

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

In re: FISKER, INC., <i>et al.</i> , Debtors. ¹	Chapter 11 Case No. 24-11390 (TMH) (Jointly Administered) Hearing Date: January 9, 2025 at 10:00 a.m. Objection Deadline: December 18, 2024 at 4:00 p.m.
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**MOTION OF SHAMROCK (LA PALMA) PROPERTIES II, LLC
REQUESTING ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE
CLAIM PURSUANT TO 11 U.S.C. § 503(B)(1)(A)**

Shamrock (La Palma) Properties II, LLC (“Shamrock”),² by and through its undersigned counsel, hereby requests allowance and payment of an administrative expense pursuant to 11 U.S.C. §§ 503(b)(1)(A) (the “Motion”), and in support thereof, respectfully states as follows:

JURISDICTION & VENUE

1. The Court has jurisdiction over the subject matter of this motion pursuant to 28 U.S.C. §§ 157(b) and 1334(b) and the standing order of reference of the District Court. This is a core proceeding arising under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), that the Court has authority to hear and determine within the meaning of 28 U.S.C. § 157(b)(2)(8). The statutory predicate for the relief sought herein is 11 U.S.C. §§ 503(b)(1)(A) and 507(a)(2).

¹ The debtors (“Debtors”) in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the Debtors’ corporate headquarters is listed on the Court’s docket as 14 Centerpointe Drive, La Palma, CA 90623.

² Pursuant to Del. Bankr. L.R. 9013-1(f), Shamrock does consent to the entry of final orders or judgments by the Court with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.



BACKGROUND

2. Shamrock owns that certain nonresidential real property, including the building and improvements located thereon, at 14 Centerpointe Drive (the "Premises") located in the City of La Palma, County of Orange, State of California and generally described as an approximately 78,980 square foot building (the "Building"), with parking for approximately 213 automobiles, which is part of a multi-building project known as Centerpointe La Palma (the "Project").

3. The Premises comprise a large commercial/industrial complex. Base rent for such Premises exceeds \$80,000 per month.

4. Shamrock leased the Premises to debtor Fisker Group Inc. ("Lessee") pursuant to that certain Standard Industrial/Commercial Single-Tenant Lease - Net dated as of April 4, 2022 by and between Shamrock, and Lessee as tenant, which has been renewed from time to time (with the Addendum thereto of even date and all exhibits, schedules, amendments, and renewals, including, without limitation, that Amendment to Lease and Memorandum of Commencement Date dated April 4, 2022, the "Lease").

5. The Debtors filed their chapter 11 petitions with this Court on June 17th and June 19th, 2024 (the "Petition Dates").

6. On June 20, 2024, the Debtors filed the *Motion of Debtors for Entry of an Order (I) Authorizing Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property and (II) Authorizing and Establishing Procedures to Reject Executory Contracts and Unexpired Leases* (D.I. 13, the "Rejection Procedures Motion").

7. The Rejection Procedures Motion was granted by Order dated July 29, 2024 (D.I. 337, the "Rejection Procedures Order").

8. Pursuant to the Rejection Procedures Order, the Debtors were authorized to notify lessors or counterparties to executory contracts of (i) the Debtors' intention to reject an unexpired lease or executory contract; (ii) the proposed effective date of such rejection (which, as to an unexpired lease of realty, must not be earlier than "the date upon which the applicable Debtor surrenders in writing (including via email) the premises to the landlord and returns the keys, key codes, or security codes as applicable"); and (iii) with respect to leases of real property, a "reasonable description" of any property being abandoned on the subject premises.

9. On August 15, 2024, the Court entered the Order (I) Approving (A) the Procedures for the Sale of Certain of the Debtors' *De Minimis* Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (B) the Form and Manner of Notice of De Minimis Sales, (II) Authorizing the Sale of Certain of Debtors' De Minimis Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and (III) Granting Related Relief (D.I. 428, the "*De Minimis* Sale Procedures Order").

10. Under the *De Minimis* Sale Procedures Order, the Debtors were authorized to sell certain types of *de minimis* assets according to limited notice procedures. For sales over \$150,000, advanced notice of the sale was required. For sales of \$150,000 or less, Debtors could file notices of sale retroactively but no later than two-weeks after the sale.

11. On or about September 12, 2024, Shamrock was contacted by Heritage Global Partners ("HGP") and was advised that HGP had purchased certain *de minimis* assets located on the Premises. See Declaration of Michael Nicasro (the "Nicasro Dec.", Exhibit "A" hereto) at ¶8 and Exhibit "6" thereto.³

³ Shamrock has attached a total of four (4) declarations and eight (8) other exhibits hereto. Three of the four declarations refer to the other exhibits as follows:

12. Shamrock’s initial review of the Court’s docket in this matter and did not reflect a notice of *de minimis* asset sale identifying HGP as a purchaser. Shamrock reached out to the Debtors’ Chief Restructuring Company, Huron Consulting Services (“Huron”) who confirmed on September 13, 2024 that HGP was indeed the purchaser of certain *de minimis* assets on the Premises. The assets sold to HGP were described as “wall-to-wall, floor-to-ceiling transaction for all Fisker owned assets inside La Palma (excluding certain vehicles and spare parts).” Nicastro Decl. at ¶8; Exhibit “6”. (It later became apparent that this was an inaccurate description). It also became clear to Shamrock that the Debtors likely intended to reject the Lease as of the end of September.

13. Subsequently, HGP raised the prospect of a short-term extension of the Lease at a significantly reduced rental rate. Shamrock declined this offer.

14. Shamrock coordinated through Debtors’ counsel and Huron for a hand-over of keys and possession of the Premises due to past acts of vandalism, theft and damage related to the homeless breaking into and attempting to set up residence when the Premises were left vacant and not secured. Shamrock sought to carefully coordinate with the Debtors to ensure that the Premises were secured and to mitigate damages.

<u>Declaration of</u>	<u>Exh. to Motion</u>	<u>Refers to Exhibit#</u>	<u>Description of Exhibit #</u>
Michael Nicastro	“A”	5	Sale notices referencing Premises
		6	Email String with Mike Nicastro
		8	Schedule of rejected contracts 9/30/2024
Anthon Lenzini	“B”	1	Photographs of Premises 9/27/2024
		3	Quote for disposal of hazardous waste
Gordon May	“C”	none	
Joseph Moran	“D”	2	Photographs of Premises in Cleanup Process
		4	Quote for Removal of hazardous waste etc.
		7	Lease and Lease Amendment

15. The keys to the Premises were turned over to Shamrock's representative, Tony Lenzini ("Lenzini"), by Debtors on September 27, 2024. See Declaration of Tony Lenzini (the "Lenzini Dec.", Exhibit "B" hereto) at ¶5.

16. After taking possession of the keys to the Premises, Lenzini performed an inspection of the Premises and took photographs. Lenzini Dec. at ¶7 and Exhibit "1".

17. The following Monday, on September 30, 2024, the Debtors filed the Fourth Notice of Rejection of Certain Executory Contracts and/or Unexpired Leases (and the Abandonment of Property) (D.I. 605, the "Rejection Notice").

18. The Premises were left in complete disarray with substantial debris scattered and will cost tens of thousands of dollars in cleanup costs. See Lenzi Dec. at ¶7 and Exhibit "1". A review of these photographs demonstrates that this could not have been the pre-bankruptcy condition of the Premises as it would be impossible for anyone to work in such conditions.

19. A notice of sale of *de minimis* assets to HGB was eventually filed with the Court, but, it appears to have been filed on October 4, 2024 (D.I. 634) – outside of the time period required by the *De Minimis* Sale Procedures Order; a week after Debtors' agent provided Shamrock the keys to the Premises; and just after Shamrock filed its Objection and Reservation of Rights of Shamrock (La Palma) Properties II, LLC in Response to Fourth Notice of Rejection of Certain Executory Contracts and/or Unexpired Leases (and the Abandonment of Property) (the "Shamrock Objection", D.I. 633). See Nicaastro Decl. at ¶9 and Exhibit 5.

20. Huron's September 13, 2024 email described a comprehensive sale of assets to HGB, but conflicts with prior filed notices of sale of property at the Premises as well as the later notice of sale of assets to HGB, and created substantial unnecessary uncertainty and confusion as to the true ownership of personal property left at the Premises. Nicaastro Dec. at ¶¶8-11.

21. As result of Debtors and Debtors' agent conduct resulting in uncertainty and confusion as to the ownership of property left behind by Debtors, Shamrock was compelled to retain landlord / tenant counsel to comply with California's noticing statute regarding property left by tenants after vacating a property.

22. In the State of California, pursuant to California Civil Code Sections 1993 et seq., when personal property remains on commercial premises after the tenant vacates, the landlord is required to serve the former tenant and anyone else the landlord reasonably believes may be the owner of any of the personal property with a Notice of Right to Reclaim Abandoned Property. The Notice may be served personally or by mail. If served by mail, the potential claimants to the personal property have 18-days from the date of service to contact the landlord to reclaim the abandoned personal property and retrieve it from the premises.

23. In this case a very substantial amount of personal property was left on the Premises after the Lessee vacated.

24. After review of the pleadings on file in the Debtors' case regarding inconsistent descriptions of property allegedly sold to different parties and abandoned by the Debtors, Shamrock's counsel served a Notice of Right to Reclaim Abandoned Property on October 15, 2024 (the "Abandoned Property Notice") to the former Lessee and multiple potential claimants in four different states by mail, and the deadline for these potential claimants to retrieve their property was November 4, 2024. Only after this notice period expired could Shamrock take the next steps pursuant to California Civil Code Sections 1993 et seq. to dispose of the abandoned personal property. The legal fees and costs associated with this legal service (the "Fee Reimbursement Claim") were \$2,540. *See* Declaration of Gordon May (the "May Dec.", Exhibit "C" hereto) at ¶7.

25. Additionally, there appears to be a substantial amount of hazardous waste that Debtors apparently attempted to abandon to Shamrock. Lenzi Dec. at ¶8 and Exhibit “3”.⁴ A review of the sale notices for personal property located at the Premises did not reflect that Debtors sold such hazardous waste—hence it is presumably Debtors’ property. Nicastro Dec. at ¶9.

26. As further detailed in the Lenzini Declaration, the removal of property from the Premises was chaotic; debris was scattered; and substantial property was left behind, including property that falls well outside of the description of property being abandoned by the Debtors in the Rejection Notice. Lenzini Dec. at ¶7; Nicastro Dec. at ¶8. Shamrock would presume and hope, moreover, that conduct of this sort would not be permitted under whatever agreement of sale may exist with HGB.

27. It appears that HGB and/or Debtors left a substantial amount of property at the Premises; hazardous waste was left behind; and either one or both engaged in conduct that resulted in the spread of debris that will certainly cause Shamrock to bear additional costs. In addition to the hazardous waste, several clay models (potentially weighing hundreds or thousands of pounds), cabinets, tables, chairs and more litter the Premises.

28. In addition to the substantial debris and personal property left behind, Debtors and/or Debtors’ agent’s conduct left exposed electrical wiring resulting in a dangerous condition. The cost to remedy this situation has not yet been determined as it will be a time and materials

⁴ As noted in the Shamrock Objection, Debtors lack the authority to abandon hazardous material. *E.g. Midlantic Nat'l Bank v. N.J. Dep't of Env'tl. Prot.*, 106 S. Ct. 755, 762 (1986) (“[t]he Bankruptcy Court does not have the power to authorize an abandonment without formulating conditions that will adequately protect the public's health and safety”) *accord Dep't of Env'tl. Res. v. Conroy*, 24 F.3d 568, 569 (3d Cir. 1994) (Alito, J.) (“the Conroys could not have escaped their obligation to do so by abandoning the hazardous property in question.”).

contract and has not been completed. See Declaration of Joseph Moran (“Moran Dec.”), attached hereto as Exhibit “D”, at ¶7.

29. As noted above, the Rejection Notice also describes the property to be abandoned merely as “Miscellaneous personal property (office equipment, shelving, tables, chairs)” (the “Abandoned Property”). This Rejection Notice only added to the confusion and uncertainty as to true owner(s) of the personal property left behind by the Debtors.

RELIEF REQUESTED AND REASONS THEREFOR

30. Under § 503(b)(1)(A) of the Bankruptcy Code, “[a]n expense is administrative only if (1) it arises out of a transaction between the creditor and the bankrupt’s trustee or debtor in possession, and (2) only to the extent that the consideration supporting the claimant’s right to payment was both supplied to and beneficial to the debtor-in-possession in the operation of the business.” In re Bethlehem Steel Corp., 479 F.3d 167, 172 (2d Cir. 2007); see also In re Garden Ridge Corp., 321 B.R. 669, 676 (Bankr. D. Del. 2005) (citing In re Waste Systems Int’l, Inc., 280 B.R. 824, 826 (Bankr. D. Del. 2002)). As to the second requirement, courts have held that an administrative expense payment should be afforded to those who either assist in the preservation and administration of the estate, or who aid the debtor's rehabilitation to the benefit of all creditors. See In re Armorflite Precision, Inc., 43 B.R. 14 (Bankr. D. Me. 1984).

31. In the Third Circuit, section 503(b)(1)(A) “has been broadly interpreted to include ‘actual, necessary costs and expenses’ that benefit the debtor's estate both directly and indirectly.” Elsom v. Woodward & Lothrop, Inc., 1997 WL 476091, *3 (E.D. Pa. 1997) (citing In re B. Cohen and Sons Caterers, Inc., 143 B.R. 27, 28 (E.D. Pa. 1992)). The policy behind section 503(b) is to facilitate the rehabilitation of insolvent debtors by encouraging third parties

to provide those debtors with necessary goods and services. See In re B. Cohen and Sons Caterers, Inc., 143 B.R. at 28 (citations omitted).

