

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

(Mark One)

- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.**

For the fiscal year ended September 30, 2006

OR

- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.**

For the transition period from _____ to _____

Commission file number 0-51813

LIQUIDITY SERVICES, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of
Incorporation or Organization)

52-2209244

(I.R.S. Employer
Identification No.)

1920 L Street, N.W., 6th Floor, Washington, D.C.
(Address of Principal Executive Offices)

20036
(Zip Code)

(202) 467-6868

(Registrant's Telephone Number, Including Area Code)

(Former Name, Former Address and Former Fiscal Year, If Changed Since Last Report)

Securities Registered pursuant to Section 12(b) of the Act:

None

Securities Registered pursuant to Section 12(g) of the Act:
Common Stock, par value \$.001 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check One):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant as of December 20, 2006 based upon the closing price of the common stock as reported by The NASDAQ Stock Market on such date, was approximately \$187,389,014.

The number of shares outstanding of the issuer's common stock, par value \$.001 per share, as of December 20, 2006 was 27,617,555.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement relating to its 2007 Annual Stockholders' Meeting, to be filed subsequently, are incorporated by reference into Part III of this Form 10-K.

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Unless the context requires otherwise, references in this report to "we," "us," the "Company" and "our" refer to Liquidity Services, Inc. and its subsidiaries.

PART I

Item 1. Business.

Overview

We are a leading online auction marketplace for wholesale, surplus and salvage assets. We enable buyers and sellers to transact in an efficient, automated online auction environment offering over 500 product categories. Our marketplaces provide professional buyers access to a global, organized supply of wholesale, surplus and salvage assets presented with digital images and other relevant product information. Additionally, we enable our corporate and government sellers to enhance their financial return on excess assets by providing a liquid marketplace and value-added services that integrate sales and marketing, logistics and transaction settlement into a single offering. We organize our products into categories across major industry verticals such as consumer electronics, general merchandise, apparel, scientific equipment, aerospace parts and equipment, technology hardware, and specialty equipment. Our online auction marketplaces are www.liquidation.com, www.govliquidation.com and www.liquibiz.com. We also operate a wholesale industry portal, www.goWholesale.com, that connects advertisers with buyers seeking products for resale and related business services.

We believe our ability to create liquid marketplaces for wholesale, surplus and salvage assets generates a continuous flow of goods from our corporate and government sellers. This flow of goods in turn attracts an increasing number of professional buyers to our marketplaces. During fiscal year 2006, the number of registered buyers grew from approximately 386,000 to approximately 524,000, or 35.7%. During the past three fiscal years, we have conducted over 508,000 online transactions generating approximately \$364 million in gross merchandise volume. Approximately 87% of our initial listings have resulted in a completed cash sale during the past three fiscal years.

In the fiscal year ended September 30, 2006, we generated revenue of \$147.8 million through multiple sources, including transaction fees from sellers and buyers, revenue sharing arrangements, value-added service charges and online advertising fees. Our revenue has grown at a compound annual growth rate of approximately 35% since fiscal year 2002. Additionally, we have been profitable and cash flow positive for each quarter since the fourth quarter of fiscal year 2002.

Industry Overview

While a well-established forward supply chain exists for the procurement of assets, most manufacturers, retailers, corporations and government agencies have not made significant investments in the reverse supply chain process. The reverse supply chain addresses the redeployment and remarketing of wholesale, surplus and salvage assets. These assets generally consist of retail customer returns, overstock products and end-of-life goods from both the corporate and

government sectors. According to D.F. Blumberg Associates, Inc., a research and consulting firm, the estimated reverse logistics market in North America will grow from approximately \$38.5 billion in 2004 to over \$63.1 billion in 2008.

The supply of wholesale, surplus and salvage assets in the reverse supply chain results from a number of factors, including:

- *Supply chain inefficiencies.* Forecasting inaccuracies, manufacturer overruns, cancelled orders, evolving market preferences, discontinued product lines, merchandise packaging changes and seasonal fluctuations result in the growth of surplus assets.
- *Product innovation.* Continuous innovation in technology products, such as computer and office equipment, consumer electronics, and personal communication and entertainment devices, results in a continuous flow of surplus assets.

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- *Return policies of large national and online retailers.* The flexible return practices of many large national retailers and online shopping sites result in a continuous supply of returned merchandise, a significant portion of which must be liquidated.
- *Compliance with government regulations.* An increasingly stringent regulatory environment necessitates the verifiable recycling and remarketing of surplus assets that would otherwise be disposed of as waste.

Organizations that manufacture, distribute, sell or use finished goods regularly need to dispose of excess inventory or returned merchandise. We believe the management and remarketing of surplus assets traditionally has been an inefficient process. While many organizations spend considerable resources developing systems and channels supporting the flow of finished goods to their core customers, we believe that many have not historically dedicated significant resources to the reverse supply chain. Factors contributing to these inefficiencies in the reverse supply chain include the lack of:

- a centralized and global marketplace to sell bulk products in the reverse supply chain;
- awareness of available methods and mechanisms for disposal of surplus assets;
- experience in managing the reverse supply chain; and
- product information and tracking as surplus assets move through the reverse supply chain.

Traditional methods of surplus asset disposition include ad-hoc, negotiated direct sales, utilization of individual brokers or sales agents and live on-site auctions. We believe brokers specializing in surplus asset disposition are generally highly fragmented, geographically dispersed and predominantly small business owners. The manual, negotiated and geographically dispersed nature of traditional surplus resale methods results in a lack of pricing transparency for offered goods and a lower number of potential buyers and bids, which we believe typically lead to lower recovery rates for sellers.

A significant number of professional buyers seek wholesale, surplus and salvage assets. They include online and offline retailers, convenience and discount stores, value-added resellers such as refurbishers and scrap recyclers, import and export firms and small businesses. Traditionally, these buyers have had limited access to large sellers of surplus assets, relying instead on their own network of industry contacts and fixed-site auctioneers to locate, evaluate and purchase specific items of interest. Traditional methods are inefficient for buyers due to the lack of:

- global access to an available supply of desired assets;
- efficient and inexpensive sourcing processes;
- a professionally managed central marketplace;
- detailed information and product description for the offered goods; and
- pricing transparency or ability to compare asset prices.

The Internet has emerged as a global medium enabling millions of people worldwide to share information, communicate and conduct business electronically. International Data Corporation (IDC), a provider of global IT research and advice, estimates global business-to-business, or B2B, e-commerce will increase at a compound annual growth rate of 27.9% between 2004 and 2009 from \$2,176 billion to \$7,446 billion. (Source: IDC, Worldwide Internet Usage and Commerce 2005-2009 Forecast Version 10.1, Doc #34256, October 2005). We believe professional buyers of wholesale, surplus and salvage assets increasingly will use the Internet to identify and source goods available for immediate purchase.

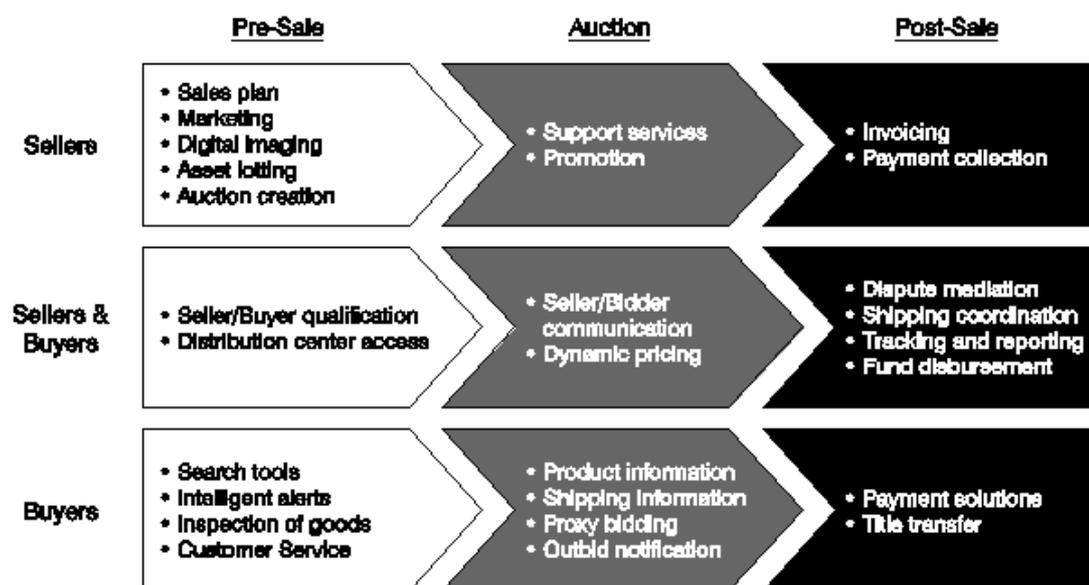
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Our Solution

Our solution is comprised of our online auction marketplaces, value-added services and our wholesale search and advertising portal. Our marketplaces and services are designed to provide sellers with a comprehensive solution to quickly bring surplus assets to market and enhance the financial value realized from the sale of these surplus assets while providing buyers with confidence in the goods they purchase. We provide sellers access to a liquid marketplace with thousands of professional buyers. Through our relationships with sellers, we provide buyers convenient access to a substantial and continuous flow of wholesale, surplus and salvage assets. We provide buyers with products in over 500 categories in lot sizes ranging from full truck loads to pallets, packages and large individual items. Our solution combines centralized marketplaces with a full suite of integrated sales, marketing, merchandising, fulfillment, payment collection, dispute mediation and logistics services. We provide sellers a convenient method of remarketing wholesale, surplus and salvage assets, including preparation of

sales information, optional warehousing of goods, settlement and transaction reporting. For any given asset, buyers have access in a centralized location to a detailed product description, product manifest, digital images of a product, relevant transaction history regarding the seller, shipping weights, product dimensions and estimated shipping costs to the buyer's location.

The following chart provides a summary of our online marketplace solution:



We believe our marketplaces benefit over time from greater scale and adoption by our constituents. As of September 30, 2006, we had aggregated approximately 524,000 registered buyers in our marketplaces. Aggregating this level of buyer demand enables us to generate a continuous flow of goods from corporate and government sellers, which in turn attracts an increasing number of professional buyers. During the fiscal year ended September 30, 2006 we had approximately 993,000 auction participants in our online auctions from our registered buyers. During fiscal year 2006, we grew our registered buyer base by 35.7% or approximately 138,000. As buyers continue to discover and use our online trading platform as an effective method to source assets, we believe our marketplaces become an increasingly attractive sales channel for corporations and government agencies. We believe this self-reinforcing cycle results in greater transaction volume and enhances the value of our marketplaces.

Competitive Factors

We have created liquid marketplaces for virtually any type, quantity or condition of wholesale, surplus or salvage assets. The strengths of our business model include:

Aggregation of supply and demand for wholesale, surplus and salvage assets

Our ability to aggregate sellers and buyers through our marketplaces is a fundamental strength of our business model. Sellers benefit from a liquid market and more competitive bidding through our large base of professional buyers, which enhances returns. Buyers benefit from our relationships with high-volume, corporate and government sellers, which provides them with continuous access to a comprehensive selection of wholesale, surplus and salvage assets. Our solution eliminates the need for sellers and buyers to rely on the highly fragmented and geographically dispersed group of traditional liquidators. Instead, sellers and buyers can conveniently access our online marketplaces for all of their wholesale, surplus and salvage asset needs.

Integrated and comprehensive solution

Our marketplaces are designed to provide sellers and buyers with a comprehensive solution for the online sale and purchase of wholesale, surplus and salvage assets. We offer a full suite of value-added services to simplify the sales process for sellers and improve the utility of our marketplaces for buyers. For corporate and government sellers, we provide sales, marketing, logistics and customer support services that are fully integrated with our marketplaces, creating operational and informational efficiencies. For many of these sellers, asset disposition is not a core business function to which they desire to dedicate internal resources. With our solution, we manage each step of the transaction for sellers. Sellers simply make goods available at their facilities or deliver them to our distribution centers and we deliver the profits after the sale is completed. We provide a one stop solution to enable professional buyers of any size throughout the world to purchase assets in an efficient manner. For these buyers, we provide a broad range of services to give them the information necessary to make a more informed bid and to ensure that they ultimately receive the goods purchased. Our buyer services include intelligent alerts, search tools, dynamic pricing, shipping and delivery, secure settlement, live customer support and dispute resolution. Our solution also includes our wholesale industry portal, which provides sellers with an opportunity to target advertising to wholesale buyers and provides buyers with access to a single online destination for sourcing wholesale products and related services.

Flexible and aligned transaction model

We offer two primary transaction models to our sellers, consignment and profit-sharing. Under both models, our compensation is based on the proceeds received from cash sales. These profit-sharing arrangements are designed to maximize returns for us and our sellers by aligning our economic interests.

Faster cycle times for our sellers

We believe our marketplace solution allows sellers to complete the entire sales process more rapidly than through traditional auction methods. Our solution generally reduces the sales and marketing cycle as compared to traditional auction methods. As a result, sellers are able to reduce inventory quickly,

generate additional working capital and reduce the cost of carrying unwanted assets.

Our Strategy

Our objective is to build upon our position as a leading online marketplace for selling wholesale, surplus and salvage assets. The key elements of our strategy are to continue to:

Grow our buyer base and increase the total number of auction participants

We intend to increase our buyer base and the total number of auction participants and competition within each auction by attracting new buyers and leveraging our database of existing professional buyers. We intend to attract new buyers by using a variety of online and traditional marketing programs. In addition, we plan to use the comprehensive buyer profiles, preferences and transactional data we have compiled over the past several years for our existing professional buyers to enable us to identify and market assets available through our auctions to the most likely buyers. We believe these initiatives will help us to increase the total number of auction participants, lead to higher selling prices and increase loyalty among our buyer base.

Increase penetration of existing sellers

We intend to increase our sales by increasing business with our existing sellers. For many of our sellers, we currently handle only a small portion of the available supply of these assets. In recent years, we have developed relationships with large corporations and government agencies that offer significant growth opportunities by increasing our share of their supply of surplus assets. For example, on behalf of the U.S. Department of Defense, we initially handled sales of its surplus personal property classified as “useable” in the United States and have expanded this relationship to include additional locations and property classifications, such as “useable” surplus property in the United Kingdom and Germany, as well as “scrap” property in the United States.

Develop new seller relationships

We intend to attract additional corporate and government sellers to our marketplaces. We believe the vast majority of corporations and government agencies still rely on inefficient traditional disposition methods for their surplus assets such as regional auctions or bulk sales to local buyers and liquidators. We believe our demonstrated performance record coupled with an expanded sales and marketing initiative will allow us to attract additional corporate and government sellers. As part of our sales and marketing initiative, we plan to hire additional sales professionals and increase our marketing and advertising to sellers in our target markets.

Develop and enhance features and services

We intend to develop and enhance marketplace features and services that benefit both buyers and sellers. With each completed auction, we gain greater insight into the optimal ways of marketing goods in the reverse supply chain and the needs of buyers and sellers within the wholesale industry. Recent new service offerings, such as inventory assurance screening, automated shipping coordination, return processing for retail sellers and online invoicing, have enhanced our operations and user experience. We intend to continue to develop new tools to further automate our solution in order to enhance the value we provide to buyers and sellers and improve the scalability of our business.

Expand our wholesale industry portal business

We intend to further expand our advertising and search engine distribution network and develop products that enable wholesale buyers and sellers to more readily create and organize relevant industry information. As a result, our growing base of advertisers can cost-effectively connect with potential customers of wholesale, surplus and salvage assets. Our wholesale industry portal provides another value-added resource to assist buyers and sellers in sourcing goods and services via the Internet.

Acquire complementary businesses

We intend to increase our share of the supply of wholesale, surplus and salvage goods sold by expanding our operations geographically and across new complementary markets. To support this growth, we intend to continue our disciplined and targeted acquisition strategy. Our approach focuses on identifying target companies that will offer us new or complementary areas of expertise, technology advancements, client bases and geographic territories, such as the STR acquisition which we completed on October 16, 2006. In considering each acquisition scenario, we evaluate the merits of the individual opportunity and determine whether to employ a “buy” or “build” strategy.

Our Marketplaces

Our online auction marketplaces serve as an efficient and convenient method for the sale of wholesale, surplus and salvage assets. Through our online auction sites, sellers and professional buyers come together to transact for goods sold “as-is, where-is,” generally without the discretionary right to return the merchandise. Items sold in our marketplaces range from new, used, salvage and scrap materials. We operate the following online marketplaces:

- Our www.liquidation.com marketplace enables corporations and selected federal government agencies located in the United States to sell wholesale, surplus and salvage assets. This marketplace and our related services are designed to meet the needs of clients selling to domestic and international buyers, including buyer qualification, brand and channel relationships protection, and shipping and logistics management.
- Our www.govliquidation.com marketplace enables selected government agencies to sell surplus and scrap assets. In addition to goods sold on behalf of other federal agencies, the surplus and scrap assets we sell as the exclusive contractor of the Defense Reutilization and Marketing Service of the U.S. Department of Defense are sold in this marketplace. To satisfy the requirements of U.S. federal government agency sellers, this marketplace incorporates additional terms and conditions of sale, such as U.S. Trade Security Controls clearance for the sale of export-controlled property.
- Our www.liquibiz.com marketplace enables European-based corporations and government agencies, including the U.K. Ministry of Defense and the US Department of Defense in the United Kingdom and Germany, to sell goods to European and other international buyers. While all of our

marketplaces reach a global buyer base, we recognize that high shipping costs can impact the amount a buyer is willing to bid for goods. As a result, we created this marketplace to geographically align European sellers and buyers. We intend to further expand our operations in Europe through our existing facilities in the United Kingdom and Germany.

Our three online auction marketplaces are designed to address the particular requirements and needs of buyers and sellers. Although our buyers may access and register on a single marketplace, we use numerous cross-marketing and cross-promotional methods to ensure that buyers are exposed to all of our marketplaces and to all product categories in which they have expressed an interest. For example, we display cross-search results for all our marketplaces in response to key word searches in a single marketplace.

Our Value-Added Services

We have integrated value-added services into our solution to simplify the sale process for sellers and improve the utility of our marketplaces for buyers. Unlike other online auction sites on which sellers post information on the auction website and deal directly with the buyer to complete a sale, we manage each step of the transaction. We perform all required pre-sale value-added services such as receiving and lotting of the merchandise and implementing marketing strategies. After an online auction transaction is executed, we perform all required post-sale value-added services such as payment collection, settlement and reporting. We believe these services contribute significantly to an enhanced selling price and a higher level of confidence for our buyers. Additionally, we believe these services improve compliance with the various policies, regulations and sale restrictions of our corporate and government sellers. Our employees provide the majority of our value-added services, outsourcing to third-party vendors in limited cases.

Seller services. We offer value-added services to sellers in three areas: (1) sales and marketing, (2) logistics and (3) settlement and customer support.

- *Sales and marketing.* Sales and marketing efforts encompass all of the services necessary to prepare merchandise for a successful auction and include the following:
 - Marketing and promotion—we use a variety of both online and traditional marketing methods to promote our sellers' merchandise and generate interest in each auction.
 - Asset lotting and merchandising—we leverage our industry experience to organize merchandise in lot sizes and product combinations that meet buyer preferences.
 - Product information enhancement—we photograph and upload digital images of the merchandise to be sold and combine the images in a relevant format. In order to increase the realized sales value, we also research, collect and use supplemental product information to enhance product descriptions.
- *Logistics.* We provide standard and optional logistics services designed to support the receipt, handling, transportation and tracking of merchandise offered through our marketplaces, including the following:
 - Distribution centers—we provide sellers with the flexibility of either having us manage the sales process at their location or delivering merchandise to one of our distribution centers.
 - Inventory management—sellers benefit from our management and inventory tracking system designed so that merchandise is received, processed and delivered in a timely manner.
 - Cataloguing merchandise—we catalogue all merchandise, which enables us to provide useful product information to buyers. We provide a detailed manifest for lots containing multiple goods. In certain circumstances, we will inspect the merchandise and provide condition descriptions.
 - Delabeling—we can remove labels and product markings from merchandise prior to sale to protect sellers' brand equity and distribution relationships.
 - Outbound fulfillment—we can arrange for domestic or international shipping for all merchandise, whether located in one of our distribution centers or at a seller's facility.
- *Settlement and customer support.* Settlement and customer support services are designed for successful completion of transactions and include:
 - Buyer qualification—we qualify buyers to ensure their compliance with applicable government or seller mandated terms of sale, as well as to confirm their ability to complete a transaction.
 - Collection and settlement—we collect all payments on behalf of sellers prior to delivery of any merchandise and only disburse the profits to the seller after the satisfaction of all conditions of a sale.
 - Transaction tracking and reporting—we enable sellers to track and monitor the status of their transactions throughout the sales process. We provide a range of comprehensive reporting services to sellers upon the completion of a transaction. Our invoicing and reporting tools can be integrated with the seller's information system, providing a more efficient flow of data.
 - Customer support and dispute resolution—we provide full customer support throughout the transaction process and dispute resolution for our customers if needed.

Buyer services. Many of the services we provide to sellers also benefit buyers by providing them with the information necessary to make a more informed bid and to receive the goods they purchased. Our buyer focused services include the following:

- Intelligent alerts—we automatically notify buyers of upcoming auctions based on their registered preferences and prior transaction history. Registered preferences can be as broad as a product category or as specific as a part number or key word. We use this information to generate automated notifications whenever we identify a product that fits a buyer's registered preference, when auctions are nearing conclusion and based on various other parameters.
- Search tools—buyers can search our marketplaces for products based on a variety of criteria including product category, keyword, lot size, product condition, product geographic location and auction ending date.
- Dynamic pricing tools—we offer multiple dynamic pricing tools including outbid notification, automated bid agent and automatic auction extension. For example, our automatic extension feature allows auctions to continue in set increments until the last bid is received, thus enhancing the pricing of goods.
- Shipping quote—we provide buyers with the information necessary to estimate the shipping costs associated with their purchase, such as shipping weights, packaging type and product dimensions.
- Delivery and shipping—we can provide packaging and shipping services for sales transactions.
- Secure settlement—in addition to qualifying sellers, providing several electronic payment options and serving as a trusted market intermediary, we verify transaction completion, which in turn enhances buyer confidence.
- Customer support and dispute resolution—we provide full customer support throughout the transaction process and dispute resolution for customers if needed.

Our Wholesale Industry Portal

In June 2004, we launched www.goWholesale.com, a wholesale industry portal supported by advertising and search services. *goWholesale.com* provides buyers of wholesale, surplus or salvage goods with tools to search for goods on the Internet and provides an avenue for manufacturers, drop shippers, distributors, importers and wholesalers to reach professional buyers. *goWholesale.com* also provides a single online destination for buyers to find specific products for resale and related business services. We developed this portal to provide advertisers with the ability to reach our growing network of professional buyers. Additionally, we believe that users of this site may have an interest in products offered in our marketplaces.

Our *goWholesale.com* portal is designed to allow advertisers to reach highly targeted wholesale buyer audiences in a more effective and efficient manner than other major search engine alternatives. Our wholesale industry portal focuses on three broad areas: generating leads for advertisers; providing access to a broad range of industry specific content for professional buyers; and creating an online community for the exchange of information by participants in the wholesale industry.

Each component of our portal delivers a variety of services, including:

<u>Lead generation</u>	<u>Content</u>	<u>Community</u>
<ul style="list-style-type: none">· Key word advertising· Banner advertising· Seller directory· Sponsorship· Newsletter advertising	<ul style="list-style-type: none">· Wholesale auctions· Industry news· Classified ads· Trade show directory	<ul style="list-style-type: none">· Community forum· Seller ratings· Web logs (blogs)· Web seminars

Sales and Marketing

We utilize a direct sales and marketing force to acquire and manage our seller accounts. As of September 30, 2006, we had 46 sales and 19 marketing personnel. Our sales activities are focused primarily on acquiring new sellers, and our marketing activities are focused primarily on acquiring new buyers and increasing existing buyer participation.

Sales

Our sales personnel develop seller relationships, establish agreements to provide our services and manage the business accounts on an on-going basis. Our sales representatives focus on building long-term relationships with sellers that we believe will generate recurring transactions. They also leverage our years of experience and database of completed transactions to identify which of our various services would be beneficial to each new or existing seller.

Our sales group is organized to serve three distinct groups of sellers: large corporate accounts, medium to small corporate accounts and government accounts. This approach is based on our experience in understanding and serving the unique needs of each type of seller:

- *Large corporate sellers.* These sellers require a customized approach, using a combination of our industry-focused sales team and our value-added services to create a comprehensive solution.

- *Medium to small corporate sellers.* These sellers are offered a turn-key solution enabling them to self-serve in our marketplaces by accessing tools and resources such as uploading product photographs and descriptions.
- *Government sellers.* These sellers require a customized approach. Sales efforts are both pro-active and re-active, including responding to already structured contract proposal requests and assisting government agencies in developing the appropriate scope of work to serve their needs.

Our sales personnel receive a salary and performance-based commissions.

Marketing

We use a variety of online and traditional marketing to attract and activate professional buyers to maximize the number of bidders participating in our online marketplaces as well as to support our sales team:

- *Buyer acquisition.* We utilize online marketing, including paid search advertising, search engine optimization, affiliate programs and cross promotion on all of our marketplaces to acquire new buyers. We supplement this online marketing with special event print media, classified advertisements and selected direct mail campaigns. Public relations campaigns, participation in trade shows and speaking engagements also complement our overall buyer acquisition efforts.
- *Buyer participation.* We use a variety of tools to increase buyer participation, including: targeted opt-in e-mail newsletters that rely on the buyer's stated categories of interest and past bidding or transaction activity; special e-mail alerts highlighting specific products of interest; convenient search tools that enable a buyer or prospective buyer to find desired items on our online marketplaces; and saved search agents that automatically alert registered buyers when items of interest are added to our marketplaces.
- *Market research.* In order to better target buyers by industry segment, geographic location or other criteria, our marketing department has gathered data and information from each of the buyer segments we serve. In addition, the marketing department conducts regular surveys to better understand buyers' behavior and needs. We have a privacy policy and have implemented security measures to protect this information.
- *Sales support.* Our marketing department creates supporting documentation and research to support our sales team in presenting our company to potential sellers and buyers, including sales brochures, white papers and participation in selected trade shows.

All marketing activities are evaluated based on the level of auction participation in our marketplaces and the cost effectiveness of each action.

Technology and Infrastructure

Our marketplaces are fully web-based and can be accessed from any Internet enabled computer by using a standard web browser. Our technology systems enable us to automate and streamline many of the manual processes associated with finding, evaluating, bidding on, paying for and shipping wholesale, surplus and salvage assets. The technology and content behind our marketplaces and integrated value-added services were developed in-house by full-time employees, providing us with control over the marketplaces and the ability to make rapid enhancements to better fit the specific needs of our business and customers. Our marketplaces are supported by a common database architecture and a shared system application. This infrastructure provides:

- an efficient channel to sell online through a variety of pricing mechanisms (standard auction, sealed bid, Dutch auction and fixed price);
- a scalable back office that enables buyers and sellers to efficiently manage transactions among remote business users by utilizing account management tools, including payment collection, invoicing management, shipping and transaction settlement; and
- an input/output agnostic platform, including conduits that enable us to integrate seamlessly with partner enterprise applications of sellers and third party service providers.

We have designed our websites and supporting infrastructure to be highly robust and to support new services and increased traffic. Our servers are fully-managed and hosted in a physically and network-secure environment at data centers in Ashburn, Virginia, which is managed by Equinix, Inc., and in Phoenix, Arizona, which is managed by Sterling Network Services. Every critical piece of our application is fully redundant, and we maintain off-site back-up systems as well as a disaster recovery facility. Our network connectivity offers high performance and scalability to accommodate increases in website traffic. Since January 1, 2003, we have experienced no material service interruptions on our online marketplaces.

Our applications support multiple layers of security, including password-protected log-ins, encryption technology to safeguard information transmitted in web sessions and firewalls to help prevent unauthorized access to our network and servers. We devote significant efforts to protecting our systems from intrusion.

Operations

Supporting large organizations that have a recurring need to sell surplus, wholesale and salvage assets requires systematic processes to enhance the financial value and convenience received by our customers. We believe we have integrated all of the required operational processes into our solution to allow our online auctions to run efficiently and to effectively support our buyers and sellers. Our operations group is comprised of three functions: (1) buyer relations; (2) shipping logistics; and (3) distribution center operations.

Buyer relations

Our buyer relations group supports the completion of buyer transactions by managing the buyer registration and qualification process, answering questions and requests from buyers, collecting buyer payments and resolving disputes. Our websites contain extensive information about buying through our online marketplaces, including an online tutorial regarding the use of our marketplaces, answers to frequently-asked buyer questions and an indexed help section. Buyers are able to contact a customer service representative by e-mail or phone if they need additional support.

Shipping logistics

Our shipping logistics group manages and coordinates inbound and outbound shipping of merchandise for sellers and buyers. We offer, as part of our value-added services, integrated shipping services and price quotes through multiple shipping carriers. In addition, our shipping coordination group personnel monitor the performance and service level of our network of carriers to help ensure speed and quality of service.

Distribution center operations

Our distribution center operations group performs selected pre-sale and post-sale value-added services at our distribution centers and at seller locations. These activities include unloading, manifesting and reporting discrepancies for all received assets and sales preparation of offered assets, including lotting and organizing offered assets, writing product descriptions, capturing digital images and providing additional optional value-added services such as delabeling, cleaning and repackaging. Our distribution center operations group personnel also arrange the outbound shipping or pick-up of purchased assets with our buyers.

Competition

The online services market for auctioning or liquidating wholesale, surplus and salvage assets is competitive and growing rapidly. We currently compete with:

- other e-commerce providers, such as Amazon.com, GSI Commerce and Overstock.com;
- auction websites such as eBay, Yahoo! Auctions and uBid;
- government agencies that have created websites to sell wholesale, surplus and salvage assets; and
- traditional liquidators and fixed-site auctioneers.

We expect our market to become even more competitive as traditional and online liquidators and auctioneers continue to develop online and offline services for disposition, redeployment and remarketing of wholesale, surplus and salvage assets. In addition, manufacturers, retailers and additional government agencies may decide to create their own websites to sell their own wholesale, surplus and salvage assets and those of third parties. Competitive pressures could harm our business, financial condition and operating results.

Some of our other current and potential competitors have longer operating histories, larger client bases, greater brand recognition and significantly greater financial, marketing and other resources than we do. In addition, some of these competitors may be able to devote greater financial resources to marketing and promotional campaigns, secure merchandise from sellers on more favorable terms, adopt more aggressive pricing or inventory availability policies and devote substantially more resources to website and systems development than we are able to do. Increased competition may result in reduced operating margins and loss of market share. We may not be able to compete successfully against current and future competitors.

Our Contracts with the U.S. Department of Defense

We are the exclusive contractor with the Defense Reutilization and Marketing Service, or DRMS, for the sale of surplus and scrap assets of the United States Department of Defense, or DoD, in the United States. This relationship provides a significant supply of goods that we offer to our buyer base through our online marketplace www.govliquidation.com. In support of these contracts, we provide services in over 1 million square feet of military warehouse space at over 150 military bases throughout the United States.

We have two material contracts with DoD under which we acquire, manage and sell government property. The largest contract was awarded in June 2001 and relates to usable surplus property of DoD turned in to DRMS and located in the United States, Puerto Rico and Guam, such as computers, electronics, office supplies, equipment, aircraft parts, clothing and textiles. The second contract was awarded in June 2005 and relates to substantially all scrap property of DoD turned into the DRMS, such as metals, alloys, and building materials. Property sold under the contracts is “demilitarized” prior to sale and does not include weapons or hazardous materials.

The surplus contract expires in June 2008 and accounted for 91.0%, 87.5% and 56.6% of our revenue and 77.5%, 76.5% and 48.3% of our gross merchandise volume for the fiscal years ended September 30, 2004, 2005 and 2006, respectively. The scrap contract expires in August 2012, subject to the DoD’s right to extend for three additional one-year terms. We began operating under the scrap contract in August 2005, and it accounted for 0.4% and 26.5% of our revenue and for 0.3% and 22.6% of our gross merchandise volume for fiscal years 2005 and 2006, respectively. The contracts were awarded in competitive bids conducted by DoD, and we may be required to go through a new competitive bidding process when our existing contracts expire.

Under the surplus property contract, we are obligated to purchase all DoD surplus property at set prices representing a percentage of the original acquisition cost, which vary depending on the type of surplus property being purchased. Under the scrap contract, we acquire scrap property at a per pound price. Under the contracts, we were initially entitled to approximately 20% of the profits of sale (defined as gross proceeds of sale less allowable operating expenses), and the DoD was entitled to approximately 80% of the profits. DoD also reimburses us for actual costs incurred for packing, loading and shipping property under the contracts that we are obligated to pick up from non-DoD locations. On September 12, 2006, we entered into a bilateral contract modification under which the DoD agreed to increase our profit-sharing percentage under the surplus contract in exchange for our agreement to implement additional inventory assurance processes and procedures with respect to the sale of demilitarized property. Under the terms of the contract modification, from August 1, 2006 until November 30, 2006, we were entitled to receive 27.5% of the profits under the surplus contract, and the DoD was entitled to receive 72.5%. After November 30, 2006, we are entitled to receive between 25% and 30.5% of the profits, based on the results of an audit of the effectiveness of the inventory controls we implement under

the contract modification. Under the scrap contract, we also have a small business performance incentive based on the number of scrap buyers that are small businesses that would allow us to receive up to an additional 2% of the profit-sharing distribution.

The contracts require us to satisfy export control and other regulatory requirements in connection with sales. Specifically, for specified categories of property sold under the contracts that are subject to export controls, we are required to (1) obtain an end-use certificate from the prospective buyer describing the nature of the buyer's business, describing the expected disposition and specific end-use of the property, and acknowledging the applicability of pertinent export control and economic sanctions laws and (2) confirm that each buyer has been cleared to purchase export-controlled items. Applicable export controls include the Export Administration Regulations enforced by the Bureau of Industry and Security ("BIS") of the U.S. Department of Commerce, and the International Traffic In Arms Regulations enforced by the Directorate of Defense Trade Controls ("DDTC") of the U.S. Department of State. Our collection, settlement tools and procedures are designed so that transactions for these categories of property cannot be completed until we receive a completed end-use certificate and confirmation of the buyer's trade security controls clearance. In addition, we do not combine export-controlled property into auction lots with property not subject to export controls.

We are also prohibited from selling property to persons or entities that appear on lists of restricted or prohibited parties maintained by the United States or other governments, including the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control of the U.S. Department of Treasury and the Entity List maintained by BIS, the Denied Persons List maintained by BIS and the Debarred Parties List maintained by DDTC. In addition, we are prohibited from selling to countries, regimes, or nationals that are the target of applicable economic sanctions or other embargoes. As part of each sale, we collect information from potential customers that our systems cross reference against a list of restricted or prohibited parties and countries, regimes, or nationals that are the target of economic sanctions or other embargoes in order to comply with these restrictions. Failure to satisfy any of these export control and other regulatory requirements could subject us to civil and criminal penalties and administrative sanctions, including termination of the DRMS contracts, forfeiture of profits, suspension of payments, fines and suspension or debarment from doing business with U.S. federal government agencies.

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The contracts may be terminated by DoD or us if rate of return proceeds performance ratios do not exceed specified benchmark ratios for two consecutive quarterly periods and the preceding twelve months. We have never failed to meet the required benchmark ratios with respect to our contracts during any of the testing periods. DoD also has the right to audit our performance under the contracts. DoD may terminate the contracts and seek other contract remedies in the event of material breaches, provided that it provides us notice and a 30-day opportunity to cure such breaches.

Employees

As of September 30, 2006, we had 378 U.S. employees, including 56 in sales and marketing, 22 in technology, 22 in customer service, 245 in operations and 33 in finance and administration. In addition, as of that date, we had 32 international employees (located primarily in the United Kingdom and Germany), including 9 in sales and marketing, 2 in customer service, 16 in operations and 5 in finance and administration.

We believe that we have good relationships with our employees. We have never had a work stoppage, and none of our employees is represented under a collective bargaining agreement or by a union.

Available Information

The address of our website is www.liquidityservicesinc.com.

Cautionary Note Regarding Forward-Looking Statements

This document contains forward-looking statements. These statements are only predictions. The outcome of the events described in these forward-looking statements is subject to known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to differ materially from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. These risks and other factors include but are not limited to those listed in Part I, Item 1A ("Risk Factors") and in our other filings with the Securities and Exchange Commission from time to time. You can identify forward-looking statements by terminology such as "may," "will," "should," "could," "would," "expects," "intends," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "continues" or the negative of these terms or other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. There may be other factors of which we are currently unaware or deem immaterial that may cause our actual results to differ materially from the forward-looking statements.

All forward-looking statements apply only as of the date of this Annual Report and are expressly qualified in their entirety by the cautionary statements included in this document. Except as may be required by law, we undertake no obligation to publicly update or revise any forward-looking statement to reflect events or circumstances occurring after the date of this Annual Report or to reflect the occurrence of unanticipated events.

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Item 1A. Risk Factors.

You should carefully consider the risks described below, together with all of the other information in this Annual Report, including the consolidated financial statements and related notes, before making an investment decision with respect to our common stock. If any of the following risks occur, our business, financial condition or operating results could suffer. As a result, the trading price of our common stock could decline and you may lose all or part of your investment in our common stock. The risks and uncertainties described below are not the only significant risks we may face. Other events that we do not currently anticipate or that we currently deem immaterial also may affect our results of operations and financial condition.

We depend on contracts with the U.S. Department of Defense for a significant portion of our revenue, and if our relationship with this customer is disrupted, we would experience a significant decrease in revenue and have difficulty generating income.

We have two material contracts with the Defense Reutilization and Marketing Service, or DRMS, under which we acquire, manage and sell surplus and scrap property of the DoD. If our relationship with DoD is impaired, we are not awarded new DoD contracts when our current contracts expire, any of our DoD contracts are terminated or the supply of assets under the contracts significantly decreased, we would experience a significant decrease in revenue and have difficulty generating income. The surplus contract accounted for 91.0%, 87.5% and 56.6% of our revenue and 77.5%, 76.5% and 48.3% of our gross merchandise volume for the fiscal years ended September 30, 2004, 2005 and 2006, respectively. We began to operate under the scrap contract in August 2005 and it accounted for 0.4% and 26.5% of our revenue and for 0.3% and 22.6% of our gross merchandise volume in fiscal year 2005 and 2006, respectively. We believe that these contracts will continue to be the source of a significant portion of our revenue and gross merchandise volume during their respective terms. The surplus contract expires in June 2008. The scrap contract has a seven-year base term that expires in August 2012, subject to DoD's right to extend for three additional one-year terms. The contracts were awarded by DoD through a competitive bidding process, and we may be required to go through a new competitive bidding process when our existing contracts expire.

Although our contracts with DoD do not allow DoD to terminate for convenience, each contract requires us to meet specified performance benchmarks. The contracts may be terminated by DoD if rate of return performance ratios do not exceed specified benchmark ratios for two consecutive quarterly periods and the preceding twelve months. Although, to date, we have never failed to meet the required benchmark ratios during any of the testing periods, we cannot assure you that we will meet the performance benchmarks in the future. DoD also has the right, after giving us notice and a 30 day opportunity to cure, to terminate the contracts and seek other contract remedies in the event of material breaches.

Unfavorable findings resulting from a government investigation or audit could subject us to a variety of penalties and sanctions, could negatively impact our future operating results and could force us to adjust previously reported operating results.

In July 2006, the Government Accountability Office (GAO) issued a report citing weaknesses in DoD excess inventory control procedures and lax security at selected DoD facilities with respect to surplus property. The GAO report refers to our company and asserts that we failed to verify the appropriate DoD regulatory classifications for certain items we sold and, as a result, we sold items we should have instead returned to the DoD. We believe that, under our DoD contracts, we do not have a contractual responsibility to assign these classifications and believe that the DoD has the contractual obligation to assign these classifications. The GAO report also identified at least 79 buyers that collectively purchased 2,669 sensitive military items and stated that the GAO was referring these sales to federal law enforcement agencies for investigation. These buyers may have acquired these sensitive military items from us. It is possible that other government and law enforcement agencies may also investigate these sales, our company and our activities under our DoD contracts. If an investigation alleges that we engaged in improper or illegal activities, we could be subject to civil and criminal penalties and administrative sanctions, including termination of contracts, forfeiture of profits, suspension of payments, fines, and suspension or debarment from doing business with U.S. federal government agencies. We could also suffer serious harm to our reputation if allegations of impropriety are made against us, whether or not these allegations have merit. If we are suspended or debarred from contracting with the federal government generally, or any specific agency, if our reputation or relationship with government agencies is impaired, or if the government otherwise ceases doing business with us or significantly decreases the amount of business it does with us, our revenue and profitability would substantially decrease.

The federal government has the right to audit our performance under our government contracts. Any adverse findings from audits or reviews of our performance under our contracts could result in a significant adjustment to our previously reported operating results. For example, our DoD contracts provide that we share sales profits with the government. The federal government may disagree with our calculation of the profits realized from the sales of government surplus assets and may require us to increase profit-sharing payments to the government that have been made in the past. If this occurs, our past operating margins may be reduced. The results of an audit by the government could significantly limit the volume and type of merchandise made available to us under our contracts with the DoD, resulting in lower gross merchandise volume, revenue, and profitability for our company. If such a government audit uncovers improper or illegal activities, we could be subject to the civil and criminal penalties, administrative sanctions and reputational harm described above. If, as the result of such an audit, we are suspended or debarred from contracting with the federal government generally, or any specific agency, if our reputation or relationship with government agencies is impaired, or if the government otherwise ceases doing business with us or significantly decreases the amount of business it does with us, our revenue and profitability would substantially decrease.

The success of our business depends on our ability to successfully obtain a supply of merchandise for our buyers and to attract and retain active professional buyers to create sufficient demand for our sellers.

Our ability to increase our revenue and maintain profitability depends on whether we can successfully expand the supply of merchandise available for sale on our online marketplaces and attract and retain active professional buyers to purchase the merchandise. Our ability to attract sufficient quantities of suitable merchandise and new buyers will depend on various factors, some of which are out of our control. These factors include our ability to:

- offer sellers liquid marketplaces for their wholesale, surplus and salvage assets;
- offer buyers a sufficient supply of merchandise;
- develop and implement effective sales and marketing strategies;
- comply with regulatory or corporate seller requirements affecting marketing and disposition of certain categories of merchandise;
- efficiently catalogue, handle, store, ship and track merchandise; and
- achieve high levels of seller and buyer satisfaction with the trading experience.

We may not be able to compete successfully against existing or future competitors.

The online services market for auctioning or liquidating wholesale, surplus and salvage assets is competitive and growing rapidly. Competitive pressures could affect our ability to attract and retain customers, which could decrease our revenue and negatively affect our operating results. We currently compete

with:

- other e-commerce providers, such as Amazon.com, GSI Commerce and Overstock.com;
- auction websites such as eBay, Yahoo! Auctions and uBid;
- government agencies that have created websites to sell wholesale, surplus and salvage assets; and
- traditional liquidators and fixed-site auctioneers.

We expect our market to become even more competitive as traditional and online liquidators and auctioneers continue to develop online and offline services for disposition, redeployment and remarketing of wholesale, surplus and salvage assets. In addition, manufacturers, retailers and government agencies may decide to create their own websites to sell their own wholesale, surplus and salvage assets and those of third parties.

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Some of our other current and potential competitors have longer operating histories, larger client bases, greater brand recognition and significantly greater financial, marketing and other resources than we do. In addition, some of these competitors may be able to devote greater financial resources to marketing and promotional campaigns, secure merchandise from sellers on more favorable terms, adopt more aggressive pricing or inventory availability policies and devote substantially more resources to website and systems development than we are able to do. Increased competition may result in reduced operating margins and loss of market share. We may not be able to compete successfully against current and future competitors.

If we fail to manage our growth effectively, our operating results could be adversely affected.

We have expanded our operations rapidly since our inception in 1999. Although we currently do not have specific plans for any expansion that would require significant capital investment, in the future we plan to expand our operations further by developing new or complementary services, products, or trading formats and enhancing the breadth and depth of our value-added services. We also plan to continue to expand our sales and marketing, technology and client support organizations. In addition, we will likely need to continue to improve our financial and management controls and our reporting systems and procedures. If we are unable to effectively implement these plans and to otherwise manage our expanding operations, we may not be able to execute our business strategy and our operating results could significantly decrease.

Our business depends on the continued growth of the Internet and e-commerce.

The business of selling merchandise over the Internet, particularly through online trading, is dynamic and relatively new. Growth in the use of the Internet as a medium for consumer commerce may not continue. Concerns about fraud and privacy, increased costs of Internet service, Internet service disruptions and other problems may discourage consumers from engaging in e-commerce. In particular, many traditional buyers and sellers of wholesale, surplus and salvage goods still conduct much of their business in traditional live auctions that do not occur on the Internet, and those buyers and sellers may be hesitant to engage in e-commerce. If the e-commerce industry fails to grow or traditional buyers and sellers of wholesale, surplus and salvage assets are unwilling to conduct business on the Internet, we may be unable to attract customers, which could cause our revenue and operating results to decline.

We may not operate profitably in the future.

We commenced operations in early 2000 and, as a result, have only a limited operating history upon which you can evaluate our business and prospects. Although we have experienced significant revenue growth in recent periods, we may not be able to sustain this growth. If we are not able to sustain this revenue growth, the value of your investment in our common stock may decline.

Our quarterly operating results have fluctuated in the past and may do so in the future, which could cause volatility in our stock price.

Our prior operating results have fluctuated due to changes in our business and the e-commerce industry. Similarly, our future operating results may vary significantly from quarter to quarter due to a variety of factors, many of which are beyond our control. You should not rely on period-to-period comparisons of our operating results as an indication of our future performance. Factors that may affect our quarterly operating results include the following:

- the addition of new buyers and sellers or the loss of existing buyers and sellers;
- the volume, size, timing and completion rate of transactions in our marketplaces;
- changes in the supply and demand for and the volume, price, mix and quality of our supply of wholesale, surplus and salvage assets;
- introduction of new or enhanced websites, services or product offerings by us or our competitors;
- implementation of significant new contracts;

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- changes in our pricing policies or the pricing policies of our competitors;
- changes in the conditions and economic prospects of the e-commerce industry or the economy generally, which could alter current or prospective buyers' and sellers' priorities;

- technical difficulties, including telecommunication system or Internet failures;
- changes in government regulation of the Internet and e-commerce industry;
- event-driven disruptions such as war, terrorism, disease and natural disasters;
- seasonal patterns in selling and purchasing activity; and
- costs related to acquisitions of technology or equipment.

Our operating results may fall below the expectations of market analysts and investors in some future periods. If this occurs, even temporarily, it could cause volatility in our stock price.

Our operating results depend on our websites, network infrastructure and transaction processing systems. Service interruptions or system failures could negatively affect the demand for our services and our ability to grow our revenue.

Any system interruptions that affect our websites or our transaction systems could impair the services that we provide to our sellers and buyers. In addition, our systems may be vulnerable to damage from a variety of other sources, including telecommunications failures, power outages, malicious human acts and natural disasters. Improving the reliability and redundancy of our systems may be expensive, reduce our margins and may not be successful in preventing system failures. Our services are also substantially dependent on systems provided by third parties, over whom we have little control. We have occasionally experienced interruptions to our services due to system failures unrelated to our own systems. Any interruptions or failures of our current systems or our ability to communicate with third party systems could negatively affect the demand for our services and our ability to grow our revenue.

If we do not respond to rapid technological changes or upgrade our systems, we could fail to grow our business and our revenue could decrease.

To remain competitive, we must continue to enhance and improve the functionality and features of our e-commerce business. Although we currently do not have specific plans for any upgrades that would require significant capital investment, in the future we will need to improve and upgrade our technology, transaction processing systems and network infrastructure in order to allow our operations to grow in both size and scope. Without such improvements, our operations might suffer from unanticipated system disruptions, slow transaction processing, unreliable service levels, or impaired quality or delays in reporting accurate financial information, any of which could negatively affect our reputation and ability to attract and retain sellers and buyers. We may also face material delays in introducing new services, products and enhancements. The Internet and the e-commerce industry are rapidly changing. If competitors introduce new products and services using new technologies or if new industry standards and practices emerge, our existing websites and our proprietary technology and systems may become obsolete. In addition, the expansion and improvement of our systems and infrastructure may require us to commit substantial financial, operational and technical resources, with no assurance our business will increase. If we fail to respond to technological change or to adequately maintain, expand, upgrade and develop our systems and infrastructure in a timely fashion our ability to grow could be limited and our revenue could decrease.

Shipment of merchandise sold in our marketplaces could be delayed or disrupted by factors beyond our control and we could lose buyers and sellers as a result.

We rely upon third party carriers such as United Parcel Services, or UPS, for timely delivery of our merchandise shipments. As a result, we are subject to carrier disruptions and increased costs due to factors that are beyond our control, including labor difficulties, inclement weather, terrorist activity and increased fuel costs. In addition, we do not have a long-term agreement with UPS or any other third party carriers, and we cannot be sure that our relationship with UPS will continue on terms favorable to us, if at all. If our relationship with UPS is terminated or impaired or if UPS is unable to deliver merchandise for us, we would be required to use alternative carriers for the shipment of products to our buyers. We may be unable to engage alternative carriers on a timely basis or on terms favorable to us, if at all. Potential adverse consequences include:

- reduced visibility of order status and package tracking;
- delays in merchandise receipt and delivery;
- increased cost of shipment; and
- reduced shipment quality, which may result in damaged merchandise.

Any failure to receive merchandise at our distribution centers or deliver products to our buyers in a timely and accurate manner could lead to client dissatisfaction and cause us to lose sellers and buyers.

A significant interruption in the operations of our customer service system or our distribution centers could harm our business and operating results.

Our business depends, to a large degree, on effective customer service and distribution center operations. We currently staff DoD warehouse distribution space, for which we do not incur leasing costs, as well as leased commercial warehouse distribution space. These operations could be harmed by several factors, including any material disruption or slowdown at our distribution centers resulting from labor disputes, changes in the terms of our underlying lease agreements or occupancy arrangements in the case of government provided facilities, telecommunications failures, power or service outages, human error, terrorist attacks, natural disasters or other events. In addition, space provided to us by DoD could be re-configured or reduced as a result of DoD's Base Realignment and Closure initiative or other infrastructure reduction initiatives. For example, DRMS has indicated that it plans to reconfigure or reduce the current warehousing functions at a number of DoD sites. A disruption in our customer service and distribution operations, including as a result of DRMS's plans to reconfigure or reduce the current warehousing functions at several sites, could cause us to lose sellers and buyers, decrease our revenue and harm our operating results.

If our transaction models are not accepted by our clients or alternative transaction models are developed, we could lose clients and our revenue and our profitability could decline.

Our services are offered to sellers using the following two primary transaction models:

- consignment (in which we charge the seller a commission); and
- profit-sharing (in which we purchase merchandise from sellers and share profits).

We also collect a buyer's premium, or a commission paid by the buyer, on substantially all completed transactions and may engage in outright purchases of client inventory. It is possible that new transaction models that are not compatible with our business model or our marketplaces may be developed and gain widespread acceptance. Alternative transaction models could cause our revenue and margins to decline. In addition, if current and potential customers do not recognize the benefits of our transaction models, activity in our marketplaces may decline or develop more slowly than we expect, which may limit our ability to grow our revenue or cause our revenue to decline.

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If we fail to accurately predict our ability to sell merchandise in which we take inventory risk and credit risk, our margins may decline as a result of lower sale prices from such merchandise.

Under our profit-sharing model, we purchase merchandise and assume the risk that the merchandise may sell for less than we paid for it. In addition, we occasionally engage in transactions with sellers in which we purchase merchandise without a profit-sharing component. In each case, we assume general and physical inventory and credit risk. These risks are especially significant because some of the goods we sell on our websites are characterized by rapid technological change, obsolescence and price erosion, and because we sometimes make large purchases of particular types of inventory. In addition, we do not receive warranties on the goods we purchase and, as a result, we have to resell or dispose of any returned goods. Historically, the number of disposed goods (which includes returned goods that we have not resold) has been less than 2% of the goods we have purchased.

To manage our inventory successfully, we need to maintain sufficient buyer demand and sell merchandise for a reasonable financial return. We may miscalculate buyer demand and overpay for the acquired merchandise. In the event that merchandise is not attractive to our buyer base, we may be required to take significant losses resulting from lower sale prices, which could reduce our revenue and margins. For example, under our DoD surplus contract, we are obligated to purchase all DoD surplus property at set prices representing a percentage of the original acquisition cost, which varies depending on the type of surplus property being purchased. When we resell property under the contract, historically we were entitled to approximately 20% of the profits of sale (defined as gross proceeds of sale less allowable operating expenses) and DoD was entitled to approximately 80% of the profits for distributions. For distributions after August 1, 2006, under the surplus contract, we were entitled to 27.5% and DoD was entitled to 72.5%. After November 30, 2006, we will receive between 25% and 30.5% of the profits from sale, based on the results of an audit of the effectiveness of the inventory controls we implement under this contract modification. The scrap contract distribution sharing is unchanged. Historically, the cost of inventory has been approximately 5% of the gross merchandise volume under our profit-sharing model. Occasionally, we are not able to sell our inventory for amounts above its cost and we may incur a loss. As we grow our business, we may choose to increase the amount of merchandise we purchase directly from sellers, thus resulting in increased inventory levels and related risk. Any such increase would require the use of additional working capital and subject us to the additional risk of incurring losses on the sale of that inventory.

We may be unable to adequately protect or enforce our intellectual property rights, which could harm our reputation and negatively impact the growth of our business.

We regard our intellectual property, particularly domain names, copyrights and trade secrets, as critical to our success. We rely on a combination of contractual restrictions and copyright and trade secret laws to protect our proprietary rights, know-how, information and technology. Despite these protections, it may be possible for a third party to copy or otherwise obtain and use our intellectual property without authorization or independently develop similar intellectual property.

We currently are the registered owners of several Internet domain names, including *www.liquidation.com*, *www.govliquidation.com*, *www.liquibiz.com* and *www.goWholesale.com*. We pursue the registration of our domain names in the U.S. and internationally. We currently do not have any patents or registered copyrights, trademarks or service marks, but we are pursuing patents and registration of such intellectual property. Effective patent, copyright, trademark, service mark, trade secret and domain name protection is expensive to maintain and may require litigation. We seek to protect our domain names in an increasing number of jurisdictions and may not be successful in doing so in certain jurisdictions. Our competitors may adopt trade names or domain names similar to ours, thereby impeding our ability to promote our marketplaces and possibly leading to client confusion. In addition, we could face trade name or trademark or service mark infringement claims brought by owners of other registered or unregistered trademarks or service marks, including trademarks or service marks that may incorporate variations of our marketplace names. Any claims related to our intellectual property or client confusion related to our marketplaces could damage our reputation and negatively impact the growth of our business.

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Our inability to use software licensed from third parties or our use of open source software under license terms that interfere with our proprietary rights could disrupt our business.

We use software licensed from third parties, including some software, known as open source software, that we use without charge. We currently use the following open source software: Linux (an operating system), MySQL (database software), PERL (an interpreter) and Apache (a web server), and we may in the future use additional open source software. In the future, these licenses to third party software may not be available on terms that are acceptable to us, or

at all. Our inability to use third-party software could result in disruptions to our business, or delays in the development of future services or enhancements of existing services, which could impair our business. In addition, the terms of certain open source software licenses may require us to provide modified versions of the open source software, which we develop, if any, or any proprietary software that incorporates all or a portion of the open source software, if any, to others on unfavorable license terms that are consistent with the open source license term. If we are required to license our proprietary software in accordance with the foregoing, our competitors and other third parties could obtain access to our intellectual property, which could harm our business.

Assertions that we infringe on intellectual property rights of others could result in significant costs and substantially harm our business and operating results.

Other parties may assert that we have infringed their technology or other intellectual property rights. We use internally developed systems and licensed technology to operate our online auction platform and related websites. Third parties could assert intellectual property infringement claims against us based on our internally developed systems or use of licensed third party technology. Third parties also could assert intellectual property infringement claims against parties from whom we license technology. If we are forced to defend against any infringement claims, whether they are with or without merit or are determined in our favor, we may face costly litigation, diversion of technical and management personnel and/or delays in completion of sales. Furthermore, the outcome of a dispute may be that we would need to change technology, develop non-infringing technology or enter into royalty or licensing agreements. A switch to different technology could cause interruptions in our business. Internal development of a non-infringing technology may be expensive and time-consuming, if we are able to successfully develop such technology at all. Royalty or licensing agreements, if required, may be unavailable on terms acceptable to us, or at all. Incurrence of any of these costs could negatively impact our operating results.

If we do not retain our senior management, we may not be able to achieve our business objectives.

Our future success is substantially dependent on the continued service of our senior management, particularly William P. Angrick, III, our chief executive officer, Jaime Mateus-Tique, our chief operating officer, and Benjamin Brown, chairman of our LSI Technology Advisory Committee and chief technology officer of our Government Liquidation subsidiary. We do not have key-person insurance on any of our officers or employees. The loss of any member of our existing senior management team could damage key seller relationships, result in the loss of key information, expertise or know-how, lead to unanticipated recruitment and training costs and make it more difficult to successfully operate our business and achieve our business goals.

If we are unable to attract and retain skilled employees, we might not be able to sustain our growth.

Our future success depends on our ability to continue to attract, retain and motivate highly skilled employees, particularly employees with sales, marketing, operations and technology expertise. Competition for employees in our industry is intense. We have experienced difficulty from time to time in attracting the personnel necessary to support the growth of our business, and we may experience similar difficulties in the future. If we are unable to attract, assimilate and retain employees with the necessary skills, we may not be able to grow our business and revenue.

Our international operations subject us to additional risks and challenges that could harm our business and our profitability.

We have begun expanding internationally, and in the future we may do so more aggressively. For the fiscal year ended September 30, 2006, international operations accounted for less than 5% of our revenue. International operations subject us to additional risks and challenges, including:

- the need to develop new seller and buyer relationships;
- difficulties and costs of staffing and managing foreign operations;
- changes in and differences between domestic and foreign regulatory requirements;
- price controls and foreign currency exchange rate fluctuations;
- difficulties in complying with export restrictions and import permits;
- reduced protection for intellectual property rights in some countries;
- potentially adverse tax consequences;
- lower per capita Internet usage and lack of appropriate infrastructure to support widespread Internet usage;
- political and economic instability; and
- tariffs and other trade barriers.

We cannot assure you that we will be successful in our efforts in foreign countries. Some of these factors may cause our international costs to exceed our domestic costs of doing business. Failure to adequately address these risks could decrease our profitability and operating results.

We may make acquisitions that require significant resources and could be unsuccessful.

In the future, we may acquire other businesses, products and technologies to complement our current business. We may not be able to identify, negotiate, finance, complete or integrate any future acquisition successfully. Acquisitions involve a number of risks, including possible adverse effects on our operating results, diversion of management's attention, inability to retain key employees of the acquired business and risks associated with unanticipated events or liabilities, some or all of which could disrupt our business and reduce the likelihood that we will receive the anticipated benefits of the acquisition in the amount or the time frame that we expect.

Should we be unable successfully to integrate a new business, we could be required either to dispose of the operation or restructure the operation. In either event, our business could be disrupted and we may not achieve the anticipated benefits of the acquisition. In addition, future transactions could result in potentially dilutive issuances of our equity securities, the incurrence of debt, contingent liabilities or amortization of expenses, or write-offs of goodwill, any of which could harm our financial condition and operating results. Future transactions may also require us to obtain additional financing, which may not be available on favorable terms or at all.

We may need additional financing in the future, which may not be available on favorable terms, if at all.

We may need additional funds to finance our operations, as well as to enhance our services, fund our expansion, respond to competitive pressures or acquire complementary businesses or technologies. However, our business may not generate the cash needed to finance such requirements. If we raise additional funds through the issuance of equity or convertible debt securities, the percentage ownership of our existing stockholders would be reduced, and these securities may have rights, preferences or privileges senior to those of our common stock. If adequate funds are not available or are not available on acceptable terms, our ability to enhance our services, fund our expansion, respond to competitive pressures or take advantage of business opportunities would be significantly limited, and we might need to significantly restrict our operations.

We face legal uncertainties relating to the Internet in general and to the e-commerce industry in particular and may become subject to costly government regulation.

The laws and regulations related to the Internet and e-commerce are evolving. These laws and regulations relate to issues such as user privacy, freedom of expression, pricing, fraud, quality of products and services, taxation, advertising, intellectual property rights and information security. Laws governing issues such as property ownership, copyrights and other intellectual property issues, taxation, libel and defamation, obscenity and personal privacy could also affect our business. Laws adopted prior to the advent of the Internet may not contemplate or address the unique issues of the Internet and related technologies and it is not clear how they will apply. Current and future laws and regulations could increase our cost of doing business and/or decrease the demand for our services.

Our auction business may be subject to a variety of additional costly government regulations.

Many states and other jurisdictions have regulations governing the conduct of traditional “auctions” and the liability of traditional “auctioneers” in conducting auctions, which may apply to online auction services. In addition, certain states have laws or regulations that expressly apply to online auction services. We expect to continue to incur costs in complying with these laws and could be subject to fines or other penalties for any failure to comply with these laws. We may be required to make changes in our business to comply with these laws, which could increase our costs, reduce our revenue, cause us to prohibit the listing of certain items, or otherwise adversely affect our financial condition or operating results.

In addition, the law regarding the potential liability of an online auction service for the activities of its users is not clear. We cannot assure you that users of our websites will comply with our terms and conditions or with laws and regulations applicable to them and their transactions. It is possible that we may be subject to allegations of civil or criminal liability for any unlawful activities conducted by sellers or buyers. Any costs we incur as a result of any such allegations, or as a result of actual or alleged unlawful transactions using our marketplaces, or in our efforts to prevent any such transactions, may harm our opportunities for future revenue growth. In addition, any negative publicity we receive regarding any such transactions or allegations may damage our reputation, our ability to attract new sellers and buyers and our business.

Certain categories of merchandise sold on our marketplaces are subject to government restrictions.

We sell merchandise, such as scientific instruments, information technology equipment and aircraft parts, that is subject to export control and economic sanctions laws, among other laws, imposed by the United States and other governments. Such restrictions include the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions and embargo laws administered by the Office of the Foreign Assets Control Regulations. These restrictions prohibit us from, among other things, selling property to (1) persons or entities that appear on lists of restricted or prohibited parties maintained by the United States or other governments or (2) countries, regimes, or nationals that are the target of applicable economic sanctions or other embargoes. In addition, for specified categories of property sold under our contracts with the DoD, we are required to (1) obtain an end-use certificate from the prospective buyer describing the nature of the buyer’s business, describing the expected disposition and specific end-use of the property, and acknowledging the applicability of pertinent export control and economic sanctions laws and (2) confirm that each buyer has been cleared to purchase export-controlled items.

We may incur significant costs or be required to modify our business to comply with these requirements. If we are alleged to have violated any of these laws or regulations we may be subject to civil and criminal penalties and administrative sanctions, including termination of contracts, forfeiture of profits, suspension of payments, fines, and suspension or debarment from doing business with U.S. federal government agencies. In addition, we could suffer serious harm to our reputation if allegations of impropriety are made against us, whether or not true.

Our business may be harmed if third parties misappropriate our clients’ confidential information.

We retain highly confidential information on behalf of our clients in our systems and databases. Although we maintain security features in our systems, our operations may be susceptible to hacker interception, break-ins and other disruptions. These disruptions may jeopardize the security of information stored in and transmitted through our systems. We may be required to expend significant capital and other resources to protect against such security breaches or to alleviate problems caused by such breaches. These issues are likely to become more difficult as we expand our operations. If any compromise of our security were to occur, we may lose clients and our reputation, business, financial condition and operating results could be harmed by the misappropriation of

confidential client information. In addition, if there is any perception that we cannot protect our clients' confidential information, we may lose the ability to attract new clients and our revenue could decline.

If we fail to comply with increasing levels of regulation relating to privacy, our business could suffer harm.

We are subject to increasing regulation at the federal, state and international levels relating to privacy and the use of personal user information. In addition, several states have proposed or enacted legislation to limit uses of personal information gathered online or require online services to establish privacy policies. Data protection regulations and enforcement efforts may restrict our ability to collect demographic and personal information from users, which could be costly or harm our marketing efforts. Such regulations, along with increased government or private enforcement, may increase the cost of growing our business and require us to expend significant capital and other resources. Our failure to comply with these federal, state and international laws and regulations could subject us to lawsuits, fines, criminal penalties, statutory damages, adverse publicity and other costs could decrease our profitability.

If one or more states successfully assert that we should collect sales or other taxes on the sale of our merchandise or the merchandise of third parties that we offer for sale on our websites, our business could be harmed.

We are currently required to pay sales taxes in all states for shipment of goods from our DoD contracts. We also pay sales or other similar taxes in respect of shipments of other goods into states in which we have a substantial presence. In addition, as we grow our business, any new operation in states in which we currently do not pay sales taxes could subject shipments into such states to state sales taxes under current or future laws.

In November 2004, the federal government passed legislation placing a three-year ban on state and local governments' imposition of new taxes on Internet access or electronic commerce transactions. This ban does not prohibit federal, state or local authorities from collecting taxes on our income or from collecting taxes that are due under existing tax rules. Unless the ban is extended, state and local governments may begin to levy additional taxes on Internet access and electronic commerce transactions upon the legislation's expiration in November 2007. An increase in taxes may make electronic commerce transactions less attractive for merchants and businesses, which could result in a decrease in the level of demand for our services.

Currently, decisions of the U.S. Supreme Court restrict the imposition of obligations to collect state and local sales and use taxes with respect to sales made over the Internet. However, a number of states, as well as the U.S. Congress, have been considering various initiatives that could limit or supersede the Supreme Court's position regarding sales and use taxes on Internet sales. If any of these initiatives resulted in a reversal of the Supreme Court's current position, we could be required to collect sales and use taxes in states other than states in which we currently pay such taxes. A successful assertion by one or more local, state or foreign jurisdictions that the sale of merchandise by us is subject to sales or other taxes, could subject us to material liabilities and increase our costs of doing business. To the extent that we pass such costs on to our clients, could harm our business and decrease our revenue.

Fraudulent activities involving our websites and disputes relating to transactions on our websites may cause us to lose clients and affect our ability to grow our business.

We are aware that other companies operating online auction or liquidation services have periodically received complaints of fraudulent activities of buyers or sellers on their websites, including disputes over the quality of goods and services, unauthorized use of credit card and bank account information and identity theft, potential breaches of system security, and infringement of third-party copyrights, trademarks and trade names or other intellectual property rights. We may receive similar complaints if sellers or buyers trading in our marketplaces are alleged to have engaged in fraudulent or unlawful activity. In addition, we may suffer losses as a result of purchases paid for with fraudulent credit card data even though the associated financial institution approved payment. In the case of disputed transactions, we may not be able to require users of our services to fulfill their obligations to make payments or to deliver goods. We also may receive complaints from buyers about the quality of purchased goods, requests for reimbursement, or communications threatening or commencing legal actions against us. Negative publicity generated as a result of fraudulent conduct by third parties or the failure to satisfactorily settle disputes related to transactions on our websites could damage our reputation, cause us to lose clients and affect our ability to grow our business.

False or defamatory statements transmitted through our services could harm our reputation and affect our ability to attract clients.

The law relating to the liability of online services companies for information carried on or disseminated through their services is currently unsettled. Claims could be made against online services companies under both the U.S. and foreign law for defamation, libel, invasion of privacy, negligence, copyright or trademark infringement, or other theories based on the nature and content of the materials disseminated through their services. Our *goWholesale.com* website allows users to make comments regarding the online auction industry in general and other users and their merchandise in particular. Although all such comments are generated by users and not by us, we are aware that claims of defamation or other injury have been made against other companies operating auction services in the past and could be made in the future against us for comments made by users. If we are held liable for information provided by our users and carried on our service, we could be directly harmed and may be forced to implement measures to reduce our liability. This may require us to expend substantial resources or discontinue certain service offerings, which could negatively affect our operating results. In addition, the increased attention focused upon liability issues as a result of these lawsuits and legislative proposals could harm our reputation and affect our ability to attract clients.

Our stock price has been volatile, and your investment in our common stock could suffer a decline in value.

The market prices of the securities of e-commerce companies have been extremely volatile and have overall declined significantly since early 2000. Broad market and industry factors may adversely affect the market price of our common stock, regardless of our actual operating performance. Factors that could cause fluctuation in the stock price may include, among other things:

- actual or anticipated variations in quarterly operating results;
- changes in financial estimates by us or by a securities analyst who covers our stock;
- publication of research reports about our company or industry;
- conditions or trends in our industry;

- stock market price and volume fluctuations of other publicly traded companies and, in particular, those whose business involves the Internet and e-commerce;
- announcements by us or our competitors of significant contracts, acquisitions, commercial relationships, strategic partnerships or divestitures;
- announcements by us or our competitors of technological innovations, new services or service enhancements;
- announcements of investigations or regulatory scrutiny of our operations or lawsuits filed against us;

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- the passage of legislation or other regulatory developments that adversely affect us, our clients or our industry;
 - additions or departures of key personnel;
 - sales of our common stock, including sales of our common stock by our directors and officers or specific stockholders; and
 - general economic conditions and slow or negative growth of related markets.

Volatility in the market price of shares may prevent investors from being able to sell their shares of common stock at prices they view as attractive. In the past, securities class action litigation has often been instituted against companies following periods of volatility in their stock price. This type of litigation could result in substantial costs and divert our management's attention and resources.

Our costs have increased significantly over our prior fiscal year as a result of operating as a public company.

We have only been operating as a public company for nine months. As a public company, we incur significant legal, accounting and other expenses that we did not incur as a private company. These expenses are associated with our public company reporting requirements and corporate governance requirements, including requirements under the Sarbanes-Oxley Act of 2002, as well as new rules implemented by the SEC, the Public Company Accounting Oversight Board and The Nasdaq Stock Market, or NASDAQ. We expect these rules and regulations to continue to increase our legal and financial compliance costs and to make some activities more time-consuming and costly. As a result, it may be more difficult for us to attract and retain qualified individuals to serve on our board of directors or as executive officers. We cannot predict or estimate the amount of additional costs we may incur as a public company or the timing of such costs.

Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.

We are subject to the periodic reporting requirements of the Securities Exchange Act of 1934, or the Exchange Act. Our disclosure controls and procedures are designed to reasonably assure that information required to be disclosed by us in reports we file or submit under the Exchange Act is accumulated and communicated to management, recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. We believe that any disclosure controls and procedures or internal controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met.

These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements due to error or fraud may occur and not be detected.

Because we have recently become a public company, we have limited experience attempting to comply with public company obligations, including Section 404 of the Sarbanes-Oxley Act of 2002.

As directed by Section 404 of the Sarbanes-Oxley Act of 2002, the SEC has adopted rules requiring public companies to include a report of management on the company's internal controls over financial reporting in their annual reports on Form 10-K. In addition, the public accounting firm auditing a public company's financial statements must attest to and report on management's assessment of the effectiveness of the company's internal controls over financial reporting. These requirements will first apply to our annual report on Form 10-K for our fiscal year ending on September 30, 2007.

We currently do not have an internal audit group, and we will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge. Also, we may discover areas of our internal controls that need improvement. We cannot be certain that any remedial measures we take will ensure that we implement and maintain adequate controls over our financial processes and reporting in the future. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could harm our operating results or cause us to fail to meet our reporting obligations. If we are unable to conclude that we have effective internal controls over financial reporting, or if our independent auditors are unable to provide us with an unqualified report as to the effectiveness of our internal controls over financial reporting as of September 30, 2007 and future year ends as required by Section 404, investors could lose confidence in the reliability of our financial statements, which could result in a decrease in the value of our common stock. Failure to comply with Section 404 could potentially subject us to sanctions or investigations by the SEC, NASDAQ or other regulatory authorities.

Some provisions of our charter, bylaws and Delaware law inhibit potential acquisition bids that you may consider favorable.

Our corporate documents and Delaware law contain provisions that may enable our board of directors to resist a change in control of our company even if a change in control were to be considered favorable by you and other stockholders. These provisions include:

- a staggered board of directors;
- a prohibition on actions by our stockholders by written consent;
- limitations on persons authorized to call a special meeting of stockholders;
- the authorization of undesignated preferred stock, the terms of which may be established and shares of which may be issued without stockholder approval;
- advance notice procedures required for stockholders to nominate candidates for election as directors or to bring matters before an annual meeting of stockholders; and
- the requirement that board vacancies be filled by a majority of our directors then in office.

These provisions could discourage, delay or prevent a transaction involving a change in control of our company. These provisions could also discourage proxy contests and make it more difficult for you and other stockholders to elect directors of your choosing and cause us to take other corporate actions you desire.

Item 1B. Unresolved Staff Comments.

Not Applicable

Item 2. Properties.

	Location	Square Feet	Lease Expiration Date
Corporate Headquarters	Washington, D.C.	13,000	January 31, 2013
Warehouse	Cranbury, New Jersey	49,000	December 31, 2009
Warehouse	North Las Vegas, Nevada	54,000	January 31, 2009
Warehouse	Dallas, Texas	81,000	July 31, 2011
Warehouse	Plainfield, Indiana	94,000	July 31, 2011
Warehouse	Fullerton, California	117,000	Two-thirds of the space will expire on August 31, 2009 and the remaining one-third will expire on July 10, 2011
Warehouse	Sacramento, California	21,000	May 31, 2010
Warehouse	Stafford, England	84,000	Half the space will expire on November 30, 2010, and the remaining half will expire on August 31, 2011
Warehouse	Schwaig, Germany	36,000	Short-term or month to month basis
Headquarters for DoD	Scottsdale, Arizona	11,000	September 30, 2008.

Our servers are housed in data centers in Ashburn, Virginia, which is managed by Equinix, Inc., and in Phoenix, Arizona, which is managed by Sterling Network Services.

Item 3. Legal Proceedings.

From time to time, we may become involved in litigation relating to claims arising in the ordinary course of our business. There are no claims or actions pending or threatened against us that, if adversely determined, would in our judgment have a material adverse effect on us.

Item 4. Submission of Matters to a Vote of Security Holders.

No matters were submitted to a vote of security holders during the quarter ended September 30, 2006.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Price Range of Common Stock

Our common stock has been traded on The NASDAQ Stock Market under the symbol LQDT since February 23, 2006. The following table sets forth the intra-day high and low per share bid price of our common stock as reported by The NASDAQ Stock Market.

Year Ended September 30, 2006	Low	High
Second Quarter	\$ 10.00	\$ 13.70
Third Quarter	\$ 12.24	\$ 19.95
Fourth Quarter	\$ 8.66	\$ 17.11

As of December 20, 2006, there were approximately 3,200 holders of record of our common stock.

Dividend Policy

Since becoming a public company on February 22, 2006, we have not paid cash dividends on our stock and currently anticipate that we will continue to retain any future earnings to finance the growth of our business.

Issuer Purchases of Equity Securities

We did not repurchase any of our equity securities during the fiscal year ended September 30, 2006.

Item 6. Selected Financial Data.

You should read the following selected consolidated financial data together with our consolidated financial statements and the related notes, and with “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” included elsewhere in this Annual Report on Form 10-K. The consolidated statement of operations data for the years ended September 30, 2004, 2005 and 2006 are derived from, and are qualified by reference to, our consolidated financial statements that have been audited by Ernst & Young LLP, an independent registered public accounting firm, and that are included in this Annual Report on Form 10-K. The consolidated statement of operations data for the years ended September 30, 2002 and 2003, and the consolidated balance sheet data as of September 30, 2002, 2003 and 2004 are derived from our audited consolidated financial statements that are not included in this Annual Report on Form 10-K.

	Year ended September 30,				
	2002	2003	2004	2005	2006
(dollars in thousands, except per share data)					
Consolidated Statement of Operations Data:					
Revenue	\$ 44,463	\$ 60,719	\$ 75,869	\$ 89,415	\$ 147,813
Costs and expenses:					
Cost of goods sold (excluding amortization)	4,876	4,481	5,743	6,288	12,160
Profit-sharing distributions	17,717	30,427	39,718	48,952	80,253
Technology and operations	9,849	10,358	12,814	14,696	20,081
Sales and marketing	1,964	3,798	4,586	5,503	8,861
General and administrative	5,673	5,810	6,046	7,397	12,073
Amortization of contract intangibles	2,483	1,862	—	135	813
Depreciation and amortization	408	465	531	586	727
Total costs and expenses	42,970	57,201	69,438	83,557	134,968
Income (loss) from operations	1,493	3,518	6,431	5,858	12,845
Interest income (expense) and other income, net	(169)	(391)	(621)	(570)	430
Income before provision for income taxes	1,324	3,127	5,810	5,288	13,275
Provision for income taxes	—	(351)	(541)	(1,166)	(5,294)
Net income	\$ 1,324	\$ 2,776	\$ 5,269	\$ 4,122	\$ 7,981
Basic earnings per common share	\$ 0.10	\$ 0.19	\$ 0.31	\$ 0.22	\$ 0.33
Basic weighted average shares outstanding	13,561,073	14,428,121	16,865,313	19,038,464	24,080,780
Diluted earnings per common share	\$ 0.07	\$ 0.17	\$ 0.29	\$ 0.18	\$ 0.31
Diluted weighted average shares outstanding	18,107,552	16,124,927	18,280,366	22,598,519	26,087,809
Non-GAAP Financial Measures:					
EBITDA(1)	\$ 4,384	\$ 5,845	\$ 6,962	\$ 6,579	\$ 14,385
Adjusted EBITDA(1)	2,485	3,750	6,115	6,666	15,008
Adjusted profit-sharing distributions(2)	19,616	32,522	40,650	48,952	80,253
Adjusted net income (loss)(2)	\$ (575)	\$ 681	\$ 4,337	\$ 4,122	\$ 7,981
Supplemental Operating Data:					
Gross merchandise volume(3)	\$ 49,209	\$ 72,305	\$ 89,104	\$ 102,210	\$ 173,090
Completed transactions(4)	92,000	123,000	141,000	173,000	194,000
Total registered buyers(5)	69,000	150,000	264,000	386,000	524,000
Total auction participants(6)	404,000	552,000	671,000	848,000	993,000

	As of September 30,				
	2002	2003	2004	2005	2006
(in thousands)					
Consolidated Balance Sheet Data:					
Cash, cash equivalents and short-term investments	\$ 5,654	\$ 10,450	\$ 12,178	\$ 10,378	\$ 66,648
Working capital(7)	(1,683)	3,780	7,021	4,154	54,082
Total assets	11,113	13,715	17,711	26,013	88,038
Total liabilities	10,362	9,984	10,333	14,596	22,286

Redeemable common stock(8)	—	—	324	474	—
Series C preferred stock	—	—	3	3	—
Common stock	12	16	19	19	28
Total stockholders' equity	751	3,731	7,054	10,943	65,752

- (1) EBITDA and adjusted EBITDA are supplemental non-GAAP financial measures. GAAP means generally accepted accounting principles in the United States. EBITDA is equal to net income plus (a) interest expense and other income; (b) provision for income taxes; (c) amortization of contract intangibles; and (d) depreciation and amortization. Our definition of adjusted EBITDA is different from EBITDA because we further adjust EBITDA for: (a) stock based compensation expense; and (b) a portion of the SurplusBid.com acquisition payments, as described below under footnote 2. For a description of our use of EBITDA and adjusted EBITDA and a reconciliation of these non-GAAP financial measures to net income (loss), see the discussion and related table below.
- (2) In June 2001, we acquired certain assets and assumed certain liabilities of SurplusBid.com, Inc. and its affiliates for \$7.5 million, including SurplusBid.com's surplus contract with the DoD. The SurplusBid.com acquisition price was paid over 33 months in accordance with the terms of the purchase agreement. At the same time, we were awarded our current surplus contract with the DoD. Our surplus contract required monthly profit-sharing distributions to the DoD under the contract to be reduced by the amount of the monthly SurplusBid.com acquisition payments. This resulted in a temporary non-recurring reduction in our profit-sharing distributions to the DoD and a significant increase in our net income during the 33 month period from June 2001 to March 2004. The total amount of the SurplusBid.com acquisition payment was recorded as a note payable in our consolidated balance sheet in fiscal 2001, discounted to a present value of approximately \$6.5 million. The discount of approximately \$1 million was accreted as interest expense over the term of the acquisition payments.

As a result, we present two supplemental non-GAAP financial measures, adjusted profit-sharing distributions and adjusted net income, to eliminate the impact of the SurplusBid.com acquisition payments on our operating results. These measures are prepared by increasing the profit-sharing distributions line item in our statements of operations by DoD's portion of the principal payments on the SurplusBid.com note payable made during each period (*i.e.*, approximately 80% of the principal payments). We do not add back the accreted interest portion of the SurplusBid.com acquisition payments when adjusting distributions and net income because the accreted interest is already included in interest expense and other income in our consolidated statements of operations. We believe adjusted profit-sharing distributions and adjusted net income are useful to investors because they eliminate an item that we do not consider indicative of our core operating performance due to its temporary, non-recurring nature. We also believe it is important to provide investors with the same metrics used by management to measure core operating performance.

The table below reconciles profit-sharing distributions and net income to such item's adjusted presentation for the periods presented.

	Year ended September 30,				
	2002	2003	2004	2005(a)	2006(a)
			(in thousands)		
Profit-sharing distributions	\$ 17,717	\$ 30,427	\$ 39,718	\$ 48,952	\$ 80,253
Adjustment	1,899	2,095	932	—	—
Adjusted profit-sharing distributions	\$ 19,616	\$ 32,522	\$ 40,650	\$ 48,952	\$ 80,253
Net income	\$ 1,324	\$ 2,776	\$ 5,269	\$ 4,122	\$ 7,981
Adjustment	(1,899)	(2,095)	(932)	—	—
Adjusted net income (loss)	\$ (575)	\$ 681	\$ 4,337	\$ 4,122	\$ 7,981

- (a) The final SurplusBid.com acquisition payment was made in March 2004 and therefore no adjustments relating to this payment were made in fiscal years 2005 and 2006.
- (3) Gross merchandise volume is the total sales value of all merchandise sold through our marketplaces during a given period.

- (4) Completed transactions represent the number of auctions in a given period from which we have recorded revenue.
- (5) Total registered buyers as of a given date represent the aggregate number of persons or entities who have registered on one of our marketplaces.
- (6) For each auction we manage, the number of auction participants represents the total number of registered buyers who have bid one or more times on that auction, and total auction participants for a given period is the sum of the auction participants in each auction conducted during that period.
- (7) Working capital is defined as current assets minus current liabilities.
- (8) Upon the closing of our initial public offering and the resulting repayment of our \$2.0 million subordinated note, the redemption feature related to these shares of common stock terminated.

We believe EBITDA and adjusted EBITDA are useful to an investor in evaluating our performance for the following reasons:

- The amortization of contract intangibles relates to the amortization of SurplusBid.com's surplus contract with the DoD during fiscal years 2001 to 2003, and amortization of the scrap contract beginning in June 2005. Depreciation and amortization expense primarily relates to property and equipment. Both of these expenses are non-cash charges that have significantly fluctuated over the past five years. As a result, we believe that adding back these non-cash charges to net income (loss) is useful in evaluating the operating performance of our business on a consistent basis from year-to-year.
- As a result of substantial federal net operating loss carryforwards, or NOLs, we did not incur significant income tax expense until fiscal 2005. With the exhaustion of our remaining federal NOLs during fiscal 2005, we recorded federal income tax expense for the first time, thus significantly decreasing our fiscal 2005 net income relative to prior years. Consequently, we believe that presenting a financial measure that adjusts net income for provision for income taxes is useful to investors when evaluating the operating performance of our business.

- During July 2001, we modified the exercise price of 3,402,794 stock options issued to employees. As a result, we are accounting for the modified stock options from the date of modification to the date the stock options are exercised, forfeited or expire unexercised using variable accounting. Under variable accounting, we revalue compensation costs for the stock options at each reporting period based on changes in the intrinsic value of the stock options. We recorded approximately \$85,000, \$87,000 and \$7,000, respectively, in stock compensation expenses based on vesting of the fair value of the options for the years ended September 30, 2004, 2005 and 2006. We will continue to revalue compensation costs for the options based on changes in the fair value of our common stock in future periods. We believe that it is useful to exclude this expense because it results from a one-time event that requires us to record expense that we are not otherwise required to record in connection with new stock options granted during the same time period. In December 2004, the Financial Accounting Standards Board issued SFAS No. 123 (revised 2004), *Share-Based Payment*, or Statement 123(R), which is a revision of SFAS No. 123. Statement 123(R) requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their estimated fair values. Pro forma disclosure is no longer an alternative. We adopted the provisions of Statement 123(R) on October 1, 2005, using the prospective method. Unvested stock based awards issued prior to October 1, 2005, the date that we adopted the provisions of Statement 123(R), were accounted for at the date of adoption using the intrinsic value method originally applied to those awards. We recorded approximately \$616,000 in stock compensation expenses based on the adoption of Statement 123(R) for the year ended September 30, 2006. As a result, we present a financial measure that adjusts net income and EBITDA for the stock compensation expense.
- As discussed above, the requirement under our surplus contract with the DoD that monthly profit-sharing distributions to the DoD be reduced by the monthly SurplusBid.com acquisition payments resulted in a temporary non-recurring reduction in our profit-sharing distributions and a significant increase in our net income and EBITDA during the 33 month period from July 2001 to March 2004. As a result, we believe that it is useful to exclude a portion of these profit-sharing distributions from adjusted EBITDA because the payments will not recur in future periods and were unrelated to our core operations.
- We believe EBITDA and adjusted EBITDA are important indicators of our operational strength and the performance of our business because they provide a link between profitability and operating cash flow.

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- We also believe that analysts and investors use EBITDA and adjusted EBITDA as supplemental measures to evaluate the overall operating performance of companies in our industry.

Our management uses EBITDA and adjusted EBITDA:

- as measurements of operating performance because they assist us in comparing our operating performance on a consistent basis as they remove the impact of items not directly resulting from our core operations;
- for planning purposes, including the preparation of our internal annual operating budget;
- to allocate resources to enhance the financial performance of our business;
- to evaluate the effectiveness of our operational strategies; and
- to evaluate our capacity to fund capital expenditures and expand our business.

EBITDA and adjusted EBITDA as calculated by us are not necessarily comparable to similarly titled measures used by other companies. In addition, EBITDA and adjusted EBITDA: (a) do not represent net income or cash flows from operating activities as defined by GAAP; (b) are not necessarily indicative of cash available to fund our cash flow needs; and (c) should not be considered as alternatives to net income, income from operations, cash provided by operating activities or our other financial information as determined under GAAP.

We prepare adjusted EBITDA by adjusting EBITDA to eliminate the impact of items that we do not consider indicative of our core operating performance. You are encouraged to evaluate these adjustments and the reasons we consider them appropriate for supplemental analysis. As an analytical tool, adjusted EBITDA is subject to all of the limitations applicable to EBITDA. Our presentation of adjusted EBITDA should not be construed as an implication that our future results will be unaffected by unusual or non-recurring items.

The table below reconciles net income to EBITDA and adjusted EBITDA for the periods presented.

	Year ended September 30,				
	2002	2003	2004	2005	2006
	(in thousands)				
Net income	\$ 1,324	\$ 2,776	\$ 5,269	\$ 4,122	\$ 7,981
Interest expense (income) and other income, net	169	391	621	570	(430)
Provision for income taxes	—	351	541	1,166	5,294
Amortization of contract intangibles	2,483	1,862	—	135	813
Depreciation and amortization	408	465	531	586	727
EBITDA	4,384	5,845	6,962	6,579	14,385
Stock compensation expense	—	—	85	87	623
Adjustment(1)	(1,899)	(2,095)	(932)	—	—
Adjusted EBITDA	\$ 2,485	\$ 3,750	\$ 6,115	\$ 6,666	\$ 15,008

- (1) The adjustment amount for each period equals approximately 80% of the principal payments on the SurplusBid.com note payable made during each period, as described above in footnote 2. No payments were made in fiscal years 2005 and 2006.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion should be read in conjunction with our consolidated financial statements and related notes and the information contained under the caption "Selected Consolidated Financial Data" contained elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could vary materially from those indicated, implied, or suggested by these forward-looking statements as a result of many factors, including those discussed under "Risk Factors" and elsewhere in this Annual Report on Form 10-K.

