**UNITED STATES**
**SECURITIES AND EXCHANGE COMMISSION**
**Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 20, 2021

**C-Bond Systems, Inc.**
(Exact name of registrant as specified in its charter)

| **Colorado** | **0-53029** | **26-1315585** |
|---|---|---|
| (State or Other Jurisdiction of Incorporation) | (Commission File Number) | (IRS Employer Identification Number) |

**6035 South Loop East, Houston, TX 77033**
(Address of principal executive offices) (zip code)

**(832) 649-5658**
(Registrant's telephone number, including area code)

(Former Name or Former Address if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

| **Title of each class** | **Trading Symbol(s)** | **Name of each exchange on which registered** |
|---|---|---|
| Not applicable | Not applicable | Not applicable |

**Explanatory Note**

On June 30, 2021, C-Bond Systems, Inc., a Colorado corporation (the "Company" or "C-Bond"), entered into a Share Exchange Agreement and Plan of Reorganization (the "Exchange Agreement") with (i) Mobile Tint LLC, a Texas limited liability company doing business as A1 Glass Coating ("Mobile"), (ii) the sole member of Mobile (the "Mobile Shareholder"), and (iii) Michael Wanke as the Representative of the Mobile Shareholder. Pursuant to the Exchange Agreement, C-Bond agreed to acquire 80% of Mobile's units, representing 80% of Mobile's issued and outstanding capital stock (the "Mobile Shares").

**Item 1.01 Entry into a Material Definitive Agreement.**

On July 22, 2021, C-Bond closed the Exchange Agreement and acquired 80% of the Mobile Shares. The Mobile Shares will be exchanged for restricted shares of C-Bond's common stock, par value $0.001 ("Common Stock"), in an amount equal to $800,000, divided by the average of the closing prices of C-Bond's Common Stock during the 30-day period immediately prior to the closing as defined in the Exchange Agreement. Two years after closing, C-Bond has the option to acquire the remaining 20% of Mobile's issued and outstanding membership interests in exchange for a number of shares of C-Bond's Common Stock equal to 300% of Mobile's average EBIT value, divided by the price of C-Bond's Common Stock as defined in the Exchange Agreement (the "Additional Closing").

The Company also entered into an Amendment to the Exchange Agreement, dated July 21, 2021, which, among other things, stipulates that for U.S. federal income tax purposes the Exchange and the Additional Closing (if exercised) are intended to qualify as a "reorganization" within the meaning of Section 368(a) of the Code and the Treasury

Regulations, and the definition of "Total EBIT Value" shall mean Mobile's net income, before income tax expense and interest expense have been deducted, for the period beginning on July 1, 2021 and ending on June 30, 2023, plus fifty percent (50%) of the Mobile Shareholder's Base Salary, as defined in the Executive Employment Agreement dated July 21, 2021, between the Mobile Shareholder and the Company (the "Employment Agreement"), as described below.

The Exchange Agreement transaction documents include the Operating Agreement of Mobile (the "Operating Agreement") which, among other things, appoints Mr. Wanke, Scott R. Silverman, and Allison Tomek as the Managers of Mobile, and governs the operations of Mobile as outlined therein. Under the terms of the Operating Agreement, the Managers shall not have the authority to perform or approve the following actions, among other things, unless such action is also approved by a unanimous vote: to terminate the existing lease between Company and MDW Management, LLC; to borrow money for the Company from banks, other lending institutions, the Manager, Members, or affiliates of the Manager or Members; to establish lines of credit in the name of the Company with financial institutions such as banks or other lending institutions; to determine and declare distributions to Members of Mobile.

In connection with the Exchange Agreement, the Company entered into a Piggy-Back Registration Rights Agreement dated July 20, 2021 (the "Registration Rights Agreement") with Mobile, the Mobile Shareholder, and Mr. Wanke, pursuant to which if at any time on or after the date of the closing, the Company proposes to file any Registration Statement (a "Registration Statement") with respect to any offering of equity securities by the Company for its own account or for shareholders of the Company, other than a Form S-8 Registration Statement, a dividend reinvestment plan, or in connection with a merger or acquisition, then the Company shall (x) give written notice of such proposed filing to the holders of registrable securities no less than ten (10) days before the anticipated filing date of the Registration Statement, and (y) offer to the holders of registrable securities the opportunity to register the sale of either (i) an amount of registrable securities equal to the total number of shares of the Company's common stock being registered in such Registration Statement that are being offered solely for the Company's account excluding the registrable securities; or (ii) an amount of registrable securities equal to the total number of shares of the Company's common stock being registered for resale by shareholders of the Company excluding the registrable securities.

On July 21, 2021, the Company entered into the Employment Agreement with Mr. Wanke, the President of Mobile, to serve as the President of C-Bond's Safety Solutions Group. Under the three-year Employment Agreement, Mr. Wanke will receive a base salary of $240,000 per year, which may be increased from time to time with the approval of the board of directors. In addition, Mr. Wanke may receive an annual bonus as determined by the board of directors. It is understood that although Mr. Wanke's base salary will be paid by Mobile, 50% of the base salary will be allocated to the expenses of Mobile, and the other 50% of the base salary will be allocated to the expenses of the Company.



In connection with the Exchange Agreement, the Company was named as guarantor ("Guarantor") of a Commercial Lease Agreement dated July 21, 2021, by and between landlord MDW Management, LLC, and tenant Mobile Tint, LLC d/b/a A-1 Glass (the "Lease"). The term of the Lease is 60 months, at a minimum monthly rent of $5,600 (not including tax), with two five-year options for the tenant to renew. The Company's obligation as Guarantor of the Lease will terminate upon the occurrence of earlier of the following: (i) the date of Guarantor's acquisition of 100% of the ownership interests of Mobile; (ii) the date that Guarantor beneficially owns less than an eighty percent (80%) ownership interest in Mobile; or (iii) two (2) years from and after the effective date of the guaranty.

The foregoing description of the Exchange Agreement is a summary only and is qualified in its entirety by reference to the full text of such document, filed as Exhibit 10.1 to the Current Report on Form 8-K filed on July 7, 2021. The foregoing description of the Amendment to the Exchange Agreement, Operating Agreement, Piggy-Back Registration Rights Agreement, Employment Agreement, and Lease are summaries only and are qualified in their entirety by reference to the full text of such documents, filed as Exhibit 10.2, 10.3, 10.4, 10.5, and 10.6, respectively,

**Item 2.01 Completion of Acquisition or Disposition of Assets.**

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.01.

**Item 3.02 Unregistered Sales of Equity Securities.**

The disclosure in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02. The offer, issuance and sale of such Mobile Units were (a) exempt from the registration and prospectus delivery requirements of the Securities Act of 1933, as amended, (b) registered or qualified (or were exempt from registration or qualification) under the registration or qualification requirements of all applicable state securities Laws and (c) accomplished in conformity with all other applicable securities Laws.

**Item 9.01 Financial Statements and Exhibits**

| Exhibit Number | Description |
|---|---|
| 10.1 | Share Exchange Agreement and Plan of Reorganization, dated June 30, 2021, by and between C-Bond Systems, Inc., Mobile Tint LLC, the sole member of Mobile, and Michael Wanke as the Representative of the Mobile Shareholder |
| 10.2 | Form of Amendment to the Exchange Agreement, dated July 21, 2021, by and between C-Bond Systems, Inc., Mobile Tint LLC, the sole member of Mobile, and Michael Wanke as the Representative of the Mobile Shareholder |
| 10.3 | Form of Operating Agreement of Mobile Tint LLC issued July 2021 |
| 10.4 | Form of Piggy-Back Registration Rights Agreement, dated July 20, 2021, by and between C-Bond Systems, Inc., Mobile Tint LLC, the sole member of Mobile, and Michael Wanke as the Representative of the Mobile Shareholder |
| 10.5 | Executive Employment Agreement, dated July 21, 2021, by and between C-Bond Systems, Inc. and Michael Wanke |
| 10.6 | Form of Commercial Lease Agreement, dated July 20, 2021 |



**SIGNATURES**

Pursuant to the requirements of the Securities and Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**C-Bond Systems, Inc.**

Date: July 26, 2021

By: */s/ Scott R. Silverman*
Name: Scott R. Silverman
Title: Chief Executive Officer

**Exhibit 10.2**

**FORM OF AMENDMENT #1 TO THE SHARE EXCHANGE AGREEMENT DATED JULY 21, 2021**

THIS AMENDMENT #1 (the "Amendment") TO THE SHARE EXCHANGE AGREEMENT dated July 21, 2021, is made effective as of July 16, 2021, by and between (i) C-Bond Systems, Inc. a Colorado corporation (the "Company"); (ii) Mobile Tint LLC, a Texas limited liability company ("Mobile"), (iii) the sole member of Mobile as set forth on the signature page hereto (the "Mobile Shareholder") and (iv) Michael Wanke as the representative of the Mobile Shareholder (the "Shareholder Representative").

**BACKGROUND**

A. The Company, Mobile, Mobile Shareholder, and Shareholder Representative are the parties to that certain share exchange agreement dated June 30, 2021 (the "SEA"); and

B. The Parties desire to amend the SEA as set forth expressly below.

NOW THEREFORE, in consideration of the execution and delivery of the Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The first sentence of Section 2.08(a) of the SEA shall be replaced with the following:

"(a) For U.S. federal income tax purposes, the Exchange and the Additional Closing (if exercised) are intended to qualify as a "reorganization" within the meaning of Section 368(a) of the Code and the Treasury Regulations promulgated thereunder."

2. The reference to "July 16, 2021" in the definition of "Termination Date" in the SEA shall be replaced with "July 21, 2021".

3. The definition of "Total EBIT Value" shall mean Mobile's net income, before income tax expense and interest expense have been deducted, for the period beginning on July 1, 2021 and ending on June 30, 2023, plus fifty percent (50%) of the Mobile Shareholder's Base Salary (as defined in that certain Executive Employment Agreement dated July 21, 2021, between the Mobile Shareholder and the Company).

4. This Amendment shall be deemed part of, but shall take precedence over and supersede any provisions to the contrary contained in the SEA. Except as specifically modified hereby, all of the provisions of the SEA, which are not in conflict with the terms of this Amendment, shall remain in full force and effect.

*[signature page to follow]*



IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

C-Bond Systems, Inc.

By: _____
Name: Scott Silverman
Title: Chief Executive Officer

Mobile Tint LLC

By: _____
Name: Michael Wanke
Title: Sole Member

Shareholder Representative

By: _____
Name: Michael Wanke

*Shareholder:*

By: _____
Name: Michael Wanke

# Mobile Tint LLC

**A Texas Limited Liability Company**

**Form of Operating Agreement**

**Issued: July 2021**

**ARTICLE I.**
DEFINITIONS

*1.01 Definitions*. The following terms used in this Agreement shall have the following meanings:

a) "Act" means collectively, and as each may be amended from time to time: Texas Business Organization Code, Title 3, Chapter 101 entitled Limited Liability Companies; and Texas Business Organization Code, Title 1, entitled General Provisions.

b) "Agreed Value" means the purchase price established for purchase transactions involving Membership Interests in the Company when purchased by the Company or other Members except as otherwise provided in the Share Exchange Agreement or herein, and shall be calculated and determined as follows:

a. As applicable:

i. The amount and form of consideration set forth in the Share Exchange Agreement for the Additional Units (defined in the Share Exchange Agreement) on or before the Additional Closing (defined in the Share Exchange Agreement);

ii. The amount agreed upon by the Parties to the transaction involving Membership Interests; or

iii. that amount represented by the fair market value of the Company on the Trigger Date multiplied by the Percentage Interest/percentage value of the Membership Interest (versus total Membership Interests of the Company) to be purchased. Unless otherwise set forth in this Agreement, the "fair market value" of the Company shall be determined by the average of the recommendations/findings/calculations performed by two business valuation experts or certified public accountants, working independently, selected by the Company and Member involved in the transaction or by the Members involved in the transaction (or by Unanimous Vote, where the foregoing options would not apply). All such calculations must be completed within the time period referenced in the remainder of this Agreement to permit a timely sale or exchange. The valuation expert shall use that method of valuation most commonly used in determining the fair market value of a going concern operating business similar to the Company which, at minimum, must determine the value of the Company in a hypothetical sale to a third party.

c) "Bankruptcy" or "Bankrupt" means, as to any Member, the Member's taking, or acquiescing to the taking, of any action seeking relief under, or advantage of, any applicable debtor relief, liquidation, receivership, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar law affecting the rights or remedies of creditors generally, as in effect from time to time. For the purpose of this definition, the term 'acquiescing' shall include, without limitation, the failure to file within the time specified by law, an answer or opposition to any proceeding commenced against such Member under any such law and a failure to file, within thirty (30) days after its entry, a petition, answer or motion to vacate or to discharge any order, judgment or decree providing for any relief under any such law.



d) "Capital Contribution" means any contribution to the capital of the Company in cash or property by a Member whenever made. "Initial Capital Contribution" means the initial contribution to the capital of the Company pursuant to this Agreement.

e) "Certificate of Formation" means the Certificate of Formation of the Company as filed with the Secretary of State of Texas and amended from time to time, as necessary.

f) "Code" means the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

g) "Company" refers to Mobile Tint LLC.

h) "Designated Authority" means the individual Governing Authority of an Entity Member entitled to exercise the Voting Interests of an Entity Member, and initially consists of the individuals set forth on Schedule 1 of this Agreement. The Designated Authority for the Exchanging Member shall be the then serving Board of Directors of the Exchanging Member.

