the date such installment of Rent is due, then, on the third such occasion within such twelve month period on which Tenant shall fail to pay an installment of Rent on the date such installment of Rent is due, Landlord shall be relieved from any obligation to provide notice to Tenant, and Tenant shall then no longer have a five day period in which to cure any such failure; (b) if Tenant fails, whether by action or inaction, to timely comply with, or satisfy, any or all of the obligations imposed on Tenant under this Lease (other than the obligation to pay Rent) for a period of 30 days after Landlord's delivery to Tenant of written notice of such default under this Section 20.2(b); provided, however, that if the default cannot, by its nature, be cured within such 30 day period, but Tenant commences and diligently pursues a cure of such default promptly within the initial 30 day cure period, then, as long as Tenant continues to diligently pursue such a cure, Landlord shall not exercise its remedies under Section 21 unless such default remains uncured for more than 120 days after the initial delivery of Landlord's original default notice; and, at Landlord's election; and (c) if Tenant vacates or abandons the Premises during the Term for more than 45 consecutive days; and (d) if Guarantor defaults under, or otherwise fails to timely satisfy, any or all of its obligations under the guaranty into which Guarantor enters with Landlord on the date of this Lease.

**21. RIGHTS AND REMEDIES.**

**21.1. Landlord's Cure Rights Upon Default of Tenant.** If a Default occurs, then Landlord may (but shall not be obligated to) cure or remedy the Default for the account of, and at the expense of, Tenant, but without waiving such Default.

**21.2. Landlord's Remedies.** In the event of any Default by Tenant under this Lease, Landlord, at its option, may, in addition to any and all other rights and remedies provided in this Lease or otherwise at law or in equity do or perform any or all of the following:

**21.2.1.** Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession to Landlord. In such event, Landlord shall be entitled to recover from Tenant all of: (i) the unpaid Rent that is accrued and unpaid as of the date on which this Lease is terminated; (ii) the worth, at the time of award, of the amount by which (x) the unpaid Rent that would otherwise be due and payable under this Lease (had this Lease not been terminated) for the period of time from the date on which this Lease is terminated through the Expiration Date exceeds (y) the amount of such rental loss that the Tenant proves could have been reasonably avoided; and (iii) any other amount necessary to compensate Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of events, would be likely to result therefrom, including but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Landlord in connection with this Lease applicable to the unexpired Term (as of the date on which this Lease is terminated). The worth, at the time of award, of the amount referred to in provision (ii) of the immediately preceding sentence shall be computed by discounting such amount at the per annum discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award, plus one percent per annum. Efforts by Landlord to mitigate damages caused by Tenant's Default shall not waive Landlord's right to recover damages under this Section 21.2. If this Lease is terminated through any unlawful entry and detainer action, Landlord shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable in such action, or Landlord may reserve the right to recover all or any part of such Rent and damages in a separate suit; or

**21.2.2.** Continue the Lease and Tenant's right to possession and recover the Rent as it becomes due. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Landlord's interests shall not constitute a termination of the Tenant's right to possession; or

**21.2.3.** Pursue any other remedy now or hereafter available under the laws of the state in which the Premises are located.

**21.2.4.** Without limitation of any of Landlord's rights in the event of a Default by Tenant, Landlord may also exercise its rights and remedies with respect to any security held or maintained by Landlord.

Any and all personal property of Tenant that may be removed from the Premises by Landlord pursuant to the authority of this Lease or of law may be handled, removed or stored by Landlord at the sole risk, cost and expense of Tenant, and in no event or circumstance shall Landlord 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 for such property of Tenant so long as the same shall be in Landlord's possession or under Landlord's control. Any such property of Tenant not removed from the Premises as of the Expiration Date or any other earlier date on which this Lease is terminated shall be conclusively presumed to have been conveyed by Tenant to Landlord under this Lease as in a bill of sale, without further payment or credit by Landlord to Tenant. Neither expiration or termination of this Lease nor the termination of Tenant's right to possession shall relieve Tenant from its liability under the indemnity provisions of this Lease.