Overview

About us. We are a leading online auction marketplace for wholesale, surplus and salvage assets. We enable buyers and sellers to transact in an efficient, automated online auction environment offering over 500 product categories. Our marketplaces provide professional buyers access to a global, organized supply of wholesale, surplus and salvage assets presented with digital images and other relevant product information. Additionally, we enable our corporate and government sellers to enhance their financial return on excess assets by providing a liquid marketplace and value-added services that integrate sales and marketing, logistics and transaction settlement into a single offering. We organize our products into categories across major industry verticals such as consumer electronics, general merchandise, apparel, scientific equipment, aerospace parts and equipment, technology hardware, and specialty equipment. Our online auction marketplaces are www.liquidation.com, www.govliquidation.com and www.liquibiz.com. We also operate a wholesale industry portal, www.goWholesale.com, that connects advertisers with buyers seeking products for resale and related business services.

We believe our ability to create liquid marketplaces for wholesale, surplus and salvage assets generates a continuous flow of goods from our corporate and government sellers. This flow of goods in turn attracts an increasing number of professional buyers to our marketplaces. During fiscal year 2006, the number of registered buyers grew from approximately 386,000 to approximately 524,000, or 35.7%. During the past three fiscal years, we have conducted over 508,000 online transactions generating approximately \$364 million in gross merchandise volume. Approximately 87% of our initial listings have resulted in a completed cash sale during the past three fiscal years.

Our history. We were incorporated in Delaware in November 1999 as Liquidation.com, Inc. and commenced operations in early 2000. During 2000, we developed our online auction marketplace platform and began auctioning merchandise primarily for small commercial sellers and government agencies. In 2001, we changed our name to Liquidity Services, Inc. In June 2001, we were awarded our first major DoD contract, the Commercial Venture Two or CV2 contract. Under this agreement, we became the exclusive contractor with the Defense Reutilization and Marketing Service, or DRMS, for the sale of usable DoD surplus assets in the United States. In June 2005, we were awarded an additional exclusive contract with the DRMS to manage and sell substantially all DoD scrap property. During 2004, we launched our wholesale industry portal, www.goWholesale.com.

Recent initiatives. We have recently made several new investments to enhance the value of our business. Throughout fiscal 2006, we continued to make investments in our U.S. distribution center operations. In the quarter ended December 31, 2005, we opened a 49,000 square foot distribution facility in Cranbury, New Jersey, in the quarter ended March 31, 2006, we opened a 54,000 square-foot distribution center in North Las Vegas, Nevada and in the quarter ended September 30 2006, we opened a 94,000 square-foot distribution center in Plainfield, Indiana, a suburb of Indianapolis.

During fiscal year 2006, we launched our liquibiz.com marketplace, in conjunction with the award of a contract, in January 2006, by the Defense Reutilization and Marketing Service (DRMS) of the U.S. Department of Defense (DoD) to purchase DoD surplus property located in Germany. We incurred start-up costs during the fiscal year ended September 30, 2006 associated with the DoD Germany contract.

Since becoming a public company in February 2006, we have continued to invest in our administrative infrastructure, including the hiring of additional finance staff and a consultant to assist us with our efforts to fulfill the requirements of the Sarbanes-Oxley Act.

STR Acquisition — Subsequent Event. We completed the acquisition of the wholesale business of STR for approximately \$10.1 million in cash on October 16, 2006. STR is a California-based remarketer of reverse supply chain merchandise, including retail customer returns, overstocks, shelf pulls, and seasonal merchandise, to wholesale buyers. The acquisition of STR strengthens our core business by adding long-standing relationships with traditional discount store chain buyers as well as Fortune 500 commercial sellers. The acquisition also expanded our distribution center network, with the addition of STR's approximately 117,000 square foot leased distribution center in Fullerton, California, a suburb of Los Angeles, as well as 21,000 square feet facility in Sacramento, California, which we believe will provide efficiencies for both domestic and international buyers and sellers.

Our revenue. We generate substantially all of our revenue by retaining a percentage of the proceeds from the sales we manage for our sellers. We offer our sellers two primary transaction models: a profit-sharing model and a consignment model.

- **Profit-sharing model.** Under our profit-sharing model, we purchase inventory from our suppliers and share with them a portion of the profits received from a completed sale in the form of a distribution. Distributions are calculated based on the value received from sale after deducting direct costs, such as sales and marketing, technology and operations and other general and administrative costs. Because we are the primary obligor, and take general and physical inventory risks and credit risk under this transaction model, we recognize as revenue the sale price paid by the buyer upon completion of a transaction. Revenue from our profit-sharing model accounted for approximately 91.0%, 87.9% and 83.1% of our total revenue for the fiscal years ended September 30, 2004, 2005 and 2006, respectively. The merchandise sold under our profit-sharing model accounted for approximately 77.5%, 76.8% and 70.9% of our gross merchandise volume, or GMV, for the fiscal years ended September 30, 2004, 2005 and 2006, respectively.
- **Consignment model.** Under our consignment model, we recognize commission revenue from sales of merchandise in our marketplaces that is owned by others. These commissions, which we refer to as seller commissions, represent a percentage of the sale price the buyer pays upon completion of a transaction. We vary the percentage amount of the seller commission depending on the various value-added services we provide to the seller to facilitate the transaction. For example, we generally increase the percentage amount of the commission if we take possession, handle, ship or provide enhanced product information for the merchandise. We collect the seller commission by deducting the appropriate amount from the sales

proceeds prior to their distribution to the seller after completion of the transaction. Revenue from our consignment model accounted for approximately 5.7%, 5.2% and 7.2% of our total revenue for the fiscal years ended September 30, 2004, 2005 and 2006, respectively. The merchandise sold under our consignment model accounted for approximately 19.7%, 18.5% and 22.4% of our GMV for the fiscal years ended September 30, 2004, 2005 and 2006, respectively.

We collect a buyer premium on substantially all of our transactions under both of our transaction models. Buyer premiums are calculated as a percentage of the sale price of the merchandise sold and are paid to us by the buyer. Buyer premiums are in addition to the price of the merchandise. Under our profit-sharing model, we typically share the proceeds of any buyer premiums with our sellers.

In addition, we occasionally engage in transactions with our sellers in which we purchase merchandise without a profit-sharing component. Under this model, we do not share any profits with the sellers. These transactions generated approximately 3% of our revenue in fiscal years 2005 and 2006.

In fiscal years 2005 and 2006, we generated approximately 2% of our revenue from advertisements on our wholesale industry portals.

Industry trends. We believe there are several industry trends impacting the growth of our business including: (1) the increase in the adoption of the Internet by businesses to conduct e-commerce both in the United States and abroad; (2) product innovation in the retail supply chain that has increased the pace of product obsolescence and, therefore, the supply of surplus assets; (3) the increase in the volume of returned merchandise handled by both online and offline retailers; (4) the increase in government regulations necessitating verifiable recycling and remarketing of surplus assets; and (5) the increase in outsourcing by corporate and government organizations of disposition activities for surplus and end-of-life assets.

Our Seller Agreements

Our DoD agreements. We have four contracts with the DoD pursuant to which we acquire, manage and sell excess property:

- *Surplus contract.* In June 2001, we were awarded the CV2 contract, a competitive-bid exclusive contract under which we acquire, manage and sell all usable DoD surplus personal property turned into the DRMS. Surplus property generally consists of items determined by the DoD to be no longer needed, and not claimed for reuse by, any federal agency, such as computers, electronics, office supplies, scientific and medical equipment, aircraft parts, clothing and textiles. In connection with the award of this surplus contract, we agreed to acquire SurplusBid.com, Inc. and its wholly owned subsidiary Levy Latham Global, LLC, the holder of the predecessor DoD surplus agreement, the Commercial Venture One or CV1 contract. Revenue from our surplus contract (including buyer premiums) accounted for approximately 91.0%, 87.5% and 56.6% of our total revenue for the fiscal years ended September 30, 2004, 2005 and 2006, respectively. The property sold under our surplus contract accounted for approximately 77.5%, 76.5% and 48.3% of our GMV for the fiscal years ended September 30, 2004, 2005 and 2006, respectively. The surplus contract expires in June 2008.
- *Scrap contract.* In June 2005, we were awarded a competitive-bid exclusive contract under which we acquire, manage and sell substantially all scrap property of the DoD turned into the DRMS. Scrap property generally consists of items determined by DoD to have no use beyond their base material content, such as metals, alloys, and building materials. The contract accounted for 0.4% and 26.5% of our revenue and 0.3% and 22.6% of our GMV for the fiscal years ended September 30, 2005 and 2006, respectively. We were required to pay \$5.7 million to the DoD in fiscal 2005 for the right to manage the operations and remarket scrap material in connection with the scrap contract. The contract expires in June 2012, subject to DoD's right to extend it for three additional one-year terms.

Under the surplus property contract, we are obligated to purchase all DoD surplus property at set prices representing a percentage of the original acquisition cost, which varies depending on the type of surplus property being purchased. Under the scrap contract, we acquire scrap property at a per pound price. When we resell property under the contracts, we were initially entitled to approximately 20% of the profits of sale (defined as gross proceeds of sale less allowable operating expenses) and the DoD was entitled to approximately 80% of the profits. We refer to these disbursement payments to DoD as profit-sharing distributions. As a result of these arrangements, we recognize as revenue the gross proceeds from these sales. DoD also reimburses us for actual costs incurred for packing, loading and shipping property under the contracts that we are obligated to pick up from non-DoD locations. On September 12, 2006, we entered into a bilateral contract modification under which the DoD agreed to increase our profit-sharing percentage under the surplus contract in exchange for our agreement to implement additional inventory assurance processes and procedures with respect to the sale of demilitarized property. Under the terms of the contract modification, from August 1, 2006 until November 30, 2006, we were entitled to receive 27.5% of the profits under the surplus contract and the DoD was entitled to receive 72.5%. After November 30, 2006, we are entitled to receive between 25% and 30.5% of the profits, based on the results of an audit of the effectiveness of the inventory controls we implement under the contract modification. Under the scrap contract, we also have a small business performance incentive based on the number of scrap buyers that are small businesses that would allow us to receive up to an additional 2% of the profit sharing distribution.

In January 2005, we were awarded a contract to purchase DoD surplus property located in the United Kingdom. This contract generated less than 1% of our revenue in both fiscal 2005 and 2006. This contract expires in January 2007.

In January 2006, we were awarded a contract to purchase DoD surplus property located in Germany. This contract generated approximately 1% of our revenue in 2006. This contract expires in January 2009.

Our UK MoD agreement. In July 2003, we were awarded a contract to manage and sell surplus property from the United Kingdom Ministry of Defence. This contract generated less than 4% of our revenue in fiscal years 2004, 2005 and 2006. This contract expires in July 2008, subject to the Ministry's right to extend the contract for two additional one-year terms.

Our commercial agreements. During fiscal year 2006, we had over 350 corporate clients who each sold in excess of \$10,000 of wholesale, surplus and salvage assets in our marketplaces. Our agreements with these clients are generally terminable at will by either party.

Key Business Metrics

Our management periodically reviews certain key business metrics for operational planning purposes and to evaluate the effectiveness of our operational strategies, allocation of resources and our capacity to fund capital expenditures and expand our business. These key business metrics include:

Gross merchandise volume. Gross merchandise volume, or GMV, is the total sales value of all merchandise sold through our marketplaces during a given period. We review GMV because it provides a measure of the volume of goods being sold in our marketplaces and thus the activity of those marketplaces. GMV also provides a means to evaluate the effectiveness of investments that we have made and continue to make, including in the areas of customer support, value-added services, product development, sales and marketing, and operations. The GMV of goods sold in our marketplace during fiscal year 2006 totaled \$173.1 million.

Completed transactions. Completed transactions represents the number of auctions in a given period from which we have recorded revenue. Similar to GMV, we believe that completed transactions is a key business metric because it provides an additional measurement of the volume of activity flowing through our marketplaces. During the fiscal year ended September 30, 2006, we completed approximately 194,000 transactions.

Total registered buyers. We grow our buyer base through a combination of marketing and promotional efforts. A person becomes a registered buyer by completing an online registration process on one of our marketplaces. As part of this process, we collect business and personal information, including name, title, company name, business address and contact information, and information on how the person intends to use our marketplaces. Each prospective buyer must also accept our terms and conditions of use. Following the completion of the online registration process, we verify each prospective buyer's e-mail address and confirm that the person is not listed on any banned persons list maintained internally or by the U.S. federal government. After the verification process, which is completed generally within 24 hours, the registration is approved and activated and the prospective buyer is added to our registered buyer list.

Total registered buyers as of a given date represents the aggregate number of persons or entities who have registered on one of our marketplaces. We use this metric to evaluate how well our marketing and promotional efforts are performing. Total registered buyers excludes duplicate registrations, buyers who are suspended from utilizing our marketplaces and those buyers who have voluntarily removed themselves from our registration database. In addition, if we become aware of registered buyers that are no longer in business, we remove them from our database. As of September 30, 2006, we had approximately 524,000 registered buyers.

Total auction participants. For each auction we manage, the number of auction participants represents the total number of registered buyers who have bid one or more times in that auction. As a result, a registered buyer who bids, or participates, in more than one auction is counted as an auction participant in each auction in which he or she participates. Thus, total auction participants for a given period is the sum of the auction participants in each auction conducted during that period. We use this metric to allow us to compare our online auction marketplaces to our competitors, including other online auction sites and traditional on-site auctioneers. In addition, we measure total auction participants on a periodic basis to evaluate the activity level of our base of registered buyers and to measure the performance of our marketing and promotional efforts. For the fiscal year ended September 30, 2006, approximately 993,000 total auction participants participated in auctions on our marketplaces.

Critical Accounting Estimates

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities. A "critical accounting estimate" is one which is both important to the portrayal of our financial condition and results and requires management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. We continuously evaluate our critical accounting estimates. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Revenue recognition. We recognize revenue in accordance with the provisions of Staff Accounting Bulletin No. 104, *Revenue Recognition*. For transactions in our online marketplaces, which generate substantially all of our revenue, we recognize revenue when all of the following criteria are met:

- a buyer submits the winning bid in an auction and, as a result, evidence of an arrangement exists and the sale price has been determined;
- title has passed to a buyer and the buyer has assumed risks and rewards of ownership;
- for arrangements with an inspection period, the buyer has received the merchandise and has not notified us within that period that it is dissatisfied with the merchandise; and
- collection is reasonably assured.

Substantially all of our sales are recorded subsequent to payment authorization being received, utilizing credit cards, wire transfers and PayPal, an Internet based payment system, as methods of payments. As a result, we are not subject to significant collection risk, as goods are generally not shipped before payment is received.

Revenue is also evaluated in accordance with EITF 99-19, *Reporting Revenue Gross as a Principal Versus Net as an Agent*, for reporting revenue of gross proceeds as the principal in the arrangement or net of commissions as an agent. In arrangements in which we are deemed to be the primary obligor, bear physical and general inventory risk, and credit risk, we recognize as revenue the gross proceeds from the sale, including buyer's premiums. Arrangements in which we act as an agent or broker on a consignment basis, without taking general or physical inventory risk, revenue is recognized based on the sales commissions that are paid to us by the sellers for utilizing our services; in this situation, sales commissions represent a percentage of the gross proceeds from the sale that the seller pays to us upon completion of the transaction.

We have evaluated our revenue recognition policy related to sales under our profit-sharing model and determined it is appropriate to account for these sales on a gross basis using the criteria outlined in EITF 99-19. The following factors were most heavily relied upon in our determination:

- We are the primary obligor in the arrangement.
- We are the seller in substance and in appearance to the buyer; the buyer contacts us if there is a problem with the purchase. Only we and the buyer are parties to the sales contract and the buyer has no recourse to the supplier. If the buyer has a problem, he or she looks to us, not the supplier.
- The buyer does not and cannot look to the supplier for fulfillment or for product acceptability concerns.
- We have general inventory risk.
- We take title to the inventory upon paying the amount set forth in the contract with the supplier. Such amount is generally a percentage of the supplier's original acquisition cost and varies depending on the type of the inventory purchased.

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- We are at risk of loss for all amounts paid to the supplier in the event the property is damaged or otherwise becomes unsaleable. In addition, as payments made for inventory are excluded from the calculation for the profit-sharing distribution under our DoD contracts, we effectively bear inventory risk for the full amount paid to acquire the property (*i.e.*, there is no sharing of inventory risk).

Valuation of goodwill and other intangible assets. In accordance with Statement of Financial Accounting Standards (SFAS) 141, *Business Combinations*, we identify and value intangible assets that we acquire in business combinations, such as customer arrangements, customer relationships and non-compete agreements, that arise from contractual or other legal rights or that are capable of being separated or divided from the acquired entity and sold, transferred, licensed, rented or exchanged. The fair value of identified intangible assets is based upon an estimate of the future economic benefits expected to result from ownership, which represents the amount at which the assets could be bought or sold in a current transaction between willing parties, that is, other than in a forced or liquidation sale.

In accordance with SFAS No. 142, *Goodwill and Other Intangible Assets*, we test our goodwill and other intangible assets for impairment annually or more frequently if events or circumstances indicate impairment may exist. Examples of such events or circumstances could include a significant change in business climate or a loss of significant customers. We apply a two-step fair value-based test to assess goodwill for impairment. The first step compares the fair value of a reporting unit to its carrying amount, including goodwill. If the carrying amount of the reporting unit exceeds its fair value, the second step is then performed. The second step compares the carrying amount of the reporting unit's goodwill to the fair value of the goodwill. If the fair value of the goodwill is less than the carrying amount, an impairment loss would be recorded in our statements of operations. Intangible assets with definite lives are amortized over their estimated useful lives and are also reviewed for impairment if events or changes in circumstances indicate that their carrying amount may not be realizable.

Our management makes certain estimates and assumptions in order to determine the fair value of net assets and liabilities, including, among other things, an assessment of market conditions, projected cash flows, cost of capital and growth rates, which could significantly impact the reported value of goodwill and other intangible assets. Estimating future cash flows requires significant judgment, and our projections may vary from cash flows eventually realized. The valuations employ a combination of present value techniques to measure fair value, corroborated by comparisons to estimated market multiples. These valuations are based on a discount rate determined by our management to be consistent with industry discount rates and the risks inherent in our current business model.

We cannot predict the occurrence of certain future events that might adversely affect the reported value of goodwill and other intangible assets, which totaled \$8.6 million at September 30, 2006. Such events may include strategic decisions made in response to economic and competitive conditions, the impact of the economic environment on our base of buyers and sellers or material negative changes in our relationships with material customers.

Income taxes. We account for income taxes in accordance with SFAS No. 109, *Accounting for Income Taxes*. This statement requires an asset and liability approach for measuring deferred taxes based on temporary differences between the financial statement and income tax bases of assets and liabilities existing at each balance sheet date using enacted tax rates for the years in which the taxes are expected to be paid or recovered. A valuation allowance is provided to reduce the deferred tax assets to a level that we believe will more likely than not be realized. The resulting net deferred tax asset reflects management's estimate of the amount that will be realized.

We provide for income taxes based on our estimate of federal and state tax liabilities. These estimates include, among other items, effective rates for state and local income taxes, estimates related to depreciation and amortization expense allowable for tax purposes, and the tax deductibility of certain other items. Our estimates are based on the information available to us at the time we prepare the income tax provision. We generally file our annual income tax returns several months after our fiscal year-end. Income tax returns are subject to audit by federal, state and local governments, generally years after the returns are filed. These returns could be subject to material adjustments or differing interpretations of the tax laws.

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Stock-based compensation. In December 2004, the Financial Accounting Standards Board issued SFAS No. 123 (revised 2004), *Share-Based Payment* (Statement 123(R)), which is a revision of SFAS No. 123. Statement 123(R) requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their estimated fair values. Pro forma disclosure is no longer an alternative. We adopted the provisions of Statement 123(R) on October 1, 2005, using the prospective method. Unvested stock-based awards issued prior to October 1, 2005 and disclosed in our September 30, 2005 consolidated financial statements using the minimum value method (rather than the estimated fair value using the Black-Scholes option pricing model) were accounted for at the date of adoption using the intrinsic value method originally applied to those awards. Therefore, in the future, we will not have any compensation expense related to these awards.

As permitted by SFAS No. 123, prior to October 1, 2005, we accounted for share-based payments to employees using the intrinsic value method and, as such, recognized no compensation cost when employee stock options were granted with exercise prices equal to the fair value of the shares on the date of grant. Accordingly, the adoption of Statement 123(R)'s fair value method may have a significant impact on our results of operations, although we believe that it will have no impact on our overall financial position. The impact of adoption of Statement 123(R) cannot be predicted at this time because it will depend significantly on levels of share-based payments granted in the future.

The above list is not intended to be a comprehensive list of all of our accounting estimates. In many cases, the accounting treatment of a particular transaction is specifically dictated by GAAP, with little need for management's judgment in their application. There are also areas in which management's judgment in selecting any available alternative would not produce a materially different result. See our audited financial statements and related notes, which contain accounting policies and other disclosures required by GAAP.

Components of Revenue and Expenses

Revenue. We generate substantially all of our revenue from sales of merchandise held in inventory and by retaining a percentage of the proceeds from the sales. Our revenue recognition practices are discussed in more detail in the section above entitled "Critical Accounting Estimates."

Cost of goods sold (excluding amortization). Cost of goods sold includes the costs of purchasing and transporting property for auction, as well as credit card transaction fees.

Profit-sharing distributions. Our two primary contracts with the DoD are structured as profit-sharing arrangements in which we purchase and take possession of all goods we receive from the DoD at a contractual percentage of the original acquisition cost of those goods. After deducting allowable operating expenses, we disburse to the DoD on a monthly basis a percentage of the profits of the aggregate monthly sales. We retain the remaining percentage of these profits after the DoD's disbursement. We refer to these disbursement payments to DoD as profit-sharing distributions.

Technology and operations. Technology expenses consist primarily of personnel costs related to our programming staff who develop and deploy new marketplaces, such as *liquibiz.com*, and continuously enhance existing marketplaces. These personnel also develop and upgrade the software systems that support our operations, such as sales processing. Because our marketplaces and support systems require frequent upgrades and enhancements to maintain viability, we have determined that the useful life for substantially all of our internally developed software is less than one year. As a result, we expense these costs as incurred.

Operations expenses consist primarily of operating costs, including buyer relations, shipping logistics and distribution center operating costs.

Sales and marketing. Sales and marketing expenses include the cost of our sales and marketing personnel as well as the cost of marketing and promotional activities. These activities include online marketing campaigns such as paid search advertising.

General and administrative. General and administrative expenses include all corporate and administrative functions that support our operations and provide an infrastructure to facilitate our future growth. Components of these expenses include executive management and staff salaries, bonuses and related taxes and employee benefits; travel; headquarters rent and related occupancy costs; and legal and accounting fees. The salaries, bonus and employee benefits costs included as general and administrative expenses are generally more fixed in nature than our operating expenses and do not vary directly with the volume of merchandise sold through our marketplaces. We anticipate that we will also incur additional employee salaries and related expenses, professional service fees, and insurance costs necessary to continue to meet the requirements of being a public company.

Amortization of contract intangibles. Amortization of contract intangibles expense for fiscal years 2001 to 2003 consists primarily of the amortization expenses resulting from the costs related to our procurement of SurplusBid.com and its DoD surplus contract, CV1. We acquired this contract in July 2001 and amortized the related intangible assets on a straight line basis over the remaining 24 month term of the contract.

We were awarded our DoD scrap contract during June 2005. This contract required us to purchase the rights to operate the scrap operations of the DoD during the seven year base term of the contract. The intangible asset created from the \$5.7 million purchase is being amortized over 84 months on a straight-line basis. The amortization period is correlated to the base term of the contract, exclusive of renewal periods.

Depreciation and amortization. Depreciation and amortization expenses consist primarily of the depreciation and amortization of amounts recorded in connection with the purchase of furniture, fixtures and equipment.

Interest income and expense and other income, net. Interest income and expense and other income, net consists primarily of interest income on cash and short-term investments and interest expense on borrowings under our long-term debt; interest expense associated with warrants to purchase our common stock that were issued to, among others, the lender of our subordinated debt financing in 2003, realized gains or losses on short-term investments, and losses on the early extinguishment of debt.

Income taxes. Prior to fiscal 2002, we incurred losses from our operations and, as a result, did not incur significant liabilities for income taxes. While we generated NOLs during this time, we did not record a deferred tax asset for these NOLs or any other deferred items because of the uncertainty of their realization. We utilized these NOLs through fiscal 2004 to offset substantially all of the federal income taxes we would have otherwise owed. We continued to owe state income taxes during these periods. At September 30, 2004, we had utilized a significant portion of our federal NOLs. During fiscal year 2005, we exhausted our remaining federal NOLs and had an effective income tax rate of approximately 22%. During fiscal year 2006, we had an effective income tax rate of approximately 40%. We estimate that our future effective income tax rate will be approximately 40%.

Results of Operations

The following table sets forth, for the periods indicated, selected statement of operations data expressed as a percentage of revenue.

	Year ended September 30,		
	2004	2005	2006
Revenue	100.0%	100.0%	100.0%
Costs and expenses:			
Cost of goods sold (excluding amortization)	7.6	7.0	8.2
Profit-sharing distributions	52.4	54.7	54.3
Technology and operations	16.9	16.4	13.6
Sales and marketing	6.0	6.2	6.0
General and administrative	8.0	8.3	8.2
Amortization of contract intangibles	—	0.2	0.6
Depreciation and amortization	0.7	0.7	0.5
Total costs and expenses	91.6	93.5	91.4
Income from operations	8.4	6.5	8.6
Interest expense and other income, net	(0.8)	(0.6)	0.3
Income before provision for income taxes	7.6	5.9	8.9
Provision for income taxes	(0.7)	(1.3)	(3.5)
Net income	6.9%	4.6%	5.4%

Year Ended September 30, 2006 Compared to Year Ended September 30, 2005

Revenue. Revenue increased \$58.4 million, or 65.3%, to \$147.8 million for the year ended September 30, 2006 from \$89.4 million for the year ended September 30, 2005. This increase was primarily due to a 51.3% increase in the average value of our transactions resulting from product mix, lotting and merchandising strategies, and buyer demand, as well as an increase in the number of completed transactions through our online auction marketplaces. During the same period, the number of completed transactions increased from approximately 173,000 to 194,000, or 11.9%. The amount of gross merchandise volume transacted through our marketplaces increased \$70.9 million, or 69.3%, to \$173.1 million for the year ended September 30, 2006 from \$102.2 million for the year ended September 30, 2005. We believe this increase is attributable to our investment in our sales and marketing organization, as well as increased market acceptance by corporate sellers and professional buyers of our online marketplaces as an efficient channel to auction and purchase wholesale, surplus and salvage assets. In addition, our scrap contract, which began operations in September 2005, and generated 26.5% of our revenue and 22.6% of our gross merchandise volume for the fiscal year ended September 30, 2006, also contributed to the increase in revenue. We also benefited from our ability to more effectively market assets to potential buyers as we gained transaction experience and industry knowledge in the vertical product segments auctioned through our marketplaces. Our marketing efforts resulted in an approximate 35.7% increase in registered buyers to approximately 524,000 at September 30, 2006 from approximately 386,000 at September 30, 2005.

Cost of goods sold (excluding amortization). Cost of goods sold (excluding amortization) increased \$5.9 million, or 93.4%, to \$12.2 million for the year ended September 30, 2006 from \$6.3 million for the year ended September 30, 2005, primarily due to the increase in revenue. As a percentage of revenue, cost of goods sold (excluding amortization) increased to 8.2% in fiscal 2006 compared to 7.0% in fiscal 2005, primarily due to an increase in merchandise we purchased for our own account and sold on *Liquidation.com*.

Profit-sharing distributions. Profit-sharing distributions increased \$31.3 million, or 63.9%, to \$80.2 million for the year ended September 30, 2006 from \$48.9 million for the year ended September 30, 2005, which was primarily due to an increase in revenue from sellers utilizing our profit-sharing model, such as the DoD, as well as the addition of the DoD scrap contract in September of 2005. As a percentage of revenue, profit-sharing distributions decreased to 54.3% in fiscal 2006 from 54.7% in fiscal 2005. This decrease is a result of faster growth in our commercial business, where most of our sellers have adopted our consignment model. Revenues from our consignment model have increased to 7.2% of total revenue for the year ended September 30, 2006 from 5.2% for the year ended September 30, 2005.

Technology and operations expenses. Technology and operations expenses increased \$5.4 million, or 36.6%, to \$20.1 million for the year ended September 30, 2006 from \$14.7 million for the year ended September 30, 2005. As a percentage of revenue, these expenses decreased to 13.6% in fiscal 2006 from 16.4% in fiscal 2005. The increase was primarily due to the addition of 75 technology and operations personnel needed to support the increased volume of transactions and merchandise discussed above. The decrease as a percentage of revenue is primarily the result of operating efficiencies gained as fixed costs, such as programming staff, were spread over a larger revenue base.

Sales and marketing expenses. Sales and marketing expenses increased \$3.4 million, or 61.0%, to \$8.9 million for the year ended September 30, 2006 from \$5.5 million for the year ended September 30, 2005. The increase was primarily due to our hiring of 20 additional sales and marketing personnel and \$1.3 million in increased expenditures on marketing and promotional activities across our marketplaces. As a percentage of revenue, these expenses were consistent at 6.0% in fiscal 2006 and 6.2% in fiscal 2005.

General and administrative expenses. General and administrative expenses increased \$4.7 million, or 63.2%, to \$12.1 million for the year ended September 30, 2006 from \$7.4 million for the year ended September 30, 2005. The increase was primarily due to (1) our DoD scrap contract resulting in \$1.6 million of additional general and administrative expenses, (2) costs of \$1.3 million related to additional accounting, legal, insurance, compliance and other expenses related to being a public company, (3) expenses of \$0.6 million related to the adoption of FAS 123(R) and (4) costs of \$1.2 million for executive and administrative staff to support our growth and the requirements of being a public company. As a percentage of revenue, these expenses were consistent at 8.2% in fiscal 2006 and 8.3% in fiscal 2005.

Amortization of contract intangibles. Amortization of contract intangibles increased \$0.7 million, to \$0.8 million for the year ended September 30, 2006, from \$0.1 million for the year ended September 30, 2005, as a result of our DoD scrap contract award during June 2005. This contract required us to purchase the rights to operate the scrap operations of the DoD during the seven year base term of the contract. The intangible asset created from the \$5.7 million purchase is being amortized over 84 months on a straight line basis, which began in August 2005.

Depreciation and amortization expenses. Depreciation and amortization expenses increased \$0.1 million, or 24.3%, to \$0.7 million for the fiscal year ended September 30, 2006 from \$0.6 million for the year ended September 30, 2005. This increase was due primarily to additional depreciation expense resulting from the purchase of \$2.0 million of property and equipment during fiscal year ended September 30, 2006.

Interest income and expense and other income, net. Interest income and expense and other income, net, of \$0.4 million of income for the year ended September 30, 2006 changed by \$1.0 million from \$0.6 million of expense for the year ended September 30, 2005. This change is a result of the repayment in February 2006 of the \$2.4 million indebtedness associated with our senior credit facility as well as our \$2.0 million subordinated note payable, following the completion of our initial public offering and invested the remaining proceeds from our initial public offering.

Provision for income tax expense. Income tax expense increased \$4.1 million to \$5.3 million for the year ended September 30, 2006 from \$1.2 million for the year ended September 30, 2005, primarily due to the increase in income before provision for income taxes and the exhaustion of our remaining federal NOLs during the year ended September 30, 2005.

Net income. Net income increased \$3.9 million, or 93.6%, to \$8.0 million for the year ended September 30, 2006 from \$4.1 million for the year ended September 30, 2005. As a percentage of revenue, net income increased to 5.4% in the year ended September 30, 2006 from 4.6% in the year ended September 30, 2005. The increase was due to the result of our growth in gross merchandise volume, while leveraging our fixed expenses.

Year Ended September 30, 2005 Compared to Year Ended September 30, 2004

Revenue. Revenue increased \$13.5 million, or 17.9%, to \$89.4 million for the year ended September 30, 2005 from \$75.9 million for the year ended September 30, 2004. This increase was primarily due to an increase in the number of completed transactions through our online auction marketplaces. The number of completed transactions increased from approximately 141,000 to 173,000, or 22.9%, in the same period. The amount of gross merchandise volume transacted through our marketplaces increased \$13.1 million, or 14.7%, to \$102.2 million for the year ended September 30, 2005 from \$89.1 million for the year ended September 30, 2004. We believe this increase is attributable to our investment in our sales and marketing organization, as well as increased market acceptance by corporate sellers and professional buyers of our online marketplaces as an efficient channel to auction and purchase wholesale, surplus and salvage assets. We also benefited from our ability to more effectively market offered assets to potential buyers as we gained transaction experience and industry knowledge in the vertical product segments auctioned through our marketplaces. Our marketing efforts resulted in an approximate 46.2% increase in registered buyers to approximately 386,000 at September 30, 2005 from approximately 264,000 at September 30, 2004. In addition, we believe we sold more surplus goods for existing sellers in 2005 as compared to 2004 because we demonstrated enhanced sales values and operational efficiencies.

Cost of goods sold (excluding amortization). Cost of goods sold (excluding amortization) increased \$0.6 million, or 9.5%, to \$6.3 million for the year ended September 30, 2005 from \$5.7 million for the year ended September 30, 2004, primarily due to the increase in revenue. As a percentage of revenue, cost of goods sold (excluding amortization) decreased to 7.0% in fiscal 2005 compared to 7.6% in fiscal 2004, primarily due to a decrease in credit card processing fees.

Profit-sharing distributions. Profit-sharing distributions increased \$9.2 million, or 23.2%, to \$48.9 million for the year ended September 30, 2005 from \$39.7 million for the year ended September 30, 2004, which was primarily due to an increase in revenue from sellers utilizing our profit-sharing model, such as the DoD. As a percentage of revenue, profit-sharing distributions increased to 54.7% in fiscal 2005 from 52.4% in fiscal 2004. As described above in "Non-GAAP Financial Measures," the increase as a percentage of revenue was due primarily to the reduction of actual profit-sharing distributions paid to DoD being reduced during the 33 month period ended March 2004 as a result of our acquisition of SurplusBid.com in June 2001. Profit-sharing distributions during the last six months of fiscal 2004 and throughout fiscal 2005 were not affected by our SurplusBid.com acquisition and, therefore, we experienced a comparative increase between 2004 and 2005 in profit-sharing distributions as a percentage of revenue.

Technology and operations expenses. Technology and operations expenses increased \$1.9 million, or 14.7%, to \$14.7 million for the year ended September 30, 2005 from \$12.8 million for the year ended September 30, 2004. As a percentage of revenue, these expenses decreased to 16.4% in fiscal 2005 from 16.9% in fiscal 2004. The increase was primarily due to the addition of 12 operations personnel needed to support the increased volume of transactions and merchandise discussed above. The decrease as a percentage of revenue is primarily the result of operating efficiencies gained as fixed costs, such as programming staff, were spread over a larger revenue base.

Sales and marketing expenses. Sales and marketing expenses increased \$0.9 million, or 20.0%, to \$5.5 million for the year ended September 30, 2005 from \$4.6 million for the year ended September 30, 2004. As a percentage of revenue, these expenses increased to 6.2% in fiscal 2005 from 6.0% in fiscal 2004. The increase was primarily due to the addition of seven additional sales and marketing personnel and \$0.4 million in increased expenditures on marketing and promotional activities across our marketplaces.

General and administrative expenses. General and administrative expenses increased \$1.4 million, or 22.3%, to \$7.4 million for the year ended September 30, 2005 from \$6.0 million for the year ended September 30, 2004. As a percentage of revenue, these expenses increased to 8.3% in fiscal 2005 from 8.0% in fiscal 2004. The increase was primarily due to: (1) the addition of three employees in our general and administrative headcount to support our growth and to prepare our company to meet the additional requirements of being a public company; and (2) costs of \$0.3 million related to our procurement of the DoD scrap contract. The remaining increase was due to increases in various general and administrative expenses to support the growth in our operations.

Amortization of contract intangibles. Amortization of contract intangibles was \$0.1 million for the year ended September 30, 2005 as a result of our DoD scrap contract award during June 2005. This contract required us to purchase the rights to operate the scrap operations of the DoD during the seven year base term of the contract. The intangible asset created from the \$5.7 million purchase is being amortized over 84 months on a straight line basis over 84 months, which began in August 2005. Amortization of contract intangibles for the year ended September 30, 2004 was \$0.

Depreciation and amortization expenses. Depreciation and amortization expenses increased \$0.1 million, or 10.4%, to \$0.6 million for the fiscal year ended September 30, 2005 from \$0.5 million for the year ended September 30, 2004. This increase was due primarily to additional depreciation expense resulting from the purchase of \$0.5 million of property and equipment during fiscal year ended September 30, 2005.

Interest expense and other income, net. Interest expense and other income, net remained constant at \$0.6 million for the years ended September 30, 2005 and September 30, 2004.

Provision for income tax expense. Income tax expense increased \$0.6 million to \$1.1 million for the year ended September 30, 2005 from \$0.5 million for the year ended September 30, 2004, primarily due to the increase in income before provision for income taxes and the exhaustion of our remaining federal NOLs during the year ended September 30, 2005.

Net income. Net income decreased \$1.2 million, or 21.8%, to \$4.1 million for the year ended September 30, 2005 from \$5.3 million for the year ended September 30, 2004. The decrease was due to the result of items discussed above.

Liquidity and Capital Resources

Historically, our primary cash needs have been working capital (including capital used for inventory purchases), which we have funded primarily through cash generated from operations. As of September 30, 2006, we had approximately \$54.3 million in cash and cash equivalents, \$12.3 million in short-term investments and \$5.4 million available under our \$5.5 million senior credit facility.

Substantially all of our sales are recorded subsequent to receipt of payment authorization, utilizing credit cards, wire transfers and PayPal, an Internet based payment system, as methods of payments. As a result, we are not subject to significant collection risk, as goods are generally not shipped before payment is received.

Changes in Cash Flows: 2006 Compared to 2005

Net cash provided by operating activities increased \$11.6 million to \$17.7 million for the year ended September 30, 2006 from \$6.1 million for the year ended September 30, 2005. For the year ended September 30, 2006, net cash provided by operating activities primarily consisted of net income of \$8.0 million, depreciation and amortization expense of \$1.5 million, stock compensation expense of \$0.6 million, and an increase in accounts payable, accrued expenses and other liabilities of \$12.2 million, offset in part by an increase in accounts receivable, inventory and prepaid expenses and other assets of \$4.7 million. For the year ended September 30, 2005, net cash provided by operating activities primarily consisted of net income of \$4.1 million, depreciation and amortization expense of \$0.7 million and an increase in accrued expenses and other liabilities of \$1.8 million, offset in part by net other expenses of \$0.4 million and a net increase in accounts receivable, inventory and prepaid assets of \$0.1 million.

Net cash used in investing activities was \$14.3 million for the year ended September 30, 2006 and \$3.2 million for the year ended September 30, 2005. Net cash used in investing activities in fiscal 2006 consisted primarily of net purchases of short-term investments of \$12.2 million, capital expenditures of \$2.0 million for purchases of equipment and leasehold improvements, and \$0.1 million for intangible assets. Net cash used in investing activities in fiscal 2005 consisted primarily of \$5.7 million for the purchase of the rights to operate the scrap operations of the DoD as required under the DoD scrap contract, \$3.8 million for the purchase of Wholesale411.com and the 3.1% minority interest in one of our subsidiaries, and capital expenditures of \$0.5 million for purchases of equipment, offset by the net proceeds from short-term investments of \$6.8 million.

Net cash provided by financing activities was \$40.5 million for the year ended September 30, 2006 and \$2.0 million for the year ended September 30, 2005. Net cash provided by financing activities in fiscal 2006 consisted primarily of net proceeds from the initial public offering of \$44.0 million and \$1.0 million from the sale of common stock issued upon option exercises, offset by the net repayment of debt and capital leases of \$4.5 million. Net cash provided by financing activities in fiscal 2005 primarily reflected \$2.4 million in borrowings under our senior credit facility and \$0.2 million from the sale of common stock issued upon option exercises. These amounts were offset by \$0.5 million of common stock repurchases and \$0.1 million of payments made on notes payable and capital leases.

Changes in Cash Flows: 2005 Compared to 2004

Net cash provided by operating activities increased \$0.5 million to \$6.1 million for the year ended September 30, 2005 from \$5.6 million for the year ended September 30, 2004. For the year ended September 30, 2005, net cash provided by operating activities primarily consisted of net income of \$4.1 million, depreciation and amortization expense of \$0.7 million and an increase in accrued expenses and other liabilities of \$1.8 million, offset in part by net other expenses of \$0.4 million and a net increase in accounts receivable, inventory and prepaid assets of \$0.1 million. For the year ended September 30, 2004, net cash provided by operating activities primarily consisted of net income of \$5.3 million, depreciation and amortization expense of \$0.5 million, net other expenses of \$0.3 million and an increase in accounts payable and other liabilities of \$1.6 million, offset in part by an increase in accounts receivable, inventory and prepaid assets of \$2.1 million.

Net cash used in investing activities was \$3.2 million for the year ended September 30, 2005 and \$3.0 million for the year ended September 30, 2004. Net cash used in investing activities in fiscal 2005 consisted primarily of \$5.7 million for the purchase of the rights to operate the scrap operations of the DoD as required under the DoD scrap contract, \$3.8 million for the purchase of Wholesale411.com and the 3.1% minority interest in one of our subsidiaries, and capital expenditures of \$0.5 million for purchases of equipment, offset by the net proceeds from short-term investments of \$6.8 million. Net cash used in investing activities in 2004 consisted primarily of net purchases of short-term investments of \$2.6 million and capital expenditures of \$0.4 million for purchases of equipment.

Net cash provided by financing activities was \$2.0 million for the year ended September 30, 2005 and net cash used in financing activities was \$3.5 million for the year ended September 30, 2004. Net cash provided by financing activities in fiscal 2005 primarily reflected \$2.4 million in borrowings under our senior credit facility and \$0.2 million from the sale of common stock issued upon option exercises. These amounts were offset by \$0.5 million of common stock repurchases and \$0.1 million of payments made on notes payable and capital leases. Net cash used in financing activities in fiscal 2004 reflected \$19.7 million from the sale of our Series C preferred stock and \$0.3 million from the sale of common stock issued upon option exercises, which was offset by a \$20.2 million special dividend to holders of our capital stock, and the repurchase of the remaining outstanding shares of our Series A and B preferred stock for \$1.8 million. In addition, we made principal payments on notes payable and capital leases of \$1.4 million and \$0.1 million of repayments made on capital lease obligations. The proceeds from the sale of our Series C preferred stock were used to pay the special dividend to holders of our capital stock. We did not use our operating cash flow to fund the payment of this dividend.

Capital Expenditures. Our capital expenditures consist primarily of computers and purchased software, office equipment, furniture and fixtures, and leasehold improvements. The timing and volume of such capital expenditures in the future will be affected by the addition of new customers or expansion of existing customer relationships. We expect capital expenditures to range from \$1.0 million to \$1.5 million in the fiscal year ending September 30, 2007. We intend to fund those expenditures primarily from operating cash flows. Our capital expenditures for the year ended September 30, 2006 were \$2.0 million. As of September 30, 2006, we had no outstanding commitments for capital expenditures.

Senior credit facility. We maintain a \$5.5 million senior credit facility due July 2007. The senior credit facility bears an annual interest rate of LIBOR plus 2.25%. As of September 30, 2006, we had no outstanding indebtedness under our senior credit facility. As of September 30, 2006, our borrowing availability under our senior credit facility was \$5.4 million due to an issued Letter of Credit for \$100,000; \$1.0 million of our availability under this facility is set aside as a contractual obligation under our DoD Scrap contract operations. The obligations under our senior credit facility are unconditionally guaranteed by us and each of our existing and subsequently acquired or organized subsidiaries (other than our subsidiaries organized to service our DoD contracts) and secured on a first priority basis by security interests (subject to permitted liens) in substantially all assets owned by us, and each of our other domestic subsidiaries, subject to limited exceptions. Our credit agreement contains a number of affirmative and restrictive covenants including limitations on mergers, consolidations and dissolutions, sales of assets, investments and acquisitions, indebtedness and liens, and dividends and other restricted payments. As of September 30, 2006, we were in full compliance with the terms and conditions of our credit agreement.

Note payable. In May 2003, we issued a subordinated note to an unaffiliated third party in exchange for \$2 million in cash. The note bore interest at 12% per annum and was secured by a junior lien on substantially all of our assets. The note was due May 2008. We utilized a portion of the proceeds from our initial public offering to retire the note.

We believe that our existing cash and cash equivalents and short term investments, will be sufficient to meet our anticipated cash needs for at least the next 12 months. Our future capital requirements will depend on many factors including our rate of revenue growth, the timing and extent of spending to support development efforts, the expansion of sales and marketing activities, the development and deployment of new marketplaces, the introduction of new value added services and the costs to establish additional distribution centers. Although we are currently not a party to any definitive agreement with respect to potential investments in, or acquisitions of, complementary businesses, products or technologies, we may enter into these types of arrangements in the future, which could also require us to seek additional equity or debt financing. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders. Additional debt would result in increased interest expense and could result in covenants that would restrict our operations. There is no assurance that such financing, if required, will be available in amounts or on terms acceptable to us, if at all.

Preferred Stock Financings

In September 2004, we issued 3,262,643 shares of Series C preferred stock to entities related to ABS Capital Partners in exchange for approximately \$20 million in cash. In December 2004, we used all of the proceeds from this transaction to pay a special dividend to all holders of our capital stock. In conjunction with the closing of our initial public offering, the outstanding shares of the Series C preferred stock were converted into shares of common stock.

Our Series A preferred stock and Series B preferred stock were either repurchased or converted into common stock in 2003 and 2004. We have no outstanding shares of Series A preferred stock and Series B preferred stock.

Contractual and Commercial Commitments

The table below represents our significant commercial commitments as of September 30, 2006. Notes payable, borrowings under our senior credit facility and capital leases are reflected on our September 30, 2006 balance sheet. Operating leases, which represent commitments to rent office and warehouse space in the United States and Europe, are not reflected on our balance sheet.

	Total	Less than 1 year	1 to 3 years	3 to 5 Years	5+ years
	(in thousands)				
Notes payable	\$ 58	\$ 16	\$ 42	—	—
Operating leases	7,566	1,789	3,096	\$ 1,939	\$ 742
Capital leases	65	63	2	—	—
Total contractual cash obligations	<u>\$ 7,689</u>	<u>\$ 1,868</u>	<u>\$ 3,140</u>	<u>\$ 1,939</u>	<u>\$ 742</u>

Off-Balance Sheet Arrangements

We do not have any transactions, obligations or relationships that could be considered material off-balance sheet arrangements.

Inflation

Inflation generally affects us by increasing our cost of labor and equipment. We do not believe that inflation had any material effect on our results of operations during the fiscal years ended September 30, 2004, 2005 and 2006.

New Accounting Pronouncements

In June 2006, the Financial Accounting Standards Board issued FIN 48, Accounting for Uncertainty in Income Taxes an interpretation of SFAS No. 109, Accounting for Income Taxes which clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with SFAS No. 109, Accounting for Income Taxes. The interpretation prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 allows recognition of only those tax benefits that satisfy a greater than 50% probability threshold. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. FIN 48 will be effective for our Company beginning October 1, 2007. We do not expect FIN 48 to have a material effect on our financial statements.

In May 2005, the Financial Accounting Standards Board issued SFAS No. 154, Accounting Changes and Error Corrections, which supersedes APB Opinion No. 20, Accounting Changes, and SFAS No. 3, Reporting Accounting Changes in Interim Financial Statements. SFAS No. 154 changes the requirements for the accounting for and reporting of changes in accounting principles. The statement requires the retroactive application to prior periods' financial statements of changes in accounting principles, unless it is impracticable to determine either the period-specific effects or the cumulative effect of the change. SFAS No. 154 does not change the guidance for reporting the correction of an error in previously issued financial statements or the change in an accounting estimate. SFAS No. 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. SFAS No. 154 became effective for our Company beginning October 1, 2006. We do not expect the adoption of SFAS No. 154 to have a material effect on our financial statements.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk.

Interest rate sensitivity. We did not have any debt as of September 30, 2006 and thus do not have any related interest rate exposure. Our investment policy requires us to invest funds in excess of current operating requirements. The principal objectives of our investment activities are to preserve principal, provide liquidity and maximize income consistent with minimizing risk of material loss.

As of September 30, 2006, our cash and cash equivalents consisted primarily of money market funds and our short term investments consisted primarily of highly rated short term bonds. The recorded carrying amounts of cash and cash equivalents approximate fair value due to their short maturities. Our interest income is sensitive to changes in the general level of interest rates in the United States, particularly since the majority of our investments are short-term in nature. Due to the nature of our short-term investments, which have a duration of three to twelve months, we have concluded that we do not have material market risk exposure.

Exchange rate sensitivity. We consider our exposure to foreign currency exchange rate fluctuations to be minimal, as less than five percent of our sales are denominated in foreign currencies. We have not engaged in any hedging or other derivative transactions to date.

Item 8. Financial Statements and Supplemental Data.

Annual Financial Statements and Selected Financial Data: The consolidated financial statements and accompanying notes listed in Part IV, Item 15(a)(1) of this Annual Report on Form 10-K are included elsewhere in this Annual Report.

Item 9. Changes in and Disagreement with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

- (a) *Evaluation of disclosure controls and procedures.* Based on the evaluation of our disclosure controls and procedures (as defined in the rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) required by Exchange Act Rules 13a-15(b) or 15d-15(b), our Chief Executive Officer and our Chief Financial Officer have concluded that as of the end of the period covered by this report, our disclosure controls and procedures were effective.
- (b) *Changes in internal controls.* There were no changes in our internal controls over financial reporting that occurred during our most recent fiscal quarter that have materially affected or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information.

None.

PART III

Item 10. Directors and Executive Officers of the Registrant.

Incorporated by reference from the Company's Proxy Statement relating to its 2007 Annual Meeting of Stockholders to be filed with the SEC within 120 days after September 30, 2006.

Code of Ethics, Governance Guidelines and Committee Charters

We have adopted a *Code of Business Conduct and Ethics* that applies to all Liquidity Services employees. We have also adopted a *Code of Ethics for Senior Officers* that applies to our senior officers, including our principal executive officer, principal financial officer and principal accounting officer. The *Code of Ethics for Senior Officers* is available on our website.

Item 11. Executive Compensation.

Incorporated by reference from the Company's Proxy Statement relating to its 2007 Annual Meeting of Stockholders to be filed with the SEC within 120 days after September 30, 2006.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholders Matters.

Incorporated by reference from the Company's Proxy Statement relating to its 2007 Annual Meeting of Stockholders to be filed with the SEC within 120 days after September 30, 2006.

Item 13. Certain Relationship and Related Transactions.

Incorporated by reference from the Company's Proxy Statement relating to its 2007 Annual Meeting of Stockholders to be filed with the SEC within 120 days after September 30, 2006.

Item 14. Principal Accountant Fees and Services.

Incorporated by reference from the Company's Proxy Statement relating to its 2007 Annual Meeting of Stockholders to be filed with the SEC within 120 days after September 30, 2006.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a)(1) The following financial statements are filed as part of this report:

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[Report of Independent Registered Public Accounting Firm](#)

Financial Statements covered by the Report of Independent Registered Public Accounting Firm:

[Consolidated Balance Sheets as of September 30, 2005 and 2006](#)

[Consolidated Statements of Operations for the years ended September 30, 2004, 2005 and 2006](#)

[Consolidated Statements of Stockholders' \(Deficit\) Equity for the years ended September 30, 2004, 2005 and 2006](#)

[Consolidated Statements of Cash Flows for the years ended September 30, 2004, 2005 and 2006](#)

[Notes to the Consolidated Financial Statements](#)

(a)(2) The following financial statement schedule is filed as part of this report:

Schedule for the three years ended September 30, 2004, 2005 and 2006:

[II — Valuation and Qualifying Accounts](#)

(a)(3) The documents required to be filed as exhibits to this report under Item 601 of Regulation S-K are listed in the Exhibit Index included elsewhere in this report, which list is incorporated herein by reference.

Report of Independent Registered Public Accounting Firm

Board of Directors and Stockholders of
Liquidity Services, Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheets of Liquidity Services, Inc. and Subsidiaries as of September 30, 2006 and 2005, and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the three years in the period ended September 30, 2006. Our audits also included the financial statement schedule listed in the index at Item 15(A). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Liquidity Services, Inc. and Subsidiaries at September 30, 2006 and 2005, and the consolidated results of their operations and their cash flows for each of the three years in the period ended September 30, 2006, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

/s/ Ernst & Young LLP

McLean, Virginia
December 14, 2006

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Liquidity Services, Inc. and Subsidiaries
Consolidated Balance Sheets
(In Thousands)

	<u>September 30,</u>	
	<u>2006</u>	<u>2005</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 54,359	\$ 10,378
Short-term investments	12,289	—
Accounts receivable, net of allowance for doubtful accounts of \$200,000 and \$50,000 in 2006 and 2005, respectively	2,557	685
Inventory	4,704	1,934
Prepaid expenses and other current assets	2,001	1,588
Total current assets	<u>75,911</u>	<u>14,585</u>
Property and equipment, net	2,362	1,000
Intangible assets, net	4,909	5,745
Goodwill	3,678	3,606
Other assets	1,178	1,077
Total assets	<u>\$ 88,038</u>	<u>\$ 26,013</u>
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 2,073	\$ 924
Accrued expenses and other current liabilities	5,283	3,336
Profit-sharing distributions payable	7,736	4,337
Consignment payables	6,658	1,281
Current portion of capital lease obligations	63	144
Current portion of long-term debt	16	409
Total current liabilities	<u>21,829</u>	<u>10,431</u>
Capital lease obligations, net of current portion	2	44
Long-term debt, net of current portion	42	3,906
Other long-term liabilities	413	215
Total liabilities	<u>22,286</u>	<u>14,596</u>
Redeemable common stock	—	474
Stockholders' equity:		
Series C Preferred Stock, \$20,000,000 liquidation preference; \$.001 par value; 0 and 3,262,643 shares authorized, issued and outstanding at September 30, 2006 and 2005, respectively	—	3
Common stock, \$.001 par value; 120,000,000 shares authorized; 27,584,608 and 19,025,971 shares issued and outstanding at September 30, 2006 and 2005, respectively	27	19
Additional paid-in capital	55,964	9,412
Accumulated other comprehensive income (loss)	247	(24)
Retained earnings	9,514	1,533
Total stockholders' equity	<u>65,752</u>	<u>10,943</u>
Total liabilities and stockholders' equity	<u>\$ 88,038</u>	<u>\$ 26,013</u>

See accompanying notes to the consolidated financial statements.

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Liquidity Services, Inc. and Subsidiaries
Consolidated Statements of Operations
(Dollars in Thousands Except Share and Per Share Data)

	Year ended September 30,		
	2006	2005	2004
Revenue	\$ 147,813	\$ 89,415	\$ 75,869
Costs and expenses:			
Cost of goods sold (excluding amortization)	12,160	6,288	5,743
Profit-sharing distributions	80,253	48,952	39,718
Technology and operations	20,081	14,696	12,814
Sales and marketing	8,861	5,503	4,586
General and administrative	12,073	7,397	6,046
Amortization of contract intangibles	813	135	—
Depreciation and amortization	727	586	531
Total costs and expenses	<u>134,968</u>	<u>83,557</u>	<u>69,438</u>
Income from operations	12,845	5,858	6,431
Interest income (expense) and other income, net	430	(570)	(621)
Income before provision for income taxes	13,275	5,288	5,810
Provision for income taxes	(5,294)	(1,166)	(541)
Net income	<u>\$ 7,981</u>	<u>\$ 4,122</u>	<u>\$ 5,269</u>
Basic earnings per common share	<u>\$ 0.33</u>	<u>\$ 0.22</u>	<u>\$ 0.31</u>
Diluted earnings per common share	<u>\$ 0.31</u>	<u>\$ 0.18</u>	<u>\$ 0.29</u>
Basic weighted average shares outstanding	<u>24,080,780</u>	<u>19,038,464</u>	<u>16,865,313</u>
Diluted weighted average shares outstanding	<u>26,087,809</u>	<u>22,598,519</u>	<u>18,280,366</u>

See accompanying notes to the consolidated financial statements.

Liquidity Services, Inc. and Subsidiaries
Consolidated Statements of Changes in Stockholders' Equity
(In Thousands Except Share Data)

	Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Gain/Loss	Retained Earnings (Accumulated Deficit)	Total
	Shares	Amount	Shares	Amount				
Balance at September 30, 2003	1,461,549	\$ 1	16,007,933	\$ 16	\$ 11,387	—	\$ (7,673)	\$ 3,731
Repurchase and retirement of Series A Preferred stock	(1,132,806)	(1)	—	—	(1,594)	—	—	(1,595)
Conversion of Series A Preferred Stock to Common	(48,193)	—	49,873	—	—	—	—	—
Repurchase and retirement of Series B Preferred stock	(249,377)	—	—	—	(249)	—	—	(249)
Conversion of Series B Preferred Stock to Common	(31,173)	—	31,173	—	—	—	—	—
Compensation expense from grant of common stock options	—	—	—	—	85	—	—	85
Net proceeds of issuance of Series C Preferred Stock	3,262,643	3	—	—	19,718	—	—	19,721
Capital distributions paid	—	—	—	—	(20,000)	—	—	(20,000)
Exercise of common stock options	—	—	2,327,771	2	200	—	—	202
Exercise of common stock warrants	—	—	609,559	1	74	—	—	75
Net income	—	—	—	—	—	—	5,269	5,269
Minority interest dividend payable	—	—	—	—	—	—	(185)	(185)
Balance at September 30, 2004	<u>3,262,643</u>	<u>3</u>	<u>19,026,309</u>	<u>19</u>	<u>9,621</u>	<u>—</u>	<u>(2,589)</u>	<u>7,054</u>
Exercise of common stock options	—	—	240,568	—	186	—	—	186
Repurchase of common stock	—	—	(240,906)	—	(482)	—	—	(482)
Compensation expense from grant of common stock options	—	—	—	—	87	—	—	87
Comprehensive income:								
Net income	—	—	—	—	—	—	4,122	4,122
Foreign currency translation	—	—	—	—	—	\$ (24)	—	(24)
Balance at September 30, 2005	<u>3,262,643</u>	<u>3</u>	<u>19,025,971</u>	<u>19</u>	<u>9,412</u>	<u>(24)</u>	<u>1,533</u>	<u>10,943</u>
Initial Public Offering	—	—	5,000,000	5	43,972	—	—	43,977
Preferred stock reclassification	(3,262,643)	(3)	3,262,643	3	—	—	—	—
Exercise of common stock options and warrants (net of tax)	—	—	295,994	—	995	—	—	995
Compensation expense from grant of common stock options	—	—	—	—	623	—	—	623
Write off of put liabilities	—	—	—	—	962	—	—	962
Comprehensive Income:								
Net income	—	—	—	—	—	—	7,981	7,981
Foreign currency translation and other	—	—	—	—	—	271	—	271
Balance at September 30, 2006	<u>—</u>	<u>—</u>	<u>27,584,608</u>	<u>\$ 27</u>	<u>\$ 55,964</u>	<u>\$ 247</u>	<u>\$ 9,514</u>	<u>\$ 65,752</u>

Liquidity Services, Inc. and Subsidiaries
Consolidated Statements of Cash Flows
(In Thousands)

	2006	2005	2004
Operating activities			
Net income	\$ 7,981	\$ 4,122	\$ 5,269
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	1,540	721	531
Amortization of debt discount	14	44	39
Interest expense related to put warrant liability and debt issue costs	315	285	200
Stock compensation expense	623	87	85
Provision (benefit) for doubtful accounts	150	(34)	2
Loss on early extinguishment of debt	171	—	—
Deferred tax benefit	(691)	(701)	—
(Loss) gain on sale of short-term investments	—	(75)	(22)
Loss on disposal of property and equipment	19	14	31
Changes in operating assets and liabilities:			
Accounts receivable	(2,022)	1,288	(1,766)
Inventory	(2,770)	(1,068)	(64)
Prepaid expenses and other assets	90	(320)	(299)
Accounts payable	1,149	(68)	344
Accrued expenses and other	1,947	500	462
Profit-sharing distributions payable	3,399	852	728
Consignment payables	5,377	481	70
Other liabilities	371	16	(17)
Net cash provided by operating activities	17,663	6,144	5,593
Investing activities			
Purchases of short-term investments	(20,037)	(28,697)	(42,017)
Proceeds from the sale of short-term investments	7,834	35,440	39,459
Proceeds from the sale of property and equipment	—	—	10
Increase in goodwill and intangibles	(90)	(5,694)	—
Cash paid for acquisitions	—	(3,806)	—
Purchases of property and equipment	(2,049)	(487)	(420)
Net cash used in investing activities	(14,342)	(3,244)	(2,968)
Financing activities			
Proceeds from issuance of debt	118	2,400	—
Proceeds from the issuance of common stock	43,977	—	—
Repayments of debt	(4,413)	(7)	(1,372)
Principal repayments of capital lease obligations	(194)	(116)	(73)
Proceeds from exercise of common stock options & warrants (net of tax)	506	186	277
Incremental tax benefit from exercise of common stock options	489	—	—
Payments to repurchase common stock	—	(482)	—
Net proceeds from the issuance of preferred stock	—	—	19,721
Payments to repurchase preferred stock	—	—	(1,844)
Dividends and capital distributions	—	—	(20,185)
Net cash provided by (used in) financing activities	40,483	1,981	(3,476)
Effect of exchange rate differences on cash and cash equivalents	177	(13)	—
Net increase (decrease) in cash and cash equivalents	43,981	4,868	(851)
Cash and cash equivalents at beginning of year	10,378	5,510	6,361
Cash and cash equivalents at end of year	<u>\$54,359</u>	<u>\$ 10,378</u>	<u>\$ 5,510</u>
Supplemental disclosure of cash flow information			
Property and equipment acquired through capital leases	\$ 71	\$ 24	\$ 293
Cash paid for income taxes	4,816	1,812	747
Cash paid for interest	\$ 217	\$ 298	\$ 263

See accompanying notes to the consolidated financial statements.

Liquidity Services, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

1. Organization

Liquidity Services, Inc. and subsidiaries (LSI or the Company) is a leading online auction marketplace for wholesale, surplus and salvage assets. LSI enables buyers and sellers to transact in an efficient, automated online auction environment offering over 500 product categories. The Company's marketplaces provide professional buyers access to a global, organized supply of wholesale, surplus and salvage assets presented with digital images and other relevant product information. Additionally, LSI enables its corporate and government sellers to enhance their financial return on excess assets by providing a liquid marketplace and value-added services that integrate sales and marketing, logistics and transaction settlement into a single offering. LSI organizes its products into categories across major industry verticals such as consumer electronics, general merchandise, apparel, scientific equipment, aerospace parts and equipment, technology hardware, and specialty equipment. The Company's online auction marketplaces are www.liquidation.com, www.govliquidation.com and www.liquibiz.com. LSI also operates a wholesale industry portal, www.goWholesale.com, that connects advertisers with buyers seeking products for resale and related business services.

The Company has five wholly owned direct and indirect subsidiaries—Surplus Acquisition Venture, LLC (SAV); Government Liquidation.com, LLC (GL); Liquidity Services Limited (LSL) (based in Chippenham, England); DOD Surplus, LLC (DODS); and Liquidity Services, GmbH (LSG). SAV was formed on October 13, 2000. On February 27, 2001, SAV formed GL as a limited liability company in the state of Delaware. GL is a single-purpose entity that remarkets surplus government property under the auspices of the Commercial Venture II contract 99-0001-0002 (the Surplus Contract) with the Defense Reutilization and Marketing Service (DRMS) of the U.S. Department of Defense (DoD). Under the terms of the contract, GL is limited to conducting business of the Surplus Contract and no other. The Company formed LSL on July 23, 2003 to enter the European marketplace. LSL conducts business under the trade name "Liquidity Services" and serves commercial entities and the UK Disposal Services Agency (DSA) responsible for the disposal of UK Ministry of Defence (MOD) surplus property, and the Defence Logistics Organisation (DLO) through a five year contract beginning August 4, 2003.

On July 20, 2005, LSI formed DODS as a limited liability company in the state of Delaware. DODS is a single-purpose entity that remarkets scrap government property under the auspices of the DoD Scrap contract 99-4001-0004 (the Scrap Contract) with the DRMS through June 2012. Under the terms of the contract, DODS is limited to conducting business of the Scrap Contract and no other. See Note 4.

During January 2006, LSI formed LSG as a limited liability company in Germany. LSG was formed to service the contract awarded by the DRMS to purchase DoD surplus property located in Germany on January 24, 2006 (contract 60-6104-0007, the Germany Contract) through January 23, 2009.

The Company's operations are subject to certain risks and uncertainties associated with technology-oriented companies including, but not limited to, the Company's dependence on use of the Internet, the effect of general business and economic trends, its susceptibility to rapid technological change, actual and potential competition by entities with greater financial resources, and the potential for the U.S. Government agencies from which the Company has derived a significant portion of its inventory to change the way they conduct their surplus disposition or to otherwise not renew their contracts with the Company.

Liquidity Services, Inc. and Subsidiaries
Notes to Consolidated Financial Statements – (Continued)

2. Summary of Significant Accounting Policies

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect amounts in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Cash and Cash Equivalents

The Company considers all highly liquid securities purchased with an initial maturity of three months or less to be cash equivalents.

Short-Term Investments

The Company accounted for investments it held as of September 30, 2006 in accordance with Statement of Financial Accounting Standards (SFAS) No. 115, *Accounting for Certain Investments in Debt and Equity Securities*.

Available-for-sale securities are stated at fair value, with the unrealized gains and losses reported in accumulated other comprehensive income. For the year ended September 30, 2006 the amount of unrealized gains and losses reported in accumulated other comprehensive income was \$88,000. For the year ended September 30, 2005 the amount of unrealized gains and losses were not material. Realized gains and losses and declines in fair value that are determined to be other-than-temporary on available-for-sale securities are included in interest expense and other income, net. The cost of securities sold is based on the specific identification method. Interest and dividends on securities classified as available-for-sale are included in interest expense and other income, net.

Inventory

Inventory consists of property obtained for resale, generally through the online auction process, and is stated at the lower of cost or market. Cost is determined using the specific identification method. Periodically, inventories are analyzed for obsolescence. Charges for obsolete inventory are included in cost of

goods sold in the period in which they have been determined to occur.

Property and Equipment

Property and equipment is recorded at cost, and depreciated and amortized on a straight-line basis over the following estimated useful lives:

Computers and purchased software	One to five years
Office equipment	Three years
Furniture and fixtures	Five to seven years
Leasehold improvements	Shorter of lease term or useful life

Liquidity Services, Inc. and Subsidiaries

Notes to Consolidated Financial Statements – (Continued)

Intangible Assets

Intangible assets consist of contract acquisition costs and covenants not to compete (see Note 4). Intangible assets are amortized using the straight-line method over their estimated useful lives, ranging from five to seven years.

Impairment of Long-Lived Assets

Long-lived assets, including intangible assets, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be fully recoverable. If an impairment indicator is present, the Company evaluates recoverability by comparing the carrying amount of the assets to future undiscounted net cash flows expected to be generated by the assets. If the assets are impaired, the impairment recognized is measured by the amount by which the carrying amount exceeds the estimated fair value of the assets.

Goodwill

In accordance with SFAS No. 142, *Goodwill and Other Intangible Assets*, goodwill determined to have an indefinite useful life is no longer amortized, but is tested for impairment, at least annually or more frequently if indicators of impairment arise. If impairment of the carrying value based on the calculated fair value exists, the Company measures the impairment through the use of discounted cash flows.

Revenue Recognition

The Company recognizes revenue in accordance with the provisions of Staff Accounting Bulletin No. 104, *Revenue Recognition*, when all of the following criteria are met:

- a buyer submits the winning bid in an auction and, as a result, evidence of an arrangement exists and the sale price has been determined;
- title has passed to the buyer and the buyer has assumed the risks and rewards of ownership;
- for arrangements with an inspection period, the buyer has received the merchandise and has not notified LSI within that period that it is dissatisfied with the merchandise; and
- collection is reasonably assured.

Revenue is also evaluated in accordance with EITF 99-19, *Reporting Revenue Gross as a Principal Versus Net as an Agent*, for reporting revenue of gross proceeds as the principal in the arrangement or net of commissions as an agent. In arrangements in which the Company is deemed to be the primary obligor and bears physical and general inventory risk, and credit risk, LSI recognizes as revenue the gross proceeds from the sale, including buyer's premiums. In arrangements in which the Company acts as an agent or broker on a consignment basis, without taking physical or general inventory risk, revenue is recognized based on the sales commissions that are paid to the Company by the sellers for utilizing LSI's services; in this situation, sales commissions represent a percentage of the gross proceeds from the sale that the seller pays to the Company upon completion of the transaction.

The Company has evaluated its revenue recognition policy related to sales under LSI's profit-sharing model and determined it is appropriate to account for these sales on a gross basis using the criteria outlined in EITF 99-19. In the Company's evaluation, the Company relied most heavily upon its status as primary obligor in the sales relationship and the fact that the Company has general inventory risk.

Liquidity Services, Inc. and Subsidiaries

Notes to Consolidated Financial Statements – (Continued)

Cost of Goods Sold

Cost of goods sold includes the costs of purchasing and transporting property for auction as well as credit card transaction fees. The Company purchases the majority of its inventory at a fixed percentage of the property's original acquisition cost. Title for the inventory passes to the Company at that point and the Company bears the risks and rewards of ownership. The Company does not have title to assets sold on behalf of its commercial or government customers when it receives only sales commission revenue and, as such, recognizes no cost of goods sold associated with those sales. Cost of goods sold also includes shipping and handling costs and amounts paid by customers for shipping and handling.

Significant Contracts

DRMS

Based on the sales price of the inventory, after reduction for allowable expenses and other disbursements under the Surplus Contract with DRMS, the Company is required to disburse to DRMS 78.2%, and to Kormendi/Gardener Partners (KGP), 1.8% of the profits from the sale of goods under this contract. In addition, disbursements to DRMS/KGP are only required to the extent the Company has distributable cash surplus, as defined under the contract. This generally means that the Company is only required to disburse funds to the extent cash on hand at the Company's subsidiary, GL, exceeds the sum of outstanding working capital advances, management's estimated accrued liabilities, contingent liabilities, and estimated operating expenses for the upcoming month. Profit-sharing distributions to DRMS/KGP under the Surplus Contract for the years ended September 30, 2006, 2005 and 2004 were \$50,686,000, \$47,446,000, and \$38,685,000, respectively, including accrued amounts, as of September 30, 2006 and 2005, of \$2,887,000 and \$4,068,000, respectively. On September 12, 2006, the DoD agreed to increase the profit sharing distribution for the surplus contract in exchange for the Company's agreement to implement additional inventory assurance processes and procedures with respect to the sale of demilitarized property. From August 1, 2006 until November 30, 2006, the Company was entitled to receive 27.5% of the profits and DRMS was entitled to 72.5% of the profits from the sale of goods under this contract. After November 30, 2006, the Company is entitled to receive between 25% and 30.5% of the profits, based on the results of an audit of the effectiveness of the inventory controls the Company implements under the contract modification.

Under the terms of the Scrap Contract, the Company is required to disburse to DRMS approximately 80% of the profits realized from the ultimate sale of the inventory, after deduction for allowable expenses, calculated in a similar manner to that of the Surplus Contract. Under the scrap contract, the Company also has a performance incentive that allows it to receive up to an additional 2% of the profit sharing distribution. This incentive is measured annually on June 30th, and is applied to the prior 12 months. For the year ended September 30, 2006 and 2005, profit-sharing distributions to the DRMS under the Scrap Contract amounted to \$27,579,000 and \$140,000, including accrued amounts, as of September 30, 2006 and 2005, of \$4,788,000 and \$140,000, respectively.

DSA

Under the contract with the DSA, the Company is required to disburse to DSA a percentage that varies based on the total annual sales volume. Distributions to DSA for the years ended September 30, 2006, 2005 and 2004 were \$1,988,000, \$1,365,000 and \$1,033,000, respectively, including accrued amounts, as of September 30, 2006 and 2005, of \$61,000 and \$129,000, respectively.

Liquidity Services, Inc. and Subsidiaries

Notes to Consolidated Financial Statements – (Continued)

Risk Associated with Certain Concentrations

The Company does not perform credit evaluations of its buyers. However, substantially all sales are recorded subsequent to payment authorization being received. As a result, the Company is not subject to significant collection risk, as goods are generally not shipped before payment is received.

For consignment sales transactions, funds are collected from buyers and are held by the Company on the sellers' behalf. The funds are included in cash and cash equivalents in the consolidated financial statements. The Company releases the funds to the seller, less the Company's commission and other fees due, after the buyer has accepted the goods or within 30 days, depending on the state where the buyer and seller conduct business. The amount of cash held on behalf of the sellers is recorded as consignment payables in the accompanying consolidated balance sheets.

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash and cash equivalents, short-term investments and accounts receivable. The Company deposits its cash with financial institutions that the Company considers to be of high credit quality.

For the years ended September 30, 2006, 2005 and 2004, no single buyer accounted for 10% or more of revenue.

Income Taxes

The Company accounts for income taxes in accordance with SFAS No. 109, *Accounting for Income Taxes*. This statement requires an asset and liability approach for measuring deferred taxes based on temporary differences between the financial statement and income tax bases of assets and liabilities existing at each balance sheet date using enacted tax rates for the years in which the taxes are expected to be paid or recovered. A valuation allowance is provided to reduce the deferred tax assets to a level that the Company believes will more likely than not be realized. The resulting net deferred tax asset reflects management's estimate of the amount that will be realized.

Stock-Based Compensation

At September 30, 2006, the Company had a stock-based employee compensation plan, which is described more fully in Note 14. Prior to October 1, 2005, the Company accounted for options issued under this plan under the recognition and measurement provisions of APB Opinion No. 25, *Accounting for Stock Issued to Employees*, and related Interpretations, as permitted by SFAS No. 123, *Accounting for Stock-Based Compensation*. Other than stock-based compensation cost associated with variable awards, which is described more fully in Note 14, no stock-based employee compensation cost was recognized in the statement of operations for the years ended September 30, 2005 or 2004, as all options granted under the plan had an exercise price equal to the market value of the underlying common stock on the date of grant. Effective October 1, 2005, the Company adopted the fair value recognition provisions of SFAS No. 123(R), *Share-Based Payment* (statement 123(R)) using the prospective-transition method. Under this transition method, compensation cost recognized in the year ended

Liquidity Services, Inc. and Subsidiaries
Notes to Consolidated Financial Statements – (Continued)

As a result of adopting Statement 123(R) on October 1, 2005, the Company's income before provision for income taxes and net income for the year ended September 30, 2006 were approximately \$616,000 and \$370,000 lower, respectively, than if it had continued to account for share-based compensation under APB Opinion No. 25. The total compensation cost related to nonvested awards not yet recognized at September 30, 2006 was approximately \$3,770,000, which will be recognized over the weighted average vesting period of 40 months. The Company utilizes the Black-Scholes option pricing model to determine its Statement 123(R) expense. Inputs into the Black-Scholes model include volatility of 40%, dividend rate of 0%, and risk-free interest rates that ranged from 4.32% to 5.05% for the year ended September 30, 2006. The Company anticipates a forfeiture rate of 33.4% based on its historical forfeiture rate. As a result of adopting Statement 123(R) on October 1, 2005, the Company's basic and diluted earnings per share for the year ended September 30, 2006 are approximately \$0.02 and \$0.01, respectively, lower than if it had continued to account for share-based compensation under APB Opinion No. 25.

Prior to the adoption of Statement 123(R), the Company presented all tax benefits of deductions resulting from the exercise of stock options as operating cash flows in the statement of cash flows. Statement 123(R) requires the cash flows resulting from the tax benefits resulting from tax deductions in excess of the compensation cost recognized for those options (excess tax benefits) to be classified as financing cash flows.

Had compensation expense been determined under the fair value method at the grant dates, the difference between the Company's net income and the Company's pro forma net income would have been insignificant. In addition, there would not have been a material effect on the Company's cash flows.

Advertising Costs

Advertising expenditures are expensed as incurred. Advertising costs charged to expense were \$2,159,000, \$939,000 and \$464,000 for the years ended September 30, 2006, 2005 and 2004, respectively.

Fair Value of Financial Instruments

SFAS No. 107, *Disclosure About Fair Value of Financial Instruments*, defines the fair value of a financial instrument as the amount at which the instrument could be exchanged in a current transaction between willing parties. Cash and cash equivalents, short-term investments, accounts receivable, accounts payable, profit-sharing distributions payable, consignment payables and long-term debt reported in the consolidated balance sheets approximate their fair values.

Foreign Currency Translation

The functional currencies for LSL and LSG, the Company's foreign subsidiaries, are the British pound and Euro, respectively. The translation of the subsidiary's financial statements into U.S. dollars is performed for balance sheet accounts using exchange rates in effect at the balance sheet date and for revenue and expense accounts using an average exchange rate during the period. The resulting translation adjustments are recognized in accumulated other comprehensive income, a separate component of stockholders' equity. Realized foreign currency transaction gains and losses are included in interest expense and other income, net in the consolidated statements of operations.

Comprehensive Income

Comprehensive income includes net income adjusted for foreign currency translation and unrealized gains and losses on available-for-sale securities, and is reflected as a separate component of stockholders' equity.

Liquidity Services, Inc. and Subsidiaries
Notes to Consolidated Financial Statements – (Continued)

Earnings per Share

Basic net income attributable to common stockholders per share is computed by dividing net income attributable to common stockholders by the weighted average number of common shares outstanding for the period. Diluted net income attributable to common stockholders per share includes the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock.

The following summarizes the potential outstanding common stock of the Company as of the dates set forth below:

	September 30,		
	2006	2005	2004
	(dollars in thousands except per share and share data)		
Weighted average shares calculation:			
Basic weighted average shares outstanding	24,080,780	19,038,464	16,865,313
Treasury stock effect of options and warrants	705,638	297,412	722,433
Shares of common stock into which outstanding preferred stock is convertible	1,301,391	3,262,643	692,620
Diluted weighted average common shares outstanding	26,087,809	22,598,519	18,280,366

Net income	\$ 7,981	\$ 4,122	\$ 5,269
Net income per common share:			
Basic income per common share	\$ 0.33	\$ 0.22	\$ 0.31
Diluted income per common share	\$ 0.31	\$ 0.18	\$ 0.29

Recent Accounting Pronouncements

In June 2006, the FASB issued FIN 48, *Accounting for Uncertainty in Income Taxes an interpretation of FASB Statement No. 109*, which clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with SFAS No. 109, *Accounting for Income Taxes*. The interpretation prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 allows recognition of only those tax benefits that satisfy a greater than 50% probability threshold. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. FIN 48 is effective for the Company beginning October 1, 2007. The Company does not expect FIN 48 to have a material affect on its financial statements.

In May 2005, the FASB issued SFAS No. 154, *Accounting Changes and Error Corrections*, which supersedes APB Opinion No. 20, *Accounting Changes*, and SFAS No. 3, *Reporting Accounting Changes in Interim Financial Statements*. SFAS No. 154 changes the requirements for the accounting for and reporting of changes in accounting principles. The statement requires the retroactive application to prior periods' financial statements of changes in accounting principles, unless it is impracticable to determine either the period-specific effects or the cumulative effect of the change. SFAS No. 154 does not change the guidance for reporting the correction of an error in previously issued financial statements or the change in an accounting estimate. SFAS No. 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. SFAS No. 154 is effective for the Company beginning October 1, 2006. The Company does not expect SFAS No. 154 to have a material affect on its financial statements.

3. DRMS Contracts

The Company's Surplus Contract with DRMS expires in June 2008. Under the terms of the Surplus Contract, the Company acquires surplus government property from DRMS at a fixed percentage of the property's original estimated acquisition value. The Company is required to purchase all surplus government property referred to it by DRMS. The Company then markets the property through its buyer network. Under the terms of the contract, the Company distributes to DRMS a fixed percentage of the profits realized from the ultimate sale of the inventory, after deduction for allowable expenses and profit-sharing distributions, as provided for under the terms of the contract.

As a result of this contract, the Company is the sole remarketer of all DoD surplus turned into DRMS available for sale within the United States, Puerto Rico, and Guam.

The Company's Scrap Contract with DRMS expires in June 2012. Under the terms of the Scrap Contract, the Company is required to purchase all scrap government property referred to it by DRMS. As a result of this contract, the Company is the sole remarketer of all U.S. Department of Defense scrap turned into DRMS available for sale within the United States, Puerto Rico, and Guam.

The contracts may be terminated by either the Company or DRMS if the rate of return performance ratio does not exceed specified benchmark ratios for two consecutive quarterly periods and the preceding twelve months. The Company has performed in excess of the benchmark ratios throughout the contract period through September 30, 2006.

Liquidity Services, Inc. and Subsidiaries

Notes to Consolidated Financial Statements – (Continued)

4. Acquisitions

Wholesale411

On May 24, 2005, the Company acquired substantially all of the assets of Aldnet Media Group, LLC (Wholesale411), a wholesale industry search portal for the wholesale industry. The operating results of Wholesale411 have been included in the accompanying consolidated financial statements from the date of acquisition. The purchase consideration consisted of \$2,900,000 of cash paid to the seller and transaction costs of \$83,000, which were allocated to identifiable intangible assets acquired and goodwill. Of the purchase consideration, \$200,000 was allocated to an amortizable intangible related to a covenant not to compete. This amount is being amortized on a straight-line basis over five years, the life of that agreement. The remaining \$2,783,000 of the purchase consideration was allocated to goodwill. Subsequent to the acquisition, the Company paid an additional \$150,000 in payments to the sellers upon the resolution of certain contingencies; this additional amount was also recorded as goodwill.

Because the Wholesale411 results of operations for the period from October 1, 2004 to May 24, 2005 were not material to the Company, the pro forma combined results of operations for the year ended September 30, 2005 are not presented. These pro forma combined results of operations would not differ materially from the historical results of operations.

Scrap Contract

In conjunction with the Company's June 2005 winning bid for the Scrap Contract, LSI was required to pay DRMS \$5,694,000 for the rights to operate the scrap operations of the DoD. This payment was recorded as a contract intangible and is being amortized over the 84-month term of the contract on a straight-line basis. The Company recorded amortization expense of \$813,000, \$136,000 and \$0 for the years ended September 30, 2006, 2005 and 2004, respectively, related to the Scrap Contract intangible asset.

Minority Interest

On July 11, 2005, the Company acquired the then outstanding minority interest in SAV for cash consideration of \$815,000. Of this amount, \$70,000 was paid to settle minority interest payable at the acquisition date. The remaining portion of the purchase consideration of \$745,000 was recorded as goodwill.

5. Property and Equipment

Property and equipment, including equipment under capital lease obligations, consists of the following:

	September 30,	
	2006	2005
	(in thousands)	
Computers and purchased software	\$2,455	\$2,006
Office/Operational equipment and vehicles	962	175
Furniture and fixtures	394	238
Leasehold improvements	692	157
	<u>4,503</u>	<u>2,576</u>
Less: accumulated depreciation and amortization	(2,141)	(1,576)
	<u>\$2,362</u>	<u>\$1,000</u>

Depreciation and amortization expense related to property and equipment for the years ended September 30, 2006, 2005 and 2004 was \$675,000, \$572,000, and \$531,000, respectively.

Liquidity Services, Inc. and Subsidiaries Notes to Consolidated Financial Statements – (Continued)

6. Intangible Assets

Intangible assets at September 30, 2006 consisted of the following:

	Useful life (in years)	(in thousands)		
		Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Contract intangible	7	\$ 5,694	\$ (949)	\$ 4,745
Covenants not to compete, and Trademarks	5	218	(54)	164
Total intangible assets, net				<u>\$ 4,909</u>

Future expected amortization of intangible assets at September 30, 2006 was as follows:

Years ending September 30,	(in thousands)
2007	\$ 853
2008	853
2009	853
2010	840
2011 and after	1,510

7. Debt

Senior Credit Facility

In December 2002, the Company entered into a senior credit facility (the Agreement) with a bank. The Agreement provides for borrowings of up to \$250,000 under a line of credit. In July 2003, the Company's line of credit under the Agreement was increased to \$750,000. In June 2005, the Company's line of credit under the Agreement was increased to \$3,000,000. In July 2005, the Company's line of credit under the Agreement was increased to \$5,500,000. This senior credit facility will expire in July 2007.

Borrowings under the Agreement bear interest at an annual rate equal to the LIBOR rate plus 2.25% (7.625% at September 30, 2006) due monthly. As of September 30, 2006 and 2005, the Company had \$0 and \$2,400,000, respectively, in outstanding borrowings under the Agreement.

Borrowings under the Agreement are secured by substantially all of the assets of the Company. The Agreement contains certain financial and non-financial restrictive covenants including, among others, the requirements to maintain a minimum level of earnings before interest, income taxes, depreciation and amortization (EBITDA). As of September 30, 2006, the Company was in compliance with these covenants.

Note Payable

On May 16, 2003, the Company received \$2,000,000 in cash in exchange for a subordinated debenture (the Note Payable) payable to an unaffiliated third party. The note was due in May 2008. The Company repaid the note in conjunction with the completion of its initial public offering in February 2006.

As additional consideration, the Company issued fully vested warrants to purchase 517,094 shares of common stock of the Company. These warrants were converted into 517,094 shares of redeemable common stock in August 2004, and the common stock was subsequently sold in the Company's initial public offering (see Note 12).

Liquidity Services, Inc. and Subsidiaries
Notes to Consolidated Financial Statements – (Continued)

On March 2, 2006, the Company repaid its Note Payable and amounts outstanding under its senior credit facility. In conjunction with the repayment of the Note Payable, the Company recorded a loss on the early extinguishment of debt of \$171,000, which is included in interest income and expense and other income, net.

Debt consisted of the following:

	September 30,	
	2006	2005
	(in thousands)	
Note payable	—	\$ 2,000
Senior credit facility	—	2,400
Note payable—other	\$ 68	26
Less: unamortized debt discount	(10)	(111)
Subtotal	58	4,315
Less: current portion of long-term debt	(16)	(409)
Long-term portion debt	\$ 42	\$ 3,906

Future minimum debt payments, exclusive of the unamortized debt discount, as of September 30, 2006 are as follows:

Years ending September 30,	(in thousands)
2007	\$ 19
2008	16
2009	10
2010	10
2011 and after	13
Total future minimum debt payments	\$ 68

8. Redeemable Common Stock

As discussed in Note 9, warrants to purchase common stock were converted into 517,094 shares of common stock that were redeemable on the same basis as the warrants. As a result, in August 2004, the Company reclassified \$312,000 related to the then recorded fair value of the put warranty liability to redeemable common stock.

The gross redemption value of the common stock was \$925,000 as of September 30, 2005. The redemption value of the common stock, based on the net present value of the gross redemption value, was determined to be \$474,000 as of September 30, 2005. Changes in the fair value of the redemption feature of the common stock were being amortized to interest expense to the date the shares were sold in the Company's initial public offering and the shares ceased to be redeemable. Changes in the fair value of the redemption feature of the common stock subsequent to August 2004 were not significant for fiscal 2004. For the years ended September 30, 2006 and 2005, the interest expense recorded resulting from the changes in the fair value of the common stock redemption feature was \$261,000 and \$150,000, respectively.

Liquidity Services, Inc. and Subsidiaries
Notes to Consolidated Financial Statements – (Continued)

9. Commitments

Leases

The Company leases certain office space and equipment under non-cancelable operating and capital lease agreements, which expire at various dates through 2013. Certain of the leases contain escalation clauses and provide for the pass-through of increases in operating expenses and real estate taxes. Rent related to leases that have escalation clauses is recognized on a straight-line basis. Resulting deferred rent charges are included in other long-term liabilities and were \$93,000 and \$28,000 at September 30, 2006 and 2005, respectively. Future minimum payments, inclusive of sublease income, under the leases as of September 30, 2006 are as follows:

Years ending September 30,	Operating	Capital
	(in thousands)	
2007	\$ 1,789	\$ 64
2008	1,737	2
2009	1,360	—
2010	1,115	—
2011 and after	1,565	—
Total future minimum lease payments	\$ 7,566	66
Less: amount representing interest		1
Present value of net minimum lease payments		65

Less: current portion of capital lease obligations	63
Capital lease obligations, noncurrent	<u>\$ 2</u>

Amortization of fixed assets acquired through capital leases is included in depreciation and amortization expense.