i) "Disability" shall mean the inability to perform Company functions as a Member, Officer or Manager as determined by an independent physician qualified to establish impairment ratings or other measures of disability according to the American Medical Association Guides to the Evaluation of Permanent Impairment;

j) “Distributable Cash” means all cash, revenues and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders (including any Member Loans); ii) all cash expenditures incurred in the normal operation of the Company's business; and iii) such Reserves as required under this Agreement or as the Managers deem reasonably necessary for the proper operation of the Company's business;

k) “Entity” or “Entities” means any general partnership, limited partnership, limited liability company, series of a limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization.

l) “Exchanging Member” refers to C-Bond Systems, Inc.

m) “Exculpation Exceptions” means, as it pertains to Managers or Officers, acts or failures to act that constitute: i) fraud against the Company; ii) a breach of fiduciary responsibility, breach of loyalty, or breach of the duty of good faith and fair dealing toward the Company; or iii) an act or omission involving the Company for which the liability of a Manager or Officer cannot be waived under applicable law.

n) “Governing Authority” is as defined under the Act;



o) “Gross Asset Value” means, with respect to any item of property of the Company, the item's adjusted basis for federal income tax purposes, except as follows:

   a. The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset on the date of contribution, as determined by the Managers;

   b. The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Managers, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company, if the Manager(s) reasonably determine that, with respect to adjustments, such adjustments as are necessary or appropriate to reflect the relative economic interests of the Members in the Company; and (iii) the liquidation of the Company(for taxation purposes) within the meaning of Treasury Regulations section 1.704-1(b)(2)(ii)(g) [regarding the liquidation of partnerships for tax purposes];

   c. The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution; and

   d. The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code sections 734(b) or 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations section 1.704-1 and this Agreement; provided, however, that Gross Asset Values shall not be adjusted to the extent the Managers determines that an adjustment is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment.

p) “Incapacity” or “Incapacitated” shall mean a person’s loss of mental capacity to manage that person’s estate and/or affairs as the term ‘incapacity’ and/or ‘intellectual disability’ are further defined and determined under the Texas Estates Code;

q) “Manager(s)” means one or more managers. References to the Manager in the singular or as him, her, it, itself, they or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine (or other non-binary gender) reference as the case may be and vice versa for references to Managers where there is a single Manager.

r) “Member” means each of the individuals or entities who hold a Membership Interest in the Company and who execute a counterpart of this Agreement as a Member. To the extent a Manager has obtained a Membership Interest in the Company, that Manager will have all the rights of a Member with respect to that Membership Interest, and the term “Member” includes a Manager to the extent the Manager owns or has purchased a Membership Interest in the Company.

s) “Membership Interest” means a Member's entire interest in the Company including but not limited to that Member's right to share in the Company's Profits, Losses, Distributable Cash, distributions of the Company's assets pursuant to this Operating Agreement and the Act. A Member’s right to participate in the management of the business and affairs of the Company or voting is distinct and subject to the provisions in this Agreement and the Act. Membership Interests will be numerically represented as ‘Units.’ Where applicable, references to “Membership Interests” may be used interchangeably with “Percentage Interest” to refer to the percentage of Units held by a Member based on the total number of Units issued by the Company.



t) “Operating Agreement” or “Agreement” means this Operating Agreement of the Company as originally executed and as amended from time to time.

u) “Percentage Interest” means a Member’s percentage interest in the Company based upon the Member’s Units owned divided by the total number of Units issued by the Company (the Percentage Interest may change from time to time and may be expressed in whole numbers or in whole plus fractional interests to two decimal points).

v) “Persons” means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and permitted assigns of such “Person” where the context so permits.

w) “Profits” and “Losses” mean, for each fiscal year of the Company or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code section 703(a)(l) shall be included in taxable income or loss), with the following adjustments:

   a. Any income of the Company that is exempt from Federal income tax and not otherwise taken into account in computing Profits and Losses for purposes of this definition shall be added to such taxable income or loss;

   b. Any expenditures of the Company described in Code section 705(a)(2)(B) or treated as Code section 705(a)(2)(B) expenditures pursuant to Treasury Regulations section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses for purposes of this definition shall be subtracted from such taxable income or loss;

   c. In the event the Gross Asset Value of any Company asset is adjusted, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

d. Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

e. In lieu of depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account depreciation for such fiscal year or other period, computed in accordance with the definition thereof; and

f. Notwithstanding any other provision of this definition, any items of income, gain, expense or loss that are specially allocated pursuant to this Agreement shall not be taken into account in computing Profits and Losses.

x) "Proxy" bears the meaning set forth in the Act.

y) "Reserves" means funds set aside or amounts allocated to reserves which shall be maintained in amounts deemed sufficient by the Managers for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.



z) "Share Exchange Agreement" refers to that certain Share Exchange Agreement between Member Michael Wanke, the Company and the Exchanging Member.

aa) "Transfer" means a sale, exchange, assignment, transfer or other disposition of Membership Interest or beneficial interest in a Membership Interest (whether voluntary, involuntary or by operation of law);

bb) "Treasury Regulations" include proposed, temporary and final regulations promulgated under the Code.

cc) "Trigger Date means the date of notice of, or the date upon which, a particular event causes or triggers the purchase or sale of Membership Interests upon the terms and conditions contained herein. The Trigger Date is additionally defined below.

dd) "Unanimous Vote" means the approval, through documented written consent or agreement, or after a Vote conducted in accordance with this Agreement or the Act, of all Members of the Company with a Voting Interest.

ee) "Vote" means:
a. a written consent or approval;
b. an electronically transmitted communication constituting a written consent or approval (such as electronic mail);
c. a ballot cast at a Meeting; or
d. a voice vote.

ff) "Voting Interest" means, with respect to a Member, the right to Vote or participate in management and any right to information concerning the business and affairs of the Company provided under the Act, except as limited by the provisions of this Agreement. A Member's Voting Interest shall be directly proportional to that Member's Percentage Interest. An Entity-Member's Designated Authority is the sole person authorized to exercise an Entity-Member's voting or consent rights.

## ARTICLE II.
## COMPANY NAME AND PURPOSE

*2. 01 Certificate of Formation and Name.* The Company has been duly organized under the laws of the State of Texas in accordance with the Act and previously filed the Certificate of Formation. The name of the Company is Mobile Tint LLC. The Company will conduct business under this name and any assumed name filed for record with such assumed name being part of the intellectual property of the Company. The Company is or will be a domestic, for profit, limited liability company as that term is defined and regulated by the Act as of the effective date set forth above.

*2.02 Purpose.* The company's purpose is to transact and carry on all lawful business for which a limited liability company may be operated in accordance with the Act.



*2.03 Principal Place of Business.* The Company's principal business office shall be located at 2029 Pat Booker Rd, Universal City, TX 78148. The Company may locate its place or places of business and registered office at any other place or places the Managers deem advisable, provided that the Managers notify the Members of the change within sixty (60) days of such change. This Agreement is performable in Bexar County, Texas.

*2.05 Registered Office/Registered Agent.* The Company's registered agent and office shall be Michael Wanke at 2029 Pat Booker Rd, Universal City, TX 78148. The registered office and registered agent may be changed by the Manager by filing the address of the new registered office and/or the name of the new registered agent with the Texas Secretary of State, pursuant to the Act. The Company shall maintain such records as required by the Act at its principal office, registered office or such other office designated by the Company. If the Managers change the Registered Agent or office, the Manager must notify the Members of the change within sixty (60) days of such change. Manager must inform the Exchanging Member of all correspondence with state or federal agencies, including but not limited to the Internal Revenue Service and the State of Texas.

*2.06 Term.* The term of the Company is perpetual unless the Company is earlier dissolved or merged with another entity and its affairs are wound up in accordance with either the provisions of this Agreement or the Act.

## ARTICLE III.
## MANAGERS

*3. 01 Management.* The business and affairs of the Company shall be managed by its Managers. The Managers shall direct, manage and control the business of the Company. Except for situations in which the approval of the Members is required by this Agreement or by non-waivable provisions of the Act, the Managers shall have the authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Only Managers have the authority to bind the company. Except as otherwise provided in this Agreement, all decisions, approvals, determinations and actions affecting the Company shall be determined, made, approved, or authorized only by an affirmative vote of a majority of all Managers. Abstentions and refusals to act upon any measure shall be considered as a vote in favor of the proposed measure. A Manager is deemed to have abstained whenever a response by that Manager has not been received within five (5) days after the time specified in this Agreement or in the notice for the response, whichever is applicable. An unresolved dispute amongst Managers regarding decision-making or the exercise of the powers listed in Paragraph 3.03 of this Agreement (that is, deadlock on

a particular issue or matter) will be considered a fundamental business decision requiring Member approval and must be submitted to the Members for resolution and approval by Unanimous Vote. Except as provided herein, the Manager shall have full power and authority to conduct all day to day business of the Company. As an 80% owned subsidiary of the Exchanging Member, the Chief Executive Officer and the Board of Directors of Exchanging Member will be informed and must approve substantive (not day to day) decisions.



*3.02 Number of Managers; Initial Managers.* The Company shall have three (3) Managers. The initial Managers shall be Michael Wanke, Scott Silverman, and Allison Tomek, who shall serve as Managers until a resignation or removal in accordance with the terms of this Agreement. The Managers shall file such documents as may be necessary to reflect the Manager's status as Manager of the Company. The Managers are not required to be a resident of the State of Texas nor shall they be required to be a Member of the Company. The number of Managers may also be increased or decreased by a Unanimous Vote. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until the Manager's successor shall be elected and qualified, or until the Manager's earlier death, resignation, Disability, Incapacity or removal. Entities acting as Managers shall act through their Designated Authority for all matters relating to the exercise of a Manager's authority and voting. Any action of the Designated Authority taken on behalf of an Entity-Manager shall be deemed the lawfully approved action of the Entity serving as Manager, and the Designated Authority shall be deemed such Entity's agent with authority to bind such Entity.

*3.03 Limitation on Manager Powers.*

The Managers shall NOT have the authority to perform or approve the following actions unless such action is also approved by a Unanimous Vote:

i. To terminate the existing Lease between Company and MDW Management, LLC for the premises commonly known as 2029 Pat Booker Rd, Universal City, TX 78148 except as otherwise provided for in the executed version of such Lease;

ii. To enter into a new lease for real property or equipment;

iii. To borrow money for the Company from banks, other lending institutions, the Manager, Members, or affiliates of the Manager or Members or to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums other than 'net' accounts in the ordinary course of the Company's business,;

iv. To establish lines of credit for an in the name of the Company with financial institutions such as banks or other lending institutions;

v. To execute any mortgages or deeds of trust; security agreements, financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases, and any other instruments or documents necessary to the business of the Company;

vi. To make any tax election under the Code; or

vii. To determine and declare distributions to Members.

Unless authorized to do so by this Agreement or by the Managers of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized in writing by the Managers to act as an agent of the Company.

*3.04 Manager's Agreements.* If more than one Manager is then serving, the Managers may designate or delineate duties between themselves so that one Manager overseas the operations or decision making for specific areas of the Company's business so long as said 'Manager's Agreement' is in writing and approved by a majority of Managers.



*3.05 Election of Managers.* The initially named Managers referenced above shall remain the Managers of the Company unless a successor for a given Manager is elected by Unanimous Vote or unless another provision of this Agreement would provide for their removal. Additional Managers may be added if elected in accordance with Section 3.07 below. Election of Managers shall occur at the annual meeting of the Company, regular meetings of the Members, or at any special meeting of the Members. Managers shall generally hold office until their successors are elected and qualified.

*3.06 Resignations.* Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of that notice or at such later date specified in the notice and the acceptance of that resignation shall not be necessary to make it effective. The resignation of a Manager who is also a member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member except as otherwise provided in this Agreement. A Manager shall be deemed to have resigned upon the Manager's death, Disability, or Incapacity or, for a Manager that is an Entity, upon the Entity's Designated Authority's death, Disability, or Incapacity.

*3.06 Removal.* At a meeting called expressly for that purpose, all or any lesser number of Managers may be removed at any time, with or without cause, by Unanimous Vote. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member or their right to vote and shall not constitute a withdrawal of a Member except as otherwise provided in this Agreement. A Manager who is also a Member is permitted to vote as a Member in any such vote for removal without regard for the Member's dual status as a Member and Manager.

*3.07 Vacancy of Managers*. Any vacancy occurring for any reason in the number of Managers of the Company may be filled by a Unanimous Vote by the Members no later than ninety (90) days after the vacancy occurs. A Manager elected to fill a vacancy shall be elected for the unexpired term of the Manager's predecessor in office and shall hold office until the expiration of such term and until the Manager's successor is elected and qualified or until the Manager's earlier death, resignation or removal.

*3.08 Manager Liability.* No Manager of the Company shall be liable to the Company or its Members for any monetary or other damages for an act or omission in the Manager's capacity as a Manager, except for liability of a Manager for an Exculpation Exception and only for an act that would constitute an Exculpation Exception. If the Act or other applicable law is amended to authorize action further eliminating or limiting the liability of the Managers, then the liability of each Manager of the Company shall be eliminated or limited to the fullest extent permitted by the Act or other applicable law, as so amended, except as provided herein.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Manager existing prior to or at the time of such repeal or modification, and such repeal or modification shall apply prospectively only.

A "breach" of this Article occurs as to a Manager for the purposes of this Agreement where a Manager has committed an Exculpation Exception.

Notwithstanding the foregoing, it shall be a defense to an Exculpation Exception that the Manager otherwise acted in accordance with the "business judgment rule" as outlined in Texas common law and, where Texas law is silent on a particular matter regarding the business judgment rule, as outlined under Delaware law.



*3.09 Not Sole Enterprise.* A Manager shall not be required to manage the Company as the Manager's sole and exclusive function and the Manager may have other business interests and engage in activities in addition to those relating to the Company.