32. The proper measure of a landlord's administrative expense claim under section 503(b)(1)(A) of the Bankruptcy Code, with priority under section 507(a)(2) thereof, is the fair market value of rent for the subject property, "which is presumable the lease rate unless there is evidence to the contrary." *In re Sportsman's Warehouse, Inc.*, 436 B.R. 308, 315 (Bankr. D. Del. 2009) (quoting *In re Goody's Family Clothing, Inc.*, 392 B.R. at 614, aff'd, 610 F.3d 812 (3d Cir. 2010)).

33. Administrative expenses can arise not only where the debtors have received a direct benefit, but where the acts of the debtors have, through post-petition conduct, harmed third parties and shifted costs that should be borne by the debtors onto such third parties. See Reading Co. v. Brown, 391 U.S. 471, 88 S. Ct. 1759, 20 L. Ed. 2d 751 (1968). Such claims may be entitled to administrative priority where a third party relies on the debtors' negligent misrepresentations, even in the absence of benefit to the estate. E.g., In re Women First Healthcare, Inc., 2005 WL 2737436 (Bankr. D. Del. Oct. 21, 2005) (Walrath, J) (stalking horse bidder entitled to administrative expense claim for damages sustained based on its reasonable reliance on debtors' negligent misrepresentation that debtors had properly noticed a sale motion).

34. Here, due to Debtors' post-petition conduct, Shamrock will be prevented from releasing the Premises until a projected date of December 6, 2024. The loss of rent consequent to the Debtors' failure to effectively turn over possession of the Premises, based upon the Lease (the "Lost Rent Claim") is estimated to be \$100,980.58. Moran Dec. at ¶9. It was uncontrovertibly the Debtors' *post-petition* conduct of: misrepresenting the status of ownership of the personalty on the Premises; allowing the Premises to be placed in a state of complete

disarray; and their improper effort to abandon hazardous material to Shamrock that has prevented Shamrock from re-leasing the Premises. Accordingly, the Debtors should be required to reimburse Shamrock for the Lost Rent Claim.

35. Additionally, due to Debtors' post-petition conduct, Shamrock was compelled to engage landlord/tenant counsel and follow California State Law notice procedures regarding personal property left at the Premises. See May Dec. at ¶6; Moran Dec. at ¶11. Thereafter, Shamrock has been first delayed and now is forced to expend substantial sums to remove the substantial debris and hazardous waste left by Debtors at the Premises. The estimated costs for Shamrock to meet its legal obligations under state law and put the Premises back into safe and suitable condition for full possession rights and releasing (the "Out of Pocket Claim") are \$153,120.58. Moran Dec. at ¶¶9-10; May Dec. at ¶7; and Lenzi Dec. at ¶¶7-8.

36. Further, Section 365(d)(3) of the Bankruptcy Code requires that the debtor "timely perform all the obligations of the debtor . . . arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title." 11 U.S.C. § 365(d)(3). To the extent that the Rejection Date for the Lease is subsequent to September 27, 2024, Shamrock's entitlement to payment would also arise under 11 U.S.C. § 365(d)(3).

NOTICE

37. Notice of this Motion has been provided to (i) the Debtors; (i) counsel to the Debtors; (iii) counsel to the Liquidating Trustee; (iv) the Office of the United States Trustee; and (v) all parties who have noted their appearances electronically pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. Shamrock submits that no further or other notice is required.

CONCLUSION

38. Shamrock hereby asserts a claim for payment under 11 U.S.C. § 503(b)(1)(A) (subject to further supplement due to timing issues.) Accordingly, Shamrock respectfully requests allowance and payment of its administrative expense claim, including, *without limitation*, the Fee Claim, the Lost Rent Claim, and the Out-of-Pocket Claim.

39. Due to the timing of Debtors' rejection of Shamrock's lease, the California State Law requirements relating to notice to third parties for property abandoned at the Premises, removal of hazardous waste left behind by Debtor and the extensive clean up and repairs made necessary by Debtor's conduct, Shamrock's administrative claim is not fully liquidated. Shamrock is filing its motion for an order allowing administrative claim at this time to meet the deadline set by Debtors' plan of reorganization and reserves the right to amend this motion and the claims and sums stated herein at a later time.

40. This request is filed without prejudice to any other claims Shamrock may have asserted, or may hereafter assert, against any of the Debtors in these consolidated cases.

WHEREFORE, Shamrock requests that the Court enter an Order: (i) allowing Shamrock an administrative expense including, *without limitation*, the Fee Claim, the Lost Rent Claim and the Out-of-Pocket Claim, and any other post-petition claims that may have or may hereafter arise or become known; (ii) requiring immediate payment of Shamrock's allowed administrative expense; and (iii) granting such other and further relief in favor of Shamrock as the Court deems just and proper.

Dated: November 18, 2024
Wilmington, Delaware

Respectfully submitted,

By: /s/ Christopher D. Loizides
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Counsel to Shamrock (La Palma) Properties II, LLC

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

In re: FISKER, INC., <i>et al.</i> , Debtors. ¹	Chapter 11 Case No. 24-11390 (TMH) (Jointly Administered) Hearing Date: January 9, 2025 at 10:00 a.m. Objection Deadline: December 18, 2024 at 4:00 p.m.
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**NOTICE OF MOTION OF SHAMROCK (LA PALMA) PROPERTIES II, LLC
REQUESTING ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE
CLAIM PURSUANT TO 11 U.S.C. §§ 503(B)(1)(A)**

Shamrock (La Palma) Properties II, LLC (“Movant”) has filed the *Motion of Shamrock (La Palma) Properties II, LLC Requesting Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. §§ 503(b)(1)(A)* (the “Motion”) which seeks the following relief: allowance and payment of Movant’s administrative expense claims associated with a lease of non-residential real property.

A HEARING ON THE MOTION WILL BE HELD ON JANUARY 9, 2025 AT 10:00 A.M. BEFORE THE HONORABLE THOMAS M. HORAN AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, WILMINGTON, DE 19801.

¹ The debtors (“Debtors”) in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the Debtors’ corporate headquarters is listed on the Court’s docket as 14 Centerpointe Drive, La Palma, CA 90623.

You are required to file a response to the Motion on or before December 18, 2024 at 4:00 p.m. At the same time, you must also serve a copy of the response upon Movant's attorneys at the addresses listed below.

FAILURE TO TIMELY FILE AND SERVE A RESPONSE MAY RESULT IN AN ORDER GRANTING THE RELIEF REQUESTED IN THE MOTION.

Dated: November 18, 2024
Wilmington, Delaware

Respectfully submitted,

By: /s/ Christopher D. Loizides
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Counsel to Movant

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

In re: FISKER, INC., <i>et al.</i> , Debtors. ¹	Chapter 11 Case No. 24-11390 (TMH) (Jointly Administered) Hearing Date: January 9, 2025 at 10:00 p.m. Objection Deadline: December 18, 2024 at 4:00 p.m.
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**ORDER GRANTING MOTION OF SHAMROCK (LA PALMA) PROPERTIES II, LLC
FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE
CLAIM PURSUANT TO 11 U.S.C. §§ 503(B)(1)(A)**

Upon consideration of the Motion of Shamrock (La Palma) Properties II, LLC (“Shamrock”) for Allowance and Payment of an Administrative Expense Claim Pursuant to 11 U.S.C. §§ 503(b)(1)(A) (the “Motion”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the standing order of reference of the District Court; and this Court having found that the notice given by Shamrock of the Motion was good and sufficient; and this Court having reviewed the Motion and all responses thereto, if any, including all documents submitted therewith; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

¹ The debtors (“Debtors”) in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is listed on the Court’s docket as 14 Centerpointe Drive, La Palma, CA 90623.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Shamrock is hereby granted an allowed administrative expense claim pursuant to sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code in the amount of \$_____.
3. The terms and conditions of this Order are immediately effective and enforceable upon its entry.
4. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

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

In re: FISKER, INC., <i>et al.</i> , Debtors. ¹	Chapter 11 Case No. 24-11390 (TMH) (Jointly Administered) .
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CERTIFICATE OF SERVICE

I, Christopher D. Loizides, hereby certify that on November 18, 2024, I did cause to be served true and correct copies of the foregoing *Motion of Shamrock (La Palma) Properties II, LLC for Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. §§ 503(b)(1)(A)* on the parties identified on the attached service list as indicated thereon.

Dated: November 18, 2024
Wilmington, Delaware

Respectfully submitted,

By: /s/ Christopher D. Loizides
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SERVICE LIST

VIA FIRST-CLASS MAIL

Fisker Inc.
14 Centerpointe Drive
La Palma, CA 90623
ORANGE-CA¹

Debtors

VIA CM/ECF, EMAIL AND FIRST-CLASS MAIL

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¹ This is the address of the Debtors listed on the Court's docket.

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Counsel to the Debtors

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U.S. Trustee

EXHIBIT “A”

DECLARATION OF MICHAEL N. NICASTRO

I, Michael N. Nicastro, hereby declare and state as follows:

1. I am over the age of eighteen years.

2. The facts stated herein are within my personal knowledge, and if called upon to testify to the same I could and would testify thereto.

3. I am an attorney at law duly admitted to practice before this Court and all courts of the State of California and was admitted pro hac vice in the pending case.

4. I am the sole shareholder of and attorney with the law firm of Nicastro & Associates, P.C., attorneys of record for Shamrock (La Palma) Properties II (“Shamrock”). Based upon prior declarations and exhibits filed in this matter, Shamrock leased real property located at 14 Centerpointe Drive, La Palma, CA (“Premises”) to Debtor.

5. I make this Declaration in support of Shamrock’s Motion Requesting Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. §§ 503(B)(1)(A) (“Motion”).

6. I am familiar with and regularly use the PACER system to review Federal Court Pleadings. I have reviewed and retrieved documents from the PACER system from the Court’s records for this case.

7. On August 15, 2024, the Court entered the Order (I) Approving (A) the Procedures for the Sale of Certain of the Debtors’ De Minimis Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (B) the Form and Manner of Notice of De Minimis Sales, (II) Authorizing the Sale of Certain of Debtors’ De Minimis Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and (III) Granting Related Relief (D.I. 428, the “De Minimis Sale Procedures Order”) See docket at 428.

8. At or near the time I was contacted by Heritage Global Partners (“HGP”), I reviewed the Court’s docket, but, did not find a notice of *de minimis* asset sale identifying HGP as a purchaser of Debtor’s property. I was able to connect with Jordan Mueller (“Mueller”) who I understand works with Huron Consulting Services (“Huron”) and is employed by Debtor as CRO. Mueller confirmed on

1 September 13, 2024 that HGP was indeed the purchaser of certain *de minimis* assets on the Premises.
2 Mueller described the assets sold to HGP as a “wall-to-wall, floor-to-ceiling transaction for all Fisker
3 owned assets inside La Palma (excluding certain vehicles and spare parts.)” Attached hereto as **Exhibit**
4 **6** and incorporated herein is a true and correct copy of the e-mail string where Mueller confirms HGP
5 was a purchaser of Debtor’s property.
6

7 9. A notice of sale of *de minimis* assets to HGB appears to have been filed with the Court on
8 October 4, 2024. I reviewed the sale notice to HGB and sales notices for other parties relating to
9 personal property located at the Premises could not find where hazardous waste was purchased.
10 Attached hereto as **Exhibit 5** are true and correct copies of the exhibits from the sale notices I found that
11 were filed in this case where the location of the assets purchased reference the Premises.
12

13 10. On September 30, 2024, the Debtors filed the Rejection Notice, which states the Debtors’
14 intention of rejecting the Lease effective as of September 27, 2024. *See* docket at 605-1.
15

16 11. A copy of the Schedule 1 in Debtor’s Rejection Notice filed on September 30, 2024
17 describes property to be abandoned by the Debtor merely as “Miscellaneous personal property (office
18 equipment, shelving, tables, chairs.)” is attached hereto as **Exhibit “8”** and incorporated by reference
19 herein.
20

21 I declare the foregoing to be true and correct under penalty of perjury under the laws of the United
22 States of America.

23 Executed on this 15th day of November 2024, in Irvine, California.
24

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26 _____
27 Michael N. Nicastro
28

EXHIBIT “B”

DECLARATION OF TONY LENZINI

I, Tony Lenzini, hereby declare and state as follows:

1. I am over the age of eighteen years.

2. The facts stated herein are within my personal knowledge, and if called upon to testify to the same I could and would testify thereto.

3. I have worked with Shamrock (La Palma) Properties II, LLC ("Shamrock") for approximately thirty (30) years as an owner's representative and have worked with Shamrock at their property located at 14 Centerpointe, La Palma, CA facility ("La Palma") for at least the past fifteen (15) years.

4. I am familiar with the inside and outside of La Palma, the property that the debtor, Fisker, occupied.

5. The keys to the Premises were turned over to me by Debtor's representative on September 27, 2024.

6. After taking possession of the keys to the Premises, I performed an inspection of the Premises.

7. La Palma was left in complete disarray. Shamrock now faces tens of thousands of dollars in cleanup costs, damage repairs, exposed wiring and hazardous waste removal. Attached as **Exhibit "1"** are true and correct copies of photos of La Palma as it looked at and around the time that possession of the property was turned over to me on September 27, 2024.

8. Shamrock intends to properly dispose of the hazardous waste left behind. Attached hereto as **Exhibit "3"** is a true and correct copy of a quote I received from a qualified contractor who handles hazardous waste disposal.

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1 I declare the foregoing to be true and correct under penalty of perjury under the laws of the
2 United States of America.

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Executed on this 14 day of November 2024, in LA PALMA, California.