Rent expense for the years ended September 30, 2006, 2005 and 2004 was \$1,974,000, \$1,556,000 and \$1,227,000, respectively. Sublease income recorded for the years ended September 30, 2006, 2005 and 2004 was \$90,000, \$238,000 and \$243,000, respectively.

Directors Agreements

Effective January 1, 2004 and June 1, 2004, the Company entered into advisory agreements with two independent directors of the Company which expire on December 31, 2006 and May 30, 2007, respectively. In addition to payments of \$1,000 for the preparation for and attendance at each Company board meeting, the agreements provided the directors a put option on any vested shares in the Company held by the directors. In conjunction with the Company's initial public offering these agreements have been amended to remove the put option provision, and thus the Company will no longer record the expenses and has reclassified this liability. The Company accounted for the put option as a liability, which was included in other long-term liabilities, and was \$173,000 at September 30, 2005. The Company recognized the amount of the increase in the redemption liability, \$68,000, \$136,000 and \$38,000, as interest expense in the years ended September 30, 2006, 2005 and 2004, respectively.

10. 401(k) Benefit Plan

The Company has various retirement plans (the Plans), which are intended to be qualified plans under Section 401(k) of the Internal Revenue Code. The Plans are defined contribution plans, available to all eligible employees and allow participants to contribute up to the legal maximum of their eligible compensation, not to exceed the maximum tax-deferred amount allowed by the Internal Revenue Service. The Plans also allow the Company to make discretionary matching contributions. For the years ended September 30, 2006, 2005 and 2004, the Company contributed and recorded expense of approximately \$348,000, \$301,000 and \$195,000, respectively, to the Plans.

Liquidity Services, Inc. and Subsidiaries Notes to Consolidated Financial Statements – (Continued)

11. Income Taxes

The components of the provision for income taxes are as follows:

	Years ended September 30,		
	2006	2005	2004
	(in thousands)		
Current tax provision:			
U.S. Federal	\$ 5,155	\$ 1,652	\$ —
State	830	215	541
	<u>5,985</u>	<u>1,867</u>	<u>541</u>
Deferred tax benefit:			
U.S. Federal	(763)	(357)	—
State	72	(344)	—
	<u>(691)</u>	<u>(701)</u>	<u>—</u>
Total provision	<u>\$ 5,294</u>	<u>\$ 1,166</u>	<u>\$ 541</u>

Deferred taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities are as follows:

	September 30,	
	2006	2005
	(in thousands)	
Deferred tax assets (liabilities):		
Net operating losses—State	\$ 10	\$ 622
Net operating losses—Foreign	494	524
Accrued vacation and bonus	451	386
Allowance for doubtful accounts	77	19
Depreciation	33	—
Other	306	(80)
Net deferred tax assets before valuation allowance	<u>1,371</u>	<u>1,471</u>
Less: valuation allowance	(494)	(770)
Total deferred tax assets	<u>\$ 877</u>	<u>\$ 701</u>

The reconciliation of the U.S. federal statutory rate to the effective rate is as follows:

	Years ended September 30,		
	2006	2005	2004
U.S. statutory rate	34.1%	34.0%	34.0%
Non-deductible foreign losses	.2%	2.4%	8.0%
Permanent items	.7%	2.2%	—

State taxes	5.1%	4.2%	5.3%
Changes in valuation allowance	(.2%)	(21.5%)	(40.3%)
Other—net	—	.7%	2.3%
Provision for income taxes	<u>39.9%</u>	<u>22.0%</u>	<u>9.3%</u>

Liquidity Services, Inc. and Subsidiaries
Notes to Consolidated Financial Statements – (Continued)

At September 30, 2006, the Company had available state net operating loss (NOL) carryforwards of approximately \$165,000, which begin to expire in 2020, and foreign NOLs of approximately \$1.7 million, which do not expire. The valuation allowance at September 30, 2006 primarily relates to the foreign NOLs. During fiscal 2005, the Company reversed \$686,000 of valuation allowances recorded against deferred tax assets as it was determined that it was more likely than not that these deferred tax assets would be realized. Circumstances could change in the future that would allow the Company to reduce the remaining valuation allowance and recognize additional net deferred tax assets.

12. Stockholders' Equity

Convertible Preferred Stock

On September 3, 2004, the Company issued 3,262,643 shares of Series C preferred stock (Series C Stock) to an unaffiliated party in exchange for \$20,000,000 in cash. The participation feature of the Series C Stock, which entitled holders of Series C Stock to participate in all distributions to the holders of common stock on an as-converted basis up to a maximum amount, expired when the Company completed its initial public offering, at which time the Series C Stock was converted into 3,262,643 shares of common stock.

Common Stock

On February 23, 2006, the Company issued 5,000,000 shares of common stock for net proceeds of \$43,977,000 in conjunction with its initial public offering.

2006 Omnibus Long-Term Incentive Plan

In conjunction with the Company's initial public offering, the board of directors and the Company's shareholders approved the 2006 Omnibus Long-Term Incentive Plan, or the 2006 Plan, on December 2, 2005. The 2005 Stock Option and Incentive Plan was terminated when the 2006 Plan became effective, immediately after the closing of initial public offering.

5,000,000 shares of common stock were initially reserved for issuance under the 2006 Plan. During fiscal year 2006, the Company issued options to purchase 1,208,000 shares to employees and directors with exercise prices between \$12.89 and \$17.63. Options to purchase 97,000 shares have been forfeited. At September 30, 2006, there were 3,889,000 shares remaining reserved for issuance in connection with awards under the 2006 Plan. The maximum number of shares subject to options or stock appreciation rights that can be awarded under the 2006 Plan to any person is 1,000,000 per year. The maximum number of shares that can be awarded under the 2006 Plan to any person, other than pursuant to an option or stock appreciation right, is 700,000 per year.

The 2006 Plan permits the granting of options to purchase shares of common stock intended to qualify as incentive stock options under the Internal Revenue Code and stock options that do not qualify as incentive stock options ("non-qualified stock options"). The exercise price of each stock option may not be less than 100% of the fair market value of the common stock on the date of grant. However, if a grant recipient, who holds at least 10% of the common stock of the Company, receives an incentive stock option, the exercise price of such incentive stock option may not be less than 110% of the fair market value of the common stock on the date of grant. The term of each stock option is fixed by the compensation committee and may not exceed 10 years from the date of grant.

Liquidity Services, Inc. and Subsidiaries
Notes to Consolidated Financial Statements – (Continued)

The compensation committee may also award under the 2006 Plan:

- restricted stock, which are shares of common stock subject to restrictions;
- stock units, which are common stock units subject to restrictions;
- dividend equivalent rights, which are rights entitling the recipient to receive credits for dividends that would be paid if the recipient had held a specified number of shares of common stock;
- stock appreciation rights, which are rights to receive a number of shares or, in the discretion of the compensation committee and subject to applicable law, an amount in cash or a combination of shares and cash, based on the increase in the fair market value of the shares underlying the right during a stated period specified by the compensation committee;
- unrestricted stock, which are shares of common stock granted without restrictions as a bonus; and

performance and annual incentive awards, ultimately payable in common stock or cash, as determined by the compensation committee (the compensation committee may grant multi-year and annual incentive awards subject to achievement of specified goals tied to business criteria set forth in the 2006 Plan).

During July 2001, the Company modified the exercise price of 3,402,794 stock options issued to employees. The stock options were originally granted with an option exercise price of \$0.45. The modified stock options have an exercise price of \$0.05 and all other terms and conditions of the options such as vesting schedules and expiration dates remained unchanged. The Company is accounting for the modified stock options from the date of modification to the date the stock options are exercised, forfeited, or expire unexercised using variable accounting. Under variable accounting, the Company will revalue compensation costs for the stock options at each reporting period based on changes in the intrinsic value of the stock options. The Company recorded \$7,000, \$87,000 and \$85,000 in stock compensation expense based on vesting of the fair value of the options, using the Black-Scholes option-pricing model for the years ended September 30, 2006, 2005 and 2004, respectively. The Company will continue to revalue compensation costs for the options based on changes in the fair value of the Company's common stock.

During the year ended September 30, 2005, the Company repurchased 240,906 shares of its common stock from former employees pursuant to the provisions of the 2005 Stock Option and Incentive Plan and the Option Agreements entered into between the Company and such former employees as option grant recipients. No additional grants have been made under 2005 Stock Option and Incentive Plan, since the Company's initial public offering. All of the stock option grants since the Company's initial public offering have been made under the 2006 Omnibus Long-Term Incentive Plan.

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Liquidity Services, Inc. and Subsidiaries
Notes to Consolidated Financial Statements – (Continued)

Stock Option Activity

A summary of the Company's stock option activity for the years ended September 30, 2006 and 2005 is as follows:

	Options	Weighted-Average Exercise Price
Options outstanding at September 30, 2004	296,697	\$ 0.42
Options granted	868,750	2.78
Options exercised	(240,568)	0.81
Options canceled	(11,594)	0.05
Options outstanding at September 30, 2005	913,285	2.53
Options granted	1,531,500	12.21
Options exercised	(220,994)	1.61
Options canceled	(233,595)	7.62
Options outstanding at September 30, 2006	<u>1,990,196</u>	9.48
Options exercisable at September 30, 2006	<u>344,816</u>	4.37

The following table summarizes information about options outstanding at September 30, 2006:

Range of Exercise Price	Number Outstanding	Options Outstanding	
		Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price
\$0.05	6,869	5.29	\$ 0.05
\$2.00 - \$7.00	872,327	8.79	4.24
\$12.00 - \$18.00	1,111,000	9.59	13.66
	<u>1,990,196</u>	9.23	9.48

The intrinsic value of outstanding and exercisable options at September 30, 2006 is approximately \$12,160,000 and \$3,869,000, respectively, based on a stock price of \$15.59 on September 29, 2006.

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Liquidity Services, Inc. and Subsidiaries
Notes to Consolidated Financial Statements – (Continued)

13. Subsequent Event

STR Acquisition

On October 16, 2006, the Company acquired substantially all of the assets of the wholesale business of STR, Inc. (STR), a traditional liquidator, for approximately \$10.1million in cash. The operating results of STR will be included in the consolidated financial statements from the date of acquisition. The purchase consideration primarily consisted of \$10,126,000 of cash paid to the seller, which was allocated to acquired tangible assets, identifiable intangible assets, liabilities assumed and goodwill.

14. Quarterly Results Unaudited

The following table sets forth for the eight most recent quarters the selected unaudited quarterly consolidated statement of operations data. The unaudited quarterly consolidated statement of operations data has been prepared on the same basis as our audited consolidated financial statements and, in the opinion of management, includes all adjustments, consisting only of normal recurring adjustments, necessary for the fair presentation of this data.

	Three months ended							
	Dec. 31, 2004	Mar. 31, 2005	June 30, 2005	Sept. 30, 2005	Dec. 31, 2005	Mar. 31, 2006	June 30, 2006	Sept. 30, 2006
	(in thousands, except share and per share data)							
Revenue	\$ 19,817	\$ 22,432	\$ 22,940	\$ 24,225	\$ 32,207	\$ 37,101	\$ 38,750	\$ 39,755
Income from operations	\$ 1,081	\$ 1,484	\$ 1,726	\$ 1,567	\$ 2,810	\$ 3,398	\$ 3,317	\$ 3,320
Net income	\$ 618	\$ 874	\$ 1,043	\$ 1,587	\$ 1,468	\$ 1,928	\$ 2,355	\$ 2,229
Basic earnings per common share	\$ 0.03	\$ 0.05	\$ 0.05	\$ 0.08	\$ 0.08	\$ 0.08	\$ 0.09	\$ 0.08
Diluted earnings per common share	\$ 0.03	\$ 0.04	\$ 0.04	\$ 0.07	\$ 0.06	\$ 0.08	\$ 0.08	\$ 0.08
Basic weighted average shares outstanding	19,029,284	19,041,592	19,089,619	18,993,361	19,034,172	22,409,104	27,347,778	27,532,067
Diluted weighted average shares outstanding	22,519,522	22,512,651	22,628,782	22,733,122	22,848,367	25,052,464	28,291,280	28,159,384

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LIQUIDITY SERVICES, INC.
SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS
(dollars in thousands)

	Balance at beginning of period	Charged to expense	Reductions	Balance at end of period
Deferred tax valuation allowance (deducted from net deferred tax assets)				
Year ended September 30, 2004	\$ 2,493	\$ 1,611	\$ 2,649	\$ 1,455
Year ended September 30, 2005	1,455	478	1,164	769
Year ended September 30, 2006	\$ 769	\$ 0	\$ 275	\$ 494
Allowance for doubtful accounts (deducted from accounts receivable) (1)				
Year ended September 30, 2006	\$ 50	\$ 150	\$ 0	\$ 200

(1) This information is omitted for the year ended September 30, 2004 and 2005 since it was not material.

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EXHIBIT INDEX

Exhibit No.	Description
2.1	Asset Purchase Agreement, dated as of August 29, 2006, among Liquidity Services, Inc., Carl C. Jones, Eddie Fischer, Bradley Fischer and Southern Textile Recycling, Inc.
3.1	Fourth Amended and Restated Certificate of Incorporation, incorporated herein by reference to Exhibit 3.1 to Amendment No. 2 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on January 17, 2006.
3.2	Amended and Restated Bylaws, incorporated herein by reference to Exhibit 3.2 to Amendment No. 2 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on January 17, 2006.
4.1	Form of Certificate of Common Stock of the Company, incorporated herein by reference to Exhibit 4.1 to Amendment No. 5 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 21, 2006.
4.2	Registration Rights Agreement, dated September 3, 2004, by and between the Company and ABS Capital Partners IV, L.P., ABS Capital Partners IV-A, L.P., ABS Capital Partners IV Offshore L.P. and ABS Capital Partners IV Special Offshore L.P., incorporated herein by reference to Exhibit 4.2 to Amendment No. 2 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on January 17, 2006.
10.1	Defense Logistics Agency, Surplus Commercial Property, Defense Reutilization and Marketing Service, Invitation for Bids, No. 99-0001, December 2000, incorporated herein by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on November 14, 2005

- 10.2 Defense Logistics Agency, Multi-Year Sale of Surplus Scrap Material at Locations Nationwide, Defense Reutilization and Marketing Service, Invitations for Bids, No. 99-4001, December 7, 2004, incorporated herein by reference to Exhibit 10.2 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on November 14, 2005.
- 10.3.1 Executive Employment Agreement, dated September 2, 2004, between the Company and William P. Angrick, III, incorporated herein by reference to Exhibit 10.3.1 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#
- 10.3.2 Amendment to Executive Employment Agreement between the Company and William P. Angrick, III, dated January 26, 2006, incorporated herein by reference to Exhibit 10.3.2 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#
- 10.4.1 Executive Employment Agreement, dated September 2, 2004, between the Company and Jaime Mateus-Tique, incorporated herein by reference to Exhibit 10.4.1 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#
- 10.4.2 Amendment to Executive Employment Agreement between the Company and Jaime Mateus-Tique, dated January 25, 2006, incorporated herein by reference to Exhibit 10.4.2 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#

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- 10.5.1 Executive Employment Agreement, dated May 15, 2001, between Government Liquidation.com, LLC and Benjamin R. Brown, incorporated herein by reference to Exhibit 10.5.1 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#
 - 10.5.2 Amendment to Executive Employment Agreement between Government Liquidation.com, LLC and Benjamin R. Brown, dated January 26, 2006, incorporated herein by reference to Exhibit 10.5.2 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#
 - 10.6.1 Executive Employment Agreement, dated January 27, 2005, between the Company and James M. Rallo, incorporated herein by reference to Exhibit 10.6.1 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#
 - 10.6.2 Amendment to Executive Employment Agreement between the Company and James M. Rallo, dated January 25, 2006, incorporated herein by reference to Exhibit 10.6.2 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#
 - 10.7.1 Executive Employment Agreement, dated June 13, 2001, between Government Liquidation.com, LLC and Thomas Burton, incorporated herein by reference to Exhibit 10.7.1 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#
 - 10.7.2 Amendment to Executive Employment Agreement between Government Liquidation.com, LLC and Thomas Burton, dated January 25, 2006, incorporated herein by reference to Exhibit 10.7.2 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#
 - 10.8.1 Executive Employment Agreement, dated November 11, 2005, between the Company and James E. Williams, incorporated herein by reference to Exhibit 10.8.1 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#
 - 10.8.2 Amendment to Executive Employment Agreement between the Company and James E. Williams, dated January 26, 2006, incorporated herein by reference to Exhibit 10.8.2 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#
 - 10.9 2005 Stock Option and Incentive Plan, incorporated herein by reference to Exhibit 10.8 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on November 14, 2005.#
 - 10.10 2006 Omnibus Long-Term Incentive Plan, incorporated by reference to Exhibit 10.10 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.#
 - 10.11 Form of Directors and Officers Indemnification Agreement, incorporated herein by reference to Exhibit 10.11 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on February 1, 2006.
 - 10.12 Amendment to Commercial Venture II (CV-II) (Sales Contract Number 99-0001-0002), dated as of September 12, 2006, between Surplus Acquisition Venture, LLC (a wholly-owned subsidiary of Liquidity Services, Inc.) and Defense Reutilization and Marketing Service of the U.S. Department of Defense, incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the SEC on September 12, 2006.
 - 10.13 LSI Non-Employee Director Compensation Plan, incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the SEC on August 1, 2006.#

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- 10.15 Lease Agreement, dated September 1, 2004, between Le Baron Investments and Southern Textile Recycling, Inc.
- 10.16 Lease Agreement, dated June 8, 2006, between Le Baron Investments and Southern Textile Recycling, Inc.
- 10.17 Lease Agreement, effective October 1, 2005, between the Company and ProLogis Development Services Incorporated.
- 10.18 Industrial Real Estate Lease Agreement, dated January 20, 2006, between the Company and Paulus Enterprises.
- 10.19 Standard Form Industrial Building Lease, effective August 1, 2006, between the Company and First Industrial Development Services, Inc.
- 10.20 Industrial Building Lease Agreement, dated February 2, 2005, between the Company and First Industrial Texas, L.P.
- 10.21 Amendment, effective June 1, 2006, to Industrial Lease Agreement, dated February 2, 2005, between the Company and First Industrial Texas, L.P.
- 21.1 List of Subsidiaries
- 23.1 Consent of Ernst & Young LLP
- 24.1 Power of Attorney (included on signature page)
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

Designates management or compensation plans.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on December 21, 2006.

LIQUIDITY SERVICES, INC.

By: /s/ William P. Angrick, III
William P. Angrick, III
*Chairman of the Board of Directors
and Chief Executive Officer*

We, the undersigned directors and officers of Liquidity Services, Inc., hereby severally constitute William P. Angrick, III and James E. Williams, and each of them singly, our true and lawful attorneys with full power to them and each of them to sign for us, in our names in the capacities indicated below, any and all amendments to this Annual Report on Form 10-K filed with the Securities and Exchange Commission.

Pursuant to the requirements of the Securities Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated on December 21, 2006.

<u>Signature</u>	<u>Title</u>
<u>/s/ William P. Angrick, III</u> William P. Angrick, III	Chairman of the Board of Directors and Chief Executive Officer (Principal Executive Officer)
<u>/s/ James M. Rallo</u> James M. Rallo	Chief Financial Officer and Treasurer (Principal Financial Officer and Principal Accounting Officer)

/s/ Jaime Mateus-Tique
Jaime Mateus-Tique

President, Chief Operating Officer and Director

/s/ Philip A. Clough
Phillip A. Clough

Director

/s/ Patrick W. Gross
Patrick W. Gross

Director

/s/ Franklin D. Kramer
Franklin D. Kramer

Director

/s/ F. David Fowler
F. David Fowler

Director

ASSET PURCHASE AGREEMENT

among

LIQUIDITY SERVICES, INC.

CARL C. JONES,

EDDIE FISCHER,

BRADLEY FISCHER

and

SOUTHERN TEXTILE RECYCLING, INC.

August 29, 2006

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the "Agreement"), dated as of August [29], 2006, is entered into by and among LIQUIDITY SERVICES, INC., a Delaware corporation ("Purchaser"), SOUTHERN TEXTILE RECYCLING, INC., a Tennessee corporation (the "Company"), CARL C. JONES, EDDIE FISCHER AND BRADLEY FISCHER, each of whom is a shareholder of Company (Messrs. Jones, Fischer and Fischer are collectively referred to herein as "Shareholders" and each is referred to as a "Shareholder").

RECITALS

WHEREAS, the Shareholders collectively own all the issued and outstanding equity securities of Company;

WHEREAS, Company is engaged in the business of purchasing and remarketing wholesale, surplus, salvage, overstock, closeout and store returned merchandise to wholesalers (the "Business") and Company is also engaged in the business of purchasing and remarketing wholesale, surplus, salvage, overstock, closeout and store returned merchandise to retail customers through Company's retail stores (the "Retail Business"); and

WHEREAS, Company desires to sell, the Shareholders desire to cause Company to sell and Purchaser desires to purchase, certain of the assets, properties and rights relating to or otherwise used or held for use by Company in the Business, and in connection therewith, Purchaser is willing to assume specified liabilities of Company relating thereto, all upon the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the respective covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

1.1. Defined Terms. As used herein, the terms below shall have the following meanings.

"Accounts Receivable" means all accounts receivable, notes and notes receivable, other receivables, book debts and other forms of obligations to Company, together with any unpaid interest or fees accrued thereon or other amounts due with respect thereto, and all related claims, rights, causes of action and suits related to such receivables.

"Acquired Assets" means all of Company's right, title and interest in, to and under the assets, properties and rights of any nature, kind or description, whether tangible or intangible, real, personal or mixed, wherever located, and whether now existing or hereafter acquired prior

to the Closing Date, related to, used or held for use in connection with, the Business, as the same shall exist on the Closing Date, including, without limitation:

- (i) all Business Intellectual Property;
- (ii) all Equipment;
- (iii) all Permits to the extent transferable to Purchaser;
- (iv) all Business Accounts Receivable other than the (i) Retained Receivables and (ii) the Accounts Receivable arising from the operation of the Retained Business;
- (v) all Business Records;
- (vi) all Business Inventory;
- (vii) all Assumed Contracts;
- (viii) all Real Property and all leasehold improvements situated at or in the Real Property;
- (ix) the benefit of any arrangement of any Person not to compete with the Business or to solicit or take customers or Employees of the Business;
- (x) all Prepaid Items;
- (xi) deposits received from customers of the Business;
- (xii) all Rights;
- (xiii) all goodwill and going concern value and other intangible assets, if any, related to, or arising from, the Business and the Acquired Assets, including, without limitation, all goodwill associated with Business Intellectual Property;
- (xiv) all marketing materials, sales literature and promotional literature; and

(xv) all other assets, properties and rights that are disclosed on Schedule 1.1(a).

“Affiliate” means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person.

“Agreement” shall have the meaning specified in the Preamble.

“Ancillary Agreements” means the Employment Agreements, the Escrow Agreement, the Assignment and Assumption Agreement, the Bill of Sale and all other agreements, documents and instruments required to be delivered by any party pursuant to this Agreement or entered into in connection with this Agreement or the transactions contemplated hereby.

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“Applicable Law” means any domestic or foreign, federal, state or local statute, law, ordinance, policy, guidance, rule, administrative interpretation, regulation, rule, order, writ, injunction, directive, judgment, decree or other requirement (including common law), of any Governmental Authority (including any Environmental Law).

“Arbitrator” shall have the meaning set forth in Section 10.12(b).

“Assignment and Assumption Agreement” means the assignment and assumption agreement by and among Purchaser and Company attached hereto as Exhibit A.

“Assumed Contracts” means all contracts and agreements set forth on Schedule 1.1(b); provided, however, that, notwithstanding anything to the contrary in this Agreement, a Non-assumed Contract shall not be an “Assumed Contract.”

“Assumed Liabilities” means, subject to the limitations and the conditions as provided herein:

(i) all liabilities arising out of ownership or use of the Acquired Assets after the Closing Date;

(ii) all liabilities of Company under the (A) Assumed Contracts and (B) Permits included in Acquired Assets, in each case relating to obligations to be performed after the Closing Date; and

(iii) all liabilities disclosed on Schedule 1.1(c).

Assumed Liabilities shall not include any Excluded Liabilities.

“Base Consideration” shall mean Eight Million Five Hundred Thousand Dollars (\$8,500,000).

“Benefit Plan” shall have the meaning specified in Section 3.13(a).

“Bill of Sale” means the bill of sale attached hereto as Exhibit B.

“Business” shall have the meaning specified in the Recitals.

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

“Business Accounts Receivable” means all Accounts Receivable arising from the operation of the Business but shall exclude any Accounts Receivable arising from the operation of the Retained Business.

“Business Intellectual Property” means all Intellectual Property owned by (in whole or in part), or licensed to, Company and in any way related to, used or held for use in connection with the Business, including all related claims, rights, causes of action and suits related to such Intellectual Property.

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“Business Inventory” means all Inventory related to, used or held for use in connection with the Business but shall exclude any Inventory related to, used or held for use in connection with the Retained Business, inventory on consignment, inventory in processing and inventory reserves.

“Business Records” means all books, records, original documents, accounts, files, papers, correspondence and other information of Company in any way related to the Business, the Acquired Assets or the Assumed Liabilities, which have been reduced to writing or other tangible or fixed form, whether in hard copy or computer or other electronic format, including legal records, warranty records, equipment logs, lists of present and former customers, distributors and suppliers, customer service and collection records, billing tapes, month-end tapes, documentation developed or used for accounting, marketing, services or any other purpose related to the conduct of the Business, other than (i) those relating solely to the Excluded Assets or Excluded Liabilities and (ii) Tax Returns and Tax records.

“CERCLA” shall have the meaning specified in Section 3.12.

“Certificate of Incorporation” shall have the meaning specified in Section 3.1.

“Closing” shall have the meaning specified in Section 2.10.

“Closing Date” shall have the meaning specified in Section 2.10.

“Closing Date Accounts Receivable Amount” means the value of Business Accounts Receivable set forth on the Closing Date Statement.

“Closing Date Inventory Amount” means the value of the Business Inventory set forth on the Closing Date Statement.

“Closing Date Inventory Statement” shall have the meaning specified in Section 2.7.

“Closing Date Statement” shall have the meaning specified in Section 2.7.

“Closing Payment” shall have the meaning specified in Section 2.4(a).

“Code” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“Company” shall have the meaning specified in the Preamble.

“Company Board” means the Board of Directors of Company.

“Company Balance Sheet” means the balance sheet of Company dated as of June 30, 2006 included in the Financial Statements.

“Company Common Stock” shall have the meaning specified in Section 3.1.

“Company Disclosure Letter” shall have the meaning specified in Article III.

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“Company Owned Copyrights” shall have the meaning specified in Section 3.19(d).

“Company Patents” shall have the meaning specified in Section 3.19(a).

“Company Registered Copyrights” shall have the meaning specified in Section 3.19(a).

“Company Software” shall have the meaning specified in Section 3.19(m).

“Company Trademarks” shall have the meaning specified in Section 3.19(a).

“Confidentiality Agreement” shall have the meaning specified in Section 5.2(b).

“Contaminant” shall have the meaning specified in Section 3.19(q).

“Contract” shall have the meaning specified in Section 3.9(a).

“Default” means (a) any actual breach or default, (b) the occurrence of an event that with the passage of time or the giving of notice or both would constitute a breach or default or (c) the occurrence of an event that, with or without the passage of time or the giving of notice or both, would give rise to a right of termination, renegotiation or acceleration.

“Disabling Code” shall have the meaning specified in Section 3.19(q).

“Dispute” shall have the meaning specified in Section 10.12(a).

“Dispute Notice” shall have the meaning specified in Section 10.12(b).

“Employee” means any full-time or part-time employee, officer or director of Company.

“Employment Agreements” means the employment agreements to be entered into by Purchaser and each of the persons listed in Schedule 1.1(d).

“Encumbrance” means any claim, lien, pledge, option, charge, easement, security interest, deed of trust, mortgage, conditional sales agreement, encumbrance or other right of third parties of any kind, whether voluntarily incurred or arising by operation of law, and includes, without limitation, any agreement to give any of the foregoing in the future, and any contingent sale or other title retention agreement or lease in the nature thereof.

“Environmental Claim” means any claim, violation or liability, by or of any Person relating to liability or potential liability (including liability or potential liability for enforcement, investigatory costs, cleanup costs, governmental response costs, natural resource damages, property damage, personal injury, fines or penalties) arising out of, based on or resulting from (a) the presence, discharge, emission, release or threatened release of any Hazardous Substance (as defined below) at any location and any exposure of Persons to such Hazardous Substance at any location, (b) the use, handling, treatment, storage or disposal of any

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Hazardous Substance, (c) circumstances forming the basis of any violation or alleged violation of any Environmental Laws (as defined below) or Permits or (d) otherwise relating to obligations or liabilities under any Environmental Law.

“Environmental Law” shall have the meaning specified in Section 3.12.

“Equipment” means all of the tangible personal property, including, without limitation, the furnishings, furniture, machinery, office supplies, computer equipment, servers, printers, software and hardware products, trade fixtures, tools, vehicles, material handling equipment, forklifts, racks, shelving, carts, handtrucks and other equipment of every kind and nature owned or leased by Company and related to, used or held for use in connection with, the Business.

“ERISA” shall have the meaning specified in Section 3.13(a).

“ERISA Affiliate” shall have the meaning specified in Section 3.13(a).

“Escrow Agent” shall have the meaning specified in Section 2.4(b).

“Escrow Agreement” shall have the meaning specified in Section 2.4(b).

“Escrow Amount” shall have the meaning specified in Section 2.4(b).

“Escrow Fund” shall have the meaning specified in Section 2.4(b).

“Escrow Termination Date” means the first anniversary of the Closing Date.

“Excluded Assets” means the Company’s right, title and interest in, to and under the following, which are not acquired by Purchaser

hereunder:

- (i) the minute books, stock records, stock certificates, organizational documents and corporate seals of Company;
- (ii) all contracts and agreements that are not Assumed Contracts;
- (iii) any cash and cash equivalents of Company on the Closing Date;
- (iv) the Retained Receivables;
- (v) the rights in connection with and assets of any Benefit Plan on the Closing Date;
- (vi) all claims for Tax refunds (or credits) or Tax loss carryforwards relating to the operation of the Business for any period or portion thereof ending on or before the Closing Date;
- (vii) all claims (including pending claims), rights, causes of action, suits, judgments and demands of any nature in favor of Company to the extent relating to, or otherwise arising out of, the Retained Business, Excluded Assets or Excluded Liabilities, whether choate or inchoate, known or unknown, contingent or noncontingent;

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- (viii) all Permits to the extent not transferable to Purchaser;
 - (ix) all Non-assumed Contracts;
 - (x) all Inventory related to, used or held for use in connection with, the Retained Business and all Excluded Inventory;
 - (xi) all rights of Company under this Agreement and the Ancillary Agreements; and
 - (xii) all other assets, properties and rights related to the Business that are disclosed on Schedule 1.1(e).

“Excluded Inventory” shall mean any Inventory (i) which the Company has agreed to sell to another party and (ii) with respect to which the Company has received full payment from such party, whether or not the Company has invoiced such party for the sale of such Inventory.

“Excluded Liabilities” means, except for Assumed Liabilities, all liabilities of Company, whether arising before, on or after the Closing Date. Without limiting the generality of the preceding sentence, the Excluded Liabilities include the following liabilities of Company (for purposes of clarification, no portion of the following items described in the remainder of this definition shall constitute an Assumed Liability):

- (i) any liability that relates to, or otherwise arises out of, the conduct or operation of the Business on or before the Closing Date, including any warranty or guarantee obligations, any obligations and liabilities for refunds, adjustments or allowances of any kind;
- (ii) any liability that relates to, or otherwise arises out of, the Retained Business;
- (iii) any liability (i) under any Assumed Contract that is to be, or was to have been, performed on or before the Closing Date or that relates to any action or inaction of Company or any of its Affiliates occurring on or before the Closing Date, and (ii) under any Contract other than the Assumed Contracts, including, without limitation, any Non-assumed Contract;

(iv) any liability for Taxes, including, without limitation, (i) any Taxes that relate to, or otherwise arise out of, the Business or the Acquired Assets, with respect to all periods or portions thereof ending on or prior to the Closing Date, and (ii) any Taxes that will arise as a result of the transactions contemplated by this Agreement (including, but not limited to, any transfer, documentary, sales, use and other Taxes assessed upon or with respect to the transfer of the Acquired Assets to Purchaser, and any recording or filing fees with respect thereto);

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(iv) any liability arising in respect of or relating to any Benefit Plan;

(v) any liability for severance or other payments arising out of the transactions contemplated by this Agreement or otherwise to Employees who are not Transferred Employees;

(vi) any liability from or relating to any indebtedness of Company or arising out of or relating to any credit facilities, capital leases or guarantees of Company or any Encumbrances related thereto;

(vii) any liability relating to any Proceeding to which Company is or becomes a party that relates to or arises out of facts or circumstances existing before the Closing Date;

(viii) any liability relating to Company failing to observe or comply with any Applicable Law, including, without limitation, any Applicable Law which relates to the sale of property in bulk in connection with the transfer of the Acquired Assets to Purchaser;

(ix) any liability in connection with any obligations owing to any Affiliate of Company;

(x) any liability under this Agreement or any Ancillary Agreement;

(xi) any liability relating to an Excluded Asset or not associated with the Acquired Assets;

(xii) any liability imposed upon Purchaser as a successor to or acquiror of the Business where such liability has not been expressly assumed by Purchaser as an Assumed Liability;

(xiii) any liability based on any action, event, facts or circumstances relating to Company, the Acquired Assets or the Business arising or existing prior to the Closing Date;

(xiv) any liability arising from, or relating to, the formation, organization or capitalization of Company or the capital stock of Company, including any common stock and preferred stock of Company, or any options, warrants or other rights to acquire any capital stock of Company, and including any liability relating to the manner in which any capital stock, or any options, warrants or other rights to acquire any capital stock of Company, were issued or granted, or relating to the distribution of proceeds from the transactions contemplated hereby to holders of capital stock of Company or any option, warrant or other right to acquire any capital stock of Company (including any liability that arises because such distribution or transaction may have constituted a fraudulent conveyance under applicable federal or state law, or may have violated state corporate law governing dividends, redemptions or other similar laws);

(xv) any liability based on misappropriation, unauthorized use or infringement of any Intellectual Property of any Person by Company or with respect to Business Intellectual Property; and

(xvi) any liability based upon acts or omissions of Company or its Representatives, shareholders or Affiliates.

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“Financial Statements” means the financial statements for Company attached hereto as Exhibit C, which consist of (i) a balance sheet dated as of December 31, 2005 and related statement of income and statement of cash flows for the year ended December 31, 2005; and (ii) the Company Balance Sheet and related statement of income and statement of cash flows for the six-month period ending June 30, 2006.

“GAAP” means accounting principles generally accepted in the United States consistently applied over all relevant periods.

“Governmental Authority” means any court, administrative agency, regulatory body, commission or other governmental authority or instrumentality of the United States or any other country or any state, county, municipality or other governmental division of any country.

“Hazardous Materials” shall have the meaning specified in Section 3.12.

“Immediate Family”, with respect to any specified Person who is a natural person, means such Person’s spouse, parents, children and siblings, including adoptive relationships and relationships through marriage, or any other relative of such Person that shares such Person’s home.

“Inbound License Agreements” shall have the meaning specified in Section 3.19(g).

“Indemnification Claim” shall have the meaning specified in Section 9.2b.

“Indemnifying Party” shall have the meaning specified in Section 9.3(a).

“Independent Accountants” shall have the meaning specified in Section 2.7(d).

“Independent Appraisers” shall have the meaning specified in Section 2.7(d).

“Intellectual Property” shall have the meaning specified in Section 3.19(a).

“Inventory” means all inventory, including raw and packing materials, work-in-progress, finished goods, supplies, parts and similar items owned by Company but shall exclude any Excluded Inventory.

“IRS” shall have the meaning specified in Section 3.13(d).

“JAMS” shall have the meaning specified in Section 10.12(c).

“Knowledge” of Company means the knowledge of the officers and directors (other than Eddie Fisher and Brad Fisher) of Company, which will be deemed to include (i) the actual knowledge of such individuals; and (ii) the knowledge that a prudent individual could be expected to discover or otherwise become aware of in the course of conducting a reasonably comprehensive investigation of the surrounding facts, circumstances, events or other matters at issue, whether or not in fact he or she made such reasonable investigation.

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“Liquidator” shall have the meaning specified in Section 2.5(c).

“Losses” shall have the meaning specified in Section 9.2(a).

“Material Adverse Effect” means any event, change, circumstance, effect or state of facts that is or could reasonably be expected to be materially adverse to (i) the business, operations, assets, condition (financial or otherwise), results of operations, liabilities or prospects of Company or the Business, as applicable, or (ii) the ability of Company to perform its obligations under this Agreement or the Ancillary Agreements.

“Material Consents” means the consents, approvals, authorizations, notifications or filings identified on Schedule 1.1(g).

“Material Contracts” shall have the meaning specified in Section 3.9(a).

“Minimum Inventory Sales Amount” means an amount equal to one hundred and twenty-four percent (124%) of the Closing Date Inventory Amount.

“Non-assumed Contracts” means a Contract that is listed on Schedule 1.1(b), but with respect to which the Company has not obtained the consent required from a third-party in order to assign such Contract to Purchaser or which the Purchaser elects, in its sole discretion, not to assume.

“Notice of Disagreement” shall have the meaning specified in Section 2.7(d).

“Ordinary Course of Business” or “Ordinary Course” or any similar phrase shall describe any action taken by a Person if:

(i) such action is consistent in manner and amount with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person; and

(ii) such action is not required to be authorized by the board of directors of such Person (or by any Person or group of Persons exercising similar authority) and is not required by Applicable Law or consistent with customary practice of such Person to be authorized by the parent company or equity holders (if any) of such Person.

“Other Intellectual Property Rights” shall have the meaning specified in Section 3.19(a).

“Outbound License Agreement” shall have the meaning specified in Section 3.19(g).

“Patents” shall have the meaning specified in Section 3.19(a).

“Permits” means all licenses, permits, franchises, approvals, authorizations, consents or orders of, or filings with, any Governmental Authority, whether foreign, federal, state or local, or with any other Person, relating to the Acquired Assets, the Assumed Liabilities or the past or present conduct or operation of, the Business.

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“Permitted Encumbrances” means (i) Encumbrances consisting of zoning or planning restrictions, easements, permits and other restrictions or limitations on the use of real property or irregularities in title thereto which do not materially detract from the value of, or materially impair the use of, such property as it is presently used in connection with the Business, (ii) Encumbrances for current Taxes, assessments or governmental charges or levies on property not yet due, (iii) mechanic’s, materialmen’s and similar liens arising in the Ordinary Course of Business or by operation of law.

“Person” means any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, limited liability company, trust, unincorporated organization, business association, firm, joint venture or Governmental Authority.

“Prepaid Items” means all credits, cash reserves, prepaid expenses, advance payments, security deposits, escrows and other prepaid items of Company arising from or related to the Business or the Acquired Assets.

“Price Allocation” shall have the meaning specified in Section 2.6(a).

“Proceeding” shall have the meaning specified in Section 3.17.

“Property Taxes” shall have the meaning specified in Section 2.9.

“Purchase Price” shall have the meaning specified in Section 2.3.

“Purchaser” shall have the meaning specified in the Preamble.

“Purchaser Indemnitee” shall have the meaning specified in Section 9.2(a).

“Real Property” shall have the meaning specified in Section 3.5.

“Related Party”, with respect to any specified Person, means: (i) any Affiliate of such specified Person, or any director, executive officer, general partner or managing member of such Affiliate; (ii) any Person who serves as a director, executive officer, partner, member or in a similar capacity of such specified Person; (iii) any Immediate Family member of an individual described in clause (ii); or (iv) any other Person who holds, individually or together with any Affiliate of such other Person and any member(s) of such other Person’s Immediate Family, more than 10% of the outstanding equity or ownership interests of such specified Person.

“Representative” means, with respect to any Person, any officer, director, principal, employee, advisor, consultant, auditor, agent, banker or other representative of such Person.

“Representative Agreements” shall have the meaning specified in Section 9.6(a).

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“Restricted Services” means purchasing and remarketing wholesale, surplus, salvage, overstock, closeout and store returned merchandise (specifically excluding, however, the sale of used clothing or shoes purchased from thrift or charitable organizations that are not suppliers to the Business, such as Goodwill Industries or the Salvation Army, and subsequently remarketed to international buyers that are not buyers in connection with the Business).

“Retained Business” means the businesses or operations of Company other than the Business, including without limitation the Retail Business.

“Retail Business” shall have the meaning specified in the Preamble.

“Retained Receivables” means the Accounts Receivable arising prior to the Closing Date and listed on Schedule 1.1(h).

“Rights” means all claims, causes of action, rights of recovery and rights of set-off against any Person arising from or related to the Business, the Acquired Assets or the Assumed Liabilities, including: (i) all rights under any Assumed Contract, including all rights to receive payment for products sold and services rendered thereunder, to receive goods and services thereunder, to assert claims and to take other rightful actions in respect of breaches, defaults and other violations thereof; (ii) all rights under or in respect of any Business Intellectual Property, including all rights to sue and recover damages for past, present and future infringement, dilution, misappropriation, violation, unlawful imitation or breach thereof, and all rights of priority and protection of interests therein under the laws of any jurisdiction; (iii) all rights under all guarantees, express or implied warranties, indemnities and similar rights arising from or related to the Business, the Acquired Assets or the Assumed Liabilities; (iv) all proceeds from existing insurance policies of Company relating to pre-Closing claims or occurrences, any benefits under such policies and any claims of Company with respect thereto, to the extent arising out of an insured loss of Company covered by any such policy whether occurring before or after the Closing Date; and (v) all claims (including pending claims and counterclaims), rights, causes of action, suits, judgments and demands of any nature in favor of Company that relate to, or otherwise arise out of, the Acquired Assets or Assumed Liabilities, whether choate or inchoate, known or unknown, contingent or noncontingent; except, in each of clauses (i) through (v) above, to the extent specifically related to Excluded Assets or Excluded Liabilities.

“Software” shall have the meaning specified in Section 3.19(m).

“Solvent” shall have the meaning specified in Section 3.27.

“Shareholder” shall have the meaning specified in the Preamble.

“Shareholders’ Representative” shall have the meaning specified in Section 9.6.

“Subsidiary” means any corporation, partnership, limited liability company, association, trust, unincorporated association or other legal entity of which Company or Purchaser (as the case may be) or any such other person (either alone or through or together with any other subsidiary), owns, directly or indirectly, more than fifty percent (50%) of the capital stock or other equity interests, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

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“Systems” shall have the meaning specified in Section 3.19(q).

“Takeover Proposal” means any proposal or offer from any Person relating to any direct or indirect acquisition or purchase of all or any portion of Company, whether effected by sale of assets, sale of stock, merger or otherwise, other than Inventory to be sold in the ordinary course of business consistent with past practice.

“Tax” shall have the meaning specified in Section 3.11(a).

“Tax Return” shall have the meaning specified in Section 3.11(a).

“Termination Fee” means the terminating party’s out-of-pocket costs and expenses in connection with the transactions contemplated by this Agreement.

“Third Party Claim” shall have the meaning specified in Section 9.3(a).

“Threshold” shall have the meaning specified in Section 9.2(c).

“Trade Secrets” shall have the meaning specified in Section 3.19(a).

“Trademarks” shall have the meaning specified in Section 3.19(a).

“Transfer Tax” shall have the meaning specified in Section 5.10(a).

“Transferred Employees” shall have the meaning specified in Section 5.7(a).

“WARN Act” shall have the meaning specified in Section 3.18(g).

1.2. Construction. Unless the context otherwise clearly indicates, words used in the singular include the plural and words used in the plural include the singular. The Schedules and Exhibits referred to herein shall be incorporated into this Agreement as an integral part hereof to the same extent as if they were set forth verbatim herein. All “Article” and “Section” references herein are references to Articles and Sections of this Agreement, unless otherwise specified. The Recitals and the captions and headings of Articles and Sections of this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not affect the meaning or interpretation of this Agreement. All references herein to dollars (or \$) shall mean US Dollars.

ARTICLE II.

PURCHASE AND SALE

2.1. Purchase and Sale of Acquired Assets.

(a) Upon the terms and subject to the conditions of this Agreement, and in reliance upon the representations, warranties and agreements herein set forth, at the Closing, Company shall irrevocably sell, transfer, convey, assign and deliver to Purchaser, and Purchaser

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shall purchase, acquire and accept from Company, the Acquired Assets, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) The Acquired Assets shall not include, and Purchaser shall not purchase, any Excluded Assets, all of which shall be retained by Company.

2.2. Assumed Liabilities; Excluded Liabilities. On the terms and subject to the conditions of this Agreement, at the Closing, Purchaser shall assume and become responsible for the Assumed Liabilities. Purchaser shall not assume, nor shall Purchaser agree to pay, perform, discharge or otherwise satisfy, or agree to indemnify Company or the Shareholders against or otherwise have any responsibility or obligation for or with respect to, any Excluded Liabilities.

2.3. Purchase Price. On the Closing Date, in full consideration for the Acquired Assets, Purchaser shall (i) assume the Assumed Liabilities, and (ii) in accordance with the provisions of Section 2.4, pay an amount equal to the Base Consideration, which amount shall be subject to adjustment as described in Sections 2.4(a) and 2.7 (as so adjusted, the “Purchase Price”).

2.4. Payment of Purchase Price; Escrow Fund.

(a) At the Closing, Purchaser shall deliver to Company Eight Million Five Hundred Thousand Dollars (\$8,500,000) subject to adjustment insofar as feasible to reflect all prorations required pursuant to Section 6.2(a) (as so adjusted, the “Closing Payment”), by wire transfer of immediately available funds to an account designated in writing by Company.

(b) At the Closing, Purchaser shall deposit with Bank of New York, as escrow agent (“Escrow Agent”), Eight Hundred Fifty Thousand Dollars (\$850,000) plus any additional amount deposited pursuant to Section 2.7(e)(i), or less any amount paid pursuant to Section 2.7(g) (the “Escrow Amount”) in immediately available funds to be held as the escrow fund (the “Escrow Fund”) pursuant to the Escrow Agreement among the Escrow Agent, Company, the Shareholders and Purchaser dated as of the date hereof (the “Escrow Agreement”), a copy of which is attached as Exhibit D hereto. Amounts in the Escrow Fund may be used (i) to satisfy claims arising under this Agreement (including claims for indemnification pursuant to Article IX) and (ii) to pay any amounts due to Purchaser under Section 6.3.

(c) The Purchase Price delivered to Company and the Escrow Agent in accordance with the terms hereof and Purchaser’s assumption of the Assumed Liabilities shall be deemed to be full payment for and in satisfaction of all rights in and pertaining to the Acquired Assets.

2.5. Necessary Actions; Further Action.

(a) Nothing in this Agreement or the Ancillary Agreements shall be construed as an agreement to assign any Acquired Asset that by its terms or pursuant to Applicable Law is not capable of being sold, assigned, transferred or delivered without the consent or waiver of a third party or Governmental Authority unless and until such consent or waiver shall be given. Company and each Shareholder shall use its best efforts, and Purchaser shall cooperate reasonably with Company, to obtain such consents and waivers and to resolve the impediments to the sale, assignment, transfer or delivery contemplated by this Agreement or the Ancillary

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Agreements and to obtain any other consents and waivers necessary to convey to Purchaser all of the Acquired Assets. Other than with respect to any Non-assumed Contract, in the event any such consents or waivers have not been obtained on or prior to the Closing Date, Company and each Shareholder shall use its best efforts to obtain the relevant consents or waivers until such consents or waivers are obtained, and Company and each Shareholder will cooperate with Purchaser in any lawful and economically feasible arrangement to provide that Purchaser shall receive the interest of Company in the benefits under any such Acquired Asset, including performance by Company, if economically feasible, as agent; *provided* that Purchaser shall undertake to pay or satisfy the corresponding liabilities for the enjoyment of such benefit to the extent Purchaser would have been responsible therefor hereunder if such consents or waivers had been obtained. Nothing in this Section 2.5(a) shall affect Purchaser's right to terminate this Agreement under Section 8.1(c) in the event that any consent or waiver as described herein is not obtained.

(b) If any further action is necessary or desirable at any time before, at or after the Closing to carry out the purposes and intent of this Agreement and the Ancillary Agreements, and to vest in Purchaser all rights, title and interests in and to the Acquired Assets, Company and each Shareholder shall take all such necessary or desirable actions. Without limiting the foregoing, Company and each Shareholder agrees to assist and cooperate with Purchaser in collecting, transferring, assigning, asserting or enforcing any claim, right or title of any kind in or to the Acquired Assets, and to do all such acts and things in relation thereto as Purchaser shall reasonably request.

(c) If, following the Closing, the Company Board and the Shareholders vote to dissolve Company and a Person is appointed to dispose of Company's assets, discharge its liabilities, and otherwise wind up its affairs in compliance with Applicable Law (such person, the "Liquidator"), Company and the Shareholders shall instruct the Liquidator to (i) cause Company to perform its obligations under this Agreement and the Ancillary Agreements, including, without limitation, Company's obligations under Sections 2.5, 2.6, 2.7, 2.9, 5.2, 5.5, 5.8, 5.9, 5.10, 5.11, 5.13, 5.14, 6.1, 6.2 and 6.3 of this Agreement and (ii) take any actions requested by Purchaser to acknowledge and agree to the Liquidator's responsibilities under this Section 2.5(c) to cause Company to perform its obligations under this Agreement and the Ancillary Agreements. The Liquidator and the Shareholders shall be jointly and severally liable for causing Company to perform its obligations under this Agreement and the Ancillary Agreements.

2.6. Purchase Price Allocation.

(a) Within sixty (60) days after the Closing Date, Purchaser shall provide to Company a draft purchase price allocation (the "Price Allocation"), which shall be prepared in a manner consistent with Section 1060 of the Code and the regulations promulgated thereunder. Purchaser and Company expect that the aggregate value allocable to furniture, fixtures and equipment in such Price Allocation shall be approximately \$600,000. Company shall propose to Purchaser any changes to the draft Price Allocation within thirty (30) days of the receipt thereof. If any such changes are proposed, Company and Purchaser shall negotiate in good faith and shall use their reasonable efforts to agree upon the final Price Allocation. Notwithstanding the foregoing, if Company and Purchaser cannot agree upon a final Price Allocation, Company and

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Purchaser covenant and agree to file and cause their respective Affiliates to file, all Tax Returns (including amended returns, claims for refund and those returns and forms required under Section 1060 of the Code and any applicable Treasury regulations) consistent with each of Company's and Purchaser's good faith allocations, unless otherwise required by law. Company and Purchaser agree to act in accordance with the Price Allocation, if agreed to by both Company and Purchaser, or in accordance with their respective good faith allocations, if Company and Purchaser do not agree to the Price Allocation, for all purposes and agree not to take any position on any Tax Return inconsistent therewith, and to conduct any audit, Tax proceeding or Tax litigation relating thereon in a manner consistent therewith.

(b) Any indemnification payment treated as an adjustment to the total consideration paid for the Acquired Assets under Section 9.2 shall be reflected as an adjustment to the consideration allocated to a specific asset, if any, giving rise to the adjustment and if any such adjustment does not relate to a specific asset, such adjustment shall be allocated among the Acquired Assets in accordance with the Price Allocation method provided in this Section 2.6.

2.7. Purchase Price Adjustment.

(a) Inventory and Accounts Receivable Adjustment. The Purchase Price shall be adjusted in accordance with Section 2.7(e) based on the difference between the Closing Date Inventory Amount and the Closing Date Accounts Receivable Amount.

(b) Physical Inventory; Closing Date Inventory Statement. Company will provide to Purchaser a full and complete listing of the Business Inventory no later than the start of business on the third Business Day immediately prior to the Closing Date. Purchaser shall cause a third party to conduct a physical count of the Business Inventory on the third Business Day immediately prior to the Closing Date. The Business Inventory shall be valued in accordance with Schedule 2.7(b). Purchaser shall, based on such physical count of the Business Inventory, then prepare or cause to be prepared, at Purchaser's expense, a statement setting forth the Closing Date Inventory Amount (the "Closing Date Inventory Statement"), and a copy thereof shall be delivered by Purchaser to Company. Purchaser and Company shall agree on the Closing Date Inventory Amount as set forth on the Closing Date Inventory Statement no later than one (1) Business Day prior to the Closing Date.

(c) Closing Date Statement. Following the Closing, Purchaser shall prepare or cause to be prepared, at Purchaser's expense, a statement setting forth the Closing Date Accounts Receivable Amount (together with the Closing Date Inventory Amount, the "Closing Date Statement"), and a copy of the Closing Date Statement, along with Purchaser's calculation of any adjustment to the Purchase Price required pursuant to Section 2.7(e), shall be delivered by Purchaser to Company within thirty (30) Business Days after the Closing Date. Company and its Representatives shall cooperate fully with all Representatives of Purchaser in the preparation of the Closing Date Statement and, without limiting the generality of the foregoing, each such Representative shall be reasonably available during normal business hours to Purchaser upon reasonable prior request. For purposes of reviewing the Closing Date Statement, Company shall have reasonable access to all data, schedules and work papers used by Purchaser in preparing the Closing Date Statement, and the employees and Representatives of Purchaser involved in preparing the Closing Date Statement.

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(d) Resolution of Disputes. The determination of the Closing Date Inventory Amount and the Closing Date Accounts Receivable Amount shall become final and binding upon the parties on the thirtieth (30th) day following receipt of the Closing Date Statement by Company unless Company delivers written notice of its disagreement (a "Notice of Disagreement") to Purchaser before such date. Any Notice of Disagreement shall specify whether Company disagrees with the Closing Date Inventory Amount and/or the Closing Date Accounts Receivable Amount and the basis for such disagreement in reasonable detail. Any item to which Company does not expressly object in the Notice of Disagreement shall be deemed to have been accepted by Company and shall become final and binding upon Company. If a Notice of Disagreement is sent by Company, then Company and Purchaser shall seek in good faith to resolve in writing any differences which they may have with respect to any amount specified in the Notice of Disagreement within the twenty day period following receipt of the Notice of Disagreement.

(i) If, at the end of such twenty (20) day period, Company and Purchaser have not reached agreement on the Closing Date Accounts Receivable Amount, the amounts that remain in dispute shall be recalculated by an independent public accounting firm selected by Purchaser (the "Independent Accountants"), acting as experts and not as arbitrators. The Independent Accountants shall be authorized to resolve only those items remaining in dispute between the parties in accordance with the provisions of this Section 2.7 within the range of the difference between Purchaser's position with respect thereto and Company's position with respect thereto. Company and Purchaser shall direct the Independent Accountants to deliver to Company and Purchaser, within twenty (20) days after being retained, a report setting forth each recalculation. Any amounts so recalculated shall be final and binding on the parties hereto, and judgment thereon may be entered in any court having jurisdiction. Company shall bear fifty percent of the fees and expenses of the Independent Accountants incurred under this Section 2.7(d) (which costs are not payable out of the Escrow Fund) and Purchaser shall bear fifty percent of the fees and expenses of the Independent Accountants incurred under this Section 2.7(d).

(ii) If, at the end of the twenty (20) day period referred to in Section 2.7(d) above, Company and Purchaser have not reached agreement on the Closing Date Inventory Amount, they shall refer their differences with respect to particular items of Inventory to a nationally recognized firm of personal property appraisers as shall be agreed in writing by Purchaser and Company (the "Independent Appraisers"), acting as experts and not as arbitrators. The Independent Appraisers shall be authorized to resolve only those items remaining in dispute between the parties in accordance with the provisions of this Section 2.7(d) within the range of the difference between Purchaser's position with respect thereto and Company's position with respect thereto. Company and Purchaser shall direct the Independent Appraisers to deliver to Company and Purchaser, within twenty (20) days after being retained, a report setting forth each recalculation. Any amounts so recalculated shall be final and binding on the parties hereto, and judgment thereon may be entered in any court having jurisdiction. Company shall bear fifty percent of the fees and expenses of the Independent Appraisers incurred under this Section 2.7(d) (which costs are not payable out of the Escrow Fund) and Purchaser shall bear fifty percent of the fees and expenses of the Independent Appraisers incurred under this Section 2.7(d).

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(e) Final Adjustment. The Purchase Price shall be adjusted, upwards or downwards, as follows:

(i) if the Closing Date Inventory Amount as finally determined pursuant to Section 2.7 is greater than the Closing Date Accounts Receivable Amount, the Purchase Price shall be adjusted upwards in an amount equal to the difference between the Closing Date Inventory Amount and the Closing Date Accounts Receivable Amount, and Purchaser shall pay ninety percent (90%) of such amount to Company and ten percent (10%) of such amount to the Escrow Agent for deposit into the Escrow Fund within five (5) Business Days after the date on which the Closing Date Inventory Amount and the Closing Date Accounts Receivable Amount are finally determined; and

(ii) if the Closing Date Inventory Amount as finally determined pursuant to Section 2.7 is less than the Closing Date Accounts Receivable Amount, the Purchase Price shall be adjusted downwards in an amount equal to the difference between the Closing Date Inventory Amount and the Closing Date Accounts Receivable Amount, and Company shall pay such amount to Purchaser within five (5) Business Days after final determination of the Closing Date Inventory Amount and Closing Date Accounts Receivable Amount.

(f) Amounts to be paid pursuant to Section 2.7(e) shall bear interest from the Closing Date to the date of such payment at a rate equal to the prime rate in effect from time to time at Citibank, N.A. in New York, calculated on the basis of a year of 365 days and the number of days elapsed.

(g) If the amount remaining in the Escrow Fund following the payment required under Section 2.7(e) is greater than ten percent (10%) of the Purchase Price as adjusted pursuant to this Section 2.7, the Escrow Agent shall distribute to Company in accordance with the Escrow Agreement a portion of the Escrow Fund such that the amount remaining in the Escrow Fund is equal to ten percent (10%) of the Purchase Price, as adjusted pursuant to Section 2.7(e). The amount of the distribution required pursuant to this Section 2.7(g), if any, shall be determined without regard to any claims made or pending against the Escrow Fund for indemnification in accordance with Section 6.3 or Article IX.

2.8. Withholding Rights. Purchaser shall be entitled to deduct and withhold from the Purchase Price otherwise payable pursuant to this Agreement such amounts as Purchaser is required to deduct and withhold with respect to the making of such payment under the Code, or any provision of

Applicable Law. To the extent that amounts are so withheld or paid over to or deposited with the relevant Governmental Authority by Purchaser, such amounts shall be treated for all purposes of this Agreement as having been paid to Company.

2.9. Allocation of Taxes. All state, county and local ad valorem and real or personal property Taxes on Acquired Assets ("Property Taxes") shall be prorated between Purchaser and Company as of the Closing Date, computed by multiplying the amount of Property Taxes for the fiscal period for which the same are levied or assessed by a fraction, the numerator of which is the number of days in such fiscal period up to and including the Closing Date and the denominator of which is the number of days in such fiscal period. In connection with such proration of Property Taxes, in the event that actual Property Tax figures are not available at the

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Closing Date, proration of Property Taxes shall be based upon the actual Property Taxes for the preceding fiscal year for which actual Property Tax figures are available, and a good faith estimate (based on facts currently available) of the Property Taxes payable with respect to the current fiscal year.

2.10. Closing. The sale and purchase of the Acquired Assets and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the "Closing") to be held at the offices of Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington, DC 20036, at 10:00 A.M. local time on October 16, 2006, or at such other place or at such other time or on such other date as Purchaser and Company mutually may agree in writing. The day on which the Closing takes place is referred to as the "Closing Date."

2.11. Deliveries by Company.

(a) On or prior to the date hereof, Company has delivered to Purchaser copies of Schedule 1.1(h) and Schedule 3.13(f), which have been prepared as if the date hereof was the Closing Date;

(b) On the third Business Day prior to the Closing Date, Company shall deliver to Purchaser:

(i) copies of Schedule 1.1(h) and Schedule 3.13(f), which shall be prepared as of the Closing Date;

(ii) a true, correct and complete list of the Accounts Receivable, including the aging thereof as of the third Business Day prior to the Closing Date; and

(iii) a true and complete list of all Inventory as of the third Business Day prior to the Closing Date, the value thereof and the address at which such Inventory is located.

(c) On or prior to the Closing Date, Company and the Shareholders, as appropriate, shall deliver, or cause to be delivered, to Purchaser the following:

(i) the executed Escrow Agreement, Assignment and Assumption Agreement and Bill of Sale;

(ii) a certificate executed by the Secretary of Company, dated as of the Closing Date, certifying as to (A) the Certificate of Incorporation and bylaws of Company; (B) resolutions adopted by the Company Board relating to the transactions contemplated by this Agreement and the Ancillary Agreements; (C) the good standing of Company in the State of Tennessee; (D) incumbency; and (E) specimen signatures of officers of Company executing this Agreement and the Ancillary Agreements;

(iii) such bills of sale, instruments of transfer, assignment and conveyance and other instruments as Purchaser shall deem necessary or appropriate to convey, transfer and assign to Purchaser and effectively vest in Purchaser all right, title and interest in and to, and good and marketable title to, the Acquired Assets, free and clear of any Encumbrances, other

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than Permitted Encumbrances, including, without limitation, instruments of assignment of the Assumed Contracts and all necessary assignments of Business Intellectual Property to Purchaser;

(iv) evidence satisfactory to Purchaser of the removal of Encumbrances, other than Permitted Encumbrances, on the Acquired Assets;

(v) the opinion of Callister & Broberg, a Law Corporation, counsel for Company, dated as of the Closing Date, a copy of which is attached hereto as Exhibit E;

(vi) such keys, passwords, codes, lock and safe combinations and other similar items as Purchaser shall require to obtain immediate and full possession and control of the Acquired Assets;

(vii) copies of all Material Consents;

(viii) all Business Records;

1.1(d);

(ix) executed Employment Agreements or consulting agreements between Purchaser and each of the persons listed in Schedule

(x) a duly executed certificate of an executive officer of Company certifying the fulfillment of the conditions set forth in Section 7.1(a); and

(xi) such other documents and items as Purchaser reasonably requests.

2.12. Deliveries by Purchaser. On or prior to the Closing Date, Purchaser shall deliver, or cause to be delivered, to Company, the Escrow Agent or third parties, as applicable, the following:

- (a) the Closing Payment and the Escrow Amount;
- (b) the executed Escrow Agreement, Assignment and Assumption Agreement and Bill of Sale;
- (c) executed Employment Agreements; and
- (d) a duly executed certificate of an executive officer of Purchaser certifying the fulfillment of the conditions set forth in Section 7.2(a).

ARTICLE III.

REPRESENTATIONS AND WARRANTIES OF

COMPANY AND SHAREHOLDERS

As a material inducement to Purchaser to enter into this Agreement, except as disclosed in the disclosure letter delivered to Purchaser by Company concurrently herewith (the "Company Disclosure Letter") and except as provided herein, Company and each Shareholder jointly and severally make the following representations and warranties to Purchaser as of the date of this

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Agreement and as of the Closing Date. Notwithstanding any other provision of this Agreement or the Company Disclosure Letter, each exception set forth in the Company Disclosure Letter will be deemed to qualify only those representations and warranties set forth in this Agreement that are specifically identified (by cross-reference or otherwise) in the Company Disclosure Letter as being qualified by such exception. Unless otherwise specified, each reference in this Agreement to any numbered schedule is a reference to that numbered schedule which is included in the Company Disclosure Letter.

3.1. Organization.

(a) Company is duly organized and validly existing under the laws of the State of Tennessee with full corporate power and corporate authority to conduct the Business and its other businesses as each is presently being conducted and to own or lease, as applicable, its assets and properties. Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where the character of its properties owned or leased or the nature of its activities make such qualification necessary. Copies of Company's Charter (the "Certificate of Incorporation") and the Company's current bylaws, and all amendments thereto, have heretofore been delivered to Purchaser and are accurate and complete as of the Closing Date.

(b) Other than shares of common stock, no par value per share, of Company ("Company Common Stock") held by the Shareholders, no other equity securities of Company are issued and outstanding. There are no outstanding options, warrants, rights, calls, commitments, conversion rights, rights of exchange, subscriptions, claims of any character, agreements, obligations, convertible or exchangeable securities or other plans or commitments, contingent or otherwise, relating to equity securities of Company; (ii) no equity securities of Company have been reserved for issuance for any purpose; and (iii) there are no outstanding or authorized stock appreciation, phantom stock, stock plans or similar rights with respect to Company.

(c) Each Shareholder has good title to, and is the record holder and beneficial owner of, the Company Common Stock held by such Shareholder, free and clear of any Encumbrances and defects of title whatsoever. Each Shareholder holds the amount of Company Common Stock set forth opposite his name on Schedule 3.1(c).

3.2. No Subsidiaries. Company does not own or control, directly or indirectly, any Subsidiary, and, except as set forth on Schedule 3.2, Company has no interest in any other corporation, limited liability company, partnership, trust, joint venture, association or other entity.

3.3. Authorization.

(a) Company has all necessary power and authority, and has taken all action necessary, to execute, deliver and perform this Agreement and the Ancillary Agreements to which it is or will be a party, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Ancillary Agreements to which it is or will be a party by Company and the

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consummation by Company of the transactions contemplated hereby and thereby have been duly approved by the Company Board, which is a duly appointed and elected board of directors, and by the shareholders of Company in unanimity. No other proceeding on the part of Company or its shareholders is

necessary to authorize this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Company, and, upon execution and delivery of the Ancillary Agreements, this Agreement and the Ancillary Agreements to which Company is or will be a party will be, the legal, valid and binding obligations of Company, enforceable against Company in accordance with their respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally and except insofar as the availability of equitable remedies may be limited by Applicable Law.

(b) Each Shareholder has all necessary power and authority, and has taken all action necessary, to execute, deliver and perform this Agreement and the Ancillary Agreements to which it is or will be a party, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder. This Agreement has been duly executed and delivered by each Shareholder, and, upon execution and delivery of the Ancillary Agreements, this Agreement and the Ancillary Agreements to which Shareholder is or will be a party will be, the legal, valid and binding obligations of such Shareholder, enforceable against it in accordance with their respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally.

3.4. Title to Properties and Assets; Sufficiency of Assets.

(a) Except as set forth on Schedule 3.4(a), (i) Company has good and valid title to or, in the case of leased properties or properties held under license, a good and valid leasehold or license interest in, all of the Acquired Assets and (ii) Company holds title to each Acquired Asset which it purports to own, free and clear of any Encumbrances other than Permitted Encumbrances.

(b) All items of tangible personal property with a value in excess of \$5,000 included in the Acquired Assets are in good operating condition and repair and are adequate for the conduct of the Business in substantially the same manner as currently conducted. Schedule 3.4(b) sets forth a true and complete list of each item of tangible personal property included in the Acquired Assets having a value in excess of \$5,000; items in Schedule 3.4(b) denoted with an asterisk (*) are leased by Company.

(c) The delivery to Buyer of the Bill of Sale will transfer to Buyer good and valid title to, or a license to use or a valid leasehold interest in, all of the Acquired Assets, free and clear of all Encumbrances (other than Permitted Encumbrances).

(d) The Acquired Assets constitute and will constitute on the Closing Date all of the assets, property and rights, tangible or intangible, that are used or held for use by Company in the Business, other than the Excluded Assets, and that are necessary and sufficient for the conduct of the Business as currently conducted or as proposed to be conducted.

3.5. Real Property. Schedule 3.5 sets forth a true and complete list of all real property leased by Company in respect of the Business (collectively, the "Real Property"), including the location of, and a brief description of the nature of the activities conducted on, such Real Property. Company does not currently own and has not previously owned any real property. Company does not lease any real property except as set forth on Schedule 3.5.

3.6. Financial Statements; Books and Records.

(a) Company has delivered to Purchaser true and correct copies of the Financial Statements. The Financial Statements (i) are correct and complete in all material respects, (ii) have been prepared in accordance with the books and records of Company, (iii) have been prepared in accordance with GAAP consistently applied throughout the periods covered thereby and (iv) fairly and accurately present the financial position of Company as of the respective dates thereof and the results of operations and changes in cash flows for the periods then ended, except as otherwise noted therein. Specifically, but not by way of limitation, the Company Balance Sheet discloses all of the debts, liabilities and obligations of any nature of Company in respect of the Business, whether due or to become due, as of the date thereof to the extent such debts, liabilities and obligations are required to be disclosed in accordance with GAAP.

(b) Company has made and kept (and given Purchaser access to) true, correct and complete books and records, which, in reasonable detail, accurately and fairly reflect the activities of Company. Company's books and records have been maintained in accordance with sound business practices, including the maintenance of an effective system of internal control over financial reporting.

3.7. Liabilities. Except (i) as disclosed in the Financial Statements as of and for the period ended July 31, 2006 and the Company Balance Sheet; (ii) for liabilities incurred after July 31, 2006 in the Ordinary Course of Business that are not, individually or in the aggregate, material to the Business (none of which results from or relates to any breach of contract, tort, infringement or violation of Applicable Law); or (iii) for liabilities that have been discharged or paid in full, Company has not incurred any liabilities of any nature, including without limitation in respect of the Business or to which the Business may be subject, whether known or unknown, and whether accrued, absolute, contingent, matured, unmatured or other, including, without limitation, "off-balance sheet" liabilities.

3.8. Absence of Certain Changes. Since December 31, 2005, there has not been any change, effect, event, occurrence, state of facts or development known to Company that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect on Company or the Business. Without limiting the generality of the foregoing, except as disclosed in Schedule 3.8 or except as contemplated hereby, since December 31, 2005:

(a) Company has conducted the Business in the Ordinary Course of Business;

(b) Company has not incurred any indebtedness for borrowed money or issued any debt securities or assumed, guaranteed or endorsed, or otherwise become responsible for, the obligations of any Person, or made any loans or advances, in each case affecting Company, the Business or the Acquired Assets or to which Company or the Business may be subject, or otherwise incurred any liability that would constitute an Assumed Liability, except in the ordinary course of business;

(c) there has not been any change in any method of accounting or accounting practice by Company, except for any such change required by reason of a change in GAAP and set forth on Schedule 3.8(c);

(d) Company has not (i) granted any severance or termination pay to any Employee, (ii) entered into any employment, deferred compensation or other similar agreement with (or any amendment to any such existing agreement) any Employee, (iii) increased the benefits payable under any existing severance or termination pay policies or employment agreements, or (iv) increased the compensation, bonus or other benefits payable to Employees, in each case other than in the Ordinary Course of Business;

(e) Company has not sold, transferred or disposed of any assets, properties or rights, including, without limitation, any Rights, other than in the Ordinary Course of Business;

(f) Company has not entered into any joint venture, partnership, exclusive dealing, noncompetition or similar agreement with any Person;

(g) Company has not made any loans or advances to any Person, other than ordinary advances to Employees for travel expenses;

(h) Company has not made any declaration, setting aside or payment of any dividend or other distribution in respect of the capital stock of Company;

(i) there has not been any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results or prospects of Company or the Business;

(j) there has not been any satisfaction or discharge of an Encumbrance or payment of any obligation by Company, except such a satisfaction, discharge or payment made in the Ordinary Course of Business that is not material to the assets, properties, financial condition, operating results or prospects of Company or the Business;

(k) there has not been any write-down of the value of any asset or Inventory used or held for use in the Business or any write-off as uncollectible of any Accounts Receivable or any portion thereof of Company in respect of the Business;

(l) Company has not made any change or amendment to an Assumed Contract, except for changes or amendments which are disclosed in this Agreement;

(m) there has not been any creation or assumption by Company of any Encumbrance, other than Permitted Encumbrances, on any Acquired Asset;

(n) Company has not canceled, compromised, waived or released any right or claim relating to the Business or the Acquired Assets;

(o) Company has not permitted the lapse of any existing policy of insurance;

(p) Company has not permitted the lapse of any right relating to any Assumed Contract, Intellectual Property or any intangible asset used or held for use in connection with the Business;

(q) Company has not accelerated the collection of or discounted any Receivables, delayed the payment of liabilities or deferred expenses, or otherwise increased cash on hand, except in the Ordinary Course of Business;

and

(r) Company has not authorized or committed or agreed to take any of the actions described in subsections (a) through (q) of this Section 3.8.

3.9. Material Contracts.

(a) Schedule 3.9(a) sets forth a complete and accurate list of all written or oral contracts, agreements, consensual obligations, promises, undertakings, legally binding arrangements, options, leases, licenses, sales and purchase orders, warranties, guarantees, indentures, mortgages, commitments and other instruments of any kind (each a "Contract"), to which Company is a party or to which Company, or any of its properties, is otherwise bound, and that relates to Company or the Business as follows (each a "Material Contract" and, collectively, the "Material Contracts"):

(i) each Contract of Company pursuant to which Company received (or was entitled to receive) or paid (or was purportedly obligated to pay) (A) in excess of \$25,000 in the twelve (12) month period ended December 31, 2005, or (B) in excess of \$12,500 in the six (6) month period ended June 30, 2006;

(ii) each Contract that requires payment by or to Company after December 31, 2005 of more than \$25,000;

(iii) each Contract of Company relating to indebtedness for borrowed money, extension of credit or the deferred purchase price of property (whether incurred, assumed, guaranteed or secured by any asset) pursuant to which Company is obligated to make any future payment or payments, in the aggregate, in excess of \$25,000;

(iv) each Contract for the purchase or delivery of goods, or performance of Services, to Company or the Business;

(v) each broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing, consulting or advertising Contract;

(vi) each Contract with a Related Party;

(vii) each employment Contract;

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(viii) each Contract that limits or purports to limit, the ability of Company or the Business to compete in any line of business or with any Person or in any geographic area or during any period of time, or that restricts the right of Company or the Business to purchase from any Person or to hire any Person;

(ix) each Contract that requires Company to grant "most favored customer" status or any type of special discount rights to any other Person;

(x) each Contract that requires a consent to or other action by any Person for, or will be subject to default, termination, repricing or other renegotiation or cancellation because of, the transactions contemplated by this Agreement or the Ancillary Agreements, or otherwise contains a provision relating to "change of control", or that would prohibit or delay the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements;

(xi) each fidelity or surety bond or completion bond;

(xii) each Contract providing for liquidated damages upon failure to meet performance or quality milestones;

(xiii) each lease of personal property;

(xiv) each Contract providing for indemnification to or from any Person with respect to liabilities relating to Company, the business or the Acquired Assets;

(xv) each Contract containing confidentiality clauses;

(xvi) each Contract relating in whole or in part to any Business Intellectual Property;

(xvii) each Contract relating to capital expenditures and involving future payments in excess of \$25,000;

(xviii) each Contract for the purchase of raw materials or services, including any construction Contract, involving in excess of \$25,000;

(xix) each Contract relating to any joint venture or partnership, merger, asset or stock purchase or divestiture Contract;

(xx) each Contract that results in any Person holding a power of attorney that relates to Company, the Business or the Acquired Assets;

(xxi) each Contract relating to settlement of any administrative or judicial proceedings within the past five years;

(xxii) each Contract with a Governmental Authority; and

(xxiii) each other Contract, whether or not made in the Ordinary Course of Business that (A) involves a future or potential liability or receivable, as the case may be, in

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excess of \$5,000 on an annual basis or in excess of \$15,000 over the current Contract term, (B) has a term greater than one year and cannot be cancelled by Company without penalty or further payment and without more than 30 days' notice or (C) is material to the business, operations, assets, financial condition, results of operations or prospects of Company or the Business, each taken as a whole.

(b) Each Material Contract is in full force and effect, paid currently and has not been materially impaired by any acts or omissions of Company. Except for those Material Contracts denoted with an asterisk (*) as set forth on Schedule 3.9(a), no Material Contract requires the consent of any other contracting party to prevent a breach of, a Default under, or a termination, change in the terms or conditions or modification of, any Material Contract as a result of the consummation of the transactions contemplated hereby. All of the Material Contracts are valid, binding and enforceable against Company in accordance with their terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting enforcement of creditors' rights generally and except insofar as the availability of equitable remedies may be limited by Applicable Law. Company has fulfilled, or taken all action reasonably necessary to enable it to fulfill when due, all of its material obligations under each of such Material Contracts. Company is not in Default under any Material Contract. To the Knowledge of Company, no other party is in Default under such Material Contracts and, to the Knowledge of Company, no event has occurred and no condition or state of facts exists which, with the passage of time or the giving of notice or both, would constitute such a Default and no written notice of any claim of Default has been given to Company. Neither Company nor any Shareholder is aware of

any intent by any party to any Material Contract to terminate or amend the terms thereof or to refuse to renew any such Material Contract upon expiration of its term. Company is not currently paying liquidated damages in lieu of performance under any Material Contract. Company has delivered to Purchaser true and complete copies of all Material Contracts and any amendments thereto.

3.10. Compliance with Other Instruments; No Conflicts.

(a) Company is not in any violation, breach or Default of (i) any term of its Certificate of Incorporation, bylaws or similar organizational documents or (ii) any provision of Applicable Law that is applicable to or binding upon Company, the Acquired Assets or the Assumed Liabilities.

(b) The execution, delivery and performance by Company and the Shareholders of and compliance with this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby will not:

(i) conflict with or violate the Certificate of Incorporation, bylaws or similar organizational documents of Company,

(ii) conflict with or violate any Applicable Law applicable to Company, the Shareholders, the Business or any of the Acquired Assets or by which Company, the Shareholders, the Business or any of the Acquired Assets may be bound or affected;

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(iii) result in any breach or violation of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, require any consent of any Person pursuant to, give to others any right of termination, amendment, modification, acceleration of, give rise to any increased, accelerated or additional rights of any Person or otherwise adversely affect any rights of Company or the Business under, or result in the creation of any Encumbrance on any of the Acquired Assets pursuant to, any Material Contract.

3.11. Taxes.

(a) Definitions. For purposes of this Agreement:

(i) the term "Tax" (including with correlative meaning, the terms "Taxes" and "Taxable") means all U.S. federal, state, local, provincial, foreign or other taxes, customs, tariffs, imposts, levies, duties, government fees or other like assessments or charges of any kind, including, without limitation, all income, franchise, sales, use, ad valorem, transfer, license, recording, employment (including federal and state income tax withholding, backup withholding, FICA, FUTA or other payroll taxes), environmental, excise, severance, stamp, occupation, premium, prohibited transaction, property, value-added, net worth, or any other taxes and any interest, penalties and additions imposed with respect to such amounts; and

(ii) the term "Tax Return" means all U.S. federal, state, local, provincial and foreign returns, declarations, claims for refunds, forms, statements, reports, schedules, information returns or similar statements or documents, and any amendments thereof (including, without limitation, any related or supporting information or schedule attached thereto) required to be filed with any Taxing authority in connection with the determination, assessment or collection of any Tax or Taxes.

(b) Company has filed (or will file when due) all Tax Returns that are required to be filed in respect of the Acquired Assets or the Business, all such Tax Returns are accurate, and all Taxes with respect to such Tax Returns have been paid. Company has paid all Taxes imposed with respect to the Acquired Assets, or otherwise payable by Company.

(c) There are no liens for Taxes (other than for current Taxes not yet due and payable) upon the Acquired Assets and there are no grounds for the assertion or assessment of any Encumbrances against the Acquired Assets, or the Business in respect of any Taxes. The transactions contemplated by this Agreement will not give rise to (i) the creation of any Encumbrances against the Acquired Assets or the Business in respect of any Taxes or (ii) the assertion of any additional Taxes against the Acquired Assets or the Business.

(d) No claim has ever been made or threatened by a Tax authority in a jurisdiction where Company does not file Tax Returns that the Business is or may be subject to Taxes by that jurisdiction. No Proceeding is pending or threatened by any Governmental Authority for any audit, examination, deficiency, assessment or collection from Company of any Taxes related to the Business, no unresolved claim for any deficiency, assessment or collection of any Taxes related to the Business has been asserted against Company and all resolved assessments of Taxes related to the Business have been paid. No issues have been raised by the relevant taxing authorities on audit that are of a recurring nature and that would have an effect upon the Taxes of the Business.

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3.12. Environmental Matters. During the period that Company has owned or leased the Real Property, (a) there have been no disposals, releases or threatened releases of Hazardous Materials (as defined below) on, from or under the Real Property and (b) neither Company nor, to the Knowledge of Company, any third party, has used, generated, manufactured or stored on, under or about the Real Property or transported to or from the Real Property any Hazardous Materials, except to the extent not in violation of applicable Environmental Laws. Company has no Knowledge of any presence, disposals, releases or threatened releases of Hazardous Materials on, from or under any of the Real Property, which may have occurred before Company took possession of any of the Real Property. For purposes of this Agreement, the terms "disposal," "release" and "threatened release" shall have the definitions assigned thereto by the U.S. Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended ("CERCLA"). For the purposes of this Section 3.12, "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste which is regulated under, or defined as a "hazardous substance," "pollutant," "contaminant," "toxic chemical," "hazardous material," "toxic substance" or "hazardous chemical" under (i) CERCLA; (ii) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001 et seq.; (iii) the U.S. Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; (iv) the U.S. Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; (v) the U.S.

3.13. Employee Benefits.

(a) Schedule 3.13(a) lists as of the date hereof all “employee benefit plans” (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)), and all bonus, stock option, stock purchase, incentive, deferred compensation, supplemental retirement, health, life, or disability insurance, dependent care, severance and other similar fringe or employee benefit plans, programs or arrangements and any current or former employment or executive compensation or severance agreements, written or otherwise maintained or contributed to by Company or an ERISA Affiliate (defined below) for the benefit of or relating to any Employee or former Employee of Company in respect of the Business (or any dependent thereof), or any trade or business (whether or not incorporated) that is a member of a controlled group including Company or that is under common control with Company within the meaning of Section 414 of the Code (an “ERISA Affiliate”), as well as each plan with respect to which Company or an ERISA Affiliate could incur liability under Section 4069 (if such plan has been or were terminated) or Section 4212(c) of ERISA (each a “Benefit Plan,” collectively, the “Benefit Plans”). For each Benefit Plan, true and complete copies of, where applicable, (i) the two (2) most recent annual reports on Form 5500 (with schedules and attachments), (ii) the actuarial reports for the last two (2) plan years and (iii) any plan document, summary plan description, trust agreement, employment agreement and other governing instrument, document or Employee communication, have been delivered to Purchaser as of the date hereof.

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(b) No Benefit Plan is subject to Title IV of ERISA or Section 412 of the Code, and neither Company nor any ERISA Affiliate has incurred any liability (contingent or otherwise) with respect to any such Benefit Plan. Neither Company nor any of its ERISA Affiliates sponsors or has ever sponsored, maintained, contributed to or incurred an obligation to contribute or incurred any liability (contingent or otherwise) with respect to any Multiemployer Plan or to a Multiple Employer Plan. For these purposes, (i) “Multiemployer Plan” means a multiemployer plan, as defined in Sections 3(37) and 4001(a)(3) of ERISA and (ii) “Multiple Employer Plan” means any Employee Benefit Plan sponsored by more than one employer, within the meaning of Sections 4063 or 4064 of ERISA or Section 413(c) of the Code.

(c) Each Benefit Plan has been maintained in all respects in accordance with its terms and the requirements of Applicable Law (including, without limitation, with the requirements of ERISA and the Code).

(d) Each Benefit Plan intended to qualify under Section 401(a) of the Code has been determined by the Internal Revenue Service (“IRS”) to so qualify, and is so qualified, and the trust created thereunder satisfies the provisions of Section 501(a) of the Code. Nothing has occurred with respect to any such Benefit Plan that could cause the loss of such qualification or exemption and no such Benefit Plan has been operated in a manner which would cause it to be disqualified in operation. No Benefit Plan is funded by a trust that is intended to be exempt from tax under the provisions of Section 501(c)(9) of the Code.

(e) No “fiduciary,” “party in interest” or “disqualified person” with respect to any Benefit Plan has participated in, engaged in or been a party to any transaction that is prohibited under Section 4975 of the Code or Section 406 of ERISA that is not exempt under Section 4975 of the Code or Section 408 of ERISA, respectively. With respect to any Benefit Plan, (i) neither Company, nor any of its ERISA Affiliates has had asserted against it any claim for taxes under Chapter 43 of Subtitle D of the Code and Section 5000 of the Code, or for penalties under ERISA Sections 502(c), 502(i) or 502(l), nor, to the Knowledge of Company, is there a basis for any such claim and (ii) no officer, director or Employee of Company has committed a breach of any fiduciary responsibility or obligation imposed by Title I of ERISA. Other than routine claims for benefits, there is no claim or proceeding (including any audit or investigation) pending or, to the Knowledge of Company, threatened, involving any Benefit Plan by any Person or any Governmental Authority.

(f) Schedule 3.13(f) sets forth a complete and accurate list of the names of all current Employees who are employed in connection with the Business specifying their position and describing their areas of responsibility with respect to the Business, and their age, salary, date of hire, commission, bonus and incentive entitlements and identifying which Employees are currently receiving long-term or short-term disability benefits or are absent from active employment on pregnancy, parental or adoption leave and their anticipated dates of return to active employment.

(g) Schedule 3.13(g) sets forth a list as of the date hereof of all (i) employment agreements with officers of Company, (ii) agreements with consultants who are individuals obligating Company to make annual cash payments in an amount of \$30,000 or more, (iii) severance agreements, programs and policies of Company with or relating to its Employees, and

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(iv) plans, programs, agreements and other arrangements of Company with or relating to its Employees that contain provisions that, as a result of the execution of this Agreement or any Ancillary Agreement or the consummation of the transactions contemplated hereby or thereby, will result in the acceleration or creation of any rights or the creation of any benefits of any Employee, whether or not listed in other parts of the Company Disclosure Letter. Company has delivered to Purchaser true and complete copies of all such agreements, plans, programs and other arrangements.

(h) No Benefit Plan that is a “welfare benefit plan” within the meaning of Section 3(1) of ERISA provides benefits to former Employees of Company or its ERISA Affiliates, other than pursuant to Section 4980B of the Code or similar state laws. Company and its ERISA Affiliates have complied in all material respects with the provisions of Part 6 of Title I of ERISA, Sections 4980B, 9801, 9802, 9811 and 9812 of the Code, and the Health Insurance Portability and Accountability Act (including regulations thereunder).

(i) Company and its ERISA Affiliates have made full and timely payment of all amounts required to be contributed or paid as expenses, or accrued such payments in accordance with normal procedures under the terms of each Benefit Plan, GAAP and Applicable Law.

(j) Company is not a party to any agreement that may result in the payment of any “excess parachute payments” within the meaning of Section 280G of the Code either directly or indirectly in connection with this Agreement or the transactions contemplated hereby.

3.14. Compliance with Law. Company is and has been in compliance in all material respects with all Applicable Law, including without limitation in connection with the conduct or operation of the Business and the ownership or use of the Acquired Assets. Company has not received, and to the knowledge of Company, there is no basis for, any notice, order, complaint or other communication from any Governmental Authority or any other Person that Company is not in compliance in all material respects with any such Laws.

3.15. Permits. Schedule 3.15 sets forth a complete list of all Permits, all of which are valid and in full force and effect as of the date hereof. Except for those Permits denoted with an asterisk (*) as set forth on Schedule 3.15, no Permit requires the consent of any Governmental Authority, or any other Person, to transfer such Permit in connection with the consummation of the transactions contemplated hereunder. Company has, and at all times has had, all Permits required under Applicable Law in respect of the operation of the Business and owns or possesses such Permits, free and clear of all Encumbrances, other than Permitted Encumbrances. Company is not in material Default, and has not received any notice of any claim of Default, with respect to any such Permit, and no condition exists that with notice or lapse of time or otherwise would constitute a Default. To the Knowledge of Company, such Permits that are included in the Acquired Assets will not be adversely affected by the completion of the transaction contemplated by this Agreement.

