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8 STEPHEN J. DONELL

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11  
12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14  
15 v.

16 ASCEND CAPVENTURES INC., et al.,

17  
18 Defendants.

Case No. 2:24-CV-07660-SPG-JPR

**DECLARATION OF STEPHEN J.  
DONELL IN SUPPORT OF EX  
PARTE APPLICATION OF  
RECEIVER, STEPHEN J. DONELL,  
FOR ORDER AUTHORIZING  
REJECTION OF WAREHOUSE  
LEASE AND ABANDONMENT OF  
ASSOCIATED WAREHOUSE  
INVENTORY**

[Ex Parte Application; Declarations of  
Joshua A. del Castillo and Jennifer  
Guillen; and [Proposed] Order submitted  
concurrently herewith]

Judge Hon. Sherilyn Peace Garnett

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1 storage or tracking records rendered it impossible for me to determine ownership or  
2 assess the value of the inventory on-site.

3 4. During my visit to the Warehouse, I was able to speak with and  
4 interview Nikita Loktev, an employee of Walzon, LLC ("Walzon"), who appeared  
5 to run the day-to-day operations of the Warehouse, and who confirmed that certain  
6 shipping operations of the Receivership Entities had been carried out through the  
7 Warehouse, but also that Walzon or other non-receivership entities were using the  
8 Warehouse for their own operations. Initially, Mr. Loktev claimed that he could  
9 distinguish the Receivership Inventory; however, he subsequently conceded that  
10 distinguishing such inventory from other clients' property would be nearly  
11 impossible, if not entirely so. At the time of my visit to the Warehouse, and based  
12 upon the areas of the Warehouse to which I had unobstructed physical access, the  
13 inventory at the Warehouse appeared to consist primarily of low-value household  
14 items.

15 5. Weeks after my visit to the Warehouse, I was provided with a copy of  
16 what appeared to be an active lease agreement (the "Lease") between Dallas NLM  
17 TT, LLC (the "Landlord") and the Receivership Entity Ascend Distribution, LLC.  
18 The Lease provides that Ascend Distribution, LLC will make monthly rental  
19 payments in the amount of \$11,150.00, through June 30, 2025. (*Id.*) As reflected in  
20 my prior submissions to the Court, the receivership estate (the "Estate") does not  
21 have funding sufficient to make these payments, and unsatisfied Lease payments  
22 continue to accrue. A true and correct copy of the Lease I received is attached  
23 hereto as Exhibit A.

24 6. Following my on-site inspection, I communicated with Walzon to  
25 address the status of the Receivership Inventory and ensure compliance with this  
26 Court's September 13, 2024 order [ECF No. 30], pursuant to which I was initially  
27 appointed as Receiver. On September 18, 2024, I caused a formal letter to be  
28 transmitted to Walzon, reiterating the requirement to preserve all inventory and

1 records related to the Receivership Entities. I also requested a detailed inventory list  
2 to evaluate the Estate's interest in the Warehouse inventory. While Walzon  
3 acknowledged these directives, it failed to produce the requested comprehensive  
4 inventory list, allegedly due to a lack of accurate records, effectively confirming my  
5 initial conclusion that an accurate accounting of Receivership Inventory is not  
6 practicable.

7 7. To mitigate disruptions to third-party clients unrelated to the  
8 receivership, I initially permitted Walzon to resume operations for non- Receivership  
9 Entity-related business, subject to the restrictions imposed by the Court's initial  
10 receivership order. I was later informed by Walzon, in October 2024, that Walzon  
11 had vacated the Warehouse and had abandoned in the Warehouse any inventory it  
12 determined (on a basis never explained) to be Receivership Inventory.

13 8. Given Walzon's consistent inability to provide me with an accurate list  
14 identifying the Receivership Inventory, I ultimately requested that my Texas local  
15 counsel conduct a follow-up visit to the Warehouse to determine the nature and  
16 quantity of any purported Receivership Inventory remaining at the Warehouse, and  
17 to arrange to restore access and control of the Warehouse to the Landlord, which has  
18 been demanding payment for rent and utilities from the receivership which the  
19 Estate lacks funding to make, even if the Warehouse contained valuable inventory.

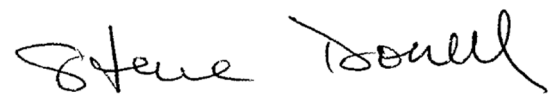
20 9. My local Texas counsel visited the Warehouse on or around January 6,  
21 2025, and was able to access parts of the Warehouse that had been inaccessible  
22 during my initial site visit. During this visit, and in addition to confirming the  
23 presence of inventory with apparently *de minimis* value (including the toiletries and  
24 other items discussed in my prior submissions to the Court), my local counsel was  
25 able to identify potentially valuable inventory, including numerous Starlink mobile  
26 internet kits and children's electronic vehicles, none of which had been visible or  
27 accessible during the initial visit to the Warehouse.

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1           10.    Given that certain newly discovered and apparent Receivership  
2 Inventory appeared to be of higher sale value than the previously identified  
3 Receivership Inventory, I immediately undertook efforts to determine whether and  
4 how such inventory might be monetized for the benefit of the Estate. After  
5 soliciting recommendations for auctioneers and sale administrators, I determined to  
6 use Texas auctioneer Rosen Systems (the "Auctioneer") for any prospective sale of  
7 the Receivership Inventory, including the newly discovered inventory. In  
8 connection with that effort, I arranged for Auctioneer personnel to visit the  
9 Warehouse and review the visible inventory, along with detailed videos and  
10 photographs taken during my local Texas counsel's recent visit to the Warehouse.  
11 Unfortunately, based on the tasks and anticipated costs reported by the Auctioneer  
12 in connection with the prospective sale of the Receivership Inventory, I have  
13 determined, in my reasonable business judgment, that a prospective sale or auction  
14 of the Receivership Inventory is unlikely to result in a net monetary benefit to the  
15 Estate, after accounting for, among other things: (a) the costs of continued Lease  
16 payments to house the inventory during the sale process; (b) utilities for the same  
17 period; (c) the expense of marketing, unpacking, and presenting the Receivership  
18 Inventory for sale; and (d) the Auctioneer's fee. Accordingly, I have reluctantly  
19 concluded that the costs of selling the Receivership Inventory outweigh the likely  
20 monetary benefit, and accordingly that all Receivership Inventory located at the  
21 Warehouse should be abandoned.

22           I declare under penalty of perjury that the foregoing is true and correct.

23           Executed on February 6, 2025, at Los Angeles, California.

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                  Stephen J. Donell

# **EXHIBIT A**

# OFFICE/WAREHOUSE LEASE AGREEMENT

**ARTICLE ONE: CERTAIN DEFINED TERMS.** The following capitalized and bold faced terms, which have been placed in this Article 1 for convenience, shall have the meaning set forth below:

"**Additional Rent**" shall mean, all charges, costs, expenses and other sums due hereunder other than Base Rent, and whether or not the same are designated as rent in this Lease, including without limitation, Tenant's Proportionate Share of Operating Expenses.

"**Base Rent**" shall mean for each month of the Lease Term, the amounts for the periods set forth in the following table:

Months	Monthly Base Rent	Annual Rate Per Sq. Ft.
1 – 12	\$10,312.50	\$8.25 NNN
13 – 24	\$10,725.00	\$8.58 NNN
25 – 36	\$11,150.00	\$8.92 NNN

"**Broker**" shall mean Holt Lunsford Commercial, Inc. for Landlord and Bradford for Tenant.

"**Building**" shall mean that certain building located at 901 – 941 Avenue N., Grand Prairie, Texas 75050, situated on the Land, which is part of the Project, more particularly described on Exhibit B attached hereto.

"**Commencement Date**" shall mean July 1, 2022.

"**Common Area**" means all areas situated on or within the Project and made available by Landlord for the common and joint use of Landlord, Tenant, and any others designated by Landlord. Common Area includes without limitation, any areas designated for parking, and all sidewalks, driveways, landscaped areas, corridors, restrooms, and any other areas and facilities, if any, designated by Landlord from time to time as Common Area.

"**Guarantor**" shall mean IOI MARKETING DEVELOPMENT INC., a Wyoming corporation.

"**Hazardous Substances**" shall mean any substance, material, waste, pollutant, or contaminant that is or could be regulated under any statute, regulations, ordinance, rule, code, judgment, permit, or other similar requirement of any governmental authority, agency or court or that may adversely affect human health or the environment.

"**Land**" shall mean that certain tract of land more particularly described on Exhibit A attached hereto.

"**Landlord**" shall mean DALLAS NLM TT, LLC, a Delaware limited liability company.

"**Landlord Notice Address**" shall mean c/o Taurus Investment Holdings, LLC, Two International Place, Suite 2710, Boston, Massachusetts 02110, Attn: Michael Ostiguy, with a copy to: c/o Taurus Investment Holdings, LLC, 3340 Peachtree Road NE, Suite 1010, Atlanta, Georgia 30326, Attn: Lathan Allen.

"**Lease**" and "**Lease Agreement**" shall mean this agreement between Landlord and Tenant, and the Exhibits referenced in this Article 1, which are attached to the Lease and incorporated herein for all purposes as if set out in full.

"**Lease Term**" shall mean the period beginning on the Commencement Date and ending on the last day of the calendar month that is thirty-six (36) full calendar months after the Commencement Date, unless this Lease is terminated early or extended to a later date pursuant to the terms hereof.

"**Monthly Expense Estimate**" shall mean an amount designated by Landlord from time to time during the Lease Term, equal to 1/12 of the estimated annual cost of Tenant's Proportionate Share of Operating Expenses, which is approximately \$2,412.50 per month or \$1.93 per square foot per year as of the date hereof.

"**Operating Expenses**" shall have the meaning set forth in Article 4.01 hereof.

"**Permitted Use**" shall mean office/general warehouse.

"**Premises**" shall mean that approximately 15,000 square feet of space known as 941 Avenue N., Grand Prairie, Texas 75050 within the Building, more particularly outlined on Exhibit C attached hereto.

"**Project**" shall mean the Land, the Common Area and all improvements situated on the Land, including the certain building with a street address of 901 – 941 Avenue N., Grand Prairie, Texas 75050.