A handwritten signature in black ink, appearing to read 'Tony Lenzini', is written over a horizontal line. The signature is stylized and somewhat scribbled.

Tony Lenzini

EXHIBIT “C”

DECLARATION OF GORDON G. MAY

I, Gordon G. May, hereby declare and state as follows:

1. I am over the age of eighteen years.

2. The facts stated herein are within my personal knowledge, and if called upon to testify to the same I could and would testify thereto.

3. I am an attorney at law duly admitted to practice before all courts of the State of California.

4. I am a partner and attorney with the law firm of Grant Genovese & Baratta, LLP, landlord/tenant counsel for Shamrock (La Palma) Properties II (“Shamrock”).

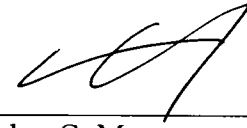
5. I make this Declaration in support of Shamrock’s Motion Requesting Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. §§ 503(B)(1)(A) (“Motion”).

6. In the State of California, pursuant to California Civil Code Sections 1993 et seq., when personal property remains on commercial premises after the tenant vacates, the landlord is required to serve the former tenant, and anyone else the landlord reasonably believes may be the owner of any of the personal property, with a Notice of Right to Reclaim Abandoned Property. The Notice may be served personally or by mail. If the Notice is served by mail the potential claimants for the personal property have 18 days from the date of service to contact the landlord to reclaim the abandoned personal property and retrieve it from the premises. In this case a very substantial amount of personal property was left at the premises after the tenant vacated (requiring 237 pages of photographs to show it all). We advised and assisted Shamrock in complying with California State law requirements to identify and notify the potential owners of this personal property. Shamrock served a Notice of Right to Reclaim Abandoned Property on October 15, 2024 to the former tenant and multiple potential claimants in four different states by mail, and the deadline for these potential claimants to retrieve their property was November 4, 2024. Only after this Notice period expired could Shamrock take the next steps pursuant to California Civil Code Sections 1993 et seq. to dispose of the abandoned personal property.

7. Legal fees and costs for this service totaled \$2,540.00.

1 8. I declare the foregoing to be true and correct under penalty of perjury under the laws of
2 the United States of America.

3
4 Executed on this 15 day of November 2024, in Irvine, California.



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7 _____
Gordon G. May

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EXHIBIT “D”

DECLARATION OF JOSEPH MORAN

I, Joseph Moran, hereby declare and state as follows:

1. I am over the age of eighteen years.

2. The facts stated herein are within my personal knowledge, and if called upon to testify to the same I could and would testify thereto.

3. I am a managing member of Shamrock (La Palma) Properties II, LLC (“Shamrock”). Debtor leased real property located at 14 Centerpointe Drive, La Palma, CA. Attached hereto and incorporated herein as **Exhibit “7”** is a copy of Shamrock’s lease and amendment to Lease for the premises with Debtor

4. Due to multiple parties potentially claiming an interest in personal property left at the former Fisker headquarters, Shamrock caused to be sent legal notice and waited the required time period for the individuals/companies to make claims for assets that they may have purchased from Fisker that were building. Some parties did claim and retrieve property that was left in the building.

5. On November 13, 2024, Shamrock started the process of removing the items that were thrown on the floors of the offices and warehouse. The amount of debris left on the floor was a safety concern as it presented a trip and fall hazard. The removal of debris scattered throughout the facility will take around 5 days. Basically, the workers have to pick up every item off the floor and put them in a 55-gallon trash container which then gets offloaded into the dumpster. This labor intensive process is required due to the fact that the debris is scattered. Attached hereto as **Exhibit “2”** are true and correct copies of photographs of one of the dumpsters that is in the process of being filled up.

6. After the debris clean-up, Shamrock will deal with the disposal of the hazardous waste.

7. In addition to the substantial debris and personal property left behind, Debtor and/or Debtor’s agent’s sale and removal of equipment left exposed wiring resulting in a dangerous condition. The next action will be having an electrical contractor come in and address the exposed electrical wires that were supplying power to the Fisker installed equipment. This presents a very unsafe situation inside the building. It appears to me that the people who left the electrical wires exposed had little to no

1 regard for the safety of others. Shamrock intends to use a contractor named Bayshore Electric
2 (“Bayshore”) for this critical corrective work. Bayshore is a trusted vendor who will bill us after the
3 work is done as they only do work as a time and material project. Shamrock intends to supplement its
4 application for allowance of administrative expense after corrective electrical work is completed.

5 8. After the building is safe to enter from a debris and electrical wire standpoint, Shamrock
6 will accept one of the two quotes it has received to remove the remaining contents from inside the
7 building. Shamrock estimates this will take 7 to 9 days. Attached as **Exhibit “4”** are true and correct
8 copies of quotes I received to remove the remaining contents from inside the building.

9 9. If everything goes as planned, the building will be ready to go back on the market on
10 December 6th. The amount of rent incurred by Debtor for failure to effectively turn over possession of
11 the Premises, based upon the contract lease rate is \$100,980.58. This figure was derived by taking one
12 month’s rent at \$84,605.35 for November 2024 and six days per diem rent for December ($\$2,729.20 \times 6$
13 $= \$16,375.23$). Due to the condition of the property, we have not allowed brokers from physically
14 showing until it is safe for non-contractors to enter and view.

15 10. Shamrock has been forced to expend substantial sums to remove the substantial debris
16 and hazardous waste left by Debtor at the Premises. Debtor’s agent made the representation that
17 personal property would be removed from the Premises prior to turning over the keys. To the contrary,
18 the Premises was left in disarray with debris scattered, substantial property left behind (including
19 hazardous waste) and exposed wiring. At this time, the estimated cost for Shamrock to remove debris
20 and hazardous waste alone that was left by Debtor at Premises so that the building is safe for non-
21 contractors to enter and in suitable condition to re-lease is at least \$49,600. We will not know the cost
22 to address the dangerous wiring situation until later.

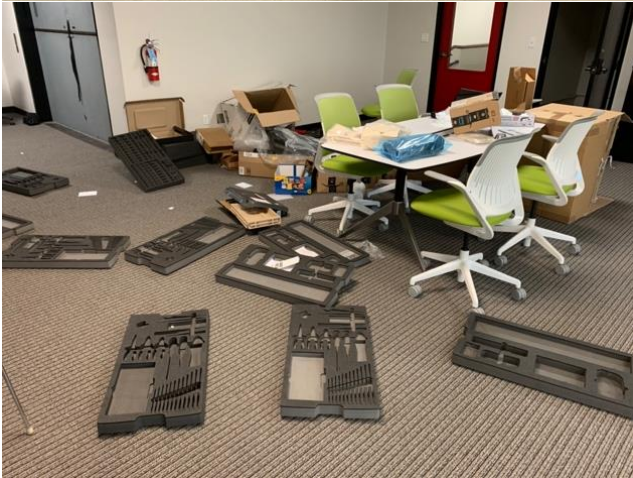
23 11. Shamrock has been diligently working to remedy the overall mess created by Debtor with
24 respect the leased premises. Due to the timing of the keys being turned over, the Debtor’s lease
25 rejection notice and the necessity of retaining counsel and following California law to provide legal
26 notice to uncertain and unknown true owners of the personal property left behind by Debtor, the process
27 of cleaning up, repairing and putting the premises back onto the market was substantially delayed.
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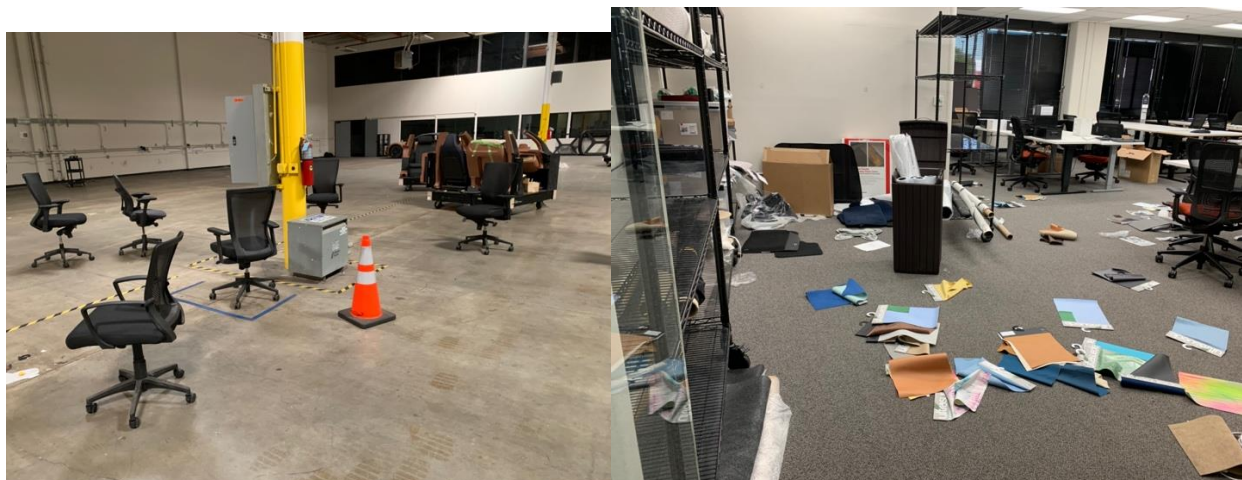
1 I declare the foregoing to be true and correct under penalty of perjury under the laws of the
2 United States of America.

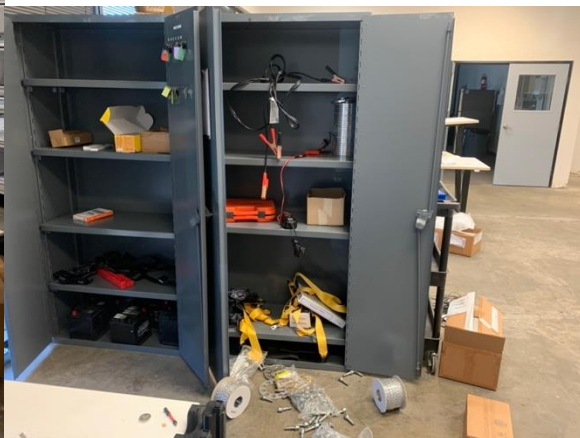
3 Executed on this 15th day of November 2024, in Bakersfield, California.
4

5 *Joseph Moran*
6 _____
7 Joseph Moran
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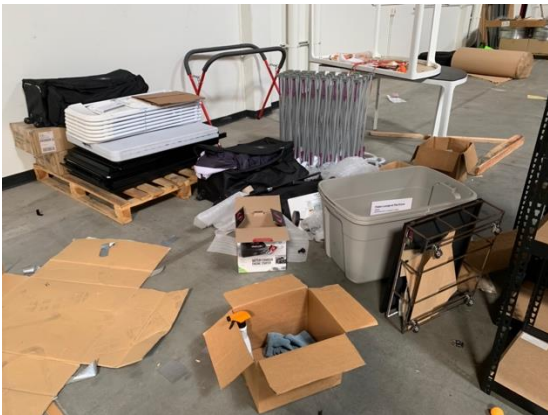
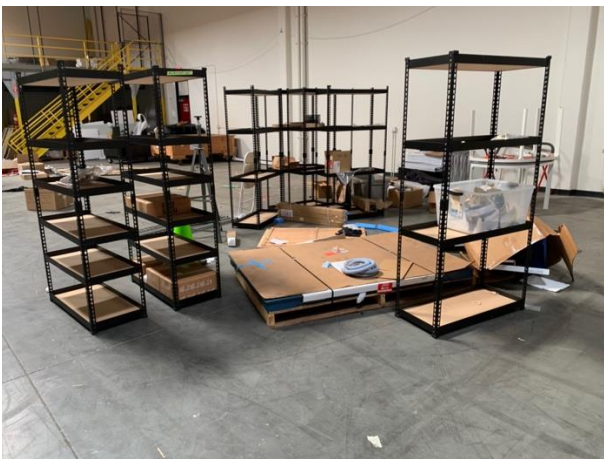
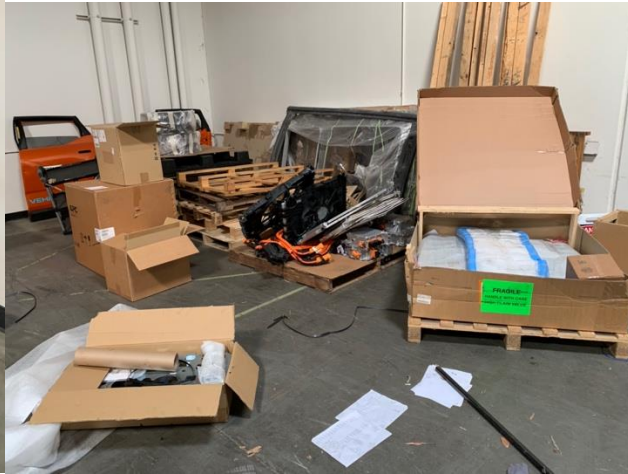
EXHIBIT "1"











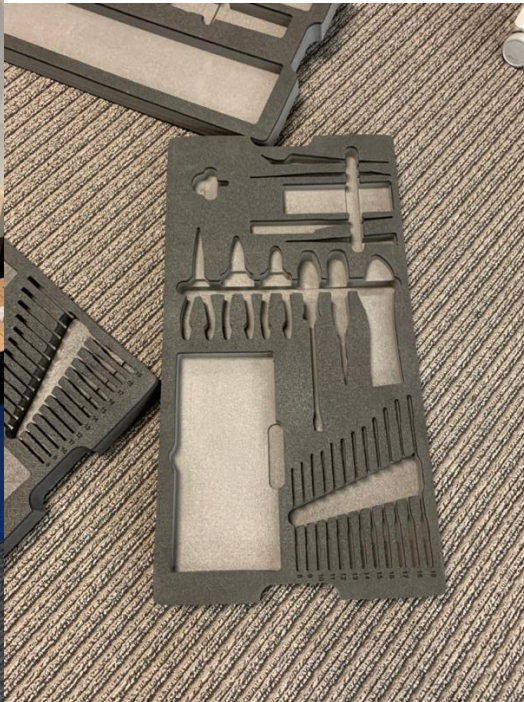






EXHIBIT "2"



EXHIBIT "3"



2304 W. 16th Street, Long Beach, CA 90813
 Telephone (800) 300-9990
 Established in 1978

11-13-24

Shamrock II Properties
 Tony Lenzini
 14 Centerpoint Dr
 La Palma CA 90623

INDUSTRIAL AND HAZARDOUS WASTE TRANSPORTATION AND DISPOSAL PROPOSAL

Dear Tony;

Please see Amberwick Corps. proposal for your Lab Pack hazardous waste listed below located at Shamrock II Properties in La Palma. This proposal is only an estimate based on job walk and actual total will be determined once all waste is packed and labeled. Shamrock II Properties will only be invoiced for the material on the manifest at pick up.