3.16. Consents and Approvals. Except as set forth on Schedule 3.16 (including, but not limited to, those Material Contracts and Permits denoted with an asterisk (*) as set forth on Schedule 3.9(a) and Schedule 3.15, respectively), no consent, approval or authorization of, declaration or notice to or filing or registration with, any Governmental Authority, or any other

Person, is required to be made or obtained by Company, any of its Affiliates or any Shareholders in connection with the execution, delivery and performance by Company and the Shareholders of this Agreement, the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby or in order to prevent the termination of any right, privilege, license or qualification of or affecting the Business or the Acquired Assets. Except as set forth on Schedule 3.16, Company and the Shareholders, as applicable, have obtained all such required consents, approvals and authorizations and made all such required declarations, notices, filings and registrations with any Governmental Authority, or any other Person, all as set forth on Schedule 3.16 (including, but not limited to, those Material Contracts and Permits denoted with an asterisk (*) as set forth on Schedule 3.9(a) and Schedule 3.15, respectively).

3.17. Litigation. Except as set forth on Schedule 3.17, there is no action, suit, proceeding, claim, arbitration or investigation (“Proceeding”) pending (or, to the Knowledge of Company, threatened) against Company, nor, to the knowledge of Company, is there any basis for any such Proceeding. Company is not a party to or subject to the provisions of any court order, writ, injunction, judgment or decree of any Governmental Authority and there is no material Proceeding by Company currently pending or which Company intends to initiate. No Proceeding has been instituted or, to the Knowledge of the Company, threatened which questions the validity or legality of the transactions contemplated hereby or by the Ancillary Agreements. There is no regulation, court order or Proceeding that enjoins or seeks to enjoin or makes the transactions contemplated hereby or by the Ancillary Agreements illegal or otherwise prohibited.

3.18. Labor Matters.

(a) Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Knowledge of Company, has sought to represent any of its Employees or Representatives.

(b) There is no strike or other labor dispute involving Company pending, or to the Knowledge of Company, threatened. Company has not, during the three year period before the date of this Agreement, received any demand letters, civil rights charges, suits, drafts of suits, administrative or other claims of or from any its Employees.

(c) All individuals who are performing consulting or other services for Company are or were correctly classified by Company as either “independent contractors” or “employees” as the case may be.

(d) Company is in compliance in all material respects with all Applicable Laws respecting employment, termination of employment, employment practices, terms and conditions of employment and wages and hours.

(e) Company has withheld and reported all amounts required by Applicable Law or agreement to be withheld and reported with respect to wages, salaries and other payments to Employees.

(f) There are no pending, or, to the Knowledge of Company, threatened, claims or actions against Company under any workers’ compensation policy or long-term disability policy.

(g) Since the enactment of the Worker Adjustment and Retraining Notification Act (the “WARN Act”), 29 U.S.C. §§ 2101 et seq., Company has not effectuated (i) a “plant closing” (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of Company, or (ii) a “mass layoff” (as defined in the WARN Act) affecting any site of employment or facility of Company, nor has Company been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state or local law. No Employee has suffered an “employment loss” (as defined in the WARN Act) in the past three years.

3.19. Intellectual Property; Software.

(a) Schedule 3.19(a) sets forth, for each of the following items of Intellectual Property that are owned, in whole or in part, including jointly with others, by, or licensed to, Company, relating to, used in or held for use in the Business, a complete and accurate list of all (i) Patents, identifying for each (A) the patent number and issue date (if issued) or application number and filing date (if not issued), (B) its title, (C) the named inventors and (D)

whether it is owned by Company (such Patents that are so owned by or licensed to Company being referred to as the “Company Patents”); (ii) registered Trademarks, pending applications for registration of Trademarks and material unregistered or common law Trademarks, identifying for each (A) its registration (as applicable) and application numbers, (B) whether it is owned by or licensed to Company, (C) its current status and (D) if registered or if an application for registration has been filed, the class(es) of goods or services to which it relates (such Trademarks that are so owned by or licensed to Company being referred to as the “Company Trademarks”); (iii) Copyright registrations and applications therefor, indicating for each (A) the applicable jurisdiction, (B) registration number (or application number), and (C) the date issued (or filed) (such Copyright registrations and applications that are so owned by or licensed to Company being referred to as the “Company Registered Copyrights”), and (iv) items of Other Intellectual Property Rights that are registered or filed with any Governmental Authority. For purposes of this Agreement, “Intellectual Property” means all rights arising from or associated with the following, whether protected, created or arising under the laws of the United States or any other jurisdiction: (A) trademarks and service marks (whether registered or unregistered), trade names, internet domain names and other Internet addresses or identifiers, trade dress rights, designs and general intangibles of like nature, and applications (including intent to use applications) to register any of the foregoing (collectively, “Trademarks”); (B) patents and patent applications, including continuation, divisional, continuation-in-part, reexamination and reissue patent applications, and any patents issuing therefrom, and rights in respect of utility models or industrial designs (collectively, “Patents”); (C) copyrights (including any registrations and applications therefor and whether registered or unregistered) (collectively, “Copyrights”); (D) trade secrets and other confidential information, know-how, proprietary processes, formulae, algorithms, models, technical data, customer lists, inventions, discoveries, research and development information, product roadmaps, concepts; ideas; techniques; methods; source codes; methodologies; and, with respect to all of the foregoing, related confidential data or information, in each case to the extent

any of the foregoing derives economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure or use, excluding any Copyrights or Patents that may cover or protect any of the foregoing (all of the foregoing in clause (D) collectively, “Trade Secrets”); and (E) mask work rights and other rights protecting integrated circuit or chip topographies or designs and any and all other proprietary, intellectual or industrial property rights of any kind or nature other than Trademarks, Patents, Copyrights or Trade Secrets (collectively, “Other Intellectual Property Rights”). Other than the items set forth on Schedule 19(a), Company has no patents, trademarks, copyrights or other intellectual property rights.

(b) Trademarks.

(i) All registered Company Trademarks are currently in compliance in all material respects with all legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications).

(ii) No Company Trademark has been or is now involved in any opposition or cancellation proceeding in the United States Patent and Trademark Office or with any foreign Governmental Authority which serves as the trademark authority of such foreign jurisdiction. No such action has been threatened either in writing, orally, or otherwise with respect to any of the Company Trademarks.

(iii) To the Knowledge of Company, there has been no prior use of any Company Trademark by any third party which would confer upon such third party superior rights in such Trademark.

(iv) To the Knowledge of Company, Company has adequately policed its Company Trademarks against third party infringement.

(v) All Company Trademarks have been continuously used by Company in the current form and in connection with the goods and services with regard to which such Company Trademarks are currently being used by Company.

(vi) All Company Trademarks are valid and enforceable, without any qualification, limitation or restriction thereon or on the use thereof, and Company has not received any notice or claim (whether written, oral or otherwise) challenging or questioning the validity or enforceability of any of such Company Trademarks or indicating an intention on the part of any person to bring a claim that any of such Company Trademarks are invalid or unenforceable.

(vii) Company has not taken any action or failed to take any action (including the manner in which it has conducted its business, or used or enforced, or failed to use or enforce, any of the Trademarks) that reasonably could be expected to result in the abandonment, cancellation, forfeiture, relinquishment, invalidation or unenforceability of any of the Company Trademarks.

(c) Patents.

(i) All Company Patents are currently in compliance with all applicable legal requirements (including payment of filing, examination, maintenance fees, annuities and proofs of working or use). Company has taken reasonable steps to protect its rights in the Company Patents and patentable inventions in accordance with standard industry practice.

(ii) Company has not taken any action or failed to take any action, conducted its business, or used or enforced (or failed to use or enforce) any of the Company Patents in a manner that reasonably could be expected to result in the abandonment of any of such Patents that would result in a bar to patentability of any of the patented inventions, or committed illegal patent tying, illegal patent term extension, other illegal anti-competition activities, laches, waiver or inequitable conduct in violation of Section 35 C.F.R. 1.56 in each case that, if litigated, would result in the unenforceability of any such Patents.

(iii) No Company Patent has been or is now involved in any interference, reissue or reexamination proceeding and, to the Knowledge of Company, no such action is or has been threatened in writing, orally, or otherwise with respect to any of the Company Patents. No patent of a third party interferes with any Company Patent.

(iv) All Company Patents are valid and enforceable, without any qualification, limitation or restriction thereon or on the use thereof, and Company has not received any notice or claim (whether written, oral or otherwise) challenging or questioning the validity or enforceability of any Company Patents or indicating an intention on the part of any person to bring a claim that any Company Patents are invalid or unenforceable or have been misused, and there is no relevant prior art pertaining to any issued patents of which Company or any Shareholder has become aware that was not disclosed during the prosecution of the patent application(s) therefor, but which, if disclosed, may have affected the prosecution thereof or the scope of the patent claims ultimately granted in respect thereof. No other party has rights, including licensing rights, to the patentable inventions and no other party contributed to the conception of or reduction to practice of any of the patentable inventions. There is no relevant prior art pertaining to any of the patentable inventions that may affect the prosecution of a patent application therefor or the scope of the patent claims ultimately granted in respect thereof.

(d) Copyrights.

(i) To the Knowledge of Company, all Company Registered Copyrights are currently in compliance in all material respects with all applicable legal requirements (including the timely payment of all fees).

(ii) Company has not received any notice or claim (whether written, oral or otherwise) challenging or questioning the validity or enforceability of any of the Company Copyrights or indicating an intention on the part of any person to bring a claim that any Company Copyright is invalid, is unenforceable or has been misused and, to Company's Knowledge, no Company Copyright otherwise has been challenged or threatened in any way.

(iii) To the Knowledge of Company, Company has not taken any action or failed to take any action (including a failure to disclose required information to the United States Copyright Office in connection with any registration of a Company Copyright therewith or in

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any applicable foreign Governmental Authority), conducted its business, or used or enforced (or failed to use or enforce) any of the Company Copyrights, in each case in a manner that reasonably could be expected to result in the unenforceability of such Company Copyrights.

(iv) To the Knowledge of Company, Company has taken all reasonable steps to protect its rights in and to the Company Copyrights and any other Copyrights used by Company in its business other than those as to which the rights being exercised by Company have been licensed from another person (collectively, the "Company Owned Copyrights"), in each case in accordance with standard industry practices).

(v) Company has not granted to any other person any right, license or permission to exercise any rights under any Company Owned Copyright except for non-exclusive rights granted to any customer of Company acquiring services or products from Company in the Ordinary Course of Business.

(e) Trade Secrets.

(i) To the Knowledge of Company, Company has taken all reasonable steps in accordance with standard industry practices to protect its rights in its Trade Secrets.

(ii) There has been no disclosure by Company of its material Trade Secrets, except pursuant to appropriate non-disclosure agreements. Without limiting the generality of the foregoing, (A) there has been no disclosure by Company of any design techniques or other proprietary information of Company without (1) designating such information as confidential and (2) taking whatever steps are required to ensure that such design techniques and other proprietary information are subject to the confidentiality undertakings set forth in the applicable non-disclosure agreement; and (B) there has been no disclosure by Company of any source code of the Company Software. No third party has in its possession, or has a license or access to, such source code and no such source code is being held in escrow by any person other than an escrow agent pursuant to the terms of a source code escrow agreement in customary form and all such source code has been safeguarded and protected as Trade Secrets of Company.

(iii) With respect to each Trade Secret of Company, the documentation relating thereto is current, accurate and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the special knowledge or memory of others.

(f) Ownership. Company exclusively owns all right, title and interest to the Company Trademarks, the Company Patents, the Company Owned Copyrights and the Company's Trade Secrets, and owns all right, title, and interest in, or has a valid and enforceable license to use, all Other Intellectual Property Rights used in, or necessary for the operation of, the Business as presently conducted and contemplated to be conducted, free and clear of all Encumbrances or other restrictions. Company has not received any notice (whether written, oral or otherwise) or claim challenging Company's ownership of any of the Intellectual Property owned or purported to be owned by Company or suggesting that any other person has any claim of legal or beneficial ownership with respect thereto nor to the Knowledge of Company is there a

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reasonable basis for any such claim. No other party has licensing or any other rights to the Company's Intellectual Property, other than pursuant to the Outbound License Agreements set forth in Schedule 3.19(g)(2).

(g) License Agreements. Schedule 3.19(g)(1) sets forth a complete and accurate list of all license agreements granting to Company any right to use or practice any rights under any Intellectual Property relating to, used in or held for use in the Business other than office automation software used generally in the Company's operations (collectively, the "Inbound License Agreements"), indicating for each the title and the parties thereto and the amount of any future royalty or license fee payable thereunder, if any. The rights licensed under each Inbound License Agreement shall be exercisable by Purchaser on and after the Closing to the same extent as by Company before the Closing. No loss or expiration of any Intellectual Property licensed to Company under any Inbound License Agreement is pending, is reasonably foreseeable or threatened. No licensor under any Inbound License Agreement has any ownership or exclusive license rights in or with respect to any improvements made by Company to the Intellectual Property licensed thereunder. Schedule 3.19(g)(2)

sets forth a complete and accurate list of all license agreements under which Company licenses software or grants other rights in or to use or practice any rights under any Intellectual Property relating to, used in or held for use in the Business, owned in whole or in part, including jointly with any other person, by Company, excluding non-exclusive licenses with customers that in the 12-month period before the date hereof have purchased or licensed products for which the total payments to Company did not exceed \$10,000 (collectively, the “Outbound License Agreements”), indicating for each the title and the parties thereto. There is no outstanding or threatened dispute or disagreement with respect to any Inbound License Agreement or any Outbound License Agreement.

(h) Sufficiency of IP Assets. To the Knowledge of Company, the Intellectual Property identified in Schedule 3.19(a), together with Company’s unregistered Copyrights, Trade Secrets and Other Intellectual Property Rights and Company’s rights under the licenses granted to Company under the Inbound License Agreements identified in Schedule 3.19(g)(1), constitute all the Business Intellectual Property rights that are used or held for use by Company in the operation of the Business as currently conducted and are all the Intellectual Property rights necessary for Purchaser to conduct the Business after the Closing Date in substantially the same manner as the Business is currently conducted or proposed to be conducted.

(i) No Infringement by Company. None of the services or products sold or licensed or services provided by Company, nor technology or materials used or distributed by Company, nor any other activities or operations of Company, infringes upon, misappropriates, violates, dilutes or constitutes the unauthorized use of, any rights owned or controlled by any third party, including any Intellectual Property of any third party.

(j) No Pending or Threatened Infringement Claims. No litigation is now or, within the three (3) years before the date of this Agreement, was pending, and no notice or other claim (whether written, oral or otherwise) has been received by Company alleging that Company has engaged in any activity or conduct that infringes upon, misappropriates, violates, or constitutes the unauthorized use of the Intellectual Property rights of any third party, nor is there any reasonable basis therefor. No Intellectual Property owned or licensed by Company is subject to any outstanding order, judgment, decree, stipulation or agreement restricting the use thereof

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by Company or, in the case of any Intellectual Property licensed to others, restricting the sale, transfer, assignment or licensing thereof by Company to any person.

(k) No Infringement by Third Parties. To Company’s Knowledge, no third party is misappropriating, infringing, diluting or violating any Intellectual Property owned or licensed by Company, and no such claims have been brought against any third party by Company.

(l) Assignment; Change of Control. The execution, delivery and performance by Company of this Agreement and the Ancillary Agreements, and the consummation of the transactions contemplated hereby and thereby, will not result in the loss or impairment of, or give rise to any right of any third party to terminate or reprice or otherwise renegotiate any of Company’s rights to own any of its Business Intellectual Property or their respective rights under any Inbound License Agreement or Outbound License Agreement, nor require the consent of any Governmental Authority or other third party in respect of any such Intellectual Property.

(m) Software. The Software owned, or purported to be owned by Company relating to, used in or held for use in the Business (collectively, the “Company Software”), was either (i) developed by Employees of Company within the scope of their employment by Company (ii) developed by independent contractors who have assigned all of their right, title and interest therein to Company pursuant to written agreements, or (iii) otherwise acquired by Company from a third party pursuant to a written agreement in which such third party assigns all of its right, title and interest therein. The Company Software is set forth on Schedule 3.19(m). To the Knowledge of Company, none of the Company Software contains any programming code, documentation or other materials or development environments that embody Intellectual Property rights of any person other than Company, except for such materials obtained by Company from other persons who make such materials generally available to all interested purchasers or end-users on standard commercial terms. To the Knowledge of Company, none of the Company Software is, in whole or in part, subject to the provisions of any open source or other source code license agreement, including GPL or LGPL, that requires the distribution of source code in connection with the distribution of the licensed software in object code form or that prohibits Company from charging a fee or otherwise limits Company’s freedom of action with regard to seeking compensation in connection with sublicensing or distributing such licensed software (whether in source code or object code form). For purposes hereof, “Software” means any and all (w) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (x) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (y) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, and (z) all documentation, including user manuals and training materials relating to any of the foregoing, including any translations thereof.

(n) Performance of Existing Software Products. Each of Company’s existing and currently supported and marketed Software products performs, in all material respects, the functions described in any agreed specifications or end user documentation or other information provided to customers of Company on which such customers relied when licensing or otherwise acquiring such products, subject only to routine bugs and errors that can be corrected promptly by Company in the course of providing customer support without further liability to Company, and all of the code of such products has been developed in a manner that meets common industry practice, including the use of regression test and release procedures.

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(o) Intentionally Deleted.

(p) Export Restrictions. To the Knowledge of Company, Company has not exported or transmitted Software or other material to any country to which such export or transmission is restricted by any applicable law, without first having obtained all necessary and appropriate United States or foreign government licenses or permits.

(q) Disabling Code and Contaminants. To the Knowledge of Company, the Company Software is free of any disabling codes or instructions (a “Disabling Code”), and any virus or other intentionally created, undocumented contaminant (a “Contaminant”), that may, or may be used to, access, modify, delete, damage or disable any Systems or that may result in damage thereto. Company has taken reasonable steps and implemented

reasonable procedures to ensure that its and their internal computer systems are free from Disabling Codes and Contaminants. The Software that is licensed by Company from third parties is free of any Disabling Codes or Contaminants that may, or may be used to, access, modify, delete, damage or disable any of the hardware, software, databases, embedded control systems, or other systems of Company (“Systems”) or that might result in damage thereto. Company has taken all reasonable steps to safeguard their respective Systems and restrict unauthorized access thereto.

(r) Employee Confidentiality Agreements. No Employee of or consultant to Company is obligated under any agreement (including licenses, covenants or commitments of any nature) or subject to any Proceeding or any other restriction that would interfere with the use of his or her best efforts to carry out his or her duties for Company or to promote the interests of Company or that would conflict with the Business. The carrying on of the Business by such Employees of and contractors to Company and the conduct of the Business, will not conflict with or result in a breach of the terms, conditions or provisions of, or constitute a Default under, any contract, covenant or instrument under which any of such Employees of or consultants to Company is now obligated. At no time during the conception of or reduction to practice of any Intellectual Property owned by Company was any developer, inventor or other contributor to such Intellectual Property operating under any grants from or contracts with any Governmental Authority or private source, performing research sponsored by any Governmental Authority or private source or subject to any employment agreement or invention assignment or nondisclosure agreement or other obligation with any third party that could adversely affect Company’s rights in such Intellectual Property. Except as set forth in Schedule 3.19(r), all developers, inventors and other contributors to the conception of or reduction to practice of any Intellectual Property owned by Company, whether or not presently employed by or under contract with Company or not, have entered into proprietary information, confidentiality and assignment agreements substantially in the form of Company’s standard forms (true, correct and complete copies of which have been delivered to Purchaser) that assign to Company any Intellectual Property rights and that otherwise appropriately protect the Company’s Intellectual Property. Except as set forth in Schedule 3.19(r), there exist no inventions by current or former Employees or consultants of Company, made or otherwise conceived before their beginning employment or consultation with Company or otherwise excluded from assignment to Company, that have been or will be incorporated into any of the Company’s Intellectual Property or products. All of the Company’s

former Employees and consultants executed a termination certificate upon their exit from Company, certifying that they (i) had returned to Company all tangible confidential and proprietary information and other property (including diskettes, CDs, Zip drives, etc.); (ii) had wiped hard drives, on home and other personal computers and laptops, clean of any source code or other Intellectual Property of Company; and (iii) would continue to abide by their nondisclosure obligations. No current or former Employee of Company that is or was employed outside of the United States by Company participated in any way in the development of any Intellectual Property of Company.

3.20. Transactions with Certain Persons. Except as set forth Schedule 3.20, no shareholder, officer or director of Company or any Affiliate of any such Person has had, either directly or indirectly, a material interest in: (a) any Person or entity which purchases from or sells, licenses or furnishes to Company any goods, property, services, technology, intellectual or other property rights or (b) any Contract to which Company is a party or by which it may be bound or affected.

3.21. Insurance. Schedule 3.21 sets forth a complete and correct list of all insurance policies of Company of any kind currently in force and also sets forth for each insurance policy the type of coverage, the name of the insureds, the insurer, the premium, the expiration date, the deductibles and loss retention amounts and the amounts of coverage. True, correct and complete copies of such insurance policies have been made available to Purchaser. All insurance coverage is in full force and effect and insures Company in sufficient amounts against such as are in accordance with normal industry practice for similar businesses (taking into account the cost and availability of such insurance). No notice of cancellation or termination has been received with respect to any such policy as of the date hereof, and all such insurance policies are in full force and effect and will remain in full force and effect up to and including the Closing (other than those that have been retired or expired in the Ordinary Course of Business). Except as set forth on Schedule 3.21, Company has no self-insurance or co-insurance programs, and the reserves set forth on the Financial Statements for Company’s fiscal year ended December 31, 2005 are adequate to cover all anticipated liabilities with respect to any such self-insurance or co-insurance programs.

3.22. Accounts Receivable. Schedule 3.22 sets forth a true, correct and complete list of the Accounts Receivable, including the aging thereof as of the date of the Company Balance Sheet. All Accounts Receivable represent valid obligations owed to Company arising from goods actually delivered or services actually performed by Company in *bona fide* transactions entered into in the Ordinary Course of Business. Except as set forth on Schedule 3.22, there is no contest, claim or right of set-off against the Accounts Receivable other than those in the Ordinary Course of Business and for which adequate reserves have been established and which are reflected in the Company Balance Sheet. The allowance for uncollectable Accounts Receivable set forth on the Company Balance Sheet is adequate in accordance with GAAP and is consistent with the historical collection experience of Company.

3.23. Inventory. Schedule 3.23 sets forth a true and complete list of all Inventory as of August [], 2006, the value thereof and the address at which such Inventory is located. Except as set forth on Schedule 3.23, such Inventory has not been consigned to, or held on consignment from, any third person. Such Inventory and additional items of Inventory arising since August [],

2006 was acquired and has been maintained in accordance with the regular business practices of Company, consists of new and unused items of a quality and quantity substantially all of which is usable or saleable in the Ordinary Course of Business, and is valued at prices equal to the lower of cost or realizable value and in accordance with the internal accounting practices of Company applied on a basis consistent with the Financial Statements, each consistently applied throughout the periods covered by the Financial Statements, with adequate provisions or adjustments for excess inventory, slow-moving inventory, spoilage and inventory obsolescence and shrinkage. The Inventory (including items of Inventory acquired subsequent to August [], 2006) consists of products of quality and quantity commercially usable and salable at not substantially less than cost in the Ordinary Course of Business, except for any items of obsolete material or material below standard quality, substantially all of which have been written down to realizable market value, or for which adequate reserves have been provided, and, except as described in Schedule 3.23, the present quantities of all Inventory are reasonable in the present circumstances of Company and consistent with the average level of Inventory in the past twenty-four (24) months.

3.24. Certain Business Practices. None of the agents or Employees of Company or any of its Affiliates has (a) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses, including, without limitation, expenses related to political activity, (b) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns, made any bribes or kickback payments or violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (c) made any other unlawful payment.

3.25. Warranties. Schedule 3.25 sets forth complete and accurate summaries of the written warranties and guaranties utilized by Company with respect to its services or products pursuant to which Company may have any current or future obligations. There have not been any deviations from such warranties and guaranties which could result in liability to Company exceeding \$25,000, and neither Company nor any of its salespeople, Employees, distributors and agents is authorized to undertake obligations to any customer or to other third parties in excess of such warranties or guaranties. Company has not made any oral warranty or guaranty with respect to any of its products or services.

3.26. Suppliers and Customers. The documents and information supplied by Company in connection with this Agreement with respect to relationships and volumes of business done with the suppliers, distributors and customers of the Business are accurate in all material respects. During the last twelve (12) months, Company has not received any notice of termination or written threat of termination from any of the ten (10) largest suppliers of the Business or any of the ten (10) largest distributors or customers of the Business, or any information that any such customer, distributor or supplier intends to materially decrease the amount of business that it does with Company.

3.27. Solvency. Company is Solvent and will be Solvent after giving effect to the transactions contemplated by this Agreement and the Ancillary Agreements and any dividend, distribution or transfer of any portion of the Purchase Price contemplated by Company. For purposes of this Agreement, "Solvent" means that: (a) the amount, at "fair valuation," or "present fair salable value" (whichever is the applicable test under the applicable provisions of

the relevant federal and state bankruptcy and fraudulent conveyance or transfer laws) of Company's assets is in excess of the total amount of Company's debts and liabilities, including contingent liabilities, (b) Company is able to pay its debts and liabilities, including contingent liabilities, as they become due, (c) Company does not have unreasonably small capital or assets to carry on Company's business as theretofore operated and as proposed to be operated and (d) Company does not intend to, or does not believe that it will, incur debts or liabilities beyond Company's ability to pay as such debts and liabilities mature, in each case as of such date. The meaning of the terms "fair valuation" and "present fair salable value" and the other terms used in this definition, and the calculation of assets, debts and liabilities shall be determined and made in accordance with the applicable provisions of the relevant federal and state bankruptcy and fraudulent conveyance or transfer laws.

3.28. No Brokers. Except as set forth on Schedule 3.28, none of Company or any of its Affiliates, or any of their respective officers, directors, employees or shareholders has entered into nor will any of them enter into any contract, agreement, arrangement or understanding with any broker, finder or similar agent or any Person which will result in the obligation of Purchaser, Company or any of their respective Affiliates to pay any finder's fee, brokerage fees or commission or similar payment in connection with the transactions contemplated hereby and by the Ancillary Agreements.

3.29. Other Information. None of the representations and warranties made by Company and the Shareholders (taken together with the Company Disclosure Letter) in this Agreement or any Ancillary Agreement, and none of the documents or information delivered to Purchaser by Company, the Shareholders or its Representatives in connection with the transactions contemplated by this Agreement and the Ancillary Agreements contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein not misleading. The financial projections relating to Company delivered to Purchaser have been prepared in good faith and are based on reasonable assumptions, constitute Company's best estimate of the information purported to be shown therein, and neither Company nor any Shareholder is aware of any fact or information that would lead it to believe that such projections are incorrect or misleading in any material respect.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

OF PURCHASER

As a material inducement to Company and the Shareholders to enter into this Agreement, except as provided herein, Purchaser makes the following representations and warranties to Company and the Shareholders as of the date of this Agreement and as of the Closing Date.

4.1. Organization. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power and authority to conduct its business as it is presently being conducted, and to own or lease, as applicable, its assets and properties.

4.2. Authorization. Purchaser has full corporate power and authority, and has taken all action necessary, to execute, deliver and perform this Agreement and the Ancillary Agreements to which it is or will be a party, to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Ancillary Agreements to which it is or will be a party by Purchaser and the consummation by Purchaser of the transactions contemplated hereby and thereby have been duly approved by all necessary corporate action under the organizational documents of Purchaser, as applicable. No other corporate proceedings on the part of Purchaser or its shareholders are necessary to authorize this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Purchaser and is, and upon execution and delivery of each of the Ancillary Agreements to which Purchaser is or will be a party will be, a legal, valid and binding obligation of Purchaser, as applicable, enforceable against Purchaser in accordance with its respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally.

ARTICLE V.

COVENANTS

5.1. **Conduct of Business.** From the date hereof through the Closing, Company shall carry on the operation of the Business in the Ordinary Course of Business and will not take any action inconsistent with this Agreement. Company will maintain the present character and quality of the Business, including its present operations, physical facilities, working conditions and relationships with lessors, licensors, suppliers, customers, contractors and Employees, and shall take such actions as are necessary to protect the Acquired Assets and their value before the Closing Date. Without limiting the generality of the foregoing, unless consented to by Purchaser in writing, Company, except as specifically contemplated by this Agreement, shall not:

(a) amend its Certificate of Incorporation or bylaws (or other similar governing documents);

(b) declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of its capital stock, make any other actual, constructive or deemed distribution in respect of its capital stock or otherwise make any payments to holders of securities issued by Company in their capacities as such;

(c) sell, transfer, license, lease or otherwise dispose of any Acquired Assets, other than sales or transfers of Inventory in the Ordinary Course of Business that do not exceed \$50,000 to any one Person in a single transaction;

(d) enter into any joint venture, strategic alliance, noncompetition, exclusive license, distribution, marketing, sales or other similar agreement;

(e) revalue in any respect any of the Acquired Assets, including writing off any indebtedness or Accounts Receivable;

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(f) incur any indebtedness for borrowed money or letters of credit, or issue any debt securities or assume, guarantee, endorse (other than endorsements for deposit or collection in the Ordinary Course of Business) or otherwise become responsible for, obligations of any other Person, except in the Ordinary Course of Business;

(g) mortgage, pledge or otherwise subject to any Encumbrance any of the Acquired Assets;

(h) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization or otherwise permit its corporate existence to be suspended, lapsed or revoked;

(i) terminate, renew or make any amendment to any Assumed Contract, enter into any new contract or agreement with respect to the Business, in each case other than in the Ordinary Course of Business;

(j) make any change in any method of accounting or accounting practice except as required by GAAP;

(k) fail to maintain the books and records on a basis consistent with past practice except to the extent changes are required by changes in Applicable Law;

(l) except as required by Applicable Law, establish, enter into, adopt, amend or terminate any employment agreement or Benefit Plan of any Employee in any manner, or increase in any manner the compensation or fringe benefits of any Employee or consultant (other than increases in the Ordinary Course of Business) or pay any benefit not required by any Benefit Plan as in effect on the date hereof;

(m) institute, settle, or agree to settle any Proceeding related to the Acquired Assets, Assumed Liabilities or the Business (other than any Proceeding related solely to Excluded Assets or Excluded Liabilities), except with respect to claims having a value less than \$10,000 in the aggregate;

(n) make or change any election in respect of Taxes; enter into any closing agreement, settle any claim or assessment in respect of Taxes; or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of material Taxes; fail to file any Tax Returns when due (taking into account valid extensions of time to file), fail to cause such Tax Returns when filed to be true, correct and complete in all material respects; prepare or file any Tax Return of Company in a manner inconsistent with past practices in preparing or filing similar Tax Returns in prior periods, or fail to pay any Taxes when due;

(o) authorize any new capital expenditure or expenditures that individually is in excess of \$5,000 or in the aggregate are in excess of \$10,000;

(p) acquire any corporation, partnership, limited liability company, other business organization or division thereof or any amount of assets in excess of \$10,000 in the aggregate (other than any acquisition of Inventory for the Business in the Ordinary Course of Business that does not exceed \$100,000);

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(q) pay, discharge or satisfy any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise) relating to the Business or the Acquired Assets, other than (i) the payment, discharge or satisfaction, in the Ordinary Course of Business of liabilities reflected or reserved against on the Company Balance Sheet or subsequently incurred in the Ordinary Course of Business or (ii) the repayment of debt set forth on Schedule 5.1(q) to be repaid by Company at Closing;

- (r) cancel, compromise, waive or release any right or claim relating to the Business or the Acquired Assets, other than in the Ordinary Course of Business;
- (s) permit the lapse of any existing policy of insurance relating to the Business or the Acquired Assets;
- (t) permit the lapse of any right relating to Business Intellectual Property or any other intangible asset used or held for use in connection with the Business;
- (u) accelerate the collection of or discount any Accounts Receivable, delay the payment of liabilities that would become Assumed Liabilities or defer expenses, reduce Inventories or otherwise increase cash on hand in connection with the Business, except in the Ordinary Course of Business;
- (v) refuse to cooperate with Purchaser in making any mutually agreeable changes, additions or revisions reasonably requested by Purchaser to (i) any of the websites operated, managed or owned by Company or (ii) any of the content appearing on such websites; or
- (w) take or agree to do (i) any of the actions described in subsections (a) through (v) of this Section 5.1, or (ii) any other act which would cause any representation or warranty of Company or Purchaser in this Agreement to be or become untrue in any material respect.

5.2. Access to Information.

(a) Between the date hereof and the Closing Date, Company will permit Purchaser and its authorized Representatives access (including for inspection and copying) at all reasonable times to the Acquired Assets and Company's Representatives, properties, offices, plants and other facilities, and books and records, including, without limitation, the Business Records, and will cause its Representatives to furnish Purchaser with such financial and operating data and other information as Purchaser may from time to time request.

(b) Each party hereto will hold, and will cause its Representatives to hold, in confidence all documents and information furnished to it by or on behalf of another party to this Agreement in connection with the transactions contemplated by this Agreement pursuant to the terms of the Mutual Confidentiality Agreement, dated June 2, 2006, between Company and Purchaser (the "Confidentiality Agreement").

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5.3. Notification of Certain Matters.

(a) Company or a Shareholder, as applicable, shall give prompt notice to Purchaser of (i) the occurrence, or failure to occur, of any event before the Closing which occurrence or failure would cause any representation or warranty of Company or a Shareholder contained in this Agreement, an Ancillary Agreement or any exhibit or schedule hereto or thereto to be untrue or inaccurate in any material respect; (ii) any failure of Company or a Shareholder to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement, any Ancillary Agreement or any exhibit or schedule hereto or thereto; (iii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements; and (iv) any Proceeding pending or threatened against a party or the parties relating to the transactions contemplated by this Agreement or the Ancillary Agreements; provided, however, that such disclosure shall not be deemed to cure any breach of a representation, warranty, covenant or agreement or to satisfy any condition.

(b) From time to time before the Closing Date, Company shall promptly supplement or amend the Company Disclosure Letter with respect to any matter arising after the delivery thereof pursuant hereto that, if existing at, or occurring on, the date of this Agreement, would have been required to be set forth or described in the Company Disclosure Letter, and in any event, not earlier than ten (10) and not less than five (5) days before the date scheduled for Closing, Company shall so supplement or amend the Company Disclosure Letter, so that such information shall be correct and complete at the time such updated information is so provided. The parties agree that the furnishing of such corrected and supplemental information, in and of itself, shall not create any presumption that such information constitutes or evidences the existence of a material change or any breach or violation by Company of any provision of this Agreement. Any corrected and supplemental information shall not be deemed to amend the Company Disclosure Letter for purposes of determining whether the conditions set forth in Article VII hereof have been satisfied, shall not be deemed to cure any breach of any representation or warranty or to limit the rights and remedies of Purchaser under this Agreement for any breach by Company or any Shareholder of such representations and warranties.

5.4. No Solicitation.

(a) None of the Shareholders or Company shall, nor shall they authorize or permit any Employee or shareholder of or, any Representative of, Company to: (i) solicit, initiate, seek, consider, discuss or encourage the submission of, any Takeover Proposal; (ii) enter into any letter of intent, agreement in principle, acquisition agreement or other agreement with respect to, or approve or recommend, any Takeover Proposal; or (iii) participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to the Business in connection with, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any Takeover Proposal. Company and the Shareholders immediately shall cease and cause to be terminated all existing discussions, conversations, negotiations and other communications with any Persons conducted heretofore with respect to any of the foregoing. Without limiting the foregoing, it is understood that any violation of the restrictions set forth in the first sentence of this Section 5.4(a)

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by any Employee of Company or any Representative of Company, whether or not such Person is purporting to act on behalf of Company or otherwise, shall be deemed to be a breach of this Section 5.4(a) by Company.

(b) Company shall advise Purchaser orally and in writing within twenty-four (24) hours of (i) any Takeover Proposal or any inquiry with respect to or which would reasonably be expected to lead to a potential Takeover Proposal that is received by or communicated to any Shareholder or any Employee of Company or, to the Knowledge of Company, any Representative of Company, (ii) the material terms of such Takeover Proposal (including a copy of any written proposal) and (iii) the identity of the Person making any such Takeover Proposal or inquiry. Company will keep Purchaser informed of the status of such Takeover Proposal or inquiry (including, without limitation, notifying Purchaser orally and in writing of any material change to the terms of such Takeover Proposal or inquiry and providing copies of any revised written proposal within 24 hours of the receipt thereof by Company). Company shall not release any Person from, or waive any provision of, any confidentiality or standstill agreement to which Company is a party, without the prior written consent of Purchaser.

5.5. Covenants Regarding Information.

(a) At or prior to the Closing, Company shall deliver or cause to be delivered to Purchaser all Business Records including, without limitation, all original agreements, documents, books and records and files stored on computer disks or tapes or any other storage medium in the possession of Company relating to the Business, the Acquired Assets and the Assumed Liabilities.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Purchaser after the Closing or for any other reasonable purpose, following the Closing, Company shall, upon reasonable notice, furnish Purchaser and its Representatives reasonable assistance (at Purchaser's expense), including access to personnel, in connection with any Proceeding involving or relating to the Business, the Acquired Assets or the Assumed Liabilities. Company shall permit, promptly upon reasonable request, Purchaser and its Representatives to use original copies of any such records for purposes of litigation; *provided* that such records shall promptly be returned to Company. For a period of seven (7) years or as required by Applicable Law, if longer, Company shall not destroy any books, documents, information, data, files and other records of Company that relate to the Business, the Acquired Assets or the Assumed Liabilities for periods prior to the Closing and which shall not otherwise have been delivered to Purchaser without providing Purchaser with written notice detailing the contents of such books and records, and providing Purchaser with the opportunity to obtain such books and records, at least ninety (90) days prior to the destruction thereof.

(c) Upon execution of this Agreement and continuing until Closing, Company shall deliver to Purchaser by Friday of each week, copies of Company's weekly management reports relating to, without limitation, Company's (i) sales, (ii) Inventory, including, without, limitation, the reports specified in Schedule 7.2(i), (iii) Accounts Receivable and (iv) transactions with buyers and transactions with suppliers during the previous week.

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(d) Upon execution of this Agreement and continuing until Closing, Company shall deliver to Purchaser by the tenth day of each month a balance sheet of the Company as of the last day of the prior month and related statement of income and statement of cash flows for the period ended as of the last day of the prior month.

5.6. Non-Competition; Non-Solicitation.

(a) Company shall not, and shall cause its Affiliates not to, and no Shareholder shall, directly or indirectly through any Person or contractual arrangement, either individually or as a shareholder, director, officer, partner, consultant, owner, employee, agent, or in any other capacity, for a period of five (5) years following the Closing, (i) solicit or offer to provide or provide Restricted Services anywhere in the world; (ii) operate an Internet site through which Restricted Services are offered or provided; or (iii) directly or indirectly through any Person or contractual arrangement, perform management, executive or supervisory functions with respect to, operate, join, control, render financial assistance to, receive any economic benefit from, exert any influence upon, or participate in or allow any of its officers or employees to be connected as an officer, employee, partner, member, shareholder, consultant or otherwise with, any business or Person that provides Restricted Services.

(b) For a period of five (5) years following the Closing, Company shall not, and shall cause its Affiliates not to, and no Shareholder shall, directly or indirectly solicit, recruit, hire or offer to hire, induce or attempt to induce or otherwise counsel, advise, ask or encourage any person who at any time on or after the date of this Agreement is a Transferred Employee to leave the employ of Purchaser or to accept employment with another employer or as an independent contractor. The foregoing shall not prohibit (i) a general solicitation to the public of general advertising or similar methods of solicitation by search firms not specifically directed at Transferred Employees or (ii) Company or any of its Affiliates from soliciting, recruiting or hiring any Transferred Employee who has ceased to be employed or retained by Purchaser for at least twelve (12) months.

(c) Company and each Shareholder acknowledge that the covenants of Company and the Shareholders set forth in this Section 5.6 are an essential element of this Agreement and that any breach by Company or the Shareholders of any provision of this Section 5.6 will result in irreparable injury to Purchaser. Company and each Shareholder acknowledge that in the event of such a breach, in addition to all other remedies available at law, Purchaser shall be entitled to equitable relief, including injunctive relief, and an equitable accounting of all earnings, profits or other benefits arising therefrom, as well as such other damages as may be appropriate. Company and each Shareholder have independently consulted with its respective counsel and after such consultation agree that the covenants set forth in this Section 5.6 are reasonable and proper to protect the legitimate interest of Purchaser.

(d) If a court of competent jurisdiction determines that the character, duration or geographical scope of the provisions of this Section 5.6 are unreasonable, it is the intention and the agreement of the parties that these provisions shall be construed by the court in such a manner as to impose only those restrictions on Company's and each Shareholder's conduct that are reasonable in light of the circumstances and as are necessary to assure to Purchaser the benefits of this Agreement. If, in any judicial proceeding, a court shall refuse to enforce all of

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the separate covenants of this Section 5.6 because taken together they are more extensive than necessary to assure to Purchaser the intended benefits of this Agreement, it is expressly understood and agreed by the parties that the provisions hereof that, if eliminated, would permit the remaining separate provisions to be enforced in such proceeding, shall be deemed eliminated, for the purposes of such proceeding, from this Agreement.

5.7. Employment.

(a) Purchaser, or an Affiliate of Purchaser, shall offer employment to Employees of the Business selected by Purchaser in its discretion. Such employment shall be at will and subject to terms and conditions imposed by Purchaser, including, at Purchaser's election, the Employee's agreement to confidentiality, non-disclosure, non-competition and/or non-solicitation covenants. All Employees of the Business who accept employment with Purchaser or an Affiliate of Purchaser shall be referred to herein as "Transferred Employees." To the extent permitted by applicable law, Purchaser shall offer Transferred Employees employee benefits on a basis which is substantially comparable to those offered to Purchaser's similarly-situated employees. Nothing contained in this Agreement shall limit Purchaser's ability to modify or terminate, in accordance with applicable law, the employment of the Transferred Employees or their terms and conditions of employment. Nothing contained in this Agreement shall create any third party beneficiary rights in any Transferring Employee, any beneficiary or dependents thereof, with respect to the compensation, terms and conditions of employment and benefits that may be provided to any Transferring Employee by Purchaser or under any benefit plan that Purchaser may maintain.

(b) From and after the Closing Date, Purchaser shall grant all Transferred Employees credit for all service (to the same extent as service with Purchaser is taken into account with respect to similarly situated employees of Purchaser) with Company prior to the Closing for purposes of vacation accrual after the Closing, as if such service with Company was service with Purchaser. From and after the Closing Date, subject to the required approval of any insurance carrier or benefit provider, and to the extent consistent with Applicable Law and Tax qualification requirements, all Transferred Employees shall participate in all Purchaser employee benefit programs in which they are eligible to participate. Purchaser shall also provide Transferred Employees with credit for any accrued vacation to which such Transferred Employees were entitled as of the Closing Date.

(c) Company shall comply with the requirements of the WARN Act or any similar state, provincial or local law with respect to any "plant closing" or "mass layoff", as those terms are defined in the WARN Act or such other applicable law, which may result from Company's termination of the employment of any Employees.

5.8. Payment of Liabilities. After the Closing, Company shall pay or otherwise satisfy any Excluded Liabilities not satisfied at Closing. Prior to adopting any proposal to dissolve Company, (a) the Company Board shall provide to Purchaser a copy of Company's plan to discharge Company's liabilities in connection with the dissolution of Company, including the Excluded Liabilities, and (b) Purchaser shall approve such plan, such approval not to be unreasonably withheld.

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5.9. Bulk Sales. Company shall comply with all applicable provisions of Applicable Law which relate to the sale of property in bulk in connection with the transfer of the Acquired Assets to Purchaser.

5.10. Tax Matters.

(a) Purchaser and Company shall cooperate in preparing, executing and filing use, sales, real estate, transfer and similar Tax Returns relating to the purchase and sale of the Acquired Assets or the Business. Such Tax Returns shall be prepared in a manner that is consistent with the determination of the fair market values allocated to the Acquired Assets as contemplated by Section 2.6. All sales, transfer, documentary, stamp, recording and similar Taxes incurred in connection with the purchase and sale of the Assets ("Transfer Taxes") shall be paid by Company.

(b) Any payments made pursuant to Section 9.2 of this Agreement shall constitute an adjustment to the Purchase Price for Tax purposes and shall be treated as such by Purchaser and Company on their Tax Returns to the extent permitted by law.

5.11. Refunds and Remittances. After the Closing: (i) if Company or any of its Affiliates receive any refund or other amount that is an Acquired Asset or is otherwise properly due and owing to Purchaser in accordance with the terms of this Agreement, Company shall promptly remit, or shall cause to be remitted, such amount to Purchaser, and (ii) if Purchaser receives any refund or other amount that is an Excluded Asset or is otherwise properly due and owing to Company or any of its Affiliates in accordance with the terms of this Agreement, Purchaser shall promptly remit, or shall cause to be remitted, such amount to Company. If either party receives a payment from a customer that cannot be identified to a specific invoice or obligation, the recipient shall inquire of the customer as to the intended application thereof and, lacking a response, the payment shall be applied to the post-Closing outstanding invoices or obligations first, and then to pre-Closing outstanding invoices or obligations.

5.12. Power of Attorney. Company hereby constitutes and appoints Purchaser the true and lawful attorney of Company, with full power of substitution, in the name of Company, but for the benefit of Purchaser (provided, however, that Company's obligations will not in any way be limited as a result of Purchaser undertaking such expense) following the Closing to (a) collect, assert or enforce any claim, right or title of any kind in or to the Acquired Assets, institute and prosecute all actions, suits and proceedings which Purchaser may deem proper in order to collect, assert or enforce any such claim, right or title, defend and compromise all actions, suits and proceedings in respect of any Acquired Asset, and do all such acts and things in relation thereto as Purchaser shall deem advisable and (b) endorse, without recourse, the name of Company on any check or other evidence of indebtedness received by Purchaser on account of any Acquired Asset. Company acknowledges that such powers are coupled with an interest and shall not be revocable by it in any manner or for any reason, including its dissolution, and that Purchaser shall be entitled to retain for its own account any amounts collected pursuant to such powers, including any amounts payable as interest in respect thereof. Such powers shall be granted by such powers of attorney and other instruments as shall be reasonably requested by Purchaser.

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5.13. Customer and Other Business Relationships. After the Closing, Company and the Shareholders shall cooperate with Purchaser in its efforts to continue and maintain for the benefit of Purchaser those business relationships of Company existing prior to the Closing relating to the Business, including relationships with lessors, Employees, Governmental Authorities, licensors, customers, suppliers and others, and Company will satisfy the Excluded Liabilities in a manner that is not detrimental to any of such relationships; provided, further, that Company shall fully satisfy any and all Excluded Liabilities

to all of its suppliers of Inventory no later than 5 Business Days after the Closing Date. None of the Shareholders or Company, nor any of its officers, Employees, Representatives or shareholders, shall take any action that would tend to diminish the value of the Acquired Assets after the Closing or that would interfere with the business of Purchaser to be engaged in after the Closing, including disparaging the name or business of Purchaser.

5.14. Resale Certificate. Prior to the Closing Date, Purchaser shall obtain a resale certificate with respect to the Business Inventory from the State of California.

5.15. Public Announcements. None of Company or the Shareholders shall issue a press release, make any other public statement or make any statement to any person outside of Company (other than to Company's legal advisers) regarding (i) this Agreement; (ii) the transactions contemplated hereby; or (iii) Company's financial statements or results, or historical financial performance, without Purchaser's prior consent. Purchaser shall provide a copy of its press release announcing the signing of this agreement to Company prior to the release of such press release by Purchaser.

5.16. Prohibition on Use. From and after the Closing Date, Company and the Shareholders shall not use, directly or indirectly, any trademarks, trade names or domain names or addresses, including corporate names, symbols or identifiers included in Business Intellectual Property, any derivatives thereof or any marks confusingly similar thereto.

ARTICLE VI.

OTHER POST-CLOSING COVENANTS

6.1. Accounts Receivable and Other Payments. At the Closing, Company shall retain all rights in the Retained Receivables and be entitled to collect such Retained Receivables. If Purchaser receives any cash or other form of payment related to the Business that is intended as a payment of the Retained Receivables due to Company, then Purchaser shall, and shall cause its Subsidiaries to, within five (5) business days after receipt of such payment or as soon as possible thereafter within the Ordinary Course of Business, properly deliver (and endorse as necessary) such payment to Company. If Company or any of its Affiliates receives any cash or other form of payment related to the Business, but that is not intended as a payment of Retained Receivables due to Company, then Company shall, or shall cause its Affiliate to, within five (5) business days after receipt of such payment or as soon as possible thereafter within the Ordinary Course of Business, properly deliver (and endorse as necessary) such payment to Purchaser.

6.2. Proration of Liabilities.

(a) Company and Purchaser shall cooperate with each other to provide for payments due with respect to the Assumed Liabilities during the payment period in which the

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Closing occurs with all the Assumed Liabilities prorated as of the Closing Date, if applicable. In furtherance and not in limitation of the foregoing, all utility charges, gas charges, electric charges, water charges, water rents and sewer rents, if any, shall be apportioned between Purchaser and Company as of 11:59 P.M. on the Closing Date, computed on the basis of the most recent meter charges or, in the case of annual charges, on the basis of the established fiscal year. All prepaid expenses (including any rent) of Company paid prior to the Closing Date in respect of the Business shall be apportioned between Purchaser and Company as of 11:59 P.M. on the Closing Date computed on the basis of the benefit received by Company prior to the Closing Date and the benefit to be received by Purchaser subsequent to the Closing Date with respect to any contract or other matter to which the prepaid expense relates. All prorrations described in this Section 6.2(a) shall be made insofar as feasible on the Closing Date, and the Base Consideration shall be adjusted accordingly as set forth in Section 2.4.

(b) In the event Purchaser or Company shall receive bills after the Closing Date for expenses incurred prior to the Closing Date that were not prorated in accordance with this Section 6.2(b), then Purchaser or Company, as the case may be, shall promptly notify the other party as to the amount of the expense subject to proration and the responsible party shall promptly pay its portion of such expense (or, in the event such expense has been paid on behalf of the responsible party, reimburse the other party for its portion of such expenses).

6.3 Inventory Sales. The parties hereto agree that if Purchaser's revenue from sales of the Inventory is less than the Minimum Inventory Sales Amount, and provided that Purchaser has used Company's customary sales methods and business practices. Company shall pay Purchaser the difference between (i) Purchaser's revenue from sales of the Inventory and (ii) the Minimum Inventory Sales Amount. If Purchaser's revenue from Inventory sales in any month or portion thereof following Closing is less than one hundred and twenty-four percent (124%) of the portion of the Closing Date Inventory Amount allocable to such Inventory, Purchaser shall deliver written notice to the Escrow Agent and Company specifying the amount of the deficiency, and the Escrow Agent shall pay such amount out of the Escrow Fund to Purchaser within five (5) Business Days after Purchaser's notice in accordance with the terms of the Escrow Agreement. In the event that the Escrow Fund is insufficient to cover the full amount to be paid to Purchaser pursuant to this Section 6.3, then the Escrow Agent shall distribute the entire Escrow Fund to Purchaser as provided in the Escrow Agreement, and Company shall have no obligation to pay any amount of the deficiency to Purchaser (other than the amount held in the Escrow Fund).

6.4 Termination of Non-assumed Contracts. If there are any Non-assumed Contracts, Company shall take all action required to terminate such Non-assumed Contracts as soon as possible following the Closing Date, including sending any required notice of termination of such Contract to the counterparty thereto on the Closing Date.

ARTICLE VII.

CONDITIONS TO CLOSING

7.1 Conditions to Obligations of Company. The obligations of Company and the Shareholders to consummate the transactions contemplated by this Agreement shall be subject to

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the fulfillment, at or prior to the Closing, of each of the following conditions, either of which may be waived in writing by Company in its sole discretion:

(a) Representations, Warranties and Covenants. The representations and warranties of Purchaser contained in this Agreement or any Ancillary Agreement or any schedule, certificate or other document delivered pursuant hereto or thereto or in connection with the transactions contemplated hereby or thereby shall be true and correct in all material respects (except for such representations and warranties as are qualified by materiality or Material Adverse Effect, which representations and warranties shall be true and correct in all respects) both when made and as of the Closing Date, or in the case of representations and warranties that are made as of a specified date, such representations and warranties shall be true and correct as of such specified date. Purchaser shall have performed in all material respects all obligations and agreements and complied in all material respects with all covenants and conditions required by this Agreement or any Ancillary Agreement to be performed or complied with by it the Closing. Company shall have received from Purchaser a certificate to the effect set forth in this Section 7.1(a) signed by an executive officer thereof.

(b) Deliveries. Company shall have received an executed copy of each of the documents listed in Section 2.12 (a), (b) and (d).

7.2. Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions, any of which may be waived in writing by Purchaser in its sole discretion:

(a) Representations, Warranties and Covenants. The representations and warranties of Company and the Shareholders contained in this Agreement or any Ancillary Agreement or any schedule, certificate or other document delivered pursuant hereto or thereto or in connection with the transactions contemplated hereby or thereby (without giving effect to any supplement to the Company Disclosure Schedule delivered after the date of this Agreement) shall be true and correct in all material respects (except for such representations and warranties as are qualified by materiality or Material Adverse Effect, which representations and warranties shall be true and correct in all respects) both when made and as of the Closing Date, or in the case of representations and warranties that are made as of a specified date, such representations and warranties shall be true and correct as of such specified date. Company and the Shareholders shall have performed in all material respects all obligations and agreements and complied in all material respects with all covenants and conditions required by this Agreement or any Ancillary Agreement to be performed or complied with by it prior to or at the Closing. Purchaser shall have received from Company a certificate to the effect set forth in this Section 7.2(a) signed by an executive officer thereof.

(b) Consents and Approvals. All Material Consents shall have been received and shall be satisfactory in form and substance to Purchaser in its sole discretion.

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(c) No Litigation. No Proceeding shall have been commenced or threatened by or before any Governmental Authority that, in the reasonable, good faith determination of Purchaser, is reasonably likely to (i) prohibit or impose limitations on Purchaser's ownership or operation of all or a material portion of the Business or the Acquired Assets or any of its other businesses or assets (or those of any of its Subsidiaries or Affiliates) or (ii) impose limitations on the ability of Purchaser or its Affiliates, or render Purchaser or its Affiliates unable, effectively to control the Business or the Acquired Assets in any material respect.

(d) Deliveries. Purchaser shall have received an executed copy of each of the documents listed in Section 2.11.

(e) No Material Adverse Effect. There shall not have occurred any change, event or development or prospective change, event or development that, individually or in the aggregate, has had or is reasonably likely to have a Material Adverse Effect on Company or the Business.

(f) Certain Contracts. The contracts set forth on Schedule 7.2(f) shall be in full force and effect as of the Closing Date and none of the parties thereto shall have notified Company of its intent to terminate any of such contracts.

(g) Certain Employees. The Employees set forth on Schedule 7.2(g) shall be employed by Company and no such Employee shall have notified Company of his or her intent to terminate his or her employment with Company.

(h) Inventory. No damage to Inventory in excess of \$100,000 in the aggregate shall have occurred since the date of this Agreement. During the period from the date of this Agreement through the Closing Date, Company shall not have (i) acquired any Inventory for the Business (A) in an amount in excess of \$100,000 and (B) outside the Ordinary Course of Business or (ii) acquired Inventory for the Retail Business, without the prior written consent of Purchaser.

(i) Accounting and Inventory Controls. Company shall have taken the actions set forth in Schedule 7.2(i).

(j) Retail Business. Company shall have taken the actions set forth in Schedule 7.2(j).

ARTICLE VIII

TERMINATION

8.1. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written consent of Purchaser and Company;

(b) (i) by Company, if Purchaser breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement or any Ancillary Agreement and such breach or failure to perform (A) would give rise to the failure of a condition set forth in Article VII, (B) with respect to failure to perform any covenant, such covenant cannot be or has not been cured within 15 days following delivery by Purchaser of written notice of such failure to perform and (C) has not been waived by Company or (ii) by Purchaser, if Company or any Shareholder breaches or fails to perform in any respect any of their respective representations, warranties or covenants contained in this Agreement or any Ancillary Agreement and such breach or failure to perform (x) would give rise to the failure of a condition set forth in Article VII, (y) with respect to failure to perform any covenant, such covenant cannot be or has not been cured within 15 days following delivery by Company of written notice of such failure to perform and (z) has not been waived by Purchaser;

(c) (i) by Company, if any of the conditions set forth in Section 7.1 shall have become incapable of fulfillment prior to December 31, 2006 or (ii) by Purchaser, if any of the conditions set forth in Section 7.2 shall have become incapable of fulfillment prior to December 31, 2006; *provided* that the right to terminate this Agreement pursuant to this Section 8.1 shall not be available if the failure of the party so requesting termination to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of such condition to be satisfied on or prior to such date;

(d) by either Company or Purchaser if the Closing shall not have occurred by December 31, 2006; *provided* that the right to terminate this Agreement under this Section 8.1 shall not be available if the failure of the party so requesting termination to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date;

(e) by either Company or Purchaser in the event that any Governmental Authority shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable; *provided* that the party so requesting termination shall have used its best efforts, in accordance with Section 2.5(a), to have such order, decree, ruling or other action vacated; or

(f) by Purchaser, if between the date hereof and the Closing, an event or condition occurs that has resulted or is reasonably likely to result in a Material Adverse Effect.

The party seeking to terminate this Agreement pursuant to this Section 8.1 (other than Section 8.1(a)) shall give prompt written notice of such termination to the other parties.

8.2. Effect of Termination. In the event of termination of this Agreement as provided in Section 8.1, this Agreement shall forthwith become void and there shall be no liability on the part of either party except for the provisions of Sections 3.28 (No Brokers), 5.2 (Access to Information), 5.14 (Public Announcements), 8.3 (Expenses; Termination Fees), 9.6 (Shareholders' Representative), 10.1 (Binding Effect; Assignment), 10.2 (Notices), 10.3 (Governing Law), 10.12 (Arbitration) and this Section 8.2; *provided* that nothing herein shall relieve any party from liability for any breach of this Agreement or any Ancillary Agreement.

8.3. Expenses. Except as otherwise specified in this Agreement or agreed in writing by the parties, all out-of-pocket costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such cost or expense.

ARTICLE IX.

INDEMNIFICATION; ESCROW

9.1. General Survival. The representations and warranties of the parties contained in this Agreement or in any certificate or other writing delivered pursuant to this Agreement shall survive the Closing until the date that is eighteen (18) months following the Closing Date, except for (i) the representation and warranty contained in each of Sections 3.11 (Taxes) and 3.27 (Solvency), which shall survive the Closing until the 120th day following the expiration of the applicable federal or state statute of limitation (including extensions thereof) with respect to the liabilities in question; (ii) the representations and warranties contained in Sections 3.1 (Organization), 3.3 (Authorization), 3.4 (Title to Assets), 3.28 (No Brokers), 4.1 (Organization) and 4.2 (Authorization) shall survive the Closing indefinitely; and (iii) the representations and warranties contained in Section 3.19 (Intellectual Property; Software) shall survive the Closing until the fourth anniversary of the Closing Date. Notwithstanding the preceding sentence, any representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentence, if notice of the inaccuracy of such representation or warranty giving rise to such right of indemnity shall have been given to the party from whom such indemnity may be sought before such time. The covenants and agreements of the parties contained in this Agreement shall survive indefinitely.

9.2. Indemnification.

(a) Company and each Shareholder shall jointly and severally indemnify Purchaser and its Affiliates, subsidiaries, officers, directors, employees, shareholders, Representatives, agents, successors and assigns (collectively, the "Purchaser Indemnitees") against, and hold each of the Purchaser Indemnitees harmless from, and shall reimburse each of them for, any and all Losses incurred by, resulting from, arising out of, relating to, imposed upon or incurred by any Purchaser Indemnitee by reason of:

(i) any inaccuracy in, misrepresentation or breach of any representation or warranty made by Company or any Shareholder contained in this Agreement or any Ancillary Agreement (disregarding any qualification or exception contained in such representation or warranty relating to materiality or Material Adverse Effect);

- Agreement;
- (ii) any breach of any covenant or agreement by Company or any Shareholder contained in this Agreement or any Ancillary
 - (iii) any Excluded Liabilities or Excluded Assets;
 - (iv) ownership or operation of the Business, the Acquired Assets or the Assumed Liabilities before the Closing Date;

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- (v) liabilities arising in connection with any failure to collect and remit Taxes;
 - (vi) ownership of the Business Intellectual Property, or claims alleging infringement on a third party's intellectual property by the Business Intellectual Property or any portion thereof;
 - (vii) Company's failure to comply with the terms and conditions of any bulk sales or bulk transfer or similar laws of any jurisdiction that may be applicable to the sale of any or all of the Acquired Assets to Purchaser; or
 - (viii) Company's failure to comply with the requirements of the WARN Act or any similar state, provincial or local law with respect to any "plant closing" or "mass layoff", as those terms are defined in the WARN Act or such other Applicable Law.

For purposes of this Agreement, the term "Losses" means any and all judgments, settlements, deficiencies, demands, claims, suits, actions or causes of action, assessments, administrative proceedings (including informal proceedings), investigations, audits, liabilities, losses, damages (whether direct, indirect, incidental or consequential), interest, Taxes, fines, penalties, diminution in value, costs, expenses (including, without limitation, reasonable legal, accounting and other fees, costs and expenses of professionals and other out-of-pocket costs incurred in investigating, preparing or defending the foregoing), whether or not involving a third-party claim, and interest on any of the foregoing from the date incurred until paid at a rate equal to the prime rate in effect on the date incurred at Citibank, N.A. in New York. Payments by an indemnified party of amounts for which such indemnified party is indemnified hereunder shall not be a condition precedent to recovery.

(b) Any claims for indemnification hereunder must be set forth in writing and be received by Company not later than the expiration of the applicable survival period (an "Indemnification Claim").

(c) No Purchaser Indemnitee shall be entitled to indemnification hereunder pursuant to Section 9.2(a)(i) for any Losses until the aggregate amount of all Losses under all claims of all Purchaser Indemnitees pursuant to Section 9.2(a)(i) shall exceed \$50,000 (the "Threshold"), at which time all such Losses incurred shall be subject to indemnification hereunder in full, including the amount of the Threshold; *provided, however*, that any Indemnification Claim pursuant to Section 9.2(a)(i), with respect to the breach of any representation or warranty contained in Sections 3.1 (Organization), 3.3 (Authorization), 3.4 (Title to Assets), 3.11 (Taxes), 3.19 (Intellectual Property; Software) or 3.28 (No Brokers) shall be indemnifiable in full without regard to the Threshold.

(d) Notwithstanding the foregoing or anything in this Agreement to the contrary, the limitations set forth in subsection (c) above shall not be applicable with respect to any claims for Losses by any Purchaser Indemnitee against Company or any Shareholder resulting from common law fraud or similar statutory provisions, or intentional misrepresentation or intentional breach.

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9.3. Procedures.

(a) In order for a Purchaser Indemnitee to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a Loss or a claim or demand made by any third party against the Indemnified Party (a "Third Party Claim"), such Purchaser Indemnitee shall deliver notice thereof to the party against whom indemnity is sought (the "Indemnifying Party") promptly after receipt by such Purchaser Indemnitee of written notice of the Third Party Claim attaching, if applicable, a copy of such Third Party Claim. The failure to provide such notice, however, shall not release the Indemnifying Party from any of its obligations under this Article IX except to the extent that the Indemnifying Party is materially prejudiced by such failure.

(b) If the Indemnifying Party acknowledges in writing its obligation to indemnify the Purchaser Indemnitee against any and all Losses that may result from a Third Party Claim pursuant to the terms of this Agreement, the Indemnifying Party shall have the right, upon written notice to the Purchaser Indemnitee within ten (10) days of receipt of notice from the Purchaser Indemnitee of the commencement of such Third Party Claim, to assume the defense thereof at the expense of the Indemnifying Party (which expenses shall not be applied against any indemnity limitation herein) with counsel selected by the Indemnifying Party and satisfactory to the Purchaser Indemnitee. The Indemnifying Party shall be liable for the fees and expenses of counsel employed by the Purchaser Indemnitee for any period during which the Indemnifying Party has failed to assume the defense thereof. If the Indemnifying Party does not expressly elect to assume the defense of such Third Party Claim within the time period and otherwise in accordance with the first sentence of this Section, the Purchaser Indemnitee shall have the sole right to assume the defense of and to settle such Third Party Claim. If the Indemnifying Party assumes the defense of such Third Party Claim, the Purchaser Indemnitee shall have the right to employ separate counsel and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Purchaser Indemnitee unless (i) the employment of such counsel shall have been specifically authorized in writing by the Indemnifying Party or (ii) the named parties to the Third Party Claim (including any impleaded parties) include both the Purchaser Indemnitee and the Indemnifying Party, and the Purchaser Indemnitee reasonably determines that representation by counsel to the Indemnifying Party of both the Indemnifying Party and such Purchaser Indemnitee may present such counsel with a conflict of interest. If the Indemnifying Party assumes the defense of any Third Party Claim, the Purchaser Indemnitee shall, at the Indemnifying Party's expense, cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party all witnesses, pertinent records, materials and information in the Purchaser Indemnitee's

possession or under its control relating thereto as is reasonably required by the Indemnifying Party. If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnifying Party shall not, without the prior written consent of the Purchaser Indemnitee, enter into any settlement or compromise or consent to the entry of any judgment with respect to such Third Party Claim if such settlement, compromise or judgment (i) involves a finding or admission of wrongdoing, (ii) does not include an unconditional written release by the claimant or plaintiff of the Purchaser Indemnitee from all liability in respect of such Third Party Claim or (iii) imposes equitable remedies or any obligation on the Purchaser Indemnitee other than solely the payment of money damages for which the Purchaser Indemnitee will be indemnified hereunder.

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(c) The indemnification required hereunder in respect of a Third Party Claim shall be made by prompt payment by the Indemnifying Party of the amount of Losses in connection therewith, as and when bills are received by the Indemnifying Party or Losses incurred have been notified to the Indemnifying Party.

(d) No Indemnifying Party shall be entitled to require that any action be made or brought against any other Person before action is brought or claim is made against it hereunder by a Purchaser Indemnitee.

(e) Notwithstanding the provisions of Section 9.3(b), each Indemnifying Party hereby consents to the nonexclusive jurisdiction of any court in which an action in respect of a Third Party Claim is brought against any Purchaser Indemnitee for purposes of any claim that a Purchaser Indemnitee may have under this Agreement with respect to such action or the matters alleged therein and agrees that process may be served on the Indemnifying Party with respect to such claim anywhere.

(f) In the event any Purchaser Indemnitee should have a claim against an Indemnifying Party hereunder that does not involve a Third Party Claim being asserted against or sought to be collected from such Purchaser Indemnitee, the Purchaser Indemnitee shall deliver notice of such claim with reasonable promptness to the Indemnifying Party. The failure to provide such notice, however, shall not release the Indemnifying Party from any of its obligations under this Article IX except to the extent that the Indemnifying Party is materially prejudiced by such failure and shall not relieve the Indemnifying Party from any other obligation or liability that it may have to the Purchaser Indemnitee or otherwise than pursuant to this Article IX.

(g) If the Indemnifying Party does not notify the Purchaser Indemnitee within ten (10) days following the Indemnifying Party's receipt of an Indemnification Claim that the Indemnifying Party disputes its liability thereunder, the claim specified in such Indemnification Claim shall be conclusively deemed a liability of the Indemnifying Party hereunder and shall be paid upon demand of the Purchaser Indemnitee by the Indemnifying Party or by the Escrow Agent pursuant to the Escrow Agreement, as applicable. If the Indemnifying Party agrees that it has an indemnification obligation but asserts that it is obligated to pay a lesser amount than that claimed in the Indemnification Claim, such lesser amount shall be conclusively deemed a liability of the Indemnifying Party hereunder and shall be paid upon demand of the Purchaser Indemnitee by the Indemnifying Party or by Escrow Agent pursuant to the Escrow Agreement, as applicable, without prejudice to or waiver of the Indemnified Party's claim for the difference. If the Indemnifying Party notifies the Purchaser Indemnitee in writing within ten (10) days following the Indemnifying Party's receipt of an Indemnification Claim that the Indemnifying Party disputes all or a portion of its liability thereunder, either party may seek to resolve the matter in accordance with the terms of Section 10.12 hereof; *provided* however, that the fourteen (14) day period referred to in Section 10.12(b) shall be reduced to five (5) days.

9.4. Remedies Not Affected by Investigation, Disclosure or Knowledge. No investigation conducted by or on behalf of any party at any time and no disclosure provided to knowledge of any party with respect to any event, condition or circumstance that renders inaccurate any representation or warranty or reveals the occurrence of a breach of any covenant

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of any other party contained in this Agreement or any Ancillary Agreement shall be deemed to be a waiver of, or to relieve such other party of any liability for, (i) the breach of any such representation, warranty or covenant, (ii) the nonfulfillment of any of the conditions set forth in this Article IX or (iii) any rights to indemnification or other remedy arising in connection therewith. Purchaser hereby expressly reserves the right to seek indemnity or other remedy for any Losses arising out of or relating to any such breach notwithstanding any investigation, disclosure or knowledge as described herein.

9.5. Escrow Fund. Purchaser hereby agrees that prior to the termination of the Escrow Fund it shall first seek a remedy from the Escrow Fund, to the extent of the amount then held in the Escrow Fund with respect to any indemnification claim asserted hereunder before seeking to recover any Losses directly from an Indemnifying Party. Subject to the following requirements, and subject to the terms of the Escrow Agreement, the Escrow Fund shall be in existence immediately following the Closing and shall terminate at 5:00 p.m., Washington, D.C. time, on the Escrow Termination Date; *provided* that the Escrow Fund shall not terminate on such date with respect to such remaining portion of the Escrow Fund (or some portion thereof) that is subject to any then pending Indemnification Claims, including Claims based on a Third Party Claim that have not been finally adjudicated or settled, for which notice is delivered to the Escrow Agent prior to the Escrow Termination Date. After the Escrow Termination Date and as soon as each pending Indemnification Claim has been resolved, the Escrow Agent shall distribute from the Escrow Fund, in accordance with the terms of the Escrow Agreement, the balance of the amount held in respect of such Indemnification Claim to Company. After release of the Escrow Fund, or if the entire amount of the Escrow Fund is subject to pending Indemnification Claims, subject to the limitations provided in this Agreement, the Purchaser Indemnitees may seek to recover Losses from the Indemnifying Parties directly. No provision of the Escrow Agreement shall limit the Purchaser Indemnitees' rights to seek injunctive relief or other rights or remedies to which the Purchaser Indemnitees' are or may be entitled, at law or equity, under this Agreement.

9.6. Shareholders' Representative.

(a) Appointment of Shareholders' Representative. Upon execution of this Agreement by the Shareholders, effective as of the date of this Agreement and without any further action by the Shareholders, Carl C. Jones will be appointed as agent and attorney-in-fact (the "Shareholders' Representative") for each Shareholder. The Shareholders' Representative shall have full power and authority to represent all of the Shareholders and their successors with respect to all matters arising under this Agreement and the Ancillary Agreements to which all of the Shareholders are parties (collectively, the "Representative Agreements") and all actions taken by the Shareholders' Representative hereunder and thereunder shall be binding upon all such

Shareholders and their successors as if expressly confirmed and ratified in writing by each of them. The Shareholders' Representative shall take any and all actions which he believes are necessary or appropriate under this Agreement and the Representative Agreements for and on behalf of the Shareholders, as fully as if the Shareholders were acting on their own behalf, including, without limitation, defending all Indemnification Claims against the Shareholders pursuant to Article IX, consenting to, compromising or settling all Indemnification Claims, conducting negotiations with Purchaser and its agents regarding such claims, dealing with Purchaser under this Agreement and the Representative Agreements with respect to all matters

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arising hereunder and thereunder, taking any and all other actions specified in or contemplated by this Agreement and the Representative Agreements, and engaging counsel, accountants or other Shareholders' Representatives in connection with the foregoing matters. Without limiting the generality of the foregoing, the Shareholders' Representative shall have full power and authority to interpret all the terms and provisions of this Agreement and the Representative Agreements and to consent to any amendment hereof or thereof on behalf of all such Shareholders and such successors. The Shareholders' Representative shall act as promptly as reasonably possible in carrying out his duties.

(b) Indemnification of Shareholders' Representative. The Shareholders' Representative shall be, and hereby is, indemnified and held harmless, jointly and severally, by the Shareholders from all losses, costs and expenses (including attorneys' fees) that may be incurred by the Shareholders' Representative as a result of the Shareholders' Representative's performance of his duties under this Agreement and the Representative Agreements, *provided* that the Shareholders' Representative shall not be entitled to indemnification for losses, costs or expenses that result from any action taken or omitted by the Shareholders' Representative as a result of his willful misconduct or gross negligence.

(c) Reasonable Reliance. In the performance of his duties hereunder, the Shareholders' Representative shall be entitled to rely upon any document or instrument reasonably believed by him to be genuine, accurate as to content and signed by any Shareholder or Purchaser. The Shareholders' Representative may assume that any person purporting to give any notice in accordance with the provisions hereof has been duly authorized to do so.

(d) Attorney-in-Fact. The Shareholders' Representative shall be hereby appointed and constituted by the Shareholders the true and lawful attorney-in-fact of each Shareholder, with full power in his name and on his behalf to act according to the terms of this Agreement and the Representative Agreements in the absolute discretion of the Shareholders' Representative; and in general to do all things and to perform all acts including, without limitation, executing and delivering the Escrow Agreement and any other agreements, certificates, receipts, instructions, notices or instruments contemplated by or deemed advisable in connection with the Escrow Agreement. This power of attorney and all authority conferred shall be granted and shall be irrevocable and shall not be terminated by any act of any Shareholder, by operation of law, whether by such Shareholder's death, disability protective supervision or any other event. Each Shareholder shall waive any and all defenses which may be available to contest, negate or disaffirm the action of the Shareholders' Representative taken in good faith. Notwithstanding the power of attorney granted pursuant to this Section 9.6, no agreement, instrument, acknowledgement or other act or document shall be ineffective by reason only of the Shareholders having signed or given such agreement, instrument, acknowledgement or other act or document directly instead of the Shareholders' Representative.

(e) Orders. The Shareholders' Representative is authorized, in his sole discretion, to comply with final, nonappealable orders or decisions issued or process entered by any court of competent jurisdiction or arbitrator with respect to the Escrow Fund. If any portion of the Escrow Fund is disbursed to the Shareholders' Representative and is at any time attached, garnished or levied upon under any court order, or in

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case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Shareholders' Representative is authorized, in his sole discretion, but in good faith, to rely upon and comply with any such order, writ, judgment or decree which he is advised by legal counsel selected by him is binding upon him without the need for appeal or other action; and if the Shareholders' Representative complies with any such order, writ, judgment or decree, he shall not be liable to any Shareholder or to any other Person by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

(f) Cessation of Duties or Removal of Shareholders' Representative; Authority of Successor Shareholders' Representative. Shareholders who in the aggregate hold at least a majority of the Company Common Stock as of the Closing Date shall have the right at any time to (x) appoint a successor Shareholders' Representative upon the resignation, disability or death of the then-acting Shareholders' Representative and (y) remove the then-acting Shareholders' Representative and appoint a successor Shareholders' Representative; *provided, however*, that neither such removal of the then-acting Shareholders' Representative nor such appointment of a successor Shareholders' Representative shall be effective until the delivery to Purchaser and, during the term of the Escrow Agreement, to the Escrow Agent of executed counterparts of a writing signed by each such Shareholder with respect to such removal and appointment, together with an acknowledgment signed by the successor Shareholders' Representative appointed in such writing that he or she accepts the responsibility of successor Shareholders' Representative and agrees to perform and be bound by all of the provisions of this Agreement applicable to the Shareholders' Representative. Each successor Shareholders' Representative shall have all of the power, authority, rights and privileges conferred by this Agreement upon the original Shareholders' Representative, and the term "Shareholders' Representative" as used herein and in the Escrow Agreement shall be deemed to include any interim or successor Shareholders' Representative.

ARTICLE X.

MISCELLANEOUS

10.1. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, in accordance with the terms hereof, and nothing in this Agreement is intended to or shall confer upon any other person, any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by Company or the Shareholders without the prior written consent of Purchaser, or by Purchaser without the prior written consent

of Company and the Shareholders' Representative, except that Purchaser may, without such consent, assign its rights hereunder, to one of its Affiliates; *provided, however*, that no such assignment shall release Purchaser, as applicable, from any of its obligations under this Agreement.

10.2. Notices. All notices, requests, claims, consents, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt or, in the case of a facsimile, upon confirmation of receipt) by

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delivery in person, by facsimile, by recognized overnight delivery service, or by registered or certified mail (postage prepaid, return receipt requested) to each other party as follows:

if to Purchaser:	Liquidity Services, Inc. 1920 L Street, N.W., 6th Floor Washington, D.C. 20036 Attention: James E. Williams, Vice President, General Counsel and Secretary Fax: (202) 467-5881
with copies to:	Gibson, Dunn & Crutcher LLP 1050 Connecticut Avenue, N.W. Washington, D.C. 20036 Attention: Stephen I. Glover Fax: (202) 530-9598
if to Company:	Southern Textile Recycling, Inc. 1850 E. Orangethorpe Ave Fullerton, CA 92831 Attention: Carl C. Jones, President Fax: (714) 738-6622
with a copy to:	Callister & Broberg 700 N. Brand Blvd., Suite 560 Glendale, CA 91203 Attention: Stephen R. Callister Fax: (818) 246-5535
if to Shareholders' Representative:	Carl C. Jones 1850 E. Orangethorpe Ave Fullerton, CA 92831 Fax: (714) 738-6622

or to such other address as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

10.3. Governing Law.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of law thereof.

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(b) Each party irrevocably agrees that any legal action, suit or proceeding against them arising out of or in connection with this Agreement or the transactions contemplated hereby or disputes relating hereto (whether for breach of contract, tortious conduct or otherwise) shall be brought exclusively in the United States District Court for the Southern District of New York, or, if such court does not have subject matter jurisdiction, the courts of the State of New York located in the Borough of Manhattan, New York city, New York State, and hereby irrevocably accepts and submits to the exclusive jurisdiction and venue of the aforesaid courts *in personam*, with respect to any such action, suit or proceeding, and each of the parties waives any objection that it may have based on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in any such court and waives personal service of any and all process upon it, and consent to all such service of process made in the manner set forth in Section 10.2. Nothing contained in this Section 10.3(b) shall affect the right of any party to serve legal process on any other party in any other manner permitted by law.

10.4. Entire Agreement; Amendments. This Agreement (including the Company Disclosure Letter (and any amendments or supplements thereto) and the Exhibits hereto), the Ancillary Agreements and the Confidentiality Agreement constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all other prior agreements and understandings both written and oral between the parties with respect to the subject matter hereof. This Agreement (including the Company Disclosure Letter) may be amended only by an instrument in writing signed on behalf of the parties hereto.

10.5. Counterparts. This Agreement may be executed by facsimile and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.6. Severability. If any provision of this Agreement is deemed or held to be illegal, invalid or unenforceable, this Agreement shall be considered divisible and inoperative as to such provision to the extent it is deemed to be illegal, invalid or unenforceable, and in all other respects this Agreement shall remain in full force and effect; *provided, however*, that if any provision of this Agreement is deemed or held to be illegal, invalid or unenforceable there shall be added hereto automatically a provision as similar as possible to such illegal, invalid or unenforceable provision that is legal, valid and enforceable. Further, should any provision contained in this Agreement ever be reformed or rewritten by any judicial body of competent jurisdiction, such provision as so reformed or rewritten shall be binding upon all parties hereto.

10.7. Descriptive Headings; Section References. The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. All references herein to Articles, Sections, subsections, paragraphs and clauses are references to Articles, Sections, subsections, paragraphs and clauses, respectively, of this Agreement unless specified otherwise.

10.8. Schedules. The Company Disclosure Letter and the Exhibits referenced in this Agreement are a material part hereof and shall be treated as if fully incorporated into the body of the Agreement.

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10.9. Specific Performance. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity without the necessity of demonstrating the inadequacy of monetary damages.

10.10. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

10.11. Waiver. Each party hereto may waive compliance by another party with any of the agreements or conditions contained herein. Any agreement on the part of any party hereto to any such waiver shall be valid only if set forth in an instrument, in writing, signed by the such party. The failure of any party hereto to assert any of its rights hereunder shall not constitute a waiver of such rights.

10.12. Dispute Resolution.

(a) It is understood and agreed between the parties hereto that any and all claims, grievances, demands, controversies, causes of action or disputes of any nature whatsoever (including, but not limited to, tort and contract claims, and claims upon any law, statute, order, or regulation) ("Disputes"), arising out of, in connection with, or in relation to (i) this Agreement, or (ii) questions of arbitrability under this Agreement, shall be resolved by final, binding, nonjudicial arbitration in accordance with the Federal Arbitration Act, 9 U.S.C. Section 1, et seq. pursuant to the following procedures:

(b) Any party may send another party or parties written notice identifying the matter in dispute and invoking the procedures of this Section (the "Dispute Notice"). Within fourteen (14) days from delivery of the Dispute Notice, each party involved in the dispute shall meet at a mutually agreed location in Washington, D.C., for the purpose of determining whether they can resolve the dispute themselves by written agreement, and, if not, whether they can agree upon an impartial third-party arbitrator (the "Arbitrator") to whom to submit the matter in dispute for final and binding arbitration.

(c) If such parties fail to resolve the dispute by written agreement or agree on the Arbitrator within the later of fourteen (14) days from any such initial meeting or within thirty (30) days from the delivery of the Dispute Notice, any such party may make written application to the Judicial Arbitration and Mediation Services ("JAMS"), in Washington, D.C. for the appointment of a single Arbitrator to resolve the dispute by arbitration. At the request of JAMS the parties involved in the dispute shall meet with JAMS at its offices within ten calendar days of such request to discuss the dispute and the qualifications and experience which each party respectively believes the Arbitrator should have; *provided, however*, that the selection of the Arbitrator shall be the exclusive decision of JAMS and shall be made within fifteen (15) calendar days of the written application to JAMS.

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(d) Within fifteen (15) calendar days of the selection of the Arbitrator, the parties involved in the dispute shall meet in Washington, D.C. with such Arbitrator at a place and time designated by such Arbitrator after consultation with such parties and present their respective positions on the dispute. Each party shall have no longer than one calendar day to present its position, the entire proceedings before the Arbitrator shall be no more than three consecutive calendar days, and the decision of the Arbitrator shall be made in writing no more than thirty calendar days following the end of the proceeding. Such an award shall be a final and binding determination of the dispute and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over such parties. The prevailing party or parties (as determined by the Arbitrator) shall in addition be awarded by the Arbitrator such party's or parties' own legal fees and expenses in connection with such proceeding. The non-prevailing party or parties (as determined by the Arbitrator) shall pay the Arbitrator's fees and expenses.

(e) By signing this Agreement, the parties hereto are giving up their respective right to a jury trial.

10.13. Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be duly executed on their respective behalf, by their respective officers thereunto duly authorized, all as of the day and year first above written.

LIQUIDITY SERVICES, INC.

By: /s/ Jaime Mateus Tique
Name: Jaime Mateus-Tique
Title: President and Chief Operating Officer

SOUTHERN TEXTILE RECYCLING, INC.

By: /s/ Carl C. Jones
Name: Carl C. Jones
Title: President

CARL C. JONES

By: /s/ Carl C. Jones
Name: Carl C. Jones
Title:

EDDIE FISCHER

By: /s/ Eddie Fischer
Name: Eddie Fischer
Title:

BRADLEY FISCHER

By: /s/ Bradley Fischer
Name: Bradley Fischer
Title:

LEASE

THIS LEASE, made and entered into this 1st day of September, 2004, by and between Le Baron Investments and Southern Textile Recycling, Inc. hereinafter respectively referred to as Landlord and Tenant, without regard to number or gender.

WITNESSETH

1. **USE.** The landlord hereby leases to Tenant and Tenant hereby hires from Landlord, for purposes of conducting thereon storage and sales of general merchandise those certain premises with appurtenances described as hereinafter set forth.
2. **PREMISES.** The premises leased to Tenant, together with appurtenances, are hereinafter referred to as the "demised premises" 1850-1900 East Orangethorpe Avenue and are situated in the City of Fullerton, County of Orange, State of California. The demised premises shall be approximately 48,794 square feet.
3. **TERMS.** The term of this lease shall be for a period of five (5) years. The term of this lease, and a Tenant's obligation to pay rent, shall commence on September 1, 2004.
4. **RENTAL.**
 - A. **Guaranteed Minimum Monthly Rental.** Tenant shall pay to the Landlord during the term of this lease as minimum monthly rental for the demised premises the sum of Twenty-Six Thousand and 00/100** (\$26,000.00) Dollars per month, which sum shall be paid in advance on the first day of each calendar month. All rental to be paid by Tenant to Landlord shall be in lawful money of the United States of America and shall be paid without deduction or offset, prior notice or demand at the address designated in Article 30. Any rent payment not paid within ten (10) days of its due date shall be subject to a ten (10) percent late charge.

** In addition to the minimum monthly rent, Tenant to pay monthly common area maintenance (CAM), real estate taxes and insurance of \$3,532.69, for a total monthly rent of \$29,532.69.

5. **REAL ESTATE TAXES AND RENTAL TAX.** In addition to all rentals herein reserved, Tenant shall pay to Landlord annual real estate taxes and assessments levied upon the demised premises together with a prorata share of the parking and common area of the Shopping center. Such amount shall be payable within ten (10) days after the receipt of a semi-annual statement to be sent by Landlord to Tenant setting forth the amount of such tax based upon the actual tax bill received by Landlord; or Landlord at its option shall have the right to estimate the amount of taxes next due and to collect and impound them from Tenant on a monthly or quarterly basis the amount of Tenant's estimated tax obligation. Within thirty (30) days following receipt of the actual tax bill, Landlord shall provide to Tenant a reconciliation of Tenant's impound account.

In the event the demised premises together with a prorata share of the parking lot and common area are not separately assessed, the applicable taxes and assessments shall be determined by the ratio that the floor area of the demised premises, including mezzanine, if any,

bears to the total floor area, including mezzanines, of the building or buildings which included the demised premises and for which a separate assessment is made. In the event such separate assessment does not reflect a pro rata share of the parking and common area based upon the ratio of building to parking and common area shown on the attached exhibit A an appropriate adjustment shall be made.

Any such tax for the year in which this lease commences or ends shall be apportioned and adjusted. With respect to any assessment which may be levied against or upon the demised premises and which, under the laws then in force, may be evidenced by improvement or other bonds, payable in annual installments, only the annual payments on said assessment shall be included in computing Tenant's obligation for taxes and assessments.

The term "real estate taxes" as used herein shall be deemed to mean all taxes imposed upon the real property and permanent improvements constituting the demised premises, and all assessments levied against said premises, but shall not include personal income taxes, personal property taxes, inheritance taxes, or franchise taxes levied against the Landlord, but not directly against said property, even though such taxes shall become a lien against said property.

Tenant shall pay to Landlord any and all excise, privilege and other taxes, other than net income and estate taxes levied or assessed by any federal, state or local authority upon the rent received by Landlord hereunder, and Tenant shall bear any business tax imposed upon Landlord by any governmental authority which is based or measured in whole or in part by amounts charged or received by Landlord from Tenant under this lease.

6. **PERSONAL PROPERTY TAX.** During the term hereof Tenant shall pay prior to delinquency all taxes assessed against and levied upon fixtures, furnishings, equivalent and all shall cause said fixtures, furnishings, equivalent and other personal property to be assessed and billed separately from the real property of Landlord. In the event any or all of the Tenant's fixtures, furnishings, equipment and other personal property shall be assessed and taxed with the Landlord's real property, the Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to the Tenant's property.

7. **CONSTRUCTION.** Landlord agrees that it will, at its sole cost and expense after the execution of this lease, commence and pursue to completion the construction of the improvements to be erected by Landlord to the extent shown on the attached Exhibit B.