**21.3. Additional Rights of Landlord.** All sums advanced by Landlord or Agent on account of Tenant under this Section, or pursuant to any other provision of this Lease, and all Base Rent and Additional Rent, if delinquent or not paid by Tenant and received by Landlord when due hereunder, shall bear interest at the Default Interest (defined below) rate from the due date thereof until paid, and such Default Interest shall be and constitute Additional Rent and be due and payable upon Landlord's or Agent's submission of an invoice therefor. The various rights, remedies and elections of Landlord reserved, expressed or contained herein are cumulative and no one of them shall be deemed to be exclusive of the others or of such other rights, remedies, options or elections as are now or may hereafter be conferred upon Landlord by law.

21.4. **Event of Bankruptcy.** In addition to, and in no way limiting the other remedies set forth herein, Landlord and Tenant agree that if Tenant ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar type proceeding under the federal bankruptcy laws, as now enacted or hereinafter amended, then: (a) "adequate assurance of future performance" by Tenant pursuant to Bankruptcy Code Section 365 will include (but not be limited to) payment of an additional/new security deposit in the amount of the then current Base Rent payable hereunder; (b) any person or entity to which this Lease is assigned, pursuant to the provisions of the Bankruptcy Code, shall be deemed, without further act or deed, to have assumed all of the obligations of Tenant arising under this Lease on and after the effective date of such assignment, and any such assignee shall, upon demand by Landlord, execute and deliver to Landlord an instrument confirming such assumption of liability; (c) notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as "Rent", shall constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code; and (d) if this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Landlord or Agent (including Base Rent, Additional Rent and other amounts hereunder), shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord or Agent shall be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and shall be promptly paid to or turned over to Landlord.

22. **BROKER.** Tenant covenants, warrants and represents that no brokers represented Tenant in the negotiation of this Lease. Landlord covenants, warrants and represents that no brokers represented Landlord in the negotiation of this Lease. Each party agrees to and hereby does defend, indemnify and hold the other harmless against and from any brokerage commissions or finder's fees or claims therefor by a party claiming to have dealt with the indemnifying party and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing. The foregoing indemnification shall survive the termination or expiration of this Lease.

23. **MISCELLANEOUS.**

23.1. **Merger.** All prior understandings and agreements between the parties are merged in this Lease, which alone fully and completely expresses the agreement of the parties. No agreement shall be effective to modify this Lease, in whole or in part, unless such agreement is in writing, and is signed by the party against whom enforcement of said change or modification is sought.

23.2. **Notices.** Any notice required to be given by either party pursuant to this Lease, shall be in writing and shall be deemed to have been properly given, rendered or made only if personally delivered, or if sent by Federal Express or other comparable commercial overnight delivery service, addressed to the other party at the addresses set forth below each party's respective signature block (or to such other address as Landlord or Tenant may designate to each other from time to time by written notice), and shall be deemed to have been given, rendered or made on the day so delivered or on the first business day after having been deposited with the courier service.

23.3. **Non-Waiver.** The failure of either party to insist, in any one or more instances, upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the Lease shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt and acceptance by Landlord or Agent of Base Rent or Additional Rent with knowledge of breach by Tenant of any obligation of this Lease shall not be deemed a waiver of such breach.

23.4. **Advances by Landlord.** If Tenant shall fail to make or perform any payment or act required by this Lease within any applicable cure period, then Landlord may at its option make such payment or perform such act for the account of Tenant, and Landlord shall not thereby be deemed to have waived any default or released Tenant from any obligation hereunder. Landlord shall give Tenant five (5) days notice (except in the case of an emergency) prior to Landlord making such payment or protective advance. All amounts so paid by Landlord and all incidental costs and expenses (including reasonable attorneys' fees and expenses) actually incurred in connection with such payment or performance, together with interest at the annual rate equal to (a) the greater of (i) twelve percent (12%) and (ii) three percent (3%) above the prime rate as announced from time to time in New York City by Citibank, N.A., or its successor or (b) at the highest rate not prohibited by applicable law, whichever of (a) or (b) is less ("Default Interest") from and including the date of the making of such payment or of the incurring of such costs and expenses to and including the date of repayment, shall be paid by Tenant to Landlord on demand.