Shamrock II Properties II

Description	Qty	Container	Rate	EXT
Lab Pack Chemist	8 hrs	~	\$125.00 hr	\$1,000.00
Lab Pack Technician	8 hrs	~	\$95.00	\$760.00
Service / Gear Truck	Day	~	\$550.00	\$550.00
Non RCRA Commodity Pack	2	Cubic Yard Box	\$1,495.00	\$2,990.00
RCRA Flammables Commodity Pack	2	Cubic Yard Box	\$1,895.00	\$3,790.00
Transportation	Flat	~	\$559.00	\$559.00

Electronic Manifest Fees	3	~	\$65.00 ea	\$195.00
Total	~	~	~	\$9,844.00

Amberwick Corporation has been in business for 46 years

Conditions:

- * Disposal prices are based on the waste descriptions Amberwick Corporation has received.
- * The prices are pending facility approval.
- * All containers must be D.O.T. approved for hazardous waste transportation.
- * Each hazardous waste manifest generated is subject to a \$40 processing fee.

If I can be of any further assistance, please give me a call.

Sincerely,

Sean P. Riley

Business Development Manager

Amberwick Corporation

Sean@Amberwick.com

714-299-1877 cell

Signature and Title (Agreed and Accepted)

Date

EXHIBIT "4"

Valentine Industries

QUOTE

Address

2716 Moore Ave, Fullerton Ca 92833

Phone

714-901-2594

Fax 714-901-1106

QUOTE # 00013765

DATE: OCT 30, 2024

BILL TO Shamrock Properties II
14 Centerpointe
La Palma, CA 90623

SHIP TO Shamrock Properties II
14 Centerpointe
La Palma, CA 90623

PO	TERMS	DUE DATE
	Due On Receipt	

QTY	ITEM #	DESCRIPTION	UNIT PRICE	TOTAL
		Manpower 6 People, 2 Weeks, \$75 per Hr. = \$18,000 Dumpster Fees 20 Dumpsters, \$875 per Dumpster = \$17,500 Clay Model Hall-away and dump Fisker Ocean (Full Size) = \$950 Fisker Alaska (Full Size) = \$950 Fisker Ronin (Full Size) = \$950 Fisker Ocean (Quarter Size) = \$450 Fisker Alaska (Quarter Size) = \$450 Ocean interior cabin (Full Size) QTY 4, \$450 ea = \$1,800 Hazardous Chemical Waste Removal and Disposal 55 Gallon Drums, QTY 3, \$700 ea = \$2,100 5 Gallon Buckets, QTY 12, \$100 ea = \$1,200 1 Gallon Buckets, QTY 75, \$50 ea = \$3,750 Forklift Rental = \$1,500		
			TOTAL	\$49,600

THANK YOU FOR YOUR BUSINESS!

RonKo
El Segundo, CA 90245

Bid

10/31/2024

INVOICE NO.

Payment terms (due on receipt)

BILL TO

Shamrock Properties II
14 Centerpointe
La Palma, CA 90623

SHIP TO

Shamrock Properties II
14 Centerpointe
La Palma, CA 90623

DESCRIPTION	QTY	UNIT PRICE	TOTAL
Labor 3 weeks	144	\$90.00	\$12,960.00
Trush Dumpsters	20	\$950.00	\$19,000.00
Clay Model Hall-away	9	\$1,000.00	\$9,000.00
Hazardous Waste	TBD		0.00
			0.00
			0.00

Remarks / Payment Instructions:

SUBTOTAL	40960.00
DISCOUNT	0.00
SUBTOTAL LESS DISCOUNT	40960.00
TAX RATE	0.00%
TOTAL TAX	0.00
SHIPPING/HANDLING	0.00

Estimate **\$ 40,960.00**

EXHIBIT "5"

APPENDIX A

Asset(s) to be Sold	Name and Address of Purchaser	Proposed Purchase Price and Commissions to Third Parties	Location of Asset(s)
Fisker Ocean Low-Demand Surplus Parts Inventory	American Lease 1225 Randall Avenue Bronx, NY 10474	\$40,000	14 Centerpointe Drive La Palma, CA 90623
Fisker Emotion Display Shell (Collector's Item)	Diehl Automotive 2757 E State Street Hermitage, PA 16148	\$10,000	14 Centerpointe Drive La Palma, CA 90623
Fisker Exterior Signage (10 Pieces)	Ideal Motors Corporation 1930 Newport Blvd. Costa Mesa, CA 92627	\$1,500	14 Centerpointe Drive La Palma, CA 90623
Fisker Karma VIN: H4K14AA4CA001225	Diehl Automotive 2757 E State Street Hermitage, PA 16148	\$15,000	14 Centerpointe Drive La Palma, CA 90623
Fisker Ronin Display Shell (Collector's Item)	Diehl Automotive 2757 E State Street Hermitage, PA 16148	\$5,000	14 Centerpointe Drive La Palma, CA 90623
Mercedes-Benz Sprinter Van W1YV0CEY2N4161130	Diehl Automotive 2757 E State Street Hermitage, PA 16148	\$23,000	14 Centerpointe Drive La Palma, CA, 90623
Mercedes-Benz Sprinter Van W1YV0CEY0N4160042	Diehl Automotive 2757 E State Street Hermitage, PA 16148	\$23,000	14 Centerpointe Drive La Palma, CA, 90623
Mercedes-Benz Sprinter Van W1YV0CEY5N4159940	Diehl Automotive 2757 E State Street Hermitage, PA 16148	\$23,000	14 Centerpointe Drive La Palma, CA, 90623

Total: \$140,500

APPENDIX A

Asset(s) to be Sold	Name and Address of Purchaser	Proposed Purchase Price and Commissions to Third Parties	Location of Asset(s)
Specialized Testing Equipment (10 Pieces)	Blue Binaries 100 W Big Beaver Rd Suite 200 Troy, MI 48084	\$120,000	14 Centerpointe Drive La Palma, CA 90623
Miscellaneous Physical Assets	Heritage Global Partners 12625 High Bluff Drive Suite 305 San Diego, CA 92130	\$125,000	14 Centerpointe Drive La Palma, CA, 90623 3030 17th St San Francisco, CA 94110

Total: \$145,000

EXHIBIT "6"

Rosanna Sumera

From: Jordan Mueller <jomueller@hcg.com>
Sent: Friday, September 13, 2024 1:49 PM
To: Mike Nicastro; bdolphin
Cc: joe@morandc.com; loizides@loizides.com; Rosanna Sumera
Subject: RE: Fisker La Palma Site--FF&E
Attachments: FSR - De Minimis Asset Sale Order (2).pdf; Heritage De Minimis Asset Disclosure_v2.pdf

Hi Mike,

Happy to help. I can confirm that Heritage has completed a wall-to-wall, floor-to-ceiling transaction for all Fisker owned assets inside La Palma (excluding certain vehicles and spare parts, which were purchased by another entity). We executed an asset purchase agreement and received funds. The sale also cleared the notification requirements of the De Minimis Asset sale order, which I've attached here, as well as the disclosure I sent to Fisker's Delaware counsel.

I'm also including Brenna Dolphin of Morris Nichols, Fisker's Delaware counsel, to provide any other assurances you may need to demonstrate that Heritage is in fact now the owner of all the La Palma assets.

Jordan Mueller

Huron Business Advisory

Mobile: 509-999-8625

jomueller@hcg.com

www.huronconsultinggroup.com



From: Mike Nicastro <mnicastro@nicastropc.com>
Sent: Friday, September 13, 2024 8:09 AM
To: Jordan Mueller <jomueller@hcg.com>
Cc: joe@morandc.com; loizides@loizides.com; Rosanna Sumera <rsumera@nicastropc.com>
Subject: [External] FW: Fisker La Palma Site--FF&E

CAUTION: This email originated from an external system. Do not click links, open attachments or forward unless you recognize the sender and know the content is safe.

Good morning Jon:

We represent one of Fisker's landlords and were contacted by Nick Dove and his people regarding a first look at furniture and other property that was purchased from the Debtor at our client's location. (See below.) Could you forward a receipt, copy of the notice of sale of remnants to HG Inc., etc. so our client has assurance that any potential purchases of furniture from HG does not violate the stay or otherwise run afoul of the DE Bankruptcy Court?

Thank you,

Mike



Michael Nicastro
Nicastro & Associates, P.C.

(949) 534-6990 Work
mnicastro@nicastropc.com

26 Executive Park, Suite 250
Irvine, CA 92614
www.nicastropc.com

Nicastro & Associates, P.C.
26 Executive Park, Suite 250
Irvine, CA 92614
P: 949-534-6990
F: 949-590-4987

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 5. We are not tax attorneys and do not provide tax advice. Any U.S. tax advice contained in the body of this e-mail was not intended or written to be used, and cannot be used, by the recipient for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions.
- THIS ELECTRONIC COMMUNICATION IS PRIVILEGED AND CONFIDENTIAL**

From: Mike Nicastro
Sent: Friday, September 13, 2024 8:03 AM
To: 'Nick Dove' <ndove@hginc.com>; Craig Thompson <cthompson@hginc.com>; joe@morandc.com
Cc: loizides@loizides.com; Rosanna Sumera <rsumera@nicastropc.com>
Subject: RE: Fisker La Palma Site--FF&E

Nick

We understand that you would not want to share your asset purchase agreement and I asked for a receipt or other confirmation recognizing your company as buyer. Thank you for Huron's information and we will do verification on our end.

We hope the removal of your assets goes smoothly and thank you again for working with and giving our client a first look at the FF&E.

Be well and be safe,

Mike



Michael Nicastro
Nicastro & Associates, P.C.
(949) 534-6990 Work
mnicastro@nicastropc.com
26 Executive Park, Suite 250
Irvine, CA 92614
www.nicastropc.com

Nicastro & Associates, P.C.
26 Executive Park, Suite 250
Irvine, CA 92614
P: 949-534-6990
F: 949-590-4987

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 5. We are not tax attorneys and do not provide tax advice. Any U.S. tax advice contained in the body of this e-mail was not intended or written to be used, and cannot be used, by the recipient for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions.
- THIS ELECTRONIC COMMUNICATION IS PRIVILEGED AND CONFIDENTIAL**

From: Nick Dove <ndove@hginc.com>
Sent: Friday, September 13, 2024 7:55 AM
To: Mike Nicastro <mnicastro@nicastropc.com>; Craig Thompson <cthompson@hginc.com>; joe@morandc.com
Cc: loizides@loizides.com; Rosanna Sumera <rsumera@nicastropc.com>
Subject: RE: Fisker La Palma Site--FF&E

Hi Mike,

Sharing our Asset Purchase Agreement is not something we would customarily do.

We are working diligently to remove our purchased assets, but more than willing to work with your client on a first look basis for the furniture and/or other items they might want.

The Estate no longer owns these assets; they are ours, and you will not be violating any Stays by transacting with us.

If you want to confirm we are indeed the purchaser, please reach out to Huron.

Jordan Mueller

Huron Business Advisory

Mobile: 509-999-8625

jomueller@hcg.com

www.huronconsultinggroup.com

Nick Dove

President

Direct: 858-847-0659

Mobile: 650-862-3834

Email: ndove@HGinc.com

Web: www.HGPAuction.com

Web: www.HGinc.com



Heritage Global Partners
NASDAQ: HGBL



12625 High Bluff Drive • Suite #305 • San Diego, CA 92130

From: Mike Nicastro <mnicastro@nicastropc.com>

Sent: Friday, September 13, 2024 6:42 AM

To: Craig Thompson <cthompson@hginc.com>; Nick Dove <ndove@hginc.com>; joe@morandc.com

Cc: loizides@loizides.com; Rosanna Sumera <rsumera@nicastropc.com>

Subject: RE: Fisker La Palma Site--FF&E

Craig:

My pleasure connecting you and thank you for working with our client.

The order you attached approved sales procedures for the sale of Fisker's assets that vary in the amount of each sale. Assuming that your company's purchase of the de minimis assets was for \$150,000 or less, we understand that there would be no notice or hearing required. Please forward a receipt or other confirmation that your company was the successful bidder. Or, provide a copy of the notice of sale that occurred "in the preceding two weeks" (language according to the attached sales order) filed by the debtor that confirms the de minimis sale was made to you folks. A copy of that notice or receipt protects you and our client!