8. **PARKING AND COMMON FACILITIES.** Landlord covenants that the common and parking areas of the shopping center of which the demised premises are a part shall be available for the non-exclusive use of Tenant during the full term of this lease or any extension of the term hereof, provided that the condemnation or any other taking by any public authority, or sale in lieu of condemnation, or any or all of such common and parking areas shall not constitute a violation of this covenant. Landlord reserves the right to change the entrances, exits, traffic lanes and the boundaries and locations of such parking area or areas. This lease shall be subordinate to any agreement existing as of the date of this lease or subsequently placed upon the real property

of which the demised premises are a part, which agreement provides for reciprocal easements and restrictions pertaining to the common and parking areas, and in the event of

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conflict between the provisions of such agreement and this lease, the provisions of said agreement shall prevail. Provided, however, nothing therein shall cause the Tenant to pay a greater share of the common area maintenance cost than herein provided, and shall further that there shall at all times be maintained common and parking areas of not less than two (2) square feet of common and parking area for each square foot of ground floor building area within the shopping center.

A. Prior to the date of Tenant's occupation of the demised premises, Landlord shall cause said common and parking area or areas to be graded, blacktopped, lighted and appropriately marked and landscaped at no expense to Tenant, and shall cause the same to be maintained in good condition and repair during the entire term hereof.

B. The Landlord shall keep or cause to be kept said automobile parking and common areas in a neat, clean and orderly condition, property lighted and landscaped, and shall repair any damage to the facilities thereof, but all expenses in connection with said automobile parking and common areas shall be charged and prorated in the manner hereinafter set forth. It is understood and agreed that the phrase "expenses in connection with said automobile parking and common areas" as used herein shall be construed to include, but not limited to, all sums expended by Landlord in connection with said automobile parking and common areas for all general maintenance and repairs, resurfacing, painting, restriping, cleaning, sweeping and janitorial services; planting and landscaping; lighting and other utilities; directional signs and other markers and bumpers; personnel to implement such services and to police the automobile parking and common areas; required fees or charges levied pursuant to any governmental requirements; and a fee equal to ten (10%) percent of said costs to Landlord for Landlord's supervision of said automobile parking and common areas.

In addition to monthly rental, Tenant agrees to pay to Landlord, on a monthly basis, Tenant's pro rata share of automobile parking and common area expenses. Tenant's prorata share of the total expenses shall be that portion of all such expenses which is equal to the proportion thereof which the number of square feet of gross floor area in the demised premises bears to the total number of square feet of gross floor area of the building. There shall be appropriate adjustments of Tenant's share of the automobile parking and common area expenses as of the commencement and expiration of the term of this lease. The term "gross floor area" as used herein shall be deemed to mean the ground floor in either the demised premises or any other buildings in the shopping center, with measurements to be from outside of exterior walls and from the center of interior separation partitions.

C. Tenant, for the use and benefit of Tenant, its agents, employees, customers, licensees and subtenants, shall have the non-exclusive right in common with Landlord, and other present and future owners, tenants and their agents, employees, customers, licensees and subtenants, to use said common and parking areas during the entire term of this lease, or any extension thereof, for ingress and egress, roadway, sidewalk, and automobile parking, provided however Tenant and Tenant's employees shall park their automobiles in those areas designated for employee parking, or at Landlord's written request shall park their automobiles outside of the shopping center.

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D. The Tenant, in the use of said common and parking areas, agrees to comply with such reasonable rules and regulations as the Landlord may adapt from time to time for the orderly and proper operation of said common areas.

9. **USES PROHIBITED.** Tenant shall not use, or permit said premises, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which said premises are hereby leased; and no use shall be made or permitted to be made of said premises, nor acts done, which will increase the existing rate of insurance upon the building in which said premises may be located (once said rate is established), or cause a cancellation of any insurance policy covering said building or any part thereof, nor shall Tenant sell or permit to be kept, used or sold in or about said premises any article which may be prohibited by standard form of fire insurance policies. Tenant shall, at his sole cost, comply with any and all requirements, pertaining to the use of said premises, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering said building and appurtenances. In the event Tenant's use of the premises, as recited in Article 1 hereof, results in a rate increase for the building of which the demised premises are a part, Tenant shall pay annually on the anniversary date of this lease, as additional rent, a sum equal to that of the additional premium occasioned by said rate increase.

10. **ALTERATIONS AND FIXTURES.** Tenant shall not make, or suffer to be made, any alteration of the demised premises, or any part thereof, without the prior written consent of Landlord, and any additions to, or alterations of, said premises, except movable furniture and trade fixtures, shall become at once a part of the realty and belong to Landlord. Any such alterations shall be in conformance with the requirements of all municipal, state and federal authorities.

Tenant agrees to promptly fixturize the store in a manner comparable to a store of similar nature.

11. **MAINTENANCE AND REPAIR.** Tenant shall, subject to Landlord's obligations hereinafter provided, at all times during the term hereof, and at Tenant's sole cost and expense, keep, maintain and repair the building and other improvements upon the demised premises in good and sanitary order and condition (except as hereinafter provided) including without limitation, the maintenance and repair of any store front, doors, window casements, glazing, heating and air conditioning system (if any), plumbing, pipes, electrical wiring and conduits. Tenant shall also at its sole cost and expense be responsible for any alterations or improvements to the demised premises necessitated as a result of the requirement of any municipal, state or federal authority. Tenant hereby waives all right to make repairs at the Expense of the landlord, and if the demised premises are located in the State of California, Tenant hereby waives all rights provided by Section 1941 of the Civil Code of the State of California to make said repairs. By entering into the demised premises, Tenant shall be deemed to have accepted the demised premises as being in good and sanitary order, condition and repair, and Tenant agrees on the last day of said term or sooner termination of this lease to surrender the demised premises with appurtenances, in the same condition as when received, reasonable use and wear

thereof and damage by fire, act of God or by the elements excepted. Tenant shall periodically sweep and clean the sidewalks adjacent to the demised premises, as needed.

Landlord shall, subject to Tenant's reimbursement as herein provided, maintain in good repair the exterior walls, roof and sidewalks. Tenant agrees that it will not, nor will authorize any person to, go onto the roof of the building of which the demised premises are a part without the prior written consent of Landlord. Said consent will be given only upon Landlord's satisfaction that any repairs necessitated as a result of Tenant's action will be made by Tenant at Tenant's expense and will be made in such a manner so as not to invalidate any guarantee relating to said roof. Landlord shall not be required to make any repairs to the exterior walls, roof and sidewalks unless and until Tenant has notified Landlord in writing of the need for such repairs and Landlord shall have had a reasonable period of time thereafter to commence and complete said repairs. Tenant shall reimburse Landlord for its prorata share of the cost of said repairs and maintenance incurred by Landlord, said prorata share to be determined according to the area of the demised premises as it relates to the total area of the building which contains the demised premises.

12. **COMPLIANCE WITH LAWS.** Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of said premises, and shall faithfully observe in said use all municipal ordinances and state and federal statutes now in force or which shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between the Landlord and Tenant.

Tenant shall not commit, or suffer to be committed, any waste upon the demised premises, or any nuisance or other act of thing which may disturb the quiet enjoyment of any other Tenant in the building in which the demised premises may be located.

13. **INSURANCE.** Landlord shall maintain fire and extended coverage insurance throughout the term of this lease in an amount equal to at least ninety (90%) percent of the replacement value of the building which includes the demised premises, together with such other insurance as may be required by Landlord's lender or by any governmental agency. Tenant hereby waives any right of recovery from Landlord, its officers and employees, and Landlord hereby waives any right of recovery from Tenant, its officers or employees, for any loss or damage (including consequential loss) resulting from any of the perils insured against in the standard form fire insurance policy with extended coverage endorsement. Tenant agrees to pay Landlord its prorata share of the cost of said insurance to be determined by the relationship that the gross floor area of the demised premises bears to the total gross floor area of the building or buildings for which such policy relates.

Tenant, if involved in food preparation and sales as a cafe, restaurant, or similar use, and/or food takeout service, shall install at Tenant's expense any fire protective systems in grill, deep fry, and cooking areas which are required by city, county, state fire ordinances, and such system when installed shall qualify for full fire protective credits allowed by the fire insurance rating and regulatory body in whose jurisdiction the premises are located.

14. **INDEMNIFICATION OF LANDLORD - LIABILITY INSURANCE BY TENANTS.** Tenant, as a material part of the consideration to be rendered to Landlord under this

lease, hereby waives all claims against Landlord for damage to goods, wares and merchandise, in, upon or about said premises and for injuries to persons in or about said premises, from any cause arising at any time; and Tenant will hold Landlord exempt and harmless from any damage or injury to any person, or the goods, wares, and merchandise of any person, arising from the use of the premises by Tenant, or from the failure of Tenant to keep the premises in good condition and repair, as herein provided.

During the entire term of this lease, the Tenant shall, at the Tenant's sole cost and expense, but for the mutual benefit of Landlord and Tenant, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the demised premises and on any sidewalks directly adjacent to the demised premises. The limitation of liability of such insurance shall be not less than One Million and 00/100 (\$1,000,000.00) Dollars in respect to injury or death on one person and to the limit of not less than One Million and 00/100 (\$1,000,000.00) Dollars in respect to anyone accident and to the limit of not less than Five Hundred Thousand and 00/100 (\$500,000.00) Dollars in respect to property damage or policy in the amount of One Million and 00/100 (\$1,000,000.00) Dollars combined single liability limit. All such policies of insurance shall be issued in the name of Tenant and Landlord and for the mutual and joint benefit and protection of the parties, and such policies of insurance or copies thereof shall be delivered to the Landlord.

15. **FREE FROM LIENS.** Tenant shall keep the demised premises and the property in which the demised premises are situated free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant.

16. **ABANDONMENT.** Tenant shall not vacate or abandon the demised premises at any time during the term of this lease; and if Tenant shall abandon, vacate or surrender the demised premises or be dispossessed by process of law, or otherwise, any personal property belonging to the Tenant and left on the demised premises shall be deemed to be abandoned, at the option of Landlord, except such property as may be mortgaged to Landlord.

17. **SIGNS AND AUCTIONS.** Tenant shall not place or permit to be placed any sign upon the exterior or in the windows of the demised premises without Landlord's prior written consent, nor shall Tenant change the color or exterior appearance of the demised premises without Landlord's prior written consent. Landlord will provide to Tenant an approved sign criteria drawing, and Tenant shall thereafter at its sole cost and expense prepare sign construction drawings, in accordance with said criteria drawings, which shall be submitted to Landlord for Landlord's written approval. Tenant agrees to install a sign in accordance with approved sign construction drawings within thirty (30) days after the commencement of the term of this lease.

Tenant shall not without Landlord's prior written consent display or sell merchandise outside the defined exterior walls and permanent doorways of the demised premises. Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the demised premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other solvency proceeding.

18. UTILITIES. Tenant shall pay before delinquency all charges for water, gas, heat, electricity, power, telephone service, and all other services of utilities used in, upon, or about the

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demised premises by Tenant or any of its subtenants, licensees, or concessionaires during the term of this lease. If any utility is not separately metered, Tenant agrees to reimburse Landlord for the cost of said service.

19. ENTRY AND INSPECTION. Tenant shall permit landlord and his agents to enter into and upon the demised premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the building in which said premises are situated, or for the purpose of making repairs, alterations or additions to any other portion of said building, including the erection and maintenance of such scaffolding, canopy, fences and props as may be required, or for the purpose of posting notices of non-liability for alterations, additions or repairs, or for the purpose of placing upon the property in which the premises are located any usual or ordinary "For Sale" signs. Landlord shall be permitted to do any of the above without any rebate of rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the premises thereby occasioned. Tenant shall permit Landlord, at any time within thirty (30) days prior to the expiration of this lease, to place upon said premises any usual or ordinary "For Lease" signs, and during such thirty (30) day period Landlord or his agents may, during normal business hours, enter upon said premises and exhibit same to prospective Tenants.

20. DAMAGE AND DESTRUCTION OF PREMISES. In the event of (a) partial or total destruction of said building containing same during said term which requires repairs to said building, or (b) said building being declared unsafe or unfit for occupancy by any authorized public authority for any reason other than Tenant's act, use or occupation, which declaration requires repairs to said building, Landlord shall forthwith make said repairs provided Tenant gives to landlord thirty (30) days written notice of the necessity therefor. No such partial destruction (including any destruction necessary in order to make repairs required by any declaration made by any public authority) shall in any wise annul or void this lease except that Tenant shall be entitled to a proportionate reduction of minimum guaranteed rental while such repairs are being made, such proportionate reduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by Tenant in said premises. However, if during the last four (4) years of the term of this lease the building is damaged as a result of fire or any other insured casualty to an extent in excess of twenty-five (25%) percent of its then replacement cost, (excluding foundation(s)), Landlord may within thirty (30) days following the date such damage occurs terminate this lease by written notice to Tenant. If Landlord, however, elects to make said repairs, and provided Landlord uses due diligence in making said repairs to building, this lease shall continue in full force and effect, and the minimum guaranteed rental shall be proportionately reduced as hereinabove provided. If Landlord elects to terminate this lease, all rentals shall be prorated between Landlord and Tenant as of the date of such destruction.

The foregoing to the contrary notwithstanding, if the building is damaged or destroyed at any time during the term hereof to an extent of more than twenty-five (25%) percent of its then replacement cost (excluding foundation(s)) as a result of a casualty not insured against, Landlord may within thirty (30) days following the date of such destruction terminate this lease upon written notice to tenant. If Landlord does not elect to so terminate because of said uninsured casualty, Landlord shall promptly rebuild and repair said building and Tenant's rental obligation shall be proportionately reduced as hereinabove provided.

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In respect to any partial or total destruction (including any destruction necessary in order to make repairs required by any such declaration of any authorized public authority) which Landlord is obligated to repair or may elect to repair under the terms of this Article 20, Tenant waives any statutory right it may have to cancel this lease as a result of such destruction.

21. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this lease, or any interest therein, and shall not sublet the demised premises or any part thereof, or any right or privilege appurtenant thereto, or permit any other person (the agents and servants of Tenant excepted) to occupy or use the demised premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. Consent by Landlord to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Consent to an assignment shall not release the original named Tenant from liability for the continued performance of the terms and provisions on the part of Tenant to be kept and performed, unless Landlord specifically releases the original named Tenant from said liability. Any assignment or subletting without the prior written consent of Landlord shall be void, and shall, at the option of Landlord terminate this lease. Neither this lease nor any interest therein shall be assignable, as to the interest of Tenant, by operation of law, without the prior written consent of Landlord. Furthermore, any increase in rent over Tenant's current rent received by Tenant related to such sublease shall be split equally between Landlord and Tenant.

22. DEFAULT. If Tenant fails to make any payment required by the provisions of this lease, when due, or fails within thirty (30) days after written notice thereof to correct any breach or default of the other covenants, terms or conditions of this lease, or if Tenant breaches this lease and abandons the property before the end of the term, Landlord shall have the right at any time thereafter to elect to terminate said lease and Tenant's right to possession thereunder. Upon such termination, Landlord shall have the right to recover against Tenant:

A. The worth at the time of award of the unpaid rent which has been earned at the time of termination;

B. 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 Tenant proves could have been reasonably avoided;

C. 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 Tenant proves could be reasonably avoided; and

D. Any other amount necessary to compensate the Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in subparagraphs A and B above shall be computed by allowing interest at ten (10%) percent per annum. The worth at the time of award of the amount referred to in subparagraph C shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one (1%) percent.

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Such efforts as Landlord may make to mitigate the damages caused by Tenant's breach of this lease shall not constitute a waiver of Landlord's right to recover damages against Tenant hereunder, nor shall anything herein contained affect Landlord's right to indemnification against Tenant for any liability arising prior to the termination of this lease for personal injuries or property damage, and Tenant hereby agrees to indemnify and hold Landlord harmless from any such injuries and damages, including all attorney's fees and costs incurred by Landlord in defending any action brought against Landlord for any recovery thereof, and in enforcing the terms and Provisions of this indemnification against Tenant.

Notwithstanding any of the foregoing, the breach of this lease by Tenant, or an abandonment of the demised premises by Tenant, shall not constitute a termination of this lease, or of Tenant's right of possession hereunder, unless and until Landlord elects to do so, and until such time Landlord shall have the right to enforce all of its rights and remedies under this lease, including the right to recover rent, and all other payments to be made by Tenant hereunder, as it becomes due; provided, however, that until such time as Landlord elects to terminate this lease, and Tenant's right of possession hereunder, Tenant shall have the right to sublet the demised premises or to assign its interests in this lease, or both, subject only to the written consent of Landlord, which consent shall not be unreasonably withheld.

As security for the performance by Tenant of all of its duties and obligations hereunder, Tenant does hereby assign to Landlord the right, power and authority, during the continuance of this lease, to collect the rents, issues and profits of the demised premises, reserving unto Tenant the right, prior to any breach or default by it hereunder, to collect and retain said rents, issues and profits as they become due and payable. Upon any such breach or default, Landlord shall have the right at any time thereafter, without notice except as provided for above, either in person, by agent or by a receiver to be appointed by a court, enter and take possession of said demised premises and collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Landlord may determine.

The parties hereto agree that acts of maintenance or preservation or efforts to release the premises, or the appointment of a receiver upon the initiative of the Landlord to protect its interests under this lease shall not constitute a termination of Tenant's right of possession for the purposes of this paragraph unless accompanied by a written notice from Landlord to Tenant of Landlord's election to so terminate.

23. **INSOLVENCY OF TENANT.** Tenant agrees that in the event all or substantially all of its assets be placed in the hands of a receiver or trustee, and in the event such receivership or trusteeship continue for a period of ten (10) days, or should Tenant make an assignment for the benefit of creditors, or be adjudicated a bankrupt, or should Tenant institute any proceedings under any state or federal bankruptcy act wherein Tenant seeks to be adjudicated a bankrupt, or seeks to be discharged of its debts, or should any voluntary proceeding be filed against such Tenant under such bankruptcy laws and Tenant consents thereto or acquiesces therein by

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pleading or default, then this lease or any interest in and to the demised premises shall not become an asset in any such proceedings and, in any of such events and in addition to any and all rights or remedies of Landlord hereunder or as provided by law, it shall be lawful for Landlord at his option to declare the term hereof ended and to re-enter the demised premises and take possession thereof and remove all persons therefrom and Tenant shall have no further claim, therein or hereunder.

24. **SURRENDER OF LEASE.** The voluntary or other surrender of this lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to him of any or all of such subleases or subtenancies.

25. **SALE OF PREMISES BY LANDLORD.** In the event of any sale of the demised premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the demised premises, shall be deemed without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this lease.

26. **HOURS OF BUSINESS.** Subject to the provisions of Article 20 hereof, Tenant shall continuously during the entire term hereof conduct and carry on Tenant's business in the demised premises and shall keep the demised premises open for business and cause Tenant's business to be conducted therein during the usual business hours of each and every business day as it is customary for businesses of like character in the city in which the demised premises are located to be open for business; provided, however, that this provision shall not apply if the demised premises should be closed and the business of Tenant temporarily discontinued therein on account of strikes, lockouts, or similar causes beyond the reasonable control of Tenant, or closed for not more than three (3) days out of respect to the memory of any deceased officer or employee of Tenant, or the relative of any such officer or employee. Tenant shall keep the demised premises adequately stocked with merchandise, and with sufficient sales personnel to care for the patronage, and to conduct said business in accordance with sound business practices.

In the event of breach by the Tenant of any of the conditions in this Article contained, the Landlord shall have, in addition to any and all remedies herein provided, the right at its option to collect not only the minimum rent herein provided, but additional rent at the rate of one-thirtieth (1/30) of the minimum monthly rent herein provided, for each and every day that the Tenant shall fail to conduct its business as herein provided, said additional rent shall

be deemed to be in lieu of any percentage rent that might have been earned during such period of the Tenant's failure to conduct its business as herein provided.

27. **ATTORNEY'S FEES.** If Landlord is involuntarily made a party defendant to any litigation concerning this lease or the demised premises by reason of any act or omission of Tenant, then, Tenant shall hold harmless Landlord from all liabilities by reason thereof, including reasonable attorney's fees and all costs incurred by Landlord in such litigation.

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If either landlord or Tenant shall commence any legal proceedings against the other with respect to any of the terms and conditions of this lease, the non-prevailing party therein shall pay to the other all expenses of said litigation, including a reasonable attorneys' fees as may be fixed by the court having jurisdiction over the matter. The parties hereto agree that the State of California is the proper jurisdiction for litigation of any matters relating to this lease, and service mailed to the address of tenants set forth herein shall be adequate service for such litigation.

28. **SECURITY DEPOSIT.** Tenant contemporaneously with the execution of this lease, has deposited with landlord the sum of Ten Thousand and 00/100 (\$10,000.00) Dollars, receipt of which is hereby acknowledged by Landlord, said deposit being given to secure the faithful performance by the Tenant of all of the terms, covenants, and conditions of this lease by the Tenant to be kept and performed during the term hereof. Tenant agrees that if the Tenant shall fail to pay the rent herein reserved promptly when due, said deposit may, at the option of the Landlord (but Landlord shall not be required to) be applied to any rent due and unpaid, and if the Tenant violates any of the other terms, covenants, and conditions of this lease, said deposit shall be applied to any damages suffered by Landlord as a result of Tenant's default to the extent of the amount of the damages suffered.

Nothing contained in this Article 28 shall in any way diminish or be construed as waiving any of the Landlord's other remedies as provided in Article 22 hereof, or by law or in equity. Should the entire security deposit, or any portion thereof, be appropriated and applied by Landlord for the payment of overdue rent or other sums due and payable to Landlord by Tenant hereunder, then Tenant shall, on the written demand of Landlord, forthwith remit to landlord a sufficient amount in cash to restore said security deposit to its original amount, and Tenant's failure to do so within fifteen (15) days after receipt of such demand, shall constitute a breach of this lease. Should Tenant comply with all of the terms, covenants, and conditions of this lease and promptly pay all of the rental herein provided for as it falls due, and all other sums payable by Tenant to landlord hereunder, said security deposit shall be returned in full to Tenant at the end of the term of this lease, or upon the earlier termination of this lease pursuant to the provisions of Article 20 hereof, except in the event the demised premises are sold as a result of the exercise of any power of sale under any mortgage or deed of trust, in which event this lease shall be automatically amended to delete any reference to this Article 28, and Tenant shall be entitled to immediate reimbursement of its security deposit from the party then holding said deposit.

29. **HOLDING OVER.** Any holding over after the expiration of the term of this lease, with the consent of landlord, shall be construed to be a tenancy from month to month, cancelable upon thirty (30) days written notice, and at a monthly rental, terms and conditions as agreed upon between landlord and Tenant.

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30. **NOTICES.** Wherever in this lease it shall be required or permitted that notice and demand be given or served by either party to this lease to or on the other, such notice or demand shall be given or served and shall not be deemed to have been duly given or served unless in writing and forwarded by 1st class mail, addressed as follows:

TO: Landlord

Le Baron Investments
2020 E. Orangethorpe Avenue
Fullerton, CA 92831-5327
Telephone: (714) 680-3812
Fax: (714) 680-3340

TO: Tenant

Southern Textile Recycling, Inc.
Attn: Carl C. Jones
1850-1900 E. Orangethorpe Avenue
Fullerton, CA 92831
phone: (714) 738-6400

Either party may change such address by written notice by certified mail to the other.

31. **SUCCESSORS IN INTEREST.** The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

32. **TENANT'S PERFORMANCE.** In the event Tenant shall fall within any time limits which may be provided herein to complete any work or perform any other requirements provided to be performed by Tenant prior to the commencement of the term hereof, or in the event Tenant shall cause a delay in the completion of any work, landlord may send Tenant written notice of said default and if said default is not corrected within ten (10) days thereafter, Landlord may by written notice prior to the curing of said default terminate this lease. Landlord shall be entitled to retain as liquidated damages all deposits made hereunder and such improvements as Tenant may have annexed to the realty that cannot be removed without damage thereto.

33. **FORCE MAJEURE.** If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reasons of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial liability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Article 33 contained shall excuse Tenant from the prompt payment of any rental or other charge required of Tenant hereunder except as may be expressly provided elsewhere in this lease.

34. PARTIAL INVALIDITY. If any term, covenant, condition or provision of this lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.

35. MARGINAL CAPTIONS. The various headings and numbers herein and the grouping of the provisions of this lease into separate articles and paragraphs are for the purpose of convenience only and shall not be considered a part hereof.

36. TIME. Time is of the essence of this lease.

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37. SUBORDINATION, ATTORNMENT. This lease, at Landlord's option, shall be subordinate to the lien of any first deed of trust or first mortgage subsequently placed upon the real property of which the demised premises are a part, and to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof; provided, however, that as to the lien of any such deed of trust or mortgage Tenant's right to quiet possession of the premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this lease, unless this lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this lease prior to the lien of its mortgage, deed of trust, or ground lease, and shall give written notice thereof to Tenant, this lease shall be deemed prior to such mortgage, deed of trust or ground lease, whether this lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

In the event any proceedings are brought, or in the event the exercise of the power of sale under any mortgage or deed of trust made by the landlord covering the demised premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the landlord under this lease.

If upon any sale, assignment, or hypothecation of the demised premises or the land thereunder by Landlord, or at any other time, an estoppel certificate and/or financial statement shall be requested of Tenant, Tenant agrees, within ten (10) days thereafter, to deliver such financial statement, and to deliver such estoppel certificate (in recordable form) addressed to any such proposed mortgagee or purchaser or to the Landlord certifying the requested information, including among other things the dates of commencement and termination of this lease, the amounts of security deposits, and that this lease is in full force and effect (if such be the case) and that there are no differences, offsets or defaults of Landlord, or noting such differences, offsets or defaults as actually exist. Tenant shall be liable for any loss or liability resulting from any incorrect information certified, and such mortgagee and purchaser shall have the right to rely on such estoppel certificate and financial statement. Tenant shall in the same manner acknowledge and execute any assignment of rights to receive rents as required by any mortgagee of Landlord.

38. RIGHT TO RELOCATE. Landlord reserves the unrestricted and unconditional right, after the commencement of the term hereof, to relocate the demised premises to substantially comparable space within the shopping center. Landlord will give Tenant written notice of its intention to relocate the demised premises, and Tenant will complete such relocation within thirty (30) days after receipt of such written notice. If the furnishings of the space to which Landlord proposes to relocate Tenant are not substantially the same as those of the demised premises, or if the Guaranteed Minimum Monthly Rental of the new space is not substantially the same as the prior Guaranteed Minimum Monthly Rental, Tenant may so notify Landlord, and if landlord fails to offer other space satisfactory to Tenant, Tenant may terminate this Lease effective as of the thirtieth (30th) day after Landlord's initial notice. Upon Tenant's peaceable vacation and abandonment of the demised premises pursuant to this Section, landlord will pay to Tenant a sum equal to one monthly installment of the Guaranteed Minimum Monthly Rental then payable under this Lease. If Tenant does relocate within the shopping center then effective on the date of such relocation this Lease will be amended by deleting the description of the original demised premises and substituting for it a description of the relocated space.

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Landlord agrees to reimburse Tenant for its actual, reasonable moving costs to such other space within the shopping center.

39. COST OF LIVING ADJUSTMENT. Upon each first anniversary date of commencement of the term of this lease, the Guaranteed Minimum Monthly Rental shall be changed to an amount that bears the same relationship to the Guaranteed Minimum Monthly Rental in effect immediately preceding such adjustment which the consumer price index for the month in which said adjustment occurs bears to the index for the month year(s) preceding the month in which such adjustment occurs. However, in no event shall the rent be reduced below that Guaranteed Minimum Monthly Rental in effect immediately preceding such adjustment. The consumer price index to be used is the Consumer Price Index — All Items, for the United States, published monthly by the United States Department of labor, in which 1967 equals 100. If said Consumer Price Index is no longer published at the adjustment date, it shall be constructed by conversion tables included in such new index.

40. SURRENDER OF PREMISES. At the expiration of the tenancy hereby created, Tenant shall surrender the leased premises in the same condition as the leased premises were in upon delivery of possession thereto under this lease, in addition to any alterations or additions which Landlord elects to keep pursuant to Paragraph 10, reasonable wear and tear excepted, and shall surrender all keys for the leased premises to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the leased premises. No act or conduct of Landlord, except a written acknowledgement of acceptance of surrender signed by Landlord, shall be deemed to be or constitute an acceptance of the surrender of the leased premises by Tenant prior to the expiration of the term of this lease.

If prior to the termination of this lease, or within 15 days thereafter, Landlord elects, by written notice to Tenant, Tenant shall promptly remove the additions, improvements, fixtures, trade fixtures and installations which were placed in the leased premises by Tenant and which are designated in said notice, and shall repair any damage occasioned by such removal; and in default thereof Landlord may effect said removals and repairs at Tenant's expense. The covenants of Tenant contained herein shall survive the expiration or termination of the lease term.

41. **PREMATURE SURRENDER OF PREMISES.** If tenant, prior to the expiration of the term of this set forth herein, prematurely vacates the premises in breach of the Lease Agreement, without the written consent of Landlord, in addition to all other damages and remedies set forth in this Lease Agreement, the Tenant will be responsible for consequential losses allowed by Code of Civil Procedures § 1951.2(4). These losses will include, but are not limited to, all necessary expenses to relocate any existing tenant from another location to occupy the subject premises, any expenses necessary to prepare the subject premises for a new tenant, any expenses required to procure a new tenant including, but not limited to lease concessions, tenant improvements, all repairs necessary to make the subject premises re-leasable and all other expenses arising from Tenant's premature surrender of the premises. Tenant agrees that Landlord shall have exclusive discretion to make commercially reasonable decisions in order to mitigate the losses arising from the premature surrender of the subject premises.

42. **CONDEMNATION.** In the event of a condemnation or a transfer in lieu thereof twenty (20%) percent or more of the demised premises is taken, or in the event as a result of such taking or transfer in lieu thereof Landlord is unable to provide the parking required by Article 8 hereof, landlord or Tenant may, upon written notice given within thirty (30) days after such taking or transfer in lieu thereof, terminate this lease. Tenant shall not be entitled to share in any portion of the award and Tenant hereby expressly waives any right or claim to any part thereof. Tenant shall, however, have the right to claim and recover, only from the condemning authority (but not from the Landlord), any amounts necessary to reimburse Tenant for the cost of removing stock and fixtures.

43. **NO ORAL AGREEMENTS.** This lease covers in full each and every agreement of every kind or nature whatsoever between the parties hereto concerning this lease, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein, and there are no oral agreements or implied covenants.

44. **CONFIDENTIALITY:** In consideration of the mutual promises herein contained, Landlord and Tenant agree not to communicate or disclose to any other person, entity, or organization, orally or in writing, direct or implied, the provisions contained in the Lease relating to the rental rate. Tenant understands that this is a material inducement to Landlord's execution of the Lease. If Tenant breaches this confidentiality provision, then the base rent shall be increased retroactively to equal the highest lease rate charged by Landlord to any other Tenant on the premises, calculated as of the date of this lease.

45. *If not in default under the terms of this lease, Landlord grants Tenant one (1) five (5) year option at the then market rents and terms, but not less than the previous rate.*

IN WITNESS WHEREOF, the parties have duly executed this lease together with the herein referred to Exhibits which are attached hereto, on the day and year first above written.

LANDLORD:

LE BARON INVESTMENTS

By: _____

TENANT:

SOUTHERN TEXTILE RECYCLING, INC.

By: _____
Carl C. Jones, President

PERSONALLY GUARANTEED BY:

By: _____
Carl C. Jones 51%

By: _____
Eddie R. Fischer 49%

LEASE

THIS LEASE, made and entered into this 8th day of June, 2006 by and between Le Baron Investments and Southern Textile Recycling, Inc. hereinafter respectively referred to as Landlord and Tenant, without regard to number or gender.

WITNESSETH

1. USE. The landlord hereby leases to Tenant and Tenant hereby hires from Landlord, for purposes of conducting thereon wholesale and retail sales of general merchandise those certain premises with appurtenances described as hereinafter set forth.
2. PREMISES. The premises leased to Tenant, together with appurtenances, are hereinafter referred to as the "demised premises" 1850-1900 East Orangethorpe Avenue and are situated in the City of Fullerton, County of Orange, State of California. The demised premises shall be approximately 68,000 square feet.
3. TERMS. The term of this lease shall be for a period of five (5) years. The term of this lease, and a Tenant's obligation to pay rent, shall commence on July 11, 2006.
4. RENTAL.
 - A. Guaranteed Minimum Monthly Rental. Tenant shall pay to the Landlord during the term of this lease as minimum monthly rental for the demised premises the sum of **See Below (\$) Dollars per month, which sum shall be paid in advance on the first day of each calendar month. All rental to be paid by Tenant to Landlord shall be in lawful money of the United States of America and shall be paid without deduction or offset, prior notice or demand at the address designated in Article 30. Any rent payment not paid within ten (10) days of its due date shall be subject to a ten (10) percent late charge.

**Year 1:	Base rent of \$39,698.40, plus R.E. Tax/CAM charges of \$5,861.60 = \$45,560.00 mo.
Years 2 through 5:	Base rent increased each July by CPI adjustment (not less than 3%, nor greater than 6%), plus R.E. Tax/CAM charges
5. REAL ESTATE TAXES AND RENTAL TAX. In addition to all rentals herein reserved, Tenant shall pay to Landlord annual real estate taxes and assessments levied upon the demised premises together with a prorata share of the parking and common area of the Shopping center. Such amount shall be payable within ten (10) days after the receipt of a semi-annual statement to be sent by Landlord to Tenant setting forth the amount of such tax based upon the actual tax bill received by Landlord; or Landlord at its option shall have the right to estimate the amount of taxes next due and to collect and impound them from Tenant on a monthly or quarterly basis the amount of Tenant's estimated tax obligation. Within thirty (30) days following receipt of the actual tax bill, Landlord shall provide to Tenant a reconciliation of Tenant's impound account.

In the event the demised premises together with a prorata share of the parking lot and common area are not separately assessed, the applicable taxes and assessments shall be determined by the ratio that the floor area of the demised premises, including mezzanine, if any, bears to the total floor area, including mezzanines, of the building or buildings which included the demised premises and for which a separate assessment is made. In the event such separate assessment does not reflect a pro rata share of the parking and common area based upon the ratio of building to parking and common area shown on the attached exhibit A an appropriate adjustment shall be made.

Any such tax for the year in which this lease commences or ends shall be apportioned and adjusted. With respect to any assessment which may be levied against or upon the demised premises and which, under the laws then in force, may be evidenced by improvement or other bonds, payable in annual installments, only the annual payments on said assessment shall be included in computing Tenant's obligation for taxes and assessments.

The term "real estate taxes" as used herein shall be deemed to mean all taxes imposed upon the real property and permanent improvements constituting the demised premises, and all assessments levied against said premises, but shall not include personal income taxes, personal property taxes, inheritance taxes, or franchise taxes levied against the Landlord, but not directly against said property, even though such taxes shall become a lien against said property.

Tenant shall pay to Landlord any and all excise, privilege and other taxes, other than net income and estate taxes levied or assessed by any federal, state or local authority upon the rent received by Landlord hereunder, and Tenant shall bear any business tax imposed upon Landlord by any governmental authority which is based or measured in whole or in part by amounts charged or received by Landlord from Tenant under this lease.

6. PERSONAL PROPERTY TAX. During the term hereof Tenant shall pay prior to delinquency all taxes assessed against and levied upon fixtures, furnishings, equivalent and all shall cause said fixtures, furnishings, equivalent and other personal property to be assessed and billed separately from the real property of Landlord. In the event any or all of the Tenant's fixtures, furnishings, equipment and other personal property shall be assessed and taxed with the Landlord's real property, the Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to the Tenant's property.

7. PARKING AND COMMON FACILITIES. Landlord covenants that the common and parking areas of the shopping center of which the demised premises are a part shall be available for the non-exclusive use of Tenant during the full term of this lease or any extension of the term hereof, provided that the condemnation or any other taking by any public authority, or sale in lieu of condemnation, or any or all of such common and parking areas shall not constitute a violation of this covenant. Landlord reserves the right to change the entrances, exits, traffic lanes and the boundaries and locations of such parking area or areas. This lease shall be subordinate to any agreement existing as of the date of this lease or subsequently placed upon the real property of which the demised premises are a part, which agreement provides for reciprocal easements and restrictions pertaining to the common and parking areas, and in the event of conflict between the provisions of such agreement and this lease, the provisions of said

agreement shall prevail. Provided, however, nothing therein shall cause the Tenant to pay a greater share of the common area maintenance cost than herein provided, and shall further that there shall at all times be maintained common and parking areas of not less than two (2) square feet of common and parking area for each square foot of ground floor building area within the shopping center.

A. Prior to the date of Tenant's occupation of the demised premises, Landlord shall cause said common and parking area or areas to be graded, blacktopped, lighted and appropriately marked and landscaped at no expense to Tenant, and shall cause the same to be maintained in good condition and repair during the entire term hereof.

B. The Landlord shall keep or cause to be kept said automobile parking and common areas in a neat, clean and orderly condition, property lighted and landscaped, and shall repair any damage to the facilities thereof, but all expenses in connection with said automobile parking and common areas shall be charged and prorated in the manner hereinafter set forth. It is understood and agreed that the phrase "expenses in connection with said automobile parking and common areas" as used herein shall be construed to include, but not limited to, all sums expended by Landlord in connection with said automobile parking and common areas for all general maintenance and repairs, resurfacing, painting, restriping, cleaning, sweeping and janitorial services; planting and landscaping; lighting and other utilities; directional signs and other markers and bumpers; personnel to implement such services and to police the automobile parking and common areas; required fees or charges levied pursuant to any governmental requirements; and a fee equal to ten (10%) percent of said costs to Landlord for Landlord's supervision of said automobile parking and common areas.

In addition to monthly rental, Tenant agrees to pay to Landlord, on a monthly basis, Tenant's pro rata share of automobile parking and common area expenses. Tenant's prorata share of the total expenses shall be that portion of all such expenses which is equal to the proportion thereof which the number of square feet of gross floor area in the demised premises bears to the total number of square feet of gross floor area of the building. There shall be appropriate adjustments of Tenant's share of the automobile parking and common area expenses as of the commencement and expiration of the term of this lease. The term "gross floor area" as used herein shall be deemed to mean the ground floor in either the demised premises or any other buildings in the shopping center, with measurements to be from outside of exterior walls and from the center of interior separation partitions.

C. Tenant, for the use and benefit of Tenant, its agents, employees, customers, licensees and subtenants, shall have the non-exclusive right in common with Landlord, and other present and future owners, tenants and their agents, employees, customers, licensees and subtenants, to use said common and parking areas during the entire term of this lease, or any extension thereof, for ingress and egress, roadway, sidewalk, and automobile parking, provided however Tenant and Tenant's employees shall park their automobiles in those areas designated for employee parking, or at Landlord's written request shall park their automobiles outside of the shopping center.

D. The Tenant, in the use of said common and parking areas, agrees to comply with such reasonable rules and regulations as the Landlord may adapt from time to time for the orderly and proper operation of said common areas.

8. **USES PROHIBITED.** Tenant shall not use, or permit said premises, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which said premises are hereby leased; and no use shall be made or permitted to be made of said premises, nor acts done, which will increase the existing rate of insurance upon the building in which said premises may be located (once said rate is established), or cause a cancellation of any insurance policy covering said building or any part thereof, nor shall Tenant sell or permit to be kept, used or sold in or about said premises any article which may be prohibited by standard form of fire insurance policies. Tenant shall, at his sole cost, comply with any and all requirements, pertaining to the use of said premises, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering said building and appurtenances. In the event Tenant's use of the premises, as recited in Article 1 hereof, results in a rate increase for the building of which the demised premises are a part, Tenant shall pay annually on the anniversary date of this lease, as additional rent, a sum equal to that of the additional premium occasioned by said rate increase.

9. **ALTERATIONS AND FIXTURES.** Tenant shall not make, or suffer to be made, any alteration of the demised premises, or any part thereof, without the prior written consent of Landlord, and any additions to, or alterations of, said premises, except movable furniture and trade fixtures, shall become at once a part of the realty and belong to Landlord. Any such alterations shall be in conformance with the requirements of all municipal, state and federal authorities.

Tenant agrees to promptly fixturize the store in a manner comparable to a store of similar nature.

10. **MAINTENANCE AND REPAIR.** Tenant shall, subject to Landlord's obligations hereinafter provided, at all times during the term hereof, and at Tenant's sole cost and expense, keep, maintain and repair the building and other improvements upon the demised premises in good and sanitary order and condition (except as hereinafter provided) including without limitation, the maintenance and repair of any store front, doors, window casements, glazing, heating and air conditioning system (if any), plumbing, pipes, electrical wiring and conduits. Tenant shall also at its sole cost and expense be responsible for any alterations or improvements to the demised premises necessitated as a result of the requirement of any municipal, state or federal authority. Tenant hereby waives all right to make repairs at the Expense of the landlord, and if the demised premises are located in the State of California, Tenant hereby waives all rights provided by Section 1941 of the Civil Code of the State of California to make said repairs. By entering into the demised premises, Tenant shall be deemed to have accepted the demised premises as being in good and sanitary order, condition and repair, and Tenant agrees on the last day of said term or sooner termination of this lease to surrender the demised premises with appurtenances, in the same condition as when received, reasonable use and wear thereof and damage by fire, act of God or by the elements excepted. Tenant shall periodically sweep and clean the sidewalks adjacent to the demised premises, as needed.

Landlord shall, subject to Tenant's reimbursement as herein provided, maintain in good repair the exterior walls, roof and sidewalks. Tenant agrees that it will not, nor will authorize any person to, go onto the roof of the building of which the demised premises are a part without the prior written consent of Landlord. Said consent will be given only upon Landlord's satisfaction that any repairs necessitated as a result of Tenant's action will be made by Tenant at Tenant's expense and will be made in such a manner so as not to invalidate any guarantee relating to said roof. Landlord shall not be required to make any repairs to the exterior walls, roof and sidewalks unless and until Tenant has notified Landlord in writing of the need for such repairs and Landlord shall have had a reasonable period of time thereafter to commence and complete said repairs. Tenant shall reimburse Landlord for its prorata share of the cost of said repairs and maintenance incurred by Landlord, said prorata share to be determined according to the area of the demised premises as it relates to the total area of the building which contains the demised premises.

11. **COMPLIANCE WITH LAWS.** Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of said premises, and shall faithfully observe in said use all municipal ordinances and state and federal statutes now in force or which shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between the Landlord and Tenant.

Tenant shall not commit, or suffer to be committed, any waste upon the demised premises, or any nuisance or other act of thing which may disturb the quiet enjoyment of any other Tenant in the building in which the demised premises may be located.

12. **INSURANCE.** Landlord shall maintain fire and extended coverage insurance throughout the term of this lease in an amount equal to at least ninety (90%) percent of the replacement value of the building which includes the demised premises, together with such other insurance as may be required by Landlord's lender or by any governmental agency. Tenant hereby waives any right of recovery from Landlord, its officers and employees, and Landlord hereby waives any right of recovery from Tenant, its officers or employees, for any loss or damage (including consequential loss) resulting from any of the perils insured against in the standard form fire insurance policy with extended coverage endorsement. Tenant agrees to pay Landlord its prorata share of the cost of said insurance to be determined by the relationship that the gross floor area of the demised premises bears to the total gross floor area of the building or buildings for which such policy relates.

Tenant, if involved in food preparation and sales as a cafe, restaurant, or similar use, and/or food takeout service, shall install at Tenant's expense any fire protective systems in grill, deep fry, and cooking areas which are required by city, county, state fire ordinances, and such system when installed shall qualify for full fire protective credits allowed by the fire insurance rating and regulatory body in whose jurisdiction the premises are located.

13. **INDEMNIFICATION OF LANDLORD - LIABILITY INSURANCE BY TENANTS.** Tenant, as a material part of the consideration to be rendered to Landlord under this

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lease, hereby waives all claims against Landlord for damage to goods, wares and merchandise, in, upon or about said premises and for injuries to persons in or about said premises, from any cause arising at any time; and Tenant will hold Landlord exempt and harmless from any damage or injury to any person, or the goods, wares, and merchandise of any person, arising from the use of the premises by Tenant, or from the failure of Tenant to keep the premises in good condition and repair, as herein provided.

During the entire term of this lease, the Tenant shall, at the Tenant's sole cost and expense, but for the mutual benefit of Landlord and Tenant, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the demised premises and on any sidewalks directly adjacent to the demised premises. The limitation of liability of such insurance shall be not less than One Million and 00/100 (\$1,000,000.00) Dollars in respect to injury or death on one person and to the limit of not less than One Million and 00/100 (\$1,000,000.00) Dollars in respect to anyone accident and to the limit of not less than Five Hundred Thousand and 00/100 (\$500,000.00) Dollars in respect to property damage or policy in the amount of One Million and 00/100 (\$1,000,000.00) Dollars combined single liability limit. All such policies of insurance shall be issued in the name of Tenant and Landlord and for the mutual and joint benefit and protection of the parties, and such policies of insurance or copies thereof shall be delivered to the Landlord.

14. **FREE FROM LIENS.** Tenant shall keep the demised premises and the property in which the demised premises are situated free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant.

15. **ABANDONMENT.** Tenant shall not vacate or abandon the demised premises at any time during the term of this lease; and if Tenant shall abandon, vacate or surrender the demised premises or be dispossessed by process of law, or otherwise, any personal property belonging to the Tenant and left on the demised premises shall be deemed to be abandoned, at the option of Landlord, except such property as may be mortgaged to Landlord.

16. **SIGNS AND AUCTIONS.** Tenant shall not place or permit to be placed any sign upon the exterior or in the windows of the demised premises without Landlord's prior written consent, nor shall Tenant change the color or exterior appearance of the demised premises without Landlord's prior written consent. Landlord will provide to Tenant an approved sign criteria drawing, and Tenant shall thereafter at its sole cost and expense prepare sign construction drawings, in accordance with said criteria drawings, which shall be submitted to Landlord for Landlord's written approval. Tenant agrees to install a sign in accordance with approved sign construction drawings within thirty (30) days after the commencement of the term of this lease.

Tenant shall not without Landlord's prior written consent display or sell merchandise outside the defined exterior walls and permanent doorways of the demised premises. Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the demised premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other solvency proceeding.

17. **UTILITIES.** Tenant shall pay before delinquency all charges for water, gas, heat, electricity, power, telephone service, and all other services of utilities used in, upon, or about the

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demised premises by Tenant or any of its subtenants, licensees, or concessionaires during the term of this lease. If any utility is not separately metered, Tenant agrees to reimburse Landlord for the cost of said service.

18. ENTRY AND INSPECTION. Tenant shall permit landlord and his agents to enter into and upon the demised premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the building in which said premises are situated, or for the purpose of making repairs, alterations or additions to any other portion of said building, including the erection and maintenance of such scaffolding, canopy, fences and props as may be required, or for the purpose of posting notices of non-liability for alterations, additions or repairs, or for the purpose of placing upon the property in which the premises are located any usual or ordinary "For Sale" signs. Landlord shall be permitted to do any of the above without any rebate of rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the premises thereby occasioned. Tenant shall permit Landlord, at any time within thirty (30) days prior to the expiration of this lease, to place upon said premises any usual or ordinary "For Lease" signs, and during such thirty (30) day period Landlord or his agents may, during normal business hours, enter upon said premises and exhibit same to prospective Tenants.

19. DAMAGE AND DESTRUCTION OF PREMISES. In the event of (a) partial or total destruction of said building containing same during said term which requires repairs to said building, or (b) said building being declared unsafe or unfit for occupancy by any authorized public authority for any reason other than Tenant's act, use or occupation, which declaration requires repairs to said building, Landlord shall forthwith make said repairs provided Tenant gives to landlord thirty (30) days written notice of the necessity therefor. No such partial destruction (including any destruction necessary in order to make repairs required by any declaration made by any public authority) shall in any wise annul or void this lease except that Tenant shall be entitled to a proportionate reduction of minimum guaranteed rental while such repairs are being made, such proportionate reduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by Tenant in said premises. However, if during the last four (4) years of the term of this lease the building is damaged as a result of fire or any other insured casualty to an extent in excess of twenty-five (25%) percent of its then replacement cost, (excluding foundation(s)), Landlord may within thirty (30) days following the date such damage occurs terminate this lease by written notice to Tenant. If Landlord, however, elects to make said repairs, and provided Landlord uses due diligence in making said repairs to building, this lease shall continue in full force and effect, and the minimum guaranteed rental shall be proportionately reduced as hereinabove provided. If Landlord elects to terminate this lease, all rentals shall be prorated between Landlord and Tenant as of the date of such destruction.

The foregoing to the contrary notwithstanding, if the building is damaged or destroyed at any time during the term hereof to an extent of more than twenty-five (25%) percent of its then replacement cost (excluding foundation(s)) as a result of a casualty not insured against, Landlord may within thirty (30) days following the date of such destruction terminate this lease upon written notice to tenant. If Landlord does not elect to so terminate because of said uninsured casualty, Landlord shall promptly rebuild and repair said building and Tenant's rental obligation shall be proportionately reduced as hereinabove provided.

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In respect to any partial or total destruction (including any destruction necessary in order to make repairs required by any such declaration of any authorized public authority) which Landlord is obligated to repair or may elect to repair under the terms of this Article 20, Tenant waives any statutory right it may have to cancel this lease as a result of such destruction.

20. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this lease, or any interest therein, and shall not sublet the demised premises or any part thereof, or any right or privilege appurtenant thereto, or permit any other person (the agents and servants of Tenant excepted) to occupy or use the demised premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. Consent by Landlord to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Consent to an assignment shall not release the original named Tenant from liability for the continued performance of the terms and provisions on the part of Tenant to be kept and performed, unless Landlord specifically releases the original named Tenant from said liability. Any assignment or subletting without the prior written consent of Landlord shall be void, and shall, at the option of Landlord terminate this lease. Neither this lease nor any interest therein shall be assignable, as to the interest of Tenant, by operation of law, without the prior written consent of Landlord. Furthermore, any increase in rent over Tenant's current rent received by Tenant related to such sublease shall be split equally between Landlord and Tenant.

21. DEFAULT. If Tenant fails to make any payment required by the provisions of this lease, when due, or fails within thirty (30) days after written notice thereof to correct any breach or default of the other covenants, terms or conditions of this lease, or if Tenant breaches this lease and abandons the property before the end of the term, Landlord shall have the right at any time thereafter to elect to terminate said lease and Tenant's right to possession thereunder. Upon such termination, Landlord shall have the right to recover against Tenant:

A. The worth at the time of award of the unpaid rent which has been earned at the time of termination;

B. 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 Tenant proves could have been reasonably avoided;

C. 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 Tenant proves could be reasonably avoided; and

D. Any other amount necessary to compensate the Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in subparagraphs A and B above shall be computed by allowing interest at ten (10%) percent per annum. The Worth at the time of award of the amount referred to in subparagraph C shall be computed by discounting

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such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one (1%) percent.

Such efforts as Landlord may make to mitigate the damages caused by Tenant's breach of this lease shall not constitute a waiver of Landlord's right to recover damages against Tenant hereunder, nor shall anything herein contained affect Landlord's right to indemnification against Tenant for any liability arising prior to the termination of this lease for personal injuries or property damage, and Tenant hereby agrees to indemnify and hold Landlord harmless from any such injuries and damages, including all attorney's fees and costs incurred by Landlord in defending any action brought against Landlord for any recovery thereof, and in enforcing the terms and Provisions of this indemnification against Tenant.

Notwithstanding any of the foregoing, the breach of this lease by Tenant, or an abandonment of the demised premises by Tenant, shall not constitute a termination of this lease, or of Tenant's right of possession hereunder, unless and until Landlord elects to do so, and until such time Landlord shall have the right to enforce all of its rights and remedies under this lease, including the right to recover rent, and all other payments to be made by Tenant hereunder, as it becomes due; provided, however, that until such time as Landlord elects to terminate this lease, and Tenant's right of possession hereunder, Tenant shall have the right to sublet the demised premises or to assign its interests in this lease, or both, subject only to the written consent of Landlord, which consent shall not be unreasonably withheld.

As security for the performance by Tenant of all of its duties and obligations hereunder, Tenant does hereby assign to Landlord the right, power and authority, during the continuance of this lease, to collect the rents, issues and profits of the demised premises, reserving unto Tenant the right, prior to any breach or default by it hereunder, to collect and retain said rents, issues and profits as they become due and payable. Upon any such breach or default, Landlord shall have the right at any time thereafter, without notice except as provided for above, either in person, by agent or by a receiver to be appointed by a court, enter and take possession of said demised premises and collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Landlord may determine.

The parties hereto agree that acts of maintenance or preservation or efforts to release the premises, or the appointment of a receiver upon the initiative of the Landlord to protect its interests under this lease shall not constitute a termination of Tenant's right of possession for the purposes of this paragraph unless accompanied by a written notice from Landlord to Tenant of Landlord's election to so terminate.

22. **INSOLVENCY OF TENANT.** Tenant agrees that in the event all or substantially all of its assets be placed in the hands of a receiver or trustee, and in the event such receivership or trusteeship continue for a period of ten (10) days, or should Tenant make an assignment for the benefit of creditors, or be adjudicated a bankrupt, or should Tenant institute any proceedings under any state or federal bankruptcy act wherein Tenant seeks to be adjudicated a bankrupt, or seeks to be discharged of its debts, or should any voluntary proceeding be filed against such Tenant under such bankruptcy laws and Tenant consents thereto or acquiesces therein by

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pleading or default, then this lease or any interest in and to the demised premises shall not become an asset in any such proceedings and, in any of such events and in addition to any and all rights or remedies of Landlord hereunder or as provided by law, it shall be lawful for Landlord at his option to declare the term hereof ended and to re-enter the demised premises and take possession thereof and remove all persons therefrom and Tenant shall have no further claim, therein or hereunder.

23. **SURRENDER OF LEASE.** The voluntary or other surrender of this lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to him of any or all of such subleases or subtenancies.

24. **SALE OF PREMISES BY LANDLORD.** In the event of any sale of the demised premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the demised premises, shall be deemed without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this lease.

25. **HOURS OF BUSINESS.** Subject to the provisions of Article 19 hereof, Tenant shall continuously during the entire term hereof conduct and carry on Tenant's business in the demised premises and shall keep the demised premises open for business and cause Tenant's business to be conducted therein during the usual business hours of each and every business day as it is customary for businesses of like character in the city in which the demised premises are located to be open for business; provided, however, that this provision shall not apply if the demised premises should be closed and the business of Tenant temporarily discontinued therein on account of strikes, lockouts, or similar causes beyond the reasonable control of Tenant, or closed for not more than three (3) days out of respect to the memory of any deceased officer or employee of Tenant, or the relative of any such officer or employee. Tenant shall keep the demised premises adequately stocked with merchandise, and with sufficient sales personnel to care for the patronage, and to conduct said business in accordance with sound business practices.

26. **ATTORNEY'S FEES.** If Landlord is involuntarily made a party defendant to any litigation concerning this lease or the demised premises by reason of any act or omission of Tenant, then, Tenant shall hold harmless Landlord from all liabilities by reason thereof, including reasonable attorney's fees and all costs incurred by Landlord in such litigation.

If either landlord or Tenant shall commence any legal proceedings against the other with respect to any of the terms and conditions of this lease, the non-prevailing party therein shall pay to the other all expenses of said litigation, including a reasonable attorneys' fees as may be fixed by the court having jurisdiction over the matter. The parties hereto agree that the State of California is the proper jurisdiction for litigation of any matters relating to this lease, and service mailed to the address of tenants set forth herein shall be adequate service for such litigation.

27. SECURITY DEPOSIT. Tenant contemporaneously with the execution of this lease, has deposited with landlord the sum of **Thirty Thousand and 00/100 (\$30,000.00) Dollars, receipt of which is hereby acknowledged by Landlord, said deposit being given to secure the faithful performance by the Tenant of all of the terms, covenants, and conditions of this lease by the Tenant to be kept and performed during the term hereof. Tenant agrees that if the Tenant shall fail to pay the rent herein reserved promptly when due, said deposit may, at the option of the Landlord (but Landlord shall not be required to) be applied to any rent due and unpaid, and if the Tenant violates any of the other terms, covenants, and conditions of this lease, said deposit shall be applied to any damages suffered by Landlord as a result of Tenant's default to the extent of the amount of the damages suffered.

Nothing contained in this Article 28 shall in any way diminish or be construed as waiving any of the Landlord's other remedies as provided in Article 22 hereof, or by law or in equity. Should the entire security deposit, or any portion thereof, be appropriated and applied by Landlord for the payment of overdue rent or other sums due and payable to Landlord by Tenant hereunder, then Tenant shall, on the written demand of Landlord, forthwith remit to landlord a sufficient amount in cash to restore said security deposit to its original amount, and Tenant's failure to do so within fifteen (15) days after receipt of such demand, shall constitute a breach of this lease. Should Tenant comply with all of the terms, covenants, and conditions of this lease and promptly pay all of the rental herein provided for as it falls due, and all other sums payable by Tenant to landlord hereunder, said security deposit shall be returned in full to Tenant at the end of the term of this lease, or upon the earlier termination of this lease pursuant to the provisions of Article 20 hereof, except in the event the demised premises are sold as a result of the exercise of any power of sale under any mortgage or deed of trust, in which event this lease shall be automatically amended to delete any reference to this Article 28, and Tenant shall be entitled to immediate reimbursement of its security deposit from the party then holding said deposit.

**Transferred from Lease dated July 11, 2001

28. HOLDING OVER. Any holding over after the expiration of the term of this lease, with the consent of landlord, shall be construed to be a tenancy from month to month, cancelable upon thirty (30) days written notice, and at a monthly rental, terms and conditions as agreed upon between landlord and Tenant.

29. NOTICES. Wherever in this lease it shall be required or permitted that notice and demand be given or served by either party to this lease to or on the other, such notice or demand shall be given or served and shall not be deemed to have been duly given or served unless in writing and forwarded by 1st class mail, addressed as follows:

TO: Landlord

Le Baron Investments
2020 E. Orangethorpe Avenue
Fullerton, CA 92831-5327
Telephone: (714) 680-3812
Fax: (714) 680-3340

TO: Tenant

Southern Textile Recycling, Inc.
Attn: Carl C. Jones
1850-1900 E. Orangethorpe Avenue
Fullerton, CA 92831
phone: (714) 738-6400

Either party may change such address by written notice by certified mail to the other.

30. SUCCESSORS IN INTEREST. The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

31. TENANT'S PERFORMANCE. In the event Tenant shall fall within any time limits which may be provided herein to complete any work or perform any other requirements provided to be performed by Tenant prior to the commencement of the term hereof, or in the event Tenant shall cause a delay in the completion of any work, landlord may send Tenant written notice of said default and if said default is not corrected within ten (10) days thereafter, Landlord may by written notice prior to the curing of said default terminate this lease. Landlord shall be entitled to retain as liquidated damages all deposits made hereunder and such improvements as Tenant may have annexed to the realty that cannot be removed without damage thereto.

32. FORCE MAJEURE. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reasons of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial liability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Article 33 contained shall excuse Tenant from the prompt payment of any rental or other charge required of Tenant hereunder except as may be expressly provided elsewhere in this lease.

33. PARTIAL INVALIDITY. If any term, covenant, condition or provision of this lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.

34. MARGINAL CAPTIONS. The various headings and numbers herein and the grouping of the provisions of this lease into separate articles and paragraphs are for the purpose of convenience only and shall not be considered a part hereof.

35. TIME. Time is of the essence of this lease.

36. SUBORDINATION, ATTORNMENT. This lease, at Landlord's option, shall be subordinate to the lien of any first deed of trust or first mortgage subsequently placed upon the real property of which the demised premises are a part, and to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof; provided, however, that as to the lien of any such deed of trust or mortgage Tenant's right to quiet possession of the premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and

observe and perform all of the provisions of this lease, unless this lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this lease prior to the lien of its mortgage, deed of trust, or

ground lease, and shall give written notice thereof to Tenant, this lease shall be deemed prior to such mortgage, deed of trust or ground lease, whether this lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

In the event any proceedings are brought, or in the event the exercise of the power of sale under any mortgage or deed of trust made by the landlord covering the demised premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the landlord under this lease.

If upon any sale, assignment, or hypothecation of the demised premises or the land thereunder by Landlord, or at any other time, an estoppel certificate and/or financial statement shall be requested of Tenant, Tenant agrees, within ten (10) days thereafter, to deliver such financial statement, and to deliver such estoppel certificate (in recordable form) addressed to any such proposed mortgagee or purchaser or to the Landlord certifying the requested information, including among other things the dates of commencement and termination of this lease, the amounts of security deposits, and that this lease is in full force and effect (if such be the case) and that there are no differences, offsets or defaults of Landlord, or noting such differences, offsets or defaults as actually exist. Tenant shall be liable for any loss or liability resulting from any incorrect information certified, and such mortgagee and purchaser shall have the right to rely on such estoppel certificate and financial statement. Tenant shall in the same manner acknowledge and execute any assignment of rights to receive rents as required by any mortgagee of Landlord.

37. **RIGHT TO RELOCATE.** Landlord reserves the unrestricted and unconditional right, after the commencement of the term hereof, to relocate the demised premises to substantially comparable space within the shopping center. Landlord will give Tenant written notice of its intention to relocate the demised premises, and Tenant will complete such relocation within thirty (30) days after receipt of such written notice. If the furnishings of the space to which Landlord proposes to relocate Tenant are not substantially the same as those of the demised premises, or if the Guaranteed Minimum Monthly Rental of the new space is not substantially the same as the prior Guaranteed Minimum Monthly Rental, Tenant may so notify Landlord, and if landlord fails to offer other space satisfactory to Tenant, Tenant may terminate this Lease effective as of the thirtieth (30th) day after Landlord's initial notice. Upon Tenant's peaceable vacation and abandonment of the demised premises pursuant to this Section, landlord will pay to Tenant a sum equal to one monthly installment of the Guaranteed Minimum Monthly Rental then payable under this Lease. If Tenant does relocate within the shopping center then effective on the date of such relocation this Lease will be amended by deleting the description of the original demised premises and substituting for it a description of the relocated space. Landlord agrees to reimburse Tenant for its actual, reasonable moving costs to such other space within the shopping center.

38. **COST OF LIVING ADJUSTMENT.** Upon the first anniversary date of commencement of the term of this lease, the Guaranteed Minimum Monthly Rental shall be changed to an amount that bears the same relationship to the Guaranteed Minimum Monthly Rental in effect immediately preceding such adjustment which the consumer price index for the month in which said adjustment occurs bears to the index for the month one year(s) preceding the month in which such adjustment occurs. However, in no event shall the rent be reduced

below that Guaranteed Minimum Monthly Rental in effect immediately preceding such adjustment. The consumer price index to be used is the Consumer Price Index — All Items, for the United States, published monthly by the United States Department of labor, in which 1967 equals 100. If said Consumer Price Index is no longer published at the adjustment date, it shall be constructed by conversion tables included in such new index. *Annual CPI adjustment to be not less than 3%, nor greater than 6%, each year.*

39. **SURRENDER OF PREMISES.** At the expiration of the tenancy hereby created, Tenant shall surrender the leased premises in the same condition as the leased premises were in upon delivery of possession thereto under this lease, in addition to any alterations or additions which Landlord elects to keep pursuant to Paragraph 10, reasonable wear and tear excepted, and shall surrender all keys for the leased premises to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the leased premises. No act or conduct of Landlord, except a written acknowledgement of acceptance of surrender signed by Landlord, shall be deemed to be or constitute an acceptance of the surrender of the leased premises by Tenant prior to the expiration of the term of this lease.

If prior to the termination of this lease, or within 15 days thereafter, Landlord elects, by written notice to Tenant, Tenant shall promptly remove the additions, improvements, fixtures, trade fixtures and installations which were placed in the leased premises by Tenant and which are designated in said notice, and shall repair any damage occasioned by such removal; and in default thereof Landlord may effect said removals and repairs at Tenant's expense. The covenants of Tenant contained herein shall survive the expiration or termination of the lease term.

40. **PREMATURE SURRENDER OF PREMISES.** If tenant, prior to the expiration of the term of this set forth herein, prematurely vacates the premises in breach of the Lease Agreement, without the written consent of Landlord, in addition to all other damages and remedies set forth in this Lease Agreement, the Tenant will be responsible for consequential losses allowed by Code of Civil Procedures § 1951.2(4). These losses will include, but are not limited to, all necessary expenses to relocate any existing tenant from another location to occupy the subject premises, any expenses necessary to prepare the subject premises for a new tenant, any expenses required to procure a new tenant including, but not limited to lease concessions, tenant improvements, all repairs necessary to make the subject premises re-leasable and all other expenses arising from Tenant's premature surrender of the premises. Tenant agrees that Landlord shall have exclusive discretion to make commercially reasonable decisions in order to mitigate the losses arising from the premature surrender of the subject premises.

41. **CONDEMNATION.** In the event of a condemnation or a transfer in lieu thereof twenty (20%) percent or more of the demised premises is taken, or in the event as a result of such taking or transfer in lieu thereof Landlord is unable to provide the parking required by Article 8 hereof, landlord or Tenant may, upon written notice given within thirty (30) days after such taking or transfer in lieu thereof, terminate this lease. Tenant shall not be entitled to share in any portion of the award and Tenant hereby expressly waives any right or claim to any part thereof. Tenant shall, however, have the right to claim

and recover, only from the condemning authority (but not from the Landlord), any amounts necessary to reimburse Tenant for the cost of removing stock and fixtures.

42. **NO ORAL AGREEMENTS.** This lease covers in full each and every agreement of every kind or nature whatsoever between the parties hereto concerning this lease, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein, and there are no oral agreements or implied covenants.

43. **CONFIDENTIALITY:** In consideration of the mutual promises herein contained, Landlord and Tenant agree not to communicate or disclose to any other person, entity, or organization, orally or in writing, direct or implied, the provisions contained in the Lease relating to the rental rate. Tenant understands that this is a material inducement to Landlord's execution of the Lease. If Tenant breaches this confidentiality provision, then the base rent shall be increased retroactively to equal the highest lease rate charged by Landlord to any other Tenant on the premises, calculated as of the date of this lease.

44. If not in default under the terms of this lease, Landlord grants Tenant a five (5) year option at the then market rents and terms, but not less than the previous rate.

IN WITNESS WHEREOF, the parties have duly executed this lease together with the herein referred to Exhibits which are attached hereto, on the day and year first above written.

LANDLORD:

Le Baron Investments

By: _____

TENANT:

Southern Textile Recycling, Inc.

By: _____
Carl C. Jones, President

PERSONALLY GUARANTEED BY:

By: _____
Carl C. Jones 51%

By: _____
Eddie R. Fischer 49%

LEASE AGREEMENT

THIS LEASE AGREEMENT is made this day of August 2005, between ProLogis Development Services Incorporated (“Landlord”), and the Tenant named below.

Tenant: Liquidity Services, Inc.

Tenant’s Representative, Address, and Telephone: Brian Johnson
2131 K Street NW, 4th Floor
Washington, DC 20037
(202) 467-6868 ext. 262

Premises: That portion of the Building, containing approximately 48,507 rentable square feet, as determined by Landlord, as shown on Exhibit A.

Project: Cranbury Business Park

Building: Building Five
5 Santa Fe Way
Suite 2
Cranbury, NJ 08512

Tenant’s Proportionate Share of Project: 2.35%

Tenant’s Proportionate Share of Building: 36.09%

Lease Term: Beginning on the Commencement Date and ending on the last day of the 49 full calendar month thereafter.

Lease Commencement Date: October 1, 2005

Rent Commencement Date: November 1, 2005

Initial Monthly Base Rent: See Addendum 1

Initial Estimated Monthly Operating Expense Payments: (estimates only and subject to adjustment to actual costs and expenses according to the provisions of this Lease)

1. Utilities:	
2. Common Area Charges:	\$1,374.37
3. Taxes:	\$2,991.27
4. Insurance:	\$202.11
5. Others: Mgmt. Fee	\$687.18

Initial Estimated Monthly Operating Expense Payments: \$5,254.93

Initial Monthly Base Rent and Operating Expense Payments: \$24,051.39

Security Deposit: \$50,000.00

Broker: Sheldon Gross Realty, Inc.

Addenda: 1. Base Rent Adjustments 2. Construction (Turnkey) 3. One Renewal Option at Market 4. Right of First Offer

Exhibits: A. Site Plan B. Standard Customer Workletter C. Office Layout

1. **Granting Clause.** In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants, and conditions hereof, Landlord leases to Tenant, and Tenant takes from Landlord, the Premises, to have and to hold for the Lease Term, subject to the terms, covenants and conditions of this Lease.

2. **Acceptance of Premises.** Tenant shall accept the Premises in its condition as of the Commencement Date, subject to all applicable laws, ordinances, regulations, covenants and restrictions. Landlord has made no representation or warranty as to the suitability of the Premises for the conduct of Tenant’s business, and

Tenant waives any implied warranty that the Premises are suitable for Tenant's intended purposes. Except as provided in Paragraph 10, in no event shall Landlord have any obligation for any defects in the Premises or any limitation on its use. The taking of possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken except for items that are Landlord's responsibility under Paragraph 10 and any punchlist items agreed to in writing by Landlord and Tenant.

3. **Use.** The Premises shall be used only for the purpose of receiving, storing, shipping and selling (but limited to wholesale sales and Tenant's online sales) products, materials and merchandise made and/or distributed by Tenant and for such other lawful purposes as may be incidental thereto; provided, however, with Landlord's prior written consent, Tenant may also use the Premises for light manufacturing. Tenant shall not conduct or give notice of any auction, liquidation, or going out of business sale on the Premises, except for Tenant's online sales. Tenant will use the Premises in a careful, safe and proper manner and will not commit waste, overload the floor or structure of the Premises or subject the Premises to use that would damage the Premises. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise, or vibrations to emanate from the Premises, or take any other action that would constitute a nuisance or would disturb, unreasonably interfere with, or endanger Landlord or any tenants of the Project. Outside storage, including without limitation, storage of trucks and other vehicles, is prohibited without Landlord's prior written consent. Tenant, at its sole expense, shall use and occupy the Premises in compliance with all laws, including, without limitation, the Americans With Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises (collectively, "Legal Requirements"). The Premises shall not be used as a place of public accommodation under the Americans With Disabilities Act or similar state statutes or local ordinances or any regulations promulgated thereunder, all as may be amended from time to time. Tenant shall, at its expense, make any alterations or modifications, within or without the Premises, that are required by Legal Requirements related to Tenant's use or occupation of the Premises. Tenant will not use or permit the Premises to be used for any purpose or in any manner that would void Tenant's or Landlord's insurance, increase the insurance risk, or cause the disallowance of any sprinkler credits. If any increase in the cost of any insurance on the Premises or the Project is caused by Tenant's use or occupation of the Premises, or because Tenant vacates the Premises, then Tenant shall pay the amount of such increase to Landlord. Any occupation of the Premises by Tenant prior to the Commencement Date shall be subject to all obligations of Tenant under this Lease.

4. **Base Rent.** Tenant shall pay Base Rent in the amount set forth above. The first month's Base Rent, the Security Deposit, and the first monthly installment of estimated Operating Expenses (as hereafter defined) shall be due and payable on the date hereof, and Tenant promises to pay to Landlord in advance, without demand, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month succeeding the Commencement Date. Payments of Base Rent for any fractional calendar month shall be prorated. All payments required to be made by Tenant to Landlord hereunder (or to such other party as Landlord may from time to time specify in writing) shall be made by Electronic Fund Transfer ("EFT") of immediately available federal funds before 11:00 a.m., Eastern Time, at such place, within the continental United States, as Landlord may from time to time designate to Tenant in writing. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any rent due hereunder except as may be expressly provided in this Lease. If Tenant is delinquent in any monthly installment of Base Rent or of estimated Operating Expenses for more than 5 days, Tenant shall pay to Landlord on demand a late charge equal to 8 percent of such delinquent sum. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as a penalty.

5. **Security Deposit.** The Security Deposit shall be held by Landlord as security for the performance of Tenant's obligations under this Lease. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Upon each occurrence of an Event of Default (hereinafter defined), Landlord may use all or part of the Security Deposit to pay delinquent payments due under this Lease, and the cost of any damage, injury, expense or liability caused by such Event of Default, without prejudice to any other remedy provided herein or provided by law. Tenant shall pay Landlord on demand the amount that will restore the Security Deposit to its original amount. Landlord's obligation respecting the Security Deposit is that of a debtor, not a trustee; no interest shall accrue thereon. The Security Deposit shall be the property of Landlord, but shall be paid to Tenant when Tenant's obligations under this Lease have been completely fulfilled. Landlord shall be released from any obligation with respect to the Security Deposit upon transfer of this Lease and the Premises to a person or entity assuming Landlord's obligations under this Paragraph 5.

6. **Operating Expense Payments.** During each month of the Lease Term, on the same date that Base Rent is due, Tenant shall pay Landlord an amount equal to 1/12 of the annual cost, as estimated by Landlord from time to time, of Tenant's Proportionate Share (hereinafter defined) of Operating Expenses for the Project. Payments thereof for any fractional calendar month shall be prorated. The term "Operating Expenses" means all costs and expenses incurred by Landlord with respect to the ownership, maintenance, and operation of the Project including, but not limited to costs of: Taxes (hereinafter defined) and fees payable to tax consultants and attorneys for consultation and contesting taxes; insurance; utilities; maintenance, repair and replacement of all portions of the Project, including without limitation, paving and parking areas, roads, roofs (including the roof membrane), alleys, and driveways, mowing, landscaping, snow removal, exterior painting, utility lines, heating, ventilation and air conditioning systems, lighting, electrical systems and other mechanical and building systems; amounts paid to contractors and subcontractors for work or services performed in connection with any of the foregoing; charges or assessments of any association to which the Project is subject; property management fees payable to a property manager, including any affiliate of Landlord, or if there is no property manager, an administration fee of 15 percent of Operating Expenses payable to Landlord; security services, if any; trash collection, sweeping and removal; and additions or alterations made by Landlord to the Project or the Building in order to comply with Legal Requirements

(other than those expressly required herein to be made by Tenant) or that are appropriate to the continued operation of the Project or the Building as a bulk warehouse facility in the market area, provided that the cost of additions or alterations that are required to be capitalized for federal income tax purposes shall be amortized on a straight line basis over a period equal to the lesser of the useful life thereof for federal income tax purposes or 10 years. Operating Expenses do not include costs, expenses, depreciation or amortization for capital repairs and capital replacements required to be made by Landlord under Paragraph 10 of this Lease, debt service under mortgages or ground rent under ground leases, costs of restoration to the extent of net insurance proceeds received by Landlord with respect thereto, leasing commissions, or the costs of renovating space for tenants.

If Tenant's total payments of Operating Expenses for any year are less than Tenant's Proportionate Share of actual Operating Expenses for such year, then Tenant shall pay the difference to Landlord within 30 days after demand, and if more, then Landlord shall retain such excess and credit it against Tenant's next payments. For purposes of calculating Tenant's Proportionate Share of Operating Expenses, a year shall mean a calendar year except the first year, which shall begin on the Commencement Date, and the last year, which shall end on the expiration of this Lease. With respect to Operating Expenses which Landlord allocates to the entire Project, Tenant's "Proportionate Share" shall be the percentage set forth on the first page of this Lease as

Tenant's Proportionate Share of the Project as reasonably adjusted by Landlord in the future for changes in the physical size of the Premises or the Project; and, with respect to Operating Expenses which Landlord allocates only to the Building, Tenant's "Proportionate Share" shall be the percentage set forth on the first page of this Lease as Tenant's Proportionate Share of the Building as reasonably adjusted by Landlord in the future for changes in the physical size of the Premises or the Building. Landlord may equitably increase Tenant's Proportionate Share for any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Project or Building that includes the Premises or that varies with occupancy or use. The estimated Operating Expenses for the Premises set forth on the first page of this Lease are only estimates, and Landlord makes no guaranty or warranty that such estimates will be accurate.

7. **Utilities.** Tenant shall pay for all water, gas, electricity, heat, light, power, telephone, sewer, sprinkler services, refuse and trash collection, and other utilities and services used on the Premises, all maintenance charges for utilities, and any storm sewer charges or other similar charges for utilities imposed by any governmental entity or utility provider, together with any taxes, penalties, surcharges or the like pertaining to Tenant's use of the Premises. Landlord may cause at Tenant's expense any utilities to be separately metered or charged directly to Tenant by the provider. Tenant shall pay its share of all charges for jointly metered utilities based upon consumption, as reasonably determined by Landlord. No interruption or failure of utilities shall result in the termination of this Lease or the abatement of rent. Tenant agrees to limit use of water and sewer for normal restroom use.

8. **Taxes.** Landlord shall pay all taxes, assessments and governmental charges (collectively referred to as "Taxes") that accrue against the Project during the Lease Term, which shall be included as part of the Operating Expenses charged to Tenant. Landlord may contest by appropriate legal proceedings the amount, validity, or application of any Taxes or liens thereof. All capital levies or other taxes assessed or imposed on Landlord upon the rents payable to Landlord under this Lease and any franchise tax, any excise, transaction, sales or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the Project or any portion thereof shall be paid by Tenant to Landlord monthly in estimated installments or upon demand, at the option of Landlord, as additional rent; provided, however, in no event shall Tenant be liable for any net income taxes imposed on Landlord unless such net income taxes are in substitution for any Taxes payable hereunder. If any such tax or excise is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in the Premises, whether levied or assessed against Landlord or Tenant.

9. **Insurance.** Landlord shall maintain all risk property insurance covering the full replacement cost of the Building. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, commercial liability insurance and rent loss insurance. All such insurance shall be included as part of the Operating Expenses charged to Tenant. The Project or Building may be included in a blanket policy (in which case the cost of such insurance allocable to the Project or Building will be determined by Landlord based upon the insurer's cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance which Landlord reasonably deems necessary as a result of Tenant's use of the Premises.

Tenant, at its expense, shall maintain during the Lease Term: all risk property insurance covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant at Tenant's expense; worker's compensation insurance with no less than the minimum limits required by law; employer's liability insurance with such limits as required by law; and commercial liability insurance, with a minimum limit of \$1,000,000 per occurrence and a minimum umbrella limit of \$1,000,000, for a total minimum combined general liability and umbrella limit of \$2,000,000 (together with such additional umbrella coverage as Landlord may reasonably require) for property damage, personal injuries, or deaths of persons occurring in or about the Premises. Landlord may from time to time require reasonable increases in any such limits. The commercial liability policies shall name Landlord as an additional insured, insure on an occurrence and not a claims-made basis, be issued by insurance companies which are reasonably acceptable to Landlord, not be cancelable unless 30 days' prior written notice shall have been given to Landlord, contain a hostile fire endorsement and a contractual liability endorsement and provide primary coverage to Landlord (any policy issued to Landlord providing duplicate or similar coverage shall be deemed excess over Tenant's policies). Such policies or certificates thereof shall be delivered to Landlord by Tenant upon commencement of the Lease Term and upon each renewal of said insurance.

The all risk property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, their officers, directors, employees, managers, agents, invitees and contractors, in connection with any loss or damage thereby insured against. Neither party nor its officers, directors, employees, managers, agents, invitees or contractors shall be liable to the other for loss or damage caused by any risk coverable by all risk property insurance, and each party waives any claims against the other party, and its officers, directors, employees, managers, agents, invitees and contractors for such loss or damage. The failure of a party to insure its property shall not void this waiver. Landlord and its agents, employees and contractors shall not be liable for, and Tenant hereby waives all claims against such parties for, business interruption and losses occasioned thereby sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises or the Project from any cause whatsoever, including without limitation, damage caused in whole or in part, directly or indirectly, by the negligence of Landlord or its agents, employees or contractors.

10. **Landlord's Repairs.** Landlord shall maintain, at its expense, the structural soundness of the roof, foundation, and exterior walls of the Building in good repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, its agents and contractors excluded. The term "walls" as used in this Paragraph 10 shall not include windows, glass or plate glass, doors or overhead doors, special store fronts, dock bumpers, dock plates or levelers, or office entries. Tenant shall promptly give Landlord written notice of any repair required by Landlord pursuant to this Paragraph 10, after which Landlord shall have a reasonable opportunity to repair.

11. **Tenant's Repairs.** Landlord, at Tenant's expense as provided in Paragraph 6, shall maintain in good repair and condition the parking areas and other common areas of the Building, including, but not limited to driveways, alleys, landscape and grounds surrounding the Premises. Subject to Landlord's obligation in Paragraph 10 and subject to Paragraphs 9 and 15, Tenant, at its expense, shall repair, replace and maintain in good condition all portions of the Premises and all areas, improvements and systems exclusively serving the Premises including, without limitation, dock and loading areas, truck doors, plumbing, water and sewer lines up to points of common connection, fire sprinklers and fire protection systems, entries, doors, ceilings, windows, interior walls, and the interior side of demising walls, and heating, ventilation and air conditioning systems. Such repair and replacements include capital expenditures and repairs whose benefit may extend beyond the Term. Heating, ventilation and air conditioning systems and other mechanical and building systems serving the Premises shall be maintained at Tenant's expense pursuant to maintenance service contracts entered into by Tenant or, at Landlord's election, by Landlord. The scope of services and contractors under such maintenance contracts shall be reasonably approved by Landlord. At Landlord's request, Tenant shall enter into a joint maintenance agreement with any railroad that services the Premises. If Tenant fails to perform any repair or

replacement for which it is responsible, Landlord may perform such work and be reimbursed by Tenant within 10 days after demand therefor. Subject to Paragraphs 9 and 15, Tenant shall bear the full cost of any repair or replacement to any part of the Building or Project that results from damage caused by Tenant, its agents, contractors, or invitees and any repair that benefits only the Premises.

12. **Tenant-Made Alterations and Trade Fixtures.** Any alterations, additions, or improvements made by or on behalf of Tenant to the Premises (“Tenant-Made Alterations”) shall be subject to Landlord’s prior written consent. Tenant shall cause, at its expense, all Tenant-Made Alterations to comply with insurance requirements and with Legal Requirements and shall construct at its expense any alteration or modification required by Legal Requirements as a result of any Tenant-Made Alterations. All Tenant-Made Alterations shall be constructed in a good and workmanlike manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Tenant-Made Alterations shall be submitted to Landlord for its approval. Landlord may monitor construction of the Tenant-Made Alterations. Tenant shall reimburse Landlord for its costs in reviewing plans and specifications and in monitoring construction. Landlord’s right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with applicable laws, codes, rules and regulations. Tenant shall provide Landlord with the identities and mailing addresses of all persons performing work or supplying materials, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall furnish security or make other arrangements satisfactory to Landlord to assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker’s compensation and other coverage in amounts and from an insurance company satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Upon completion of any Tenant-Made Alterations, Tenant shall deliver to Landlord sworn statements setting forth the names of all contractors and subcontractors who did work on the Tenant-Made Alterations and final lien waivers from all such contractors and subcontractors. Upon surrender of the Premises, all Tenant-Made Alterations and any leasehold improvements constructed by Landlord or Tenant shall remain on the Premises as Landlord’s property, except to the extent Landlord requires removal at Tenant’s expense of any such items or Landlord and Tenant have otherwise agreed in writing in connection with Landlord’s consent to any Tenant-Made Alterations. Tenant shall repair any damage caused by such removal.

Tenant, at its own cost and expense and without Landlord’s prior approval, may erect such shelves, bins, machinery and trade fixtures (collectively “Trade Fixtures”) in the ordinary course of its business provided that such items do not alter the basic character of the Premises, do not overload or damage the Premises, and may be removed without injury to the Premises, and the construction, erection, and installation thereof complies with all Legal Requirements and with Landlord’s requirements set forth above. Tenant shall remove its Trade Fixtures and shall repair any damage caused by such removal.

13. **Signs.** Tenant shall not make any changes to the exterior of the Premises, install any exterior lights, decorations, balloons, flags, pennants, banners, or painting, or erect or install any signs, windows or door

lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises, without Landlord’s prior written consent. Upon surrender or vacation of the Premises, Tenant shall have removed all signs and repair, paint, and/or replace the building facia surface to which its signs are attached. Tenant shall obtain all applicable governmental permits and approvals for sign and exterior treatments. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises shall be subject to Landlord’s approval and conform in all respects to Landlord’s requirements.

14. **Parking.** Tenant shall be entitled to park in common with other tenants of the Project in those areas designated for nonreserved parking. Landlord may allocate parking spaces among Tenant and other tenants in the Project if Landlord determines that such parking facilities are becoming crowded. Landlord shall not be responsible for enforcing Tenant’s parking rights against any third parties.

15. **Restoration.** If at any time during the Lease Term the Premises are damaged by a fire or other casualty, Landlord shall notify Tenant within 60 days after such damage as to the amount of time Landlord reasonably estimates it will take to restore the Premises. If the restoration time is estimated to exceed 6 months, either Landlord or Tenant may elect to terminate this Lease upon notice to the other party given no later than 30 days after Landlord’s notice. If neither party elects to terminate this Lease or if Landlord estimates that restoration will take 6 months or less, then, subject to receipt of sufficient insurance proceeds, Landlord shall promptly restore the Premises excluding the improvements installed by Tenant or by Landlord and paid by Tenant, subject to delays arising from the collection of insurance proceeds or from Force Majeure events. Tenant at Tenant’s expense shall promptly perform, subject to delays arising from the collection of insurance proceeds, or from Force Majeure events, all repairs or restoration not required to be done by Landlord and shall promptly re-enter the Premises and commence doing business in accordance with this Lease. Notwithstanding the foregoing, either party may terminate this Lease if the Premises are damaged during the last year of the Lease Term and Landlord reasonably estimates that it will take more than one month to repair such damage. Base Rent and Operating Expenses shall be abated for the period of repair and restoration in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises. Such abatement shall be the sole remedy of Tenant, and except as provided herein, Tenant waives any right to terminate the Lease by reason of damage or casualty loss.

16. **Condemnation.** If any part of the Premises or the Project should be taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a “Taking” or “Taken”), and the Taking would prevent or materially interfere with Tenant’s use of the Premises or in Landlord’s judgment would materially interfere with or impair its ownership or operation of the Project, then upon written notice by Landlord this Lease shall terminate and Base Rent shall be apportioned as of said date. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, the Base Rent payable hereunder during the unexpired Lease Term shall be reduced to such extent as may be fair and reasonable under the circumstances. In the event of any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant’s interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord’s award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant’s Trade Fixtures, if a separate award for such items is made to Tenant.

17. **Assignment and Subletting.** Without Landlord’s prior written consent, Tenant shall not assign this Lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises and any attempt to do any of the foregoing shall be void and of no effect. For purposes of this paragraph, a transfer of the ownership interests controlling Tenant shall be deemed an assignment of this Lease unless such ownership interests are publicly traded. Notwithstanding the above, Tenant may assign or sublet the Premises, or any part thereof, to any entity controlling Tenant, controlled by Tenant or under common control with Tenant (a “Tenant Affiliate”), without the prior written consent of Landlord. Tenant shall reimburse Landlord for all of Landlord’s reasonable out-of-pocket expenses in connection with any assignment or

sublease. Upon Landlord's receipt of Tenant's written notice of a desire to assign or sublet the Premises, or any part thereof (other than to a Tenant Affiliate), Landlord may, by giving written notice to Tenant within 30 days after receipt of Tenant's notice, terminate this Lease with respect to the space described in Tenant's notice, as of the date specified in Tenant's notice for the commencement of the proposed assignment or sublease.

Notwithstanding any assignment or subletting, Tenant and any guarantor or surety of Tenant's obligations under this Lease shall at all times remain fully responsible and liable for the payment of the rent and for compliance with all of Tenant's other obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such assignments or sublettings). In the event that the rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto) exceeds the rental payable under this Lease, then Tenant shall be bound and obligated to pay Landlord as additional rent hereunder all such excess rental and other excess consideration within 10 days following receipt thereof by Tenant.

If this Lease be assigned or if the Premises be subleased (whether in whole or in part) or in the event of the mortgage, pledge, or hypothecation of Tenant's leasehold interest or grant of any concession or license within the Premises or if the Premises be occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder Landlord may collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and, except to the extent set forth in the preceding paragraph, apply the amount collected to the next rent payable hereunder; and all such rentals collected by Tenant shall be held in trust for Landlord and immediately forwarded to Landlord. No such

transaction or collection of rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder.