"**Project Rules**" shall mean the rights, rules and regulations governing the use and occupancy of the Project, Building and Premises, which Landlord, in Landlord's sole discretion, may change from time to time during the Lease Term, and which changes become effective upon delivery of a copy to Tenant.

"**Security Deposit**" shall mean the amount of \$27,125.00.

"**Special Provisions**" shall have the meaning set forth in Article 15 hereof.

"**Tenant**" shall mean ASCEND DISTRIBUTION, LLC, a Texas limited liability company.

"**Tenant / Capital Improvements**" Tenant accepts the Premises "as is, where is" without representation or warranty, either express or implied, without any obligation to alter, remodel, improve, repair or decorate any part of the Premises, except as otherwise expressly provided in Article 15.01 below.

"**Tenant Notice Address**" shall mean 941 Avenue N., Grand Prairie, Texas 75050.

"**Tenant's Proportionate Share**" shall mean a fraction having as its numerator the floor area of the Premises and as its denominator the total floor area of the buildings situated within the boundaries of the Project, all as determined by Landlord. As of the date hereof, Tenant's Proportionate Share is 9.38% (i.e., 15,000 divided by 160,000 and rounded to the nearest hundredth).

## ARTICLE TWO: LEASE AND LEASE TERM

**2.01 Lease Grant.** Landlord leases to Tenant, and Tenant leases from Landlord, the Premises and the non-exclusive right to use the Common Areas, subject to all of the terms and conditions of this Lease. Upon the expiration of the Lease Term, Tenant shall immediately surrender the Premises to Landlord.

**2.02 Delay and Early Possession.** If Landlord fails to deliver possession of the Premises to Tenant on the Commencement Date, the Commencement Date shall be delayed until the Premises are delivered to Tenant. Occupancy of the Premises by Tenant prior to the Commencement Date shall not change the Lease Term, but otherwise shall be subject to the terms and conditions of this Lease. Tenant shall pay Base Rent and Additional Rent prorated for the period of early occupancy.

**2.03 Holding Over.** If Tenant continues to occupy the Premises after expiration of the Lease Term, such occupancy shall be a tenancy at will, subject to all of the terms, conditions, and covenants of this Lease except that (a) Tenant shall have no right to renew, extend or expand, (b) Base Rent shall be equal to one hundred fifty percent (150%) of the Base Rent then in effect, and (c) all payments of Base Rent and Additional Rent shall be prorated to reflect the number of days Tenant continues to occupy the Premises. Tenant shall pay all costs, expenses and damages incurred by Landlord in connection with such holdover, and shall indemnify Landlord against all claims arising from or relating to such holdover.

## ARTICLE THREE: RENT, MONTHLY EXPENSE ESTIMATES AND SECURITY DEPOSIT

**3.01 Manner of Payment.** All payments of Base Rent and Additional Rent, which collectively constitute rent for purposes of any law relating to bankruptcy, insolvency, reorganization or relief of debtors, shall be made to Landlord via ACH payment. Tenant's covenants to pay the Base Rent and the Additional Rent are independent of any other covenant, condition, provision or agreement herein contained. Nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of Landlord. Rent shall be payable without deduction, offset, prior notice or demand, in lawful money of the United States. Should Tenant hold over after the expiration of the Lease Term as referenced in Section 2.03 above, Tenant shall be required to pay to Landlord via ACH payment, on or before the first day of any holdover period, the holdover Base Rent for such period. Notwithstanding anything in this Lease to the contrary, Tenant agrees and acknowledges that Tenant's failure to deliver the holdover Base Rent as required herein shall be an automatic Default Event with no notice or demand required whatsoever.

**3.02 Time of Payment.** Upon execution hereof, Tenant shall pay the Base Rent and Monthly Expense Estimate for the first month of the Lease Term. On or before the first day of the second month of the Lease Term and of each month thereafter, a like monthly installment shall be due and payable, in advance, without offset, deduction or prior demand. If the Lease Term commences on other than the first day of a calendar month or ends on other than the last day of a calendar month, the Base Rent and Monthly Expense Estimate for such fractional month shall be prorated to reflect the number of days occurring in such month.

**3.03 Late Charges.** If Landlord does not receive the Base Rent or Additional Rent on the date due or as otherwise set forth in any notice from Landlord to Tenant, Tenant shall pay a late payment charge equal to 5% of such amount. In addition, Tenant shall pay a charge of \$35.00 for any check returned or dishonored. Tenant acknowledges that the additional costs and expenses resulting to Landlord from late payments and returned checks are difficult to ascertain precisely and agrees that the foregoing charges represent a fair, reasonable, good faith estimate of the costs Landlord will incur.



**3.04 Security Deposit.** Upon execution hereof, Tenant shall deliver the Security Deposit to Landlord. Landlord may apply all or part of the Security Deposit to pay any unpaid Base Rent or Additional Rent or to cure any other defaults of Tenant and Tenant shall restore the Security Deposit to its full amount within ten (10) days after Landlord's written request. 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. If Tenant is not in default at the expiration of the Lease Term, Landlord will refund the unused portion of the Security Deposit to Tenant after Tenant vacates the Premises.

**ARTICLE FOUR: OPERATING EXPENSES**

**4.01.a Operating Expenses.** "Operating Expenses" shall mean all expenses and disbursements of every kind that Landlord incurs, pays or becomes obligated to pay in connection with the ownership, operation, security, repair, replacement and maintenance of the Project (collectively, the "Project Operations"), including without limitation (a) wages and salaries of all individuals or entities engaged in Project Operations, including taxes, insurance and benefits relating thereto; (b) management fees; (c) the cost of equipment, supplies and materials used in Project Operations; (d) the annual amortization of the cost of all capital improvements made to the Project (including interest) that Landlord reasonably believes will reduce the cost of operating the Project, or are made in order to comply with any law, ordinance or regulation now or hereafter promulgated by any governmental authority, as amortized over the useful economic life of such improvements as determined by Landlord in its reasonable discretion in accordance with generally accepted accounting principles, taking into account the useful life of the improvements; (e) the cost of all utilities that are not paid directly to service provider by Tenant, other than the cost of utilities actually reimbursed to Landlord by Tenant and other occupants of the Project; (f) the cost of the insurance carried by Landlord pursuant to Article 5.01 below; (g) all taxes, assessments and governmental charges of any kind and from any source including, without limitation, all taxes attributable to taxable margin levied pursuant to Chapter 171 of the Texas Property Tax Code or any amendment, adjustment or replacement thereof that are based upon, attributable to, or applicable to, in whole or part, the Project, rents received from the Project, or the operation of the Project; and (h) the cost of attorneys, accountants, and consultants that relate directly to the operation of the Project and benefit all occupants of the Project. Operating Expenses shall not include costs related to the sale, leasing, or financing of the Project or costs payable solely by Landlord pursuant to Article 7.02 hereof. If the Project is not fully leased and occupied during any year of the Lease Term, then Operating Expenses for such period shall be adjusted to the amount that would have been incurred, in Landlord's reasonable estimation, if the Project had been fully leased and occupied for the entire year.

**4.01.b Utilities.** Tenant shall pay any and all utility cost associated with the Building and/or the Premises directly to the service provider upon occupancy.

**4.02 Reconciliation.** Landlord makes no guaranty or warranty that the Monthly Expense Estimate will be accurate. Landlord may equitably increase Tenant's Proportionate Share of Operating Expenses 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 that includes the Premises or that varies with the occupancy of the Project. If the payments of the Monthly Expense Estimates made by Tenant during any year are less than Tenant's Proportionate Share of Operating Expenses for such year, as increased or adjusted, Tenant shall pay the difference to Landlord within 30 days after demand. If the total of such payments for any year are more than Tenant's Proportionate Share of Operating Expenses for such year, Landlord shall retain such excess and credit it against Tenant's Monthly Expense Estimate in the following year. 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 the Lease Term.

**4.03 Tenant Taxes.** Prior to delinquency, Tenant shall pay (a) all taxes levied or assessed against any personal property or fixtures placed in the Premises and (b) any rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax measured by or based on the Base Rent, Additional Rent or any services provided pursuant to this Lease. Upon the request of Landlord, Tenant shall deliver to Landlord receipts from the applicable taxing authority to verify payment. If Landlord pays such taxes directly to the applicable taxing authority or the assessed value of the Building or Project is increased by the inclusion of any personal property or fixtures placed in the Premises, then Tenant shall pay Landlord the amount of such taxes paid directly, or the tax attributable to such increased valuation, within fifteen (15) days after written notice from Landlord requesting payment.

**ARTICLE FIVE: INSURANCE**

**5.01 Landlord and Tenant Insurance.** During the Lease Term, Landlord and Tenant shall carry insurance as required by Exhibit D.

**ARTICLE SIX: WAIVERS AND INDEMNIFICATION**

**6.01 Indemnification and Waiver.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TENANT KNOWINGLY AND VOLUNTARILY WAIVES AND RELEASES (COLLECTIVELY, THE "WAIVERS") THE LANDLORD PARTIES AND HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS (COLLECTIVELY, THE "INDEMNIFICATION OBLIGATIONS") THE LANDLORD, THE PROTECTED PARTIES AND ANY OFFICER, DIRECTOR, OWNER, PARTNER, EMPLOYEE, AGENT, PROPERTY MANAGER, SHAREHOLDER, INVITEE, LICENSEE, VISITOR, OR BROKER OF LANDLORD OR THE PROTECTED PARTIES (COLLECTIVELY "LANDLORD PARTIES"), THEIR SUCCESSORS AND ASSIGNS, FROM AND AGAINST, ANY AND ALL FINES, SUITS, LITIGATION, LOSSES, COSTS, LIABILITIES, CLAIMS, DEMANDS, OBLIGATIONS, INJURIES, PENALTIES, DISBURSEMENTS, CHARGES, ASSESSMENTS, SETTLEMENT PAYMENTS, DAMAGES (INCLUDING ACTUAL, CONSEQUENTIAL AND PUNITIVE), ACTIONS OR CAUSES OF ACTION (WHETHER IN TORT, CONTRACT, OR UNDER A THEORY OF STRICT LIABILITY, OR WHETHER IN LAW, EQUITY, STATUTORY OR OTHERWISE), LIENS, JUDGMENTS AND EXPENSES (INCLUDING LEGAL COSTS AS DEFINED IN THE FOLLOWING PARAGRAPH 6.02) OF EVERY KIND OR CHARACTER, FORESEEABLE AND UNFORESEEABLE, ARISING OR ALLEGED TO ARISE, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, IN CONNECTION WITH, RELATING TO, OR RESULTING FROM (INDIVIDUALLY, A "CLAIM", AND COLLECTIVELY, THE "CLAIMS") (A) ANY BREACH, VIOLATION OR NON-PERFORMANCE OF ANY TERM, PROVISION, COVENANT, AGREEMENT OR CONDITION ON THE PART OF ANY OF THE TENANT PARTIES, (B) ANY HARM TO, IMPAIRMENT OR LOSS OF, OR IMPAIRMENT OR LOSS OF USE OF, PROPERTY, INCLUDING INCOME SUFFERED BY ANY INDIVIDUAL OR ENTITY INSIDE THE PREMISES OR CAUSED OR SUFFERED BY ANY OF THE TENANT PARTIES OUTSIDE THE PREMISES, (C) HARM TO (INCLUDING SICKNESS OR DISEASE) OR DEATH OF A PERSON INSIDE THE PREMISES OR CAUSED OR SUFFERED BY ANY OF THE TENANT PARTIES OUTSIDE THE PREMISES, AND/OR (D) "PERSONAL AND ADVERTISING INJURY," AS SUCH TERM IS DEFINED IN ISO FORM CG 0001 1001.