Thank you,

Mike



Michael Nicastro
Nicastro & Associates, P.C.
(949) 534-6990 Work
mnicastro@nicastropc.com
26 Executive Park, Suite 250
Irvine, CA 92614
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From: Craig Thompson <cthompson@hginc.com>
Sent: Thursday, September 12, 2024 2:13 PM
To: Mike Nicastro <mnicastro@nicastropc.com>; Nick Dove <ndove@hginc.com>; joe@morandc.com
Cc: loizides@loizides.com; Rosanna Sumera <rsumera@nicastropc.com>
Subject: RE: Fisker La Palma Site--FF&E

Thank you for connecting us, Mike.

Attached is the De Minimis Asset Sale Order. I am assuming that is what you are looking for.

Hi Joe,

Do you have time for a quick call first? I am available anytime today or tomorrow if you have time

Craig Thompson

Senior Vice President

Direct: 858-847-0658

Mobile: 858-210-8785

Email: cthompson@HGinc.com

Web: www.HGPAuction.com

Web: www.HGinc.com



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From: Mike Nicastro <mnicastro@nicastropc.com>

Sent: Thursday, September 12, 2024 1:39 PM

To: Craig Thompson <cthompson@hginc.com>; Nick Dove <ndove@hginc.com>; joe@morandc.com

Cc: loizides@loizides.com; Rosanna Sumera <rsumera@nicastropc.com>

Subject: RE: Fisker La Palma Site--FF&E

Craig Thompson and Nick Dove meet Joe Moran and vice versa. Either Joe or another client representative will meet you at the Fisker facility located at 14 Centerpointe Drive, La Palma, California. Please feel free to communicate directly to coordinate this visit.

Two items that need to be addressed: 1) We need a copy of the Bankruptcy Court order approving the FF&E sale to you folks. Our client needs to be sure that they are not violating the stay if they want to buy some furniture or other items that are at the property. 2) Our client does not have a set of keys to the building – Fisker changed the locks. There will need to be some coordination with the Debtor’s people at the property for you all to be able to visit and do your walk-through.

I remain available if anyone has any questions,

Mike



Michael Nicastro

Nicastro & Associates, P.C.

(949) 534-6990 Work

mnicastro@nicastropc.com

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EXHIBIT "7"

**STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE - NET
(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)**

1. Basic Provisions ("Basic Provisions")

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only April 4, 2022, is made by and between Shamrock (La Palma) Properties II, LLC, a California limited liability company ("**Lessor**"), and Fisker Group Inc., a Delaware corporation ("**Lessee**"), (collectively the "**Parties**," or individually a "**Party**").

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 14 Centerpointe Drive (the "**Premises**") located in the City of La Palma, County of Orange, State of California and generally described as an approximately 78,980 square foot building (the "**Building**"), with parking for approximately 213 automobiles, which is part of a multi-building project known as Centerpointe La Palma (the "**Project**"). (See also Paragraph 2 and Exhibit A)

1.3 **Term:** Seven (7) years and 0 months ("**Original Term**") commencing on the date Lessor tenders possession of the Premises to Lessee ("**Commencement Date**") and ending on the day before the seventh (7th) anniversary of the Commencement Date ("**Expiration Date**"). Lessor represents that there is currently no third party with a right to occupy the Premises granted by Lessor. (See also Paragraphs 3 and 53)

1.4 **Early Possession:** N/A

1.5 **Base Rent:** \$78,980.00 per month ("**Base Rent**"), payable on the first (1st) day of each month following the Commencement Date. (See also Paragraphs 4 and 52(a))

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** \$78,980.00 for the period of the first month of the Original Term.

(b) **Security Deposit:** \$187,909.92 ("**Security Deposit**").

(c) **Common Area Maintenance Expenses:** \$18,955.20 for the first (1st) thirty (30) days beginning with the Commencement Date. (See also Paragraph 52(b))

(d) **Total Due Upon Execution of this Lease:** \$285,845.12.

1.8 **Agreed Use:** Solely for research, design, development and storage of electric vehicles with associated general administrative office use, and for any other uses related to Lessee's electric vehicle business that are allowed by the City of La Palma. (See also Paragraph 8)

1.9 **Insuring Party:** Lessor is the "**Insuring Party**" unless otherwise stated herein. (See also Paragraph 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15)

(a) **Representation:** The following real estate brokers (collectively, the "**Brokers**") and brokerage relationships exist in this transaction (check applicable boxes):

Cushman and Wakefield represents Lessor exclusively ("**Lessor's Broker**");

The Klabin Company represents Lessee exclusively ("**Lessee's Broker**"); or

_____ represents both Lessor and Lessee ("**Dual Agency**").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers for the brokerage services rendered by the Brokers the fee agreed to in a separate written agreement between Lessor and Lessor's Broker.

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by N/A ("**Guarantor**"). (See also Paragraph 37)

1.12 **Addendum and Exhibits.** Attached hereto is an Addendum consisting of Paragraphs 52 through 58 and Exhibits A and B, all of which constitute a part of this Lease.

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver that portion of the Premises contained within the Building ("**Unit**") to Lessee broom clean and free of debris on the Commencement Date. So long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty (30) days following the Commencement Date, if and to the extent that the existing elevator, electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, are not in good operating condition on said date and, except if and to the extent that such condition changes as a result of acts or omissions of Lessee, its agents, employees and/or invitees, for one year following the Commencement Date, that the structural elements of the roof, bearing walls and foundation of the Unit are not free of material defects on said date, or that the Unit contains hazardous levels of any mold or fungi defined as toxic under applicable state or federal law on said date, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee given, if at all, within one (1) year after the Commencement Date, setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. If Lessee does not give Lessor the required notice within the notice period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee in accordance with the terms of this Lease.

2.3 **Compliance. NOTE: Lessee is responsible for determining whether the improvements on the Premises and/or Common Areas comply with the building codes that were in effect at the time that each improvement on the Premises or Common Area, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Commencement Date, including without limitation the Americans with Disabilities Act ("**Applicable Requirements**") and whether the zoning and such improvements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with Applicable Requirements that were in effect at the time that each improvement on the Premises, or portion thereof, was constructed, other than Applicable Requirements which apply to the particular use for which Lessee will use the Premises, modifications which may be required by Applicable Requirements as a result of Lessee's use, or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of such a non-compliance within 6 months following the Commencement Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the**


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construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"). Lessor and Lessee shall allocate the cost of such work as follows:

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

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

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

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been advised by Lessor to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and, subject to Paragraphs 2.2 and 2.3 above, assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Lessor nor Lessor's agents have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. Nothing in this Paragraph 2.4 abrogates the Parties' respective obligations under this Lease.

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

3. Term.

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

3.2 **Intentionally Omitted.**

3.3 **Delay in Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession as agreed, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises. Subject to Paragraph 3.4 below, if possession is not delivered within ten (10) days after the execution and delivery of this Lease, Lessee may, at its option, by written notice given, if at all, within five (5) business days after the mutual execution and delivery of this Lease ("**Termination Notice Period**"), cancel this Lease, in which event, unless, subject to Paragraph 3.4, Lessor tenders possession upon within ten (10) days after the end of the Termination Notice Period, the Parties shall be discharged from all obligations hereunder. If Lessor tenders possession of the Premises during such ten (10) day period, or if Lessor is not required to do so pursuant to Paragraph 3.4 below, Lessee's right to cancel shall terminate. Except as otherwise provided, if possession is not tendered to Lessee by the Commencement Date and Lessee does not terminate this Lease, as aforesaid, any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession of the Premises is not delivered within four (4) months after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

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

4. Rent.

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

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

4.3 **Common Area Maintenance Expenses.** See Paragraph 52(b).

4.4 Rental Taxes. In addition to Base Rent, Lessee shall pay to Lessor each month an amount equal to any rental taxes, gross receipts taxes, transaction privilege taxes, sales taxes, or similar taxes ("Rental Taxes") levied on the Base Rent then due or otherwise assessed in connection with the rental activity. Said monies shall be paid at the same time and in the same manner as the Base Rent.

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

6. Use.

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to neighboring properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within five (5) business days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

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

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance. At such times as Lessor may reasonably request, Lessee shall provide Lessor with a written list identifying any Hazardous Substances then used, stored or maintained upon the Premises, the use and approximate quantity of each such material, a copy of any Material Safety Data Sheet ("MSDS") issued by the manufacturer thereof, written information concerning the removal, transportation, and disposal of the same, and such other information as Lessor may reasonably require or as may be required by Environmental Laws. Lessor, at its option, and at Lessee's expense, may cause an engineer selected by Lessor, to review (1) Lessee's operations including materials used, generated, stored, disposed, and manufactured in Lessee's business; and (2) Lessee's compliance with terms of this Paragraph. Lessee shall provide the engineer with such information reasonably requested by the engineer to complete the review. The first such review may occur prior to or shortly following the commencement of the Term of this Lease. Thereafter, such review shall not occur more frequently than once each year unless cause exists for some other review schedule.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party other than Lessor, or Lessor's agents, contractors or employees. Lessee shall not be responsible for the investigation or remediation of Hazardous Substances that migrate underground or above ground on or under the Premises from areas outside of the Premises not caused or contributed to by Lessee. If the Premises contain asbestos containing materials, Lessee shall not be responsible for the encapsulation or removal of any asbestos containing materials, unless such encapsulation or removal is triggered by Lessee's Alterations or Utility Installations, but shall be required to comply with an ACBM plan. To Lessor's actual knowledge, the Building was constructed in 1988 and there is currently no ACBM plan in place for the Building; Lessor represents to Lessee that it does not have actual knowledge, without investigation or inquiry, of the presence of asbestos in the Building.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to Hazardous Substances brought onto the Premises by Lessor, or Lessor's agents, contractors or employees, or with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties, not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created


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or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall, subject to Paragraphs 8.2(a), 8.6 and 8.8, indemnify, defend, reimburse, and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which Lessee suffers as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are suffered as a direct result of Hazardous Substances at the Premises which are caused by the gross negligence or willful misconduct of Lessor, its agents, contractors, or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

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

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$175,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$175,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination. If a Hazardous Substance Condition occurs during the term of this Lease for which Lessee is not responsible under this Paragraph 6.2(c) which Lessee suspects poses a significant threat to the health of Lessee's employees, Lessee may so notify Lessor ("Lessee's Audit Notice"). If Lessee does so, Lessor shall, at Lessee's cost, have a Phase I or Phase II audit report of the Premises and the Project (the "Audit Report") performed by an environmental consulting firm selected by Lessor and reasonably satisfactory to Lessee. If Lessor does not designate an environmental consulting firm within ten (10) days following Lessee's Audit Notice, Lessee may engage an environmental consulting firm to prepare an Audit Report. The purpose of the Audit Report will be to address the existence, the existence of Hazardous Substances which pose a threat to the health of Lessee's employees in the Premises or Project. In the event that the Audit Report concludes that Hazardous Substances which are dangerous to the health of Lessee's employees, and which pose a significant threat of injury to Lessee's employees, are found within the Premises and the Project, Lessor shall reimburse to Lessee the full cost of the Audit Report within ten (10) days after the date of the Audit Report. In the event that the Audit Report establishes the existence of Hazardous Substances which pose a significant threat to the health of Lessee's employees in the Premises or Project, or Lessor independently determines the existence of Hazardous Substances which pose a significant threat to the health of Lessee's employees in, on or under the Premises or the Project (of which independent determination Lessor shall give Lessee notice ("Lessor's Notice"), then Lessee shall have the option to terminate this Lease by giving notice of its election to do so to Lessor within fifteen (15) days after receipt by Lessee of Lessor's Notice. In the event Lessee is entitled to exercise the foregoing option and does so strictly in the manner and within the time specified in the foregoing sentence, then this Lease shall terminate as of the effective date of Lessee's notice electing to terminate the Lease. If Lessee fails to exercise such option to terminate as aforesaid, then such option shall lapse and not thereafter be exercisable by Lessee.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the reasonable requirements of any applicable fire insurance underwriter or rating bureau, and the reasonable recommendations of Lessor's engineers and/or consultants which relate in any manner to such Requirements, without regard to whether said Requirements are now in effect or become effective after the Commencement Date. Lessee shall, within 10 days after such receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

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

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

7:1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation) and subparagraph (c) below, Lessee shall, at (subject to Paragraph 7.1(c)) Lessee's sole expense, keep the Premises, Utility Installations, and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, heating, ventilating, air-conditioning, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior, non-structural only unless the same are Alterations performed by Lessee, in which case Lessee shall be responsible therefor), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep


INITIALS

52
INITIALS

the exterior appearance of the Building in a first-class condition consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements ("**Basic Elements**"), if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) elevator, (vi) roof surface and drains, (vii) driveways and parking lots, and (viii) clarifiers

(c) **Replacement.** Subject to Lessee's Indemnification of Lessor as set forth in Paragraph 8.7 below and the provisions of Paragraphs 2.2 and 7.2, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if the Basic Elements described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such Basic Elements, then such Basic Elements shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is the number of months of the useful life of such replacement as such useful life is specified pursuant to Federal income tax regulations or guidelines for depreciation thereof (including interest on the unamortized balance as is then commercially reasonable in the judgment of Lessor's accountants), with Lessee reserving the right to prepay its obligation at any time. Notwithstanding the foregoing, so long as the need for repair does not result from Lessee's failure to exercise and perform good maintenance practices (including maintaining in place and enforcing the HVAC service contract described in Paragraph 7.1(b)) and/or Lessee's suffering or permitting excessive load on one or more HVAC units (e.g., by allowing one or more units to be inoperable, thereby increasing the load on the other units), Lessor will bear 100% of the cost of replacing each HVAC unit in place as of the Commencement Date the first time during the Original Term (only) that the cost of restoring such unit to operable condition in any single instance exceeds 50% of the cost of replacement thereof.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), except if and to the extent repair and/or maintenance is required as a result of Lessee's acts or omissions, Lessor, at (subject to Paragraph 7.1(c)) Lessor's sole cost and expense, shall repair and, if Lessor determines the same to be necessary, replace the structural elements of the roof, the roof membrane (or equivalent), embedded plumbing (other than any such plumbing installed and/or affected by Lessee's Alterations and/or Utility Installations), sprinklers, exterior walls, structural walls, and foundations of the Building; subject to the foregoing, it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

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

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

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

7.4 **Ownership; Removal; Surrender; and Restoration.**

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

(b) **Removal.** If at the time Lessee requests Lessor's consent to make any Alterations or Utility Installations, Lessee requests Lessor in writing to advise Lessee which, if any, of the proposed Alterations and/or Utility Installations Lessor may require Lessee to remove at the expiration (only) of the Term, and if Lessor responds in writing to Lessee specifying which of the proposed Alterations and/or Utility Installations Lessor will not require Lessee to remove, Lessee shall not be required to remove any

such specified Alterations and/or Utility Installations. Subject to the preceding sentence, by delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear, repairs required to be performed pursuant to this Lease by Lessor and damage covered by Paragraph 9 for which Lessee is not responsible pursuant to such Paragraph 9 excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Commencement Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances for which Lessee is responsible under Paragraph 6.2(c) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below. Any Alterations and/or Utility Installations required to be removed by Lessee pursuant to Paragraphs 7.4(b) and/or 55 and all specialized equipment, machinery, racking, and floor bolts shall be removed, and the warehouse floors shall be in a clean and Flat and Finished (as hereinafter defined) condition. As used herein, the term "Flat and Finished" shall mean that (i) all bolts in the concrete floors shall be pushed down at least one inch or more below the finished floor, and (ii) all resulting holes and spalling shall be covered and patched with an epoxy compound, which shall be flush with the floor's surface.