18. **Indemnification.** Except for the negligence of Landlord, its agents, employees or contractors, and to the extent permitted by law, Tenant agrees to indemnify, defend and hold harmless Landlord, and Landlord's agents, employees and contractors, from and against any and all losses, liabilities, damages, costs and expenses (including attorneys' fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in or about the Project and arising from the use and occupancy of the Premises or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises or due to any other act or omission of Tenant, its subtenants, assignees, invitees, employees, contractors and agents. The furnishing of insurance required hereunder shall not be deemed to limit Tenant's obligations under this Paragraph 18.

19. **Inspection and Access.** Landlord and its agents, representatives, and contractors may enter the Premises at any reasonable time to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Landlord and Landlord's representatives may enter the Premises during business hours for the purpose of showing the Premises to prospective purchasers and, during the last year of the Lease Term, to prospective tenants. Landlord may erect a suitable sign on the Premises stating the Premises are available to let or that the Project is available for sale. Landlord may grant easements, make public dedications, designate common areas and create restrictions on or about the Premises, provided that no such easement, dedication, designation or restriction materially interferes with Tenant's use or occupancy of the Premises. At Landlord's request, Tenant shall execute such instruments as may be necessary for such easements, dedications or restrictions.

20. **Quiet Enjoyment.** If Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of this Lease, at all times during the Lease Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

21. **Surrender.** Upon termination of the Lease Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, broom clean, ordinary wear and tear and casualty loss and condemnation covered by Paragraphs 15 and 16 excepted. Any Trade Fixtures, Tenant-Made Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property. All obligations of Tenant hereunder not fully performed as of the termination of the Lease Term shall survive the termination of the Lease Term, including without limitation, indemnity obligations, payment obligations with respect to Operating Expenses and obligations concerning the condition and repair of the Premises.

22. **Holding Over.** If Tenant retains possession of the Premises after the termination of the Lease Term, unless otherwise agreed in writing, such possession shall be subject to immediate termination by Landlord at any time, and all of the other terms and provisions of this Lease (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period, except that Tenant shall pay Landlord from time to time, upon demand, as Base Rent for the holdover period, an amount equal to double the Base Rent in effect on the termination date, computed on a monthly basis for each month or part thereof during such holding over. All other payments shall continue under the terms of this Lease. In addition, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Paragraph 22 shall not be construed as consent for Tenant to retain possession of the Premises. For purposes of this Paragraph 22, "possession of the Premises" shall continue until, among other things, Tenant has delivered all keys to the Premises to Landlord, Landlord has complete and total dominion and control over the Premises, and Tenant has completely fulfilled all obligations required of it upon termination of the Lease as set forth in this Lease, including, without limitation, those concerning the condition and repair of the Premises.

23. **Events of Default.** Each of the following events shall be an event of default ("Event of Default") by Tenant under this Lease:

(i) Tenant shall fail to pay any installment of Base Rent or any other payment required herein when due, and such failure shall continue for a period of 5 days from the date such payment was due.

(ii) Tenant or any guarantor or surety of Tenant's obligations hereunder shall (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "proceeding for relief"); (C) become the subject of any proceeding for relief which is not dismissed within 60 days of its filing or entry; or (D) die or

suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).

(iii) Any insurance required to be maintained by Tenant pursuant to this Lease shall be cancelled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease.

(iv) Tenant shall not occupy or shall vacate the Premises or shall fail to continuously operate its business at the Premises for the permitted use set forth herein, whether or not Tenant is in monetary or other default under this Lease.

(v) Tenant shall attempt or there shall occur any assignment, subleasing or other transfer of Tenant's interest in or with respect to this Lease except as otherwise permitted in this Lease.

(vi) Tenant shall fail to discharge any lien placed upon the Premises in violation of this Lease within 30 days after any such lien or encumbrance is filed against the Premises.

(vii) Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Paragraph 23, and except as otherwise expressly provided herein, such default shall continue for more than 30 days after Landlord shall have given Tenant written notice of such default.

24. **Landlord's Remedies.** Upon each occurrence of an Event of Default and so long as such Event of Default shall be continuing, Landlord may at any time thereafter at its election: terminate this Lease or Tenant's right of possession, (but Tenant shall remain liable as hereinafter provided) and/or pursue any other remedies at law or in equity. Upon the termination of this Lease or termination of Tenant's right of possession, it shall be lawful for Landlord, without formal demand or notice of any kind, to re-enter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law and to remove Tenant and all persons and property therefrom. If Landlord re-enters the Premises, Landlord shall have the right to keep in place and use, or remove and store, all of the furniture, fixtures and equipment at the Premises.

If Landlord terminates this Lease, Landlord may recover from Tenant the sum of: all Base Rent and all other amounts accrued hereunder to the date of such termination; the cost of reletting the whole or any part of the Premises, including without limitation brokerage fees and/or leasing commissions incurred by Landlord, and costs of removing and storing Tenant's or any other occupant's property, repairing, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant or tenants, and all reasonable expenses incurred by Landlord in pursuing its remedies, including reasonable attorneys' fees and court costs; and the excess of the then present value of the Base Rent and other amounts payable by Tenant under this Lease as would otherwise have been required to be paid by Tenant to Landlord during the period following the termination of this Lease measured from the date of such termination to the expiration date stated in this Lease, over the present value of any net amounts which Tenant establishes Landlord can reasonably expect to recover by reletting the Premises for such period, taking into consideration the availability of acceptable tenants and other market conditions affecting leasing. Such present values shall be calculated at a discount rate equal to the 90-day U.S. Treasury bill rate at the date of such termination.

If Landlord terminates Tenant's right of possession (but not this Lease), Landlord may, but shall be under no obligation to, relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord without thereby releasing Tenant from any liability hereunder and without demand or notice of any kind to Tenant. For the purpose of such reletting Landlord is authorized to make any repairs, changes, alterations, or additions in or to the Premises as Landlord deems reasonably necessary or desirable. If the Premises are not relet, then Tenant shall pay to Landlord as damages a sum equal to the amount of the rental reserved in this Lease for such period or periods, plus the cost of recovering possession of the Premises (including attorneys' fees and costs of suit), the unpaid Base Rent and other amounts accrued hereunder at the time of repossession, and the costs incurred in any attempt by Landlord to relet the Premises. If the Premises are relet and a sufficient sum shall not be realized from such reletting [after first deducting therefrom, for retention by Landlord, the unpaid Base Rent and other amounts accrued hereunder at the time of reletting, the cost of recovering possession (including attorneys' fees and costs of suit), all of the costs and expense of repairs, changes, alterations, and additions, the expense of such reletting (including without limitation brokerage fees and leasing commissions) and the cost of collection of the rent accruing therefrom] to satisfy the rent provided for in this Lease to be paid, then Tenant shall immediately satisfy and pay any such deficiency. Any such payments due Landlord shall be made upon demand therefor from time to time and Tenant agrees that Landlord may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect in writing to terminate this Lease for such previous breach.

Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether by agreement or by operation of law, it being understood that such surrender and/or termination can be effected only by the written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same. Tenant and Landlord further agree that forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity, shall not be a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant

waives the service of notice of Landlord's intention to re-enter as provided for in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. The terms "enter," "re-enter," "entry" or "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Any reletting of the Premises shall be on such terms and conditions as Landlord in its sole discretion may determine (including without limitation a term different than the remaining Lease Term, rental concessions, alterations and

repair of the Premises, lease of less than the entire Premises to any tenant and leasing any or all other portions of the Project before reletting the Premises). Landlord shall not be liable, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting.

25. **Tenant's Remedies/Limitation of Liability.** Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within 30 days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of 30 days, then after such period of time as is reasonably necessary). All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "Landlord" in this Lease shall mean only the owner, for the time being of the Premises, and in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership. Any liability of Landlord under this Lease shall be limited solely to its interest in the Project, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord.

26. **Waiver of Jury Trial.** TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.

27. **Subordination.** This Lease and Tenant's interest and rights hereunder are and shall be subject and subordinate at all times to the lien of any first mortgage, now existing or hereafter created on or against the Project or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant. Tenant agrees, at the election of the holder of any such mortgage, to attorn to any such holder. Tenant agrees upon demand to execute, acknowledge and deliver such instruments, confirming such subordination and such instruments of attornment as shall be requested by any such holder. Tenant hereby appoints Landlord attorney in fact for Tenant irrevocably (such power of attorney being coupled with an interest) to execute, acknowledge and deliver any such instrument and instruments for and in the name of the Tenant and to cause any such instrument to be recorded. Notwithstanding the foregoing, any such holder may at any time subordinate its mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution, delivery or recording and in that event such holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such mortgage and had been assigned to such holder. The term "mortgage" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "holder" of a mortgage shall be deemed to include the beneficiary under a deed of trust.

28. **Mechanic's Liens.** Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord or Tenant in, the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises and that it will save and hold Landlord harmless from all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the interest of Landlord in the Premises or under this Lease. Tenant shall give Landlord immediate written notice of the placing of any lien or encumbrance against the Premises and cause such lien or encumbrance to be discharged within 30 days of the filing or recording thereof; provided, however, Tenant may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and Tenant causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Landlord within such 30 day period.

29. **Estoppel Certificates.** Tenant agrees, from time to time, within 10 days after request of Landlord, to execute and deliver to Landlord, or Landlord's designee, any estoppel certificate requested by Landlord, stating that this Lease is in full force and effect, the date to which rent has been paid, that Landlord is not in default hereunder (or specifying in detail the nature of Landlord's default), the termination date of this Lease and such other matters pertaining to this Lease as may be requested by Landlord. Tenant's obligation to furnish each estoppel certificate in a timely fashion is a material inducement for Landlord's execution of this Lease. No cure or grace period provided in this Lease shall apply to Tenant's obligations to timely deliver an estoppel certificate. Tenant hereby irrevocably appoints Landlord as its attorney in fact to execute on its behalf and in its name any such estoppel certificate if Tenant fails to execute and deliver the estoppel certificate within 10 days after Landlord's written request thereof.

30. **Environmental Requirements.** Except for Hazardous Material contained in products used by Tenant in de minimis quantities for ordinary cleaning and office purposes, Tenant shall not permit or cause any party

to bring any Hazardous Material upon the Premises or transport, store, use, generate, manufacture or release any Hazardous Material in or about the Premises without Landlord's prior written consent. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and shall remediate in a manner satisfactory to Landlord any Hazardous Materials released on or from the Project by Tenant, its agents, employees, contractors, subtenants or invitees. Tenant shall complete and certify to disclosure statements as requested by Landlord from time to time relating to Tenant's transportation, storage, use, generation, manufacture or release of Hazardous Materials on the Premises. The term "Environmental Requirements" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "Hazardous Materials" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the "operator" of Tenant's "facility" and the "owner" of all Hazardous Materials brought on the Premises by Tenant, its agents, employees, contractors or invitees, and the wastes, by-products, or residues generated, resulting, or produced therefrom.

Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all losses (including, without limitation, diminution in value of the Premises or the Project and loss of rental income from the Project), claims, demands, actions, suits, damages (including, without limitation,

punitive damages), expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, actual attorneys' fees, consultant fees or expert fees and including, without limitation, removal or management of any asbestos brought into the property or disturbed in breach of the requirements of this Paragraph 30, regardless of whether such removal or management is required by law) which are brought or recoverable against, or suffered or incurred by Landlord as a result of any release of Hazardous Materials for which Tenant is obligated to remediate as provided above or any other breach of the requirements under this Paragraph 30 by Tenant, its agents, employees, contractors, subtenants, assignees or invitees, regardless of whether Tenant had knowledge of such noncompliance. The obligations of Tenant under this Paragraph 30 shall survive any termination of this Lease.

Landlord shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Requirements, its obligations under this Paragraph 30, or the environmental condition of the Premises. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant.

31. **Rules and Regulations.** Tenant shall, at all times during the Lease Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises and the Project. The current rules and regulations are attached hereto. In the event of any conflict between said rules and regulations and other provisions of this Lease, the other terms and provisions of this Lease shall control. Landlord shall not have any liability or obligation for the breach of any rules or regulations by other tenants in the Project.

32. **Security Service.** Tenant acknowledges and agrees that, while Landlord may patrol the Project, Landlord is not providing any security services with respect to the Premises and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises.

33. **Force Majeure.** Landlord shall not be held responsible for delays in the performance of its obligations hereunder when caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Landlord ("Force Majeure").

34. **Entire Agreement.** This Lease constitutes the complete agreement of Landlord and Tenant with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Lease. This Lease may not be amended except by an instrument in writing signed by both parties hereto.

35. **Severability.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

36. **Brokers.** Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than the broker, if any, set forth on the first page of this Lease, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

37. **Miscellaneous.** (a) Any payments or charges due from Tenant to Landlord hereunder shall be considered rent for all purposes of this Lease.

(b) If and when included within the term "Tenant," as used in this instrument, there is more than one person, firm or corporation, each shall be jointly and severally liable for the obligations of Tenant.

(c) All notices required or permitted to be given under this Lease shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable national overnight courier service, postage prepaid, or by hand delivery addressed to the parties at their addresses below, and with a copy sent to Landlord at 14100 East 35th Place, Aurora, Colorado 80011. Either party may by notice given aforesaid change its address for all subsequent notices. Except where otherwise expressly provided to the contrary, notice shall be deemed given upon delivery.

(d) Except as otherwise expressly provided in this Lease or as otherwise required by law, Landlord retains the absolute right to withhold any consent or approval.

(e) At Landlord's request from time to time Tenant shall furnish Landlord with true and complete copies of its most recent annual and quarterly financial statements prepared by Tenant or Tenant's accountants and any other financial information or summaries that Tenant typically provides to its lenders or shareholders.

(f) Neither this Lease nor a memorandum of lease shall be filed by or on behalf of Tenant in any public record. Landlord may prepare and file, and upon request by Landlord Tenant will execute, a memorandum of lease.

(g) The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto.

(h) The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.

(i) Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(j) Any amount not paid by Tenant within 5 days after its due date in accordance with the terms of this Lease shall bear interest from such due date until paid in full at the lesser of the highest rate permitted by applicable law or 15 percent per year. It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(k) Construction and interpretation of this Lease shall be governed by the laws of the state in which the Project is located, excluding any principles of conflicts of laws.

(l) Time is of the essence as to the performance of Tenant's obligations under this Lease.

(m) All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. In the event of any conflict between such exhibits or addenda and the terms of this Lease, such exhibits or addenda shall control.

(n) In the event either party hereto initiates litigation to enforce the terms and provisions of this Lease, the non-prevailing party in such action shall reimburse the prevailing party for its reasonable attorney's fees, filing fees, and court costs.

38. **Landlord's Lien/Security Interest.** Tenant hereby grants Landlord a security interest, and this Lease constitutes a security agreement, within the meaning of and pursuant to the Uniform Commercial Code of the state in which the Premises are situated as to all of Tenant's property situated in, or upon, or used in connection with the Premises (except merchandise sold in the ordinary course of business) as security for all of Tenant's obligations hereunder, including, without limitation, the obligation to pay rent. Such personalty thus encumbered includes

specifically all trade and other fixtures for the purpose of this Paragraph and inventory, equipment, contract rights, accounts receivable and the proceeds thereof. In order to perfect such security interest, Tenant shall execute such financing statements and file the same at Tenant's expense at the state and county Uniform Commercial Code filing offices as often as Landlord in its discretion shall require; and Tenant hereby irrevocably appoints Landlord its agent for the purpose of executing and filing such financing statements on Tenant's behalf as Landlord shall deem necessary.

39. **Limitation of Liability of Trustees, Shareholders, and Officers of ProLogis.** Any obligation or liability whatsoever of ProLogis, a Maryland real estate investment trust, which may arise at any time under this Lease or any obligation or liability which may be incurred by it pursuant to any other instrument, transaction, or undertaking contemplated hereby shall not be personally binding upon, nor shall resort for the enforcement thereof be had to the property of, its trustees, directors, shareholders, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise.

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

TENANT:

Liquidity Services, Inc.

By: _____
Name: Jaime Mateus-Tique
Title: President & COO

LANDLORD:

PROLOGIS DEVELOPMENT SERVICES
INCORPORATED, a Delaware corporation

By: _____
Name: Charles E. Sullivan
Title: Senior Vice President

Address:

2131 K Street NW, 4th Floor

Washington, DC 20037

Address:

One Capital Drive
Suite 103
Cranbury, NJ 08512

Rules and Regulations

1. The sidewalk, entries, and driveways of the Project shall not be obstructed by Tenant, or its agents, or used by them for any purpose other than ingress and egress to and from the Premises.

2. Tenant shall not place any objects, including antennas, outdoor furniture, etc., in the parking areas, landscaped areas or other areas outside of its Premises, or on the roof of the Project.
3. Except for seeing-eye dogs, no animals shall be allowed in the offices, halls, or corridors in the Project.
4. Tenant shall not disturb the occupants of the Project or adjoining buildings by the use of any radio or musical instrument or by the making of loud or improper noises.
5. If Tenant desires telegraphic, telephonic or other electric connections in the Premises, Landlord or its agent will direct the electrician as to where and how the wires may be introduced; and, without such direction, no boring or cutting of wires will be permitted. Any such installation or connection shall be made at Tenant's expense.
6. Tenant shall not install or operate any steam or gas engine or boiler, or other mechanical apparatus in the Premises, except as specifically approved in the Lease. The use of oil, gas or inflammable liquids for heating, lighting or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Project.
7. Parking any type of recreational vehicles is specifically prohibited on or about the Project. Further, parking any type of trucks, trailers or other vehicles in the Premises is specifically prohibited. Except for the overnight parking of operative vehicles, no vehicle of any type shall be stored in the parking areas at any time. In the event that a vehicle is disabled, it shall be removed within 48 hours. There shall be no "For Sale" or other advertising signs on or about any parked vehicle. All vehicles shall be parked in the designated parking areas in conformity with all signs and other markings. All parking will be open parking, and no reserved parking, numbering or lettering of individual spaces will be permitted except as specified by Landlord.
8. Tenant shall maintain the Premises free from rodents, insects and other pests.
9. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs or who shall in any manner do any act in violation of the Rules and Regulations of the Project.
10. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall not be responsible to Tenant for any loss of property on the Premises, however occurring, or for any damage done to the effects of Tenant by the janitors or any other employee or person.
11. Tenant shall give Landlord prompt notice of any defects in the water, lawn sprinkler, sewage, gas pipes, electrical lights and fixtures, heating apparatus, or any other service equipment affecting the Premises.
12. Tenant shall not permit storage outside the Premises, including without limitation, outside storage of trucks and other vehicles, or dumping of waste or refuse or permit any harmful materials to be placed in any drainage system or sanitary system in or about the Premises.
13. All moveable trash receptacles provided by the trash disposal firm for the Premises must be kept in the trash enclosure areas, if any, provided for that purpose.
14. No auction, public or private, will be permitted on the Premises or the Project, except for Tenant's online sales.
15. No awnings shall be placed over the windows in the Premises except with the prior written consent of Landlord.
16. The Premises shall not be used for lodging, sleeping or cooking or for any immoral or illegal purposes or for any purpose other than that specified in the Lease. No gaming devices shall be operated in the Premises.

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17. Tenant shall ascertain from Landlord the maximum amount of electrical current which can safely be used in the Premises, taking into account the capacity of the electrical wiring in the Project and the Premises and the needs of other tenants, and shall not use more than such safe capacity. Landlord's consent to the installation of electric equipment shall not relieve Tenant from the obligation not to use more electricity than such safe capacity.
 18. Tenant assumes full responsibility for protecting the Premises from theft, robbery and pilferage.
 19. Tenant shall not install or operate on the Premises any machinery or mechanical devices of a nature not directly related to Tenant's ordinary use of the Premises and shall keep all such machinery free of vibration, noise and air waves which may be transmitted beyond the Premises.

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ADDENDUM 1

BASE RENT ADJUSTMENTS

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED , BETWEEN

Base Rent shall equal the following amounts for the respective periods set forth below:

<u>Period</u>	<u>Monthly Base Rent</u>
October 1, 2005 to October 31, 2005	\$ 0
November 1, 2005 to October 31, 2006	\$ 18,796.46
November 1, 2006 to October 31, 2007	\$ 19,172.39
November 1, 2007 to October 31, 2008	\$ 19,555.84
November 1, 2008 to October 31, 2009	\$ 19,946.96

ADDENDUM 2

CONSTRUCTION
(TURNKEY)

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED , BETWEEN

ProLogis Development Services Incorporated
and
Liquidity Services, Inc.

(a) Landlord agrees to furnish or perform at Landlord's sole cost and expense those items of construction and those improvements (the "Initial Improvements") specified below:

Construct approximately 1,200 square feet of finished office space in accordance with the Office Floor Plan, Exhibit C, and Landlord's Standard Customer Workletter, attached hereto as Exhibit B. Further, Landlord shall provide up to an additional (48) 400-watt, metal halide fixtures in the warehouse.

Landlord may collect a construction management fee, payable by Tenant within 30 days following receipt of Landlord's invoice from time to time throughout the period of construction of the Initial Improvements, which such fee shall be calculated based upon the scope of work of the Initial Improvements as described herein, taking into account costs generally payable for similar services within the market area in which the Project is located.

(b) If Tenant shall desire any changes, Tenant shall so advise Landlord in writing and Landlord shall determine whether such changes can be made in a reasonable and feasible manner. Any and all costs of reviewing any requested changes, and any and all costs of making any changes to the Initial Improvements which Tenant may request and which Landlord may agree to shall be at Tenant's sole cost and expense and shall be paid to Landlord upon demand and before execution of the change order.

(c) Landlord shall proceed with and complete the construction of the Initial Improvements. As soon as such improvements have been Substantially Completed, Landlord shall notify Tenant in writing of the date that the Initial Improvements were Substantially Completed. Such date, unless an earlier date is specified as the Commencement Date in this Lease or otherwise agreed to in writing between Landlord and Tenant, shall be the "Commencement Date," unless the completion of such improvements was delayed due to any act or omission of, or delay caused by, Tenant including, without limitation, Tenant's failure to approve plans, complete submittals or obtain permits within the time periods agreed to by the parties or as reasonably required by Landlord, in which case the Commencement Date shall be the date such improvements would have been completed but for the delays caused by Tenant. The Initial Improvements shall be deemed substantially completed ("Substantially Completed") when, in the opinion of the construction manager (whether an employee or agent of Landlord or a third party construction manager) ("Construction Manager"), the Premises are substantially completed except for punch list items which do not prevent in any material way the use of the Premises for the purposes for which they were intended. In the event Tenant, its employees, agents, or contractors cause construction of such improvements to be delayed, the date of Substantial Completion shall be deemed to be the date that, in the opinion of the Construction Manager, Substantial Completion would have occurred if such delays had not taken place. Without limiting the foregoing, Tenant shall be solely responsible for delays caused by Tenant's request for any changes in the plans, Tenant's request for long lead items or Tenant's interference with the construction of the Initial Improvements, and such delays shall not cause a deferral of the Commencement Date beyond what it otherwise would have been. After the Commencement Date Tenant shall, upon demand, execute and deliver to Landlord a letter of acceptance of delivery of the Premises. In the event of any dispute as to the Initial Improvements, including the Commencement Date, the certificate of the Construction Manager shall be conclusive absent manifest error.

(d) The failure of Tenant to take possession of or to occupy the Premises shall not serve to relieve Tenant of obligations arising on the Commencement Date or delay the payment of rent by Tenant. Subject to applicable ordinances and building codes governing Tenant's right to occupy or perform in the Premises, Tenant shall be allowed to install its tenant improvements, machinery, equipment, fixtures, or other property on the Premises during the final stages of completion of construction provided that Tenant does not thereby interfere with the completion of construction or cause any labor dispute as a result of such installations, and provided further that Tenant does hereby agree to indemnify, defend, and hold Landlord harmless from any loss or damage to such property, and all liability, loss, or damage arising from any injury to the Project or the property of Landlord, its contractors, subcontractors, or materialmen, and any death or personal injury to any person or persons arising out of such installations, unless any such loss, damage, liability, death, or personal injury was caused by Landlord's negligence. Any such occupancy or performance in the Premises shall be in accordance with the provisions

governing Tenant-Made Alterations and Trade Fixtures in the Lease, and shall be subject to Tenant providing to Landlord satisfactory evidence of insurance for personal injury and property damage related to such installations and satisfactory payment arrangements with respect to installations permitted hereunder. Delay in putting Tenant in possession of the Premises shall not serve to extend the term of this Lease or to make Landlord liable for any damages arising therefrom.

ADDENDUM 3

ONE RENEWAL OPTION AT MARKET

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED , BETWEEN

ProLogis Development Services Incorporated
and
Liquidity Services, Inc.

(a) Provided that as of the time of the giving of the Extension Notice and the Commencement Date of the Extension Term, (x) Tenant is the Tenant originally named herein, (y) Tenant actually occupies all of the Premises initially demised under this Lease and any space added to the Premises, and (z) no Event of Default exists or would exist but for the passage of time or the giving of notice, or both; then Tenant shall have the right to extend the Lease Term for an additional term of 4 years (such additional term is hereinafter called the "Extension Term") commencing on the day following the expiration of the Lease Term (hereinafter referred to as the "Commencement Date of the Extension Term"). Tenant shall give Landlord notice (hereinafter called the "Extension Notice") of its election to extend the term of the Lease Term at least 9 months, but not more than 12 months, prior to the scheduled expiration date of the Lease Term.

(b) The Base Rent payable by Tenant to Landlord during the Extension Term shall be the greater of (i) the Base Rent applicable to the last year of the initial Lease term and (ii) the then prevailing market rate for comparable space in the Project and comparable buildings in the vicinity of the Project, taking into account the size of the Lease, the length of the renewal term, market escalations and the credit of Tenant. The Base Rent shall not be reduced by reason of any costs or expenses saved by Landlord by reason of Landlord's not having to find a new tenant for such premises (including, without limitation, brokerage commissions, costs of improvements, rent concessions or lost rental income during any vacancy period). In the event Landlord and Tenant fail to reach an agreement on such rental rate and execute the Amendment (defined below) at least 6 months prior to the expiration of the Lease, then Tenant's exercise of the renewal option shall be deemed withdrawn and the Lease shall terminate on its original expiration date.

(c) The determination of Base Rent does not reduce the Tenant's obligation to pay or reimburse Landlord for Operating Expenses and other reimbursable items as set forth in the Lease, and Tenant shall reimburse and pay Landlord as set forth in the Lease with respect to such Operating Expenses and other items with respect to the Premises during the Extension Term without regard to any cap on such expenses set forth in the Lease.

(d) Except for the Base Rent as determined above, Tenant's occupancy of the Premises during the Extension Term shall be on the same terms and conditions as are in effect immediately prior to the expiration of the initial Lease Term; provided, however, Tenant shall have no further right to any allowances, credits or abatements or any options to expand, contract, renew or extend the Lease.

(e) If Tenant does not give the Extension Notice within the period set forth in paragraph (a) above, Tenant's right to extend the Lease Term shall automatically terminate. Time is of the essence as to the giving of the Extension Notice.

(f) Landlord shall have no obligation to refurbish or otherwise improve the Premises for the Extension Term. The Premises shall be tendered on the Commencement Date of the Extension Term in "as-is" condition.

(g) If the Lease is extended for the Extension Term, then Landlord shall prepare and Tenant shall execute an amendment to the Lease confirming the extension of the Lease Term and the other provisions applicable thereto (the "Amendment").

(h) If Tenant exercises its right to extend the term of the Lease for the Extension Term pursuant to this Addendum, the term "Lease Term" as used in the Lease, shall be construed to include, when practicable, the Extension Term except as provided in (d) above.

ADDENDUM 4

RIGHT OF FIRST OFFER

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED , BETWEEN

ProLogis Development Services Incorporated
and
Liquidity Services, Inc.

(a) "Offered Space" shall mean The adjacent 85,893 SF unit currently occupied by Delta Apparel.

(b) Provided that as of the date of the giving of Landlord's Notice, (x) Tenant is the Tenant originally named herein, (y) Tenant actually occupies all of the Premises originally demised under this Lease and any premises added to the Premises, and (z) no Event of Default or event which but for the passage of time in the giving of notice, or both, would constitute an Event of Default has occurred and is continuing, if at any time during the Lease Term any lease for any portion of the Offered Space shall expire, then Landlord, before offering such Offered Space to anyone, other than the tenant then occupying such space (or its affiliates), shall offer to Tenant the right to include the Offered Space within the Premises on the same terms and conditions upon which Landlord intends to offer the Offered Space for lease.

(c) Such offer shall be made by Landlord to Tenant in a written notice (hereinafter called the "First Offer Notice") which offer shall designate the space being offered and shall specify the terms which Landlord intends to offer with respect to any such Offered Space. Tenant may accept the offer set forth in the First Offer Notice by delivering to Landlord an unconditional acceptance (hereinafter called "Tenant's Notice") of such offer within 5 business days after delivery by Landlord of the First Offer Notice to Tenant. Time shall be of the essence with respect to the giving of Tenant's Notice. If Tenant does not accept (or fails to timely accept) an offer made by Landlord pursuant to the provisions of this Addendum with respect to the Offered Space designated in the First Offer Notice, Landlord shall be under no further obligation with respect to such space by reason of this Addendum.

(d) Tenant must accept all Offered Space offered by Landlord at any one time if it desires to accept any of such Offered Space and may not exercise its right with respect to only part of such space. In addition, if Landlord desires to lease more than just the Offered Space to one tenant, Landlord may offer to Tenant pursuant to the terms hereof all such space which Landlord desires to lease, and Tenant must exercise its rights hereunder with respect to all such space and may not insist on receiving an offer for just the Offered Space.

(e) If Tenant at any time declines any Offered Space offered by Landlord, Tenant shall be deemed to have irrevocably waived all further rights under this Addendum, and Landlord shall be free to lease the Offered Space to third parties including on terms which may be less favorable to Landlord than those offered to Tenant.

INDUSTRIAL REAL ESTATE LEASE
(Multi-Tenant Facility)

ARTICLE ONE: BASIC TERMS

This Article One contains the Basic Terms of the Lease between the Landlord and Tenant named below. Other Articles, Sections and Paragraphs of the Leases referred to in this Article One explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

Section 1.01. Date of Lease: January 20, 2006
Section 1.02. Landlord (include legal entity): Paulus Enterprises
a California Limited Liability Company
Address of Landlord: 6060 Business Center Ct.
San Diego, California 92154
Section 1.03. Tenant (include legal entity): Liquidity Services Inc.
1920 L Street NW
Address of Tenant: Suite 600
Washington, DC 20036

Section 1.04 Property: The Property is part of Landlord's multi-tenant real property development known as NorthGate Industrial Center and described or depicted in Exhibit "A" (the "Project"). The Project includes the land, the buildings and all other improvements located on the land, and the common areas described in Paragraph 4.05(a). The Property is

An approximate 54,000 square foot (net rentable are) office /warehouse located within the +/- 108,000 square foot "Project" consisting of approximately 2,000 square feet of office space and located at 3824 North 5th Street, Suite A & B, North Las Vegas Nevada 89030. See site plan as Exhibit "A" attached hereto.

Section 1.05. Lease Term: Three (3) years beginning on February 1st., 2006 or such other date as is specified in this Lease, and ending on January 31st 2009 or 36 months from start date if other than February 1st, 2006.

Section 1.06. Permitted Uses: (See Article Five) General office/administrative, warehousing, storage, and distribution of consumer goods and non-hazardous general property.

Section 1.07. Tenant's Guarantor: (If none, so state) None

Section 1.08. Brokers: (See Article Fourteen)

Landlord's Broker: General Realty Group Inc. — Eric L. Sallie

Tenant's Broker: C.B. Richard Ellis — Greg Tassi

Section 1.09. Commission Payable to Landlord's Broker: (See Article Fourteen) 2% General Realty Group Inc. 2% C.B. Richard Ellis.

Section 1.10. Initial Security Deposit: (See Section 3.03) \$16,740.00

Section 1.11. Vehicle Parking Spaces Allocated to Tenant: (See Section 4.05) Twenty-Nine (29)

Table with 1 column 'Initials' and 3 empty rows.

Section 1.12. Rent and Other Charges Payable by Tenant:

- (a) BASE RENT: Sixteen Thousand Seven Hundred Forty and 00/100 (\$16,740.00) Dollars per month for the first twelve (12) months, as provided in Section 3.01, and shall be increased on the first day of the 13th and 25th month(s) after the Commencement Date as follows. 13th through 24th month \$ 18,360.00 (Eighteen Thousand Three Hundred Sixty Dollars) 25th through 36th month \$ 19,440.00 (Nineteen Thousand Four Hundred Forty Dollars)
(b) OTHER PERIODIC PAYMENTS: (i) Real Property Taxes (See Section 4.02); (ii) Utilities (See Section 4.03); (iii) Insurance Premiums (See Section 4.04); (iv) Tenant's Initial Pro Rata Share of Common Area Expenses (See Section 4.05); (v) Impounds for Insurance Premiums and Property Taxes (See Section 4.08); (vi) Maintenance, Repairs and Alterations (See Article Six).
(c) Tenant's share of the property taxes, insurance and common area operating expenses shall be Fifty (50%) Percent. Tenant's share has been determined by dividing the net leasable square footage of the Property by the net leaseable square footage of the Project as set out

Section 1.13. Landlord’s Share of Profit on Assignment or Sublease: (See Section 9.05) One Hundred (100%) of the Profit (the “Landlord’s Share”).

Section 1.14. Riders: The following Riders are attached to and made a part of this Lease:

- Exhibit “A: - Site Plan
- Exhibit “B” — Disclosure Statement
- Exhibit “C” — Rules and Regulations
- Duties Owed By A Nevada Real Estate Licensee

Section 1.15. Tenant Improvements: Landlord at it’s sole cost shall provide the following improvements. Lessee agrees that T.I.’s will be completed as soon as practicable,

- Lessor shall create a 20’x 20’ opening between two units or as close to that size that is practical.
- Lessor shall replace carpet in office space.
- Lessor shall repaint office space.
- Lessor shall install three (3) hydraulic pit levelers.
- Lessor shall install +/- thirty-two (32) additional metal halide fixtures.

Landlord will complete said improvements up to a maximum of Forty Thousand (\$40,000) Dollars. Landlord and Tenant agree that Landlord shall obtain estimates in advance of beginning the improvements and in the event such estimates exceed said maximum of \$40,000 then at Tenants option all or part of the improvements shall be cancelled or Tenant will accept to pay for any extra cost. In the event any work results in a cost overrun that causes the total cost of said improvement to be over \$40,000 then Tenant agrees to pay for said cost overruns.

ARTICLE TWO: LEASE TERM

Section 2.01. Lease of Property for Lease Term. Landlord leases the Property to Tenant and Tenant leases the Property from Landlord for the Lease Term. The Lease Term is for the Period Stated in Section 1.05 above and shall begin and end of the dates specified in Section 1.05 above, unless the beginning or end of the Lease Term is changed under any provision of this Lease. The “Commencement Date” shall be the date specified in Section 1.05 above for the beginning of the Lease Term, unless advanced or delayed under any provision of this Lease.

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Section 2.02. Delay in Commencement. Landlord shall not be liable to Tenant if Landlord does not deliver possession of the Property to Tenant on the Commencement Date. Landlord’s non-delivery of the Property to Tenant on that date shall not affect this Lease or the obligations of Tenant under this Lease except that the Commencement Date shall be delayed until Landlord delivers possession of the Property to Tenant, plus the number of days necessary to end the Lease Term on the last day of a month. If Landlord does not deliver possession of the Property to Tenant within sixty (60) days after the Commencement Date, Tenant may elect to cancel this Lease by giving written notice to Landlord within ten (10) days after the sixty (60)-day period ends. If Tenant gives such notice, the Lease shall be canceled and neither Landlord nor Tenant shall have any further obligations to the other. If Tenant does not give such notice, Tenant’s right to cancel the Lease shall expire and the Lease Term shall commence upon the delivery of possession of the Property to Tenant. If delivery of possession of the Property to Tenant is delayed, Landlord and Tenant shall, upon such delivery, execute an amendment to this Lease setting forth the actual Commencement Date and expiration of the Lease. Failure to execute such amendment shall not affect the actual Commencement Date and expiration date of the Lease.

Section 2.03. Early Occupancy. If Tenant occupies the Property prior to the Commencement Date, Tenant’s occupancy of the Property shall be subject to all of the provisions of this Lease. Early occupancy of the Property shall not advance the expiration date of this Lease. Tenant shall pay Base Rent and all other charges specified in this Lease for the early occupancy period.

Section 2.04. Holding Over. Tenant shall vacate the Property upon the expiration or earlier termination of this Lease. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant’s delay in vacating the Property. If Tenant does not vacate the Property upon the expiration or earlier termination of the Lease and Landlord thereafter accepts rent from Tenant, Tenant’s occupancy of the Property shall be a “month-to-month” tenancy, subject to all of the terms of this Lease applicable to a month-to-month tenancy, except that the Base Rent then in effect shall be increased by twenty-five percent (25%).

ARTICLE THREE: BASE RENT

Section 3.01. Time and Manner of Payment. Upon execution of this Lease, Tenant shall pay Landlord the Base Rent in the amount stated in Paragraph 1.12 (a) above for the first month of the Lease Term. On the first day of the second month of the Lease Term and each month thereafter, Tenant

shall pay Landlord the Base Rent, in advance, without offset, deduction or prior demand. The Base Rent shall be payable at Landlord's address or at such other place as Landlord may designate in writing. Payment of rent shall not be conditioned on receiving a statement or invoice from Landlord.

Section 3.02. Security Deposit; Increases.

(a) Upon the execution of this Lease, Tenant shall deposit with Landlord cash Security Deposit in the amount set forth in Section 1.10 above. Landlord may apply all or part of the Security Deposit to any unpaid rent or other charges due from Tenant or to cure any other defaults of Tenant. If Landlord uses any part of the Security Deposit, Tenant shall restore the Security Deposit to its full amount within ten (10) days after Landlord's written request. Tenant's failure to do so shall be a material default under this Lease. No interest shall be paid on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit.

(b) Each Time the Base Rent is increased, Tenant shall deposit additional funds with Landlord sufficient to increase the Security Deposit to an amount which bears the same relationship to the adjusted Based Rent as the Initial Security Deposit bore to the initial Base Rent.

Section 3.03. Termination; Advance Payments. Upon termination of this Lease under Article Seven (Damage or Destruction), Article Eight (Condemnation) or any other termination not resulting from Tenant's default,

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and after Tenant has vacated the Property in the manner required by this Lease, Landlord shall refund or credit to Tenant (or Tenant's successor) the unused portion of the Security Deposit, any advance rent or other advance payments made by Tenant to Landlord, and any amounts paid for real property taxes and other reserves which apply to any time periods after termination of the Lease.

ARTICLE FOUR: OTHER CHARGES PAYABLE BY TENANT

Section 4.01. Additional Rent. All charges payable by Tenant other than Base Rent are called "Additional Rent." Unless this Lease provides otherwise, Tenant shall pay all Additional Rent then due with the next monthly installment of Base Rent. The term "rent" shall mean Base Rent and Additional Rent.

Section 4.02. Property Taxes.

(a) **Real Property Taxes.** Tenant shall pay all real property taxes on the Property (including any fees, taxes or assessments against, or as a result of, any tenant improvements installed on the Property by or for the benefit of Tenant) during the Lease Term. Subject to Paragraph 4.02(c) and Section 4.08 below, such payment shall be made at least ten (10) days prior to the delinquency date of the taxes. Within such ten (10)-day period, Tenant shall furnish Landlord with satisfactory evidence that the real property taxes have been paid. Landlord shall reimburse Tenant for any real property taxes paid by Tenant covering any period of time prior to or after the Lease Term. If Tenant fails to pay the real property taxes when due, Landlord may pay the taxes and Tenant shall reimburse Landlord for the amount of such tax payment as Additional Rent.

(b) **Definition of "Real Property Tax."** "Real property tax" means: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Property; (ii) any tax on the Landlord's right to receive, or the receipt of, rent or income from the Property or against Landlord's business of leasing the Property; (iii) any tax or charge fro fire protection, streets, sidewalks, road maintenance, refuse of other services provided to the Property by any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Property due to a change of ownership, as defined by applicable law, or other transfer of all or part of Landlord's Interest in the Property; and (v) any charge or fee replacing any tax previously included within the definition of real property tax. "Real property tax" does not, however, include Landlord's federal or state income, franchise, inheritance or estate taxes.

(c) **Joint Assessment.** If the Property is not separately assessed, Landlord shall reasonably determine Tenant's share of the real property tax payable by Tenant under Paragraph 4.02 (a) from the assessor's worksheets or other reasonably available information. Tenant shall pay such share to Landlord within fifteen (15) days after receipt of Landlord's written statement.

(d) **Personal Property Taxes.**

(I) Tenant shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall try to have personal property taxed separately from the Property.

(II) If any of Tenant's person al property is taxed with the Property Tenant shall pay Landlord the taxes for the personal property within fifteen (15) days after Tenant receives a written statement from Landlord for such personal property taxes.

Section 4.03. Utilities. Tenant shall pay, directly to the appropriate supplier, the cost of all natural gas, heat, light, power, sewer service, telephone, water, refuse disposal and other utilities and services supplied to the Property. However, if any services or utilities are jointly metered with other property, Landlord shall make a reasonable determination of Tenant's proportionate share of the cost of such utilities and services and Tenant shall pay such share to Landlord within fifteen (15) days after receipt of Landlord's written statement.

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Section 4.04. Insurance Policies.

(a) Liability Insurance. During the Lease Term, Tenant shall maintain a policy of commercial general liability insurance (sometimes known as broad form comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Property. Tenant shall name Landlord as an additional insured under such policy. The initial amount of such insurance shall be One Million Dollars (\$1,000,000) per occurrence and shall be subject to periodic increase based upon inflation, increased liability awards, recommendation of Landlord’s professional insurance advisers and other relevant factors. The liability insurance obtained by Tenant under this Paragraph 4.04(a) shall (i) be primary and non-contributing; (ii) contain cross-liability endorsements; and (iii) insure Landlord against Tenant’s performance under Section 5.05, if the matters giving rise to the indemnity under Section 5.05 result from the negligence of Tenant. The Amount and coverage of such insurance shall not limit Tenant’s liability nor relieve Tenant of any other obligation under this Lease. Landlord may also obtain comprehensive public liability insurance in an amount and with coverage determined by Landlord insuring Landlord against liability arising out of ownership, operation, use or occupancy of the Property. The policy obtained by Landlord shall not be contributory and shall not provide primary insurance.

(b) Property and Rental Income Insurance. During the Lease Term, Landlord shall maintain policies of insurance covering loss of or damage to the Property in the full amount of its replacement value. Such policy shall contain an Inflation Guard Endorsement and shall provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), sprinkler leakage and any other perils which Landlord deems reasonable necessary. Landlord shall have the right to obtain flood and earth quake insurance if required by any lender holding a security interest in the Property. Landlord shall not obtain insurance of Tenant’s fixtures or equipment or building improvements installed by Tenant on the Property. During the Lease Term, Landlord shall also maintain a rental income insurance policy, with loss payable to Landlord, in an amount equal to one year’s Base Rent, plus estimated real property taxes and insurance premiums. Tenant shall be liable for the payment of any deductible amount under Landlord’s or Tenant’s insurance policies maintained pursuant to this Section 4.04, in an amount not to exceed Ten Thousand Dollars (\$10,000). Tenant shall not do or permit anything to be done which invalidates any such insurance policies.

(c) Payment of Premiums. Subject to Section 4.08, Tenant shall pay all premiums for the insurance policies described in Paragraphs 4.04(a) and (b) (whether obtained by Landlord or Tenant) within fifteen (15) days after Tenant’s receipt of a copy of the premium statement or other evidence of the amount due, except Landlord shall pay all premiums for non-primary comprehensive public liability insurance which Landlord elects to obtain as provided in Paragraph 4.04(a). For insurance policies maintained by Landlord which cover improvements on the entire Project, Tenant shall pay Tenant’s prorated share of the premiums, in accordance with the formula in Paragraph 4.05(e) for determining Tenant’s share of common Area costs. If insurance policies maintained by Landlord cover improvements on real property other than the Project, Landlord shall deliver to Tenant a statement of the Premium applicable to the Property showing in reasonable detail how Tenant’s share of the premium was computed. If the Lease Term expires before the expiration of an insurance policy maintained by Landlord, Tenant shall be liable for Tenant’s prorated share of the insurance premiums. Before the Commencement Date, Tenant shall deliver to Landlord a copy of any policy of insurance which Tenant is required to maintain under this Section 4.04. At least thirty (30) days prior to the expiration of any such policy, Tenant shall deliver to Landlord a renewal of such policy. As an alternative to providing a policy of insurance, Tenant shall have the right to provide Landlord a certificate of insurance, executed by an authorized officer of the insurance company, showing that the insurance which Tenant is required to maintain under this Section 4.04 is in full force and effect and containing such other information which Landlord reasonable requires.

(d) General Insurance Provisions.

(i) Any insurance which Tenant is required to maintain under this Lease shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days’ written notice prior to any cancellation or modification of such coverage.

(ii) If Tenant fails to deliver any policy, certificate or renewal to Landlord required under this Lease within the prescribed time period or if any such policy is canceled or modified during the Lease Term without Landlord’s consent, Landlord may obtain such insurance, in which case Tenant shall reimburse

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Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance.

(iii) Tenant shall maintain all insurance required under this Lease with companies holding a “General Policy Rating” or A-12 or better, as set forth in the most current issue of “Best Key Rating Guide”. Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 4.04 may not be available in the future. Tenant acknowledges that the insurance described in this Section 4.04 is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant is unable to maintain the insurance required under the Lease, Tenant shall nevertheless maintain insurance coverage which is customary and commercially reasonable in the insurance industry for Tenant’s type of

business, as that coverage may change from time to time. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall obtain any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

(iv) Unless prohibited under any applicable insurance policies maintained, Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers employees, agents or representatives of the other, for loss of or damage to its property or the property of others under its control, if such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage. Upon obtaining the required policies of insurance, Landlord and Tenant shall give notice to the insurance carriers of this mutual waiver of subrogation.

Section 4.05. Common Areas; Use, Maintenance and Costs.

(a) **Common Areas.** As used in this Lease, "Common Areas" shall mean all areas within the Project which are available for the common use of tenants of the Project and which are not leased or held for the exclusive use of Tenant or other tenants, including, but not limited to, parking areas, driveways, sidewalks, loading area, access roads, corridors, landscaping and planted areas. Landlord, from time to time, may change the size, location, nature and use of any of the Common Areas, convert Common Areas into leaseable areas, construct additional parking facilities (including parking structures) in the Common Areas, and increase or decrease Common Area land and /or facilities. Tenant acknowledges that such activities may result in inconvenience to Tenant. Such activities and changes are permitted if they do not materially affect Tenant's use of the Property.

(b) **Use of Common Areas.** Tenant shall have the nonexclusive right (in common with other tenants and all others to whom Landlord has granted or may grant such rights) to use the Common Areas for the purposes intended, subject to such reasonable rules and regulations as Landlord may establish from time to time. Tenant shall abide by such rules and regulations and shall use its best effort to cause others who use the Common Areas with Tenant's express or implied permission to abide by Landlord's rules and regulations. At any time, Landlord may close any Common Areas to perform any acts in the Common Areas as, in Landlord's judgment, are desirable to improve the Project. Tenant shall not interfere with the rights of Landlord, other tenants or any other person entitled to use the Common Areas.

(c) **Specific Provision re: Vehicle Parking.** Tenant shall be entitled to use the number of vehicle parking spaces in the Project allocated to Tenant in Section 1.11 of the Lease without paying any additional rent. Tenant's parking shall not be reserved and shall be limited to vehicles no larger than standard size automobiles or pickup utility vehicles. Tenant shall not cause large trucks or other large vehicles to be parked within the Project or on the adjacent public streets. Temporary parking of large delivery vehicles in the Project may be permitted by the rules and regulations established by Landlord. Vehicles shall be parked only in striped parking spaces and not in driveways, loading areas or other locations not specifically designated for parking. Handicapped spaces shall only be used by those legally permitted to use them. If Tenant parks more vehicles in the parking area than the number set forth in Section 1.11 of this Lease, such conduct shall be a material breach of this Lease. In addition to Landlord's other remedies under the Lease, Tenant shall pay a daily charge determined by Landlord for each such additional vehicle.

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(d) **Maintenance of Common Areas.** Landlord shall maintain the Common Areas in good order, condition and repair and shall operate the Project, in Landlord's sole discretion, as a first-class industrial/commercial real property development. Tenant shall pay Tenant's pro rata share (as determined below) of all costs incurred by Landlord for the operation and maintenance of the Common Areas. Common Area costs include, but are not limited to costs and expenses for the following: gardening and landscaping; utilities, water and sewage charges; maintenance of signs (other than tenants' signs); premiums for liability, property damage, fire and other types of casualty insurance of the Common Areas and worker's compensation insurance; all property taxes and assessments levied on or attributable to personal property used in connection with the Common Areas; straight-line depreciation on personal property owned by Landlord which is consumed in the operation or maintenance of the Common Areas; rental or lease payments paid by Landlord for rented or leased personal property used in the operation or maintenance of the Common Areas; fees for required licenses and permits; repairing, resurfacing, repaving, maintaining, painting, lighting, cleaning, refuse removal, security and similar items; reserves for roof replacement and exterior painting and other appropriate reserves; and a reasonable allowance to Landlord for Landlord's supervision of the common Areas (not to exceed five percent (5%) of the gross rents of the Project for the calendar year). Landlord may cause any or all of such services to be provided by third parties and the cost of such services shall be included in Common Area costs. Common Area costs shall not include depreciation of real property which forms part of the Common Areas.

(e) **Tenant's Share and Payment.** Tenant shall pay tenant's annual pro rata share of all Common Area costs (prorated for any fractional month) upon written notice from Landlord that such costs are due and payable, and in any event prior to delinquency. Tenant's pro rata share shall be calculated by dividing the square foot area of the Property, as set forth in Section 1.04 of the Lease, by the aggregate square foot area of the Project which is leased or held for lease by tenants, as of the date on which the computation is made. Tenant's initial pro rata share is set out in Paragraph 1.12 (b). Any changes in the Common Area costs and/or the aggregate area of the Project leased or held for lease during the Lease Term shall be effective on the first day of the month after such change occurs. Landlord may, at Landlord's election, estimate in advance and charge to Tenant as Common Area costs, all real property taxes for which Tenant is liable under Section 4.02 of the Lease, all insurance premiums for which Tenant is liable under Section 4.04 of the Lease, all maintenance and repair costs for which Tenant is liable under Section 6.04 of the Lease, and all other Common Area costs payable by Tenant hereunder. At Landlord's election, such statements of estimated Common Area costs shall be delivered monthly, quarterly or at any other periodic intervals to be designated by Landlord. Landlord may adjust such estimates at any time based upon Landlord's experience and reasonable anticipation of costs. Such adjustments shall be effective as of the next rent payment date after notice to Tenant. Within sixty (60) days after the end of each calendar year of the Lease Term, Landlord shall deliver to Tenant a statement prepared in accordance with generally accepted accounting principles setting forth, in reasonable detail, the Common Area costs paid or incurred by Landlord during the preceding calendar year and Tenant's pro rata share. Upon receipt of such statement, there shall be an adjustment between Landlord and Tenant, with payment to or credit given by Landlord (as the case may be) so that Landlord shall receive the entire amount

of Tenant's share of such costs and expenses for such period. The initial estimated budget for 2006 for Common Area costs are \$0.095 per square foot total Five Thousand One Hundred Thirty (\$5,130) Dollars and shall be reimbursed monthly in advance.

Section 4.06. Late Charges. Tenant's failure to pay rent promptly may cause Landlord to incur unanticipated costs. The exact amount of such costs are impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by any ground lease, mortgage or trust deed encumbering the Property. Therefore, if Landlord does not receive any rent payment within ten (10) days after it becomes due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of the over due amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment.

Section 4.07. Interest on Past Due Obligations. Any amount owed by Tenant to Landlord which is not paid when due shall bear interest at the rate of fifteen percent (15%) per annum from the due date of such amount. However, interest shall not be payable on late charges to be paid by Tenant under this Lease. If the interest rate

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specified in this Lease is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law.

Section 4.08. Impounds for Insurance Premiums and Real Property Taxes. If requested by any ground lessor or lender to whom Landlord has granted a security interest in the Property, or if Tenant is more than ten (10) days late in the payment of rent more than once in any consecutive twelve (12)-month period, Tenant shall pay Landlord a sum equal to one-twelfth (1/12) of the annual real property taxes and insurance premiums payable by Tenant under this Lease, together with each payment of Base Rent. Landlord shall hold such payments in a non-interest bearing impound account. If unknown, Landlord shall reasonable estimate the amount of real property taxes and insurance premiums when due. Tenant shall pay any deficiency of funds in the impound account to Landlord upon written request. If Tenant defaults under this Lease, Landlord any apply any funds in the impound account to any obligation then due under this Lease.

ARTICLE FIVE: USE OF PROPERTY

Section 5.01. Permitted Uses. Tenant may use the Property only for the Permitted Uses set forth in Section 1.06 above.

Section 5.02. Manner of Use. Tenant shall not cause or permit the Property to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation or order, which annoys or interferes with the rights of tenants of the Project, or which constitutes a nuisance or waste. Tenant shall obtain and pay for all permits, including a Certificate of Occupancy, required for Tenant's occupancy of the Property and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Tenant of the Property, including the Occupational Safety and Health Act.

Section 5.03. Hazardous Materials. As used in this Lease, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons. Tenant shall not cause or permit any Hazardous Material to be generated, produced, brought upon, used, stored, treated or disposed of in or about the Property by Tenant, its agents, employees, contractors, sub-lessees or invitees without the prior written consent of Landlord. Landlord shall be entitled to take into account such other factors or facts as Landlord may reasonable determine to be relevant in determining whether to grant or withhold consent to Tenant's proposed activity with respect to Hazardous Material. In no event, however, shall Landlord be required to consent to the installation or use of any storage tanks of the Property.

Section 5.04. Signs and Auctions. Tenant shall not place any signs on the Property without Landlord's prior written consent. Tenant shall not conduct or permit any auctions or sheriff's sales at the Property, except for Tenant's on-line auctions.

Section 5.05. Indemnity. Tenant shall indemnify Landlord against and hold Landlord Harmless from any and all costs, claims or liability arising from: (a) Tenant's use of the Property; (b) the conduct of Tenant's business or anything else done or permitted by Tenant to be done in or about the Property, including any contamination of the Property or any other property resulting from the presence or use of Hazardous Material caused or permitted by Tenant; (c) any breach or default in the performance of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; or (e) other acts or omissions of Tenant.

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Tenant shall defend Landlord against any such cost, claim or liability at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord, Tenant assumes all risk of damage to property or injury to persons in or about the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's gross negligence or willful misconduct. As used in this Section, the term "Tenant" shall include Tenant's employees, agents, contractors, and invitees, if applicable.

Section 5.06. Landlord's Access. Landlord or its agents may enter the Property at all reasonable times to show the Property to potential buyers, investors or tenants or other parties; to do any other act or to inspect and conduct tests in order to monitor Tenant's compliance with all applicable environmental laws and all laws governing the presence and use of Hazardous Material; or for any other purpose Landlord deems necessary. Landlord shall give Tenant prior notice of such entry, except in the case of an emergency. Landlord may place customary "For Sale" or "For Lease" signs on the Property.

Section 5.07. Quiet Possession. If Tenant pays the rent and complies with all other terms of this Lease, Tenant may occupy and enjoy the Property for the full Lease Term, subject to the provisions of this lease.

ARTICLE SIX: CONDITION OF PROPERTY; MAINTENANCE, REPAIRS AND ALTERATIONS

Section 6.01. Existing Conditions. Tenant accepts the Property in its condition as of the execution of the Lease, subject to all recorded matters, laws, ordinances, and governmental regulations and orders. Except as provided herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Property or the suitability of the Property for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition of the Property and is not relying on any representations of Landlord or any Broker with respect thereto. If Landlord or Landlord's Broker has provided a Property Information Sheet or other Disclosure Statement regarding the Property, a copy is attached as an exhibit to the Lease.

Section 6.02. Exemption of Landlord from Liability. Landlord shall not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Property, whether such damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or rain; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) any act or omission of any other tenant to the Project. Landlord shall not be liable for any such damage or injury even though the cause of or the means of repairing such damage or injury are not accessible to tenant. The Provisions of the Section 6.02 shall not, however, exempt Landlord from liability for Landlord's gross negligence or willful misconduct.

Section 6.03. Landlord's Obligations.

(a) Except as provided in Article Seven (Damage or Destruction) and Article Eight (Condemnation), Landlord shall keep the following in good order, condition and repair; the foundations, exterior walls and roof of the Property (including painting the exterior surface of the exterior walls of the Property not more often than once every five (5) years, if necessary) and all components of electrical, mechanical, plumbing, heating and air conditioning systems and facilities located on the Property which are concealed or used in common by tenants of the Project. However, Landlord shall not be obligated to maintain or repair windows, doors, plate glass or the interior surfaces of exterior walls. Landlord shall make repairs under this Section 6.03 within a reasonable time after receipt of written notice from Tenant of the need for such repairs.

(b) Tenant shall pay or reimburse Landlord for all costs Landlord incurs under Paragraph 6.03 (a) above as Common Area costs as provided for in Section 4.05 of the Lease. Tenant waives the benefit of any statute

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in effect now or in the future which might give Tenant the right to make repairs at Landlord's expense or to terminate this Lease due to Landlord's failure to keep the Property in good order, condition and repair.

Section 6.04. Tenant's Obligations.

(a) Except as provided in Section 6.03, Article Seven (Damage or Destruction) and Article Eight (Condemnation), Tenant shall keep all portions of the Property (including structural, non-structural, interior, system and equipment) in good order, condition and repair (including interior repainting and refinishing, as needed). If any portion of the Property or any system or equipment in the Property which Tenant is obligated to repair cannot be fully repaired or restored, Tenant shall promptly replace such portion of the Property or system or equipment in the Property, regardless of whether the benefit of such replacement extends beyond the Lease Term; but if the benefit or useful life of such replacement extends beyond the Lease Term (as such term may be extended by exercise of any options), the useful life of such replacement shall be prorated over the remaining portion of the Lease Term (as extended), and Tenant shall be liable only for that portion of the cost which is applicable to the Lease Term (as extended). Tenant shall maintain a preventive maintenance contract providing for the regular inspection and maintenance of the heating and air conditioning system by a licensed heating and air conditioning contractor, unless Landlord maintains such equipment under Section 6.03 above. If any part of the Property or the Project is damaged by any act or omission of Tenant, Tenant shall pay Landlord the cost of repairing or replacing such damaged property, whether or not Landlord would otherwise be obligated to pay the cost of maintaining or repairing such property. It is the intention of Landlord and Tenant that at all times Tenant shall maintain the portions of the Property which Tenant is obligated to maintain in an attractive, first-class and fully operative condition.

(b) Tenant shall fulfill all of Tenant's obligations under this Section 6.04 at Tenant's sole expense. If Tenant fails to maintain, repair or replace the Property as required by this Section 6.04, Landlord may, upon ten (10) days' prior notice to Tenant (except that no notice shall be required in the case of an emergency), enter the Property and perform such maintenance or repair (including replacement, as needed) on behalf of Tenant. In such case, Tenant shall reimburse Landlord for all costs incurred in performing such maintenance or repair immediately upon demand.

Section 6.05. Alterations, Additions, and Improvements.

(a) Tenant shall not make any alterations, additions, or improvements to the Property without Landlord's prior written consent, except for non-structural alterations which do not exceed Ten Thousand Dollars (\$10,000) in cost cumulatively over the Lease Term and which are not visible from the outside of any building of which the Property is part. Landlord may require Tenant to provide demolition and/or lien and completion bonds if form and amount satisfactory to Landlord. Tenant shall promptly remove and alterations, additions, or improvements constructed in violation of this Paragraph 6.05 (a) upon Landlord's written request. All alterations, additions, and improvements shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord. Upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials.

(b) Tenant shall pay when due all claims for labor and material furnished to the Property. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work in the property, regardless of whether Landlord's consent to such work is required. Landlord may elect to record and post notices of non-responsibility on the Property.

Section 6.06. Condition upon Termination. Upon the termination of the Lease, Tenant shall surrender the Property to Landlord, broom clean and in the same condition as received except for ordinary wear and tear which Tenant was not otherwise obligated to remedy under any provision of this Lease. However, Tenant shall not be obligated to repair any damage which Landlord is required to repair under Article Seven (Damage or Destruction). In addition, Landlord may require Tenant to remove any alterations, additions or improvements (whether or not made with Landlord's consent) prior to the expiration of the Lease and to restore the Property to its prior condition, all at Tenant's expense. All alterations, additions and improvements which Landlord has not required Tenant to remove

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shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of the Lease, except that Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Property. Tenant shall repair, at Tenant's expense, any damage to the Property caused by the removal of any such machinery or equipment. In no event, however, shall Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property) without Landlord's prior written consent: Any power wiring or power panels; lighting or lighting fixtures; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating or air conditioning equipment; fencing or security gates; or other similar building operating equipment and decorations.

ARTICLE SEVEN: DAMAGE OR DESTRUCTION

Section 7.01. Partial Damage to Property.

(a) Tenant shall notify Landlord in writing immediately upon the occurrence of any damage to the Property. If the Property is only partially damaged (i.e., less than fifty percent (50%) of the Property is untenantable as a result of such damage or less than fifty percent (50%) of Tenant's operations are materially impaired) and if the proceeds received by Landlord from the insurance policies described in Paragraph 4.04 (b) are sufficient to pay for the necessary repairs, this Lease shall remain in effect and Landlord shall repair the damage as soon as reasonably possible. Landlord may elect (but is not required) to repair any damage to Tenant's fixtures, equipment, or improvements.

(b) If the insurance proceeds received by Landlord are not sufficient to pay the entire cost of repair, or if the cause of the damage is not covered by the Insurance policies which Landlord maintains under Paragraph 4.04 (b), Landlord may elect either to (i) repair the damage as soon as reasonably possible, in which case this Lease shall remain in full force and effect, or (ii) terminate this Lease as of the date the damage occurred. Landlord shall notify Tenant within thirty (30) days after receipt of notice of the occurrence of the damage whether Landlord elects to repair the damage or terminate the Lease. If Landlord elects to repair the damage, Tenant shall pay Landlord the "deductible amount" (if any) under Landlord's insurance policies and, if the damage was due to an act or omission of Tenant, or Tenant's employees, agents, contractors or invitees, the difference between the actual cost of repair and any insurance proceeds received by Landlord. If Landlord elects to terminate the Lease, Tenant may elect continue this Lease if full force and effect, in which case Tenant shall repair any damage to the Property and any building in which the Property is located. Tenant shall pay the cost of such repairs, except that upon satisfactory completion of such repairs, Landlord shall deliver to Tenant any insurance proceeds received by Landlord for the damage repaired by Tenant. Tenant shall give Landlord written notice of such election within ten (10) days after receiving Landlord's termination notice.

(c) If the damage to the Property occurs during the last six (6) months of the Lease Term and such damage will require more than thirty (30) days to repair, either Landlord or Tenant may elect to terminate this Lease as of the date the damage occurred, regardless of the sufficiency of any Insurance proceeds. The party electing to terminate this Lease shall give written notification to the other party of such election within thirty (30) days after Tenant's notice to Landlord of the occurrence of the damage.

Section 7.02. Substantial or Total Destruction. If the Property is substantially or totally destroyed by any cause whatsoever (i.e., the damage to the Property is greater than partial damage as described in Section 7.01), and regardless of whether Landlord receives any insurance proceeds, this Lease shall terminate as of the date the destruction occurred. Notwithstanding the preceding sentence, if the Property can be rebuilt within six (6) months after the date of destruction, Landlord may elect to rebuild the Property at Landlord's own expense, in which case this Lease shall remain in full force and effect. Landlord

shall notify Tenant of such election within thirty (30) days after Tenant's notice of the Occurrence of total or substantial destruction. If Landlord so elects, Landlord shall rebuild the Property at Landlord's sole expense, except that if the destruction was caused by an act or omission of Tenant, Tenant shall pay Landlord the difference between the actual cost of rebuilding and any insurance proceeds received by Landlord.

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Section 7.03. Temporary Reduction of Rent. If the Property is destroyed or damaged and Landlord or Tenant repairs or restores the Property pursuant to the provisions of this Article Seven, any rent payable during the period of such damage, repair and/or restoration shall be reduced according to the degree, if any, to which Tenant's use of the Property is impaired. However, the reduction shall not exceed the sum of one year's payment of Base Rent, insurance premiums and real property taxes. Except for such possible reduction in Base Rent, insurance premiums and real property taxes, Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, destruction, repair, or restoration of or to the Property.

Section 7.04. Waiver. Tenant waives the protecting of any statute, code or judicial decision which grants a tenant the right to terminate lease in the event of the substantial or total destruction of the leased property. Tenant agrees that the provisions of Section 7.02 above shall govern the rights and obligations of Landlord and Tenant in the event of any substantial or total destruction to the Property.

ARTICLE EIGHT: CONDEMNATION

If all or any portion of the Property is taken under the power of eminent domain or sold under the threat of that power (all of which are called "Condemnation"), this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If more than twenty percent (20%) of the floor area of the building in which the Property is located, or which is located on the Property, is taken, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If neither Landlord nor Tenant terminates this lease, this Lease shall remain in effect as to the portion of the Property not taken, except that the Base Rent and Additional Rent shall be reduced in proportion to the reduction in the floor area of the Property. Any Condemnation award or payment shall be distributed in the following order: (a) first, to any ground lessor, mortgagee or beneficiary under a deed of trust encumbering the Property, the amount of its interest in the Property; (b) second, to Tenant, only the amount of any award specifically designated for loss of or damage to Tenant's trade fixtures or removable personal property; and (c) third, to Landlord, the remainder of such award, whether as compensation for reduction in the value of the leasehold, the taking of the fee, or otherwise. If this Lease is not terminated, Landlord shall repair any damage to the Property caused by the Condemnation, except that Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority. If the severance damages received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to either terminate this Lease or make such repair at Landlord's expense.

ARTICLE NINE: ASSIGNMENT AND SUBLETTING

Section 9.01. Landlord's consent required. No portion of the Property or of Tenant's interest in this Lease may be acquired by any other person or entity, whether by sale, assignment, mortgage, sublease, transfer, operation of law, or act of Tenant, without Landlord's prior written consent, except as provided in Section 9.02 below. Landlord has the right to grant or withhold its consent as provided in Section 9.05 below. Any attempted transfer without consent shall be void and shall constitute a non-curable breach of this Lease. If Tenant is a partnership, any cumulative transfer of more than twenty percent (20%) of the partnership interests shall require Landlord's consent. If Tenant is a corporation, any change in the ownership of a controlling interest of the voting stock of the corporation shall require Landlord's consent.

Section 9.02. Tenant Affiliate. Tenant may assign this Lease or sublease the Property, without Landlord's consent, to any corporation which controls, is controlled by or is under common control with Tenant, or to any

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corporation resulting from the merger of or consolidation with Tenant (Tenant's Affiliate"). In such case, any Tenant's Affiliate shall assume in writing all of Tenant's obligations under this Lease.

Section 9.03. No Release of Tenant. No transfer permitted by this Article Nine, whether with or without Landlord's consent, shall release Tenant or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any provision of this Article Nine. Consent to one transfer is not consent to any subsequent transfer. If Tenant's transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee. Landlord may consent to

subsequent assignments or modifications of this Lease by Tenant's transferee, without notifying Tenant or obtaining its consent. Such action shall not relieve Tenant's liability under this Lease.

Section 9.04. Offer Terminate. If Tenant desires to assign the Lease or sublease the Property, Tenant shall have the right to offer, in writing, to terminate the Lease as of a date specified in the offer. If Landlord Elects in writing to accept the offer to terminate within twenty (20) days after notice of the offer, the Lease shall terminate as of the date specified and all the terms and provisions of the Lease governing termination shall apply. If Landlord does not so elect, the Lease shall continue in effect until otherwise terminated and the provisions of Section 9.05 with respect to any proposed transfer shall continue to apply.

Section 9.05. Landlord's Consent.

(a) Tenant's request for consent to any transfer described in Section 9.01 shall set forth in writing the details of the proposed transfer, including the name, business and financial condition of the prospective transferee, financial details of the proposed transfer (e.g., the term of and the rent and security deposit payable under any proposed assignment or sublease), and any other information Landlord deems relevant. Landlord shall have the right to withhold consent, if reasonable, or to grant consent, based on the following factors: (i) the business of the proposed assignee or subtenant and the proposed use the Property; (ii) the net worth and financial reputation of the proposed assignee or subtenant; (iii) Tenant's compliance with all of its obligations under the Lease; and (iv) such other factors as Landlord may reasonably deem relevant. If Landlord objects to a proposed assignment solely because of the net worth and/or financial reputation of the proposed assignee, Tenant may nonetheless sublease (but not assign), all or a portion of the Property to the proposed transferee, but only on the other terms of the proposed transfer.

(b) If Tenant assigns or subleases, the following shall apply:

(i) Tenant shall pay to Landlord as Additional Rent under the Lease the Landlord's Share (stated in Section 1.13) of Profit (defined below) on such transaction as and when received by Tenant, unless Landlord gives written notice to Tenant and the assignee or subtenant that Landlord's Share shall be paid by the assignee or subtenant to Landlord directly. The "Profit" means (A) all amounts paid to Tenant for such assignments or sublease, including "key" money, monthly rent in excess of the monthly rent payable under the Lease, and all fees and other consideration paid for the assignment or sublease, including fees under any collateral agreements, less- (B) costs and expenses directly incurred by Tenant in connection with the execution and performance of such assignment or sublease for real estate broker's commissions and costs of renovation or construction of tenant improvements required under such assignment or sublease. Tenant is entitled to recover such costs and expenses before Tenant is obligated to pay the Landlord's Share to Landlord. The Profit in the case of a sublease of less than all the Property is the rent allocable to the subleased space as a percentage on a square footage basis.

(ii) Tenant shall provide Landlord a written statement certifying all amounts to be paid from any assignment or sublease of the Property within thirty (30) days after the transaction documentation is signed, and Landlord may inspect Tenant's books and records to verify the accuracy of such statement. On written request, Tenant shall promptly furnish to Landlord copies of all the transaction documentation, all of which shall be certified by Tenant to be complete, true and correct. Landlord's receipt of Landlord's Share shall no to consent to any further assignment or subletting. The breach of Tenant's obligation under this Paragraph 9.05 (b) shall be a material default of the Lease.

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ARTICLE TEN: DEFAULTS; REMEDIES

Section 10.01. Covenants and Conditions. Tenant's performance of each of Tenant's obligations under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Property is conditioned upon such performance. Time is of the essence in the performance of all covenants and conditions.

Section 10.02. Defaults. Tenant shall be in material default under this Lease:

(a) If Tenant abandons the Property or if Tenant's vacation of the Property results in the cancellation of any insurance described in Section 4.04.

(b) If Tenant fails to pay rent or any other charge when due.

(c) If Tenant fails to perform any of Tenant's non-monetary obligations under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more than thirty (30) days are required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the thirty (30)-day period and thereafter diligently pursues its completion. However, Landlord shall not be required to give such notice if Tenant's failure to perform constitutes a non-curable breach of this Lease. The notice required by this Paragraph is intended to satisfy and all notice requirements imposed by law on Landlord and is not in addition to any such requirement.

(d) (i) If Tenant makes a general assignment or general arrangement for the benefit of creditors; (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease is subjected to attachment, execution

or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph) is not default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord shall receive, as Additional Rent, the excess, if any, of the rent (or other consideration) paid in connection with such assignment or sublease over the rent payable by Tenant under this Lease.

(e) If any guarantor of the Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant's obligations under the Lease. Unless otherwise expressly provided, no guaranty of the Lease is revocable.

Section 10.03. Remedies. On the occurrence of any material default by Tenant, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy, which Landlord may have:

(a) Terminate Tenant's right to possession of the Property by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Property to Landlord. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including (i) the worth at the time of the award of the unpaid Base Rent, Additional Rent and other charges which Landlord had earned at the time of the termination; (ii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other Charges which Landlord would have earned after termination until the time of the award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Tenant would have paid for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would by likely to result there from, including, but not limited to, any costs or expenses Landlord incurs in maintaining or preserving the Property after such default, the cost of recovering possession of the Property, expenses of reletting, including necessary renovations or

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alterations of the Property, Landlord's reasonable attorneys' fees incurred in connection therewith, and any real estate commission paid or payable. As used in subparts (i) and (ii) above, the "worth at the time of the award:" is computed by allowing interest on unpaid amounts at the rate of fifteen percent (15%) per annum, or such lesser amount as may then be the maximum lawful rate. As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%). If Tenant has abandoned the Property, Landlord shall have the option of (i) retaking possession of the Property and Recovering from Tenant the amount specified in this Paragraph 10.03 (a), or (ii) proceeding under Paragraph 10.03 (b).

(b) Maintain Tenant's right to possessing, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Property. Inc such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due.

(a) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Property is located.

Section 10.04. Repayment of "Free" Rent. If this Lease provides for a postponement of any monthly rental payments, a period of "free" rent or other rent concession, such postponed rent or "free" rent is called the "Abated Rent". Tenant shall be credited with having paid all of the Abated Rent on the expiration of the Lease Term only if Tenant has fully, faithfully, and punctually performed all of Tenant's obligations hereunder, including the payment of all rent (other than the Abated Rent) and all other monetary obligations and the surrender of the Property in the physical condition required by this Lease. Tenant acknowledges that its right to receive credit for the Abated Rent is absolutely conditioned upon Tenant's full, faithful and punctual performance of its obligations under this Lease. If Tenant defaults and does not cure within any applicable grace period, the Abated Rent shall immediately become due and payable in full and this Lease shall be enforced as if there were no such rent abatement or other rent concession. In such case Abated Rent shall be calculated based on the full initial rent payable under this Lease.

Section 10.05. Automatic Termination. Notwithstanding any other term or provision hereof to the contrary, the Lease shall terminate on the occurrence of any act which affirms the Landlord's intention to terminate the Lease as provided in Section 10.03 hereof, in the filling of an unlawful detainer action against Tenant. On such termination, Landlord's damages for default shall include all costs and fees, including reasonable attorneys' fees that Landlord incurs in connection with the filling, commencement, pursuing and/or defending of any action in any bankruptcy court or other court with respect to the Lease; the obtaining of relief from any stat in bankruptcy restraining any action to evict Tenant; or the pursuing of any action with respect to Landlord's right to possession of the Property. All such damages suffered (apart from Base Rent and other rent payable hereunder) shall constitute pecuniary damages which must be reimbursed to Landlord prior to assumption of the Lease by Tennant or any successor to Tenant in any bankruptcy or other proceeding.

Section 10.06. Cumulative Remedies. Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

ARTICLE ELEVEN: PROTECTION OF LENDERS

Section 11.01. Subordination. Landlord shall have the right to subordinate this Lease to any ground lease, deed of trust or mortgage encumbering the Property, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Tenant shall cooperate with Landlord and any lender that is acquiring a security interest in the Property or the Lease. Tenant shall execute such further documents and assurances as such lender may require, provided that Tenant's obligations under this Lease shall not be increased in any material way (the performance of ministerial acts shall not be deemed material), and Tenant shall not be deprived of its rights under this Lease. Tenant's right to quiet

possession of the Property during the Lease Term shall not be disturbed if Tenant pays the rent and perform all of Tenant's obligations under this Lease and is not otherwise in default. If any ground lessor, beneficiary or mortgage elects to have this

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Lease prior to the lien of its ground lease, deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of said ground lease, deed of trust or mortgage or the date of recording thereof.

Section 11.02. Attornment. If Landlord's interest in the Property is acquired by any ground lessor, beneficiary under a deed of trust, mortgage, or purchaser at a foreclosure sale, Tenant shall attorn to the transferee of or successor to Landlord's interest in the Property and recognize such transferee or successor as Landlord under this Lease. Tenant waives the protection of any statute or rule of law that gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Property upon the transfer of Landlord's interest.

Section 11.03. Signing of Documents. Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any such attornment or subordination or agreement to do so. If Tenant fails to do so within ten (10) days after written request, Tenant hereby makes, constitutes and irrevocably appoints Landlord, or any transferee or successor of Landlord, the attorney-in-fact of Tenant to execute and deliver any such instrument or document.

Section 11.04. Estoppel Certificates.

(a) Upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been canceled or terminated; (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (iv) that Landlord is not in default under this Lease (or, if Landlord is claimed to be in default, stating why); and (v) such other representations or information with respect to Tenant or the Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Property may require. Tenant shall deliver such statement to Landlord within ten (10) days after Landlord's request. Landlord may give any such statement by Tenant to any prospective purchaser or encumbrancer of the Property. Such purchaser or encumbrancer may rely conclusively upon such statements true and correct.

(b) If Tenant does not deliver such statement to Landlord within such ten (10)-day period, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been canceled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's Base Rent or other charges have been paid in advance; and (iv) that Landlord is not in default under the Lease. In such event, Tenant shall be stopped from denying the truth of such facts.

Section 11.05. Tenant's Financial Condition. Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord such financial statements as Landlord reasonably requires verifying the Net worth of Tenant or any assignee, subtenant, or guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by such lender to facilitate the financing or refinancing of the Property. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease.

ARTICLE TWELVE: LEGAL COSTS

Section 12.01. Legal Proceedings. If Tenant or Landlord shall be in breach or default under this Lease, such party (the "Defaulting Party") shall reimburse the other party (the "Nondefaulting Party") upon demand for any costs or expenses that the Nondefaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. The losing party in such action

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shall pay such attorneys' fees and costs. Tenant shall also indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action (a) instituted by Tenant against any third party, or by any third party against Tenant, or by or against any person holding any interest under or using the Property by license of or agreement with Tenant; (b) for foreclosure

of any lien for labor or material furnished to or for Tenant or such other person; (c) otherwise arising out of or resulting from any act or material furnished to or for Tenant or such other person; or (d) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election. Tenant shall reimburse Landlord for any legal fees or costs Landlord incurs in any such claim or action.

Section 12.02. Landlord's Consent. Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with Tenant's request for Landlord's consent under Article Nine (Assignment and Subletting), or in connection with any other act which Tenant proposes to do and which requires Landlord's consent.

ARTICLE THIRTEEN: MISCELLANEOUS PROVISIONS

Section 13.01. Non-Discrimination. Tenant promises, and it is a condition to the continuance of this Lease, that there will be no discrimination against, or segregation of, any person or group of persons on the basis of race, color, sex, creed, national origin or ancestry in the leasing, subleasing, transferring, occupancy, tenure or use of the Property or any portion thereof.

Section 13.02. Landlord's Liability; Certain Duties.

(a) As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Property or Project or the leasehold estate under a ground lease of the Property or Project at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest is relieved of all liability with respect to the obligations of Landlord under this Lease to be performed on or after the date of transfer. However, each Landlord shall deliver to its transferee all funds that Tenant previously paid if such funds have not yet been applied under the terms of this lease.

(b) Tenant shall give written notice of any failure by Landlord to perform any of its obligations under this Lease to Landlord and to any ground lessor, mortgagee or beneficiary under any deed of trust encumbering the Property whose name and address have been furnished to Tenant in writing. Landlord shall not be in default under this Lease unless Landlord (or such ground lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is commenced within such thirty (30)-day period and thereafter diligently pursued to completion.

(c) Notwithstanding any term or provision herein to the contrary, the liability of Landlord for the performance of its duties and obligations under this Lease is limited to Landlord's interest in the Property and the Project, and neither the Landlord nor its partners, shareholders, officers or other principals shall have any personal liability under this Lease.

Section 13.04. Interpretation. The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents' employees, contractors, invitees, successors or others using the Property with Tenant's expressed or implied permission.

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Section 13.05. Incorporation of Prior Agreements; Modifications. This Lease is the only agreement between the parties pertaining to the lease of the Property and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

Section 13.06. Notices. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered to the address specified in Section 1.03 above. Notices to Landlord shall be delivered to the address specified in Section 1.02 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.

Section 13.07. Waivers. All waivers must be in writing and signed by the waiving party. Landlord's failure to enforce any provision of this Lease or its acceptance of rent shall not be a waiver and shall not prevent Landlord from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement.

Section 13.08. No Recordation. Tenant shall not record this Lease without prior written consent from Landlord. However, either Landlord or Tenant may require that a "Short Form" memorandum of this Lease executed by both parties be recorded. The party requiring such recording shall pay all transfer taxes and recording fees.

Section 13.09. Binding Effect; Choice of Law. This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant's successor unless the rights of interests of Tenant's successor are acquired in accordance with the terms of this Lease. The laws of the state in which the Property is located shall govern this Lease.

Section 13.10. Corporate Authority; Partnership Authority. If Tenant is a corporation, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant

shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general partner of the partnership, that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership or certificate of limited partnership.

Section 13.11. Joint and Several Liability. All parties signing this Lease as Tenant shall be jointly and severally liable for all obligations of Tenant.

Section 13.12. Force Majeure. If Landlord cannot perform any of its obligations due to events beyond Landlord's control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond Landlord's control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions.

Section 13.13. Execution of Lease. This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord's delivery of this Lease to Tenant shall not be deemed to be an offer to lease and shall not be binding upon either

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party until executed and delivered by both parties.

Section 13.14. Survival. All representations and warranties of Landlord and Tenant shall survive the termination of this Lease.

ARTICLE FOURTEEN: BROKERS

Section 14.01. Broker's Fee. When this Lease is signed by and delivered to both Landlord and Tenant, Landlord shall pay a real estate commission to Landlord's Broker named in Section 1.08 above, if any, as provided in the written agreement between Landlord and Landlord's Broker, or the sum stated in Section 1.09 above for services rendered to Landlord by Landlord's Broker in this transaction. Landlord shall pay Landlord's Broker a commission if Tenant exercises any option to extend the Lease Term or to buy the Property, or any similar option or right which Landlord may grant to Tenant, or if Landlord's Broker is the procuring cause of any other lease or sale entered into between Landlord and Tenant covering the Property. Such commission shall be the amount set forth in Landlord's Broker's commission schedule in effect as of the execution of this Lease. If a Tenant's Broker is named in Section 1.08 above, Landlord's Broker shall pay an appropriate portion of its commission to Tenant's Broker if so provided in any agreement between Landlord's Broker and Tenant's Broker. Nothing contained in this Lease shall impose any obligation on Landlord to pay a commission or fee to any party other than Landlord's Broker

Section 14.02. Protection of Brokers. If Landlord sells the Property, or assigns Landlord's interest in this Lease, the buyer or assignee shall, by accepting such conveyance of the Property or assignment of the Lease, be conclusively deemed to have agreed to make all payments to Landlord's Broker thereafter required of Landlord under this Article Fourteen. Landlord's Broker shall have the right to bring a legal action to enforce or declare rights under this provision. The prevailing party in such action shall be entitled to reasonable attorneys' fees to be paid by the losing party. Such attorneys' fees shall be fixed by the court in such action. This Paragraph is included in this Lease for the benefit of Landlord's Broker.

Section 14.03. Agency Disclosure; No Other Brokers. Landlord and Tenant each warrant that they have dealt with no other real estate broker(s) in connection with this transaction.

ARTICLE FIFTEEN: OPTION TO RENEW

Provided that lessee is not in default in the performance of this Lease, Lessee will have the option to renew the Lease for an additional term of 36 months commencing at the expiration of the initial Lease term. All of the terms and conditions of the Lease will apply during the renewal term, except that the monthly rent will be the then current Market Value for rental rates in the North Las Vegas area for similar properties without consideration for lease inducements offered by Landlord. In no event shall the rental rate for the renewal period be less than the rate in last month of the preceding term plus Three (3%) percent. In the event the parties cannot agree on the Market Value rental rate then each party shall designate a real estate broker active in the North Las Vegas market and said two designees shall determine the Market Value rental rate.

The option will be exercised by written notice given to Lessor not less than six (6) months prior to the expiration of the initial Lease term. If notice is not given within the time specified, this Option will expire.

ARTICLE SIXTEEN: COMPLIANCE

The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement,

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including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment In Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

ADDITIONAL PROVISIONS MAY BE SET FORTH IN A RIDER OR RIDERS ATTACHED HERETO OR IN THE BLANK SPACE BELOW. IF NO ADDITIONAL PROVISIONS ARE INSERTED, PLEASE DRAW A LINE THROUGH THE SPACE BELOW.

Landlord and Tenant have signed this Lease at the place and on the dates specified adjacent to their signatures below and have initialed all Riders which are attached to or incorporated by reference in this Lease.

Paulus Enterprises LLC
Landlord

Liquidity Services Inc.
Tenant

Wail Paulus
Manager

Jaime Mateus-Tique
President & COO

Date

Date

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**STANDARD FORM
INDUSTRIAL BUILDING LEASE
(MULTI-TENANT)**

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

- 1.1.** Date of Lease:
- 1.2.** Landlord: First Industrial Development Services, Inc.
- 1.3.** Tenant: Liquidity Services, Inc.
- 1.4.** Premises: The Premises are located as shown on the floor plan attached as **Exhibit A-1** and it is agreed are conclusively stipulated to contain 94,407 rentable square feet in the building commonly known as 1399 S Perry Road, Plainfield, Indiana 46168 (the "**Building**").
- 1.5.** Property: The land described on **Exhibit A** and the Building and other improvements situated thereon.
- 1.6.** Lease Term: 5 years 0 months ("**Term**"), commencing August 1, 2006 ("**Commencement Date**") and ending July 31, 2011, subject to **Section 13.1** below, ("**Expiration Date**").
- 1.7.** Permitted Uses: (See **Section 4.1**) general warehouse and office
- 1.8.** Tenant's Guarantor: (if none, so state) None
- 1.9.** Brokers: (See **Section 23**; if none, so state)
(A) Tenant's Broker: CBRE
(B) Landlord's Broker: None
- 1.10.** Security/Damage Deposit: (See **Section 4.4**) \$24,781.84
- 1.11.** Initial Estimated Additional Rent Payable by Tenant: \$0.35 per year
- 1.12.** Tenant's Proportionate Share: 39.04%
- 1.13.** Riders to Lease: The following riders are attached to and made a part of this Lease. (If none, so state) Exhibit A, A-1, B, C, D & E
- 1.14.** Option to Extend: Provided that Tenant is not then in default hereunder, Tenant shall have the option to extend the Term for an additional five (5) year period ("**Option Period**") upon the same terms and conditions hereof, except that the Base Rent (as hereinafter defined) for the Option Period shall be increased (but in no event decreased) to an amount equal to the reasonable fair market rental value for the Premises, as determined by the fair market rental value of similar space in the local market/region in which the Building is located, but in no event shall the monthly Base Rent exceed 115% of the Base Rent payable for the month immediately preceding the Option Period; and further provided that Tenant provides notice of its exercise of such option to Landlord at least one hundred eighty (180) days prior to the expiration of the Term.
- 1.15.** Right of First Refusal: Provided that Tenant is not then in default hereunder and subject to the terms hereof, Tenant shall have a one-time right of first refusal ("**ROFR**") to lease any space or premises within the Building adjacent to the Premises ("Additional Space"), which is or becomes available for rent or lease during the Term. If Landlord receives a written offer to lease the Additional Space (an "**Offer**"), Landlord shall give Tenant notice of such Offer ("**ROFR Notice**"). Tenant shall have three (3) business days to exercise the ROFR by written notice to Landlord. If Tenant timely exercises the ROFR, (a) the Premises shall automatically be amended to include the Additional Space; (b) Tenant's Proportionate Share shall be automatically adjusted accordingly; and (c) the terms and provisions of this Lease shall apply to the Additional Space, except that the Base Rent attributable to the Additional Space shall be equal to the Base Rent identified in the Offer.

2. LEASE OF PREMISES; RENT.

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

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

Lease Period	Annual Base Rent	Monthly Base Rent	Per Square Foot Base Rent
08/01/2006 — 07/31/2011	\$297,382.05	\$24,781.84	\$3.15

Tenant shall also pay Tenant's Proportionate Share (as set forth in **Section 1.12**) of Operating Expenses (as hereinafter defined) and any other amounts owed by Tenant hereunder [collectively, "**Additional Rent**"]. In the event any monthly installment of Base Rent or Additional Rent, or both, is not paid within 10 days of the date when due, a late charge in an amount equal to 5% of the then delinquent installment of Base Rent and/or Additional Rent [the "**Late**"]

Charge”; the Late Charge, Default Interest (as defined in **Section 22.3** below), Base Rent and Additional Rent shall collectively be referred to as **“Rent”**] shall be paid by Tenant to Landlord, c/o _____ or if sent by overnight courier to _____ Attention _____ or such other entity designated as Landlord’s management agent, if any, and if Landlord so appoints such a management agent, the **“Agent”**), or pursuant to such other directions as Landlord shall designate in this Lease or otherwise in writing.