*3.10 Managers' Meetings.* Where only one Manager is then serving, no Manager's meetings shall be required. Managers' meetings, regular or special, may be held either within or outside of the State of Texas. Managers may participate in such meetings in person or by use of telephone equipment or other electronic means allowing for confirmation of presence/attendance of the Manager (including electronic or online instant messaging services, software, or "chat rooms"). An annual meeting of the Managers may be held, and if held, shall be at such time and place as determined by the Managers. Additional or special meetings of the Managers shall be held whenever requested to do so by any Manager or the President (if elected) by providing ten (10) days electronic (via electronic mail) or written notice stating the date, time, place and purpose of the meeting. If all of the Managers execute a waiver of notice of the meeting, no notice shall be required, and said waivers may be initiated, confirmed, and executed via electronic mail messages originating from the Manager wishing to waive notice. Attendance of Managers at any meeting shall constitute a waiver of notice of such meeting, except where the Managers attend a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

*3.11 Quorum.*

a) One hundred percent (100%) of the Managers shall constitute a quorum for the transaction of business at all meetings of the Managers. The act of sixty-six percent (66%) of all Managers shall be the act of the Managers unless the act of a greater number is required by statute, by the Certificate of Formation or by this Agreement. If there is no quorum at a meeting of the Managers, then the meeting shall adjourn and a new notice be sent for a new meeting. If there is no quorum present at the successor meeting, then sixty-six percent (66%) present shall constitute a quorum, unless this action is prohibited by law. Notwithstanding this Article 3.12(a), the Managers may act by a writing signed by sixty-six percent (66%) of the Managers provided that one hundred percent (100%) of the Managers receive notice of the act five (5) days prior its execution.

b) Notwithstanding Article 3.12(a) any Manager may take the actions that the Manager is permitted to take pursuant to any Manager's Agreement if promulgated in accordance with Paragraph 3.04 hereinabove.

*3.12 Manager's Proxy Voting.* A Manager may not vote by Proxy.



*3.13 Committees.* The Managers may designate one or more committees to assist in the exercise of the management and business affairs of the Company, subject to the limitations set forth in the Act, and all amendments thereto. Any such committee, to the extent provided in such resolution, the Certificate of Formation, or by this Agreement, shall have and may exercise, subject to the control of the Managers, such powers and duties as prescribed and authorized by the Managers. Each such committee shall utilize the following minimum requirements and such other requirements as established by the Managers:

a) Each committee shall be comprised of at least one (1) Manager, who shall be the presiding chairman of the committee. The committee members shall be determined by the Manager. Committee members (with the exception of the presiding chairman) are not required to be either Managers or Members of the Company.

b) Any members of any such committee may be removed by the Manager, whenever in the Manager's judgment the best interests of the Company will be served thereby.

c) The designation of one or more committees and the delegation of authority to any such committee shall not operate to relieve the Manager of any responsibility imposed upon the Manager by law.

d) The salaries and/or other compensation of the committee members, if any, shall be determined by unanimous vote of the Managers.

*3.14 Compensation and Reimbursement*. Manager compensation, if any, shall be established from time to time by Unanimous Vote. The Company shall also be responsible for paying all costs incurred by the Manager in the operation of the Company and preparation and distribution of reports and other communications concerning the Company. If any such costs and expenses are or have been paid by the Manager on behalf of the Company, then the Manager shall be entitled to be reimbursed for such payment from the Company. Any change in the Manager's compensation set forth above must also be approved by Unanimous Vote.

*3.15 Contracts with Managers and Members.* No contract or other transaction between the Company and one or more of its Members or Managers or between the Company and another Entity or enterprise of which one or more of the Members or Managers hold an ownership interest, or in which they are otherwise interested, directly or indirectly, shall be invalid solely because of such relationship, or solely because such Member or Manager is present at or participates in the meeting of the Managers or committee thereof which authorizes the contract or other transactions or solely because his or their votes are counted for such purpose, if the material facts as to his relationship or interest and as to the contract or other transaction are known or disclosed to the Managers, and such Managers in good faith authorize the contract or other transaction by the affirmative vote of a majority of the disinterested Managers even though the disinterested Managers be less than a majority of Managers, or the material facts as the his or her relationship or interest and as to the contract or other transaction is otherwise approved by Unanimous Vote. It is expressly agreed by the Members that sales transactions between the Company and Exchanging Member are expected and shall not constitute an invalid relationship or conflict of interest.

*3.16 Partnership Representative.* If the Company qualifies to elect pursuant to Code Section 6221(b) (or successor provision) to have Subchapter C of Chapter 63 of the Code not apply to any federal income tax audits and other proceedings, the Managers may cause the Company to make such election in consultation with the Company's tax advisor(s). Otherwise, the then serving Managers of the Company shall be designated the"partnership representative" within the meaning of Code Section 6223 with sole authority to act on behalf of the Company for purposes of Subchapter C of Chapter 63 of the Code and any comparable provisions of state or local income tax laws provided. Where the Partnership Representative represents the Company in connection with all examinations of the Company's affairs by tax authorities, including, without limitation, administrative and judicial proceedings, the Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings.

In addition:

a) If any "partnership adjustment" (as defined in Code Section 6241(2)) is determined with respect to the Company, the Partnership Representative shall promptly notify the Members upon the receipt of a notice of final partnership adjustment, and shall take such actions as directed by a majority of the Members in writing within 10 business days after the receipt of such notice, including whether to file a petition in Tax Court, cause the Company to pay the amount of any such adjustment under Code Section 6225, or make the election under Code Section 6226.

b) If any "partnership adjustment" (as defined in Code Section 6241(2)) is finally determined with respect to the Company and the Partnership Representative has not caused the Company to make the election under Code Section 6226, then (i) the Members shall take such actions requested by the Partnership Representative, including filing amended tax returns and paying any tax due in accordance with Code Section 6225(c)(2); (ii) the Partnership Representative shall use commercially reasonable efforts to make any modifications available under Code Section 6225(c)(3), (4) and (5); and (iii) any "imputed underpayment" (as determined in accordance with Code Section 6225) or partnership adjustment that does not give rise to an imputed underpayment shall be apportioned among the Members of the Company for the taxable year in which the adjustment is finalized in such manner as may be necessary (as determined by the Partnership Representative in good faith) so that, to the maximum extent possible, the tax and economic consequences of the partnership adjustment and any associated interest and penalties are borne by the Members based upon their interests in the Company for the reviewed year.

c) If any subsidiary of the Company (i) pays any partnership adjustment under Code Section 6225; (ii) requires the Company to file an amended tax return and pay associated taxes to reduce the amount of a partnership adjustment imposed on the subsidiary, or (iii) makes an election under Code Section 6226, the Partnership Representative shall cause the Company to make the administrative adjustment request provided for in Code Section 6227 consistent with the principles and limitations set forth in Sections 1(d)-(e) above for partnership adjustments of the Company, and the Members shall take such actions reasonably requested by the Partnership Representative in furtherance of such administrative adjustment request.

d) The obligations of each Member or former Member under this provision shall survive the transfer or redemption by such Member of its Membership Interest and the termination of this Agreement or the dissolution of the Company.

*3.17 Manager Actions Without a Meeting*. Action required or permitted to be taken at a meeting of Managers may be taken without a meeting if the action is evidenced by a sufficient percentage of managers, as provided in this Agreement, in written consents describing the action taken, signed by each Manager entitled to vote and kept in the minutes or for filing with the Company records. Action taken under this Article is effective when a sufficient percentage of Managers entitled to vote have signed the consent, unless the consent specifies a different effective date. Such consent may also be obtained by one or more or a series of electronic mail or text messages from each Manager where such message states the proposed action to be taken and each Manager required or permitted to vote on the same expresses their consent via such electronic mail or text messages. Where text messages are used, the telephone number of a given text message must match the mobile telephone number of record for a given Manager shown in the Company's records.



*3.18 Officers.* It is intended that the entirety of the Company's affairs be managed by the Managers. However, the Company may also have officers if deemed necessary by the Managers. The appointment or election of one or more officers (along with their respective functions/job duties) shall be set forth in writing or pursuant to a separate employment agreement and shall further require approval by Unanimous Vote. One person may hold any two or more offices, and no officers need be a Manager, Member, or a resident of Texas.

**ARTICLE IV**.
**MEMBERS**

*4.01 Members.* Ownership rights in the Company are reflected as Units or as a Percentage Interest. The Company is initially authorized to issue up to One Thousand (1,000) Units. Members must own a minimum of one whole Unit and may own, additionally, fractional Units in the Company. Fractional Units shall be denominated in halves (0.50) or in quarters (0.25) only. By Unanimous Vote, the Company may issue (i) additional units or other interests in the Company (ii) obligations, evidences of indebtedness or other securities or interests convertible or exchangeable into interests in the Company and (iii) warrants, options or other rights to purchase or otherwise acquire interests in the Company; provided that the Company shall not issue units to any Person unless such Person shall have executed a counterpart to this Agreement. The Company may issue additional Units for any form of consideration the Managers determines appropriate where the issuance is approved by Unanimous Vote.

If additional units are issued, the rights of Members in respect of units or interests of any class or series shall be reduced/diluted on a pro rata basis based on holdings of such Units, and the Managers shall have the power and authority to amend the Schedule of Members solely to reflect such additional issuances and reduction/dilution and to make any such other amendments as they deem necessary or desirable to reflect such additional issuances/admission of additional Members. The name, address, electronic mail address, Units, Percentage Interest, and value of capital contributed by each Member shall be recorded in the records of the Company. In matters subject to a vote of the Members, each Member with Voting Interests shall vote in proportion to their respective Percentage Interest. Cumulative voting of interests shall not be permitted.

Although the Company uses Units as a measure of a Member's Membership Interest and may increase the total number of Units distributed as a means of adjusting Percentage Interests, the Company does not intend to hold Units as "treasury stock" in the corporate sense. Rather, it is understood and agreed that the Company may admit one or more additional Members collectively or individually holding up to a one-hundred percent (100%) Percentage Interest in the Company, all as determined based on the definitions and terms of this Agreement.

If the Company participates in any transaction to acquire or reacquire Membership Interests, then such transaction shall be treated as a 'redemption' whereby the reacquired Membership Interests are cancelled or distributed pro-rata amongst the remaining Members of the Company.

*4.02 Classes of Interests*. There shall only be one (1) class of Membership Interests.



*4.03 Limitation of Liability.* Each Member's liability shall be limited as set forth in this Agreement, the Act, the judicial decisions of the State of Texas, and other applicable law. Members are not agents for the Company.

*4.04 Company Debt Liability.* A Member will not be personally liable for any acts, debts or losses of the Company unless required by law.

*4.05 Approval of Sale of All Assets or Units.* The Members shall have the right by Unanimous Vote to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets or Units which is to occur as part of a single transaction or plan.

*4.06 Company Books.* The Managers shall maintain and preserve, during the term of the Company, such records and documents which the Managers, in the Managers' discretion, deems appropriate. The Company shall maintain such other records as are required by non-waivable provisions of the Act. The Managers may delegate the maintenance of such records to Company employees or outside advisors/contractors.

*4.07 Priority and Return of Capital.* Except as may be expressly provided in Articles VI and VII or in any attachment or exhibit to this Agreement, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Losses or distributions.

**ARTICLE V.**
**MEETINGS OF MEMBERS**

*5.01 Annual Meetings.* An annual meeting of the Members of the Company for the transaction of such business as may properly come before the meeting may be held at such time and date as shall be designated by the Managers from time to time and stated in the notice of the meeting. Such annual meeting shall be called in the same manner as provided in this Agreement for special meetings of the Members, except that the purposes of such meeting need be enumerated in the notice of such meeting only to the extent required by law in the case of annual meetings. If at any time the Company has only one Member entitled to vote, then no Member's meetings shall be required.

*5.02 Special Meetings.* Special meetings of the Members may be called by the holders of not less than twenty percent (20%) of all Membership Interests. Business transacted at all special meetings shall be confined to the purposes stated in the notice.

*5.03 Place of Meetings.* The Managers may designate any place, either within or outside the State of Texas, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal place of business of the Company.

*5.04 Notice of Meetings.* Except as otherwise provided herein, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the Manager or Members calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered three (3) calendar days after being deposited in the United States mail via certified mail, addressed to the Member at its address as it appears on the books of the Company. Notice of any such meeting may also be delivered electronically via electronic mail as long as the electronic notice otherwise complies with the requirements provided in this Agreement. Absent sooner confirmation of receipt by the intended recipient, electronic mail shall be deemed to have been delivered one (1) day after it has been electronically transmitted to the Member's electronic mail address on file in the books of the Company.



*5.05 Meetings of All Members.* If all of the Members shall meet at any time and place, either within or outside of the State of Texas, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

*5.06 Record Date.* For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

*5.07 Quorum.* Members holding 100% of the Membership Interests in person or by Proxy shall constitute a quorum at any meeting of Members. The Members present at a duly organized meeting may continue to transact business despite the withdrawal during such meeting of that number of Percentage Interest whose absence would cause less than a quorum.

*5.08 Manner of Acting.* All Member actions require a Unanimous Vote. Unless otherwise expressly provided herein or required under applicable law, only Members who have a Membership Interest and a Voting Interest may vote or consent upon any matter and their vote or consent, as the case may be, shall be counted in the determination of whether the matter was approved by the Members.

*5.09 Voting Matters*. Each Member with a Voting Interest shall Vote in proportion to the Member's Percentage Interest as of the governing record date and cumulative voting shall not be permitted.