**6.02 Independent Covenants.** THE WAIVERS AND INDEMNIFICATION OBLIGATIONS (A) ARE INDEPENDENT OF, AND WILL NOT BE LIMITED BY, EACH OTHER OR ANY INSURANCE OBLIGATIONS IN THIS LEASE (WHETHER OR NOT COMPLIED WITH) OR COMPARATIVE NEGLIGENCE STATUTES OR PRINCIPLES OR DAMAGES OR BENEFITS PAYABLE UNDER WORKERS' COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS, (B) WILL SURVIVE EXPIRATION OF THE LEASE TERM UNTIL ALL CLAIMS ARE FULLY AND FINALLY BARRED BY ALL APPLICABLE LAWS, RULES, REGULATIONS AND STATUTES, AND (C) WILL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW FOR THE BENEFIT OF THE LANDLORD PARTIES, EVEN IF A CLAIM IS CAUSED BY THE ACTIVE OR PASSIVE, JOINT, CONCURRENT OR COMPARATIVE NEGLIGENCE OF ONE OR MORE OF THE LANDLORD PARTIES (THE "INDEMNITY BENEFICIARY"), AND REGARDLESS OF WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED UPON OR ALLEGED AGAINST THE INDEMNITY BENEFICIARY, BUT WILL NOT BE ENFORCED TO THE EXTENT THAT A COURT OF COMPETENT JURISDICTION HOLDS IN A FINAL JUDGMENT THAT A CLAIM IS CAUSED BY THE WILLFUL MISCONDUCT, SOLE NEGLIGENCE OR GROSS NEGLIGENCE OF THE INDEMNITY BENEFICIARY. THE OBLIGATION OF TENANT TO DEFEND THE LANDLORD PARTIES SET FORTH IN THE PRECEDING ARTICLE 6.01 MEANS THAT TENANT SHALL OPPOSE A CLAIM ON BEHALF OF THE INDEMNITY BENEFICIARY, IN LITIGATION, ARBITRATION, MEDIATION OR OTHER PROCEEDING WITH COUNSEL REASONABLY ACCEPTABLE TO THE INDEMNITY BENEFICIARY AND PAY ALL COSTS ASSOCIATED WITH THE PREPARATION OR PROSECUTION OF SUCH DEFENSE, INCLUDING WITHOUT LIMITATION ALL COURT COSTS, ATTORNEYS' FEES, EXPERTS' FEES OR OTHER EXPENSES INCURRED IN INVESTIGATING, PREPARING, PROSECUTING OR SETTLING ANY LEGAL ACTION OR PROCEEDING, OR ARBITRATION, MEDIATION, OR OTHER METHOD OF ALTERNATIVE DISPUTE RESOLUTION (COLLECTIVELY, THE "LEGAL COSTS"), ALL OF WHICH COSTS SHALL BE A DEMAND OBLIGATION OWING BY TENANT TO THE INDEMNITY BENEFICIARY.

**6.03 Property Code Waiver.** TENANT HEREBY WAIVES ANY STATUTORY RIGHTS APPLICABLE UNDER SECTIONS 91.004 AND 93.002 OF THE TEXAS PROPERTY CODE. LANDLORD AND TENANT HEREBY EACH ACKNOWLEDGE AND AGREE THAT THEY ARE KNOWLEDGEABLE AND EXPERIENCED IN COMMERCIAL TRANSACTIONS AND FURTHER HEREBY ACKNOWLEDGE AND AGREE THAT THE LEASE PROVISIONS FOR DETERMINING CHARGES, AMOUNTS AND ADDITIONAL RENT PAYABLE BY TENANT ARE COMMERCIALY REASONABLE AND VALID EVEN THOUGH SUCH METHODS MAY NOT STATE PRECISE MATHEMATICAL FORMULAE FOR DETERMINING SUCH CHARGES. ACCORDINGLY, TENANT HEREBY VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS TO WHICH TENANT MAY BE ENTITLED UNDER SECTION 93.012 OF THE TEXAS PROPERTY CODE, AS SUCH SECTION NOW EXISTS OR AS SAME MAY BE HEREAFTER AMENDED OR SUCCEEDED.

**6.04 Waiver of Implied Warranties and Acceptance of Condition.** TENANT ACKNOWLEDGES THAT (A) IT HAS INSPECTED THE PREMISES AND EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE (INCLUDING ANY AGREEMENT TO CONSTRUCT IMPROVEMENTS TO THE PREMISES), TENANT ACCEPTS THE PREMISES IN AN "AS IS, WHERE IS" CONDITION, (B) THE PREMISES, THE BUILDING AND ANY IMPROVEMENTS COMPRISING THE SAME ARE SUITABLE FOR THE PURPOSE FOR WHICH THE PREMISES ARE LEASED, (C) NO REPRESENTATIONS AS TO THE REPAIR OF THE PREMISES, NOR PROMISES TO ALTER, REMODEL OR IMPROVE THE PREMISES HAVE BEEN MADE BY LANDLORD (EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE), AND (D) NEITHER LANDLORD NOR ANY OF THE LANDLORD PARTIES HAS MADE ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE HABITABILITY, MERCHANTABILITY, SUITABILITY, QUALITY, CONDITION OR FITNESS FOR ANY PARTICULAR PURPOSE (COLLECTIVELY, THE "DISCLAIMED WARRANTIES") WITH REGARD TO THE PREMISES, THE BUILDING, OR THE PROJECT. TENANT HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, THE DISCLAIMED WARRANTIES WITH REGARD TO THE PREMISES, THE BUILDING AND THE PROJECT AND AGREES THAT ITS OBLIGATIONS HERUNDER ARE NOT CONDITIONED OR CONTINGENT UPON RECEIPT OF A CERTIFICATE OF OCCUPANCY.

**6.05 Waiver of Right to Protest.** TENANT HEREBY WAIVES ANY AND ALL RIGHTS UNDER SECTION 41.413 AND 42.015 OF THE TEXAS PROPERTY TAX CODE GRANTING TO TENANT THE RIGHT TO CONTEST APPRAISED VALUES, OR TO RECEIVE NOTICE OF REAPPRAISED VALUES, ON ALL OR ANY PORTION OF THE PROJECT IRRESPECTIVE OF WHETHER LANDLORD HAS ELECTED TO CONTEST SAME. TO THE EXTENT SUCH WAIVER IS PROHIBITED BY APPLICABLE LAW, TENANT HEREBY APPOINTS LANDLORD AS TENANT'S ATTORNEY IN FACT, COUPLED WITH AN INTEREST, TO APPEAR AND TAKE ALL ACTIONS ON BEHALF OF TENANT WHICH TENANT MAY HAVE UNDER SAID SECTION OF THE CODE WITH RESPECT TO THE PROJECT, BUT NOT WITH RESPECT TO TENANT'S PERSONAL PROPERTY LOCATED WITHIN THE PREMISES.



**ARTICLE SEVEN: MAINTENANCE, USE, REPAIR AND ALTERATIONS**

**7.01 Permitted Use.** Tenant may use the Premises only for the Permitted Use. If Tenant pays the Base Rent and Additional Rent, and otherwise complies with all other terms, conditions and covenants of this Lease, Tenant may occupy and enjoy the Premises for the Lease Term. Tenant shall comply with the Project Rules and all deed restrictions, restrictive covenants, governmental laws, ordinances and regulations applicable to the use of the Premises, the conduct of the business operated by Tenant at the Premises, the construction or installation of any improvements to the Premises, and the appearance of the Premises. Tenant shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with the Premises, all at Tenant's sole expense. Tenant shall not permit or cause any party to bring any Hazardous Substances upon the Premises or transport, store, use, generate, manufacture, dispose or release any Hazardous Substances on or from the Premises. Tenant shall indemnify, defend and hold Landlord harmless from and against any losses, claims, demands, actions, suits, damages, expenses and costs which are brought or recoverable against Landlord as a result of any release of Hazardous Substances by Tenant or any Tenant Parties.

**7.02 Landlord Maintenance, Repair, and Operation Obligations.** Landlord shall maintain, at Landlord's expense (i.e., not as part of Operating Expenses), only the full roof replacement, structural soundness of the foundation, and structural soundness of the exterior walls of the building of which the Premises are a part in good repair, reasonable wear and tear and casualty losses and damages caused by Tenant excluded (collectively, the "Landlord Repairs"). The term "walls" as used in this ARTICLE 7.02 shall not include windows, glass or plate glass, doors or overhead doors, special store fronts, dock bumpers, dock plates or levers, or office entries. Furthermore, Landlord, as part of Operating Expenses, shall maintain the Project (other than leased premises and the obligations of other tenants of the Project) in good repair and condition. Tenant shall immediately give Landlord written notice of any repair required by Landlord pursuant to this ARTICLE 7.02. Landlord shall not be obligated to make the Landlord Repairs until a reasonable time after receipt of written notice from Tenant of the need for such repairs. Tenant, at Tenant's sole cost and expense, shall promptly remove Tenant's fixtures, inventory, equipment and other Premises, to the extent required by Landlord, to enable Landlord to make the Landlord Repairs. Landlord's liability hereunder shall be limited to the cost of such repairs or corrections. THIS IS A NET LEASE AND, EXCEPT AS SET FORTH IN THIS ARTICLE 7.02, LANDLORD HAS NO OBLIGATION TO REPAIR OR MAINTAIN THE PREMISES, BUILDING OR PROJECT.