8. Insurance; Indemnity.

8.1 **Payment For Insurance.** Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of \$2,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within ten (10) days following receipt of an invoice.

8.2 Liability Insurance.

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

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

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. If Lessor is the Insuring Party, however, Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4 rather than by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$25,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an insured loss.

(b) **Rental Value.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one (1) year. Said insurance shall provide that in the event the Lease is terminated by reason of an insured loss, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of Rent from the date of any such loss. Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next twelve (12) month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 Lessee's Property; Business Interruption Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$25,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

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

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

8.5 **Insurance Policies.** Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee



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shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Commencement Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. Lessee shall use commercially reasonable efforts to obtain the agreement of Lessee's insurers to send writing notice to Lessor 30 days prior to canceling or modifying any such policy and shall promptly provide Lessor with any notice received by Lessee from any insurer of cancellation or modification of any insurance policy. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If Lessee shall fail to procure and maintain the insurance required to be carried by it, Lessor may, but shall not be required to procure the same on Lessee's behalf, in which case Lessee shall reimburse Lessor the cost thereof upon demand. Lessor may require (a) that Lessee obtain additional types of insurance, including but not limited to earthquake, sprinkler leakage by earthquakes, environmental and terrorism insurance to the extent such coverages are required by Lessor's Lender (as defined in Paragraph 30.1 below) and (b) from time to time, but not more frequently than every three (3) years during the Term, increases in the policy limits for all insurance to be carried by Lessee as set forth herein, in order to reflect standard limits for similar properties.

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

8.7 Indemnities.

(a) **Lessee Indemnity.** Subject to the limitations set forth in Paragraph 8.6 and except for the gross negligence or willful misconduct of Lessor, or its agents, contractors, or employees, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents (to the extent not covered by insurance maintained, or required to be maintained, by Lessor hereunder), and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

(b) **Lessor Indemnity.** Subject to the waiver of subrogation described in the last sentence of Paragraph 8.2(a), and subject further to the limitations set forth in Paragraphs 8.6 and 8.8, if and to the extent not covered by insurance maintained or required to be maintained by Lessee under Paragraph 8 of the Lease, and except to the extent caused or contributed by the negligence, intentional acts, or willful misconduct of Lessee, or its agents, contractors, employees and/or invitees, Lessor shall indemnify, protect, defend and hold harmless Lessee from any and all claims, losses, damages, judgments, penalties and liabilities (including, without limitation, attorneys' fees) for personal injuries (excluding, but not limited to, claims for property damage, lost profits, consequential and other damages) caused by the gross negligence or willful misconduct of Lessor, or Lessor's agents, contractors, or employees.

8.8 Exemption of Lessor and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of Paragraph 8. Notwithstanding anything to the contrary contained in this Lease, nothing in this Lease shall impose any obligation on Lessor or Lessee to be responsible or liable for, and each hereby releases the other from all liability for, consequential damages, including lost profits, or loss of business, other than those consequential damages incurred by Lessor in connection with a Breach of (i) the holdover provisions under Paragraph 26, and/or (ii) Hazardous Substances provisions under Paragraph 6.

9. Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within thirty (30) days from the date of the damage or destruction as to (i) whether or not the damage is Premises Partial Damage or Premises Total Destruction, and (ii) the anticipated time period required to complete the repair of the damage (the "Repair Period Notice"). (See also Paragraph 9.6(c) below.) Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items unless it occurs simultaneously with Premises Partial Damage or Premises Total Destruction, as Lessee has the responsibility to repair or replace such items pursuant to the provisions of Paragraph 7.1. The Repair Period Notice shall be accompanied by a statement from a licensed contractor or architect containing the contractor's or architect's opinion regarding the anticipated period for Lessor to complete the repair of the damage as required under this Lease.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction.

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

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

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose.


INITIALS


INITIALS

Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect; or (ii) have this Lease terminate thirty (30) days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

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

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

9.5 Damage Near End of Term. If at any time during the last six (6) months of this Lease there is damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessor or, provided the damage was not caused by a negligent or willful act of Lessee, Lessee may terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving a written termination notice to the other party within thirty (30) days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is ten days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

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

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

(c) **Repair Period Notice; Lessee's Termination Rights.** If Lessor does not provide the Repair Period Notice within the required thirty (30) day period, Lessee may provide notice to Lessor of such failure, which notice shall include a statement in at least 12 point type and all capital letter that unless Lessor provides a Repair Notice Period within ten (10) business days thereafter, Lessee will have the right to terminate the Lease if Lessor fails to deliver a Repaired Period Notice within such ten (10) business day period. If the Repair Period Notice provided by Lessor indicates that the anticipated period for repairing the damage exceeds one hundred eighty (180) day from and after the date of the occurrence of the damage or destruction, the Lease shall terminate under Paragraph 9.4 above.

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

9.8 Waive Statutes. Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

10. Real Property Taxes.

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

10.2 Payment of Taxes. Lessor shall deliver a copy of the Real Property Tax bill to Lessee. In addition to Base Rent, Lessee shall pay to Lessor an amount equal to the Real Property Tax installment due at least 20 days prior to the applicable delinquency date. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease,


INITIALS

66
INITIALS

Lessee's share of such installment shall be prorated. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payments shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sum as is necessary. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

10.3 Joint Assessment. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 Personal Property Taxes. Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause such property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement.

11. Utilities. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered. By executing this Lease, Lessee hereby authorizes Lessor to obtain information regarding Lessee's utility and energy usage at the Premises directly from the applicable utility providers and Lessee shall execute, within ten (10) days of Lessor's request, any additional documentation required by any applicable utility provider evidencing such authorization. Further, within thirty (30) days of Lessor's request, Lessee shall provide to Lessor all information regarding Lessee's utility and energy usage at the Premises required to be provided by Lessor pursuant to Applicable Requirements, including, if Lessor is reasonably required by Applicable Requirements to obtain the same, copies of Lessee's utilities bills for the immediately preceding calendar month within ten (10) days of the close of each calendar quarter during the term.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

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

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 50% or more of the voting control of Lessee shall constitute a change in control for this purpose.

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

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a non-curable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) if the assignment or sublease is not terminated within 30 days after written notice from Lessor, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to injunctive relief. Notwithstanding anything to the contrary contained in this Lease, if Lessee or any proposed transferee claims that Lessor has unreasonably withheld or delayed its consent or otherwise acted unreasonably under this Paragraph 12, their sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Lessee hereby waives all other remedies, including without limitation, the right to terminate this Lease.

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

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e., 20 square feet or less, to be used by (i) a third party vendor in connection with the installation of a vending machine or payphone, or (ii) a development partner or third-party user of Lessee's equipment or a portion of the lab space shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee of the obligations of Lessee that first arise under this Lease after the effective date of the assignment, or the express acknowledgement by such sublessee for the benefit of Lessor that the sublease is subject to all terms and conditions of this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

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

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

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

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$1,500, as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.

(f) Any assignee of this Lease shall, by reason of accepting such assignment shall be deemed to have assumed all obligations of the Lessee that first arise under this Lease after the effective date of the assignment, and agreed to

conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing. Any sublessee of the Premises shall be deemed to have agreed for the benefit of Lessor to conform and comply with each and every term, covenant, and condition herein to be observed or performed by Lessee during the term of said sublease, other than obligations as are contrary to or inconsistent with the provisions of the sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 38.2)

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

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

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

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

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

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

(f) In addition to all other conditions to Lessor's consent to a proposed assignment or subletting by Lessee (a "Transfer"), Lessor may withhold consent on any of the following grounds which Lessee agrees are reasonable:

(i) Lessee is in Default at any time between the date of the request for approval and the date of Lessor's approval of the Transfer.

(ii) The transferee is of a character or reputation or engaged in a business that is not consistent with the quality of the Building.

(iii) The transferee intends to use the space for purposes that are not permitted by the zoning and the City of La Palma.

(iv) The transferee is either a governmental agency or instrumentality thereof.

(v) The Transfer will result in more than a reasonable and safe number of occupants within the space.

(vi) The transferee is not a party of reasonable financial worth or financial stability in light of the responsibilities involved under this Lease on the date consent is requested, as determined by Lessor.

(vii) The Transfer would cause a violation of another lease or any agreement to which Lessor is a party, or would give an occupant of the Building or the Project a right to cancel its lease.

(viii) Either the transferee or an affiliate of the transferee (i) occupies space in the Building or the Project at the time of the request for consent; (ii) is negotiating with Lessor to lease space in the Building or the Project at such time; or (iii) has negotiated with Lessor during the twelve (12) month period immediately preceding the proposed transfer.

12.4 Lessee shall pay to Lessor fifty percent (50%) of any Transfer Premium received by Lessee. "Transfer Premium" shall mean (a) all rent, additional rent or other consideration payable by an assignee or sublessee (whichever, a "Transferee") in excess of the Rent payable by Lessee under this Lease on a per rentable square foot basis; (b) all key money and bonus money paid by Transferee; and (c) any payment in excess of fair market value for services rendered by Lessee to Transferee. The "Transfer Premium" (i) shall be reduced by all out-of-pocket expenses incurred by Lessee in connection with the Transfer, such as brokerage commissions and reasonable attorneys' fees; and (ii) shall not include any compensation for the fair market value of Lessee's property nor reasonable compensation for the sale of Lessee's business that is not attributable to the value of Lessee's leasehold interest hereunder. Lessee shall pay the Transfer Premium to Lessor within five (5) days following receipt by Lessee. Lessee shall furnish upon Lessor's request a complete statement, certified by an independent certified public accountant, or Lessee's chief financial officer, setting forth in detail the computation of any Transfer Premium. Within one (1) year following the date of the Transfer, Lessor shall have the right at all reasonable times to audit the books, records and papers of Lessee relating to any Transfer as necessary to confirm the calculation of the Transfer Premium. If the Transfer Premium shall be found understated, Lessee shall, within thirty (30) days after demand, pay the deficiency, and Lessor's costs of such audit. If the Transfer Premium has been understated by more than ten percent (10%), Lessor shall have the right to cancel this Lease upon thirty (30) days' notice to Lessee and Lessee shall indemnify Lessor from and against any and all liability associated with such termination, including but not limited to any claims by the Transferee.

13. Default; Breach; Remedies.

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

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

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

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

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

evidence, rescission, documents or evidence, it shall not be a default if Lessee commences efforts to obtain such evidence, rescission, documents or evidence within said 10 day period and thereafter diligently uses reasonable efforts to obtain such evidence, rescission, documents or evidence and does obtain the same within thirty (30) days.

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

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

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

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

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

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises; reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

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

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

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease and the continuation of this Lease during the entire initial Term. Upon Breach of this Lease by Lessee during the Original Term, the unamortized (straight line over the initial term of the Lease, measured from the date of the Breach) portion of any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 business days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 5% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. Notwithstanding the foregoing, Lessor shall waive the late charges (but not the late payment interest) in connection with one (1) late payment during each twelve (12) month period, provided that Lessee tenders the overdue payment to Lessor within five (5) days after Lessee's receipt of written notice from Lessor stating that the payment was not received when due. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance. In addition, any check returned by the bank for any reason will be considered


INITIALS

68
INITIALS

late and will be subject to all late charges, plus a Fifty Dollar (\$50.00) fee. Nothing contained herein shall be construed as to compel Lessor to accept any payment of Rent in arrears or late charges should Lessor elect to apply its rights and remedies available under this Lease or at law or in equity in the event of a Default. If Lessee shall fail to pay Base Rent within ten (10) days following the due date on any three (3) or more occasions during any twelve (12) month period during the Term, Lessor shall have the right, in addition to any other rights or remedies it may have under this Lease, to require Lessee to pay Base Rent in quarterly installments in advance.

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

13.6 **Breach by Lessor.**

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

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

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

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

16: **Estoppel Certificates.**

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

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

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

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

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

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

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and proceeds from insurance and, provided the Lessor breach preceded the date of the sale of the Premises and the purchaser does not assume liability for any such breach, the proceeds of such sale and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease; and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets, except for proceeds from insurance or, subject to the foregoing limitations, the sale of the Premises, for such satisfaction.