*5.09.1 Designated Authority to Exercise Entity Voting.* The Designated Authority shall exercise any Entity-Member's right to consents, right to Vote or Voting Interests for all matters subject to the approval or disapproval of the Members under this Agreement. A Designated Authority's participation in a consent or Vote involving the Members shall constitute a warranty and representation that: the Designated Authority's vote represents the will/desire of the Entity-Member; the Designated Authority has the authority to bind and act on behalf of the Entity-Member as its agent; and the Entity-Member and Designated Authority have fulfilled any internal Entity-Member requirements necessary to document such authority, where applicable, including but not limited to resolutions, consents, or other documents. If an individual Designated Authority suffers Death, Incapacity or Disability, then the following person shall automatically succeed to the rights of such Designated Authority, as applicable, except as set forth in Article 3 regarding Managers: the lawfully appointed representative of the estate of such individual Designated Authority; or the successor to the Designated Authority according to the governing documents of the deceased or disabled Designated Authority's Entity-Member. For Entity Members, any reference in this Agreement to the exercise of the rights of a Member is a reference to the exercise of such rights through the acts of the Entity Member's Designated Authority.



*5.10 Proxies.* At all meetings of Members, a Member may vote in person or by Proxy executed in writing by the Member No Proxy shall be valid after sixty (60) days from the date of its execution. Proxies may be submitted by electronic mail.

*5.11 Action by Members without A Meeting.* Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by a sufficient percentage of Members, as provided in this Agreement, in written consents describing the action taken, signed by Member entitled to vote and delivered to the Managers of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Article is effective when a sufficient percentage of Members entitled to vote have signed the consent, unless the consent specifies a different effective date. Such consent may also be obtained by one or more or a series of electronic mail messages from each voting Member where such message states the proposed action to be taken and each Member required or permitted to vote on the same expresses their consent via such electronic mail messages.

*5.13 Waiver of Notice.* When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice. A Member may submit a waiver of notice electronically to the Company by electronic mail.

*5.14 Electronic or Telephonic Meetings*. Meetings of the Members may also be held telephonically via conference call or electronically via an internet-based venue for meetings such as a "chat room" or similar online or internet-based meeting format that allows for the verification of the identity of the Member and presence of the Member for such

meeting.

*5.15 Resolving Voting Disputes.* For voting disputes requiring an additional vote to meet the Unanimous Vote requirement under this Agreement, the Members shall submit themselves and the voting dispute to an informal meditative consultation with such mediator as the Members agree upon (the "Tiebreaking Mediation"). The mediator need not be a certified mediator, but may be an experienced business lawyer, business person, CPA, or other business professional. The informal Tiebreaking Mediation is supplementary to the primary dispute resolution procedures specified in this Agreement and is limited solely to Member voting matters in the event of a deadlock. The Tiebreaking Mediation may be initiated by any Member in the event that an additional vote is required. Scheduling of and timelines/deadlines for the Tiebreaking Mediation shall be mutually agreed between all Members with Voting Interests and the mediator but shall occur no less than thirty (30) days of a Member's request for the same. Members will be permitted to present the proposed course of action or decision along with opposing viewpoints / support for their position to the mediator in the format of their choice.

Any fees/costs incurred to conduct the Tiebreaking Mediation will be borne by the Members pro-rata in accordance with their (respective percentage of) Membership Interests. Any further unresolved disputes shall be subject to the Dispute Resolution provisions of this Agreement and such other remedies for a deadlock in the Company permitted under the Act.

*5.16 Business Conflicts.* Members and Managers of the Company may participate in other business ventures without any obligation to offer the Company, Managers, or any other member the right to participate in such business(es) without regard for whether such businesses may be in competition with that of the Company.



*5.17 Mergers, Sales, Conversion, and Acquisitions.* Mergers, conversions, sales, acquisitions, the disposition of substantially all of the assets or Membership Interests of the Company, and other Fundamental Business Transactions (as that term is defined by the Act) must be approved by a Unanimous Vote.

**ARTICLE VI.**
**CONTRIBUTIONS TO THE COMPANY**

*6.01 Members' Capital Contributions.* Each Member has contributed an amount of cash or other valuable consideration determined by the Managers, as his, her, or its share of the Initial Capital Contribution. No Member shall be paid interest on any Capital Contribution to the Company. A Member's Capital Account may also be adjusted as a result of the Share Exchange Agreement.

*6.02 Additional Contributions.* Members are not required to make additional Capital Contributions to the Company.

*6.03 Capital Accounts.*

a) A separate Capital Account will be maintained for each Member where applicable. Each Member's Capital Account will be increased by i) the amount of money or other consideration contributed by such Member to the Company; ii) the fair market value of any property contributed by such Member to the Company; iii) the amount of any Company liabilities that are expressly assumed by such Member or that are secured by any Company property distributed to such Member; iv) the amount of Profits allocated to such Member. Each Member's Capital Account will be decreased by i) the amount of money distributed to such Member by the Company; ii) the fair market value of any property distributed to such Member by the Company; iii) the amount of any liabilities of such Member that are expressly assumed by the Company or that are secured by any property contributed by such Member to the Company; and iv) the amount of Losses allocated to such Member.

b) In the event of a permitted sale or exchange of a Membership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred interest.

c) In determining the amount of any liability for purposes of this Article 6.03, there shall be taken into account Code §752(c) and any other applicable provisions of the Code and Treasury Regulations (as such provisions may be amended).

d) In the event any Member has a deficit capital account at the end of any Company fiscal year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1)and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excesses as quickly as possible.



e) If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member's allocable share of the Profits or Losses (to the extent such Profits or Losses have not previously been reflected in the Members' Capital Accounts) that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values immediately prior to their distribution.

f) If the Company makes an election under Code Section 754, the amounts of any adjustments to the bases (or Gross Asset Values) of the Assets of the Company made pursuant to Code Section 743 shall not be reflected in the Capital Accounts of the Members, but the amounts of any adjustments to the bases (or Gross Asset Values) of the Assets of the Company made pursuant to Code Section 734 as a result of the distribution of property by the Company to a Member (to the extent that such adjustments have not previously been reflected in the Members' Capital Accounts) shall be reflected in the Capital Accounts of the Members in the manner prescribed in Regulations Section 1.704-1(b)(2)(iv)(m)(4).

g) The Members may elect, upon the occurrence of any of the following events, that the Capital Account balance of each Member shall be adjusted to reflect the Member's allocable share of the Profits or Losses (to the extent such Profits or Losses have not previously been reflected in the Members' Capital Accounts) that would be realized by the Company if it sold all of its property at its fair market value as reasonably determined by the Manager on the date of the adjustment:

(i) any increase in any new or existing Member's Interest in the Company resulting from a more than de minimis contribution of cash or property by such Member to the Company;

(ii) any reduction in a Member's interest in the Company resulting from a more than de minimis distribution to such Member in liquidation of all or a portion of such Member's Interest in the Company; and

(iii) whenever else allowed under application Regulations.

h) In the event any Interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest. In the event the transfer of an Interest in the Company causes a termination of the Company for federal income tax purposes under Code Section 708(b)(1)(B), the Capital Accounts of the Members shall be determined in accordance with Regulations Section 1.704-1(b)(2)(iv)(1).

i) In the event the Regulations fail to provide guidance for the maintenance of the Capital Accounts of Members in particular instances, then the Capital Accounts shall be adjusted by the Members in a manner that (i) is consistent with the underlying economic arrangement among the Members, and (ii) is based, whenever practicable, upon federal tax accounting principles.



j) The provisions of this Article 6.03 are intended to comply with Treasury Regulations §1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. If the Managers determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or a Member) are computed in order to comply with such Regulations, the Managers may make such modification, provided that it will not have a material effect on the amounts distributable to any Member upon the dissolution of the Company. The Managers also shall i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations §1.704-1(b)(2)(iv)(q), and ii) make any appropriate modifications if unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations §1.704-1(b).

*6.04 No Deficit Makeup, But Qualified Income Offset Applies.* Except as provided in Article 6.02, a Member with a deficit Capital Account balance shall not be required to contribute additional capital to the Company for the purposes of 'making up' the deficit or otherwise bringing the Member's Capital Account back to a 'zero' or positive balance provided, however, that there shall be a qualified income offset as provided in Treasury Regulation 1.704-I(b)(2)(ii)(d) and as described above.

*6.05 Additional Capital Provisions.* No Member shall have the right to withdraw all or any part of its Capital Contribution or to receive any return on any portion of its Capital Contribution, except as may be otherwise specifically provided in this Agreement. Except as otherwise provided in this Agreement, a Member may lend money to and transact other business with the Company, and, subject to applicable law, has the same rights and obligations with respect to those matters as a person who is not a Member.

## ARTICLE VII.
## ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS

*7.01 Allocations of Profits and Losses from Operations.*

Unless otherwise agreed by Unanimous Vote:

a) Profits and Losses are set forth in preceding paragraphs, and shall be allocated each fiscal year according to the number of units or percentage of Membership Interest owned, as reflected in the records of the Company (a fixed sharing ratio).

b) For any Membership Interest not owned by the same person for the entire fiscal year the allocation shall be prorated.

c) The Company shall not recognize any assignment of a Member's right to share in profits and losses (except for the security interest and appurtenant rights thereto granted to Company).

*7.02 Special Allocations.* The Members may, by Unanimous Vote, make Special Allocations regarding capital assets or the allocation of profit and loss for any Member for a given Fiscal Year by setting forth those Special Allocations, as amended from time to time, in a documentary attachment to this Agreement entitled "Exhibit A: "Overriding Allocations of Profits and Losses." Any such Special Allocations shall not be taken into account in the general allocations provided for above which general allocations shall be complementary to such Special Allocations.



*7.03 Distributions.* The Managers may distribute Distributable Cash if approved by Unanimous Vote. Before distributing Distributable Cash to the members in accordance with the general distribution scheme noted below pro-rata in accordance with the Percentage Interests shown on Schedule 1, Distributable Cash shall first be distributed or set aside as follows:

- for Tax Distributions under this Agreement;
- to the repayment of Member Loans, if any; then
- to the Members in accordance with their respective Percentage Interests.

Except as herein provided to the contrary, a Member has no right to demand and receive any distribution in a form other than cash. Except as otherwise provided herein, all distributions of cash or other property shall be made to the Members pro rata in proportion to the respective Percentage Interests of the Members on the record date of such distribution or as otherwise determined by the Managers. Except as provided in Article 7.04, all distributions of Distributable Cash and property shall be made at such time and in such amounts as determined by the Managers. All amounts withheld by contract or pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Article 7.03.

*7.04 Limitation upon Distributions.*

a) Unless agreed by Unanimous Vote, no distributions or return of contributions shall be made and paid if, after the distribution or return of distribution is made either:

1. the Company would be insolvent;
2. the Reserve would be depleted; or
3. the net assets of the Company would be less than zero.

b) The Managers may base a determination that a distribution or return of contribution may be made under Article 7.03(a) in good faith reliance upon a balance sheet and profit and loss statement of the Company represented to be correct by the person having charge of its books of account or certified by an independent

public or certified public accountant or firm of accountants to fairly reflect the financial condition of the Company.

*7.05 Accounting Principles.* The profits and losses of the Company shall be determined in accordance with commonly accepted accounting principles applied on a consistent basis using the cash method of accounting unless the Code or Treasury Regulations require the use of the accrual method or another accounting method. The Managers may elect such methods as are permitted under the Code.

*7.06 Accounting Period.* The Company's accounting period shall be the calendar year ("Fiscal Year") unless otherwise determined by the Manager(s). The Fiscal Year may be also adjusted to match the fiscal year of the Exchanging Member.



*7.07 Records, Audits and Reports.* At the expense of the Company, the Manager shall reasonably maintain records and accounts of the operations and expenditures of the Company. The Manager may delegate this task to an accounting or other financial firm working for the benefit of the Company. Any Member may audit such records no more than once per Fiscal Year after the closure of a given Fiscal Year at the Member's sole expense.

*7.08 Returns and Other Elections.* The Managers and Officers (if any) shall cause the preparation and timely filing (subject to any extensions permitted, which are exercisable by the Manager) of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's Fiscal Year taking into account any permitted extensions or disputes with a taxing authority. All elections permitted to be made by the Company under federal or state laws shall be made by the Managers. Members must timely provide any information required by the Company for the timely filing of returns. If the Company obtains an extension of time to file any return, a copy of the return will be provided to Members within a reasonable time after the return is filed.

*7.09 Interest On and Return of Capital Contributions.* No member shall be entitled to interest on its Member's Capital Contribution or to return of its Capital Contribution.

*7.10 Tax Distribution.* In addition to the general distributions provided above, if a Member has received an allocation of Profits from the Company that exceed the Member's allocation of Losses for a given tax year, the Managers must distribute available cash/Distributable Cash to the Member(s) equal to the Member's allocation of profits for the calendar year multiplied by the Member's effective tax rate (the effective tax rate being the percentage of the Member's adjusted gross income that is due to the US Treasury for income tax for the applicable year).

*7.11 Allocation of Liquidation Preferences.* In the event of the Company's liquidation, allocations of Profits or Losses, as appropriate, shall be made among the Members so that a liquidating distribution in accordance with positive Capital Account balances shall to the greatest extent possible be equal to a liquidating distribution pro rata in accordance with the respective Percentage Interests of the Members, with the result that the economic expectations of the Members shall be realized. In order to effectuate the economic expectations of the Members, the Company shall make such allocations of Profits and Losses among the Members (including, without limitation, allocations of items of gross income and/or deduction) as may be necessary for the year of such liquidation.