2.3. Covenants Concerning Rental Payments. Tenant shall pay the Rent promptly when due, without notice or demand, and without any abatement, deduction or setoff, except as may otherwise be expressly and specifically provided in this Lease. No payment by Tenant, or receipt or acceptance by Agent or Landlord, of a lesser amount than the correct Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord or satisfaction, and Agent or Landlord may accept such payment without prejudice to its right to recover the balance due or to pursue any other remedy available to Landlord. If the Commencement Date occurs on a day other than the first day of a calendar month, the Rent due for the first calendar month of the Term shall be prorated on a per diem basis (based on a 360 day, 12 month year) and paid to Landlord on the Commencement Date, and the Term will be extended to terminate on the last day of the calendar month in which the Expiration Date stated in **Section 1.6** occurs. Simultaneously with the execution and delivery of this Lease, Tenant shall deposit with Landlord or Agent an amount equal to the sum of (i) the first monthly installment of Base Rent payable under this Lease, as set forth in **Section 2.2** above and (ii) the sum designated as the Initial Estimated Additional Rent as set forth in **Section 1.10** above, in cash. Tenant’s deposit of the foregoing items, together with the amount of the Security deposit specified in **Section 1.10** above shall constitute a condition precedent to the Landlord’s obligations under this Lease, and Tenant’s failure to make such deposit shall constitute an event of default by Tenant under this Lease.

3. OPERATING EXPENSES.

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

3.1.1. Operating Expenses. The term **“Operating Expenses”** shall mean all costs and expenses paid or incurred with respect to the ownership, repair, replacement, restoration, maintenance and operation of the Property, including, without limitation, the following: (i) services provided directly by employees of Landlord or Agent in connection with the operation, maintenance or rendition of other services to or for the Property; (ii) to the extent not separately metered, billed, or furnished, all charges for utilities and services furnished to either or both of the Property and the Premises (including, without limitation, the Common Areas [as hereinafter defined]), together with any taxes on such utilities; (iii) all premiums for casualty, workers’ compensation, liability, boiler, flood and all other types of insurance provided by Landlord and relating to the Property, all third party administrative costs incurred in connection with the procurement and implementation of such insurance policies, and all deductibles paid by Landlord pursuant to insurance policies required to be maintained by Landlord under this Lease; (iv) the cost of all supplies, tools, materials and equipment utilized in the ownership and operation of the Property, and sales and other taxes thereon; (v) amounts charged (including, without limitation, those costs and expenses set forth in **Section 13.2 (i)** below) by any or all of contractors, materialmen and suppliers for services, materials and supplies furnished to Landlord in connection with any or all of the operation, repair and maintenance of any part of the Property (together with a reasonable overhead and administrative fee to Landlord), including, without limitation, the structural elements of the Property and the Common Areas; (vi) management fees to Landlord or Agent or other persons or management entities actually involved in the management and operation of the Property; (vii) any capital improvements made by, or on behalf of, Landlord to the Property that are either or both (a) designed to reduce Operating Expenses and (b) required to keep the Property in compliance with all governmental laws, rules and regulations applicable thereto, from time to time, the cost of which capital improvements shall be reasonably amortized by Landlord over the useful life of the improvement, in accordance with generally accepted accounting principles; (viii) all professional fees incurred in connection with the operation, management and maintenance of the Property; and (ix) Taxes, as hereinafter defined in **Section 3.1.2**. Notwithstanding any other provision herein to the contrary, it is agreed that if the Property is not fully occupied during any calendar year, then an adjustment shall be made in computing the Operating Expenses for such calendar year so that the Operating Expenses are computed as though the Property had been fully occupied during such calendar year. To the extent that Landlord incurs any expenses (such as, by way of illustration only, multi-property service contracts or blanket insurance policies) in respect of both the Property and any other properties owned by Landlord, Landlord may include a fair and equitable apportionment of such expenses in Operating Expenses.

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3.1.2. Taxes. The term **“Taxes,”** as referred to in **Section 3.1.1(ix)** above shall mean (i) all governmental taxes, assessments, fees and charges of every kind or nature (other than Landlord’s income taxes), whether general, special, ordinary or extraordinary, due at any time or from time to time, during the Term and any extensions thereof, in connection with the ownership, leasing, or operation of the Property, or of the personal property and equipment located therein or used in connection therewith; and (ii) any reasonable expenses incurred by Landlord in contesting such taxes or assessments and/or the assessed value of the Property. For purposes hereof, Tenant shall be responsible for any Taxes that are assessed, become a lien, or accrue during any Operating Year, which obligation shall survive the termination or expiration of this Lease.

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

3.2. Payment of Operating Expenses. Tenant shall pay, as Additional Rent and in accordance with the requirements of **Section 3.3**, Tenant’s Proportionate Share of the Operating Expenses as set forth in **Section 3.3**. Additional Rent commences to accrue upon the Commencement Date. The Tenant’s Proportionate Share of Operating Expenses payable hereunder for the Operating Years in which the Term begins and ends shall be prorated to correspond to that portion of said Operating Years occurring within the Term. Tenant’s Proportionate Share of Operating Expenses and any other sums due and payable under this Lease shall be adjusted upon receipt of the actual bills therefor, and the obligations of this **Section 3** shall survive the termination or expiration of the Lease.

3.3. Payment of Additional Rent. Landlord shall have the right to reasonably estimate the Operating Expenses for each Operating Year. Upon Landlord’s or Agent’s notice to Tenant of such estimated amount, Tenant shall pay, on the first day of each month during that Operating Year, an amount (the **“Estimated Additional Rent”**) equal to the estimate of the Tenant’s Proportionate Share of Operating Expenses divided by 12 (or the fractional portion of the Operating Year remaining at the time Landlord delivers its notice of the estimated amounts due from Tenant for that Operating Year). Landlord may during the course of any Operating Year, redetermine the amount of its estimate of Operating Expenses for such Operating Year and adjust the amount of Estimated Additional Rent accordingly, whereupon Tenant shall pay the adjusted Estimated Additional Rent from and after the first day of the month following the month in which Landlord delivers to Tenant written notice of such adjustment of Estimated Additional Rent. If the aggregate amount of Estimated Additional Rent actually paid by Tenant during any Operating Year is less than Tenant’s actual ultimate liability for Operating Expenses for that particular Operating Year, Tenant shall pay the deficiency within 30 days of Landlord’s written demand therefor. If the aggregate amount of Estimated

Additional Rent actually paid by Tenant during a given Operating Year exceeds Tenant's actual liability for such Operating Year, the excess shall be credited against the Estimated Additional Rent next due from Tenant during the immediately subsequent Operating Year, except that in the event that such excess is paid by Tenant during the final Lease Year, then upon the expiration of the Term, Landlord or Agent shall pay Tenant the then-applicable excess promptly after determination thereof. No interest shall be payable to Tenant on account of payments of Estimated Additional Rent, and such payments may be commingled. If there exists any dispute as to (i) the amount of Additional Rent, (ii) whether a particular expense is properly included in Additional Rent or (iii) Landlord's calculation of Additional Rent (each an "Additional Rent Dispute"), the events, errors, acts or omissions giving rise to such Additional Rent Dispute shall not constitute a breach or default by Landlord under this Lease and even if a judgment resolving the Additional Rent Dispute is entered against Landlord, this Lease shall remain in full force and effect and Landlord shall not be liable for any consequential damages resulting from the event, error, act or omission giving rise to such Additional Rent Dispute. Notwithstanding the existence of an Additional Rent Dispute, Tenant shall pay timely the amount of Additional Rent which is in dispute and will continue to make all subsequent payments of Additional Rent as and when required under this Lease, provided that the payment of such disputed amount and other amounts shall be without prejudice to Tenant's position.

3.4 Intentionally Deleted.

3.5 Intentionally Deleted.

4. USE OF PREMISES AND COMMON AREAS; SECURITY DEPOSIT.

4.1. Use of Premises and Property. The Premises shall be used by the Tenant for the purpose(s) set forth in **Section 1.7** above and for no other purpose whatsoever. Tenant shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises or the Property, in any manner that may (a) violate any Certificate of Occupancy for the Premises or the Property; (b) cause, or be liable to cause, injury to, or in any way impair the value or proper utilization of, all or any portion of the Property (including, but not limited to, the structural elements of the Property) or any equipment, facilities or systems therein; (c) constitute a violation of the laws and requirements of any public authority or the requirements of insurance bodies or the rules and regulations of the Property, including any covenant, condition or restriction affecting the Property; (d) exceed the load bearing capacity of the floor of the Premises; (e) impair or tend to impair the character, reputation or appearance of the Property; or (e) unreasonably annoy, inconvenience or disrupt the operations or tenancies of other tenants or users of the Property. On or prior to the date hereof, Tenant has completed and delivered for the benefit of Landlord a "Tenant Operations Inquiry Form" in the form attached hereto as **Exhibit D** describing the nature of Tenant's proposed business operations at the Premises, which form is intended to, and shall be, relied upon by Landlord.

4.2. Use of Common Areas. As used herein, "Common Areas" shall mean all areas within the Property that are available for the common use of tenants of the Property and that are not leased or held for the exclusive use of Tenant or other tenants or licensees, including, but not limited to, parking areas, driveways,

sidewalks, loading areas, access roads, corridors, landscaping and planted areas. Tenant shall have the nonexclusive right to use the Common Areas for the purposes intended, subject to such reasonable rules and regulations as Landlord may uniformly establish from time to time. Tenant shall not interfere with the rights of any or all of Landlord, other tenants or licensees, or any other person entitled to use the Common Areas. Without limitation of the foregoing, Tenant shall not park or store any vehicles or trailers on, or conduct truck loading and unloading activities in, the Common Areas in a manner that unreasonably disturbs, disrupts or prevents the use of the Common Areas by Landlord, other tenants or licensees or other persons entitled to use the Common Areas. Landlord, from time to time, may change any or all of the size, location, nature and use of any of the Common Areas although such changes may result in inconvenience to Tenant, so long as such changes do not materially and adversely affect Tenant's use of the Premises. In addition to the foregoing, Landlord may, at any time, close or suspend access to any Common Areas to perform any acts in the Common Areas as, in Landlord's reasonable judgment, are desirable to improve or maintain either or both of the Premises and the Property, or are required in order to satisfy Landlord's obligations under either or both of **Sections 13.2 and 18**; provided, however, that Landlord shall use reasonable efforts to limit any disruption of Tenant's use and operation of the Premises in connection therewith.

4.3. Signage. Tenant shall not affix any sign of any size or character to any portion of the Property, without prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed. Tenant shall remove all signs of Tenant upon the expiration or earlier termination of this Lease and immediately repair any damage to either or both of the Property and the Premises caused by, or resulting from, such removal.

4.4. Security/Damage Deposit. Simultaneously with the execution and delivery of this Lease, Tenant shall deposit with Landlord or Agent the sum set forth in **Section 1.10** above, in cash (the "Security"), representing security for the performance by Tenant of the covenants and obligations hereunder. The Security shall be held by Landlord or Agent, without interest, in favor of Tenant; provided, however, that no trust relationship shall be deemed created thereby and the Security may be commingled with other assets of Landlord. If Tenant defaults in the performance of any of its covenants hereunder, Landlord or Agent may, without notice to Tenant, apply all or any part of the Security, to the extent required for the payment of any Rent or other sums due from Tenant hereunder, in addition to any other remedies available to Landlord. In the event the Security is so applied, Tenant shall, upon demand, immediately deposit with Landlord or Agent a sum equal to the amount so used. If Tenant fully and faithfully complies with all the covenants and obligations hereunder, the Security (or any balance thereof) shall be returned to Tenant within 30 days after the last to occur of (i) the date the Term expires or terminates or (ii) delivery to Landlord of possession of the Premises. Landlord may deliver the Security to any purchaser of Landlord's interest in the Premises [or any Successor Landlord (defined below), if applicable], and thereupon Landlord and Agent shall be discharged from any further liability with respect to the Security.

4.5. Parking. Tenant shall have the right to use twenty-five (25) dedicated parking spaces, the location of which shall be determined by Landlord in its reasonable direction.

5. CONDITION AND DELIVERY OF PREMISES.

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

Sections 13.2 and 18 and (b) with respect to all (if any) repairs and improvements expressly and specifically described in **Exhibit B** attached hereto (“**Landlord Work Items**”). Landlord agrees to make reasonable efforts to enforce, or cause Agent to enforce, upon Tenant’s request, all manufacturer’s or contractor’s warranties, if any, issued in connection with any of the Landlord Work Items.

5.2. Delay in Commencement. Landlord shall not be liable to Tenant if Landlord does not deliver possession of the Premises to Tenant on the Commencement Date. The obligations of Tenant under the Lease shall not be affected thereby, except that the Commencement Date shall be delayed until Landlord delivers possession of the Premises to Tenant, and the Lease Term shall be extended by a period equal to the number of days of delay in delivery of possession of the Premises to Tenant, plus the number of days necessary to end the Lease Term on the last day of a month.

5.3. Confirmation of Commencement Date. Upon Landlord’s delivery of possession, and as a condition precedent to such delivery, of the Premises to Tenant, Tenant shall deliver to Landlord a Confirmation of Commencement Date in substantially the form attached hereto as **Exhibit E**.

5.4. ACCESS.

5.4.1. Early Access. Landlord shall allow Tenant access to the Premises commencing on July 1, 2006, for the purpose of installing fixtures in the Premises, provided Tenant shall provide Landlord with at least three (3) business days’ prior written notice of the date on which Tenant desires to have access to the Premises (the “**Access Date**”). Any access prior to the Commencement Date shall be subject to all of the terms and conditions of this Lease, except that Tenant shall not be required to pay Base Rent or Additional Rent until the Commencement Date. Among other things, prior to the Access Date, Tenant shall deliver to Landlord evidence reasonably acceptable to Landlord that Tenant is in compliance with the insurance requirements of this Lease. Tenant shall act in good faith to minimize interference with the work being performed by Landlord at the Premises.

5.4.2. Temporary Use. Subject to the terms and conditions hereof, Landlord hereby grants to Tenant a license to the existing office space in the east end of the Building (the “**Existing Office**”). Such use shall be subject to all of the terms and conditions of the Lease, except that Tenant shall not be required to pay any Base Rent or Additional Rent for the Existing Office. The license granted in this **Section 5.4.2** shall commence on the Commencement Date and shall expire upon the completion of the construction by Landlord of the TI Work (as defined in **Exhibit B** attached hereto). Landlord shall reimburse Tenant for all reasonable, out-of-pocket expenses actually incurred by Tenant in connection with moving its business operations from the Existing Office to the New Office (as defined in **Exhibit B** attached hereto).

6. SUBORDINATION; NOTICES TO SUPERIOR LESSORS AND MORTGAGEES; ATTORNMENT.

6.1. Subordination. Provided that Tenant is provided with a subordination, nondisturbance and attornment agreement duly executed by the holder of any mortgage or deed of trust or the landlord pursuant to any ground lease, this Lease shall be subject and subordinate at all times to (a) all ground leases or underlying leases that may now exist or hereafter be executed affecting either or both of the Premises and the Property and (b) any mortgage or deed of trust that may now exist or hereafter be placed upon, and encumber, any or all of (x) the Property; (y) any ground leases or underlying leases for the benefit of the Property; and (z) all or any portion of Landlord’s interest or estate in any of said items. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases that benefit the Property or any such mortgage or deed of trust liens to this Lease. Tenant shall execute and deliver, upon demand by Landlord and in the form reasonably requested by Landlord, any additional documents evidencing the priority of subordination of this Lease with respect to any such ground leases or underlying leases for the benefit of the Property or any such mortgage or deed of trust.

6.2. Estoppel Certificates. Tenant agrees, from time to time and within 10 days after request by Landlord, to deliver to Landlord, or Landlord’s designee, an estoppel certificate stating such matters pertaining to this Lease as may be reasonably requested by Landlord. Failure by Tenant to timely execute and deliver such certificate shall constitute an event of default and an acceptance of the Premises and acknowledgment by Tenant that the statements included therein are true and correct without exception. Landlord and Tenant intend that any statement delivered pursuant to this section may be relied upon by any prospective purchaser or mortgagee of the Property or of any interest therein or any other Landlord designee.

6.3. Transfer for Landlord. In the event of a sale or conveyance by Landlord of the Property, the same shall operate to release Landlord from any future liability for any of the covenants or conditions, express or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to Landlord’s successor in interest with respect thereto and agrees to attorn to such successor.

7. QUIET ENJOYMENT. Subject to the provisions of this Lease, so long as Tenant pays all of the Rent and performs all of its other obligations hereunder, Tenant shall not be disturbed in its possession of the Premises by Landlord, Agent or any other person lawfully claiming through or under Landlord; provided, however, in addition to Landlord’s rights under **Section 16** and elsewhere in this Lease, Landlord and Landlord’s agents, employees, contractors and representatives shall be provided reasonable access to the Premises such that Landlord and Landlord’s agents, employees, contractors and representatives may perform the General Maintenance Services (as hereinafter defined) without undue interruption, delay or hindrance. This covenant shall be construed as a covenant running with the Property and is not a personal covenant of Landlord. Tenant shall not unreasonably interrupt, delay, prevent or hinder the performance of the General Maintenance Services by or on behalf of Landlord. Notwithstanding the foregoing, however, Tenant acknowledges and agrees that Landlord shall have the unfettered and unilateral right to use portions of the Common Areas (inclusive of the roof of the Building) for such purposes and uses as Landlord may desire; provided, however, that in all events and under all circumstances, Landlord’s use of any portion of the Common Areas shall not interfere, in any material respect, with any or all of (a) Tenant’s rights to occupy and use the Common Areas (in the manner and for the purposes contemplated hereunder); (b) Tenant’s right to utilize the vehicular parking areas located on the Common Areas; and (c) Tenant’s right of access, ingress and egress to and from the Common Areas.

8. ASSIGNMENT, SUBLETTING AND MORTGAGING.

8.1. Prohibition. Tenant acknowledges that this Lease and the Rent due under this Lease have been agreed to by Landlord in reliance upon Tenant’s reputation and creditworthiness and upon the continued operation of the Premises by Tenant for the particular use described in **Section 4.1** above; therefore, Tenant shall not, whether voluntarily, or by operation of law, or otherwise: (a) assign or otherwise transfer this Lease; (b) sublet the Premises or any part thereof, or allow the same to be used or occupied by anyone other than Tenant; or (c) mortgage, pledge, encumber, or otherwise hypothecate this Lease or the Premises, or any part thereof, in any manner whatsoever, without in each instance obtaining the prior written consent of Landlord, which consent may be given or withheld in Landlord’s sole discretion. Any purported assignment, mortgage, transfer, pledge or sublease made without the prior written

consent of Landlord shall be absolutely null and void. No assignment of this Lease shall be effective and valid unless and until the assignee executes and delivers to Landlord any and all documentation reasonably required by Landlord in order to evidence assignee's assumption of all obligations of Tenant hereunder. Any consent by Landlord to a particular assignment, sublease or mortgage shall not constitute consent or approval of any subsequent assignment, sublease or mortgage, and Landlord's written approval shall be required in all such instances. No consent by Landlord to any assignment or sublease shall be deemed to release Tenant from its obligations hereunder and Tenant shall remain fully liable for performance of all obligations under this Lease.

8.2. Rights of Landlord. If this Lease is assigned, or if the Premises (or any part thereof) are sublet or used or occupied by anyone other than Tenant, whether or not in violation of this Lease, Landlord or Agent may (without prejudice to, or waiver of its rights), collect Rent from the assignee, subtenant or occupant. Landlord or Agent may apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of this **Section 8**. With respect to the allocable portion of the Premises sublet, in the event that the total rent and any other considerations received under any sublease by Tenant is greater than the total Rent required to be paid, from time to time, under this Lease, Tenant shall pay to Landlord one hundred percent (100%) of such excess as received from any subtenant and such amount shall be deemed a component of the Additional Rent.

8.3. Permitted Transfers. The provisions of **Section 8.1(a)** shall apply to a transfer of a majority (i.e. greater than 50% interest) of the voting stock of Tenant or to any other change in voting control of Tenant (if Tenant is a corporation), or to a transfer of a majority of the general partnership or membership interests in Tenant (if Tenant is a partnership or a limited liability company) or to a change in the managerial control of Tenant, or to any comparable transaction involving any other form of business entity, whether effectuated in one or more transactions, as if such transfer were an assignment of this Lease; but said provisions shall not apply to such a transfer, provided, in any of such events, the successor to Tenant (or any party remaining liable for the obligations of Tenant hereunder): (i) has a tangible net worth at least equal to the tangible net worth of Tenant as of the Commencement Date or (ii) is capable of satisfying Tenant's obligations hereunder, in Landlord's reasonable judgment. Any such permitted transferee shall execute and deliver to Landlord any and all documentation reasonably required by Landlord in order to evidence assignee's assumption of all obligations of Tenant hereunder. Notwithstanding anything to the contrary contained in this **Section 8.3**, in no event may Tenant assign, mortgage, transfer, pledge or sublease this Lease to any entity whatsoever if, at the time of such assignment, mortgage, transfer, pledge or sublease, Tenant is in default under this Lease.

9. COMPLIANCE WITH LAWS.

9.1. Compliance with Laws. Tenant shall, at its sole expense (regardless of the cost thereof), comply with all local, state and federal laws, rules, regulations and requirements now or hereafter in force and all judicial and administrative decisions in connection with the enforcement thereof (collectively, "**Laws**"), pertaining to either or both of the Premises and Tenant's use and occupancy thereof. If any license or permit is required for the conduct of Tenant's business in the Premises, Tenant, at its expense, shall procure such license prior to the Commencement Date, and shall maintain such license or permit in good standing throughout the Term. Tenant shall give prompt notice to Landlord of any written notice it receives of the alleged violation of any Law or requirement of any governmental or administrative authority with respect to either or both of the Premises and the use or occupation thereof. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord is a party thereto or not, that any such Law pertaining to the Premises has been violated, shall be conclusive of that fact as between Landlord and Tenant.

9.2. Hazardous Materials. Tenant agrees and covenants that: (i) Tenant shall, at its own cost, at all times comply (and cause all others to comply) with all laws (federal, state or local) relating to Hazardous Materials, including, but not limited to, all Environmental Laws (defined below), and Tenant shall further, at its own cost, obtain and maintain in full force and effect at all times all permits and other approvals required in connection therewith; (ii) Tenant shall promptly provide Landlord or Agent with complete copies of all communications, permits or agreements with, from or issued by any governmental authority or agency (federal, state or local) or any private entity relating in any way to the presence, release, threat of release, or placement of Hazardous Materials on or in the Premises or any portion of the Property, or the generation, transportation, storage, use, treatment, or disposal at, on, in or from the Premises, of any Hazardous Materials; (iii) Landlord, Agent and their respective agents and employees shall have the right to either or both (x) enter the Premises and (y) conduct appropriate tests for the purposes of ascertaining Tenant's compliance with all applicable laws (including Environmental Laws), rules or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of either or both of the Premises and the Property; and (iv) upon written request by Landlord or Agent, Tenant shall provide Landlord with the results of reasonably appropriate tests of air, water or soil to demonstrate that Tenant complies with all applicable laws, rules or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of either or both of the Premises and the Property. This **Section 9.2** does not authorize the generation, transportation, storage, use, treatment or disposal of any Hazardous Materials at, to, from, on or in the Premises in contravention of this **Section 9**. If, at any time or from time to time during the Term (or any extension thereof), any Hazardous Material (defined below) is generated, created, transported, stored, used, treated or disposed of at, to, from, on or in either or both of the Premises and the Property by, or as a result of any act or omission of, any or all of Tenant and any or all of Tenant's Parties (defined below), Tenant covenants to investigate, clean up and otherwise remediate, at Tenant's sole expense, any release of Hazardous Materials caused, contributed to, or created by any or all of (A) Tenant and (B) any or all of Tenant's officers, directors, members, managers, partners, invitees, agents, employees, contractors or representatives ("**Tenant Parties**") during the Term. Such investigation and remediation shall be performed only after Tenant has obtained Landlord's prior written consent; provided, however, that Tenant shall be entitled to respond immediately to an emergency without first obtaining such consent. All remediation shall be performed in strict compliance with Environmental Laws in accordance with the highest standards of remediation and to the reasonable satisfaction of Landlord. Tenant shall be liable for any and all conditions covered hereby, and for all costs relating thereto, that are caused or created by any or all of Tenant and any or all of Tenant's Parties. Tenant shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Materials in any way connected to the Premises without first obtaining Landlord's written consent (which consent may be given or withheld in Landlord's sole, but reasonable, discretion) and affording Landlord the reasonable opportunity to participate in any such proceedings. As used herein, the term (x) "**Environmental Laws**" shall mean any and all laws pertaining to Hazardous Materials or

that otherwise deal with, or relate to, air or water quality, air emissions, soil or ground conditions or other environmental matters of any kind; and (y) "**Hazardous Materials**" shall mean any waste, material or substance (whether in the form of liquids, solids or gases, and whether or not organic or inorganic

or embedded or airborne) that is or may be deemed to be or include a pesticide, petroleum, asbestos, polychlorinated biphenyl, radioactive material, urea formaldehyde or any other pollutant or contaminant or material or substance that is or may be deemed to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious, or that presents a risk to public health or to the environment, and that is or becomes regulated by any Environmental Law. The undertakings, covenants and obligations imposed on Tenant under this **Section 9.2** shall survive the termination or expiration of this Lease.

9.3. Presumptions. In any case where there is any dispute or controversy regarding the source of any Hazardous Materials, unless it is clearly and indisputably proven that such Hazardous Materials were present in the Premises on or before the Lease Execution Date or thereafter placed therein by (a) Landlord or its employees, agents or contractors, or (b) by any tenant of the Building other than Tenant, or (c) by any other third party not affiliated with Tenant, it shall be conclusively deemed for all purposes of this Lease that such Hazardous Materials were placed in the Premises by Tenant or one of the Tenant Parties.

10. INSURANCE.

10.1. Insurance to be Maintained by Landlord. Landlord shall maintain (a) "all-risk" property insurance policy covering the Property (at its full replacement cost), but excluding Tenant's Property (defined below), and (b) commercial general public liability insurance covering Landlord for claims arising out of liability for bodily injury, death, personal injury, advertising injury and property damage occurring in and about the Property and otherwise resulting from any acts and operations of Landlord, its agents and employees, and (c) rent loss insurance, all of the above with limits that are required by any lender(s) of Landlord, or as are otherwise reasonably determined by Landlord.

10.2. Insurance to be Maintained by Tenant. Tenant shall purchase, at its own expense, and keep in force at all times during this Lease the policies of insurance set forth below in **Sections 10.2.1** and **10.2.2** (collectively, "**Tenant's Policies**"). All Tenant's Policies shall (a) be issued by an insurance company with a Best rating of A-X or better and otherwise reasonably acceptable to Landlord and shall be licensed to do business in the state in which the Property is located; (b) provide that said insurance shall not be canceled or materially modified unless 30 days' prior written notice shall have been given to Landlord; and (c) otherwise be in such form, and include such coverages, as Landlord may reasonably require. All Tenant's Policies (or, at Landlord's option, Certificates of Insurance, in a form reasonably acceptable to Landlord, evidencing said Tenant's Policies), shall be delivered to Landlord by Tenant upon commencement of the Lease and renewals thereof shall be delivered at least 30 days prior to the expiration of each Tenant's Policy. Tenant shall give prompt notice to Landlord and Agent of any bodily injury, death, personal injury, advertising injury or property damage occurring in and about the Property.

10.2.1. General Liability and Auto Insurance. Tenant shall purchase and maintain, throughout the Term, a Tenant's Policy(ies) of (i) commercial general or excess liability insurance, including personal injury and property damage, in the amount of not less than \$2,000,000.00 per occurrence, and \$5,000,000.00 annual general aggregate, per location; (ii) comprehensive automobile liability insurance covering Tenant against any losses arising out of liability for personal injuries or deaths of persons and property damage occurring in or about the Premises in the amount of not less than \$1,000,000, combined single limit. The Tenant's Policies required by this **Section 10.2.1** shall (a) name Landlord, Agent, and any party holding an interest to which this Lease may be subordinated as additional insureds; (b) provide coverage on an occurrence basis; (c) provide coverage for the indemnity obligations of Tenant under this Lease; (d) contain a severability of insured parties provision and/or a cross liability endorsement; (e) be primary, not contributing with, and not in excess of, coverage that Landlord may carry; and (f) provide coverage with no exclusion for a pollution incident arising from a hostile fire.

10.2.2. Property and Workers' Compensation Insurance. Tenant shall purchase and maintain, throughout the Term, a Tenant's Policy or Policies of (i) "all-risk" property insurance covering Tenant's Property (at its full replacement cost), and damage to other property resulting from any acts or operations of Tenant, and (ii) workers' compensation insurance per the applicable state statutes covering all employees of Tenant.

10.3. Waiver of Subrogation. To the extent permitted by law, and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other for (a) damages to property, (b) damages to all or any portion of either or both of the Premises and the Property, (c) claims arising by reason of the foregoing, to the extent such damages and claims are insured against, or required to be insured against, by Landlord or Tenant under this Lease, or (d) claims paid by Tenant's workers' compensation carrier. This provision is intended to waive, fully and for the benefit of each party, any rights and/or claims which might give rise to a right of subrogation by any insurance carrier. The coverage obtained by each party pursuant to this Lease shall include, without limitation, a waiver of subrogation by the carrier which conforms to the provisions of this section.

11. ALTERATIONS.

11.1. Procedural Requirements. Tenant may, from time to time, at its expense, make alterations or improvements in and to the Premises (hereinafter collectively referred to as "**Alterations**"), provided that Tenant first obtains the written consent of Landlord in each instance. Landlord's consent to Alterations shall not be unreasonably withheld, provided that: (a) the Alterations are non-structural and the structural integrity of the Property shall not be affected; (b) the Alterations are to the interior of the Premises; (c) the proper functioning of the

mechanical, electrical, heating, ventilating, air-conditioning ("**HVAC**"), sanitary and other service systems of the Property shall not be affected and the usage of such systems by Tenant shall not be increased; (d) the Alterations have no adverse effect on other leased premises in the Property; (e) Tenant shall have appropriate insurance coverage, reasonably satisfactory to Landlord, regarding the performance and installation of the Alterations; (f) the Alterations shall conform with all other requirements of this Lease; and (g) Tenant shall have provided Landlord with reasonably detailed plans for such Alterations in advance of requesting Landlord's consent. Additionally, before proceeding with any Alterations, Tenant shall (i) at Tenant's expense, obtain all necessary governmental permits and certificates for the commencement and prosecution of Alterations; (ii) submit to Agent, for Landlord's written approval, working drawings, plans and specifications and all permits for the work to be done and Tenant shall not proceed with such Alterations until it has received said approval; and (iii) cause those contractors, materialmen and suppliers engaged to perform the Alterations to deliver to Landlord certificates of insurance (in a form reasonably acceptable to Landlord) evidencing policies of commercial general liability insurance (providing the same coverages as required in **Section 10.2.1** above) and workers' compensation insurance. Such insurance policies shall satisfy the obligations imposed under **Section 10.2.1(a)** through **(d)** and **(f)**. After obtaining Landlord's approval to the Alterations, Tenant shall give Landlord at least five days' prior written notice of the commencement of any Alterations at the Premises, and Landlord may elect to record and post notices of non-responsibility at the Premises. Notwithstanding anything to the contrary contained in this **Section 11.1**, Landlord's consent shall not be required for Alterations satisfying clauses (a) through (f) above and costing

\$10,000.00 or less in any one instance (up to a maximum aggregate of \$25,000.00 over the Term) provided that Tenant notifies Landlord of such Alterations prior to commencing thereon and obtains all approvals and permits necessary for the commencement and prosecution of such Alterations.

11.2. Performance of Alterations. Tenant shall cause the Alterations to be performed in compliance with all applicable permits, laws and requirements of public authorities, and with Landlord's reasonable rules and regulations or any other restrictions that Landlord or Agent may impose on the Alterations. Tenant shall cause the Alterations to be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the standards for the Property established by Landlord or Agent. Tenant shall obtain all necessary permits and certificates for final governmental approval of the Alterations and shall provide Landlord with "as built" plans, copies of all construction contracts, governmental permits and certificates and proof of payment for all labor and materials, including, without limitation, copies of paid invoices and final lien waivers.

11.3. Lien Prohibition. Tenant shall pay when due all claims for labor and material furnished to the Premises in connection with the Alterations. Tenant shall not permit any mechanics or materialmen's liens to attach to the Premises or the Property. Tenant, at its expense, shall procure the satisfaction or discharge of record of all such liens and encumbrances within 30 days after the filing thereof; or, within such thirty (30) day period, Tenant shall provide Landlord, at Tenant's sole expense, with endorsements (satisfactory, both in form and substance, to Landlord and the holder of any mortgage or deed of trust) to the existing title insurance policies of Landlord and the holder of any mortgage or deed of trust, insuring against the existence of, and any attempted enforcement of, such lien or encumbrance. In the event Tenant has not so performed, Landlord may, at its option, pay and discharge such liens and Tenant shall be responsible to reimburse Landlord, on demand and as Additional Rent under this Lease, for all costs and expenses incurred in connection therewith, together with interest thereon at the rate set forth in **Section 22.3**, which expenses shall include reasonable fees of attorneys of Landlord's choosing, and any costs in posting bond to effect discharge or release of the lien as an encumbrance against the Premises or the Property.

12. LANDLORD'S AND TENANT'S PROPERTY.

12.1. Landlord's Property. Subject to **Section 12.2**, all fixtures, machinery, equipment, improvements and appurtenances attached to, or built into, the Premises at the commencement of, or during the Term, whether or not placed there by or at the expense of Tenant, shall become and remain a part of the Premises; shall be deemed the property of Landlord (the "**Landlord's Property**"), without compensation or credit to Tenant; and shall not be removed by Tenant at the Expiration Date unless Landlord requests their removal. Further, any personal property in the Premises on the Commencement Date, movable or otherwise, unless installed and paid for by Tenant, shall be and shall remain the property of Landlord and shall not be removed by Tenant. In no event shall Tenant remove any of the following materials or equipment without Landlord's prior written consent (which consent may be given or withheld in Landlord's sole discretion): any power wiring or power panels, lighting or lighting fixtures, wall or window coverings, carpets or other floor coverings, heaters, air conditioners or any other HVAC equipment, fencing or security gates, or other similar building operating equipment and decorations.

12.2. Tenant's Property. All movable non-structural partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment that are installed in the Premises by, or for the account of, Tenant and without expense to Landlord and that can be removed without structural damage to the Property, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (collectively, the "**Tenant's Property**") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term, provided Tenant repairs or pays the cost of repairing any damage to the Premises or to the Property resulting from the installation and/or removal thereof. At or before the Expiration Date, or the date of any earlier termination, Tenant, at its expense, shall remove from the Premises all of Tenant's Property and any Alterations (except such items thereof as constitute Landlord's Property; or as Landlord shall have expressly permitted, in writing, to remain, which property shall become the property of Landlord), and Tenant shall repair (to Landlord's reasonable satisfaction) any damage to the Premises or the Property resulting from any installation and/or removal of Tenant's Property. Any other items of Tenant's Property that shall remain in the Premises after the Expiration Date, or following an earlier termination date, may, at the option of Landlord, be deemed to have been abandoned, and in such case, such items may be retained by Landlord as its property or be disposed of by Landlord, in Landlord's sole and absolute discretion and without accountability, at Tenant's expense.

Notwithstanding the foregoing, if Tenant is in default under the terms of this Lease, Tenant may remove Tenant's Property from the Premises only upon the express written direction of Landlord.

13. REPAIRS AND MAINTENANCE.

13.1. Tenant Repairs and Maintenance.

13.1.1. Tenant Responsibilities. Throughout the Term, Tenant shall, at its sole cost and expense: (i) both (x) maintain and preserve, in first-class condition (subject to normal and customary wear and tear), and (y) perform any and all repairs and replacements required in order to so maintain and preserve, in first class condition, the Premises and the fixtures and appurtenances therein (including, but not limited to, the Premises' plumbing and HVAC systems, all doors, overhead or otherwise, glass and levelers located in the Premises or otherwise available in the Property for Tenant's sole use; and excluding, however, only those specific components of the Premises for which Landlord is expressly responsible under **Section 13.2**); and (ii) except to the extent Landlord elects to repair and maintain the HVAC systems as part of General Maintenance Services (as hereinafter defined), maintain, in full force and effect, a preventative maintenance and service contract with a reputable service provider for maintenance of the HVAC systems of the Premises (the "**HVAC Maintenance Contract**"). The terms and provisions of any such HVAC Maintenance Contract shall require that the service provider maintain the Premises' HVAC system in accordance with the manufacturer's recommendations and otherwise in accordance with normal, customary and reasonable practices in the geographic area in which the Premises is located and for HVAC systems comparable to the Premises' HVAC system.

In addition to Tenant's obligations under (i) and (ii) above, Tenant shall also be responsible for all costs and expenses incurred to perform any and all repairs and replacements (whether structural or non-structural; interior or exterior; and ordinary or extraordinary), in and to the Premises and the Property and the facilities and systems thereof, if and to the extent that the need for such repairs or replacements arises directly or indirectly from any or all of: (a) the performance or existence of any Alterations, (b) the installation, use or operation of Tenant's Property in the Premises, (c) the moving of Tenant's Property in or out of the Property, and (d) any act, omission, misuse, or neglect of Tenant, any of its subtenants, or others entering into the Premises by act or omission of Tenant or any subtenant. Any repairs or replacements required to be made by Tenant to any or all of the structural components of the Property and the mechanical, electrical, sanitary, HVAC, or other systems of the Property or Premises shall be performed by appropriately licensed

contractors approved by Landlord, which approval shall not be unreasonably withheld. All such repairs or replacements shall be subject to the supervision and control of Landlord, and all repairs and replacements shall be made with materials of equal or better quality than the items being repaired or replaced.

13.1.2. General Maintenance Services. Notwithstanding any of the foregoing, however, from time to time during the Term, Landlord may elect, in its sole discretion and by delivery of written notice to Tenant, to perform on behalf of Tenant, all or some portion of the repairs, maintenance, restoration and replacement in and to the Premises required to be performed by Tenant under this Lease (any such repairs, maintenance, restoration and/or replacement activities that Landlord elects to perform on behalf of Tenant are herein collectively referred to as “**General Maintenance Services**”). Tenant shall reimburse Landlord for the cost or value of all General Maintenance Services provided by Landlord as Additional Rent, simultaneously with the payment of Operating Expenses as part of Estimated Additional Rent (on a monthly estimated basis subject to annual reconciliation, as described in **Section 3.3** above). Unless and until Landlord affirmatively elects to provide General Maintenance Services, nothing contained herein shall be construed to obligate Landlord to perform any General Maintenance Services or, except as otherwise expressly provided in **Section 13.2**, to repair, maintain, restore or replace any portion of the Premises. Landlord may from time to time, in its sole discretion, (x) reduce or expand the scope of the General Maintenance Services that Landlord has elected to provide or (y) revoke its election to provide any or all of the General Maintenance Services, in either event, upon delivery of not less than thirty (30) days’ prior written notice to Tenant.

13.1.3. HVAC Maintenance Contract. If Landlord does not elect to repair and maintain the HVAC systems as part of General Maintenance Services, or revokes such election at any time after having made such election, then, within 30 days following either (a) the Commencement Date or (b) the date on which Landlord advises Tenant that Landlord will no longer provide General Maintenance Services for the HVAC system, whichever date is applicable, Tenant shall procure and deliver to Landlord the HVAC Maintenance Contract. Thereafter, Tenant shall provide to Landlord a copy of renewals or replacements of such HVAC Maintenance Contract no later than 30 days prior to the then-applicable expiry date of the existing HVAC Maintenance Contract. If Tenant fails to timely deliver to Landlord the HVAC Maintenance Contract (or any applicable renewal or replacement thereof), then Landlord shall have the right to contract directly for the periodic maintenance of the HVAC systems in the Premises and to charge the cost thereof back to Tenant as Additional Rent.

13.2. Landlord Repairs. Notwithstanding anything contrary herein, Landlord shall repair, replace and restore the foundation, exterior and interior load-bearing walls, roof structure and roof covering and tuckpointing of the Property; provided, however, that (i) all costs and expenses so incurred by Landlord to repair, replace and restore the above items shall constitute Operating Expenses; provided, however, that with respect to any costs incurred in the replacement context, those costs shall not constitute an Operating Expense except to the extent that such costs so qualify under **Section 3.1.1(vii)**; and (ii) notwithstanding (i) above, in the event that any such repair, replacement or restoration is necessitated by any or all of the matters set forth in **Sections 13.1(a)** through **(d)** above (collectively, “**Tenant Necessitated Repairs**”), then Tenant shall be required to reimburse Landlord for all costs and expenses that Landlord incurs in order to perform such Tenant Necessitated Repairs, and such reimbursement shall be paid, in full, within 10 days after Landlord’s delivery of demand therefor. Landlord agrees

to commence the repairs, replacements or restoration described in this **Section 13.2** within a reasonable period of time after receiving from Tenant written notice of the need for such repairs.

14. UTILITIES. Tenant shall purchase all utility services and shall provide for scavenger, cleaning and extermination services. As provided in **Section 3.1.1.** above, utility charges are included within Operating Expenses; therefore, when and as Tenant pays estimated Operating Expenses, those estimated monthly payments shall include monthly estimated installments of utility charges; nevertheless, at Landlord’s election or with Landlord’s consent, Tenant may pay the utility charges for its Premises directly to the utility or municipality providing such service, and in that event: (a) all charges shall be paid by Tenant before they become delinquent; and (b) utility charges for the Premises shall not be included in estimated Operating Expenses. Tenant shall be solely responsible for the repair and maintenance of any meters necessary in connection with such services. Tenant’s use of electrical energy in the Premises shall not, at any time, exceed the capacity of either or both of (i) any of the electrical conductors and equipment in or otherwise servicing the Premises; and (ii) the HVAC systems of either or both of the Premises and the Property.

15. INVOLUNTARY CESSATION OF SERVICES. Landlord reserves the right, without any liability to Tenant and without affecting Tenant’s covenants and obligations hereunder, to stop service of any or all of the HVAC, electric, sanitary, elevator (if any), and other systems serving the Premises, or to stop any other services required by Landlord under this Lease, whenever and for so long as may be necessary by reason of (i) accidents, emergencies, strikes, or the making of repairs or changes which Landlord or Agent, in good faith, deems necessary or (ii) any other cause beyond Landlord’s reasonable control. Further, it is also understood and agreed that Landlord or Agent shall have no liability or responsibility for a cessation of services to the Premises or to the Property that occurs as a result of causes beyond Landlord’s or Agent’s reasonable control. No such interruption of service shall be deemed an eviction or disturbance of Tenant’s use and possession of the Premises or any part thereof, or render Landlord or Agent liable to Tenant for damages, or relieve Tenant from performance of Tenant’s obligations under this Lease, including, but not limited to, the obligation to pay Rent; provided, however, that if any interruption of services due to the act or omission of Landlord persists for a period in excess of five (5) consecutive business days from the date on which Landlord receives notice from Tenant thereof Tenant shall, as Tenant’s sole remedy, be entitled to a proportionate abatement of Rent to the extent, if any, of any actual loss of use of the Premises by Tenant.

16. LANDLORD’S RIGHTS. Landlord, Agent and their respective agents, employees and representatives shall have the right to enter and/or pass through the Premises at any time or times upon reasonable prior notice (except in the event of emergency): (a) to examine and inspect the Premises and to show them to actual and prospective lenders, prospective purchasers or mortgagees of the Property or providers of capital to Landlord and its affiliates; and (b) to make such repairs, alterations, additions and improvements in or to all or any portion of either or both of the Premises and the Property, or the Property’s facilities and equipment as Landlord is required or desires to make. Landlord and Agent shall be allowed to take all materials into and upon the Premises that may be required in connection with any repairs, alterations, additions or improvements, without any liability to Tenant and without any reduction or modification of Tenant’s covenants and obligations hereunder; provided, however, that Landlord shall use reasonable efforts to limit interference with Tenant’s business operations and Tenant’s occupancy and use of the Premises. During the period of six months prior to the Expiration Date (or at any time, if Tenant has vacated or abandoned the Premises or is otherwise in default under this Lease), Landlord and its agents may exhibit the Premises to prospective tenants. Additionally, Landlord and Agent shall have the following rights with respect to the Premises, exercisable without notice to Tenant, without liability to Tenant, and without being deemed an eviction or disturbance of Tenant’s use or possession of the Premises or giving rise to any claim for setoff or abatement of Rent: (i) to designate and approve, prior to installation, all types of signs; (ii) to have pass keys, access cards, or both, to the Premises; and (iii) to decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time after Tenant vacates or abandons the Premises for more than 30 consecutive days or without notice to Landlord of Tenant’s intention to reoccupy the Premises.

17. NON-LIABILITY AND INDEMNIFICATION.

17.1. Non-Liability. Except as provided in **Section 17.2.2**, none of Landlord, Agent, any other managing agent, or their respective affiliates, owners, partners, directors, officers, agents and employees shall be liable to Tenant for any loss, injury, or damage, to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss. Further, except as provided in **Section 17.2.2**, none of Landlord, Agent, any other managing agent, or their respective affiliates, owners, partners, directors, officers, agents and employees shall be liable to Tenant (a) for any damage caused by other tenants or persons in, upon or about the Property, or caused by operations in construction of any public or quasi-public work; (b) with respect to matters for which Landlord is liable, for consequential or indirect damages purportedly arising out of any loss of use of the Premises or any equipment or facilities therein by Tenant or any person claiming through or under Tenant; (c) any defect in the Premises or the Property; (d) injury or damage to person or property caused by fire, or theft, or resulting from the operation of heating or air conditioning or lighting apparatus, or from falling plaster, or from steam, gas, electricity, water, rain, snow, ice, or dampness, that may leak or flow from any part of the Property, or from the pipes, appliances or plumbing work of the same.

17.2. Indemnification.

17.2.1. Tenant Indemnification. Tenant hereby indemnifies, defends, and holds Landlord, Agent and their respective affiliates, owners, partners, directors, officers, agents and employees (collectively, "**Landlord Indemnified Parties**") harmless from and against any and all Losses (defined below) arising from or in connection with any or all of: (a) the conduct or management of either or both the Property and the Premises or any business therein, or any work or Alterations done, or any condition created by any or all of

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Tenant and Tenant's Parties in or about the Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant is given access to the Premises; (b) any act, omission or negligence of any or all of Tenant and Tenant's Parties; (c) any accident, injury or damage whatsoever (unless caused by Landlord's negligence) occurring in, at or upon either or both of the Property and the Premises and caused by any or all of Tenant and Tenant's Parties; (d) any breach by Tenant of any of its warranties and representations under this Lease; (e) any actions necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under the Bankruptcy Code; (f) any violation or alleged violation by any or all of Tenant and Tenant's Parties of any Law including, without limitation, any Environmental Law; (g) any breach of the provisions of **Section 9** by any or all of Tenant and Tenant's Parties; (h) claims for work or labor performed or materials supplies furnished to or at the request of any or all of Tenant and Tenant's Parties; (i) claims arising from any breach or default on the part of Tenant in the performance of any covenant contained in this Lease; (j) any Hazardous Materials used, exposed, emitted, released, discharged, generated, manufactured, sold, transported, handled, stored, treated, reused, presented, disposed of or recycled in, at, near or under all or any portion of the Premises as a result of the acts or omissions of any or all of Tenant and Tenant's Parties; and (k) the violation of any Environmental Law or any permit, application or consent required in connection with any Environmental Law by any or all of Tenant and Tenant's Parties with respect to the Premises during the Term, excluding, however, any violation of any Environmental Law resulting directly from the acts or omissions of Landlord and Landlord's employees, agents and contractors (collectively, "**Tenant's Indemnified Matters**"). In case any action or proceeding is brought against any or all of Landlord and the Landlord Indemnified Parties by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from any or all of Landlord, Agent or any Superior Party (defined below), shall resist and defend such action or proceeding by counsel reasonably satisfactory to, or selected by, Landlord. The term "**Losses**" shall mean all claims, demands, expenses, actions, judgments, damages (actual, but not consequential), penalties, fines, liabilities, losses of every kind and nature (including, without limitation, property damage, diminution in value of Landlord's interest in the Premises or the Property, damages for the loss or restriction on use of any space or amenity within the Premises or the Property, damages arising from any adverse impact on marketing space in the Property, sums paid in settlement of claims and any costs and expenses associated with injury, illness or death to or of any person), suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing indemnity. The provisions of this **Section 17.2.1** shall survive the expiration or termination of this Lease.

17.2.2. Landlord Indemnification. Landlord hereby indemnifies, defends and holds Tenant harmless from and against any and all Losses actually suffered or incurred by Tenant as the sole and direct result of any negligent, willful or intentional acts or omissions of any or all of Landlord, Agent and any parties within the direct and sole control of either or both of Landlord and Agent. In the event that any action or proceeding is brought against Tenant, and the foregoing indemnity is applicable to such action or proceeding, then Landlord, upon notice from Tenant, shall resist and defend such action or proceeding by counsel reasonably satisfactory to Tenant. Notwithstanding anything to the contrary set forth in this Lease, however, in all events and under all circumstances, the liability of Landlord to Tenant shall be limited to the interest of Landlord in the Property, and Tenant agrees to look solely to Landlord's interest in the Property for the recovery of any judgment or award against Landlord, it being intended that Landlord shall not be personally liable for any judgment or deficiency. The provisions of this **Section 17.2.2** shall survive the expiration or termination of this Lease.

17.3. Force Majeure. The obligations of Tenant hereunder shall not be affected, impaired or excused, and Landlord shall have no liability whatsoever to Tenant, with respect to any act, event or circumstance arising out of (a) Landlord's failure to fulfill, or delay in fulfilling any of its obligations under this Lease by reason of labor dispute, governmental preemption of property in connection with a public emergency or shortages of fuel, supplies, or labor, or any other cause, whether similar or dissimilar, beyond Landlord's reasonable control; or (b) any failure or defect in the supply, quantity or character of utilities furnished to the Premises, or by reason of any requirement, act or omission of any public utility or others serving the Property, beyond Landlord's reasonable control.

18. DAMAGE OR DESTRUCTION.

18.1. Notification and Repair. Tenant shall give prompt notice to Landlord and Agent of (a) any fire or other casualty to the Premises or the Property, and (b) any damage to, or defect in, any part or appurtenance of the Property's sanitary, electrical, HVAC, elevator or other systems located in or passing through the Premises or any part thereof. Tenant shall be liable for any claim, loss, damage, cost or expense resulting from Tenant's failure to give Landlord the foregoing notice in a timely manner. Subject to the provisions of **Section 18.3** below, if either or both of the Property and the Premises is damaged by fire or other insured casualty, Landlord shall repair (or cause Agent to repair) the damage and restore and rebuild the Property and/or the Premises (except for Tenant's Property) with reasonable dispatch after (x) notice to it of the damage or destruction and (y) the adjustment of the insurance proceeds attributable to such damage. Subject to the provisions of **Section 18.3** below, Tenant shall not be entitled to terminate this Lease and no damages, compensation or claim shall be payable by Landlord for purported inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or of the Property pursuant to this Section. Landlord (or Agent, as the case may be) shall use its diligent, good faith efforts to make

such repair or restoration promptly and in such manner as not to unreasonably interfere with Tenant's use and occupancy of the Premises, but Landlord or Agent shall not be required to do such repair or restoration work except during normal business hours of business days.

18.2. Rental Abatement. Provided that any damage to either or both of the Property and the Premises is not caused by, or is not the result of acts or omissions by, any or all of Tenant and Tenant's Parties, if (a) the Property is damaged by fire or other casualty thereby causing the Premises to be inaccessible or (b) the Premises

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are partially damaged by fire or other casualty, the Rent shall be proportionally abated to the extent of any actual loss of use of the Premises by Tenant.

18.3. Total Destruction. If the Property or the Premises shall be totally destroyed by fire or other casualty, or if the Property shall be so damaged by fire or other casualty that (in the reasonable opinion of a reputable contractor or architect designated by Landlord): (i) its repair or restoration requires more than 180 days or (ii) such repair or restoration requires the expenditure of more than 50% of the full insurable value of the Property immediately prior to the casualty or (iii) the damage (x) is less than the amount stated in (ii) above, but more than 10% of the full insurable value of the Property; and (y) occurs during the last two years of Lease Term, Landlord and Tenant shall each have the option to terminate this Lease (by so advising the other, in writing) within 10 days after said contractor or architect delivers written notice of its opinion to Landlord and Tenant, but in all events prior to the commencement of any restoration of the Premises or the Property by Landlord. In such event, the termination shall be effective as of the date upon which either Landlord or Tenant, as the case may be, receives timely written notice from the other terminating this Lease pursuant to the preceding sentence. If neither Landlord nor Tenant timely delivers a termination notice, this Lease shall remain in full force and effect. Notwithstanding the foregoing, if (A) any holder of a mortgage or deed of trust encumbering the Property or landlord pursuant to a ground lease encumbering the Property (collectively, "**Superior Parties**") or other party entitled to the insurance proceeds fails to make such proceeds available to Landlord in an amount sufficient for restoration of the Premises or the Property, or (B) the issuer of any casualty insurance policies on the Property fails to make available to Landlord sufficient proceeds for restoration of the Premises or the Property, then Landlord may, at Landlord's sole option, terminate this Lease by giving Tenant written notice to such effect within 30 days after Landlord receives notice from the Superior Party or insurance company, as the case may be, that such proceeds shall not be made available, in which event the termination of this Lease shall be effective as of the date Tenant receives written notice from Landlord of Landlord's election to terminate this Lease. Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease by virtue of any delays in completion of repairs and restoration. For purposes of this **Section 18.3** only, "**full insurable value**" shall mean replacement cost, less the cost of footings, foundations and other structures below grade.

18.4. Insurance Proceeds. Landlord shall not be obligated to expend in repairs and restoration an amount in excess of the proceeds of insurance recovered with respect to any casualty. Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage, whether carried by Landlord or Tenant, for damage to either or both of the Premises and the Property (excluding any proceeds for damage to Tenant's Property). In the event that either or both of the Premises and the Property are not repaired or reconstructed, all proceeds of insurance (excluding any proceeds covering Tenant's Property), whether carried by Landlord or Tenant, shall be payable to Landlord. Landlord's duty to repair the Premises and the Property (excluding Tenant's Property) is limited to repairing the Premises to the condition existing immediately prior to such fire or other casualty.

19. EMINENT DOMAIN. If the whole, or any substantial (as reasonably determined by Landlord) portion, of the Property is taken or condemned for any public use under any Law or by right of eminent domain, or by private purchase in lieu thereof, and such taking would prevent or materially interfere with the Permitted Use of the Premises, this Lease shall terminate effective when the physical taking of said Premises occurs. If less than a substantial portion of the Property is so taken or condemned, or if the taking or condemnation is temporary (regardless of the portion of the Property affected), this Lease shall not terminate, but the Rent payable hereunder shall be proportionally abated to the extent of any actual loss of use of the Premises by Tenant. Landlord shall be entitled to any and all payment, income, rent or award, or any interest therein whatsoever, which may be paid or made in connection with such a taking or conveyance, and Tenant shall have no claim against Landlord for the value of any unexpired portion of this Lease. Notwithstanding the foregoing, any compensation specifically and independently awarded to Tenant for loss of business or goodwill, or for its personal property, shall be the property of Tenant.

20. SURRENDER AND HOLDOVER. On the last day of the Term, or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Premises, (a) Tenant shall quit and surrender the Premises to Landlord "broom-clean" and in good order, condition and repair (as defined by **Exhibit C**, attached hereto and incorporated herein by reference), except for ordinary wear and tear and such damage or destruction as Landlord is required to repair or restore under this Lease, (b) Tenant shall remove all of Tenant's Property therefrom, except as otherwise expressly provided in this Lease, and (c) Tenant shall surrender to Landlord any and all keys, access cards, computer codes or any other items used to access the Premises. Landlord shall be permitted to inspect the Premises in order to verify compliance with this **Section 20** at any time prior to (x) the Expiration Date, (y) the effective date of any earlier termination of this Lease, or (z) the surrender date otherwise agreed to in writing by Landlord and Tenant. The obligations imposed under the first sentence of this **Section 20** shall survive the termination or expiration of this Lease. If any repairs are required to be performed in, to or at the Premises (pursuant to the first sentence of this **Section 20** or any other applicable provision of this Lease) upon the expiration or termination of the Term, Tenant shall cause such repairs to be performed, to Landlord's reasonable satisfaction, within 10 business days after the date on which this Lease is terminated or expired. If Tenant fails to timely comply with the preceding sentence, then Landlord shall have the right to cause the repairs to be performed, at Tenant's expense, and all such expenses so incurred by Landlord shall bear interest (at the rate specified in the second sentence of **Section 22.3**) from the date the expense is incurred until the date paid, in full, by Tenant (inclusive of interest). If Tenant remains in possession after the Expiration Date hereof or after any earlier termination date of this Lease or of Tenant's right to possession: (i) Tenant shall be deemed a tenant-at-sufferance; (ii) Tenant shall pay 200% of the aggregate of the Base Rent and Additional Rent last prevailing hereunder, and also shall pay all actual damages sustained by Landlord, directly by reason of Tenant's remaining in possession after the expiration or termination of this Lease; (iii) there shall be no renewal or extension of this Lease by operation of law; and (iv) the tenancy-at-will may be terminated by Landlord upon one days' or by Tenant upon 30 days' prior written notice

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given by the terminating party to the non-terminating party. The provisions of this **Section 20** shall not constitute a waiver by Landlord of any re-entry rights of Landlord provided hereunder or by law.

21. EVENTS OF DEFAULT.

21.1. Bankruptcy of Tenant. It shall be a default by Tenant under this Lease if Tenant makes an assignment for the benefit of creditors, or files a voluntary petition under any state or federal bankruptcy or insolvency law, or an involuntary petition alleging an act of bankruptcy or insolvency is filed against Tenant under any state or federal bankruptcy or insolvency law that is not dismissed within 90 days, or whenever a petition is filed by or against (to the extent not dismissed within 90 days) Tenant under the reorganization provisions of the United States Bankruptcy Code or under the provisions of any state or federal law of like import, or whenever a petition shall be filed by Tenant under the arrangement provisions of the United States Bankruptcy Code or similar state or federal law, or whenever a receiver of Tenant, or of, or for, the property of Tenant shall be appointed, or Tenant admits it is insolvent or is not able to pay its debts as they mature.

21.2. Default Provisions. Each of the following shall constitute a default by Tenant under this Lease: (a) if Tenant fails to pay Rent or any other payment when due hereunder within five days after written notice from Landlord of such failure to pay on the due date; provided, however, that if in any consecutive 12 month period, Tenant shall, on two (2) separate occasions, fail to pay any installment of Rent on the date such installment of Rent is due, then, on the third such occasion and on each occasion thereafter on which Tenant shall fail to pay an installment of Rent on the date such installment of Rent is due, Landlord shall be relieved from any obligation to provide notice to Tenant, and Tenant shall then no longer have a five day period in which to cure any such failure; or (b) if Tenant fails, whether by action or inaction, to timely comply with, or satisfy, any or all of the obligations imposed on Tenant under this Lease (other than the obligation to pay Rent) for a period of 30 days after Landlord's delivery to Tenant of written notice of such default under this **Section 21.2(b)**; provided, however, that if the default cannot, by its nature, be cured within such 30 day period, but Tenant commences and diligently pursues a cure of such default promptly within the initial 30 day cure period, then Landlord shall not exercise its remedies under **Section 22** unless such default remains uncured for more than 60 days after the initial delivery of Landlord's original default notice; or (c) Tenant fails to deliver to Landlord prior written notice (accompanied by an additional security deposit equal to two monthly installments of Base Rent) before Tenant vacates or abandons the Premises during the Term.

22. RIGHTS AND REMEDIES.

22.1. Landlord's Cure Rights Upon Default of Tenant. If Tenant defaults in the performance of any of its obligations under this Lease, and fails to cure such default on a timely basis (pursuant to **Section 21.2**), Landlord, without thereby waiving such default, may (but shall not be obligated to) perform the same for the account, and at the expense of, Tenant.

22.2. Landlord's Remedies. In the event of any default by Tenant under this Lease, Landlord, at its option, and after any applicable notice and cure period (as required pursuant to **Section 21.2**), but without additional notice or demand from Landlord, if any, as provided in **Section 21.2** has expired, may, in addition to all other rights and remedies provided in this Lease, or otherwise at law or in equity: (a) terminate this Lease and Tenant's right of possession of the Premises; or (b) terminate Tenant's right of possession of the Premises without terminating this Lease; provided, however, that Landlord may, whether Landlord elects to proceed under Subsections (a) or (b) above, relet the Premises, or any part thereof for the account of Tenant, for such rent and term and upon such terms and conditions as are acceptable to Landlord. In addition, for purposes of any reletting, Landlord is authorized to decorate, repair, alter and improve the Premises to the extent deemed necessary by Landlord, in its sole discretion. In the event of the termination of this Lease by Landlord pursuant to (a) above, Landlord shall be entitled to recover from Tenant (i) all damages and other sums that Landlord is entitled to recover under any provision of this Lease or at law or in equity, including, but not limited to, all fixed dollar amounts of Base Rent and Additional Rent accrued and unpaid for the period up to and including such termination date; (ii) all other additional sums payable by Tenant, or for which Tenant is liable, or in respect of which Tenant has agreed to indemnify Landlord, under any of the provisions of this Lease, that may be then owing and unpaid; (iii) all costs and expenses (including, without limitation, court costs and attorneys' reasonable fees) incurred by Landlord in the enforcement of its rights and remedies under this Lease; and (iv) any damages provable by Landlord as a matter of law including, without limitation, an amount equal to the positive difference, if any, between (x) the discounted present value (at 6% per annum) of the Base Rent provided to be paid for the remainder of the Term (measured from the effective termination date of this Lease) and (y) the fair market rental value of the Leased Premises (determined at the date of termination of this Lease) after deduction (from such fair market rental value) of the projected costs and expenses of reletting the Premises (including the anticipated costs of repairs, alterations, improvements, additions, legal fees and brokerage commissions) as reasonably estimated by Landlord. If Landlord elects to pursue its rights and remedies under Subsection (b) above, and the Premises are relet and a sufficient sum is not realized therefrom, then to satisfy the payment, when due, of Base Rent and Additional Rent reserved under the Lease for any monthly period (after payment of all Landlord's reasonable expenses of reletting), Tenant shall, in Landlord's sole judgment, either (i) pay any such deficiency monthly or (ii) pay such deficiency on an accelerated basis, which accelerated deficiency shall be discounted at a rate of 6% per annum. If Landlord elects to pursue its rights and remedies under Subsection (b) above, and Landlord fails to relet the Premises, then Tenant shall pay to Landlord the sum of (x) the projected costs of Landlord's expenses of reletting (including the anticipated costs of repairs, alterations, improvements, additions, legal fees and brokerage commissions) as reasonably estimated by Landlord and (y) the accelerated amount of Base Rent and Additional Rent due under the Lease for the balance of the Term, discounted to present value at a rate of 6% per annum. Tenant agrees that Landlord may file suit to recover any sums due to Landlord hereunder from time to time and that such suit or recovery of any amount due Landlord hereunder shall not be any defense to any subsequent action brought for any amount not theretofore reduced to

judgment in favor of Landlord. If Landlord elects to pursue its rights and remedies under Subsection (b), then Landlord shall at any time have the further right and remedy to rescind such election and pursue its rights and remedies under Subsection (a). In the event Landlord elects, pursuant to clause (b) of this **Section 22.2**, to terminate Tenant's right of possession only, without terminating this Lease, Landlord may, at Landlord's option, enter into the Premises, remove Tenant's Property, Tenant's signs and other evidences of tenancy, and take and hold possession thereof, as provided in **Section 20** hereof; provided, however, that such entry and possession shall not terminate this Lease or release Tenant, in whole or in part, from Tenant's obligation to pay the Base Rent and Additional Rent reserved hereunder for the full Term, or from any other obligation of Tenant under this Lease. Any and all property that may be removed from the Premises by Landlord pursuant to the authority of the Lease or of law, to which Tenant is or may be entitled, may be handled, removed or stored by Landlord at the sole risk, cost and expense of Tenant, and in no event or circumstance shall Landlord be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. Any such property of Tenant not retaken from storage by Tenant within 30 days after the end of the Term, however terminated, shall be conclusively presumed to have been conveyed by Tenant to Landlord under this Lease as in a bill of sale, without further payment or credit by Landlord to Tenant.

For purposes of determining any recovery of rent or damages by Landlord that depends upon what Landlord could collect by using reasonable efforts to relet the Premises, in the event such determination is required by applicable law notwithstanding the foregoing waiver by Tenant, it is understood and agreed that:

- (a) Landlord may elect to lease other comparable, available space in the Building, if any, before reletting the Premises.
- (b) Landlord may decline to incur out-of-pocket costs to relet the Premises, other than customary leasing commissions and legal fees for the negotiation of a lease with a new tenant.
- (c) Landlord may decline to relet the Premises at rental rates below then prevailing market rental rates, because of the negative impact lower rental rates would have on the value of the Building and because of the uncertainty of actually receiving from Tenant the greater damages that Landlord would suffer from and after reletting at the lower rates.
- (d) Before reletting the Premises to a prospective tenant, Landlord may require the prospective tenant to demonstrate the same financial wherewithal that Landlord would require as a condition to leasing other space in the Building to the prospective tenant.
- (e) Identifying a prospective tenant to relet the Premises, negotiating a new lease with such tenant and making the Premises ready for such tenant will take time, depending upon market conditions when the Premises first become available for reletting, and during such time Landlord cannot be expected to collect any revenue from reletting.
- (f) Listing the Premises with a broker in a manner consistent with parts (a) through (e) above constitutes reasonable efforts on the part of Landlord to relet the Premises.

22.3. Additional Rights of Landlord. Any and all costs, expenses and disbursements, of any kind or nature, incurred by Landlord or Agent in connection with the enforcement of any and all of the terms and provisions of this Lease, including attorneys' reasonable fees (through all appellate proceedings), shall be due and payable (as Additional Rent) upon Landlord's submission of an invoice therefor. All sums advanced by Landlord or Agent on account of Tenant under this Section, or pursuant to any other provision of this Lease, and all Base Rent and Additional Rent, if delinquent or not paid by Tenant and received by Landlord when due hereunder, shall bear interest at a rate equal to the lesser of (i) the maximum lawful rate from time to time permitted under applicable law or (ii) of 5% per annum above the "prime" or "reference" or "base" rate (on a per annum basis) of interest publicly announced as such, from time to time, by Bank One, N.A. or its successor, or such other national banking association as may be designated by Landlord in the event there is no successor thereto ("**Default Interest**"), from the due date thereof until paid, and such interest shall be and constitute Additional Rent and be due and payable upon Landlord's or Agent's submission of an invoice therefor. The various rights, remedies and elections of Landlord reserved, expressed or contained herein are cumulative and no one of them shall be deemed to be exclusive of the others or of such other rights, remedies, options or elections as are now or may hereafter be conferred upon Landlord by law.

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

hereunder), shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord or Agent shall be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and shall be promptly paid to or turned over to Landlord.

23. BROKER. Tenant covenants, warrants and represents that the broker set forth in **Section 1.9(A)** was the only broker to represent Tenant in the negotiation of this Lease ("**Tenant's Broker**"). Landlord covenants, warrants and represents that the broker set forth in **Section 1.9(B)** was the only broker to represent Landlord in the negotiation of this Lease ("**Landlord's Broker**"). Landlord shall be solely responsible for paying the commission of Tenant's Broker. Each party agrees to and hereby does defend, indemnify and hold the other harmless against and from any brokerage commissions or finder's fees or claims therefor by a party claiming to have dealt with the indemnifying party and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing. The foregoing indemnification shall survive the termination or expiration of this Lease.

24. MISCELLANEOUS.

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

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

If to Landlord:

First Industrial Development Services, Inc.
 311 South Wacker Drive, Suite 4000
 Chicago, Illinois 60606
 Attn: Executive Vice President — Operations

With a copy to: First Industrial Realty Trust, Inc.
1425 Sadlier Circle W. Drive
Indianapolis, Indiana 46239
Attn: Asset Manager

With a copy to: Barack Ferrazzano Kirschbaum Perlman & Nagelberg LLC
333 West Wacker Drive
Suite 2700
Chicago, Illinois 60606
Attn: Suzanne Bessette-Smith

If to Tenant: Liquidity Services, Inc
2131 K Street NW, 4th Floor
Washington, DC 20037

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

24.4. Legal Costs. Any party in breach or default under this Lease (the “**Defaulting Party**”) shall reimburse the other party (the “**Nondefaulting Party**”) upon demand for any legal fees and court (or other administrative proceeding) costs or expenses that the Nondefaulting Party incurs in connection with the breach or default, regardless whether suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, in the event of litigation, the court in such action shall award to the party in whose favor a judgment is entered a reasonable sum as attorneys’ fees and costs, which sum shall be paid by the losing party. Tenant shall pay Landlord’s attorneys’ reasonable fees incurred in connection with Tenant’s request for Landlord’s consent under provisions of this Lease governing assignment and subletting, or in connection with any other act which Tenant proposes to do and which requires Landlord’s consent.

24.5. Parties Bound. Except as otherwise expressly provided for in this Lease, this Lease shall be binding upon, and inure to the benefit of, the successors and assignees of the parties hereto. Tenant hereby releases Landlord named herein from any obligations of Landlord for any period subsequent to the conveyance and transfer of Landlord’s ownership interest in the Property. In the event of such conveyance and transfer, Landlord’s obligations shall thereafter be binding upon each transferee (whether Successor Landlord or otherwise). No

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obligation of Landlord shall arise under this Lease until the instrument is signed by, and delivered to, both Landlord and Tenant.

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

24.7. Survival of Obligations. Upon the expiration or other termination of this Lease, neither party shall have any further obligation nor liability to the other except as otherwise expressly provided in this Lease and except for such obligations as, by their nature or under the circumstances, can only be, or by the provisions of this Lease, may be performed after such expiration or other termination.

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

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

24.10. Authority of Tenant. If Tenant is a corporation, partnership, limited liability company, association or any other entity, it shall deliver to Landlord, concurrently with the delivery to Landlord of an executed Lease, certified resolutions of Tenant’s directors or other governing person or body (i) authorizing execution and delivery of this Lease and the performance by Tenant of its obligations hereunder and (ii) certifying the authority of the party executing the Lease as having been duly authorized to do so.

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

24.12. Relocation. Landlord shall have the right to relocate Tenant from the Premises to comparable (as to size, configuration and improvements) alternative space in the Property (“**Replacement Premises**”) upon 90 days’ prior written notice to Tenant. In the event of such a relocation, Landlord shall make reasonable, good faith efforts to coordinate with Tenant a mutually acceptable plan (as to scope and timing) for such relocation, and Landlord shall be responsible for the third party costs incurred to accomplish the physical relocation of Tenant (e.g. movers and telephone company charges). If the Replacement Premises are larger in size than the original Premises, there shall be no adjustment in Tenant’s Base Rent; however, Tenant’s Proportionate

Share shall be appropriately modified, thereby resulting in a potential increase in Tenant's Additional Rent. If, however, the Replacement Premises is a smaller size (as to rentable square feet) than the original Premises, Landlord shall appropriately adjust both Tenant's Base Rent and its Proportionate Share.

24.13. Financial Information. From time to time during the Term, Tenant shall deliver to Landlord information and documentation describing and concerning Tenant's financial condition, and in form and substance reasonably acceptable to Landlord, within ten (10) days following Landlord's written request therefor.

24.14. Confidential Information. Tenant agrees to maintain in strict confidence the economic terms of this Lease and any or all other materials, data and information delivered to or received by any or all of Tenant and Tenants' Parties either prior to or during the Term in connection with the negotiation and execution hereof. The provisions of this **Section 24.14** shall survive the termination of this Lease.

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

24.16. Joint and Several Liability. All parties signing this Lease as Tenant shall be jointly and severally liable for all obligations of Tenant hereunder.

24.17. Riders. All Riders and Exhibits attached hereto and executed (or initialed) both by Landlord and Tenant shall be deemed to be a part hereof and hereby incorporated herein.

24.18. Intentionally Deleted.

24.19. Landlord's Liens. In addition to any statutory lien for Rent in Landlord's favor, Landlord shall have and Tenant hereby grants to Landlord, a continuing security interest for all Rent and other sums of money becoming due from Tenant, upon all of Tenant's Property situated on the Premises, and, notwithstanding anything contrary to this, Lease such Tenant's Property shall not be removed from the Premises without the consent

of Landlord until all arrearages in Rent as well as any and all other sums of money then due to Landlord shall first have been paid and discharged. In the event of a default under this Lease, Landlord shall have, in addition to any other remedies provided herein by law, all rights and remedies under the Uniform Commercial Code, including without limitation, the right to sell the Tenant's Property at public or private sale. Tenant hereby agrees to execute such financing statements and other instruments necessary or desirable in Landlord's discretion to perfect the security interest hereby created. Any statutory lien for Rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereto.

[Signature Page to Follow]

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

LANDLORD:

First Industrial Development Services, Inc., a Maryland corporation

By: _____

Name: _____

Its: _____

TENANT:

Liquidity Services, Inc., a _____

By: _____

Name: Jaime Mateus-Tique

Its: President & Chief Operating Officer

**EXHIBIT A
Property**

A-1

EXHIBIT A-1

B-1

**LEASE EXHIBIT B
Landlord's Work Items**

Landlord, at Landlord's sole cost and expense, shall perform certain tenant improvements to the Premises (the "**TI Work**") pursuant to a final space plan to be prepared by Landlord and mutually agreed upon by the parties. All finishes for the TI Work will be Landlord's standard finishes. The TI Work shall include the following items:

- 1) Construct a 2,000 square foot office space (the "**New Office**"), in the west end of the building, including two (2) private offices and an airlock entry, substantially in accordance with the design of the existing office space in the east end of the Building.
2. Construct a warehouse breakroom for approximately ten (10) employees.
3. Construct a men's restroom and women's restroom in compliance with building codes for a total of twenty (20) employees.

B-2

LEASE EXHIBIT C

Broom Clean Condition and Repair Requirements

- All walls must be clean and free of holes.
- Overhead door must be free of any broken panels, cracked lumber or dented panels. The overhead door springs, rollers, tracks, motorized door operator, and all other items pertaining to the overhead door must also be in good working condition.
- HVAC system must be in good working order. Filters must be changed, and all thermostats must be in working order. Tenant must supply Landlord with maintenance records.
- All floors (warehouse and office) must be clean and free of excessive dust, dirt, grease, oil and stains.
- Drop grid ceiling must be free of excessive dust from lack of changing filters. (No ceiling tiles may be missing or damaged.)
- All trash must be removed from both inside and outside of the Building.
- All lightbulbs and ballasts must be working.
- All signs in front of Building and on glass entry door and rear door must be removed.
- Hot water heater must work.
- All plumbing fixtures, equipment and drains must be clean and in working order.
- Windows must be clean.
- All mechanical and electrical systems must be in good working condition.

C-1

LEASE EXHIBIT D

14. Does your business have an EPA Hazardous Waste Generator ID Number? **YES** **NO**
15. What spill prevention and containment measures will be in place for the chemicals and wastes stored at the proposed facility? (describe briefly)
16. Does your business have an Emergency Response or Contingency Plan in place in the event of a chemical incident (please provide a copy) **YES** **NO**
17. Does your business have any type of Hazardous Materials training program for your employees? (describe briefly):
18. Do you have copies of all Material Safety Data Sheets (MSDS) at your facility for the chemicals listed in question #7? (Please provide copies): **YES** **NO**
19. Does your business carry environmental insurance coverage in the event of a chemical incident? **YES** **NO**
20. Will you be required to make filings and notices or obtain permits as required by Federal and/or State regulations for the operations at the proposed facility? Specifically:
- a. SARA Title III Section 312 (Tier II) reports **YES** **NO**
(> 10,000lbs. of hazardous materials STORED at any one time)
 - b. SARA Title III Section 313 (Tier III) Form R reports **YES** **NO**
(> 10,000lbs. of hazardous materials USED per year)
 - c. NPDES or SPDES Stormwater Discharge permit **YES** **NO**
(answer "No" if "No-Exposure Certification" filed)

D-3

21. This form was prepared by the undersigned as a complete and correct description of Tenant's proposed operations at the location noted, and the Landlord may rely on this information.

Signature

Print Name

Date

D-4

**EXHIBIT E
CONFIRMATION OF COMMENCEMENT DATE**

To be completed with Property Manager upon Lease Commencement

, 2006

Liquidity Services, Inc.
2131 K Street NW, 4th Floor
Washington, DC 20037

RE: Industrial Building Lease dated (the "Lease") by and between First Industrial Development Services, Inc. ("Landlord") and Liquidity Services, Inc. ("Tenant")

Dear :

This letter shall confirm that the Commencement Date for the above-referenced Lease is , 2006

Liquidity Services, Inc., as Tenant, hereby acknowledges the following: (i) Tenant is in possession of the Premises (as defined in the Lease); (ii) the Lease is in full force and effect; (iii) Landlord is not in default under the Lease; and (iv) possession of the Premises is accepted by Tenant as having been delivered in accordance with the terms and conditions of the Lease.

Our records indicate the following information for the 94,407 square feet of space:

Commencement Date:	200
Base Rent Commencement Date:	200
Next Monthly Base Rent Due:	200
Operating Expense Commencement Date:	200
Lease Expiration Date:	200

Please sign two (2) copies of this letter in the space provided below acknowledging your agreement with the above and return them to me at my office. I suggest you attach a copy of this letter to your copy of the Lease. Thank you again for your cooperation and assistance regarding this matter. Please contact me at any time should you have questions regarding the lease, building, or any related manner. Sincerely,

Acknowledged and Agreed to this day of , 20

[Name]
Property Manager

Liquidity Services, Inc.

By: _____
Title: _____

**STANDARD FORM
INDUSTRIAL BUILDING LEASE
(MULTI-TENANT)**

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

- 1.1. Date of Lease:
- 1.2. Landlord: First Industrial Texas L.P.
- 1.3. Tenant: Liquidity Services, Inc.
- 1.4. Premises: The Premises are located as shown on the floor plan attached as **Exhibit A-1** and it is agreed are conclusively stipulated to contain 49,833 rentable square feet in the building commonly known as 12750 Perimeter Drive, Suite 154, Dallas, Texas 75228 (the "**Building**") and the Building is conclusively stipulated to contain 178,200 rentable square feet.
- 1.5. Property: The land described on **Exhibit A** and the Building and other improvements situated thereon.
- 1.6. Lease Term: 3 years 2 months ("**Term**"), commencing March 1, 2005 ("**Commencement Date**") and ending April 30, 2008, subject to **Section 13.1** below, ("**Expiration Date**").
- 1.7. Permitted Uses: (See **Section 4.1**) general warehouse and distribution
- 1.8. Tenant's Guarantor: (if none, so state) None
- 1.9. Brokers: (See **Section 23**; if none, so state)
 - (A) Tenant's Broker: None
 - (B) Landlord's Broker: None
- 1.10. Security/Damage Deposit: (See **Section 4.4**) \$14,466.06
- 1.11. Initial Estimated Additional Rent Payable by Tenant: \$3,658.08 per month
- 1.12. Tenant's Proportionate Share: 27.993%
- 1.13. Riders to Lease: The following riders are attached to and made a part of this Lease. (If none, so state) Exhibit A, A-1, B, C, D & E

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

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

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

Lease Period	Annual Base Rent	Monthly Base Rent	Per Square Foot Base Rent
03/01/05 — 04/30/05	\$ 0.00	\$ 0.00	\$ 0.00
05/01/05 — 04/30/06	\$ 112,236.75	\$ 9,353.06	\$ 2.25
05/01/06 — 04/30/07	\$ 124,707.50	\$ 10,392.29	\$ 2.50
05/01/07 — 04/30/08	\$ 137,178.25	\$ 11,431.52	\$ 2.75

Tenant shall also pay Tenant's Proportionate Share (as set forth in **Section 1.12**) of Operating Expenses (as hereinafter defined), Tenant's Proportionate Share of any and all Reserve Expenses (as hereinafter defined) and any other amounts owed by Tenant hereunder [collectively, "**Additional Rent**"]. In the event any monthly installment of Base Rent or Additional Rent, or both, is not paid within 10 days of the date when due, a late charge in an amount equal to 5% of the then delinquent installment of Base Rent and/or Additional Rent [the "**Late Charge**"; the Late Charge, Default Interest (as defined in **Section 22.3** below), Base Rent and Additional Rent shall collectively be referred to as "**Rent**"] shall be paid by Tenant to Landlord, c/o First Industrial Texas, L.P., P.O. Box 730816, Dallas, TX, 75373-0816 or if sent by overnight courier to Bank One National Processing Corp., 14800 Frye Rd., Fort

Worth, Texas 76155 Attention First Industrial Texas, LP, PO Box 730816 or such other entity designated as Landlord's management agent, if any, and if Landlord so appoints such a management agent, the "**Agent**"), or pursuant to such other directions as Landlord shall designate in this Lease or otherwise in writing.

2.3. **Covenants Concerning Rental Payments.** Tenant shall pay the Rent promptly when due, without notice or demand, and without any abatement, deduction or setoff, except as may otherwise be expressly and specifically provided in this Lease. No payment by Tenant, or receipt or acceptance by Agent or Landlord, of a lesser amount than the correct Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord or satisfaction, and Agent or Landlord may accept such payment without prejudice to its right to recover the balance due or to pursue any other remedy available to Landlord. If the Commencement Date occurs on a day other than

the first day of a calendar month, the Rent due for the first calendar month of the Term shall be prorated on a per diem basis (based on a 360 day, 12 month year) and paid to Landlord on the Commencement Date, and the Term will be extended to terminate on the last day of the calendar month in which the Expiration Date stated in **Section 1.6** occurs. Simultaneously with the execution and delivery of this Lease, Tenant shall deposit with Landlord or Agent an amount equal to the sum of (i) the first monthly installment of Base Rent payable under this Lease, as set forth in **Section 2.2** above and (ii) the sum designated as the Initial Estimated Additional Rent as set forth in **Section 1.10** above, in cash. Tenant's deposit of the foregoing items, together with the amount of the Security deposit specified in **Section 1.10** above shall constitute a condition precedent to the Landlord's obligations under this Lease, and Tenant's failure to make such deposit shall constitute an event of default by Tenant under this Lease.

3. **OPERATING EXPENSES.**

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

3.1.1. **Operating Expenses.** The term "**Operating Expenses**" shall mean all costs and expenses paid or incurred with respect to the ownership, repair, replacement, restoration, maintenance and operation of the Property, including, without limitation, the following: (i) services provided directly by employees of Landlord or Agent in connection with the operation, maintenance or rendition of other services to or for the Property; (ii) to the extent not separately metered, billed, or furnished, all charges for utilities and services furnished to either or both of the Property and the Premises (including, without limitation, the Common Areas [as hereinafter defined]), together with any taxes on such utilities; (iii) all premiums for casualty, workers' compensation, liability, boiler, flood and all other types of insurance provided by Landlord and relating to the Property, all third party administrative costs incurred in connection with the procurement and implementation of such insurance policies, and all deductibles paid by Landlord pursuant to insurance policies required to be maintained by Landlord under this Lease; (iv) the cost of all supplies, tools, materials and equipment utilized in the ownership and operation of the Property, and sales and other taxes thereon; (v) amounts charged (including, without limitation, those costs and expenses set forth in **Section 13.2 (i)** below) by any or all of contractors, materialmen and suppliers for services, materials and supplies furnished to Landlord in connection with any or all of the operation, repair and maintenance of any part of the Property (together with a reasonable overhead and administrative fee to Landlord), including, without limitation, the structural elements of the Property and the Common Areas; (vi) management fees to Landlord or Agent or other persons or management entities actually involved in the management and operation of the Property; (vii) any capital improvements made by, or on behalf of, Landlord to the Property that are either or both (a) designed to reduce Operating Expenses and (b) required to keep the Property in compliance with all governmental laws, rules and regulations applicable thereto, from time to time, the cost of which capital improvements shall be reasonably amortized by Landlord over the useful life of the improvement, in accordance with generally accepted accounting principles; (viii) all professional fees incurred in connection with the operation, management and maintenance of the Property; and (ix) Taxes, as hereinafter defined in **Section 3.1.2**. Notwithstanding any other provision herein to the contrary, it is agreed that if the Property is not fully occupied during any calendar year, then an adjustment shall be made in computing the Operating Expenses for such calendar year so that the Operating Expenses are computed as though the Property had been fully occupied during such calendar year. To the extent that Landlord incurs any expenses (such as, by way of illustration only, multi-property service contracts or blanket insurance policies) in respect of both the Property and any other properties owned by Landlord, Landlord may include a fair and equitable apportionment of such expenses in Operating Expenses. For the purposes of computing Operating Expenses for the initial term of this Lease, the portion of Operating Expenses consisting of costs and expenses within the direct contractual control of Landlord (collectively, "Controllable Expenses") shall be deemed to increase at a rate no greater than ten percent (10%) per annum on a cumulative compounded basis over the term of this Lease. Notwithstanding anything in this Lease to the contrary, Controllable Expenses shall include all expenses except for insurance premiums, utilities costs, and Taxes.

3.1.2. **Taxes.** The term "**Taxes,**" as referred to in **Section 3.1.1(ix)** above shall mean (i) all governmental taxes, assessments, fees and charges of every kind or nature (other than Landlord's income taxes), whether general, special, ordinary or extraordinary, due at any time or from time to time, during the Term and any extensions thereof, in connection with the ownership, leasing, or operation of the Property, or of the personal property and equipment located therein or used in connection therewith; and (ii) any reasonable expenses incurred by Landlord in contesting such taxes or assessments and/or the assessed value of the Property. For purposes hereof, Tenant shall be responsible for any Taxes that are assessed, become a lien, or accrue during any Operating Year, which obligation shall survive the termination or expiration of this Lease.

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

3.2. **Payment of Operating Expenses.** Tenant shall pay, as Additional Rent and in accordance with the requirements of **Section 3.3**, Tenant's Proportionate Share of the Operating Expenses as set forth in **Section 3.3**. Additional Rent commences to accrue upon the Commencement Date. The Tenant's Proportionate Share of Operating Expenses payable hereunder for the Operating Years in which the Term begins and ends shall be prorated to correspond to that portion of said Operating Years occurring within the Term. Tenant's Proportionate Share of Operating Expenses and any other sums due and payable under this Lease shall be adjusted upon receipt of the actual bills therefor, and the obligations of this **Section 3** shall survive the termination or expiration of the Lease.