**7.03 Tenant Maintenance, Repair, and Operation Obligations.** Tenant shall pay the initial connection charges for any utilities serving the Premises as well as the ongoing charges for the use of such utilities, including without limitation, gas, water and electricity. Except as set forth in Article 7.02 above, Tenant, at its own cost and expense, shall (a) maintain all parts of the Premises in good condition, ordinary wear and tear excepted, (b) promptly repair, paint, and/or replace any portion of the Premises or the Building that is changed, altered or damaged as a result of any approved or unapproved installation, placement, application or attachment, (c) promptly make all necessary repairs and replacements to the Premises and the exterior doors; electrical system; plumbing; any fire protection sprinkler system; any heating, ventilation and air conditioning equipment; and any other mechanical systems and components that are contained in, or provide service to, the Premises (collectively, the "Premises Systems"), all in a good and workmanlike manner, and (d) enter into a preventive maintenance contract with a maintenance contractor reasonably acceptable to Landlord, which provides for periodical maintenance and servicing of the Premises Systems during the Lease Term, as recommended by the respective manufacturers of the Premises Systems, or required by Landlord. If Tenant fails to provide Landlord with a copy of such contract within ten (10) days after the Commencement Date, Landlord may enter into such a contract on Tenant's behalf, the cost of which shall be paid by Tenant upon written demand.

**7.04 Alterations and Signs.** Tenant shall not create any openings in the roof or exterior walls of the Building or Premises. Without the prior written consent of Landlord, Tenant shall not (a) install, place, attach or affix to the Premises, the roof or the exterior walls of the Building, any exterior lights, decorations, balloons, flags, pennants, banners, signs, draperies, window treatments, bars or security installations, painting, signs, or door lettering, decals, stickers, placards, decorations or advertising media of any type that can be viewed from the exterior of the Premises or the Building or (b) make any alterations, additions or improvements to the Premises. Landlord shall not unreasonably withhold consent to the any alterations, additions or improvements to the interior of the Premises or the installation or attachment of shelves, bins, machinery, trade fixtures, air conditioning or heating equipment to the interior of the Premises; provided that Tenant pays all costs incurred or arising in connection therewith and complies with all applicable governmental laws, ordinances and regulations. Tenant shall not permit a mechanic's or materialman's lien to be asserted against the Premises. Upon request by Landlord, Tenant shall deliver to Landlord proof of payment reasonably satisfactory to Landlord of all costs incurred or arising out of any such alterations, additions or improvements.

**7.05 Landlord's Access.** Landlord and any of the Landlord Parties shall have the right, during normal business hours, to enter the Premises (a) to inspect the general condition and state of repair thereof, (b) to make repairs required or permitted under this Lease, (c) to show the property to any prospective tenant or purchaser or (d) for any other reasonable purpose. During the final 150 days of the Lease Term, Landlord and any of the Landlord Parties shall have the right to erect and maintain on or about the Premises customary signs advertising the Premises for lease or sale.

**7.06 Condition at Termination or Vacation.** Upon the earlier to occur of (a) vacation of the Premises by Tenant or (b) expiration of the Lease Term, unless otherwise set forth herein, Tenant shall deliver the Premises to Landlord, broom clean and in the same condition that existed on the Commencement Date, ordinary wear and tear excepted, with the Premises Systems in good operating condition, and at Landlord's option, Tenant shall remove all exterior signs and any or all alterations, improvements, and fixtures installed, attached, erected or constructed after the Commencement Date. Provided that Tenant is not in default under this Lease, Tenant shall have the right to remove any of the remaining items, except that without Landlord's written consent, Tenant shall not remove any of the Premises Systems; any lighting or lighting fixtures; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; fencing; or security gates. At the time of removal, Tenant shall repair in a good and workmanlike manner any damage caused by the original installation, erection, or construction of such items, and/or the removal thereof. All alterations, additions and improvements that are not removed shall be deemed to have been abandoned by Tenant and Landlord may take possession and ownership of such abandoned property by delivering written notice thereof to Tenant.

**ARTICLE EIGHT: FIRE AND CASUALTY**

**8.01 Damage.** Tenant immediately shall give prompt written notice to Landlord if the Premises or Building are damaged or destroyed by fire or other casualty. If (a) the Premises or Building should be totally destroyed, (b) the Premises or the Building are so damaged that in Landlord's estimation, rebuilding or repairs cannot be completed within one hundred twenty (120) days after the date Landlord receives written notice from Tenant of such damage, (c) the cost of rebuilding or repairs would exceed twenty five percent (25%) of the replacement value of the Building (d) damage or destruction to the Premises or the Building occurs within the last eighteen (18) months of the Lease, (e) any Mortgagee (as defined below) requires that insurance proceeds be applied to reduce or retire the indebtedness secured by the Mortgage (hereinafter defined), (f) the casualty is not covered by the insurance required to be carried by Landlord pursuant to this Lease, or (g) Landlord determines that insurance proceeds will be insufficient to restore the Building, then in any such case Landlord may terminate this Lease by delivering written notice to Tenant, in which event the rights and obligations of Landlord and Tenant hereunder shall cease and terminate; provided that any liabilities of Tenant which accrued prior to termination of this Lease shall survive same. In connection with any repair or reconstruction to the Premises arising from or necessitated by fire or the casualty which is covered by the insurance carried by Landlord, Tenant shall pay to Landlord Tenant's Proportionate Share of the amount of any deductible of such insurance upon demand, as Additional Rent.

**8.02 Rebuilding.** If Landlord fails to terminate this Lease in accordance with the foregoing Article 8.01, Landlord will commence to restore the Building and the Premises to substantially the condition that existed prior to the occurrence of such casualty, subject to (a) modifications required by zoning and building codes and other applicable laws, (b) modifications required by any Mortgagee, and (c) provided that access to the Premises or the Building is not materially impaired, any modifications to the parking, landscaping and open areas surrounding the Building deemed desirable by Landlord. Landlord shall not be required to rebuild, repair or replace any part of Tenant's removable partitions, furniture, fixtures, and equipment, or any alterations or improvements made to the Premises after the Commencement Date, and will not be required to spend an amount in excess of the insurance proceeds (plus the deductible amount) actually received by Landlord due to the casualty. Landlord will not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from the casualty or its repair. TENANT ACKNOWLEDGES THAT IT HAS BEEN ADVISED THAT IF THE PREMISES OR BUILDING ARE DAMAGED OR DESTROYED BY FIRE OR OTHER CASUALTY THERE WILL BE NO ABATEMENT OF BASE RENT OR ADDITIONAL RENT AND THAT TENANT SHOULD OBTAIN INSURANCE TO PROVIDE FOR SUCH PAYMENTS.

**ARTICLE NINE: CONDEMNATION**

If, during the term of this Lease or any extension or renewal thereof, all or a substantial part of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall terminate and rent shall be abated during the unexpired portion of this Lease, effective from the date of taking of the Premises by the condemning authority. If less than a substantial part of the Premises is taken for public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, Landlord, at its option, may by written notice terminate this Lease or shall forthwith at its sole expense restore and reconstruct the Premises to the extent possible (other than leasehold improvements made by Tenant or any assignee, subtenant or other occupant of the Premises) to make the same reasonably tenantable and suitable for the Permitted Use. The Base Rent during the unexpired portion of the Lease Term shall be adjusted equitably. Tenant hereby waives any interest in, and assigns to Landlord any compensation awarded in connection with, or as a result of any of the foregoing proceedings, all of which shall be the property of Landlord. Landlord shall have no interest in any award made to Tenant pursuant to a separate claim, and specifically denominated by the condemning authority as compensation to Tenant for relocation expenses, loss of business or goodwill or for the taking of Tenant's fixtures and any improvements constructed on the Premises after the Commencement Date.

**ARTICLE TEN: ASSIGNMENT AND SUBLETTING**

Tenant shall not sublet all or part of the Premises or assign, transfer, mortgage, pledge or encumber this Lease or any interest therein, without the prior written consent of Landlord. Any attempt by Tenant to sublease all or part of the Premises or to assign, transfer or encumber this Lease shall (a) be void and (b) not relieve Tenant from the further performance of its obligations hereunder. Tenant hereby assigns, transfers and conveys to Landlord all amounts received by Tenant (whether denominated as rent or otherwise) pursuant to or in connection with, any such actual or attempted assignment or sublease, whether consented to by Landlord or mandated by judicial intervention, including without limitation any amounts in excess of the Base Rent, and Tenant agrees to deliver to Landlord such amounts within ten (10) days after receipt. Landlord may collect any such amounts directly from such assignee, subtenant or transferee and apply the same against the Base Rent and Additional Rent due Landlord hereunder. No such collection shall constitute a novation or a release of Tenant from the further performance of Tenant's obligations hereunder.

**ARTICLE ELEVEN: DEFAULT AND REMEDIES**

**11.01 Default.** The occurrence of any one or more of the following events, each of which is deemed to be material, shall constitute a default on the part of Tenant under this Lease ("**Default Event**"):

- (a) Tenant shall fail to (1) pay any installment of the Base Rent or Additional Rent on the date that same is due, (2) restore the Security Deposit to its full amount as required by Article 3.04 hereof, and/or (3) comply with any term, condition or covenant of this Lease, other than those pertaining to payment of Base Rent or Additional Rent, and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant;
- (b) Tenant or any guarantor (collectively, the "**Obligors**") of Tenant's Lease obligations shall be unable to pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors;
- (c) The commencement by or against the Obligors of any action, case or proceeding seeking reorganization, adjustment, liquidation, dissolution or the like, of the Obligors' debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for the Obligors or for all or any substantial part of the Obligors' property;
- (d) Tenant shall (1) vacate, abandon or commence to vacate or abandon all or a substantial portion of the Premises or (2) fail to continuously operate its business at the Premises for the Permitted Use; or
- (e) If Tenant is not an individual, a transfer or series of related transfers of the equity or beneficial ownership interests in Tenant or any direct or indirect owners of Tenant that results in a change, directly or indirectly, in the right or power to direct or cause the direction of the management or policies of Tenant, unless the shares or other instruments evidencing the equity or beneficial ownership of Tenant are listed on a nationally recognized security exchange or over-the-counter market.