*7.12 Allocation Upon Buy-Out or Shift in Interest.* In the event of the transfer of all or part of an Interest pursuant to this Agreement at any time other than the end of a Company Year, the distributive share of the various Company items in respect of the Interest so transferred shall (unless otherwise determined in writing by the transferor and transferee) be allocated between the transferor and transferee (i) in the same ratio as the number of days in such Company taxable year before and after such transfer or adjustment, except that the provisions of this sentence shall not be applicable to a gain or loss on the sale or other disposition of all or substantially all of the property of the Company or to other extraordinary nonrecurring items or (ii) as otherwise required under the Code.



## ARTICLE VII.
## TRANSFERABILITY AND CERTIFICATES

*8.01 Withdrawal of Members; Superseding Share Exchange Agreement* A Member shall not be permitted to withdraw from the Company. The Share Exchange Agreement sets forth an option between Member Michael Wanke and Exchanging Member pursuant to which Exchanging Member may acquire Member Michael Wanke's Membership Interest upon the terms and conditions set forth in the Share Exchange Agreement. To the extent the terms of this Section 8 and the terms of the Share Exchange Agreement conflict regarding Exchanging Member's purchase option contained therein, the terms of the Share Exchange Agreement shall control.

*8.02 Restrictions on Transfer of Membership Interests.* No Member shall have any right to sell, pledge/hypothecate, transfer, or assign an interest in the Company without the written consent and approval of all the Members (a Unanimous Vote). Any transfer or encumbrance of a Membership Interest without approval by the Members as required under this Agreement shall be void. Notwithstanding any other provision of this Agreement to the contrary, a Member who is a natural person may transfer all or any portion of his or her Membership Interest to any revocable trust created for the benefit of the Member, or any combination between or among the Member, the Member's spouse, and the Member's issue; provided that the Member retains a beneficial interest in the trust and all of the Voting Interest included in such Membership Interest and further provided that only the Member may make decisions regarding the Company.

*8.02.1 Natural Heirs*. Further, and notwithstanding any provision of this Agreement to the contrary, a Member may leave his/her Membership Interests to the Member's natural heirs as designated in the Member's will, as determined via guardianship proceedings, or as probated under proceedings for intestacy. If the Member has not made such bequest or if the Member's heirs express their desire not to become a Substituted Member or Member, then the Member's death shall instead be treated as a Triggering Event, with the proceeds of any purchase of such Membership Interest being payable to the deceased Member's estate or heirs, as applicable.

*8.03 Option to Purchase Membership Interests.* On the happening of any of the following events ("Triggering Events") with respect to a Member (as applicable), the Company and the other Members shall have the option to purchase all or any portion of the Membership Interest in the Company of such Member ("Selling Member") as set forth in Section 8.04:

a) Subject to the provisions of Article 8.02, the death or Incapacity, or Disability of a Member who is an individual;

b) the Bankruptcy of a Member; or

c) the occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement.

Except in instances of a Member's death or Incapacity each Member agrees to promptly give Notice of a Triggering Event to the Company and all other Members provided, however, that such notice shall not be a condition to the Company's or other Members' exercise of any purchase option set forth herein. In the instance of the Bankruptcy of a Member, the Member must provide the Company with at least thirty (30) days advance written notice of the Member's intention to file for Bankruptcy.

*8.04 Company's Option to Purchase Membership Interests.*

a) On the receipt of Notice of any Triggering Event (the date of such receipt is hereinafter referred to as the "Trigger Date" or "Option Date"), the Manager(s) shall promptly give notice of the occurrence of such a Triggering Event to each Member, and the Company shall have the option, for a period ending ninety (90) calendar days following the determination of the purchase price to purchase the Membership Interest in the Company to which the option relates (each a "Company Option"), at the price and on the terms provided herein, and if the Company fails to exercise the aforementioned option, then the other Members, pro rata in accordance with their prior Membership Interests in the Company, shall then have the option, for a period of thirty (30) days after the end of the respective Company Option period, to purchase the Membership Interest in the Company not purchased by the Company, on the same terms and conditions as apply to the Company.

b) The "Purchase Price" shall be the Agreed Value of the Membership Interest being acquired.

c) The Company or purchasing Members shall pay the Purchase Price in cash, by wire transfer of immediately available funds or such other form of payment as shall be agreeable to the selling Member or may pay the Purchase Price in a 5 year note with interest set at the current prime rate published in the Wall Street Journal, at the Company or purchasing Member's/Members' Option, provided that an initial upfront payment of 25% of the Purchase Price is also paid.

*8.05 Participation in Voting.*

a) No Member shall participate in any Vote or decision in any matter pertaining to the forced disposition of that Member's Membership Interest in the Company under this Agreement. No transferee shall have a Voting Interest in the company unless the Members grants the transferee a Voting Interest by Unanimous Vote.

b) Notwithstanding any other provision in this Agreement, any Member with a Voting Interest who receives an additional Membership Interest in the company from another Member or Deceased Member (through probate or intestate successions) who had a Voting Interest prior to transfer of the additional Membership Interest, shall have a Voting Interest in proportion to her entire Membership interest including the additional Membership Interest with voting rights.

*8.06 Securities Laws.* The initial sale or issuance of Membership Interests in the Company to the initial Members is exempt from securities laws of the State of Texas in accordance with the Act and has not been qualified or registered under the securities laws of any state, or registered under the Securities Act of 1933 ("1933 Act"), as amended, in reliance upon exemptions from the registration provisions of those laws. Notwithstanding any other provision of this Agreement, Membership Interests may not be Transferred or Encumbered unless registered or qualified under applicable state and federal securities law or unless, in the opinion of legal counsel satisfactory to the Company, such qualification or registration is not required. The Member who desires to transfer a Membership Interest shall be responsible for all legal fees incurred in connection with said opinion.



*8.07 Certificates.* The Company may issue certificates representing Membership Interests but is not required to do the same. If a certificate is issued, no replacement certificate shall be issued until the former certificate for the Units represented thereby shall have been surrendered and canceled, except that replacements for lost or destroyed certificates may be issued, upon such terms, conditions, and guarantees as the Manager may see fit to impose, including the execution of an indemnity agreement.

**ARTICLE IX.**
**WINDING UP AND TERMINATION**

*9.01 Termination of Existence.*

a) The Company shall wind up its affairs upon the occurrence of any of the following events:

1. a determination by an affirmative Unanimous Vote; or
2. an entry of a decree of judicial dissolution.

b) In addition to the language set forth above for the Designated Authority, if a Member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage her person or her property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling his or her estate or administering his or her property.

*9.02 Winding Up, Liquidation and Distribution of Assets.*

a) Upon termination of the Company, an accounting shall be made by the Managers or the Company's accountants or other financial professional of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of winding up. The Managers shall immediately proceed to wind up the affairs of the Company.

b) If the Company's affairs are to be wound up, the Managers shall:

1. Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Manager may determine to distribute any assets to the Members in kind),

2. Notify creditors of the Company of the filing and, to the extend funds are available, discharge all liabilities of the Company, including liabilities to Members who are creditors, to the extent otherwise permitted by law, other than liabilities to Members for Distributions, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members, the amounts of such Reserves shall be deemed to be an expense of the Company),



3. Distribute the remaining assets in accordance with the Act and to the extent the Members have positive capital accounts; and

4. Notify the Secretary of State's Office in and for the State of Texas., within thirty (30) days of dissolution of the Company, that the Company is being dissolved and take such steps and execute such documents as are necessary to revoke the Company's registration with the Secretary of State's Office in and for the State of Texas.

c) Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

d) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

e) The Managers shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

*9.03 Certificate of Termination.* When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefore and all of the remaining property and assets of the Company have been distributed, a Certificate of Termination as required by the Act, shall be executed and filed with the Texas Secretary of State.

*9.04 Effect of Filing of Certificate of Termination.* Upon the filing of a Certificate of Termination with the Texas Secretary of State, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act. The Manager(s) shall have authority to distribute any Company property discovered after termination, convey real estate and take such other action as may be necessary on behalf of and in the name of Company.

*9.05 Return of Contribution Nonrecourse to Other Members.* Except as provided by law or as expressly provided in this Agreement, upon termination, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, such Member or Members shall have no recourse against any other Member, except as otherwise provided by law.

**ARTICLE X.**
**INDEMNIFICATION AND INSURANCE**

*10.01 Indemnification of Managers and Officers.* The Managers shall authorize the Company to pay or reimburse any present or former Manager or Officer of the Company any costs or expenses actually and necessarily incurred (including, but without limitation, judgments, penalties [including excise and similar taxes], fines, settlements, costs and reasonable attorneys' fees) by that Manager or Officer in any action, suit, or proceeding to which the Manager or Officer is made a party by reason of holding that position, provided, however, that no Manager or Officer shall receive such indemnification if finally adjudicated therein to be liable for an Exculpation Exception. This indemnification shall be extended to good-faith expenditures incurred in anticipation of threatened or proposed litigation. The Manager may, in proper cases, extend the indemnification to cover the good faith settlement of any such action, suit, or proceeding, whether formally instituted or not. Additionally, the Manager may, at the Manager's discretion pay any of the costs incurred during the pendency of any action, suit, or proceeding; provided that the foregoing shall not apply where the Manager or Officer is accused of an Exculpation Exception and, should the Manager or Officer be finally adjudicated as liable for Exculpation Exception or breach of Article 3.08, any sums previously paid on behalf of said Manager or Officer shall be immediately repaid to the Company.



The Company is also required to advance to any Manager reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any action or proceeding which arises out of such conduct as those costs and expenses are incurred. If such an advance is made by the Company the Manager must agree in writing to reimburse the Company for such fees, costs and expenses to the extent that it is ultimately determined by a court of competent jurisdiction that such Manager was not entitled to indemnification. However, the Company shall not initially be required to advance the cost of such attorney's fees to any Manager or Officer where the Manager or Officer is accused of an Exculpation Exception, or in any application by a Member for a rehabilitative receivership for the Company. The foregoing does not affect the rights of a Manager to be reimbursed for such fees, costs, and expenses if the Manager or Officer is ultimately found not to have breached Article 3.08 or engaged in an Exculpation Exception. If a Manager or Officer seeking such advancement is denied such advancement on the basis of the commission of an Exculpation Exception, in addition to meeting the requirements set forth above for such advancement, the Manager or Officer may also file a request for an interim evidentiary hearing with the arbitrator or court of law overseeing any such dispute, as applicable, to request a ruling on the interim advancement of such fees, expenses, and costs based upon the Manager's or Officer's showing that the Manager likely did not commit or participate in an Exculpation Exception or is entitled to a defense to the same as set forth in Article 3.08. If so, the arbitrator or court shall evaluate the Manager or Officer's request in the same manner as a request for a pre-trial, equitable remedy under Texas law, and the proof required for the Manager to receive such advancement shall be a showing that the Manager is likely to prevail at trial or other final hearing as to a non-breach of Article 3.08, defense to an Exculpation Exception allowed under Article 3.08, or non-participation in an Exculpation Exception in the same manner as is required for a party to obtain, sustain or receive a temporary injunction under Texas common law. In so doing, the same standards of proof, burden shifting mechanisms, and evidence required to sustain a showing that a party is likely to prevail at trial for the purposes of seeking a temporary injunction shall also apply to the Manager's or Officer's request for a disputed advancement submitted to the court or arbitrator based on a breach of Article 3.08 or participation in an Exculpation Exception, provided however that no party to such proceeding shall be required to post a bond. The court or arbitrator may be further guided in considering such request by any applicable Texas common law or case-law regarding advancements. The court or arbitrator's ruling on such application shall be treated the same as a trial court's initial ruling on a request for a temporary injunction for the purposes of appeal rights and consideration at final trial on the merits, and the court's or arbitrator's initial ruling on advancement shall have no bearing on whether the Manager or Officer is fully and finally adjudicated to be entitled to such reimbursement of fees, expenses, and costs at a final trial on the merits. Notwithstanding the foregoing, nothing in this Article is intended to convert the contractual remedy offered herein to an equitable remedy; rather, in the absence of multiple Texas cases regarding disputes over advancements, the Members and Managers simply seek to implement a more predictable mechanism by which a court or arbitrator may consider the merits of a Manager's or Officer's request for an advancement denied on the basis of a breach of Article 3.08 or participation in an Exculpation Exception.



**ARTICLE XI.**
**OTHER PROVISIONS**

*11.01 Notices.* Any notice, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been delivered, given and received for all purposes i) if delivered personally to the Party to whom the same is directed, or ii) is sent by registered or certified mail, postage and charges prepaid, addressed as follows: if to the Company, to the Company at the address set forth in Article 2.04 hereof, or to such other address as the Company may from time to time specify by notice to the Members; if to Manager, to the Manager in care of the Company at the address set forth in Article 2.04 hereof, or to such other

address as the Company may from time to time specify by notice to the Members and Manager; if to a Member, to such Member at the address set forth in the initial membership record, or to such other address as such Member may from time to time specify by notice to the Company. In the event any such notice is refused by the addressee for any reason whatsoever, then the date of such refusal shall be deemed the date of receipt of such notice by the addressee.

*11.02 Binding Effect.* Except as otherwise provided in the Agreement, every covenant, term, and provision of the Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legatees, legal representatives, successors, transferees and assigns.

*11.03 Construction.* Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member. Time is of the essence in the performance of the obligations of the Parties under this Agreement.

*11.04 Headings.* Article and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

*11.05 Severability.* If one or more provisions of this Agreement are held to be unenforceable under applicable law, then: 1) such provision shall be excluded from this Agreement; 2) the balance of the Agreement shall be interpreted as if such provision were so excluded; and 3) the balance of the Agreement shall be enforceable in accordance with its terms.

*11.06 Further Action.* Each Member agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the provisions and intent of this Agreement.

*11.07 Variation of Pronouns.* All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require. The terms or phrases "at the election of" or "at the discretion of" a Manager or Member refers to decisions of the Managers or Members, as applicable, completed in accordance with the terms of this Agreement.