**23.5. Parties Bound.** Except as otherwise expressly provided for in this Lease, this Lease shall be binding upon, and inure to the benefit of, the successors and assignees of the parties hereto. Tenant hereby releases Landlord named herein from any obligations of Landlord for any period subsequent to the conveyance and transfer of Landlord's ownership interest in the Premises. In the event of such conveyance and transfer, Landlord's obligations shall thereafter be binding upon each transferee (whether Successor Landlord or otherwise). No obligation of Landlord shall arise under this Lease until the instrument is signed by, and delivered to, both Landlord and Tenant.

**23.6. Recordation of Lease.** Tenant shall not record or file this Lease (or any memorandum hereof) in the public records of any county or state.

**23.7. Governing Law; Construction.** This Lease shall be governed by and construed in accordance with the laws of the state in which the Premises is located. If any provision of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected but shall be enforced to the extent permitted by law. The captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation, or other provision of this Lease to be performed by Tenant, shall be construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. This Lease may be executed in counterpart and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument.

**23.8. Time.** Time is of the essence for this Lease. If the time for performance hereunder falls on a Saturday, Sunday or a day that is recognized as a holiday in the state in which the Premises is located, then such time shall be deemed extended to the next day that is not a Saturday, Sunday or holiday in said state.

**23.9. Authority of Parties.** Each of Tenant and Landlord hereby represents, warrants, and covenants with and to the other as follows: the individual(s) acting as signatory on behalf of such party is(are) duly authorized to execute this Lease; such party has procured (whether from its members, partners or board of directors, as the case may be), the requisite authority to enter into this Lease; this Lease is and shall be fully and completely binding upon such party; and such party shall timely and completely perform all of its obligations hereunder.

**23.10. WAIVER OF TRIAL BY JURY.** THE LANDLORD AND THE TENANT, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY ANY PARTY TO THIS LEASE WITH RESPECT TO THIS LEASE, THE PREMISES, OR ANY OTHER MATTER RELATED TO THIS LEASE OR THE PREMISES.

**23.11. Financial Information.** Within 60 days after the end of each of the first three fiscal quarters of each fiscal year of Quantum Foods, LLC, Tenant shall deliver to Landlord consolidated and consolidating unaudited financial statements of Quantum Foods, LLC and subsidiaries, and GDC Logistics, LLC and subsidiaries, including balance sheets as of the close of such fiscal quarter and statements of income and members equity and of cash flows for such fiscal quarter and for the period from the beginning of the applicable fiscal year to the end of such fiscal quarter, all prepared in accordance with U.S. generally accepted accounting principles (except for exclusion of footnotes and subject to normal year-end audit adjustments), and certified by the chief executive officer or the chief financial officer of Quantum Foods, LLC, and of GDC Logistics, LLC, respectively ("Financial Statements"). Within 120 days after the end of each fiscal year of Quantum Foods, LLC, and GDC Logistics, LLC, Tenant shall deliver to Landlord the consolidated and consolidating financial statements of Quantum Foods, LLC and subsidiaries, and GDC Logistics, LLC and subsidiaries, for such fiscal year, including consolidated and consolidating balance sheets as of the end of such fiscal year and consolidated and consolidating statements of income and members equity and of cash flows for such fiscal year, all prepared in accordance with U.S. generally accepted accounting principles consistently applied (except for the application of Financial Accounting Standards Board Interpretation No. 46 or similar principles that would require the consolidation of the results and operations of Quantum Foods, LLC, and its subsidiaries with the results and operations of its parent), together with audit opinions of independent auditors with respect to the consolidated financial statements ("Annual Financial Statements"). No later than thirty (30) days prior to the expiration of each fiscal year of Quantum Foods, LLC, Tenant shall deliver to Landlord financial projections of each of Quantum Foods, LLC and subsidiaries, and GDC Logistics, LLC and subsidiaries, for at least the following fiscal year. These projections shall include an annual income statement and balance sheet of the Tenant and Guarantor. Not less frequently than each fiscal quarter, Tenant shall also provide Landlord any covenant calculations then required to be sent to any lenders to Quantum Foods, LLC and subsidiaries, or GDC Logistics, LLC and subsidiaries, or both.