**11.02 Remedies.** Upon the occurrence of a Default Event, Landlord, without further notice or demand and using lawful force if necessary or appropriate, shall be entitled to (a) terminate this Lease or any of Tenant's rights under this Lease, with or without reentering or repossessing the Premises; (b) terminate Tenant's right to occupy all or any part of the Premises, without terminating this Lease, and with or without reentering or repossessing the Premises; (c) change or pick the locks, access codes, or other access control devices, and take any other self-help or judicial action to exclude Tenant and other occupants from the Premises; (d) remove and store any property on the Premises; (e) enter upon the Premises without terminating this Lease or repossessing the Premises and do whatever Tenant is obligated to do under the terms of this Lease; (f) without terminating this Lease, enter upon the Premises to clean, repair, remodel and make such alterations and improvements as may be necessary in order to relet the Premises; (g) withhold or suspend any payment that this Lease would otherwise require Landlord to make; (h) recover Base Rent, Additional Rent and Default Costs (hereinafter defined); (i) charge interest on any amount not paid when due from the due date through the date of its payment at the Default Rate, which is the lesser of 18% per annum or the highest rate permitted by applicable law; and/or (j) exercise all other remedies available to Landlord at law or in equity, including, without limitation, injunctive and other extraordinary remedies. In the event Landlord elects to exercise the remedy listed in Article 11.02(c) as contained herein, Landlord or its agent shall place a written notice on Tenant's front door stating the name and address or telephone number of the individual from whom a new key may be obtained and that such key may only be obtained during the hours stated. Landlord shall, however, have absolutely no obligation to furnish a new key unless and until Tenant (i) cures all existing defaults; and (ii) delivers to Landlord a sum of money determined by Landlord in its sole discretion which shall be added to and become a part of the Security Deposit of Tenant hereunder. Landlord and Tenant intend that the foregoing remedy expressly supersedes any conflicting provisions contained in Section 93.002 of the Texas Property Code, or any successor statute.

**11.03 Cumulative.** The remedies listed in Article 11.02(a) - Article 11.02(j) are cumulative and not exclusive. Pursuit of any one of the foregoing remedies shall not preclude pursuit of any of the other remedies, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions and covenants of this Lease. Actions to collect amounts due by Tenant to Landlord under this subparagraph may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease Term. Unless Landlord delivers a signed, written notice thereof to Tenant, no act or omission by Landlord or any of the Landlord Parties, including without limitation, (a) accepting keys to the Premises delivered by, or on behalf of, Tenant, (b) accepting payments of any amounts owed under this Lease, (c) entry or re-entry into the Premises, (d) repossession of the Premises, (e) filing a forcible detainer action, or (f) reletting the Premises, will constitute Landlord's acceptance of surrender of the Premises, termination of this Lease, or an actual or constructive eviction of Tenant.

**11.04 Default Waivers.** NONE OF THE LANDLORD PARTIES WILL BE LIABLE FOR ANY DAMAGES CLAIMED BY ANY OF THE TENANT PARTIES ARISING FROM ANY ACT OR OMISSION OF ANY OF THE LANDLORD PARTIES IN THE EXERCISE OF ANY RIGHT OR REMEDY FOR TENANT'S DEFAULT UNDER THIS LEASE, INCLUDING WITHOUT LIMITATION, CLAIMS ARISING FROM ANY OF THE LANDLORD PARTIES OWN NEGLIGENCE. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT, AFTER CONSULTATION WITH COUNSEL OF ITS OWN CHOOSING, WAIVES ALL NOTICES AND DEMANDS (INCLUDING, WITHOUT LIMITATION, NOTICE OF BREACH OR DEFAULT, NOTICE OF NON-PAYMENT OR NON-PERFORMANCE, DEMAND FOR PAYMENT OR PERFORMANCE, DEMAND FOR POSSESSION, NOTICE OF ANY CHANGE IN LOCKS OR ACCESS CONTROL DEVICES, REENTRY, OR REPOSSESSION, AND NOTICE TO VACATE), EXCEPT FOR THOSE NOTICES AND DEMANDS EXPRESSLY REQUIRED IN THIS LEASE.

**11.05 Liability for Default.**

(a) "**Default Costs**" shall mean all actual, incidental, and consequential damages, court costs, interest, and attorneys' fees arising from a Default Event, including without limitation, (1) the cost of recovering possession of the Premises, (2) the cost of removing and storing Tenant's or other occupant's property, (3) any brokerage fees incurred by Landlord in connection with any reletting of the whole or any part of the Premises to a new occupant or occupants, (4) the unamortized portion of any brokerage fees incurred by Landlord in connection with the execution of this Lease, (5) the costs of cleaning, decorating, repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new occupant or occupants, (6) the costs of collecting any Base Rent and Additional Rent owed by Tenant or a new occupant of the Premises, (7) the cost of performing any obligation of Tenant under the Lease, plus 15% of the cost incurred as a reasonable administrative fee to compensate Landlord for the time, expense, and inconvenience involved in performing such obligations (8) the unamortized portion of any improvements to the Premises made by Landlord pursuant to this Lease, and (9) any other expense, loss or cost incurred by Landlord as a result of, or arising from, Tenant's breach of the Lease or Landlord's enforcing or defending its rights and remedies for such breach.

(b) "**Liquidated Costs**" shall mean the following costs, expenses, charges and fees arising from a Default Event: (1) The cost of recovering possession of the Premises, (2) The cost of removing and storing Tenant's or other occupant's property, (3) The costs of collecting any Base Rent and Additional Rent owed by Tenant, (4) The cost of performing any obligation of Tenant under the Lease, and (5) All actual, court costs, interest, and attorneys' fees incurred by Landlord in connection with the foregoing.

(c) "**Fair Market Deficiency Rent**" shall mean the total sum that a willing, comparable, tenant would pay, and a willing landlord would accept in an arm's length transaction, for comparable space in a building of substantially equivalent quality, size, condition, and location giving appropriate consideration to (1) concessions then available in the market place, (2) the operating expenses and real estate taxes, (3) the remaining length of the Lease Term calculated as if it expired on the date originally set forth herein, (4) the expected time the property would remain vacant before occupancy, and (5) any other generally applicable terms and conditions of tenancy for the property in question. Fair Market Deficiency Rent shall be determined by an independent MAI appraiser selected by Landlord and shall be binding on both Landlord and Tenant.

(d) If Landlord has repossessed the Premises without terminating the Lease and relet (whether one or more, the "**Substitute Lease**") all or part the Premises:

(1) "**Substitute Deficiency**" shall mean the positive amount, if any, of (i) the sum of all Base Rent and Additional Rent due during the period that the Lease Term and term of the Substitute Lease are coterminous, less (ii) the total amounts that Landlord actually receives from any tenant under the Substitute Lease during the same period.

(2) Tenant shall be liable for and shall pay Landlord the sum of (i) the Default Costs, (ii) all Base Rent and Additional Rent owed to Landlord hereunder accrued to the date of such repossession, (iii) the present value (discounted at 6% simple annual interest) of the Substitute Deficiency, if any, (iv) the present value (discounted at 6% simple annual interest) of the Fair Market Deficiency Rent of that part of Premises subject to a Substitute Lease for any period beginning the first day following the term of the Substitute Lease and ending on the last day of the Lease Term, calculated as if the Lease Term expired on the date originally set forth herein, and (v) the present value (discounted at 6% simple annual interest) of the Fair Market Deficiency Rent of that part of Premises not subject to a Substitute Lease for any period beginning on the date of repossession by Landlord and ending on the last day of the Lease Term, calculated as if the Lease Term expired on the date originally set forth herein.

(e) If Landlord, with or without repossessing the Premises, does not terminate this Lease, then at Landlord's option, Tenant shall be liable for and shall pay Landlord the sum of (i) the Default Costs, (ii) all Base Rent and Additional Rent owed to Landlord hereunder accrued to the date of the Default Event, and (iii) the present value (discounted at 6% simple annual interest) of the Fair Market Deficiency Rent of the Premises for the period beginning on the date of a Default Event, and ending on the last day of the Lease Term, calculated as if the Lease Term expired on the date originally set forth herein.

(f) If Landlord terminates this Lease, at Landlord's option, Tenant shall be liable for and shall pay to Landlord, the sum of all Base Rent and Additional Rent owed to Landlord hereunder accrued to the date of such termination, plus, as liquidated damages, an amount equal to the sum of (1) the Liquidated Costs, and (2) the present value of (i) the total Base Rent and Additional Rent owed hereunder for the remaining portion of the Lease Term, calculated as if the Lease Term expired on the date originally set forth herein, less (ii) the then Fair Market Deficiency Rent of the Premises for such period, which because of the difficulty of ascertaining such value, Landlord and Tenant stipulate and agree, shall in no event be deemed to exceed seventy-five percent (75%) of the Base Rent and Additional Rent payable in the last month of the Lease Term.

(g) Upon such reletting, all rentals received by Landlord shall be applied first, to the payment of any indebtedness other than Base Rent and Additional Rent due hereunder from Tenant to Landlord; second, to the payment of any Default Costs; third, to the payment of Base Rent and Additional Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder.