*11.08 Amendments.* This Agreement may not be amended, altered or repealed except in writing at a properly noticed meeting of the Members upon a Unanimous Vote.

*11.09 Waivers.* The failure of any party to seek redress for default of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default, from having the effect of an original default.

*11.10 Governing Law.* The laws of the State of Texas shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties.

*11.11 Creditors.* None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

*11.12 Representations.* Each Member represents:

**(a) That the Member understands that the membership interest obtained herein has not been registered under the 1933 Act or any state securities law and may not be sold or transferred in the absence of any effective registration statement under the 1933 Act, or an exemption from the registration thereunder and compliance with applicable state securities laws.**

**(b) That the purchase or acquisition of the membership interest herein is within an exemption to the 1933 Act.**

**(c) Member is acquiring the membership interest for Member's own account.**

**(d) Member understands that this Agreement contains legally binding provisions, Member has had the opportunity to consult with a lawyer, and has either i) consulted with a lawyer, or ii) decided not to consult with a lawyer.**

*11.13 Counterpart Execution.* This Agreement may be executed in any number of counterparts with same effect as if all of the Members had signed the same document. All counterparts shall be construed together and shall constitute one agreement. Signatures upon documents returned or transmitted by facsimile or by electronic/digital signature shall be treated as originals.

*11.14 Dispute Resolution*. In the event of a dispute arising under, from, or related to this Agreement, the parties agree to submit themselves to the jurisdiction and venue of the Civil District Courts of Bexar County, Texas.

*11.15 Prior Agreements*. Except as otherwise set forth herein, this Agreement constitutes and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements including but not limited to any prior Operating Agreement of the Company, except as otherwise provided for in the Share Exchange Agreement.

*11.16 Electronic Transmissions.* An "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Without limiting the manner by which notice may otherwise be given to the Managers or Members, any notice to the Managers or Members given by the Company under any provision of the Act or this Agreement shall be effective if given by a form of electronic transmission consented to by the Manager or Member to whom the notice is given. Any such consent shall be revocable by the Manager or Member by written notice to the Company. Any such consent shall be deemed revoked if:

(i) the Company is unable to deliver by electronic transmission two consecutive notices given by the Company in accordance with such consent; and



(ii) such inability becomes known to the secretary, an assistant secretary of the Company or to the Managers or transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(i) if by facsimile telecommunication, when directed to a number at which the Member has consented to receive notice;

(ii) if by electronic mail, when directed to an electronic mail address at which the Member has consented to receive notice and where such delivery is made with a requested read receipt or delivery receipt;

(iii) if by a posting on an electronic network together with separate notice to the Member of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iv) if by any other form of electronic transmission, when directed to the Member.

An affidavit of the secretary or an assistant secretary or of the Managers or of the transfer agent or other agent of the Company that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

*11.17 Coverage of the Act.* To the extent this Agreement is silent on a given provision or concept, applicable provisions of the Act shall apply or control.



**The undersigned Members and undersigned Manager(s)** have entered into the foregoing Operating Agreement and have caused their signatures, or the signatures of their duly authorized representatives, to be set forth below with an effective date equal to the Closing Date defined in the Share Exchange Agreement. This Agreement shall not become effective if Closing does not occur under the Share Exchange Agreement.

**Member: Michael Wanke**

**Michael Wanke, Individually**

**Member: C-Bond Systems, Inc.**

**By: Scott Silverman**
**Its: Chief Executive Officer**

**Acknowledged and Agreed by the Manager(s):**

**Michael Wanke**

**Scott Silverman**

**Allison Tomek**

**Schedule 1**

| Member | Initial Capital Contribution | Initial Capital Account | Units / Percentage Interest |
|---|---|---|---|
| C-Bond Systems, Inc. | $ _____ | $ _____ | 80% |
| Michael Wanke | $ _____ | $ _____ | 20% |

**Designated Authority:**

**Member C-Bond Systems, Inc.:**

Board of Directors of C-Bond Systems, Inc.

**Exhibit 10.4**

**Form of Piggy-Back Registration Rights Agreement**

THIS PIGGY-BACK REGISTRATION RIGHTS AGREEMENT (the "Agreement") is made effective as of July 20, 2021, by and between (i) C-Bond Systems, Inc. a Colorado corporation (the "Company"); (ii) Mobile Tint LLC, a Texas limited liability company ("Mobile"), (iii) the sole member of Mobile as set forth on the signature page hereto (the "Mobile Shareholder") and (iv) Michael Wanke as the representative of the Mobile Shareholder (the "Shareholder Representative").

1. Piggy-Back Registration.

1.1 Piggy-Back Rights. The Company, Mobile, Mobile Shareholder, and Shareholder Representative are the parties to that certain share exchange agreement dated June 30, 2021 (the "SEA"). All of the Additional Closing Exchange Shares (as defined in the SEA) if the Additional Closing (as defined in the SEA) occurs as well as the Closing Exchange Shares (as defined in the SEA) as well as any additional securities of the Company issued to the Mobile Shareholder in the future shall be deemed "Registrable Securities" subject to the provisions of this Agreement. If at any time on or after the date of the Closing (as defined in the SEA), the Company proposes to file any Registration Statement under the 1933 Act (a "Registration Statement") with respect to any offering of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into, equity securities, by the Company for its own account or for shareholders of the Company for their account (or by the Company and by shareholders of the Company), other than a Registration Statement (i) filed in connection with any employee stock option or other benefit plan on Form S-8, (ii) for a dividend reinvestment plan or (iii) in connection with a merger or acquisition, then the Company shall (x) give written notice of such proposed filing to the holders of Registrable Securities appearing on the books and records of the Company as such a holder as soon as practicable but in no event less than ten (10) days before the anticipated filing date of the Registration Statement, which notice shall describe the amount and type of securities to be included in such Registration Statement, the intended method(s) of distribution, and the name of the proposed managing underwriter or underwriters, if any, of the offering, and (y) offer to the holders of Registrable Securities in such notice the opportunity to register the sale of either (at the holder's option): (i) an amount of Registrable Securities equal to the total number of shares of the Company's common stock being registered in such respective Registration Statement that are being offered solely for the Company's account excluding the Registrable Securities; or (ii) an amount of Registrable Securities equal to the total number of shares of the Company's common stock being registered for resale by shareholders of the Company excluding the Registrable Securities (such holders must specify such amount in writing within three (3) calendar days following receipt of such notice) (a "Piggy-Back Registration"). The Company shall cause such number of Registrable Securities to be included in such registration and shall cause the managing underwriter or underwriters of a proposed underwritten offering to permit such number of the Registrable Securities requested to be included in a Piggy-Back Registration on the same terms and conditions as any similar securities of the Company and to permit the sale or other disposition of such number of Registrable Securities in accordance with the intended method(s) of distribution thereof (with the understanding that the Company shall file the initial prospectus covering the Mobile Shareholder's sale of such number of the Registrable Securities within ten (10) calendar days after date that the Registration Statement is declared effective by the SEC).

1.2 Withdrawal. Any holder of Registrable Securities may elect to withdraw such holder's request for inclusion of Registrable Securities in any Piggy-Back Registration by giving written notice to the Company of such request to withdraw prior to the effectiveness of the Registration Statement. The Company (whether on its own determination or as the result of a withdrawal by persons making a demand pursuant to written contractual obligations) may withdraw a Registration Statement at any time prior to the effectiveness of such Registration Statement.

1.3 The Company shall notify the holders of Registrable Securities at any time when a prospectus relating to such holder's Registrable Securities is required to be delivered under the 1933 Act, upon discovery that, or upon the happening of any event as a result of which, the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing. At the request of such holder, the Company shall also prepare, file and furnish to such holder a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of the Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing. The holders of Registrable Securities shall not to offer or sell any Registrable Securities covered by the Registration Statement after receipt of such notification until the receipt of such supplement or amendment.

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1.4 The Company may request a holder of Registrable Securities to furnish the Company such information with respect to such holder and such holder's proposed distribution of the Registrable Securities pursuant to the Registration Statement as the Company may from time to time reasonably request in writing or as shall be required by law or by the SEC in connection therewith, and such holders shall furnish the Company with such information.

1.5 All fees and expenses incident to the performance of or compliance with this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the SEC, (B) with respect to filings required to be made with any trading market on which the Company's common stock is then listed for trading, (C) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities) and (D) with respect to any filing that may be required to be made by any broker through which a holder of Registrable Securities intends to make sales of Registrable Securities with the FINRA, (ii) printing expenses, (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) 1933 Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other persons or entities retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In no event shall the Company be responsible for any broker or similar commissions of any holder of Registrable Securities.

1.6 The Company and its successors and assigns shall indemnify and hold harmless the Mobile Shareholder, each holder of Registrable Securities, the officers, directors, members, partners, agents and employees (and any other individuals or entities with a functionally equivalent role of a person holding such titles, notwithstanding a lack of such title or any other title) of each of them, or any such holder of Registrable Securities (within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other individuals or entities with a functionally equivalent role of a person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling individual or entity (each, an "Indemnified Party"), from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, up to a total maximum dollar amount equal to $800,000, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any related prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any such prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading or (2) any violation by the Company of the 1933 Act, the 1934 Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based upon information regarding the Mobile Shareholder or such holder of Registrable Securities furnished to the Company by such party for use therein. The Company shall notify the Mobile Shareholder and each holder of Registrable Securities promptly of the institution, threat or assertion of any proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware.

1.7 Sections 9.01, 9.02, 9.03, and 9.04 of the SEA are hereby incorporated into this Agreement and shall apply with respect to this Agreement.

2. Maintenance of Current Information About the Company. The parties acknowledge that maintenance of current information about the Company in accordance with regulations under the 1934 Act will be necessary to allow the Mobile Shareholder to sell its shares pursuant to Rule 144 under the 1933 Act or to piggyback registrations

contemplated by Section 1 above. The Company shall use best efforts, until the Registrable Securities have been sold by the initial holder of the Registrable Securities, to: (i) make and keep available adequate current public information, as those terms are understood and defined in Rule 144 under the 1933 Act at all times after the effective date of a registration statement filed by the Company; (ii) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act; and (iii) at the holder's request, provide any holder of Registrable Securities with a written statement that to the best of Company's knowledge that it has complied with the requirements of Rule 144, the 1933 Act and the 1934 Act and any other information as the holder may reasonably request to allow it to avail itself of any regulation that permits the selling of Registrable Securities.

(Signature Page to Follow)



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

C-Bond Systems, Inc.

By: _____
Name: Scott Silverman
Title: Chief Executive Officer

Mobile Tint LLC

By: _____
Name: Michael Wanke
Title: Sole Member

Shareholder Representative

By: _____
Name: Michael Wanke

Mobile Shareholder:

By: _____
Name: Michael Wanke

**Exhibit 10.5**

EXECUTIVE EMPLOYMENT AGREEMENT

Dated as of July 21, 2021

THIS EXECUTIVE EMPLOYMENT AGREEMENT (the "Agreement") dated as of the date first set forth above (the "Effective Date") is entered into by and between C-Bond Systems, Inc., a Colorado corporation (the "Company"), and Michael Wanke (the "Executive"). The Company and Executive may collectively be referred to as the "Parties" and each individually as a "Party."

WHEREAS, the Company desires to employ the Executive as the President of its Safety Solutions Group and the Executive desires to serve in such capacity on behalf of the Company, in each case subject to the terms and conditions herein:

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and the Executive hereby agree as follows:

1. Employment.

(a) Term. The term of this Agreement (the "Initial Term") shall begin as of the Effective Date and shall end on the earlier of (i) the third anniversary of the Effective Date and (ii) the time of the termination of the Executive's employment in accordance with Section 3. This Initial Term and any Renewal Term (as defined below) shall automatically be extended for one or more additional terms of one (1) year each (each a "Renewal Term" and together with the Initial Term, the "Term"), unless either the Company or Executive provide notice to the other Party of their desire to not so renew the Initial Term or Renewal Term (as applicable) at least thirty (30) days prior to the expiration of the then-current Initial Term or Renewal Term, as applicable. All unvested shares of stock and stock options shall expire upon such termination.

(b) Duties. The Company hereby appoints Executive, and Executive shall serve, as President of its Safety Solutions Group. Executive shall report to the Company's President and the Company's Chief Executive Officer. The Executive shall have such duties and responsibilities as are consistent with Executive's position. In addition, Executive will continue to serve as President of Mobile Tint LLC dba A1 Glass Coating ("Mobile")

(c) Best Efforts. During the Term, the Executive shall devote Executive's best efforts and full time and attention to promote the business and affairs of the Company and its affiliated companies, including Mobile and shall be engaged in other business activities only to the extent that such activities are not competitive with the Company and do not interfere or conflict with Executive's obligations to the Company hereunder, including, without limitation, the obligations pursuant to Section 6. Notwithstanding the foregoing, the Executive may (A) serve on corporate, civic, educational, philanthropic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments and consult non-competitive businesses so long as such activities do not significantly interfere with the performance of the Executive's responsibilities hereunder. The foregoing shall also not be construed as preventing the Executive from investing Executive's assets in such form or manner as will not require any significant services on Executive's part in the operation of the affairs of the businesses or entities in which such investments are made; provided, however, that the Executive shall not invest in any business competitive with the Company, except that the Executive shall be permitted to own not more than 5% of the stock of those companies whose securities are listed on a national securities exchange or quoted on the OTC Markets.

2. Compensation and Other Benefits. As compensation for the services to be rendered hereunder, during the Term the Company shall pay to the Executive the salary and bonuses, and shall provide the benefits, as set forth in this Section 2.