**23.12. Confidential Information.** With respect to any of Tenant's non-public business or financial information, Landlord agrees to maintain such information in confidence and not disclose such information to any third party whatsoever, provided, however, that, notwithstanding the foregoing, Landlord may disclose such information (a) to Landlord's employees, agents, officers, directors, representatives, brokers, third party consultants, engineers, lenders, accountants and attorneys (collectively, "Landlord's Representatives") to the extent that such Landlord's Representatives reasonably need to know such information in order to assist, and perform services on behalf of, Landlord or evaluate the transactions contemplated by this Lease; (b) to the extent required by any applicable statute, law, regulation, governmental or judicial authority; and (c) in connection with any litigation that may arise between the parties in connection with the transactions contemplated by this Lease. The provisions of this Section 23.12 shall survive the termination of this Lease.

**23.13. Submission of Lease.** Submission of this Lease to Tenant for signature does not constitute a reservation of space or an option to lease. This Lease is not effective until execution by and delivery to both Landlord and Tenant.

**23.14. Landlord's Waiver.** Landlord shall, within fifteen (15) business days of written request by Tenant therefor, execute and deliver to Tenant and its lender a so-called "Landlord's waiver" waiving any interest of Landlord in Tenant's Property and Tenant's personal property to the extent such instrument contains commercially reasonable terms, as determined by Landlord in its sole, but reasonable, judgment.

[Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

**LANDLORD:**

FIRST INDUSTRIAL DEVELOPMENT SERVICES,  
INC., a Maryland corporation

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

**TENANT:**

QUANTUM CULINARY, LLC, an Illinois limited liability  
company

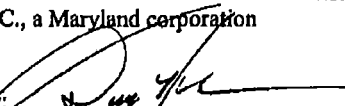
By: \_\_\_\_\_  
Its: \_\_\_\_\_

|   |  |
|---|--|
| <u>Landlord's Addresses for Notices:</u><br><br>First Industrial Development Services, Inc.<br>311 South Wacker Drive, Suite 4000<br>Chicago, Illinois 60606<br>Attn: Executive Vice President-Operations | <u>Tenant's Addresses for Notices:</u><br><br>c/o Quantum Foods, LLC<br>750 South Schmidt Road<br>Bolingbrook, Illinois 60440<br>Attn: President |
| <u>With a copy to:</u><br><br>First Industrial Realty Trust, Inc.<br>9450 West Bryn Mawr Avenue<br>Suite 750<br>Rosemont, Illinois 60018<br>Attn: Lease Administration                                    | <u>With a copy to:</u><br><br>Quantum Rosa Mystica Enterprises, LLC<br>1011 State Street<br>Lemont, Illinois 60439<br>Attn: President            |
| <u>With a copy to:</u><br><br>Barack Ferrazzano Kirschbaum Perlman & Nagelberg LLP<br>333 West Wacker Drive<br>Suite 2700<br>Chicago, Illinois 60606<br>Attn: Suzanne Bessette-Smith                      |  |