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

22. **No Prior or Other Agreements.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective.

23. **Notices.**

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

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

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

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

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

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.** When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge as follows:

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

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

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

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

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

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

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

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

30.1 **Subordination.** Subject to the provisions of this Paragraph 30, this Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Except as provided in Paragraph 30.2 and as otherwise agreed in a Non-Disturbance Agreement (as defined in Paragraph 30.3 below), Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security




Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder first accruing after the transfer of title, and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner. See Paragraphs 17 and 20

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

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

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

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after 24 hours' notice to Lessee for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises as Lessor is required or permitted to perform pursuant to this Lease. Subject to the express provisos of this Paragraph, all such activities shall be without abatement of rent or liability to Lessee. Notwithstanding the foregoing, except in the event of an emergency, any entry by Lessor shall be subject to Lessee's reasonable security policies implemented to protect trade secrets and confidential information, provided that Lessee keeps Lessor apprised of such policies and does not unreasonably restrict Lessor's access rights (e.g., in the event Lessee requires an escort for Lessor access to certain portions of the Premises, Lessee shall make such escort available to Lessor at the Premises within a reasonable amount of time) (not to exceed 24 hours) following Lessor's request for access to any such portion of the Premises). Notwithstanding the foregoing, if the acts or omissions of Lessor or Lessor's agents, contractors, or employees constitutes a default by Lessor under this Lease that renders a portion of the Premises unusable for the purposes permitted by this Lease, and such default is not cured by Lessor within five (5) business days after written notice of the default given by Lessee to Lessor (describing the portion of the Premises rendered unusable), and the Lessee does not actually use that portion of the Premises, then the monthly Base Rent for that portion of the Premises shall be abated for the period of time from and after expiration of such five (5) business day period through the earlier of the date Lessee uses that portion or the date on which Lessor shall have cured the Lessor default.

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

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements. If Lessor shall approve any signage for Lessee, such signage shall be erected, affixed and maintained at Lessee's sole cost and expense at all times in accordance with the signage program and requirements ("Sign Program") established by the Project's property owners' association and/or by Lessor (which Sign Program shall be subject to revision by Lessor from time to time, but any such revisions by Lessor (only) shall not apply to signs previously approved and installed.) and the City of La Palma sign ordinance. Without limiting the generality of the foregoing, if Lessor shall approve any signage for Lessee, then whether or not Lessor shall then have established a Signage Program, such signage shall be composed of such materials as may be reasonably designated by Lessor and shall be in a format, configuration and location reasonably designated by Lessor. If Lessor grants such approval, the signage will be at Lessee's expense. Lessee shall not affix, paint, erect, or inscribe any sign, projection, awning, signal, or advertisement of any kind to any part of the Premises, the Building or the Project, including, without limitation, the inside or outside of windows or doors, without the written consent of Lessor. Lessor shall have the right to remove any signs or other matter installed without Lessor's permission without being liable to Lessee by reason of such removal and to charge the cost of removal to Lessee, payable within ten (10) days of written demand by Lessor. At the expiration or earlier termination of this Lease, Lessee shall, at Lessee's sole cost and expense, remove any signage and repair any damage caused in connection with such removal. Lessor's approval of Lessee's signage shall not be unreasonably withheld, conditioned or delayed.

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

36. Consents. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach,

except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Force Majeure.** If the performance by Lessor or Lessee of any provision of this Lease (other than the payment of a monetary obligation) is delayed or prevented by any act of God, strike, pandemic, epidemic, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, and any other cause not within the control of Lessor or Lessee, as applicable, then the period for performance of the provision shall be automatically extended for the same time Lessor or Lessee is so delayed or hindered.

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

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

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

39.2 **Options Personal To Original Lessee.** Except as otherwise specifically set forth in this Paragraph 39.2, any Option granted to Lessee in this Lease is personal to the original Lessee and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting. Notwithstanding the foregoing, any Option granted to Lessee in this Lease may assigned to and, subject to the terms of this Paragraph 39, exercised by any of (a) any parent, subsidiary or affiliate of Lessee which Controls (as defined below), is Controlled by or is under common Control with Lessee (collectively, an "Affiliate"), (b) any corporation, limited liability partnership, limited liability company or other business entity in which or with which Lessee, an Affiliate of Lessee, or their respective corporate successors or assigns, is merged or consolidated, or (c) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity that acquires all or substantially all of Lessee's assets or the ownership interest in Lessee necessary to Control Lessee. The terms "Control" and "Controlled" shall mean the possession of the voting power to direct or cause the direction of the management and policy of such corporation, partnership, limited liability company or other entity, whether through the ownership of voting securities or by statute, and whether directly or indirectly through Affiliates.

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

39.4 **Effect of Default on Options.**

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

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

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of thirty (30) days after such Rent becomes due (without any necessity of Lessor to give notice thereof), (ii) Lessor gives to Lessee three (3) or more notices of separate Default during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

40. **Multiple Buildings.** If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and that Lessee will pay its fair share of common expenses incurred in connection therewith.

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

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

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay.

44. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party

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

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

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

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

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

48. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION

OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

49. **Mediation and Arbitration of Disputes.** An Addendum requiring the Mediation and/or the Arbitration of all disputes between the Parties arising out of this Lease is is not attached to this Lease.

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

51. **CASp.** Pursuant to Section 1938 of the California Civil Code, Lessor hereby advises Lessee that as of the date of this Lease neither the Premises, the Building nor the Project have undergone inspection by a Certified Access Specialist (CASp). Further, pursuant to Section 1938 of the California Civil Code, Lessor notifies Lessee of the following: "A Certified Access Specialist (CASp) can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although California state law does not require a CASp inspection of the Premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of any such CASp inspection, the payment of the costs and fees for the CASp inspection and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises." Therefore and notwithstanding anything to the contrary contained in this Lease, Lessor and Lessee agree that (a) Lessee may, at its option and at its sole cost, cause a CASp to inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under California law, (b) the Parties shall mutually coordinate and reasonably approve of the timing of any such CASp inspection so that Lessor may, at its option, have a representative present during such inspection, and (c) subject to Paragraph 2.3, Lessee shall be solely responsible for the cost of any repairs necessary to correct violations of construction-related accessibility standards within the Premises, any and all such alterations and repairs to be performed in accordance with Paragraph 7.3 of this Lease provided Lessee shall have no obligation to remove any repairs or alterations made pursuant to a CASp inspection under this Paragraph 51.

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

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

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

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

Note: If either Party to this Lease is a married individual, both spouses may need to execute this Lease in order to bind the marital community.

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

Executed at: SEVINE, CA Executed: Manhattan Beach, CA
 On: 4/15/2022 On: Apr 14, 2022

By LESSOR: **By LESSEE:**
SHAMROCK (LaPalma) PROPERTIES II, LLC, **FISKER GROUP INC.,**
 a California limited liability company a Delaware corporation

By: JOSEPH W MORAN By: Geeta Gupta
 Name Printed: Joe Moran Name Printed: Geeta Gupta-Fisker
 Title: _____ Title: COO and CFO, Director

By: _____ By: _____
 Name Printed: _____ Name Printed: _____
 Title: _____ Title: _____
 Address: 7352 Autopark Drive, Huntington Beach, CA 92648 Address: 1888 Rosecrans Blvd. Manhattan Beach, CA 90266
 Telephone: (714) 843-9116 Telephone: (833) 434-7537
 Facsimile: () Facsimile: legal@fiskerinc.com
ap@fiskerinc.com for accounting
 Federal ID No. _____ Federal ID No. 81-3883342

ADDENDUM

Date: April 4, 2022
By and Between
Lessor: Shamrock (La Palma) Properties II, LLC
Lessee: Fisker Group Inc., a Delaware corporation
Property Address: 14 Centerpointe Drive, La Palma, California 90623

Paragraphs: 52-58

52. Base Rent and Other Charges.

(a) Monthly Base Rent shall be as follows:

Term Months	Base Rent	Rent Type
1	\$78,980.00	NNN
2	\$0.00	Free of Base Rent ¹
3 through 12	\$78,980.00	NNN Per Month
12 through 24	\$81,744.30	NNN Per Month
25 through 36	\$84,605.35	NNN Per Month
37 through 48	\$87,566.54	NNN Per Month
49 through 60	\$90,631.37	NNN Per Month
61 through 72	\$93,803.46	NNN Per Month

(b) Lessee will be responsible for all the costs specified in Paragraphs 8.1 (Insurance) and 10.2 (Real Property Taxes) of the form lease to which this Addendum is attached, together with property owner's association dues (collectively, "Common Area Maintenance Expenses"), which are currently estimated to be \$0.24 psf, and are subject to change. Common Area Maintenance Expenses shall be paid by Lessee monthly in advance on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Maintenance Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing the actual Common Area Maintenance Expenses incurred during the preceding year. If Lessee's payments during such year exceed the actual amount of such costs, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than the actual amount of such costs, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(c) Notwithstanding anything to the contrary in the Lease and subject to the provisions of Paragraph 13.3 of the Lease, Lessor hereby conditionally excuses Lessee from the payment of Base Rent and Common Area Maintenance Expenses for the second month of the Term, provided that Lessee shall pay all other charges under the Lease from and after the Commencement Date, including without limitation Common Area Maintenance Expenses.

(d) Except as otherwise expressly and unequivocally provided in this Lease, Lessee shall not for any reason withhold or reduce the amounts payable by Lessee under this Lease, it being understood that the obligations of Lessor hereunder are independent of Lessee's obligations. If Lessor is required by governmental authority or other force majeure event to reduce energy consumption or impose a parking or similar charge with respect to the Premises, Building or Project, to restrict the hours of operation of, limit access to, or reduce parking spaces available at the Building, or take other limiting actions, then Lessee is not entitled to abatement or reduction of rent or to terminate this Lease.

53. Commencement Date Memorandum. Within ten (10) days after the Commencement Date, Lessor and Lessee shall execute a memorandum of Commencement Date in the form of Exhibit B hereto, failing which Lessor's determination of the Commencement Date shall be binding on Lessee.

54. Additional Term. Subject to the provisions of Paragraph 39.4 of the Lease and this Paragraph, Lessee shall have the option to extend the Term by one (1) additional period of five (5) years (the

¹ Subject to Lease Paragraph 13.3.


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"Additional Term"). Such option shall be exercised, if at all, by written notice to Lessor given at least six (6) and no more than nine (9) months prior to the Expiration Date specified in Paragraph 1.3. of this Lease. Subject to the provisions of Paragraph 39.4, provided Lessee gives notice in the manner and within the time specified in this Paragraph 54, the Term shall be extended by the Additional Term, on all of the conditions set forth in this Lease for the Original Term, except that:

(a) Base Rent for the Additional Term shall be the greater of (i) 100% of fair market rental rate or rates for comparable buildings for renewal terms (considering the size, age, quality, utility, location, access, improvements and amenities of the Premises, and market concessions, if any, given to renewing tenants including, but not limited to, free rent and improvement allowances) located within the general geographic location of the Project, as reasonably determined by Lessor, or (ii) the Base Rent for the last year of the Original Term. Lessor shall, upon receipt of Lessee's notice provided for above and at least three (3) months prior to the Expiration Date, notify Lessee in writing ("Lessor's Determination Notice") of its determination of the fair market rental rate or rates and the Base Rent for the Additional Term; and

(b) There shall be no further options to extend the Term.

(c) Within ten (10) days after Lessor's Determination Notice is given, Lessee may elect by written notice to Lessor either to (i) unequivocally accept the Base Rent for the Additional Term as determined by Lessor or (ii) submit the matter to appraisal in accordance with (d) below. Lessee's failure to make a written election strictly in accordance with the preceding sentence shall be deemed to be an acceptance of the Base Rent as specified by Lessor in Lessor's Determination Notice, except that an equivocal acceptance of the Base Rent shall be deemed an election by Lessee to submit the matter to appraisal in accordance with (d) below.

(d) If Lessee elects or is deemed to have elected to submit the matter to appraisal in accordance with (c) above, then each party shall, by written notice to the other party given within ten (10) days after such election or deemed election by Lessee, select an appraiser. If either party shall fail to select an appraiser in such manner and within such time, the single appraiser actually selected shall perform the appraisal. If each party timely and properly selects an appraiser, the two appraisers selected by the parties shall attempt to agree on the fair market rental value for the Additional Term within thirty (30) days after their appointment; if they are unable to so agree and their appraised values differ by more than five percent (5%) in the aggregate over the Additional Term, the two appraisers shall, by written notice to Lessor and Lessee, select a third appraiser within five (5) days after expiration of the thirty (30) day period within which they were to determine and agree on the fair market rental, which third appraiser shall analyze the fair market rental for the Additional Term. If they cannot agree on a third appraiser within such time period, or if both parties fail to select an appraiser in the manner and within the time herein provided, either party may have the third (or sole, if applicable) appraiser appointed by application to the presiding judge of the Orange County Superior Court or his or her designee. If the appraised values of the first two appraisers are within five percent (5%) in the aggregate over the Additional Term, then Lessor shall calculate the average of the two appraised values as a flat rental rate for the Additional Term, which average shall be the fair market rental rate for the Additional Term.

(e) The appraisers shall have the MAI designation and a minimum of ten (10) years experience in the La Palma commercial warehouse/office market. Each of the first two appraisers shall analyze the fair market rental value of the Premises and shall give written notice to the parties of his or her appraisal within thirty (30) days following his or her appointment or selection, but in no event later than the commencement of the Additional Term. If a single appraiser is used, his or her determination shall be the fair market rental rate. If three appraisers are used, the third appraiser shall select one of the values determined by the first two appraisers as the fair market rental rate. The cost of the appraisals shall be shared equally by Lessor and Lessee.