(a) Base Salary. Mobile shall pay to the Executive an annual base salary of $240,000 annually, payable on a bi-weekly basis commencing on the effective date (the "Base Salary"). It is understood that although the Executive's Base Salary will be paid by Mobile, only 50% of the Base Salary will be deducted from the calculation of the EBIT Value as defined in Section 2.06 of the Share Exchange Agreement and Plan of Reorganization dated June 30, 2021, by and between by and among C-Bond Systems, Inc., Mobile Tint LLC, the Shareholders of Mobile Tint LLC; and Michael Wanke as the Shareholder Representative. For the avoidance of doubt, 50% of the Base Salary will be allocated to the expenses of Mobile, and the other 50% of the Base Salary will be allocated to the expenses of the Company.

(b) Bonus. The Executive shall be eligible for an annual bonus payment in an amount to be determined by the Board of Directors of the Company (the "Bonus"). The Bonus shall be determined and payable based on the achievement of certain performance objectives of the Company as established by the Board and communicated to and agreed to by the Executive in writing as soon as practicable after commencement of the year in respect of which the Bonus is paid. The Bonus, if earned, is payable in cash and/or restricted stock at the discretion of the Board. It is understood between the Parties that the target bonus for each year shall be up to 50% of the Base Salary.

(c) Equity Grants. The Executive shall be eligible for an annual equity award (typically granted in or about May) in accordance with Company's policies and subject to the terms of the C-Bond Systems, Inc. 2018 Long Term Incentive Plan and standard form of restricted share agreement.

(d) Expenses. The Company shall reimburse the Executive for all necessary and reasonable travel, entertainment and other business expenses incurred by Executive in the performance of Executive's duties hereunder in accordance with such reasonable procedures as the Company may adopt generally from time to time.

(e) Vacation. The Executive shall be entitled to 4 weeks of vacation annually, holiday and sick leave at levels no less than commensurate with those provided to any other senior executives of the Company, in accordance with the Company's vacation, holiday and other pay-for-time-not-worked policies.

(f) Retirement and Welfare Benefits. The Executive shall be entitled to participate in the Company's health, life insurance, long and short-term disability, dental, retirement, and medical programs, if any, pursuant to their respective terms and conditions, on a basis no less than commensurate with those provided to any other senior executives of the Company. The Executive shall also be entitled to coverage of 100% of his personal health insurance costs (directly, or by reimbursement for the difference created by legally mandated health insurance cost coverage limits). Nothing in this Agreement shall preclude the Company or any affiliate of the Company from terminating or amending any employee benefit plan or program from time to time after the Effective Date, provided that any such amendment or termination shall be effective as to the Executive only if it is equally applicable to every other senior executive officer of the Company.



3. Termination.

(a) Definition of Cause. For purposes hereof, "Cause" shall mean:

(i) a material violation of any material written rule or policy of the Company, a copy of which has been provided to Executive, and which the Executive fails to

correct within 10 days after the Executive receives written notice from the Board of such violation;

(ii) misconduct by the Executive to the material and demonstrable detriment of the Company;

(iii) the Executive's conviction (by a court of competent jurisdiction, not subject to further appeal) of, or pleading guilty to, a felony;

(iv) the Executive's continued and ongoing gross negligence in the performance of Executive's duties and responsibilities to the Company as described in this Agreement; or

(v) the Executive's material failure to perform Executive's duties and responsibilities to the Company as described in this Agreement (other than any such failure resulting from the Executive's incapacity due to physical or mental illness as determined by a doctor appointed by the Board or any such failure subsequent to the Executive being delivered a notice of termination without Cause by the Company or delivering a notice of termination for Good Reason to the Company), in either case after written notice from the Board to the Executive of the specific nature of such material failure and the Executive's failure to cure such material failure within ten (10) days following receipt of such notice.

(b) Definition of Good Reason. For purposes hereof, "Good Reason" shall mean:

(i) The Executive no longer being the President of the Safety Solutions Group of the Company;

(ii) a reduction in Base Salary, other than as part of an across-the-board reduction in salaries of management personnel (including all vice presidents and positions above) of less than 20%;

(iii) at any time following a Change of Control (as defined in Section 4), a material diminution by the Company of compensation and benefits (taken as a whole) provided to the Executive as compared to immediately prior to a Change of Control;

(iv) any other material breach by the Company of any of the terms and conditions of this Agreement which the Company fails to correct within 10 days after the Company receives written notice from Executive of such violation.

(c) Termination by the Company. The Company may terminate the Term and Executive's employment hereunder at any time, with or without Cause, subject to the terms and conditions herein.

(i) For Cause. In the event that the Company terminates the Term or Executive's employment hereunder with Cause, then in such event, (A) the Company shall pay to Executive any unpaid Base Salary and benefits then owed or accrued, and any unreimbursed expenses incurred by the Executive pursuant to Section 2(e), in each case through the termination date, and each of which shall be paid within 10 days following the termination date; and (B) all of the Parties' rights and obligations hereunder shall thereafter cease, other than such rights or obligations which arose prior to the termination date or in connection with such termination, and subject to Section 16.



(ii) Without Cause. In the event that the Company terminates the Term or Executive's employment hereunder without Cause, then in such event, subject to Section 3(f), the Company shall pay to Executive a severance (payable monthly over the remaining term) equal to the compensation remaining for the total term of such Agreement.

(d) Termination by the Executive. The Executive may terminate the Term or resign from Executive's employment hereunder at any time, with or without Good Reason.

(i) With Good Reason. In the event that Executive terminates the Term or resigns from Executive's employment hereunder with Good Reason, the Company shall pay to Executive the amounts, and Executive shall, be entitled, subject to Section 3(f), to such benefits (including without limitation retaining stock awards previously granted), that would have been payable to Executive or which Executive would have received had the Term and Executive's employment been terminated by the Company without Cause pursuant to Section 3(c)(ii).

(ii) Without Good Reason. In the event that Executive terminates the Term or resigns from Executive's employment hereunder without Good Reason, the Company shall pay to Executive the amounts, and Executive shall be entitled to such benefits (including without limitation retaining stock awards previously granted), that would have been payable to Executive or which Executive would have received had the Term and Executive's employment been terminated by the Company with Cause pursuant to Section 3(c)(i).

(e) Termination by Death or Disability. In the event of the Executive's death or total disability (as defined in Section 22(e)(3) of the Internal Revenue Code of 1986, as amended) during the Term, the Term and Executive's employment shall terminate on the date of death or total disability as determined by a doctor chosen by the Board and Executive shall be entitled to such benefits that would have been payable to Executive or which Executive would have received had the Term and Executive's employment been terminated by the Company with Cause pursuant to Section 3(c)(i).

(f) The payment of the severance amounts outlined in this Agreement, other than the payment of accrued base salary and expense reimbursement under Sections 3(c)(i), 3(d)(ii) and 3(e), shall be contingent on the receipt by the Company of a complete release of all claims from the Executive in a form mutually agreed by the Parties.

(g) Automatic Termination. This Agreement and all covenants contained herein (including but not limited to those set forth in Sections 6 through 11) shall automatically terminate and be of no further force and effect if Company elects to rescind the Share Exchange Agreement Dated June 30, 2021 between Company, Mobile Tint, LLC and Executive (the "SEA") pursuant to Section 6.10 of the SEA. The effective date of such termination shall be the same as the date that the Mobile Units (defined in the SEA) are reconveyed to the Mobile Shareholder (defined in the SEA).



4. Change of Control.

A "Change of Control" shall be deemed to have occurred if, after the Effective Date, (i) the beneficial ownership (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of securities representing more than 50% of the combined voting power of the Company is acquired by any "person" as defined in sections 13(d) and 14(d) of the Exchange Act (other than the Company, any subsidiary of the Company, or any trustee or other fiduciary holding securities under an employee benefit plan of the Company), (ii) the merger or consolidation of the Company with or into another corporation where the shareholders of the Company, immediately prior to the

consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, shares representing in the aggregate 50% or more of the combined voting power of the securities of the corporation issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any) in substantially the same proportion as their ownership of the Company immediately prior to such merger or consolidation, or (iii) the sale or other disposition of all or substantially all of the Company's assets to an entity, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned directly or indirectly by shareholders of the Company, immediately prior to the sale or disposition, in substantially the same proportion as their ownership of the Company immediately prior to such sale or disposition. Notwithstanding anything herein to the contrary, the issuance of additional equity from numerous sources in connection with a capital raise by the Company shall not be a Change of Control. However, if a single investor or small group of related investors acting in one or a series of transactions, provide capital so as to take control of the Company (more than 50%), it shall be a change of control. For example, if a private equity firm(s) or a strategic investor invest significant capital into the Company resulting in their equity being in excess of 50%, it shall be a change of control.

(a) If a Change of Control, as defined above, occurs during the term of this Agreement, all unvested stock options/grants of the Executive shall vest in full upon the closing of the Change of Control transaction. Upon the closing of a Change of Control event, this Agreement shall terminate.

5. Post-Termination Assistance. Upon the Executive's termination of employment with the Company, the Executive agrees to fully cooperate in all matters relating to the winding up or pending work on behalf of the Company and the orderly transfer of work to other employees of the Company following any termination of the Executives' employment. The Executive further agrees that Executive will provide, upon reasonable notice, such information and assistance to the Company as may reasonably be requested by the Company in connection with any audit, governmental investigation, litigation, or other dispute in which the Company is or may become a party and as to which the Executive has knowledge; provided, however, that (i) the Company agrees to reimburse the Executive for any related out-of-pocket expenses, including travel expenses, and (ii) any such assistance may not unreasonably interfere with Executive's then current employment.

6. Restrictive Covenants.

(a) In consideration of the obligations of the Company hereunder, the Executive agrees that Executive shall not:

(i) during the Term and for a period of two years after a termination of the Executive's employment with the Company for any reason, (A) directly or indirectly become an employee, director, consultant or advisor of, or otherwise affiliated with, any business which provides, in whole or in part, the same or similar services and/or products offered by Company, or (B) directly or indirectly solicit or hire or encourage the solicitation or hiring of any person who was an employee of the Company at any time on or after the date of such termination (unless more than six months shall have elapsed between the last day of such person's employment by the Company and the first date of such solicitation or hiring);



(ii) during or after the Term, make statements or representations, or otherwise communicate, directly or indirectly, in writing, orally, or otherwise, or take any other action which disparages the Company or its officers, directors, businesses or reputations; or during or after the Term, without the written consent of the Board, disclose to any person other than as required by law or court order, any confidential information obtained by the Executive while in the employ of the Company, provided, however, that confidential information shall not include any information known generally to the public (other than as a result of unauthorized disclosure by the Executive) or any specific information or type of information generally not considered confidential by persons engaged in the same business

(iii) as the Company, or information disclosed by the Company by any member of the Board or any other officer thereof to a third party without restrictions on the disclosure of such information.

(b) Executive agrees that the geographic scope of the above restrictions shall extend to the geographic area in which Company actively conducted business immediately prior to termination of this Agreement or expiration of the Term.

(c) For the purpose of Section 5 and Section 6 only, the term "Company" shall mean the Company and its subsidiaries. Notwithstanding the above, nothing in this Agreement shall preclude the Executive from making truthful statements or disclosures that are required by applicable law, regulation or legal process.

(d) Executive admits and agrees that Executive's breach of the provisions of this Section 6 would result in irreparable harm to the Company. Accordingly, in the event of Executive's breach or threatened breach of such restrictions, Executive agrees that the Company shall be entitled to an injunction restraining such breach or threatened breach without the necessity of posting a bond or other security. Further, in the event of Executive's breach, the duration of the restrictions contained in this Section 6 shall be extended for the entire time that the breach existed so that the Company is provided with the benefit of the full-time period provided herein.

(e) In addition to injunctive relief, the Company shall be entitled to any other remedy available in law or equity by reason of Executive's breach or threatened breach of the restrictions contained in this Section 6.

(f) If the Company or Executive retains an attorney to enforce or attest the provisions of this Section 6, the successful Party in such proceeding shall be entitled to receive its attorneys' fees and costs so incurred both prior to filing a lawsuit, during the lawsuit and on appeal, from the unsuccessful Party in such proceeding.

(g) It is the intent and understanding of each Party hereto that if, in any action before any arbitration panel, court or agency legally empowered to enforce this Agreement, any term, restriction, covenant or promise in this Section 6 is found to be unreasonable and for that reason unenforceable, then such term, restriction, covenant or promise shall be deemed modified to the extent necessary to make it enforceable by such arbitration panel, court or agency.

(h) Notwithstanding any provision of this Agreement to the contrary, the foregoing Restrictive Covenant shall cease and be of no further force and effect if Company terminates this Agreement without Cause or Executive terminates this Agreement for Good Reason.



7. Enforcement. The Executive hereby expressly acknowledges that the restrictions contained in Section 6 are reasonable and necessary to protect the Company's legitimate interests, that the Company would not have entered into this Agreement in the absence of such restrictions, and that any violation of such restrictions will result in irreparable harm to the Company. The Executive agrees that the Company shall be entitled to preliminary and permanent injunctive relief, without the necessity of proving actual damages, as well as an equitable accounting of all earnings, profits and other benefits arising from any violation of the restrictions contained in Section 6, which rights shall be cumulative and in addition to any other rights or remedies to which the Company may be entitled. The Executive irrevocably and unconditionally (i) agrees that any legal proceeding arising out of this paragraph may be brought in any court of applicable jurisdiction and venue located in the State of Texas (the "Selected Courts"), (ii) consents to the non-exclusive jurisdiction of the Selected Courts in any such proceeding, and (iii) waives any objection to the laying of venue of any such proceeding in any Selected Court.