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

**LANDLORD:**

FIRST INDUSTRIAL DEVELOPMENT SERVICES,  
INC., a Maryland corporation

By:   
Its: Executive Director of Investments

**TENANT:**

QUANTUM CULINARY, LLC, an Illinois limited liability  
company

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

| <u>Landlord's Addresses for Notices:</u>   | <u>Tenant's Addresses for Notices:</u>  |
|--|---|
| First Industrial Development Services, Inc.<br>311 South Wacker Drive, Suite 4000<br>Chicago, Illinois 60606<br>Attn: Executive Vice President-Operations                        | c/o Quantum Foods, LLC<br>750 South Schmidt Road<br>Bolingbrook, Illinois 60440<br>Attn: President                                |
| <u>With a copy to:</u><br>First Industrial Realty Trust, Inc.<br>9450 West Bryn Mawr Avenue<br>Suite 750<br>Rosemont, Illinois 60018<br>Attn: Lease Administration               | <u>With a copy to:</u><br>Quantum Rosa Mystica Enterprises, LLC<br>1011 State Street<br>Lemont, Illinois 60439<br>Attn: President |
| <u>With a copy to:</u><br>Barack Ferrazzano Kirschbaum Periman & Nagelberg LLP<br>333 West Wacker Drive<br>Suite 2700<br>Chicago, Illinois 60606<br>Attn: Suzanne Bessette-Smith |   |

**EXHIBIT A**

**PREMISES**

**[ATTACH APPROPRIATE LEGAL DESCRIPTION]**

File No.:NCS-226181-CHI1

**Legal Description:**

**LOT 3 IN CROSSROADS BUSINESS PARK RESUBDIVISION NO. 5, BEING A RESUBDIVISION OF PART OF LOT 1 IN BLOCK 1 OF CROSSROADS BUSINESS PARK BEING A SUBDIVISION OF PART OF SECTION 21, TOWNSHIP 37 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 10, 1997 AS DOCUMENT NUMBER R97-110070, IN WILL COUNTY, ILLINOIS.**

**EXHIBIT B**

**TENANT OPERATIONS INQUIRY FORM**

1. Name of Company/Contact \_\_\_\_\_
2. Address/Phone \_\_\_\_\_  
\_\_\_\_\_
3. Provide a brief description of your business and operations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Will you be required to make filings and notices or obtain permits as required by Federal and/or State regulations for the operations at the proposed facility? Specifically:

- a. SARA Title III Section 312 (Tier II) reports *YES NO*  
(> 10,000 lbs. of hazardous materials STORED at any one time)
- b. SARA Title III Section 313 (Tier III) Form R reports *YES NO*  
(> 10,000 lbs. of hazardous materials USED per year)
- c. NPDES or SPDES Stormwater Discharge permit *YES NO*  
(answer "No" if "No-Exposure Certification" filed)
- d. EPA Hazardous Waste Generator ID Number *YES NO*

5. Provide a list of chemicals and wastes that will be used and/or generated at the proposed location. Routine office and cleaning supplies are not included. Make additional copies if required.

| Chemical/Waste | Approximate Annual Quantity Used or Generated | Storage Container(s)<br>(i.e. Drums, Cartons, Totes, Bags, ASTs, USTs, etc) |
|----------------|---|---|
|                |   |   |
|                |   |   |
|                |   |   |