55. **Alterations.** Subject to Lessee's compliance with Paragraph 7.3 of the Lease, Lessee shall have the right, at Lessee's sole cost and expense, to perform the following improvements to the Premises: (i) install a dynamometer (which Lessor acknowledges will require cutting the slab), (ii) construct up to four (4) or more block walls within the Building; (iii) install vehicle floor lifts; (iv) fence the real yard area of the Premises; (v) install a cooling tower near the loading area on the Premises and related plumbing; (vi) upgrade the electrical service and panels to 3,000 AMPs, (vii) routing of power cables, (viii) improve, upgrade, enhance, or expand the sprinkler system; (ix) improve, upgrade, enhance, or expand HVAC and ventilation systems for the Premises, and (x) information technology wiring and supporting equipment. All of the foregoing shall be performed, if at all, in accordance with all Applicable Requirements and plans and


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specifications approved by Lessor. The improvements listed in Paragraph 54(i), (ii), (iii), (v), (vii), and (x) shall be removed prior to the expiration or earlier termination of the Term and the Premises restored to the condition they were in prior to the installation of the same. Provided Lessee obtains approval of the plans therefor, the improvements listed in Paragraph 54(iv), (vi), (viii) and (ix) shall remain in the Premises at the expiration or earlier termination of the Term.

55. Tenant Improvements.

(a) LESSEE ACKNOWLEDGES THAT LESSOR DID NOT CONSTRUCT THE BUILDING OR THE PROJECT. SUBJECT TO PARAGRAPHS 2.2 AND 2.3 OF THE LEASE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LESSOR HEREBY DISCLAIMS, AND LESSEE WAIVES THE BENEFIT OF, ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF HABITABILITY, FITNESS OR SUITABILITY FOR PURPOSE, OR THAT THE PREMISES, THE IMPROVEMENTS IN THE PREMISES, THE BUILDING OR THE PROJECT HAVE BEEN CONSTRUCTED IN A GOOD AND WORKMANLIKE MANNER.

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(b) As an independent inducement to Lessor agreeing to enter into this Lease, without which Lessor would not enter into this Lease, in furtherance of the provisions of Paragraph 2.4 of the Lease, but subject to the express obligations of Lessor set forth in Paragraphs 2.2, 2.3, 7.1(c), and 7.2 of the Lease, (i) Lessee agrees, acknowledges, represents, warrants and covenants as follows: (A) Lessee has accepted and occupied the Premises pursuant to the Lease without reservation; (B) Lessee had a full and complete opportunity to measure the Premises, both prior to entering into the Lease and prior to entering into this Lease, and Lessee confirms that the Premises are in fact the size stated in the Lease; (C) Lessor made no oral or written representation or warranty with respect to the size of the Premises, either prior to, concurrent with or subsequent to execution of the Lease; and (D) Lessee has not relied on any oral or written statement of Lessor with respect to the Premises (whether contrary to the Lease or otherwise), except as expressly set forth in the Lease, and (ii) Lessee hereby waives, releases and fully and finally and forever discharges Lessor and its agents, successors and assigns, of and from any and all manner of actions or causes of action, in law or in equity, suits, debts, liens, liabilities, claims, demands, and damages of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), arising out of and/or related to the size or condition of the Premises as of the date of this Lease. It is Lessee's intention that the foregoing release shall be effective as a bar to all actions, causes of action, obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities and demands of any character, nature and kind, known or unknown, suspected or unsuspected, to be so barred; in furtherance of which intention Lessee expressly waives any and all right and benefit conferred upon them by the provisions of Section 1542 of the California Civil Code, which reads as follows:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and which, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lessee recognizes, acknowledges, and agrees that it has been advised as to the significance and legal effect of the waiver of such rights under Section 1542 of the Civil Code, that it is aware that it may hereafter discover facts in addition to or different from those which it now knows or believes to be true with respect to any Claims it may have arising from or related to the foregoing matter, but that nonetheless, it is the intention of Lessee to fully, finally, and forever settle and release all Claims arising from or related to the foregoing matter, whether known, unknown, fixed, contingent, suspected, unsuspected, or otherwise.

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56. Occupancy and Permits. Neither Lessor nor Lessor's Broker makes any representation or warranties that Lessee's use complies with Applicable Requirements. Lessee's execution of the Lease shall be evidence of Lessee's satisfaction of this issue.

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57. **Signage.** Lessee at Lessee's expense shall be granted sign rights on the Building subject to Lessor's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed, and approval of the owner's association, the city and/or any other governmental agencies. All such signage shall be maintained and insured by Lessee and shall be removed by Lessee at Lessee's sole cost and expense at the expiration or earlier termination of the Term, including without limitation repairing any damage to the roof and or façade of the Building and eliminating any discoloration caused by the presence of such sign.

58. **OFAC.**

(a) Lessee represents and warrants that (i) it is not, and, to the best of its knowledge, none of its affiliates, partners, shareholders, members, managers, employees, officers, directors, representatives or agents is, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or under any other law, rule, order, or regulation that is enforced or administered by OFAC (such persons and entities each being a "Prohibited Person"); (ii) it is not acting directly or indirectly, for or on behalf of any Prohibited Person; (iii) it is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any Prohibited Person; and (iv) it will not contract with or otherwise engage in any dealings or transactions or be otherwise associated with any Prohibited Person.

(b) Lessee hereby agrees to defend, indemnify, and hold harmless Lessor, its affiliates, property manager, members and managers from and against any and all claims, damages, losses, risks, liabilities, and expenses (including fines, penalties, attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.

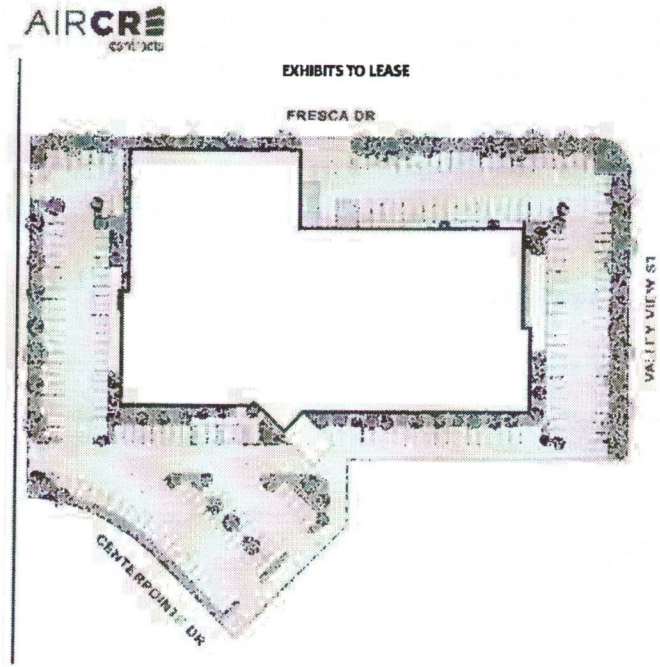
(c) Lessor represents and warrants that (i) it is not, and, to the best of its knowledge, none of its affiliates, members or managers, is, a Prohibited Person (iii) it is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any Prohibited Person; and (iv) it will not contract with or otherwise engage in any dealings or transactions or be otherwise associated with any Prohibited Person. Lessor hereby agrees to defend, indemnify, and hold harmless Lessee from and against any and all claims, damages, losses, risks, liabilities, and expenses (including fines, penalties, attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.


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Exhibit A

Site Plan of Premises



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Page 1 of 1

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Exhibit B

Form of Memorandum of Commencement Date

MEMORANDUM OF COMMENCEMENT DATE

In connection with that certain Standard Industrial/Commercial Single-Tenant Lease-Net dated April __, 2022 (the "Lease") between Shamrock (LaPalma) Partners II, LLC, as Lessor, and Fisker Group, Inc., as Lessee, concerning the Premises located at 14 Centerpointe Drive, La Palma, California, Lessor and Lessee hereby agree as follows:

1. The Commencement Date stated in Paragraph 1.3 the Lease is hereby agreed to be April __, 2022 and the Expiration Date stated in Paragraph 1.3 of the Lease is confirmed to be April __, 2029.
2. Lessee has or shall commence paying Base Rent with respect to the Premises pursuant to the Lease on April __, 2022.

Dated effective this __ day of April, 2022.

"LESSEE"

FISKER GROUP INC.,
a Delaware corporation

By: _____
Name: Geeta Gupta-Fisker
Title: COO and CFO, Director

"LESSOR"

SHAMROCK (LaPalma) PROPERTIES II, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____


INITIALS

INITIALS

AMENDMENT TO LEASE AND MEMORANDUM OF COMMENCEMENT DATE

In connection with that certain Standard Industrial/Commercial Single-Tenant Lease-Net dated April 4, 2022 (the "Lease") between Shamrock (LaPalma) Properties II, LLC, as Lessor, and Fisker Group, Inc., as Lessee, concerning the Premises located at 14 Centerpointe Drive, La Palma, California, Lessor and Lessee hereby agree as follows:


1. The Commencement Date stated in Paragraph 1.3 the Lease is hereby agreed to be May 1, 2022 and the Expiration Date stated in Paragraph 1.3 of the Lease is confirmed to be April 30, 2029.
2. Lessee has or shall commence paying Base Rent with respect to the Premises pursuant to the Lease on May 1, 2022.
3. Paragraph 52(a) of the Lease is hereby amended to read in full as follows (and footnote 1 as set forth in the Lease shall continue to apply thereto):
 - (a) "Monthly Base Rent shall be as follows:

Term Months	Base Rent	Rent Type
1	\$78,980.00	NNN
2	\$0.00	Free of Base Rent ¹
3 through 12	\$78,980.00	NNN Per Month
13 through 24	\$81,744.30	NNN Per Month
25 through 36	\$84,605.35	NNN Per Month
37 through 48	\$87,566.54	NNN Per Month
49 through 60	\$90,631.37	NNN Per Month
61 through 72	\$93,803.46	NNN Per Month
73 through 84	\$97,086.59	NNN Per Month

Dated effective this ___ day of May, 2022

"LESSEE"

FIKSKER GROUP INC.,
a Delaware corporation

By: 
Name: Geeta Gupta-Fisker May 11, 2022
Title: COO/CFO

"LESSOR"

SHAMROCK (LaPalma) PROPERTIES II, LLC,
a California limited liability company

By: _____
Joseph W. Moran, Managing Member

¹ Subject to Lease Paragraph 13.3.

14 Centerpointe Amendment and CommDate_Clean copy

Final Audit Report

2022-05-11

Created:	2022-05-10
By:	Beth Morrissey (bmorrissey@fiskerinc.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAYxeiWqUNDPCsag7kWKeHXClxG0RpqedX

"14 Centerpointe Amendment and CommDate_Clean copy" History






-  Document created by Beth Morrissey (bmorrissey@fiskerinc.com)
2022-05-10 - 8:49:41 PM GMT
-  Document emailed to Geeta Gupta-Fisker (gfisker@fiskerinc.com) for signature
2022-05-10 - 8:50:45 PM GMT
-  Email viewed by Geeta Gupta-Fisker (gfisker@fiskerinc.com)
2022-05-11 - 9:19:33 PM GMT
-  Document e-signed by Geeta Gupta-Fisker (gfisker@fiskerinc.com)
Signature Date: 2022-05-11 - 9:19:51 PM GMT - Time Source: server
-  Agreement completed.
2022-05-11 - 9:19:51 PM GMT

EXHIBIT "8"

Schedule 1**Schedule of Rejected Contracts and Leases and Abandoned Property**

	Debtor	Contract Counterparty and Address	Contract Description
1	Fisker Group Inc.	ADT Commercial LLC 1501 Yamato Road Boca Raton, FL 33431	Master Services Agreement to provide security, fire and life safety services
2	Fisker Group Inc.	HYG Financial Services, Inc. 5000 Riverside Dr Suite 300 E Irving, CA 92603	Equipment lease Hyster Forklift Model E50XN Serial # A268N38053X

Schedule 1**Schedule of Rejected Contracts and Leases and Abandoned Property (Continued)**

	Debtor	Real Property Lease Address	Landlord Counterparty and Address	Lease Description	Lease Rejection Date	Abandoned Property
1	Fisker Inc.	3030 17 th Street San Francisco, CA 94110 (also known as 398 Treat Ave San Francisco, CA 94110)	Manoutcher Movassate and Jaleh Movassate, Trustees of the Movassate Family Trust 3030 17th Street San Francisco, CA 94110	Lease commencement date May 11, 2022.	9/26/2024	None.
2	Fisker Group Inc.	14 Centerpointe Drive, La Palma, California 90623	Shamrock La Palma Properties II LLC 7352 Autopark Dr La Palma, CA 92648 Shamrock La Palma Properties II LLC 7352 Autopark Drive Huntington Beach, CA 92648	Lease commencement date May 11, 2022.	9/27/2024	Miscellaneous personal property (office equipment, shelving, tables, chairs).

Schedule 1**Schedule of Rejected Contracts and Leases and Abandoned Property (Continued)**

	Debtor	Real Property Lease Address	Landlord Counterparty and Address	Lease Description	Lease Rejection Date	Abandoned Property
3	Fisker Group Inc.	1715 Hacienda Dr, Vista, CA 92081	VistalCal Luxury Imports, Inc. dba BMW of Vista 1715 Hacienda Drive Vista, CA 92081 VistalCal Luxury Imports, Inc. 200 SW 1st Avenue 14th Floor Fort Lauderdale, FL 33301	Lease commencement date November 3, 2023	9/27/2024	None.