**11.06 Duty to Mitigate.** Landlord and Tenant stipulate and agree that:

(a) Any duty Landlord may have to mitigate damages will be satisfied if beginning no sooner than thirty (30) days after Tenant physically vacates the Premises and continuing until the Premises have been relet, (a) a "For Lease" sign is placed on the Premises, Building and/or at the Project, (b) markets the Premises to commercial real estate brokers, (c) includes the Premises in Landlord's inventory of available space, which is made available to commercial real estate brokers, (d) includes the Premises in Landlord's regularly published advertising, if any, of available space, and (e) shows the Premises to prospective tenants, if requested;

(b) Landlord, without breaching any duty it may have to mitigate damages, may (1) lease other vacant space in Landlord's inventory prior to reletting the Premises, (2) refuse to relet the Premises to any prospective tenant that does not meet Landlord's leasing guidelines and credit requirements, (3) relet all or part of the Premises at the then fair market rental value, which may be equal to or greater than the Base Rent and Additional Rent, (4) relet the Premises on terms different from those in this Lease, including without limitation, the length of the term and any lease concessions comparable to those then being offered for comparable space in light of market conditions, and (5) may but shall not be obligated to make improvements or alterations to the Premises, unless Tenant pays such costs to Landlord in advance;

(c) Unless a court of competent jurisdiction holds in a final judgment that Landlord (1) had a duty to mitigate damages under this Lease and (2) failed to comply with the requirements of this Article 11.06 and such failure caused an avoidable and quantifiable increase in Landlord's damages, Tenant shall remain liable for Base Rent, Additional Rent and any Default Costs; and

(d) **TO THE FULLEST EXTENT PERMITTED BY LAW, THE EXPRESS OBLIGATIONS SET FORTH IN THIS ARTICLE 11.06 ARE OBJECTIVELY REASONABLE AND SATISFY ANY OBLIGATION LANDLORD MAY HAVE TO MITIGATE ITS DAMAGES.**

**11.07 Notice of Landlord Default.** 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 Premises 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.

**11.08 Limitation of Landlord's Liability.** 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, including return of the any remaining portion of the Security Deposit if the same has been delivered to the transferee. In the event of any breach or default by Landlord in any term or provision of this Lease, and, as a consequence, if Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds received at a judicial sale upon execution and levy against the right, title and interest of Landlord in the Building, and Landlord, its owners, partners or venturers, and the Landlord Parties shall have no personal, partnership, corporate or other liability hereunder.

#### **ARTICLE TWELVE: LANDLORD'S LIEN**

In addition to the statutory Landlord's lien, Tenant hereby grants to Landlord a security interest to secure payment of all rent and other sums of money becoming due hereunder from Tenant, upon all goods, wares, equipment, fixtures, furniture and other personal property of Tenant situated in or upon the Premises, together with the proceeds from the sale or lease thereof. Such property shall not be removed without the consent of Landlord until all arrearages in Base Rent and Additional Rent due to Landlord hereunder shall have been paid. Upon the occurrence of an event of default, Landlord may, in addition to any other remedies provided herein or by law, enter upon the Premises and take possession of any and all personal property of Tenant situated on the Premises without liability for trespass or conversion, and sell the same at public or private sale, with or without having such property at the sale, after giving Tenant reasonable notice of the time and place of any such sale. Unless otherwise required by law, notice to Tenant of such sale shall be deemed sufficient if given in the manner prescribed in this Lease at least ten (10) days before the time of the sale. Any public sale made under this Article shall be deemed to have been conducted in a commercially reasonable manner if held on the Premises or where the property is located, after the time, place and method of sale and a general description of the types of property to be sold have been advertised in a daily newspaper published in Dallas County, Texas, for five consecutive days before the date of the sale. Landlord or its assigns may purchase at a public sale and, unless prohibited by law, at a private sale. The proceeds from any disposition dealt with in this Article, less any and all expenses connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and legal expenses), shall be applied as a credit against the indebtedness secured by the security interest granted herein. Any surplus shall be paid to Tenant or as otherwise required by law; Tenant shall pay and deficiencies forthwith. Upon request by Landlord, Tenant agrees to execute and deliver to Landlord a financing statement in form sufficient to perfect the security interest of Landlord in the aforementioned property and proceeds thereof under the provisions of the Uniform Commercial Code in force in the State of Texas. The statutory lien for rent is expressly reserved; the security interest herein granted is in addition and supplementary thereto.

#### **ARTICLE THIRTEEN: PROTECTION OF LENDERS**

**13.01 Subordination.** This Lease shall be and hereby is declared to be subject to and subordinate to any mortgages and/or deeds of trust ("Mortgage") now or at any time hereafter constituting a lien or charge upon the Premises, the improvements situated thereon, the Building or the Land, and to any and all increases, renewals, modifications, consolidations, replacements and extensions of thereof. Tenant agrees to attorn to the Landlord's current or future mortgages ("Mortgage") or to any transferee, purchaser, lessor or beneficiary ("Landlord Successor") following any foreclosure, sale or transfer in lieu thereof. The provisions of this Article 13.01 shall be self-operative, and no further instrument shall be required to effect such subordination of this Lease. Within ten (10) days after request, however, Tenant shall execute and deliver to any Mortgagee or Landlord Successor, a Subordination, Non-Disturbance and Attornment Agreement ("SNDA") confirming the subordination of the Lease and containing other terms and conditions satisfactory to such Mortgagee or Landlord Successor; provided, that the SNDA (a) provides that Tenant's use or possession of the Premises shall not be disturbed so long as Tenant is not in default under this Lease beyond any applicable periods for notice and cure, and (b) does not materially increase Tenant's obligations hereunder. Notwithstanding any foreclosure or sale under any mortgage or deed of trust (or transfer by deed in lieu thereof), so long as Tenant is not in default beyond any applicable periods for notice and cure, this Lease shall remain in full force and effect.

**13.02 Certificates.** Tenant agrees, from time to time, within ten (10) days after the written request of Landlord, to deliver to Landlord, or Landlord's designee, (a) a written statement certifying that this Lease is in full force and effect, the date to which rent has been paid, the unexpired term of this Lease and such other factual matters pertaining to this Lease as may be requested by Landlord, (b) a Certificate of Occupancy for the Premises, and/or (c) current financial statements of any Obligor in such reasonable detail as Landlord may require to verify the net worth and financial condition of such Obligor, which financial statements Tenant represents and warrants will be a true and accurate statement of the matters contained therein as of the date thereof.

#### **ARTICLE FOURTEEN: MISCELLANEOUS**

**14.01 OFAC.** Neither Tenant nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

**14.02 Force Majeure.** In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by any cause not within the control of Landlord, such as an Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, or flood, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Landlord is so delayed or hindered.

**14.03 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. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include the Tenant Parties. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Lease Term, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and 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. This Lease is the only agreement between the parties pertaining to the lease of the Premises 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.

**14.04 Relocation.** Landlord may at any time during the Term, at Tenant's expense, relocate Tenant to other space in the Building or another building owned or managed by Landlord in the vicinity of the Building (the "New Premises"), which is approximately the same dimensions and size and is improved in such a manner so that the New Premises shall be comparable in its interior design and decoration to the Premises; however, if Landlord exercises Landlord's election to relocate Tenant to the New Premises, then Tenant shall not be required to pay a higher Base Rent for the New Premises. Nothing herein contained shall relieve Tenant, or imply that Tenant is relieved, of the liability for or obligation to pay any Additional Rent due by reason of any of the other provisions of this Lease, which provisions shall be applied to the New Premises. Landlord's election to relocate Tenant shall not terminate this Lease or release Tenant, in whole or in part, from Tenant's obligation to perform its obligations hereunder for the full Term. If any such relocation occurs, this Lease shall continue in full force with no change in the terms or conditions hereof other than (1) the substitution of the New Premises for the Premises specified in Section 1, and (2) if the size of the New Premises differs from the Premises, the Proportionate Share shall be adjusted. Upon request from Landlord, Tenant shall execute an amendment to this Lease reflecting such changes.

**14.05 Waivers.** All waivers must be in writing and signed by the waiving party. Landlord's failure to enforce any provisions of this Lease or its acceptance of Base Rent or Additional 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.

**14.06 Notices.** All notices required or permitted under this Lease shall be in writing and shall be personally delivered or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage pre-paid, registered or certified mail, return receipt requested, addressed as stated herein. Notices to Tenant shall be delivered to the Tenant Notice Address, except that upon Tenant's taking possession of the Premises, the Premises shall thereafter be deemed to be the Tenant Notice Address for notice purposes. Notices to any other party hereto shall be delivered to the address specified in Article One as the address for such party. Any party hereto may change its notice address upon written notice to the other parties.

**14.07 Attorneys' Fees.** If on account of any breach or default by any party hereto in its obligations to another party hereto, it shall become necessary for the non-defaulting party to employ an attorney to enforce or defend any of its rights or remedies hereunder, the defaulting party agrees to pay the non-defaulting party its reasonable attorneys' fees, whether or not suit is instituted in connection therewith.

**14.08 Governing Law; Venue.** The laws of the State of Texas shall govern this Lease. All obligations hereunder, shall be performable and payable in Dallas County, Texas.

**14.09 Survival.** All obligations of any party hereto not fulfilled at the expiration the Lease Term shall survive such expiration as continuing obligations of such party.

**14.10 Binding Effect.** This Lease shall inure to the benefit of, and be binding upon each of the parties hereto and their heirs, representatives, successors and assigns; provided, however, Landlord shall have no obligation to Tenant's successors or assigns unless the rights or interests of such successors or assigns are acquired in accordance with the terms of this Lease.

**14.11 Acknowledgement of Rules.** Tenant acknowledges receipt of a copy of the existing Project Rules.

**14.12 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.

**ARTICLE FIFTEEN: SPECIAL PROVISIONS**

**15.01 Tenant Improvements.** Landlord, at Landlord's sole cost and expense, agrees to complete the following improvements to the Premises using building-standard materials and colors: (a) add LED lights to the warehouse portion of the Premises; (b) demo ramp to three (3) dock high doors; and (c) add new ceiling tiles throughout the office portion of the Premises. Additionally, Landlord hereby agrees to cause all existing electrical, plumbing, mechanical and HVAC systems serving the Premises to be in good working order prior to the Commencement Date.

**15.02 Renewal Option.** Subject to the terms and conditions of this Article 15.02, Tenant is granted the option to extend the Lease Term of this Lease for one (1) extended term of three (3) years (the "**Renewal Term**"), provided: (a) Tenant is not in default at the time of exercise of the Renewal Term, and (b) Tenant gives written notice of its exercise of the Renewal Term not less than nine (9) months prior to the proposed commencement of the Renewal Term and not more than twelve (12) months prior to the expiration of the original Lease Term. The Renewal Term shall be upon the same terms, conditions and rentals, except (a) Tenant shall have no further right of renewal after the Renewal Term, and (b) the monthly Base Rent applicable during such Renewal Term shall be the greater of: (i) 104% of the monthly Base Rent payable during the last month of the initial Lease Term, or (ii) the then current Market Rental Rate. The term "**Market Rental Rate**" shall mean that rate (net of any improvements allowance or other tenant inducements not being granted to Tenant), which is prevailing for comparable space and comparable projects located in Dallas County, Texas, taking into consideration the size of the Premises, the length of the extension term, the age of the Building and the creditworthiness of Tenant. The Market Rental Rate shall be determined by Landlord.