## EXHIBIT C

### **BROOM CLEAN CONDITION AND REPAIR REQUIREMENTS**

- All lighting is to be placed into good working order. This includes replacement of bulbs, ballasts, and lenses as needed.
- All truck doors and dock levelers should be serviced and placed in good operating order (including, but not limited to, overhead door springs, rollers, tracks and motorized door operator). This would include the necessary (a) replacement of any dented truck door panels, broken panels and cracked lumber, and (b) adjustment of door tension to insure proper operation. All door panels that are replaced shall be painted to match the building standard.
- All structural steel columns in the warehouse and office should be inspected for damage, and must be repaired. Repairs of this nature shall be pre-approved by the Landlord prior to implementation.
- HVAC system shall be in good working order, including the necessary replacement of any parts to return the unit to a well-maintained condition. This includes, but is not limited to, filters, thermostats, warehouse heaters and exhaust fans. Upon move-out, Landlord will have an exit inspection performed by a certified mechanical contractor to determine the condition of the HVAC system.
- All holes in the sheet rock walls shall be repaired prior to move-out. All walls shall be clean.
- The carpets and vinyl tiles shall be in a clean condition and shall not have any holes or chips in them. Flooring shall be free of excessive dust, dirt, grease, oil and stains.
- Facilities shall be returned in a clean condition, including, but not limited to, the cleaning of the coffee bar, restroom areas, windows, and other portions of the Premises.
- There shall be no protrusion of anchors from the warehouse floor and all holes shall be appropriately patched. If machinery/equipment is removed, the electrical lines shall be properly terminated at the nearest junction box.
- All exterior windows with cracks or breakage shall be replaced. All windows shall be clean.
- Tenant shall provide keys for all locks on the Premises, including front doors, rear doors, and interior doors.
- All mechanical and electrical systems shall be left in a safe condition that conforms to code. Bare wires and dangerous installations shall be corrected to Landlord's reasonable satisfaction.
- All plumbing fixtures shall be in good working order, including, but not limited to, the water heater. Faucets and toilets shall not leak.
- All dock bumpers shall be left in place and well-secured.
- Drop grid ceiling shall be free of excessive dust from lack of changing filters. No ceiling tiles may be missing or damaged.
- All trash shall be removed from both inside and outside of the Building.
- All signs in front of Buildings and on glass entry door and rear door shall be removed.
- Remove all pads for machinery and repair and seal any roof penetrations.

**EXHIBIT D**

**TERMINATION VALUES**

In the event Tenant has the right to purchase the Premises pursuant to Section 18.3.1, the purchase price shall be an amount equal to the product of (A) 1.10, multiplied by (B) the sum of the following: (i) the amount of the current Landlord's equity investment in the Premises (including all related acquisition costs, including, but not limited to, legal fees, brokerage commissions, environmental consultants and engineering consultants and any unreimbursed improvements and capital expenditures), (ii) the amount of any then-outstanding debt on the Premises, and (iii) the amount of any yield maintenance or defeasance fees or other fees or premiums due in connection with the pre-payment of any then-outstanding debt.

The determination of the purchase price under this Exhibit D shall be determined by Landlord in its sole, but reasonable, discretion and shall be conclusive absent manifest error.



**EXHIBIT E**

**TENANT'S PROPERTY**

1. Any racking, machinery and equipment in the Building, except any machinery and equipment that is (i) part of the HVAC, electrical, water, or natural gas systems and utilities or (ii) structures, systems, machinery, and equipment used in connection with cooling the Building's cooler and freezer rooms.
2. CO<sub>2</sub>, nitrogen, ammonia and other gas and compressed gas tanks, except to the extent that any of such tanks are required for the operation of any or all of the items described in 1(i) or (ii) above.

# **EXHIBIT C**

## GUARANTY OF LEASE

**GUARANTY OF LEASE** (this "**Guaranty**") made as of July 17, 2006, by GDC Logistics, a Delaware limited liability company, with an address at 750 South Schmidt Road, Bolingbrook, Illinois ("**Guarantor**"), to First Industrial Development Services, Inc., a Maryland corporation, having an office at 311 South Wacker Drive, Suite 4000, Chicago, Illinois 60606 ("**Landlord**").

### WITNESSETH:

#### **WHEREAS:**

A. Landlord has been requested by Quantum Foods 213-D, LLC, a Delaware limited liability company ("**Quantum 213-D**"), Quantum Culinary, LLC, an Illinois limited liability company ("**Quantum Culinary**"), Choice One Foods, LLC, a Delaware limited liability company ("**Choice One**"), and Guarantor, each with an office at 750 South Schmidt Road, Bolingbrook, Illinois 60440 (individually and collectively, "**Tenant**"; provided, however, that if Guarantor is a Tenant, such term as used herein shall be deemed to refer to each Tenant other than Guarantor), to enter into Industrial Building Leases dated as of the date hereof (individually and collectively the "**Lease**"; provided, however, that if Guarantor is a Tenant, such terms as used herein shall be deemed to refer to each Lease other than the Lease under which Guarantor is Tenant), whereby Landlord would lease to the applicable Tenant, and such Tenant would rent from Landlord, certain premises located respectively at 750 South Schmidt Road, Bolingbrook, Illinois, 525 West Crossroads Boulevard, Bolingbrook, Illinois, 4020 Compton Avenue, Los Angeles, California, and 550 West North Frontage Road, Bolingbrook, Illinois, as more particularly described in the Lease (the "**Premises**").