3.3. **Payment of Additional Rent.** Landlord shall have the right to reasonably estimate the Operating Expenses for each Operating Year. Upon Landlord's or Agent's notice to Tenant of such estimated amount, Tenant shall pay, on the first day of each month during that Operating Year, an amount (the "**Estimated Additional Rent**") equal to the estimate of the Tenant's Proportionate Share of Operating Expenses divided by 12 (or the fractional portion of the Operating Year remaining at the time Landlord delivers its notice of the estimated amounts due from Tenant for that Operating Year). Landlord may during the course of any Operating Year, redetermine the amount of its estimate of Operating Expenses for such Operating Year and adjust the amount of Estimated Additional Rent accordingly, whereupon Tenant shall pay the adjusted Estimated Additional Rent from and after the first day of the month following the month in which Landlord delivers to Tenant written notice of such adjustment of Estimated Additional Rent. If the aggregate amount of Estimated Additional Rent actually paid by Tenant during any Operating Year is less than Tenant's actual ultimate liability for Operating Expenses for that particular Operating Year, Tenant shall pay the deficiency within 30 days of Landlord's written demand therefor. If the aggregate amount of Estimated Additional Rent actually paid by Tenant during a given Operating Year exceeds Tenant's actual liability for such Operating Year, the excess shall be credited against the Estimated Additional Rent next due from Tenant during the immediately subsequent Operating Year, except that in the event that such excess is paid by Tenant during the final Lease Year, then upon the expiration of the Term, Landlord or Agent shall pay Tenant the then-applicable excess promptly after determination thereof. No interest shall be payable to Tenant on account of payments of Estimated Additional Rent or deposits to the Maintenance Reserve, and such payments may be commingled. If there exists any dispute as to (i) the amount of Additional Rent, (ii) whether a particular expense is properly included in Additional Rent or (iii) Landlord's calculation of Additional Rent (each an "Additional Rent Dispute"), the events, errors, acts or omissions giving rise to such Additional Rent Dispute shall not constitute a breach or default by Landlord under this Lease and even if a judgment resolving

the Additional Rent Dispute is entered against Landlord, this Lease shall remain in full force and effect and Landlord shall not be liable for any consequential damages resulting from the event, error, act or omission giving rise to such Additional Rent Dispute. Notwithstanding the existence of an Additional Rent Dispute, Tenant shall pay timely the amount of Additional Rent which is in dispute and will continue to make all subsequent payments of Additional Rent as and when required under this Lease, provided that the payment of such disputed amount and other amounts shall be without prejudice to Tenant's position.

3.4 Compliance with Computation Requirements and Waiver of Statute. Landlord and Tenant are knowledgeable and experienced in real estate transactions. Landlord and Tenant agree that each provision of this Lease for determining charges, amounts and additional rent payable by Tenant (including, without limitation, payments under Sections 3.1, 3.2, and 3.3 above) is commercially reasonable and, as to each such charge or amount, constitutes a "method by which the charge is to be computed" for purposes of Section 93.004 of the Texas Property Code, as enacted by House Bill 2186, 77th Legislature, and agree that the provisions of this Lease for determining charges, amounts and additional rent payable by Tenant (including, without limitation, payments under Sections 3.1, 3.2, and 3.3 above) are commercially reasonable and valid even though such methods may not state a precise mathematical formula for determining such charges. Accordingly, Tenant voluntarily and knowingly waives all rights and benefits of Tenant under Section 39.004 of The Texas Property Code, as enacted by House Bill 2186, 77th Legislature, as such section may from time to time be amended.

3.5 Real Estate Tax Protest. Section 41.413 of the Texas Property Tax Code may give Tenant the right to protest before the appropriate appraisal review board a determination of the appraised value of the Property if Landlord does not so protest and requires Landlord to deliver to Tenant a notice of any determination of the appraised value of the Property. Tenant acknowledges that the Property is a multi-tenant facility, that any filing of a protest of appraised value by Tenant will give the appraisal district discretion to increase or decrease the appraised value, that an increase in the appraised value will affect Landlord and the other tenants of the Property, and that an increase in the appraised value may increase the taxes not only for the year in question but for future years, potentially beyond expiration of the Lease Term. Accordingly, to the extent permitted by applicable law, Tenant hereby waives the provisions of §41.413 of the Texas Property Tax Code (or any successor thereto). In the alternative, if §41.413 of the Texas Property Tax Code may not be waived, Tenant agrees not to protest any valuation unless Tenant notifies Landlord in writing of Tenant's intent so to protest and Landlord fails to protest the valuation within fifteen (15) days after Landlord receives Tenant's written notice. If Tenant files a protest without giving the written notice required by the preceding sentence, such filing shall be an event of default under this Lease without the necessity of any notice from Landlord, notwithstanding any other provisions of this Lease to the contrary. Furthermore, if Tenant exercises the right of protest granted by §41.413 of the Texas Property Tax Code, Tenant shall be solely responsible for, and shall pay, all costs of such protest. If as a result of any protest filed by Tenant, the appraised value of the Property is increased by the appraisal board, Tenant shall be solely responsible for, and shall pay upon demand by Landlord, all taxes (not only Tenant's Pro Rata Share Percentage of Real Estate Taxes) assessed against the Property in excess of the taxes which would have been payable in the absence of the protest. Tenant shall continue to pay such excess taxes until the determination of appraised value of the Property is changed by the appraisal review board, *regardless of whether the increased taxes are incurred during the term of the Lease or thereafter*. Landlord agrees, upon request by Tenant, to provide to Tenant a copy of the determination of appraised value for any year. The payment obligations of Tenant under this Section 3.5 shall survive the expiration or other termination of this Lease.

4. USE OF PREMISES AND COMMON AREAS; SECURITY DEPOSIT.

4.1. Use of Premises and Property. The Premises shall be used by the Tenant for the purpose(s) set forth in **Section 1.7** above and for no other purpose whatsoever. Tenant shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises or the Property, in any manner that may (a) violate any Certificate of Occupancy for the Premises or the Property; (b) cause, or be liable to cause, injury to, or in any way impair the value or proper utilization of, all or any portion of the Property (including, but not limited to, the structural elements of the Property) or any equipment, facilities or systems therein; (c) constitute a violation of the laws and requirements of any public authority or the requirements of insurance bodies or the rules and regulations of the Property, including any covenant, condition or restriction affecting the Property; (d) exceed the load bearing capacity of the floor of the Premises; (e) impair or tend to impair the character, reputation or appearance of the Property; or (e) unreasonably annoy, inconvenience or disrupt the operations or tenancies of other tenants or users of the Property. On or prior to the date hereof, Tenant has completed and delivered for the benefit of Landlord a "Tenant Operations Inquiry Form" in the form attached hereto as **Exhibit D** describing the nature of Tenant's proposed business operations at the Premises, which form is intended to, and shall be, relied upon by Landlord.

4.2. Use of Common Areas. As used herein, "**Common Areas**" shall mean all areas within the Property that are available for the common use of tenants of the Property and that are not leased or held for the exclusive use of Tenant or other tenants or licensees, including, but not limited to, parking areas, driveways, sidewalks, loading areas, access roads, corridors, landscaping and planted areas. Tenant shall have the nonexclusive right to use the Common Areas for the purposes intended, subject to such reasonable rules and regulations as Landlord may uniformly establish from time to time. Tenant shall not interfere with the rights of any or all of Landlord, other tenants or licensees, or any other person entitled to use the Common Areas. Without limitation of the foregoing, Tenant shall not park or store any vehicles or trailers on, or conduct truck loading and unloading activities in, the Common Areas in a manner that unreasonably disturbs, disrupts or prevents the use of the Common Areas by Landlord, other tenants or licensees or other persons entitled to use the Common Areas. Landlord, from time to time, may change any or all of the size, location, nature and use of any of the Common Areas although such changes may result in inconvenience to Tenant, so long as such changes do not materially and adversely affect Tenant's use of the Premises. In addition to the foregoing, Landlord may, at any time, close or suspend access to any Common Areas to perform any acts in the Common Areas as, in Landlord's reasonable judgment, are desirable to improve or maintain either or both of the Premises and the Property, or are required in order to satisfy Landlord's obligations under either or both of **Sections 13.2 and 18**; provided, however, that Landlord shall use reasonable efforts to limit any disruption of Tenant's use and operation of the Premises in connection therewith.

4.3. Signage. Tenant shall not affix any sign of any size or character to any portion of the Property, without prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed. Tenant shall remove all signs of Tenant upon the expiration or earlier termination of this Lease and immediately repair any damage to either or both of the Property and the Premises caused by, or resulting from, such removal.

4.4. Security/Damage Deposit. Simultaneously with the execution and delivery of this Lease, Tenant shall deposit with Landlord or Agent the sum set forth in **Section 1.10** above, in cash (the "**Security**"), representing security for the performance by Tenant of the covenants and obligations hereunder, the amount of which Security was determined by adding the last installments of monthly Base and Additional Rent. The Security shall be held by Landlord or Agent, without interest, in favor of Tenant; provided, however, that no trust relationship shall be deemed created thereby and the Security may be commingled with other assets of Landlord. If Tenant defaults in the performance of any of its covenants hereunder, Landlord or Agent may, without notice to Tenant, apply all or any part of the Security, to the extent required for the payment of any Rent or other sums due from Tenant hereunder, in addition to any other remedies available to Landlord. In the event the Security is so applied, Tenant shall, upon demand, immediately deposit with Landlord or Agent a sum

equal to the amount so used. If Tenant fully and faithfully complies with all the covenants and obligations hereunder, the Security (or any balance thereof) shall be returned to Tenant within 30 days after the last to occur of (i) the date the Term expires or terminates or (ii) delivery to Landlord of possession of the Premises; provided, however, that the Security shall be returned on such earlier date as may be required under then applicable law in the event that the following waiver is not enforceable under then applicable law; provided, further, however, that Tenant, to the fullest extent permitted under applicable law hereby waives Tenant's rights and remedies under Sections 93.04 through 93.011 of the Texas Property Code, as same may from time to time be amended, and in any event Tenant agrees that Landlord may deduct from the Security Deposit, if same is subject to such rights and remedies, all damages that Landlord has suffered or that Landlord reasonably estimates that it will suffer as a result of any breach of this Lease. Landlord may deliver the Security to any purchaser of Landlord's interest in the Premises [or any Successor Landlord (defined below), if applicable], and thereupon Landlord and Agent shall be discharged from any further liability with respect to the Security.

5. CONDITION AND DELIVERY OF PREMISES.

5.1. **Condition of Premises.** Tenant agrees that Tenant is familiar with the condition of both the Premises and the Property, and Tenant hereby accepts the foregoing on an "AS-IS," "WHERE-IS" basis. Tenant acknowledges that neither Landlord nor Agent, nor any representative of Landlord, has made any representation as to the condition of the foregoing or the suitability of the foregoing for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of the foregoing. Neither Landlord nor Agent shall be obligated to make any repairs, replacements or improvements (whether structural or otherwise) of any kind or nature to the foregoing in connection with, or in consideration of, this Lease, except (a) as set forth in **Sections 13.2 and 18** and

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(b) with respect to all (if any) repairs and improvements expressly and specifically described in **Exhibit B** attached hereto ("**Landlord Work Items**"). Landlord agrees to make reasonable efforts to enforce, or cause Agent to enforce, upon Tenant's request, all manufacturer's or contractor's warranties, if any, issued in connection with any of the Landlord Work Items.

5.2. **Delay in Commencement.** Landlord shall not be liable to Tenant if Landlord does not deliver possession of the Premises to Tenant on the Commencement Date. The obligations of Tenant under the Lease shall not be affected thereby, except that the Commencement Date shall be delayed until Landlord delivers possession of the Premises to Tenant, and the Lease Term shall be extended by a period equal to the number of days of delay in delivery of possession of the Premises to Tenant, plus the number of days necessary to end the Lease Term on the last day of a month.

6. SUBORDINATION; NOTICES TO SUPERIOR LESSORS AND MORTGAGEES; ATTORNMENT.

6.1. **Subordination.** Provided that Tenant is provided with a subordination, nondisturbance and attornment agreement duly executed by the holder of any mortgage or deed of trust or the landlord pursuant to any ground lease, this Lease shall be subject and subordinate at all times to (a) all ground leases or underlying leases that may now exist or hereafter be executed affecting either or both of the Premises and the Property and (b) any mortgage or deed of trust that may now exist or hereafter be placed upon, and encumber, any or all of (x) the Property; (y) any ground leases or underlying leases for the benefit of the Property; and (z) all or any portion of Landlord's interest or estate in any of said items. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases that benefit the Property or any such mortgage or deed of trust liens to this Lease. Tenant shall execute and deliver, upon demand by Landlord and in the form reasonably requested by Landlord, any additional documents evidencing the priority of subordination of this Lease with respect to any such ground leases or underlying leases for the benefit of the Property or any such mortgage or deed of trust.

6.2. **Estoppel Certificates.** Tenant agrees, from time to time and within 10 days after request by Landlord, to deliver to Landlord, or Landlord's designee, an estoppel certificate stating such matters pertaining to this Lease as may be reasonably requested by Landlord. Failure by Tenant to timely execute and deliver such certificate shall constitute an event of default and an acceptance of the Premises and acknowledgment by Tenant that the statements included therein are true and correct without exception. Landlord and Tenant intend that any statement delivered pursuant to this section may be relied upon by any prospective purchaser or mortgagee of the Property or of any interest therein or any other Landlord designee.

6.3. **Transfer for Landlord.** In the event of a sale or conveyance by Landlord of the Property, the same shall operate to release Landlord from any future liability for any of the covenants or conditions, express or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to Landlord's successor in interest with respect thereto and agrees to attorn to such successor.

7. **QUIET ENJOYMENT.** Subject to the provisions of this Lease, so long as Tenant pays all of the Rent and performs all of its other obligations hereunder, Tenant shall not be disturbed in its possession of the Premises by Landlord, Agent or any other person lawfully claiming through or under Landlord; provided, however, in addition to Landlord's rights under **Section 16** and elsewhere in this Lease, Landlord and Landlord's agents, employees, contractors and representatives shall be provided reasonable access to the Premises such that Landlord and Landlord's agents, employees, contractors and representatives may perform the General Maintenance Services (as hereinafter defined) without undue interruption, delay or hindrance. This covenant shall be construed as a covenant running with the Property and is not a personal covenant of Landlord. Tenant shall not unreasonably interrupt, delay, prevent or hinder the performance of the General Maintenance Services by or on behalf of Landlord. Notwithstanding the foregoing, however, Tenant acknowledges and agrees that Landlord shall have the unfettered and unilateral right to use portions of the Common Areas (inclusive of the roof of the Building) for such purposes and uses as Landlord may desire; provided, however, that in all events and under all circumstances, Landlord's use of any portion of the Common Areas shall not interfere, in any material respect, with any or all of (a) Tenant's rights to occupy and use the Common Areas (in the manner and for the purposes contemplated hereunder); (b) Tenant's right to utilize the vehicular parking areas located on the Common Areas; and (c) Tenant's right of access, ingress and egress to and from the Common Areas.

8. ASSIGNMENT, SUBLETTING AND MORTGAGING.

8.1. **Prohibition.** Tenant acknowledges that this Lease and the Rent due under this Lease have been agreed to by Landlord in reliance upon Tenant's reputation and creditworthiness and upon the continued operation of the Premises by Tenant for the particular use described in **Section 4.1** above; therefore, Tenant shall not, whether voluntarily, or by operation of law, or otherwise: (a) assign or otherwise transfer this Lease; (b) sublet the Premises or any part thereof, or allow the same to be used or occupied by anyone other than Tenant; or (c) mortgage, pledge, encumber, or otherwise hypothecate this Lease or the Premises, or any part thereof, in any manner whatsoever, without in each instance obtaining the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole discretion. Any purported assignment, mortgage, transfer, pledge or sublease made without the prior written

consent of Landlord shall be absolutely null and void. No assignment of this Lease shall be effective and valid unless and until the assignee executes and delivers to Landlord any and all documentation reasonably required by Landlord in order to evidence assignee's assumption of all obligations of Tenant hereunder. Any consent by Landlord to a particular assignment, sublease or mortgage shall not constitute consent or approval of any subsequent assignment, sublease or mortgage, and Landlord's written approval shall be required in all such

instances. No consent by Landlord to any assignment or sublease shall be deemed to release Tenant from its obligations hereunder and Tenant shall remain fully liable for performance of all obligations under this Lease.

8.2. Rights of Landlord. If this Lease is assigned, or if the Premises (or any part thereof) are sublet or used or occupied by anyone other than Tenant, whether or not in violation of this Lease, Landlord or Agent may (without prejudice to, or waiver of its rights), collect Rent from the assignee, subtenant or occupant. Landlord or Agent may apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of this **Section 8**. With respect to the allocable portion of the Premises sublet, in the event that the total rent and any other considerations received under any sublease by Tenant is greater than the total Rent required to be paid, from time to time, under this Lease, Tenant shall pay to Landlord one hundred percent (100%) of such excess as received from any subtenant and such amount shall be deemed a component of the Additional Rent.

8.3. Permitted Transfers. The provisions of **Section 8.1(a)** shall apply to a transfer of a majority (i.e. greater than 50% interest) of the voting stock of Tenant or to any other change in voting control of Tenant (if Tenant is a corporation), or to a transfer of a majority of the general partnership or membership interests in Tenant (if Tenant is a partnership or a limited liability company) or to a change in the managerial control of Tenant, or to any comparable transaction involving any other form of business entity, whether effectuated in one or more transactions, as if such transfer were an assignment of this Lease; but said provisions shall not apply to such a transfer, provided, in any of such events, the successor to Tenant (or any party remaining liable for the obligations of Tenant hereunder): (i) has a net worth at least equal to the net worth of Tenant as of the Commencement Date or (ii) is capable of satisfying Tenant's obligations hereunder, in Landlord's reasonable judgment. Any such permitted transferee shall execute and deliver to Landlord any and all documentation reasonably required by Landlord in order to evidence assignee's assumption of all obligations of Tenant hereunder. Notwithstanding anything to the contrary contained in this **Section 8.3**, in no event may Tenant assign, mortgage, transfer, pledge or sublease this Lease to any entity whatsoever if, at the time of such assignment, mortgage, transfer, pledge or sublease, Tenant is in default under this Lease.

9. COMPLIANCE WITH LAWS.

9.1. Compliance with Laws. Tenant shall, at its sole expense (regardless of the cost thereof), comply with all local, state and federal laws, rules, regulations and requirements now or hereafter in force and all judicial and administrative decisions in connection with the enforcement thereof (collectively, "**Laws**"), pertaining to either or both of the Premises and Tenant's use and occupancy thereof. If any license or permit is required for the conduct of Tenant's business in the Premises, Tenant, at its expense, shall procure such license prior to the Commencement Date, and shall maintain such license or permit in good standing throughout the Term. Tenant shall give prompt notice to Landlord of any written notice it receives of the alleged violation of any Law or requirement of any governmental or administrative authority with respect to either or both of the Premises and the use or occupation thereof. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord is a party thereto or not, that any such Law pertaining to the Premises has been violated, shall be conclusive of that fact as between Landlord and Tenant.

9.2. Hazardous Materials. Tenant agrees and covenants that: (i) Tenant shall, at its own cost, at all times comply (and cause all others to comply) with all laws (federal, state or local) relating to Hazardous Materials, including, but not limited to, all Environmental Laws (defined below), and Tenant shall further, at its own cost, obtain and maintain in full force and effect at all times all permits and other approvals required in connection therewith; (ii) Tenant shall promptly provide Landlord or Agent with complete copies of all communications, permits or agreements with, from or issued by any governmental authority or agency (federal, state or local) or any private entity relating in any way to the presence, release, threat of release, or placement of Hazardous Materials on or in the Premises or any portion of the Property, or the generation, transportation, storage, use, treatment, or disposal at, on, in or from the Premises, of any Hazardous Materials; (iii) Landlord, Agent and their respective agents and employees shall have the right to either or both (x) enter the Premises and (y) conduct appropriate tests for the purposes of ascertaining Tenant's compliance with all applicable laws (including Environmental Laws), rules or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of either or both of the Premises and the Property; and (iv) upon written request by Landlord or Agent, Tenant shall provide Landlord with the results of reasonably appropriate tests of air, water or soil to demonstrate that Tenant complies with all applicable laws, rules or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of either or both of the Premises and the Property. This **Section 9.2** does not authorize the generation, transportation, storage, use, treatment or disposal of any Hazardous Materials at, to, from, on or in the Premises in contravention of this **Section 9**. If, at any time or from time to time during the Term (or any extension thereof), any Hazardous Material (defined below) is generated, created, transported, stored, used, treated or disposed of at, to, from, on or in either or both of the Premises and the Property by, or as a result of any act or omission of, any or all of Tenant and any or all of Tenant's Parties (defined below), Tenant covenants to investigate, clean up and otherwise remediate, at Tenant's sole expense, any release of Hazardous Materials caused, contributed to, or created by any or all of (A) Tenant and (B) any or all of Tenant's officers, directors, members, managers, partners, invitees, agents, employees, contractors or representatives ("**Tenant Parties**") during the Term. Such investigation and remediation shall be performed only after Tenant has obtained Landlord's prior written consent; provided, however, that Tenant shall be entitled to respond immediately to an emergency without first obtaining such consent. All remediation shall be performed in strict compliance with Environmental Laws in accordance with the highest standards of remediation and to the reasonable satisfaction of Landlord. Tenant shall be liable for any and all conditions covered hereby, and for all costs relating thereto, that are caused or created by any or all of Tenant and any or all of Tenant's Parties. Tenant shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Materials in any way connected to the Premises

without first obtaining Landlord's written consent (which consent may be given or withheld in Landlord's sole, but reasonable, discretion) and affording Landlord the reasonable opportunity to participate in any such proceedings. As used herein, the term (x) "**Environmental Laws**" shall mean any and all laws

pertaining to Hazardous Materials or that otherwise deal with, or relate to, air or water quality, air emissions, soil or ground conditions or other environmental matters of any kind; and (y) "**Hazardous Materials**" shall mean any waste, material or substance (whether in the form of liquids, solids or gases, and whether or not organic or inorganic or embedded or airborne) that is or may be deemed to be or include a pesticide, petroleum, asbestos, polychlorinated biphenyl, radioactive material, urea formaldehyde or any other pollutant or contaminant or material or substance that is or may be deemed to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious, or that presents a risk to public health or to the environment, and that is or becomes regulated by any Environmental Law. The undertakings, covenants and obligations imposed on Tenant under this **Section 9.2** shall survive the termination or expiration of this Lease.

9.3. Presumptions. In any case where there is any dispute or controversy regarding the source of any Hazardous Materials, unless it is clearly and indisputably proven that such Hazardous Materials were present in the Premises on or before the Lease Execution Date or thereafter placed therein by (a) Landlord or its employees, agents or contractors, or (b) by any tenant of the Building other than Tenant, or (c) by any other third party not affiliated with Tenant, it shall be conclusively deemed for all purposes of this Lease that such Hazardous Materials were placed in the Premises by Tenant or one of the Tenant Parties.

10. INSURANCE.

10.1. Insurance to be Maintained by Landlord. Landlord shall maintain (a) "all-risk" property insurance policy covering the Property (at its full replacement cost), but excluding Tenant's Property (defined below), and (b) commercial general public liability insurance covering Landlord for claims arising out of liability for bodily injury, death, personal injury, advertising injury and property damage occurring in and about the Property and otherwise resulting from any acts and operations of Landlord, its agents and employees, and (c) rent loss insurance, all of the above with limits that are required by any lender(s) of Landlord, or as are otherwise reasonably determined by Landlord.

10.2. Insurance to be Maintained by Tenant. Tenant shall purchase, at its own expense, and keep in force at all times during this Lease the policies of insurance set forth below in **Sections 10.2.1** and **10.2.2** (collectively, "**Tenant's Policies**"). All Tenant's Policies shall (a) be issued by an insurance company with a Best rating of A-X or better and otherwise reasonably acceptable to Landlord and shall be licensed to do business in the state in which the Property is located; (b) provide that said insurance shall not be canceled or materially modified unless 30 days' prior written notice shall have been given to Landlord; and (c) otherwise be in such form, and include such coverages, as Landlord may reasonably require. All Tenant's Policies (or, at Landlord's option, Certificates of Insurance, in a form reasonably acceptable to Landlord, evidencing said Tenant's Policies), shall be delivered to Landlord by Tenant upon commencement of the Lease and renewals thereof shall be delivered at least 30 days prior to the expiration of each Tenant's Policy. Tenant shall give prompt notice to Landlord and Agent of any bodily injury, death, personal injury, advertising injury or property damage occurring in and about the Property.

10.2.1. General Liability and Auto Insurance. Tenant shall purchase and maintain, throughout the Term, a Tenant's Policy(ies) of (i) commercial general or excess liability insurance, including personal injury and property damage, in the amount of not less than \$2,000,000.00 per occurrence, and \$5,000,000.00 annual general aggregate, per location; (ii) comprehensive automobile liability insurance covering Tenant against any losses arising out of liability for personal injuries or deaths of persons and property damage occurring in or about the Premises in the amount of not less than \$1,000,000, combined single limit. The Tenant's Policies required by this **Section 10.2.1** shall (a) name Landlord, Agent, and any party holding an interest to which this Lease may be subordinated as additional insureds; (b) provide coverage on an occurrence basis; (c) provide coverage for the indemnity obligations of Tenant under this Lease; (d) contain a severability of insured parties provision and/or a cross liability endorsement; (e) be primary, not contributing with, and not in excess of, coverage that Landlord may carry; and (f) provide coverage with no exclusion for a pollution incident arising from a hostile fire.

10.2.2. Property and Workers' Compensation Insurance. Tenant shall purchase and maintain, throughout the Term, a Tenant's Policy or Policies of (i) "all-risk" property insurance covering Tenant's Property (at its full replacement cost), and damage to other property resulting from any acts or operations of Tenant, and (ii) workers' compensation insurance per the applicable state statutes covering all employees of Tenant.

10.3. Waiver of Subrogation. To the extent permitted by law, and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other for (a) damages to property, (b) damages to all or any portion of either or both of the Premises and the Property, (c) claims arising by reason of the foregoing, to the extent such damages and claims are insured against, or required to be insured against, by Landlord or Tenant under this Lease, or (d) claims paid by Tenant's workers' compensation carrier. This provision is intended to waive, fully and for the benefit of each party, any rights and/or claims which might give rise to a right of subrogation by any insurance carrier. The coverage obtained by each party pursuant to this Lease shall include, without limitation, a waiver of subrogation by the carrier which conforms to the provisions of this section.

11. ALTERATIONS.

11.1. Procedural Requirements. Tenant may, from time to time, at its expense, make alterations or improvements in and to the Premises (hereinafter collectively referred to as "**Alterations**"), provided

that Tenant first obtains the written consent of Landlord in each instance. Landlord's consent to Alterations shall not be unreasonably withheld, provided that: (a) the Alterations are non-structural and the structural integrity of the Property shall not be affected; (b) the Alterations are to the interior of the Premises; (c) the proper functioning of the mechanical, electrical, heating, ventilating, air-conditioning ("**HVAC**"), sanitary and other service systems of the Property shall not be affected and the usage of such systems by Tenant shall not be increased; (d) the Alterations have no adverse effect on other leased premises in the Property; (e) Tenant shall have appropriate insurance coverage, reasonably satisfactory to Landlord, regarding the performance and installation of the Alterations; (f) the Alterations shall conform with all other requirements of this Lease; and (g) Tenant shall have provided Landlord with reasonably detailed plans for such Alterations in advance of requesting Landlord's consent. Additionally, before proceeding with any Alterations, Tenant shall (i) at Tenant's expense, obtain all necessary governmental permits and certificates for the commencement and prosecution of Alterations; (ii) submit to Agent, for Landlord's written approval, working drawings, plans and specifications and all permits for the work to be done and Tenant shall not proceed with such Alterations until it has received said approval; and (iii) cause those contractors, materialmen and suppliers engaged to perform the Alterations to deliver to Landlord certificates of insurance (in a form reasonably acceptable to Landlord) evidencing policies of commercial general liability insurance (providing the same coverages as required in **Section 10.2.1** above) and workers' compensation insurance. Such insurance policies shall satisfy the obligations imposed under **Section 10.2.1(a)** through **(d)** and **(f)**. After obtaining Landlord's approval to the Alterations, Tenant shall give Landlord at least five days' prior

written notice of the commencement of any Alterations at the Premises, and Landlord may elect to record and post notices of non-responsibility at the Premises. Notwithstanding anything to the contrary contained in this **Section 11.1**, Landlord's consent shall not be required for Alterations satisfying clauses (a) through (f) above and costing \$10,000.00 or less in any one instance (up to a maximum aggregate of \$25,000.00 over the Term) provided that Tenant notifies Landlord of such Alterations prior to commencing thereon and obtains all approvals and permits necessary for the commencement and prosecution of such Alterations.

11.2. Performance of Alterations. Tenant shall cause the Alterations to be performed in compliance with all applicable permits, laws and requirements of public authorities, and with Landlord's reasonable rules and regulations or any other restrictions that Landlord or Agent may impose on the Alterations. Tenant shall cause the Alterations to be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the standards for the Property established by Landlord or Agent. Tenant shall obtain all necessary permits and certificates for final governmental approval of the Alterations and shall provide Landlord with "as built" plans, copies of all construction contracts, governmental permits and certificates and proof of payment for all labor and materials, including, without limitation, copies of paid invoices and final lien waivers.

11.3. Lien Prohibition. Tenant shall pay when due all claims for labor and material furnished to the Premises in connection with the Alterations. Tenant shall not permit any mechanics or materialmen's liens to attach to the Premises or the Property. Tenant, at its expense, shall procure the satisfaction or discharge of record of all such liens and encumbrances within 30 days after the filing thereof; or, within such thirty (30) day period, Tenant shall provide Landlord, at Tenant's sole expense, with endorsements (satisfactory, both in form and substance, to Landlord and the holder of any mortgage or deed of trust) to the existing title insurance policies of Landlord and the holder of any mortgage or deed of trust, insuring against the existence of, and any attempted enforcement of, such lien or encumbrance. In the event Tenant has not so performed, Landlord may, at its option, pay and discharge such liens and Tenant shall be responsible to reimburse Landlord, on demand and as Additional Rent under this Lease, for all costs and expenses incurred in connection therewith, together with interest thereon at the rate set forth in **Section 22.3**, which expenses shall include reasonable fees of attorneys of Landlord's choosing, and any costs in posting bond to effect discharge or release of the lien as an encumbrance against the Premises or the Property.

12. LANDLORD'S AND TENANT'S PROPERTY.

12.1. Landlord's Property. Subject to **Section 12.2**, all fixtures, machinery, equipment, improvements and appurtenances attached to, or built into, the Premises at the commencement of, or during the Term, whether or not placed there by or at the expense of Tenant, shall become and remain a part of the Premises; shall be deemed the property of Landlord (the "**Landlord's Property**"), without compensation or credit to Tenant; and shall not be removed by Tenant at the Expiration Date unless Landlord requests their removal. Further, any personal property in the Premises on the Commencement Date, movable or otherwise, unless installed and paid for by Tenant, shall be and shall remain the property of Landlord and shall not be removed by Tenant. In no event shall Tenant remove any of the following materials or equipment without Landlord's prior written consent (which consent may be given or withheld in Landlord's sole discretion): any power wiring or power panels, lighting or lighting fixtures, wall or window coverings, carpets or other floor coverings, heaters, air conditioners or any other HVAC equipment, fencing or security gates, or other similar building operating equipment and decorations.

12.2. Tenant's Property. All movable non-structural partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment that are installed in the Premises by, or for the account of, Tenant and without expense to Landlord and that can be removed without structural damage to the Property, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (collectively, the "**Tenant's Property**") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term, provided Tenant repairs or pays the cost of repairing any damage to the Premises or to the Property resulting from the installation and/or removal thereof. At or before the Expiration Date, or the date of any earlier termination, Tenant, at its expense, shall remove from the Premises all of Tenant's Property and any Alterations (except such items thereof as constitute Landlord's Property; or as Landlord shall have expressly permitted, in writing, to remain, which property shall become the property of Landlord), and Tenant shall repair (to Landlord's reasonable satisfaction) any damage to the Premises or the Property resulting from any installation and/or removal of Tenant's Property. Any other items of Tenant's Property that shall remain in the

Premises after the Expiration Date, or following an earlier termination date, may, at the option of Landlord, be deemed to have been abandoned, and in such case, such items may be retained by Landlord as its property or be disposed of by Landlord, in Landlord's sole and absolute discretion and without accountability, at Tenant's expense. Notwithstanding the foregoing, if Tenant is in default under the terms of this Lease, Tenant may remove Tenant's Property from the Premises only upon the express written direction of Landlord.

13. REPAIRS AND MAINTENANCE.

13.1. Tenant Repairs and Maintenance.

13.1.1. Tenant Responsibilities. Throughout the Term, Tenant shall, at its sole cost and expense: (i) both (x) maintain and preserve, in first-class condition (subject to normal and customary wear and tear), and (y) perform any and all repairs and replacements required in order to so maintain and preserve, in first class condition, the Premises and the fixtures and appurtenances therein (including, but not limited to, the Premises' plumbing and HVAC systems, all doors, overhead or otherwise, glass and levelers located in the Premises or otherwise available in the Property for Tenant's sole use; and excluding, however, only those specific components of the Premises for which Landlord is expressly responsible under **Section 13.2**); and (ii) except to the extent Landlord elects to repair and maintain the HVAC systems as part of General Maintenance Services (as hereinafter defined), maintain, in full force and effect, a preventative maintenance and service contract with a reputable service provider for maintenance of the HVAC systems of the Premises (the "**HVAC Maintenance Contract**"). The terms and provisions of any such HVAC Maintenance Contract shall require that the service provider maintain the Premises' HVAC system in accordance with the manufacturer's recommendations and otherwise in accordance with normal, customary and reasonable practices in the geographic area in which the Premises is located and for HVAC systems comparable to the Premises' HVAC system.

In addition to Tenant's obligations under (i) and (ii) above, Tenant shall also be responsible for all costs and expenses incurred to perform any and all repairs and replacements (whether structural or non-structural; interior or exterior; and ordinary or extraordinary), in and to the Premises and the Property and the facilities and systems thereof, if and to the extent that the need for such repairs or replacements arises directly or indirectly from any or all of: (a) the performance or existence of any Alterations, (b) the installation, use or operation of Tenant's Property in the Premises, (c) the moving of Tenant's Property in or out of the Property, and (d) any act, omission, misuse, or neglect of Tenant, any of its subtenants, or others entering into the Premises by act or omission of Tenant or any subtenant. Any repairs or replacements required to be made by Tenant to any or all of the structural components of the Property and the mechanical, electrical, sanitary, HVAC, or other systems of the Property or Premises shall be performed by appropriately licensed

contractors approved by Landlord, which approval shall not be unreasonably withheld. All such repairs or replacements shall be subject to the supervision and control of Landlord, and all repairs and replacements shall be made with materials of equal or better quality than the items being repaired or replaced.

13.1.2. General Maintenance Services. Notwithstanding any of the foregoing, however, from time to time during the Term, Landlord may elect, in its sole discretion and by delivery of written notice to Tenant, to perform on behalf of Tenant, all or some portion of the repairs, maintenance, restoration and replacement in and to the Premises required to be performed by Tenant under this Lease (any such repairs, maintenance, restoration and/or replacement activities that Landlord elects to perform on behalf of Tenant are herein collectively referred to as “**General Maintenance Services**”). Tenant shall reimburse Landlord for the cost or value of all General Maintenance Services provided by Landlord as Additional Rent, simultaneously with the payment of Operating Expenses as part of Estimated Additional Rent (on a monthly estimated basis subject to annual reconciliation, as described in **Section 3.3** above). Unless and until Landlord affirmatively elects to provide General Maintenance Services, nothing contained herein shall be construed to obligate Landlord to perform any General Maintenance Services or, except as otherwise expressly provided in **Section 13.2**, to repair, maintain, restore or replace any portion of the Premises. Landlord may from time to time, in its sole discretion, (x) reduce or expand the scope of the General Maintenance Services that Landlord has elected to provide or (y) revoke its election to provide any or all of the General Maintenance Services, in either event, upon delivery of not less than thirty (30) days’ prior written notice to Tenant [**THE LANGUAGE IN THIS SENTENCE IS NOT TO BE REMOVED OR REVISED**].

13.1.3. HVAC Maintenance Contract. If Landlord does not elect to repair and maintain the HVAC systems as part of General Maintenance Services, or revokes such election at any time after having made such election, then, within 30 days following either (a) the Commencement Date or (b) the date on which Landlord advises Tenant that Landlord will no longer provide General Maintenance Services for the HVAC system, whichever date is applicable, Tenant shall procure and deliver to Landlord the HVAC Maintenance Contract. Thereafter, Tenant shall provide to Landlord a copy of renewals or replacements of such HVAC Maintenance Contract no later than 30 days prior to the then-applicable expiry date of the existing HVAC Maintenance Contract. If Tenant fails to timely deliver to Landlord the HVAC Maintenance Contract (or any applicable renewal or replacement thereof), then Landlord shall have the right to contract directly for the periodic maintenance of the HVAC systems in the Premises and to charge the cost thereof back to Tenant as Additional Rent.

13.2. Landlord Repairs. Notwithstanding anything contrary herein, Landlord shall repair, replace and restore the foundation, exterior and interior load-bearing walls, roof structure and roof covering and tuckpointing of the Property; provided, however, that (i) all costs and expenses so incurred by Landlord to repair, replace and restore the above items shall constitute Operating Expenses; provided, however, that with respect to any costs incurred in the replacement context, those costs shall not constitute an Operating Expense except to the extent that such costs so qualify under **Section 3.1.1(vii)**; and (ii) notwithstanding (i) above, in the event that any such repair, replacement or restoration is necessitated by any or all of the matters set forth in **Sections 13.1(a)** through **(d)**

above (collectively, “**Tenant Necessitated Repairs**”), then Tenant shall be required to reimburse Landlord for all costs and expenses that Landlord incurs in order to perform such Tenant Necessitated Repairs, and such reimbursement shall be paid, in full, within 10 days after Landlord’s delivery of demand therefor. Landlord agrees to commence the repairs, replacements or restoration described in this **Section 13.2** within a reasonable period of time after receiving from Tenant written notice of the need for such repairs.

14. UTILITIES. Tenant shall purchase all utility services and shall provide for scavenger, cleaning and extermination services. As provided in **Section 3.1.1.** above, utility charges are included within Operating Expenses; therefore, when and as Tenant pays estimated Operating Expenses, those estimated monthly payments shall include monthly estimated installments of utility charges; nevertheless, at Landlord’s election or with Landlord’s consent, Tenant may pay the utility charges for its Premises directly to the utility or municipality providing such service, and in that event: (a) all charges shall be paid by Tenant before they become delinquent; and (b) utility charges for the Premises shall not be included in estimated Operating Expenses. Tenant shall be solely responsible for the repair and maintenance of any meters necessary in connection with such services. Tenant’s use of electrical energy in the Premises shall not, at any time, exceed the capacity of either or both of (i) any of the electrical conductors and equipment in or otherwise servicing the Premises; and (ii) the HVAC systems of either or both of the Premises and the Property.

15. INVOLUNTARY CESSATION OF SERVICES. Landlord reserves the right, without any liability to Tenant and without affecting Tenant’s covenants and obligations hereunder, to stop service of any or all of the HVAC, electric, sanitary, elevator (if any), and other systems serving the Premises, or to stop any other services required by Landlord under this Lease, whenever and for so long as may be necessary by reason of (i) accidents, emergencies, strikes, or the making of repairs or changes which Landlord or Agent, in good faith, deems necessary or (ii) any other cause beyond Landlord’s reasonable control. Further, it is also understood and agreed that Landlord or Agent shall have no liability or responsibility for a cessation of services to the Premises or to the Property that occurs as a result of causes beyond Landlord’s or Agent’s reasonable control. No such interruption of service shall be deemed an eviction or disturbance of Tenant’s use and possession of the Premises or any part thereof, or render Landlord or Agent liable to Tenant for damages, or relieve Tenant from performance of Tenant’s obligations under this Lease, including, but not limited to, the obligation to pay Rent; provided, however, that if any interruption of services due to the act or omission of Landlord persists for a period in excess of five (5) consecutive business days from the date on which Landlord receives notice from Tenant thereof Tenant shall, as Tenant’s sole remedy, be entitled to a proportionate abatement of Rent to the extent, if any, of any actual loss of use of the Premises by Tenant.

16. LANDLORD’S RIGHTS. Landlord, Agent and their respective agents, employees and representatives shall have the right to enter and/or pass through the Premises at any time or times upon reasonable prior notice (except in the event of emergency): (a) to examine and inspect the Premises and to show them to actual and prospective lenders, prospective purchasers or mortgagees of the Property or providers of capital to Landlord and its affiliates; and (b) to make such repairs, alterations, additions and improvements in or to all or any portion of either or both of the Premises and the Property, or the Property’s facilities and equipment as Landlord is required or desires to make. Landlord and Agent shall be allowed to take all materials into and upon the Premises that may be required in connection with any repairs, alterations, additions or improvements, without any liability to Tenant and without any reduction or modification of Tenant’s covenants and obligations hereunder; provided, however, that Landlord shall use reasonable efforts to limit interference with Tenant’s business operations and Tenant’s occupancy and use of the Premises. During the period of six months prior to the Expiration Date (or at any time, if Tenant has vacated or abandoned the Premises or is otherwise in default under this Lease), Landlord and its agents may exhibit the Premises to prospective tenants. Additionally, Landlord and Agent shall have the following rights with respect to the Premises, exercisable without notice to Tenant, without liability to Tenant, and without being deemed an eviction or disturbance of Tenant’s use or possession of the Premises or giving rise to any claim for setoff or abatement of Rent: (i) to designate and approve, prior to installation, all types of signs; (ii) to have pass keys, access cards, or both, to the Premises;

and (iii) to decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time after Tenant vacates or abandons the Premises for more than 30 consecutive days or without notice to Landlord of Tenant's intention to reoccupy the Premises.

17. NON-LIABILITY AND INDEMNIFICATION.

17.1. Non-Liability. Except as provided in **Section 17.2.2**, none of Landlord, Agent, any other managing agent, or their respective affiliates, owners, partners, directors, officers, agents and employees shall be liable to Tenant for any loss, injury, or damage, to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss. Further, except as provided in **Section 17.2.2**, none of Landlord, Agent, any other managing agent, or their respective affiliates, owners, partners, directors, officers, agents and employees shall be liable to Tenant (a) for any damage caused by other tenants or persons in, upon or about the Property, or caused by operations in construction of any public or quasi-public work; (b) with respect to matters for which Landlord is liable, for consequential or indirect damages purportedly arising out of any loss of use of the Premises or any equipment or facilities therein by Tenant or any person claiming through or under Tenant; (c) any defect in the Premises or the Property; (d) injury or damage to person or property caused by fire, or theft, or resulting from the operation of heating or air conditioning or lighting apparatus, or from falling plaster, or from steam, gas, electricity, water, rain, snow, ice, or dampness, that may leak or flow from any part of the Property, or from the pipes, appliances or plumbing work of the same.

17.2. Indemnification.

17.2.1. Tenant Indemnification. Tenant hereby indemnifies, defends, and holds Landlord, Agent and their respective affiliates, owners, partners, directors, officers, agents and employees

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(collectively, "**Landlord Indemnified Parties**") harmless from and against any and all Losses (defined below) arising from or in connection with any or all of: (a) the conduct or management of either or both the Property and the Premises or any business therein, or any work or Alterations done, or any condition created by any or all of Tenant and Tenant's Parties in or about the Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant is given access to the Premises; (b) any act, omission or negligence of any or all of Tenant and Tenant's Parties; (c) any accident, injury or damage whatsoever (unless caused by Landlord's negligence) occurring in, at or upon either or both of the Property and the Premises and caused by any or all of Tenant and Tenant's Parties; (d) any breach by Tenant of any of its warranties and representations under this Lease; (e) any actions necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under the Bankruptcy Code; (f) any violation or alleged violation by any or all of Tenant and Tenant's Parties of any Law including, without limitation, any Environmental Law; (g) any breach of the provisions of **Section 9** by any or all of Tenant and Tenant's Parties; (h) claims for work or labor performed or materials supplies furnished to or at the request of any or all of Tenant and Tenant's Parties; (i) claims arising from any breach or default on the part of Tenant in the performance of any covenant contained in this Lease; (j) any Hazardous Materials used, exposed, emitted, released, discharged, generated, manufactured, sold, transported, handled, stored, treated, reused, presented, disposed of or recycled in, at, near or under all or any portion of the Premises as a result of the acts or omissions of any or all of Tenant and Tenant's Parties; and (k) the violation of any Environmental Law or any permit, application or consent required in connection with any Environmental Law by any or all of Tenant and Tenant's Parties with respect to the Premises during the Term, excluding, however, any violation of any Environmental Law resulting directly from the acts or omissions of Landlord and Landlord's employees, agents and contractors (collectively, "**Tenant's Indemnified Matters**"). In case any action or proceeding is brought against any or all of Landlord and the Landlord Indemnified Parties by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from any or all of Landlord, Agent or any Superior Party (defined below), shall resist and defend such action or proceeding by counsel reasonably satisfactory to, or selected by, Landlord. The term "**Losses**" shall mean all claims, demands, expenses, actions, judgments, damages (actual, but not consequential), penalties, fines, liabilities, losses of every kind and nature (including, without limitation, property damage, diminution in value of Landlord's interest in the Premises or the Property, damages for the loss or restriction on use of any space or amenity within the Premises or the Property, damages arising from any adverse impact on marketing space in the Property, sums paid in settlement of claims and any costs and expenses associated with injury, illness or death to or of any person), suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing indemnity. The provisions of this **Section 17.2.1** shall survive the expiration or termination of this Lease.

17.2.2. Landlord Indemnification. Landlord hereby indemnifies, defends and holds Tenant harmless from and against any and all Losses actually suffered or incurred by Tenant as the sole and direct result of any negligent, willful or intentional acts or omissions of any or all of Landlord, Agent and any parties within the direct and sole control of either or both of Landlord and Agent. In the event that any action or proceeding is brought against Tenant, and the foregoing indemnity is applicable to such action or proceeding, then Landlord, upon notice from Tenant, shall resist and defend such action or proceeding by counsel reasonably satisfactory to Tenant. Notwithstanding anything to the contrary set forth in this Lease, however, in all events and under all circumstances, the liability of Landlord to Tenant shall be limited to the interest of Landlord in the Property, and Tenant agrees to look solely to Landlord's interest in the Property for the recovery of any judgment or award against Landlord, it being intended that Landlord shall not be personally liable for any judgment or deficiency. The provisions of this **Section 17.2.2** shall survive the expiration or termination of this Lease.

17.3. Force Majeure. The obligations of Tenant hereunder shall not be affected, impaired or excused, and Landlord shall have no liability whatsoever to Tenant, with respect to any act, event or circumstance arising out of (a) Landlord's failure to fulfill, or delay in fulfilling any of its obligations under this Lease by reason of labor dispute, governmental preemption of property in connection with a public emergency or shortages of fuel, supplies, or labor, or any other cause, whether similar or dissimilar, beyond Landlord's reasonable control; or (b) any failure or defect in the supply, quantity or character of utilities furnished to the Premises, or by reason of any requirement, act or omission of any public utility or others serving the Property, beyond Landlord's reasonable control.

18. DAMAGE OR DESTRUCTION.

18.1. Notification and Repair. Tenant shall give prompt notice to Landlord and Agent of (a) any fire or other casualty to the Premises or the Property, and (b) any damage to, or defect in, any part or appurtenance of the Property's sanitary, electrical, HVAC, elevator or other systems located in or passing through the Premises or any part thereof. Tenant shall be liable for any claim, loss, damage, cost or expense resulting from Tenant's failure to give Landlord the foregoing notice in a timely manner. Subject to the provisions of **Section 18.3** below, if either or both of the Property and the Premises is damaged by fire or other insured casualty, Landlord shall repair (or cause Agent to repair) the damage and restore and rebuild the Property and/or the Premises (except for Tenant's Property) with reasonable dispatch after (x) notice to it of the damage or destruction and (y) the adjustment of the insurance proceeds attributable to such damage. Subject to the provisions of **Section 18.3** below, Tenant shall not be entitled to terminate this Lease and no damages,

compensation or claim shall be payable by Landlord for purported inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or of the Property pursuant to this Section. Landlord (or Agent, as the case may be) shall use its diligent, good faith efforts to make such repair or restoration promptly and in such manner as not to unreasonably interfere with Tenant's use and occupancy of the Premises, but Landlord or Agent shall not be required to do such repair or restoration work except during normal business hours of business days.

18.2. Rental Abatement. Provided that any damage to either or both of the Property and the Premises is not caused by, or is not the result of acts or omissions by, any or all of Tenant and Tenant's Parties, if (a) the Property is damaged by fire or other casualty thereby causing the Premises to be inaccessible or (b) the Premises are partially damaged by fire or other casualty, the Rent shall be proportionally abated to the extent of any actual loss of use of the Premises by Tenant.

18.3. Total Destruction. If the Property or the Premises shall be totally destroyed by fire or other casualty, or if the Property shall be so damaged by fire or other casualty that (in the reasonable opinion of a reputable contractor or architect designated by Landlord): (i) its repair or restoration requires more than 180 days or (ii) such repair or restoration requires the expenditure of more than 50% of the full insurable value of the Property immediately prior to the casualty or (iii) the damage (x) is less than the amount stated in (ii) above, but more than 10% of the full insurable value of the Property; and (y) occurs during the last two years of Lease Term, Landlord and Tenant shall each have the option to terminate this Lease (by so advising the other, in writing) within 10 days after said contractor or architect delivers written notice of its opinion to Landlord and Tenant, but in all events prior to the commencement of any restoration of the Premises or the Property by Landlord. In such event, the termination shall be effective as of the date upon which either Landlord or Tenant, as the case may be, receives timely written notice from the other terminating this Lease pursuant to the preceding sentence. If neither Landlord nor Tenant timely delivers a termination notice, this Lease shall remain in full force and effect. Notwithstanding the foregoing, if (A) any holder of a mortgage or deed of trust encumbering the Property or landlord pursuant to a ground lease encumbering the Property (collectively, "**Superior Parties**") or other party entitled to the insurance proceeds fails to make such proceeds available to Landlord in an amount sufficient for restoration of the Premises or the Property, or (B) the issuer of any casualty insurance policies on the Property fails to make available to Landlord sufficient proceeds for restoration of the Premises or the Property, then Landlord may, at Landlord's sole option, terminate this Lease by giving Tenant written notice to such effect within 30 days after Landlord receives notice from the Superior Party or insurance company, as the case may be, that such proceeds shall not be made available, in which event the termination of this Lease shall be effective as of the date Tenant receives written notice from Landlord of Landlord's election to terminate this Lease. Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease by virtue of any delays in completion of repairs and restoration. For purposes of this **Section 18.3** only, "**full insurable value**" shall mean replacement cost, less the cost of footings, foundations and other structures below grade.

18.4. Insurance Proceeds. Landlord shall not be obligated to expend in repairs and restoration an amount in excess of the proceeds of insurance recovered with respect to any casualty. Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage, whether carried by Landlord or Tenant, for damage to either or both of the Premises and the Property (excluding any proceeds for damage to Tenant's Property). In the event that either or both of the Premises and the Property are not repaired or reconstructed, all proceeds of insurance (excluding any proceeds covering Tenant's Property), whether carried by Landlord or Tenant, shall be payable to Landlord. Landlord's duty to repair the Premises and the Property (excluding Tenant's Property) is limited to repairing the Premises to the condition existing immediately prior to such fire or other casualty.

19. EMINENT DOMAIN. If the whole, or any substantial (as reasonably determined by Landlord) portion, of the Property is taken or condemned for any public use under any Law or by right of eminent domain, or by private purchase in lieu thereof, and such taking would prevent or materially interfere with the Permitted Use of the Premises, this Lease shall terminate effective when the physical taking of said Premises occurs. If less than a substantial portion of the Property is so taken or condemned, or if the taking or condemnation is temporary (regardless of the portion of the Property affected), this Lease shall not terminate, but the Rent payable hereunder shall be proportionally abated to the extent of any actual loss of use of the Premises by Tenant. Landlord shall be entitled to any and all payment, income, rent or award, or any interest therein whatsoever, which may be paid or made in connection with such a taking or conveyance, and Tenant shall have no claim against Landlord for the value of any unexpired portion of this Lease. Notwithstanding the foregoing, any compensation specifically and independently awarded to Tenant for loss of business or goodwill, or for its personal property, shall be the property of Tenant.

20. SURRENDER AND HOLDOVER. On the last day of the Term, or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Premises, (a) Tenant shall quit and surrender the Premises to Landlord "broom-clean" and in good order, condition and repair (as defined by **Exhibit C**, attached hereto and incorporated herein by reference), except for ordinary wear and tear and such damage or destruction as Landlord is required to repair or restore under this Lease, (b) Tenant shall remove all of Tenant's Property therefrom, except as otherwise expressly provided in this Lease, and (c) Tenant shall surrender to Landlord any and all keys, access cards, computer codes or any other items used to access the Premises. Landlord shall be permitted to inspect the Premises in order to verify compliance with this **Section 20** at any time prior to (x) the Expiration Date, (y) the effective date of any earlier termination of this Lease, or (z) the surrender date otherwise agreed to in writing by Landlord and Tenant. The obligations imposed under the first sentence of this **Section 20** shall survive the termination or expiration of this Lease. If any repairs are required to be performed in, to or at the Premises (pursuant to the first sentence of this **Section 20** or any other applicable provision of this Lease) upon the expiration or termination of the Term, Tenant shall cause such repairs to be performed, to Landlord's reasonable satisfaction, within 10 business days after the date on which this Lease is terminated or expired. If Tenant fails to timely comply with the preceding sentence, then Landlord shall have the right to cause the repairs to be performed, at Tenant's expense, and all such expenses so incurred by Landlord shall bear interest (at the rate specified in the second sentence of **Section 22.3**) from the date the expense is incurred until the date paid, in full, by Tenant (inclusive of interest). If Tenant remains in possession after the Expiration Date hereof or after any earlier termination date of this Lease or of Tenant's right to possession: (i) Tenant shall be deemed a tenant-at-sufferance; (ii) Tenant shall pay 200% of the aggregate of the Base Rent and Additional Rent last prevailing hereunder, and also shall pay all actual damages sustained by Landlord, directly by reason of Tenant's remaining in possession after the expiration or

termination of this Lease; (iii) there shall be no renewal or extension of this Lease by operation of law; and (iv) the tenancy-at-will may be terminated by Landlord upon one days' or by Tenant upon 30 days' prior written notice given by the terminating party to the non-terminating party. The provisions of this

Section 20 shall not constitute a waiver by Landlord of any re-entry rights of Landlord provided hereunder or by law.

21. EVENTS OF DEFAULT.

21.1. Bankruptcy of Tenant. It shall be a default by Tenant under this Lease if Tenant makes an assignment for the benefit of creditors, or files a voluntary petition under any state or federal bankruptcy or insolvency law, or an involuntary petition alleging an act of bankruptcy or insolvency is filed against Tenant under any state or federal bankruptcy or insolvency law that is not dismissed within 90 days, or whenever a petition is filed by or against (to the extent not dismissed within 90 days) Tenant under the reorganization provisions of the United States Bankruptcy Code or under the provisions of any state or federal law of like import, or whenever a petition shall be filed by Tenant under the arrangement provisions of the United States Bankruptcy Code or similar state or federal law, or whenever a receiver of Tenant, or of, or for, the property of Tenant shall be appointed, or Tenant admits it is insolvent or is not able to pay its debts as they mature.

21.2. Default Provisions. Each of the following shall constitute a default by Tenant under this Lease: (a) if Tenant fails to pay Rent or any other payment when due hereunder within five days after written notice from Landlord of such failure to pay on the due date; provided, however, that if in any consecutive 12 month period, Tenant shall, on two (2) separate occasions, fail to pay any installment of Rent on the date such installment of Rent is due, then, on the third such occasion and on each occasion thereafter on which Tenant shall fail to pay an installment of Rent on the date such installment of Rent is due, Landlord shall be relieved from any obligation to provide notice to Tenant, and Tenant shall then no longer have a five day period in which to cure any such failure; or (b) if Tenant fails, whether by action or inaction, to timely comply with, or satisfy, any or all of the obligations imposed on Tenant under this Lease (other than the obligation to pay Rent) for a period of 30 days after Landlord's delivery to Tenant of written notice of such default under this **Section 21.2(b)**; provided, however, that if the default cannot, by its nature, be cured within such 30 day period, but Tenant commences and diligently pursues a cure of such default promptly within the initial 30 day cure period, then Landlord shall not exercise its remedies under **Section 22** unless such default remains uncured for more than 60 days after the initial delivery of Landlord's original default notice; or (c) Tenant fails to deliver to Landlord prior written notice (accompanied by an additional security deposit equal to two monthly installments of Base Rent) before Tenant vacates or abandons the Premises during the Term.

22. RIGHTS AND REMEDIES.

22.1. Landlord's Cure Rights Upon Default of Tenant. If Tenant defaults in the performance of any of its obligations under this Lease, and fails to cure such default on a timely basis (pursuant to **Section 21.2**), Landlord, without thereby waiving such default, may (but shall not be obligated to) perform the same for the account, and at the expense of, Tenant.

22.2. Landlord's Remedies. In the event of any default by Tenant under this Lease, Landlord, at its option, and after any applicable notice and cure period (as required pursuant to **Section 21.2**), but without additional notice or demand from Landlord, if any, as provided in **Section 21.2** has expired, may, in addition to all other rights and remedies provided in this Lease, or otherwise at law or in equity: (a) terminate this Lease and Tenant's right of possession of the Premises; or (b) terminate Tenant's right of possession of the Premises without terminating this Lease; provided, however, that Landlord may, whether Landlord elects to proceed under Subsections (a) or (b) above, relet the Premises, or any part thereof for the account of Tenant, for such rent and term and upon such terms and conditions as are acceptable to Landlord. In addition, for purposes of any reletting, Landlord is authorized to decorate, repair, alter and improve the Premises to the extent deemed necessary by Landlord, in its sole discretion. In the event of the termination of this Lease by Landlord pursuant to (a) above, Landlord shall be entitled to recover from Tenant (i) all damages and other sums that Landlord is entitled to recover under any provision of this Lease or at law or in equity, including, but not limited to, all fixed dollar amounts of Base Rent and Additional Rent accrued and unpaid for the period up to and including such termination date; (ii) all other additional sums payable by Tenant, or for which Tenant is liable, or in respect of which Tenant has agreed to indemnify Landlord, under any of the provisions of this Lease, that may be then owing and unpaid; (iii) all costs and expenses (including, without limitation, court costs and attorneys' reasonable fees) incurred by Landlord in the enforcement of its rights and remedies under this Lease; and (iv) any damages provable by Landlord as a matter of law including, without limitation, an amount equal to the positive difference, if any, between (x) the discounted present value (at 6% per annum) of the Base Rent provided to be paid for the remainder of the Term (measured from the effective termination date of this Lease) and (y) the fair market rental value of the Leased Premises (determined at the date of termination of this Lease) after deduction (from such fair market rental value) of the projected costs and expenses of reletting the Premises (including the anticipated costs of repairs, alterations, improvements, additions, legal fees and brokerage commissions) as reasonably estimated by Landlord. If Landlord elects to pursue its rights and remedies under Subsection (b) above, and the Premises are relet and a sufficient sum is not realized therefrom, then to satisfy the payment, when due, of Base Rent and Additional Rent reserved under the Lease for any monthly period (after payment of all Landlord's reasonable expenses of reletting), Tenant shall, in Landlord's sole judgment, either (i) pay any such deficiency monthly or (ii) pay such deficiency on an accelerated basis, which accelerated deficiency shall be discounted at a rate of 6% per annum. If Landlord elects to pursue its rights and remedies under Subsection (b) above, and Landlord fails to relet the Premises, then Tenant shall pay to Landlord the sum of (x) the projected costs of Landlord's expenses of reletting (including the anticipated costs of repairs, alterations, improvements, additions, legal fees and brokerage commissions) as reasonably estimated by Landlord and (y) the accelerated amount of Base Rent and Additional Rent due under the Lease for the balance of the Term, discounted to present value at a rate of 6% per annum. Tenant agrees that Landlord may file suit to recover any

sums due to Landlord hereunder from time to time and that such suit or recovery of any amount due Landlord hereunder shall not be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord. If Landlord elects to pursue its rights and remedies under Subsection (b), then Landlord shall at any time have the further right and remedy to rescind such election and pursue its rights and remedies under Subsection (a). In the event Landlord elects, pursuant to clause (b) of this **Section 22.2**, to terminate Tenant's right of possession only, without terminating this Lease, Landlord may, at Landlord's option, enter into the Premises, remove Tenant's Property, Tenant's signs and other evidences of tenancy, and take and hold possession thereof, as provided in **Section 20** hereof; provided, however, that such entry and possession shall not terminate this Lease or release Tenant, in whole or in part, from Tenant's obligation to pay the Base Rent and Additional Rent reserved hereunder for the full Term, or from any other obligation of Tenant under this Lease. Any and all property that may be removed from the Premises by Landlord pursuant to the authority of the Lease or of law, to which Tenant is or may be entitled, may be handled, removed or stored by Landlord at the sole risk, cost and expense of Tenant, and in no event or circumstance shall Landlord be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. Any such property of Tenant not retaken from storage by Tenant within 30 days after the end of the Term, however terminated, shall be conclusively presumed to have been conveyed by Tenant to Landlord under this Lease as in a bill of sale, without further payment or credit by Landlord to Tenant. **AS A MATERIAL INDUCEMENT TO LANDLORD TO ENTER INTO THIS LEASE, TENANT HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED**

UNDER APPLICABLE LAW, ANY OBLIGATION OR DUTY ON THE PART OF LANDLORD TO MITIGATE ANY DAMAGES ARISING BY VIRTUE OF OR IN CONNECTION WITH ANY DEFAULT BY TENANT UNDER THIS LEASE.

For purposes of determining any recovery of rent or damages by Landlord that depends upon what Landlord could collect by using reasonable efforts to relet the Premises, in the event such determination is required by applicable law notwithstanding the foregoing waiver by Tenant, it is understood and agreed that:

- (a) Landlord may elect to lease other comparable, available space in the Building, if any, before reletting the Premises.
- (b) Landlord may decline to incur out-of-pocket costs to relet the Premises, other than customary leasing commissions and legal fees for the negotiation of a lease with a new tenant.
- (c) Landlord may decline to relet the Premises at rental rates below then prevailing market rental rates, because of the negative impact lower rental rates would have on the value of the Building and because of the uncertainty of actually receiving from Tenant the greater damages that Landlord would suffer from and after reletting at the lower rates.
- (d) Before reletting the Premises to a prospective tenant, Landlord may require the prospective tenant to demonstrate the same financial wherewithal that Landlord would require as a condition to leasing other space in the Building to the prospective tenant.
- (e) Identifying a prospective tenant to relet the Premises, negotiating a new lease with such tenant and making the Premises ready for such tenant will take time, depending upon market conditions when the Premises first become available for reletting, and during such time Landlord cannot be expected to collect any revenue from reletting.
- (f) Listing the Premises with a broker in a manner consistent with parts (a) through (e) above constitutes reasonable efforts on the part of Landlord to relet the Premises.

22.3. Additional Rights of Landlord. Any and all costs, expenses and disbursements, of any kind or nature, incurred by Landlord or Agent in connection with the enforcement of any and all of the terms and provisions of this Lease, including attorneys' reasonable fees (through all appellate proceedings), shall be due and payable (as Additional Rent) upon Landlord's submission of an invoice therefor. All sums advanced by Landlord or Agent on account of Tenant under this Section, or pursuant to any other provision of this Lease, and all Base Rent and Additional Rent, if delinquent or not paid by Tenant and received by Landlord when due hereunder, shall bear interest at a rate equal to the lesser of (i) the maximum lawful rate from time to time permitted under applicable law or (ii) of 5% per annum above the "prime" or "reference" or "base" rate (on a per annum basis) of interest publicly announced as such, from time to time, by Bank One, N.A. or its successor, or such other national banking association as may be designated by Landlord in the event there is no successor thereto ("**Default Interest**"), from the due date thereof until paid, and such interest shall be and constitute Additional Rent and be due and payable upon Landlord's or Agent's submission of an invoice therefor. The various rights, remedies and elections of Landlord reserved, expressed or contained herein are cumulative and no one of them shall be deemed to be exclusive of the others or of such other rights, remedies, options or elections as are now or may hereafter be conferred upon Landlord by law.

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

23. BROKER. Tenant covenants, warrants and represents that the broker set forth in **Section 1.9(A)** was the only broker to represent Tenant in the negotiation of this Lease ("**Tenant's Broker**"). Landlord covenants, warrants and represents that the broker set forth in **Section 1.9(B)** was the only broker to represent Landlord in the negotiation of this Lease ("**Landlord's Broker**"). Landlord shall be solely responsible for paying the commission of Landlord's Broker. Each party agrees to and hereby does defend, indemnify and hold the other harmless against and from any brokerage commissions or finder's fees or claims therefor by a party claiming to have dealt with the indemnifying party and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing. The foregoing indemnification shall survive the termination or expiration of this Lease.

24. MISCELLANEOUS.

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

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

If to Landlord: First Industrial Texas, L.P.
311 South Wacker Drive, Suite 4000
Chicago, Illinois 60606
Attn: Executive Vice President — Operations

With a copy to: First Industrial Realty Trust, Inc.
4505 Excel Parkway, Suite 600
Addison, Texas 75001
Attn: Robert B. Riner, Jr. — Sr. Regional Director

With a copy to: Barack Ferrazzano Kirschbaum Perlman & Nagelberg LLC
333 West Wacker Drive
Suite 2700
Chicago, Illinois 60606
Attn: Suzanne Bessette-Smith

If to Tenant: Liquidity Services, Inc
2131 K Street NW, 4th Floor
Washington, DC 20037

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

24.4. Legal Costs. Any party in breach or default under this Lease (the “**Defaulting Party**”) shall reimburse the other party (the “**Nondefaulting Party**”) upon demand for any legal fees and court (or other administrative proceeding) costs or expenses that the Nondefaulting Party incurs in connection with the breach or

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default, regardless whether suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, in the event of litigation, the court in such action shall award to the party in whose favor a judgment is entered a reasonable sum as attorneys’ fees and costs, which sum shall be paid by the losing party. Tenant shall pay Landlord’s attorneys’ reasonable fees incurred in connection with Tenant’s request for Landlord’s consent under provisions of this Lease governing assignment and subletting, or in connection with any other act which Tenant proposes to do and which requires Landlord’s consent.

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

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

24.7. Survival of Obligations. Upon the expiration or other termination of this Lease, neither party shall have any further obligation nor liability to the other except as otherwise expressly provided in this Lease and except for such obligations as, by their nature or under the circumstances, can only be, or by the provisions of this Lease, may be performed after such expiration or other termination.

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

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

24.10. Authority of Tenant. If Tenant is a corporation, partnership, limited liability company, association or any other entity, it shall deliver to Landlord, concurrently with the delivery to Landlord of an executed Lease, certified resolutions of Tenant’s directors or other governing person or body (i) authorizing execution and delivery of this Lease and the performance by Tenant of its obligations hereunder and (ii) certifying the authority of the party executing the Lease as having been duly authorized to do so.

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

24.12. Relocation. Landlord shall have the right to relocate Tenant from the Premises to comparable (as to size, configuration and improvements) alternative space in the Property (“**Replacement Premises**”) upon 90 days’ prior written notice to Tenant. In the event of such a relocation, Landlord shall make reasonable, good faith efforts to coordinate with Tenant a mutually acceptable plan (as to scope and timing) for such relocation, and Landlord shall be responsible for the third party costs incurred to accomplish the physical relocation of Tenant (e.g. movers and telephone company charges). If the Replacement Premises are larger in size than the original Premises, there shall be no adjustment in Tenant’s Base Rent; however, Tenant’s Proportionate Share shall be appropriately modified, thereby resulting in a potential increase in Tenant’s Additional Rent. If, however, the Replacement Premises is a smaller size (as to rentable square feet) than the original Premises, Landlord shall appropriately adjust both Tenant’s Base Rent and its Proportionate Share.

24.13. Financial Information. From time to time during the Term, Tenant shall deliver to Landlord information and documentation describing and concerning Tenant’s financial condition, and in form and substance reasonably acceptable to Landlord, within ten (10) days following Landlord’s written request therefor.

24.14. Confidential Information. Tenant agrees to maintain in strict confidence the economic terms of this Lease and any or all other materials, data and information delivered to or received by any or all of Tenant and Tenants’ Parties either prior to or during the Term in connection with the negotiation and execution hereof. The provisions of this **Section 24.14** shall survive the termination of this Lease.

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

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24.16. Joint and Several Liability. All parties signing this Lease as Tenant shall be jointly and severally liable for all obligations of Tenant hereunder.

24.17. Riders. All Riders and Exhibits attached hereto and executed (or initialed) both by Landlord and Tenant shall be deemed to be a part hereof and hereby incorporated herein.

24.18. WAIVER OF TENANT’S DTPA RIGHTS. TENANT HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ITS RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES ACT AS NOW IN FORCE AND FROM TIME TO TIME HEREAFTER AMENDED.

24.19. Landlord’s Liens. In addition to any statutory lien for Rent in Landlord’s favor, Landlord shall have and Tenant hereby grants to Landlord, a continuing security interest for all Rent and other sums of money becoming due from Tenant, upon all of Tenant’s Property situated on the Premises, and, notwithstanding anything contrary to this, Lease such Tenant’s Property shall not be removed from the Premises without the consent of Landlord until all arrearages in Rent as well as any and all other sums of money then due to Landlord shall first have been paid and discharged. In the event of a default under this Lease, Landlord shall have, in addition to any other remedies provided herein by law, all rights and remedies under the Uniform Commercial Code, including without limitation, the right to sell the Tenant’s Property at public or private sale. Tenant hereby agrees to execute such financing statements and other instruments necessary or desirable in Landlord’s discretion to perfect the security interest hereby created. Any statutory lien for Rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereto

[Signature Page to Follow]

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

LANDLORD:

First Industrial Texas LP, a Delaware limited partnership

By: FR Texas GP, LLC, a Delaware limited liability company, its sole general partner

By: First Industrial, L.P., a Delaware limited partnership, its sole member

By: First Industrial Realty Trust, Inc., its general partner

By: _____

Name: Robert B. Riner, Jr.
Its: Sr. Regional Director

TENANT

_____, a

Name: Jaime Mateus-Tique

Its: _____

S-1

**EXHIBIT A
Property**

BEING a tract of land situated in the Solomon Dixon Survey, Abstract No. 408, Dallas County, Texas, and being City of Dallas Lot 1, Block E/8408, "Fifth Installment Perimeter Business Park", as filed for record in Volume 79205, Page 2576, Deed Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with yellow plastic cap stamped "A.H. HALFF ASSOC." (hereafter referred to as "with cap") found in the southerly right-of-way line of Perimeter Drive (60 feet wide), said point being South 56 degrees 23 minutes 30 seconds East, a distance of 40.65 feet from the northwest corner of Lot 2, Block E/8048 of the "Second Installment — Perimeter Business Park" as filed for record in Volume 73229, Page 1371, Deed Records of Dallas County, Texas and being more particularly described as follows:

THENCE, South 56 degrees 23 minutes 30 seconds East, along the south line of Perimeter Drive, a distance of 305.00 feet to a 1/2-inch iron rod with cap found for the point of curvature of a circular curve to the right having a radius of 25.00 feet, whose chord bears South 19 degrees 56 minutes 39 seconds East, a distance of 29.70 feet;

THENCE in a southeasterly and southwesterly direction, along said south line and curve, through a central angle of 72 degrees 53 minutes 43 seconds an arc distance of 31.81 feet to a 1/2-inch iron rod with cap found for the point of reverse curvature of a circular curve to the left having a radius of 60.00 feet, whose chord bears South 58 degrees 45 minutes 12 seconds East, a distance of 116.05 feet, said curve being the cul-de-sac of Perimeter Drive;

THENCE along said cul-de-sac, through a central angle of 150 degrees 30 minutes 50 seconds, an arc distance of 157.62 feet to 1/2-inch iron rod with cap found for corner on the common line of Lot 1 and Lot 2, Block E/8048;

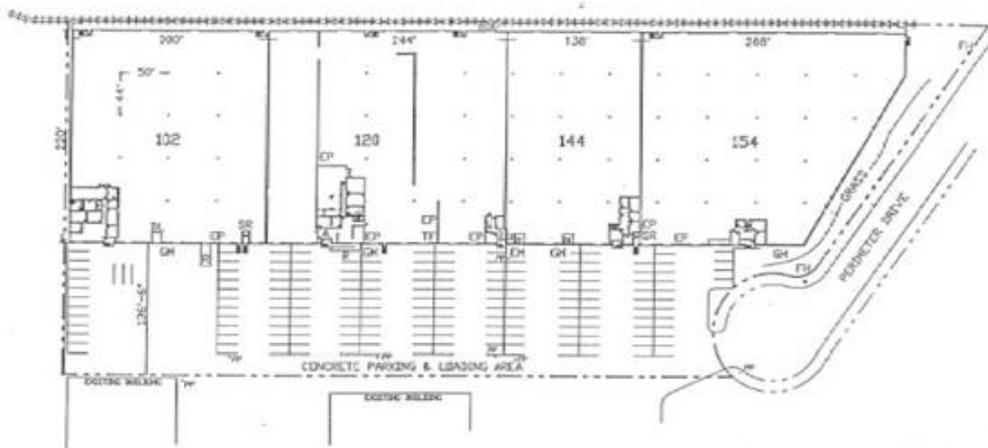
THENCE South 0 degrees 22 minutes 00 seconds West, along said common line, a distance of 683.39 feet to a 1/2-inch iron rod with cap found for corner;

THENCE North 89 degrees 38 minutes 00 seconds West, along the south line of Lot 1, a distance of 365.00 feet to a 1/2-inch iron rod with cap found for corner on the east line of Lot 2, Block E/8048;

THENCE North 0 degrees 22 minutes 00 seconds East, along said east line, a distance of 938.00 feet to the POINT OF BEGINNING AND CONTAINING 293,043 square feet or 6.730 acres of land, more or less.

A-1

EXHIBIT A-1



B-1

**LEASE EXHIBIT B
Landlord's Repairs And Improvements**

Landlord shall, at Landlord's sole cost and expense, install three (3) dock levelers, install new warehouse lighting, retiling and refurbish the bathroom, and clean the carpet and touch up paint the office area, not to exceed \$45,500. All Tenant Improvements shall be completed within 30 days of Lease Commencement.

B-2

LEASE EXHIBIT C

Broom Clean Condition and Repair Requirements

- All walls must be clean and free of holes.
- Overhead door must be free of any broken panels, cracked lumber or dented panels. The overhead door springs, rollers, tracks, motorized door operator, and all other items pertaining to the overhead door must also be in good working condition.
- HVAC system must be in good working order. Filters must be changed, and all thermostats must be in working order. Tenant must supply Landlord with maintenance records.
- All floors (warehouse and office) must be clean and free of excessive dust, dirt, grease, oil and stains.
- Drop grid ceiling must be free of excessive dust from lack of changing filters. (No ceiling tiles may be missing or damaged.)
- All trash must be removed from both inside and outside of the Building.
- All lightbulbs and ballasts must be working.
- All signs in front of Building and on glass entry door and rear door must be removed.
- Hot water heater must work.
- All plumbing fixtures, equipment and drains must be clean and in working order.
- Windows must be clean.
- All mechanical and electrical systems must be in good working condition.

C-1

LEASE EXHIBIT D

TENANT OPERATIONS INQUIRY

Tenant Name:

Tenant SIC Code/Description:

Property Address:

Property Number/Region:

1. Name of Company (if different from above)
2. Address (local):
Phone (local)
3. Address (corporate):
Phone (corporate)
4. What is your business (brief description):
5. What operations will you maintain at the proposed facility?
6. Has your business received any Notices of Violation of environmental laws from municipal or state agencies regarding operations at your current facility? If so, explain:
7. Describe any assembly, manufacturing, machining, painting, printing or mechanical repair activities that will be part of your business operations at the proposed facility:

(answer "No" if "No-Exposure Certification" filed)

C-4

21. This form was prepared by the undersigned as a complete and correct description of Tenant's proposed operations at the location noted, and the Landlord may rely on this information.

Signature

Print Name

Date

C-5

**EXHIBIT E
MOVING CLAUSE**

Provided Tenant is not in default of any terms and conditions of the Lease, and Landlord is still the owner of record for the current Premises, Tenant shall have the ability to move from the Premises to other First Industrial owned projects and/or a future developed projects of similar square footage during the term of the Lease, without incurring any penalty under its current Lease. Tenant's obligations under its current Lease shall be cancelled in full following Tenant's actual moving date to the alternate First Industrial space. Landlord and tenant agree to negotiate such relocation in good faith based on current market conditions.

C-6

FIRST LEASE MODIFICATION AGREEMENT

THIS FIRST LEASE MODIFICATION AGREEMENT, made and entered into this _____ day of _____, 2006, by and between **FIRST INDUSTRIAL TEXAS LP, a Delaware limited partnership** (hereinafter called "Landlord"), and Liquidity Services, Inc., a Delaware corporation (hereinafter called "Tenant").

WHEREAS, by Lease Agreement, dated February 2, 2005, **FIRST INDUSTRIAL TEXAS LP, a Delaware limited partnership** as Landlord, leased to Tenant certain premises (the "Premises") totaling 49,883 square feet situated at 12750 Perimeter Drive, Suite 154, Dallas, Texas, 75228.

NOW, THEREFORE, in consideration of the mutual promises given one to the other, the Parties hereto intending to be legally bound, do hereby covenant and agree as follows:

1. This First Lease Modification Agreement is subject to Landlord's completion and acceptance of a Lease Termination Agreement with Club Sports of North Texas, Inc. for the premises located at 12750 Perimeter Drive, Suite 144, prior to April 3, 2006. The Lease Termination Agreement will terminate the Club Sports of North Texas, Inc. Lease on May 31, 2006.
2. Said Lease Agreement, dated February 2, 2005, covering the Premises is hereby extended for an additional term of Thirty-nine (39) months commencing May 1, 2008 and expiring July 31, 2011.
3. Said Lease Agreement, dated February 2, 2005, is hereby amended to include an additional 30,641 square feet ("Expansion Space") for a term of Sixty-two (62) months commencing June 1, 2006, and expiring July 31, 2011, for a total of 80,524 square feet (**Exhibit A**).
4. Tenant's Proportionate Share is amended to 45.1874% of the building.
5. Tenant agrees to pay to Landlord during the extended lease period set out above, rental as follows, payable on or before the first (1st) day of each month in advance during the period of June 1, 2006 through July 31, 2011.

Lease Period	Monthly Net Rent Existing Space (49,883 sq. ft.)	Monthly Net Rent Expansion Space (30,641 sq. ft.)	Total Monthly Base Rent (80,524 sq. ft.)	Per Square Foot
06/01/06 – 07/31/06	\$ 10,392.29	\$ 0.00	\$ 10,392.29	\$ 1.55
08/01/06 – 04/30/07	\$ 10,392.29	\$ 7,021.90	\$ 17,414.19	\$ 2.60
05/01/07 – 04/30/08	\$ 11,431.52	\$ 7,021.90	\$ 18,453.42	\$ 2.75
05/01/08 – 04/30/09	\$ 11,847.21	\$ 7,277.24	\$ 19,124.45	\$ 2.85
05/01/09 – 04/30/10	\$ 12,262.90	\$ 7,532.58	\$ 19,795.48	\$ 2.95
05/01/10 – 07/31/11	\$ 12,678.60	\$ 7,787.92	\$ 20,466.52	\$ 3.05

6. Landlord agrees to perform the following at its sole cost and expense;
 - Addition of one (1) ramp to dock door
 - Addition of one (1) new dock leveler
 - Repair of two (2) existing dock levelers
 - Addition of five (5) metal halide lights to expansion space
 - New paint and carpet for approximately 1,106 square feet of expansion space office area
 - Demo existing pedestrian ramp
 - Install a 10'x10' opening in the demising wall
 - Put the two existing exhaust fans in good working order
7. Security/Damage Deposit is amended to \$25,328.80 (\$15,089.60 on file from previous lease plus additional security deposit of \$10,239.20 due from Tenant).
8. Tenant shall continue to pay its pro rata share of all Common Area Maintenance (CAM) charges throughout the extended lease term, currently estimated to be \$.96 per square foot, or \$6,441.92 per month for the 2006 Calendar year.
9. Except as herein extended and amended, all terms and conditions of the Lease Agreement dated February 2, 2005, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Lease Modification Agreement in triplicate the day and year first written above.

TENANT:

Liquidity Services, Inc.
A Delaware Corporation

By: _____
William P. Angrick III
Chairman & CEO

LANDLORD:

First Industrial Texas LP, a Delaware limited partnership

By: FR Texas GP, LLC, a Delaware limited liability company, its sole general partner

Date: _____

By: First Industrial, L.P., a Delaware limited partnership,
its sole member

By: First Industrial Realty Trust, Inc., its general partner

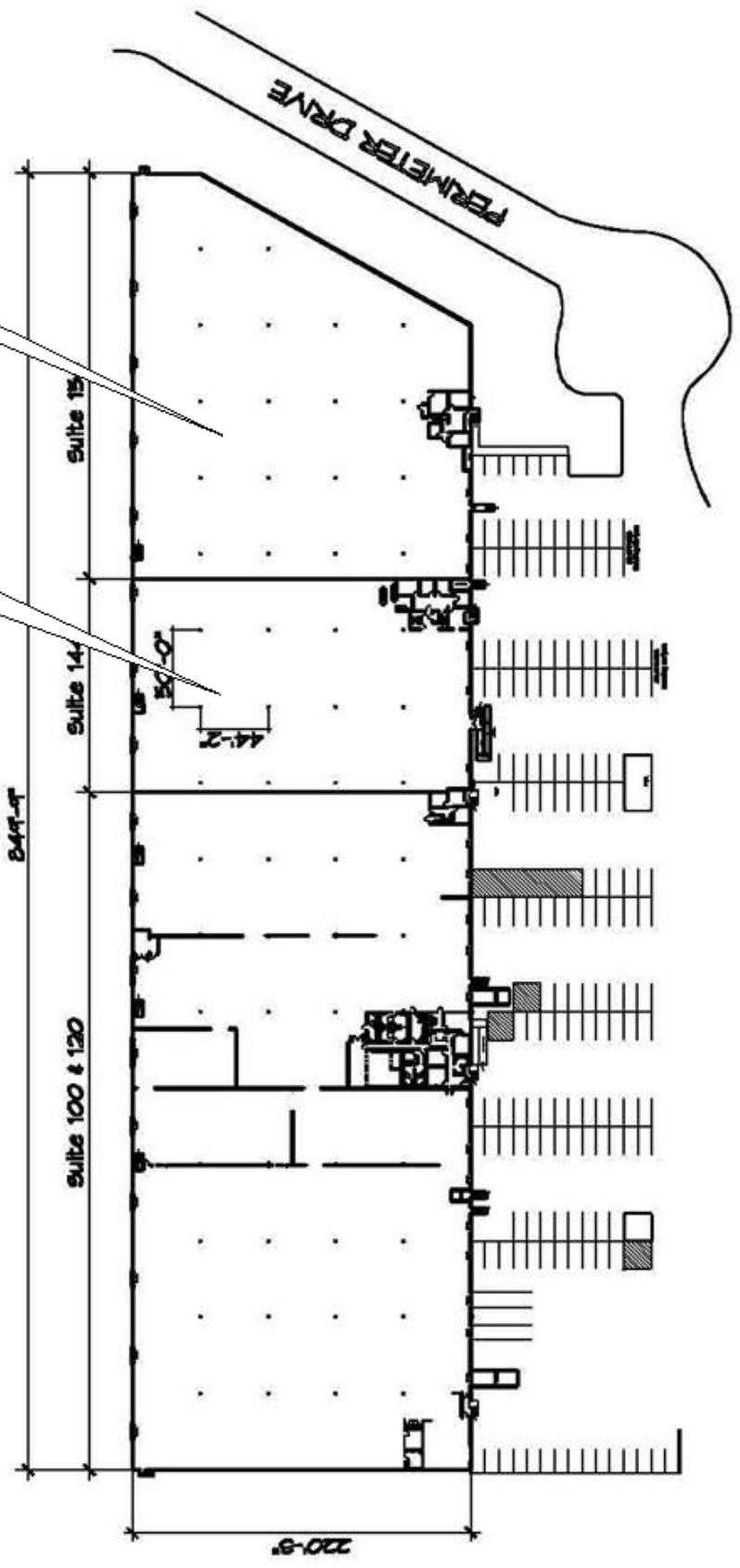
By: _____
Royal Pratt
Vice President — Operations and Leasing

Date: _____

Exhibit A

Existing Space
49,883 Sq. Ft.

Expansion Space
30,641 Sq. Ft.



Initial Here

SUBSIDIARIES OF LIQUIDITY SERVICES, INC.

<u>Company</u>	<u>Jurisdiction of Organisation</u>
Surplus Acquisition Venture, LLC	Delaware
Government Liquidation.com, LLC*	Delaware
Liquidity Services Limited	UK
DOD Surplus LLC	Delaware
Liquidity Services, GmbH	Germany
Liquidity Services Asia Limited	China (Hong Kong)
Liquidity (Shanghai) Business Services Co., Ltd.	China (Shanghai)

* Government Liquidation.com, LLC is a subsidiary of Surplus Acquisition Venture, LLC

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-132192) pertaining to the 2005 Stock Option and Incentive Plan and the 2006 Omnibus Long-Term Incentive Plan of Liquidity Services, Inc. of our report dated December 14, 2006, with respect to the consolidated financial statements and schedule of Liquidity Services, Inc. included in the Annual Report (Form 10-K) for the year ended September 30, 2006.

/s/ Ernst & Young LLP

McLean, Virginia
December 18, 2006

**CERTIFICATION PURSUANT TO RULE 13a-14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, William P. Angrick, III, certify that:

1. I have reviewed this annual report on Form 10-K of Liquidity Services, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) [Paragraph omitted pursuant to SEC Release Nos. 33-8618 and 34-52492];
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 21, 2006

/s/ William P. Angrick, III

By: William P. Angrick, III

Title: *Chairman of the Board of Directors and Chief Executive Officer*

**CERTIFICATION PURSUANT TO RULE 13a-14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, James M. Rallo, certify that:

1. I have reviewed this annual report on Form 10-K of Liquidity Services, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) [Paragraph omitted pursuant to SEC Release Nos. 33-8618 and 34-52492];
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 21, 2006

/s/ James M. Rallo

By: James M. Rallo

Title: Chief Financial Officer and Treasurer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the annual report of Liquidity Services, Inc. (the "Company") on Form 10-K for the period ended September 30, 2006 as filed with the Securities and Exchange Commission, I, William P. Angrick, III, Chief Executive Officer of the Company, certify, to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the Company.

December 21, 2006

/s/ William P. Angrick, III

William P. Angrick, III

Chairman of the Board of Directors and Chief Executive Officer

THE FOREGOING CERTIFICATION IS BEING FURNISHED SOLELY PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002 AND IS NOT BEING FILED AS PART OF THE FORM 10-K OR AS A SEPARATE DISCLOSURE DOCUMENT.

A SIGNED ORIGINAL OF THIS WRITTEN STATEMENT REQUIRED BY SECTION 906, OR OTHER DOCUMENT AUTHENTICATING, ACKNOWLEDGING, OR OTHERWISE ADOPTING THE SIGNATURE THAT APPEARS IN TYPED FORM WITHIN THE ELECTRONIC VERSION OF THIS WRITTEN STATEMENT REQUIRED BY SECTION 906, HAS BEEN PROVIDED TO LIQUIDITY SERVICES, INC. AND WILL BE RETAINED BY LIQUIDITY SERVICES, INC. AND FURNISHED TO THE SECURITIES AND EXCHANGE COMMISSION OR ITS STAFF UPON REQUEST.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the annual report of Liquidity Services, Inc. (the "Company") on Form 10-K for the fiscal year ended September 30, 2006 as filed with the Securities and Exchange Commission, I, James M. Rallo, Chief Financial Officer of the Company, certify, to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the Company.

December 21, 2006

/s/ James M. Rallo

James M. Rallo

Chief Financial Officer and Treasurer

THE FOREGOING CERTIFICATION IS BEING FURNISHED SOLELY PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002 AND IS NOT BEING FILED AS PART OF THE FORM 10-K OR AS A SEPARATE DISCLOSURE DOCUMENT.

A SIGNED ORIGINAL OF THIS WRITTEN STATEMENT REQUIRED BY SECTION 906, OR OTHER DOCUMENT AUTHENTICATING, ACKNOWLEDGING, OR OTHERWISE ADOPTING THE SIGNATURE THAT APPEARS IN TYPED FORM WITHIN THE ELECTRONIC VERSION OF THIS WRITTEN STATEMENT REQUIRED BY SECTION 906, HAS BEEN PROVIDED TO LIQUIDITY SERVICES, INC. AND WILL BE RETAINED BY LIQUIDITY SERVICES, INC. AND FURNISHED TO THE SECURITIES AND EXCHANGE COMMISSION OR ITS STAFF UPON REQUEST.