**15.03 Guaranty.** As additional consideration for Landlord to enter into this Lease, Tenant shall cause Guarantor to execute the guaranty, attached hereto as **Exhibit E** and Tenant shall deliver same to Landlord contemporaneously with Tenant's execution hereof. Tenant's failure to deliver such guaranty as required in the preceding sentence shall be an automatic Default Event under this Lease, with no notice being necessary to Tenant, and Landlord shall be entitled to exercise any and all rights and remedies available to it hereunder, as well as at law or in equity. Additionally, if Tenant fails to deliver such guaranty, Landlord, notwithstanding anything to the contrary contained in this Lease, may terminate this Lease by providing Tenant five (5) days advance written notice thereof.

**15.04 Lease Termination Contingency.** Tenant acknowledges and agrees that the Premises is currently occupied by another tenant and that Landlord's obligations to perform each and every covenant and provision contained in this Lease are subject to, and expressly conditioned upon, the agreement of Landlord and such other tenant reaching a mutual agreement as to the early termination of such other tenant's lease. The effectiveness of this Lease is expressly subject to and conditioned upon Landlord and such other tenant reaching mutual agreement on the early termination of such lease and such tenant's vacation of the Premises. In the event that Landlord cannot acquire possession of the Premises prior to the Commencement Date of this Lease, Landlord shall not be deemed to be in default hereunder, and Tenant agrees to accept possession of the Premises at such time as Landlord is able to tender the same. In no event shall Landlord's failure to acquire possession of the Premises and deliver the same to Tenant create any liability or default on the part of Landlord nor subject Landlord to any damages.

LANDLORD:

**DALLAS NLM TT, LLC,**  
a Delaware limited liability company

By: H. Herbert Myers  
Printed Name: H. Herbert Myers  
Title: Vice President

Date of Execution by Landlord: June 10, 2022

TENANT:

**ASCEND DISTRIBUTION, LLC,**  
a Texas limited liability company

By: Jeremy Leung  
Printed Name: Jeremy Leung  
Title: President

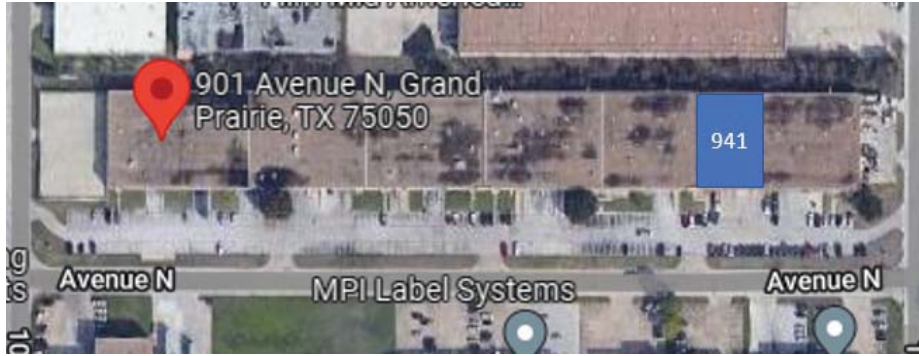
Date of Execution by Tenant: June 8, 2022

**Exhibit A – Land**

Site 3, Block 2, Second Installment, Industrial Community No. 5, Great Southwest Industrial District, an Addition to the City of Grand Prairie, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-48, Page 525-527, Plat Records, Tarrant County, Texas.



Exhibit B – Building







**Exhibit D – Tenant and Landlord Insurance Requirements**

- (a) Tenant, at its sole expense, shall obtain and keep in force during the Lease Term the following insurance for the Premises:
- (i) "All Risk" special insurance form or equivalent form insuring the Tenant / Capital Improvements, including without limitation the Tenant Improvements, Tenant's interest in the Premises and all property located in the Premises, including furniture, equipment, fittings, installations, fixtures, supplies and any other personal property, leasehold improvements and alterations ("Tenant's Property"), in an amount equal to the full replacement value, it being understood that no lack or inadequacy of insurance by Tenant shall in any event make Landlord subject to any claim by virtue of any theft of or loss or damage to any uninsured or inadequately insured property;
  - (ii) Business Interruption insurance in an amount at least equal to the rental value of the Premises for at least 24 months (that is, the aggregate amount of all rent and other consideration payable under the lease by Tenant).
  - (iii) Commercial general liability insurance written on an occurrence basis including personal injury, bodily injury, broad form property damage, operations hazard, owner's protective coverage, contractual liability, with a cross liability clause and a severability of interests clause to cover Tenant's indemnities set forth herein, and products and completed operations liability, in limits not less than \$1,000,000 inclusive per occurrence and \$2,000,000 per location annual aggregate, or such higher limits as Landlord may require from time to time during the Lease Term and such insurance policies will be written as primary policies, not contributing with and not supplemental to the coverage that Landlord may carry and will not be subject to a deductible and umbrella liability insurance in excess of the underlying coverage listed in herein, with limits of not less than \$5,000,000 per occurrence/\$5,000,000 aggregate sitting excess of employer's liability, auto liability and general liability, and not more restrictive than all underlying liability;
  - (iv) Worker's Compensation and Employer's Liability insurance, with a waiver of subrogation endorsement in favor of Landlord, in form and amount as required by applicable law;
  - (v) in the event Tenant performs any repairs or alterations in the Premises, Builder's Risk insurance on an "All Risk" basis (including collapse) on a completed value (non-reporting) form for full replacement value covering all work incorporated in the Building and all materials and equipment in or about the Premises;
  - (vi) Auto Liability Insurance for owned, hired, or non-owned vehicles with a limit of liability not less than \$1,000,000 combined limit for bodily injury and property damage; and
  - (vii) any other form or forms of insurance or any changes or endorsements to the insurance required herein as Landlord, or any mortgagee or lessor of Landlord may require, from time to time, in form or in amount, including, without limitation, environmental liability insurance covering the cost of investigation, response or remediation related to Hazardous Substances disposed of or released on, under, or about the Building and the Premises by Tenant,

Tenant shall have the right to include the insurance required by Paragraph (a) under Tenant's policies of "blanket insurance," provided that no other loss which may also be insured by such blanket insurance shall affect the insurance coverages required hereby and further provided that Tenant delivers to Landlord a certificate specifically stating that such coverages apply to Landlord, the Premises, the Building and the Project. All such insurance policies and certificates of insurance, except workers' compensation or employer's liability insurance, shall name Landlord, Landlord's manager, all mortgagees and lessors of Landlord, and any other entity as reasonably required by Landlord and of which Tenant has been notified, as additional insureds, all as their respective interest may appear. All insurance required under this Paragraph shall be issued by such good and reputable insurance companies acceptable to Landlord and qualified to do and doing business in the State of Texas and having a rating not less than A- or better by Standard & Poor's or Moody's or A.VIII as rated in the most current copy of A.M. Best's Insurance Report in a form satisfactory to Landlord. Tenant shall deliver to Landlord certificates with copies of policies, together with satisfactory evidence of payment of premiums for such policies, by the Commencement Date and, with respect to renewals of such policies, not later than thirty (30) days prior to the end of the expiring term of coverage. Upon Landlord's request Tenant shall deliver to Landlord certified copies of such policies. All policies of insurance shall be primary and Tenant shall not carry any separate or additional insurance concurrent in form or contributing in the event of any loss or damage with any insurance required to be maintained by Tenant under this Lease. All such policies and certificates shall contain an agreement by the insurers that the policies will not be invalidated as they affect the interests of Landlord and Landlord's mortgagees by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies and that the insurers shall notify Landlord and any mortgagee or lessor of Landlord in writing, by certified U.S. mail, return receipt requested, not less than forty-five (45) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein and shall include a clause or endorsement denying the insurer any rights or subrogation against Landlord.

If Tenant shall hire or bring a contractor onto the Premises to perform any alterations, work or improvements, Tenant agrees to have a written agreement with contractor whereby they will be required to carry the same insurance coverages for Commercial General Liability, Auto and Worker's Compensation and Employer's Liability insurance as required of Tenant. Tenant shall also require that such contractors insurance will meet same additional terms as required of Tenant herein with regards to adding Landlord, Landlord's manager, all mortgagees and lessors of Landlord, and any other entity as reasonably required by Landlord and of which Tenant has been notified, as additional insureds, maintaining primary and non-contributory coverage, waiving all rights of recovery and subrogation, and making certificates of insurance available as evidence of all policies during the term of their work and in advance of all applicable renewals.

(b) Landlord shall not be required to carry insurance of any kind on Tenant's Property and Premise and Tenant hereby agrees that Tenant shall have no right to receive any proceeds from any insurance policies carried by Landlord.

(c) Tenant shall not knowingly conduct or permit to be conducted in the Premises any activity, or place any equipment in or about the Premises or the Project, which will invalidate the insurance coverage in effect or increase the rate of casualty insurance or other insurance on the Premises or the Project, and Tenant shall comply with all requirements and regulations of Landlord's casualty and liability insurer. If any invalidation of coverage or increase in the rate of casualty insurance or other insurance occurs or is threatened by any insurance company due to any act or omission by Tenant, or its agents, employees, representatives, or contractors, such statement or threat shall be conclusive evidence that the increase in such rate is due to such act of Tenant or the contents or equipment in or about the Premises, and, as a result thereof, Tenant shall be liable for such increase and such amount shall be considered Additional Rent payable with the next monthly installment of monthly Base Rent due under this Lease. In no event shall Tenant introduce or permit to be kept on the Premises or brought into the Building any dangerous, noxious, radioactive or explosive substance.