B. Guarantor is under common control with each other Tenant, and will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

**NOW, THEREFORE**, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS.** Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. **COVENANTS OF GUARANTOR.**

(a) Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Base Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations and agreements to be performed by Tenant under the Lease (all of the obligations described in clauses (i) and (ii), collectively, the "**Obligations**"). If Tenant defaults under the Lease, Guarantor will, without notice or demand, promptly pay and perform all of the Obligations, and pay to Landlord, when and as due, all Base Rent and Additional Rent payable by Tenant under the Lease, together with all damages, costs and expenses to which Landlord is entitled pursuant to any or all of the Lease, this Guaranty and applicable Laws.

(b) Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "**Action**") commenced by Landlord against Guarantor to collect Base Rent and Additional Rent and any other rent, sums and charges due under the Lease for any month or months shall not

prejudice in any way Landlord's rights to collect any such amounts due for any subsequent month or months throughout the Term in any subsequent Action, (ii) Landlord may, at its option, without prior notice or demand, join Guarantor in any Action against Tenant in connection with or based upon either or both of the Lease and any of the Obligations, (iii) Landlord may seek and obtain recovery against Guarantor in an Action against Tenant or in any independent Action against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim against Tenant or against any security of Tenant held by Landlord under the Lease, and (iv) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant, as if Guarantor were a party to such Action, irrespective of whether or not Guarantor is entered as a party or participates in such Action.

(c) Any default or failure by the Guarantor to perform any of its Obligations under this Guaranty shall be deemed an immediate default by Tenant under the Lease.

(d) Guarantor shall not transfer, assign or convey a controlling interest (i.e. greater than a 50% interest) of stock, membership interests or partnership interests in Guarantor, or by merger or dissolution, without Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed. Notwithstanding any contrary language in this Guaranty, however, Guarantor may, without the necessity of consent from Landlord, so transfer, assign or convey a controlling interest in Guarantor to, or permit a merger with, any buyer of all or substantially all of the business conducted by Tenant at the Premises (as defined in the Lease), provided that (A) the buyer/transferee/successor has a Tangible Net Worth of at least Fifty Million Dollars (\$50,000,000), (B) immediately following such transaction, the Quantum Parties have a combined Tangible Net Worth of at least Fifty Million Dollars (\$50,000,000), and (C) Guarantor advises Landlord, in writing, at least thirty (30) days in advance of such transaction. Notwithstanding any contrary language in this Guaranty, Guarantor may, without the necessity of consent from Landlord, permit the transfer of stock, membership interests or partnerships in Guarantor among members of the family of Edward B. Bleka, and trusts for the sole benefit of members of the family of Edward B. Bleka.

### 3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.

(a) This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

(b) If the Lease is renewed, or the Term extended, for any period beyond the Expiration Date, either pursuant to any option granted under the Lease or otherwise, or if Tenant holds over beyond the Expiration Date, the obligations of Guarantor hereunder shall extend and apply to the full and faithful performance and observance of all of the Obligations under the Lease accruing during any renewal, extension or holdover period.

(c) This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of: (i) any modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same), (ii) any releases or discharges of Tenant other than the full release and complete discharge of all of the Obligations, (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant, (iv) any extension of time that may be granted by Landlord to Tenant, (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise), (vi) any subletting, concession, franchising, licensing or permitting of the Premises, (vii) any changed or different use of the Premises, (viii) any other dealings or matters occurring between Landlord and Tenant, (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from other persons or entities, (x) the release by Landlord of any other guarantor, (xi) Landlord's release of any security provided under the Lease, or (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Laws. Without limiting the foregoing, this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to

Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises and/or the Property, as fully as if any of the same were the named Tenant under the Lease.

(d) Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease or by relief of Tenant from any of Tenant's obligations under the Lease or otherwise by (i) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (ii) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; or (iii) the rejection, disaffirmance or other termination of the Lease in any such proceeding. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, including, without limitation, the insolvency, bankruptcy, liquidation or reorganization of Tenant, Guarantor or otherwise, all as though such payment had not been made, and, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned.

#### 4. WAIVERS OF GUARANTOR.

(a) Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty and notice of dishonor, (ii) notice of any actions taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Base Rent and Additional Rent or other rent, charges or amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of its obligations hereunder, (v) any requirement that Landlord protect, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant or any collateral, and (vi) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

(b) GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH: THIS GUARANTY; THE LEASE; ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES AND/OR THE PROPERTY; ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE, THE PREMISES AND/OR THE PROPERTY; ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEES OR LICENSEES; OR ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM THE PREMISES AND/OR THE PROPERTY. GUARANTOR SHALL NOT IMPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT BE DEEMED TO WAIVE ANY DEFENSES BY GUARANTOR TO THE EXTENT THE SAME ARE AVAILABLE TO TENANT. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

5. **SUBROGATION.** Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in either or both of the Premises and the Property, which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall hold such amount in trust for Landlord and shall pay such amount to Landlord immediately following receipt by Guarantor, to be applied against the Obligations, whether matured or unmatured, in such order as Landlord may determine. Guarantor hereby subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to Landlord under the Lease.

6. **REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

(a) Guarantor is a Delaware limited liability company; has all requisite power and authority to enter into and perform its obligations under this Guaranty; and this Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

(b) The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Laws or any contractual restriction binding on or affecting Guarantor or any of its properties, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties.

(c) There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

(d) Guarantor's principal place of business is 750 South Schmidt Road, Bolingbrook, Illinois.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be given as provided in the Lease, as follows:

(a) if to Guarantor at Guarantor's address set forth on the first page of this Guaranty, Attention: President (with a copy to Guarantor at Guarantor's address set forth on the first page of this Guaranty, Attention: General Counsel); and

(b) if to Landlord, at Landlord's address set forth on the signature page of the Lease (with a copy to Landlord's attorney as also set forth on the signature page to the Lease);

or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7.

8. **CONSENT TO JURISDICTION; WAIVER OF IMMUNITIES.** The undersigned hereby (a) consents and submits to the jurisdiction of the courts of the State of Illinois and the federal courts sitting in the State of Illinois and shall be subject to service of process in the State of Illinois with respect to any dispute there arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, (d) agrees to join Landlord in any petition for removal to either and such court and (e) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of

process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

9. MISCELLANEOUS.

(a) Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns. This Guaranty may not be assigned by Guarantor.

(b) Guarantor promises to pay all of Landlord's expenses, including, without limitation, attorneys' fees and costs, incurred by Landlord in enforcing the terms and conditions of either or both of the Lease and this Guaranty.

(c) Guarantor shall, from time to time within ten (10) days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications). Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises and/or Property.

(d) If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

(e) The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

(f) Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

(g) Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

(h) The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of Illinois, without giving effect to the principles of conflicts of law.

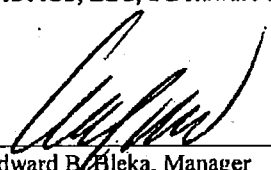
(i) The execution of this Guaranty prior to execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

[Signature Page to Follow]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first above written.

GUARANTOR:

GDC LOGISTICS, LLC, a Delaware limited liability company

By:  \_\_\_\_\_  
Edward B. Bleka, Manager