(d) Landlord shall not be liable to Tenant, or to Tenant's agents, servants, employees, customers, or invitees for any injury to person or damage to property caused by any act, omission, or neglect of Tenant, its agents, servants, employees, invitees, licensees or any other person entering the Land, the Common Areas, the Building or the Premises under the invitation of Tenant or arising out of a default by Tenant in the performance of its obligations hereunder. Tenant hereby indemnifies and holds Landlord harmless from all liability and claims for any such damage or injury to the fullest extent allowed by applicable law.

Landlord hereby indemnifies and holds Tenant harmless from any claims arising from Landlord's negligence or willful misconduct.

In no event shall Landlord or Tenant be liable to the other for any consequential, special or indirect damages, such as loss of business or profit except in connection with this Lease.

(e) Landlord shall not be liable for any injury or damage to persons or property resulting from unknown fire, explosion, falling plaster, steam, gas, electricity, electrical or electronic emanations or disturbance, water, rain or snow or leaks from any part of the Building or from the pipes, or caused by dampness, vandalism, malicious mischief or by any other cause of whatever nature, unless caused by or due to the gross negligence of Landlord, its agents, servants or employees. Tenant shall take all reasonably prudent temporary measures and safeguards to prevent any injury, loss or damage to persons or property in the event of an incident in leased space.

(f) Landlord shall maintain property insurance on the Building and the Premises, such policy or policies to cover Landlord's interest in the Building and Premises in amounts and in coverages considered by Landlord to be reasonable and customary. Such insurance shall be maintained at the expense of Landlord (as a part of Operating Expenses), and payments for losses thereunder shall be made solely to Landlord or the mortgagees of Landlord relative to the Land and the Building (collectively, "Mortgagees"; each, a "Mortgagee"), as their respective interests shall appear. The insurance required to be obtained by Landlord may be obtained by Landlord through blanket or master policies insuring other entities or properties owned or controlled by Landlord.

(g) Any insurance limits required by this Lease are minimum limits only and not intended to restrict the liability imposed on any Tenant or contractor for work performed under the contract.

**Waiver of Subrogation:**

Anything in this Lease to the contrary notwithstanding (including, without limitation, Paragraph (d) herein), Landlord and Tenant each hereby waive any and all rights of recovery, claim, action, or cause of action, against the other, its agents, officers, or employees, for any loss or damage that may occur to the Premises or a part thereof, or any improvements thereto, or any personal property of such party therein, by reason of fire, the elements, or any other cause(s) which are required to be insured against under the terms of the property insurance policies referred to in Paragraph (a) and Paragraph (f) herein, regardless of cause or origin, including negligence of the other party hereto, its agents, officers, or employees. All insurance policies carried with respect to Paragraph (a) and Paragraph (f) herein, if permitted under applicable law, shall contain a provision whereby the insurer waives, prior to loss, all rights of subrogation against Landlord and Tenant.

Exhibit E – Guaranty

GUARANTY AGREEMENT

This GUARANTY AGREEMENT is made as of the 8 day of June, 2022, by IOI MARKETING DEVELOPMENT INC., a Wyoming corporation, having an address at 1309 Coffeen Avenue, Suite 1387, Sheridan, Wyoming 82801 (the "Guarantor").

WITNESSETH:

WHEREAS, DALLAS NLM TT, LLC, a Delaware limited liability company (the "Landlord"), and ASCEND DISTRIBUTION, LLC, a Texas limited liability company (the "Tenant") have entered into that certain Office/Warehouse Lease Agreement (the "Lease") dated June 8, 2022, for space (the "Premises") located at 941 Avenue N., Grand Prairie, Texas 75050 (the "Property");

WHEREAS, Landlord has requested that Guarantor execute this Guaranty as a condition precedent to the execution and delivery of the Lease by Landlord; and

WHEREAS, Guarantor has agreed to execute this Guaranty in order to induce Landlord to execute and deliver the Lease.

NOW THEREFORE, in consideration of the execution and delivery of the Lease by Landlord, and for other valuable consideration, receipt of which is hereby acknowledged, it is agreed as follows:

1. Guarantor does hereby guarantee to Landlord, the due and punctual payment of all rent, additional rent, and other sums payable under the Lease, and any and all extensions, renewals, modifications or amendments thereof, and each and every installment thereof, as well as the full and prompt and complete performance by the Tenant of all and singular the covenants, conditions and provisions in the Lease, and any and all extensions, renewals, modifications or amendments thereof, contained on the part of Tenant therein to be kept, observed and performed, for the full term of the Lease and any extension thereof, as permitted by the Lease with no less force and effect than if the Guarantor were named as the Tenant in the Lease, and Guarantor will forthwith on demand pay all amounts at any time in arrears, and will make good any and all defaults occurring under the Lease.

2. This Guaranty shall be absolute, continuing, unlimited and unconditional, and Landlord shall not be required to take any action or institute any proceedings against Tenant, or give any notice to Guarantor before the Landlord has the right to demand payment or performance by Guarantor upon default by the Tenant. This Guaranty and the liability of Guarantor hereunder shall in no way be impaired or affected by any assignment which may be made of the Lease, or any subletting thereunder, or by any extension(s) of the payment of any rental or any other sums provided to be paid by Tenant, or by any forbearance or delay in enforcing any of the terms, conditions, covenants or provisions of the Lease or any amendment, modification, renewal or revision of the Lease.

3. No action or proceeding brought or instituted under this Guaranty against Guarantor and no recovery had in pursuance thereof shall be any bar or defense to any further action or proceeding which may be brought under this Guaranty by reason of any further default or defaults of Tenant.

4. The liability of Guarantor shall not be deemed to be waived, released, discharged, impaired or affected by reason of the release or discharge of Tenant in any creditors, receivership, bankruptcy (including Chapter VII or Chapter XI bankruptcy proceedings or other reorganization proceedings under the Bankruptcy Act) or other proceeding, or the rejection or disaffirmance of the Lease in any proceeding.

5. Guarantor hereby waives notice of acceptance of this Guaranty and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices of default, nonpayment or nonperformance by Tenant under the Lease, and waives diligence, demand, presentment and suit on the part of Landlord in the enforcement of any liability, obligation or duty guaranteed hereby. Guarantor also hereby waives any and all rights and remedies available to guarantors and sureties under Section 17.001 of the Texas Civil Practice as amended and Remedies Code and Chapter 34 of the Texas Business and Commerce Code as amended.

6. It is understood that other agreements similar to this Guaranty may, at Landlord's sole option and discretion, be executed by other persons with respect to the Lease. This Guaranty shall be cumulative of any such agreements and the liabilities and obligations of the Guarantor shall in no event be affected or diminished by reason of such other agreements. Moreover, in the event Landlord obtains another signature of more than one guarantor on this page or by obtaining additional guaranty agreements, or both, Guarantor agrees that Landlord, in Landlord's sole discretion, may (i) bring suit against all guarantors of the Lease jointly and severally or against any one or more of them, (ii) compound or settle with any one or more of the guarantors for such consideration as Landlord may deem proper, and (iii) release one or more of the guarantors from liability. The undersigned further agrees that no such action shall impair the rights of Landlord to enforce the Lease against any remaining guarantor or guarantors, including the undersigned.

7. This Guaranty is duly authorized and validly executed, and is binding upon and enforceable against Guarantor. All financial statements and information furnished to Landlord by Guarantor do fully and accurately present the financial condition of Guarantor as of the date hereof.

8. The undersigned agrees that if Landlord shall employ an attorney to present, enforce or defend all of Landlord's rights or remedies hereunder, the undersigned shall pay any reasonable attorney's fees incurred by Landlord in such connection.

9. The undersigned agrees that this Guaranty is performable in Dallas County, Texas, and waives the right to be sued elsewhere.

10. There shall be no modification of the provisions of this Guaranty unless the same be in writing and signed by Guarantor and Landlord.

11. All of the terms, agreements and conditions of this Guaranty shall extend to and be binding upon Guarantor, its heirs, legal representatives, successors and assigns, and shall inure to the benefit of Landlord, its heirs, legal representatives, successors and assigns, and to any future owner of the fee of the Premises referred to in the Lease, and to any mortgagee of the fee interest of the Landlord in the Property.

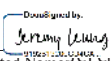
12. Guarantor acknowledges that it has provided Landlord with its financial statement as a material inducement to Landlord's agreement to lease the Premises to Tenant, and that Landlord has relied on the accuracy of such financial statement in entering into the Lease. Guarantor represents and warrants that the information contained in such financial statement is true, complete and correct in all material aspects. Within fifteen (15) days following Landlord's written request, but not more often than one (1) time during any consecutive twelve (12) month period, Guarantor will provide to Landlord current, unaudited financial statements of Guarantor. Within forty-five (45) days following the expiration of each calendar quarter during the term of the Lease, Guarantor will provide to Landlord unaudited financial statements of Guarantor. Any unaudited financial statements shall be prepared in accordance with generally accepted accounting principles consistently applied and certified to be true and correct by Guarantor's chief financial officer. Within fifteen (15) days following Guarantor's receipt of the final, annual audited financial statements from Guarantor's auditors, Guarantor shall provide Landlord a copy of such audited financial statements. Landlord may disclose and share such financial statements with Landlord's advisors; attorneys; consultants; and lenders, investors and purchasers (as well as prospective lenders, investors and purchasers).

13. Guarantor agrees to furnish from time to time when requested by Landlord, the holder of any deed of trust, mortgage, or other instrument of security, or the lessor under any ground lease or underlying lease covering all or any part of the Building (as defined in the Lease) or the improvements therein or the Land (as defined in the Lease) situated beneath the Building, or any interest of Landlord therein, a certificate signed by Guarantor confirming and containing such factual certifications and representations reasonably deemed appropriate by the party requesting such certificate, and Guarantor shall, within ten (10) days following receipt of said proposed certificate(s) from Landlord, return a fully executed copy of said certificate(s) to Landlord. In the event Guarantor shall fail to return a fully executed copy of such certificate to Landlord within the foregoing ten (10) day period, then Guarantor shall be deemed to have approved and confirmed all of the terms, certifications and representations contained in such certificate, and Guarantor hereby appoints Landlord as its attorney-in-fact to execute such statement in such event.

IN WITNESS WHEREOF, Guarantor has hereunto set its signature as of the 8 day of June, 2022.

GUARANTOR:

IOI MARKETING DEVELOPMENT INC.,  
a Wyoming corporation

By:   
Printed Name: Jeremy Leung  
Title: President