8. No Mitigation or Set Off. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the

Executive under any of the provisions of this Agreement and such amounts shall not be reduced, regardless of whether the Executive obtains other employment. The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any circumstances, including, without limitation, any set-off, counterclaim, recoupment, defense or other right which the Company may have against the Executive or others; provided, however, the Company shall have the right to offset the amount of any funds loaned or advanced to the Executive and not repaid against any severance obligations the Company may have to the Executive hereunder.

9. Return of Documents. Upon termination of Executive's employment, the Executive agrees to return all documents belonging to the Company in Executive's possession including, but not limited to, contracts, agreements, licenses, business plans, equipment, software, software programs, products, work-in-progress, source code, object code, computer disks, books, notes and all copies thereof, whether in written, electronic or other form; provided that the Executive may retain copies of Executive's rolodex. In addition, the Executive shall certify to the Company in writing as of the effective date of termination that none of the assets or business records belonging to the Company are in Executive's possession, remain under Executive's control, or have been transferred to any third person.

10. Intellectual Property Rights.

(a) Disclosure of Work Product. As used in this Agreement, the term "Work Product" means any invention, whether or not patentable, know-how, designs, mask works, trademarks, formulae, processes, manufacturing techniques, trade secrets, ideas, artwork, software or any copyrightable or patentable works. Executive agrees to disclose promptly in writing to Company, or any person designated by Company, all Work Product that is solely or jointly conceived, made, reduced to practice, or learned by Executive in the course of any work performed for Company ("Company Work Product"). Executive agrees (a) to use Executive's best efforts to maintain such Company Work Product in trust and strict confidence; (b) not to use Company Work Product in any manner or for any purpose not expressly set forth in this Agreement; and (c) not to disclose any such Company Work Product to any third party without first obtaining Company's express written consent on a case-by-case basis.

(b) Ownership of Company Work Product. Executive agrees that any and all Company Work Product conceived, written, created or first reduced to practice in the performance of work under this Agreement shall be deemed "work for hire" under applicable law and shall be the sole and exclusive property of Company.

Assignment of Company Work Product. Executive irrevocably assigns to Company all right, title and interest worldwide in and to the Company Work Product and all applicable intellectual property rights related to the Company Work Product, including without limitation, copyrights, trademarks, trade secrets, patents, moral rights, contract and licensing rights (the "Proprietary Rights"). Except as set forth below, Executive retains no rights to use the Company Work Product and agrees not to challenge the validity of Company's ownership in the Company Work Product. Executive hereby grants to Company a perpetual, non-exclusive, fully paid-up, royalty-free, irrevocable and world-wide right, with rights to sublicense through multiple tiers of sublicensees, to reproduce, make derivative works of, publicly perform, and display in any form or medium whether now known or later developed, distribute, make, use and sell any and all Executive owned or controlled Work Product or technology that Executive uses to complete the services and which is necessary for Company to use or exploit the Company Work Product.



(c) Assistance. Executive agrees to cooperate with Company or its designee(s), both during and after the Term, in the procurement and maintenance of Company's rights in Company Work Product and to execute, when requested, any other documents deemed necessary by Company to carry out the purpose of this Agreement. Executive will assist Company in every proper way to obtain, and from time to time enforce, United States and foreign Proprietary Rights relating to Company Work Product in any and all countries. Executive's obligation to assist Company with respect to Proprietary Rights relating to such Company Work Product in any and all countries shall continue beyond the termination of this Agreement, but Company shall compensate Executive at a reasonable rate to be mutually agreed upon after such termination for the time actually spent by Executive at Company's request on such assistance.

(d) Executive Representations and Warranties. Executive hereby represents and warrants that:

(i) Company Work Product will be an original work of Executive or all applicable third parties will have executed assignments of rights reasonably acceptable to Company;

(ii) Executive will not grant, directly or indirectly, any rights or interest whatsoever in the Company Work Product to any third party;

(iii) Executive has full right and power to enter into and perform Executive's obligations under this Agreement without the consent of any third party; and

(iv) Executive will comply with any written safety procedures or policies promulgated by the Company.

11. Confidentiality.

(a) Definition. For purposes of this Agreement, "Confidential Information" shall mean all Company Work Product and all non-public written, electronic, and oral information or materials of Company communicated to or otherwise obtained by Executive in connection with this Agreement, which is related to the products, business and activities of Company, its Affiliates (as defined below), and subsidiaries, and their respective customers, clients, suppliers, and other entities with which such party does business, including: (i) all costing, pricing, technology, software, documentation, research, techniques, procedures, processes, discoveries, inventions, methodologies, data, tools, templates, know how, intellectual property and all other proprietary information of Company; (ii) the terms of this Agreement; and (iii) any other information identified as confidential in writing by Company. Confidential Information shall not include information that: (a) was lawfully known by Executive without an obligation of confidentiality before its receipt from Company; (b) is independently developed by Executive without reliance on or use of Confidential Information; (c) is or becomes publicly available without a breach by Executive of this Agreement; or (d) is disclosed to Executive by a third party which is not required to maintain its confidentiality. An "Affiliate" of a Party shall mean any entity directly or indirectly controlling, controlled by, or under common control with, such Party at any time during the Term for so long as such control exists.



(b) Company Ownership. Company shall retain all right, title, and interest to the Confidential Information, including all copies thereof and all rights to patents, copyrights, trademarks, trade secrets and other intellectual property rights inherent therein and appurtenant thereto. Subject to the terms and conditions of this Agreement, Company hereby grants Executive a non-exclusive, non-transferable, license during the Term to use any Confidential Information solely to the extent that such Confidential Information is necessary for the performance of Executive's duties hereunder. Executive shall not, by virtue of this Agreement or otherwise, acquire any proprietary rights whatsoever in Confidential Information, which shall be the sole and exclusive property and confidential information of Company. No identifying marks, copyright or proprietary right notices may be deleted from any copy of Confidential Information. Nothing contained herein shall be construed to limit the rights of Company from performing similar services for, or delivering the same or similar deliverable to, third parties using the Confidential Information and/or using the same personnel to provide any such services or deliverables.

(c) Confidentiality Obligations. Executive agrees to hold the Confidential Information in confidence and not to copy, reproduce, sell, assign, license, market, transfer, give or otherwise disclose such Confidential Information to any person or entity or to use the Confidential Information for any purposes whatsoever, without the express written

permission of Company, other than disclosure to Executive's, partners, principals, directors, officers, employees, subcontractors and agents on a "need-to-know" basis as reasonably required for the performance of Executive's obligations hereunder or as otherwise agreed to herein. Executive shall be responsible to Company for any violation of this Section 11 by Executive's employees, subcontractors, and agents. Executive shall maintain the Confidential Information with the same degree of care, but no less than a reasonable degree of care, as Executive employs concerning its own information of like kind and character.

(d) Required Disclosure. If Executive is requested to disclose any of the Confidential Information as part of an administrative or judicial proceeding, Executive shall, to the extent permitted by applicable law, promptly notify Company of that request and cooperate with Company, at Company's expense, in seeking a protective order or similar confidential treatment for the Confidential Information. If no protective order or other confidential treatment is obtained, Executive shall disclose only that portion of Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information which is required to be disclosed.

(e) Enforcement. Executive acknowledges that the Confidential Information is unique and valuable, and that remedies at law will be inadequate to protect Company from any actual or threatened breach of this Section 11 by Executive and that any such breach would cause irreparable and continuing injury to Company. Therefore, Executive agrees that Company shall be entitled to seek equitable relief with respect to the enforcement of this Section 11 without any requirement to post a bond, including, without limitation, injunction and specific performance, without proof of actual damages or exhausting other remedies, in addition to all other remedies available to Company at law or in equity. For greater clarity, in the event of a breach or threatened breach by Executive of any of the provisions of this Section 11, in addition to and not in limitation of any other rights, remedies or damages available at law or in equity, Company shall be entitled to a permanent injunction or other like remedy in order to prevent or restrain any such breach or threatened breach by Executive, and Executive agrees that an interim injunction may be granted against Executive immediately on the commencement of any action, claim, suit or proceeding by Company to enforce the provisions of this Section 11, and Executive further irrevocably consents to the granting of any such interim or permanent injunction or any like remedy. If any action at law or in equity is necessary to enforce the terms of this Section 11, Executive, if it is determined to be at fault, shall pay Company's reasonable legal fees and expenses on a substantial indemnity basis.



(f) Related Duties. Executive shall: (i) promptly deliver to Company upon Company's request all materials in Executive's possession which contain Confidential Information; (ii) use its best efforts to prevent any unauthorized use or disclosure of the Confidential Information; (iii) notify Company in writing immediately upon discovery of any such unauthorized use or disclosure; and (iv) cooperate in every reasonable way to regain possession of any Confidential Information and to prevent further unauthorized use and disclosure thereof.

(g) Legal Exceptions. Further notwithstanding the foregoing provisions of this Section 11, Executive may disclose confidential information as may be expressly required by law, governmental rule, regulation, executive order, court order, or in connection with a dispute between the Parties; provided that prior to making any such disclosure, Executive shall use its best efforts to: (i) provide Company with at least fifteen (15) days' prior written notice setting forth with specificity the reason(s) for such disclosure, supporting documentation therefor, and the circumstances giving rise thereto; and (ii) limit the scope and duration of such disclosure to the strictest possible extent.

(h) Limitation. Except as specifically set forth herein, no licenses or rights under any patent, copyright, trademark, or trade secret are granted by Company to Executive hereunder, or are to be implied by this Agreement. Except for the restrictions on use and disclosure of Confidential Information imposed in this Agreement, no obligation of any kind is assumed or implied against either Party or their Affiliates by virtue of meetings or conversations between the Parties hereto with respect to the subject matter stated above or with respect to the exchange of Confidential Information. Each party further acknowledges that this Agreement and any meetings and communications of the Parties and their affiliates relating to the same subject matter shall not: (i) constitute an offer, request, invitation or contract with the other Party to engage in any research, development or other work; (ii) constitute an offer, request, invitation or contract involving a buyer-seller relationship, joint venture, teaming or partnership relationship between the Parties and their affiliates; or (iii) constitute a representation, warranty, assurance, guarantee or inducement with respect to the accuracy or completeness of any Confidential Information or the non-infringement of the rights of third persons.

12. Effect of Waiver. The waiver by either Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach hereof. No waiver shall be valid unless in writing.

13. Assignment. This Agreement may not be assigned by either Party without the express prior written consent of the other Party hereto, except that the Company (i) may assign this Agreement to any subsidiary or affiliate of the Company, provided that no such assignment shall relieve the Company of its obligations hereunder without the written consent of the Executive, and (ii) will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise. This Agreement shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of the Parties.

14. No Third-Party Rights. Except as expressly provided in this Agreement, this Agreement is intended solely for the benefit of the Parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person or entity other than the Parties hereto.



15. Entire Agreement; Effectiveness of Agreement. This Agreement sets forth the entire agreement of the Parties hereto and shall supersede any and all prior agreements and understandings concerning the Executive's employment by the Company. This Agreement may be changed only by a written document signed by the Executive and the Company. Notwithstanding the foregoing, this Agreement shall not supersede or replace any agreement entered into between the Company and the Executive with respect to any plan or benefit described in Section 2(f).

16. Survival. The provisions of Section 4, Section 5, Section 6, Section 7, Section 9, Section 10, Section 11, this Section 16, Section 18 and Section 19 shall survive any termination or expiration of this Agreement.

17. Severability. If any one or more of the provisions, or portions of any provision, of the Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions or parts hereof shall not in any way be affected or impaired thereby.

18. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE SUBSTANTIVE AND PROCEDURAL LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO RULES GOVERNING CONFLICTS OF LAW.

19. Arbitration.

(a) Other than as set forth in Section 7, any controversy, claim or dispute arising out of or relating to this Agreement or the Executive's employment by the Company, including, but not limited to, common law and statutory claims for discrimination, wrongful discharge, and unpaid wages, shall be resolved by arbitration in San Antonio, Texas

pursuant to then-prevailing National Rules for the Resolution of Employment Disputes of the American Arbitration Association. The arbitration shall be conducted by three arbitrators, with one arbitrator selected by each Party and the third arbitrator selected by the two arbitrators so selected by the Parties. The arbitrators shall be bound to follow the applicable Agreement provisions in adjudicating the dispute. It is agreed by both Parties that the arbitrators' decision is final, and that no Party may take any action, judicial or administrative, to overturn such decision. The judgment rendered by the arbitrators may be entered in the Selected Courts. Each Party will pay its own expenses of arbitration and the expenses of the arbitrators will be equally shared provided that, if in the opinion of the arbitrators any claim, defense, or argument raised in the arbitration was unreasonable, the arbitrators may assess all or part of the expenses of the other Party (including reasonable attorneys' fees) and of the arbitrators as the arbitrators deem appropriate. The arbitrators may not award either Party punitive or consequential damages. Notwithstanding the foregoing, this arbitration provision shall not apply to any employment related claims or administrative proceedings that cannot properly be the subject of arbitration according to applicable law.

(b) WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

20. Indemnification. During the Term, the Executive shall be entitled to indemnification and insurance coverage for directors' and officers' liability, fiduciary liability and other liabilities arising out of the Executive's position with the Company in any capacity, in an amount not less than the highest amount available to any other senior level executive or member of the Board and to the full extent provided by the Company's certificate of incorporation or by-laws, and such coverage and protections, with respect to the various liabilities as to which the Executive has been customarily indemnified prior to termination of employment, shall continue for at least six years following the end of the Term. Any indemnification agreement entered into between the Company and the Executive shall continue in full force and effect in accordance with its terms following the termination of this Agreement.



21. Notices. All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party, or by registered or certified mail, return receipt requested, postage prepaid, or by email with return receipt requested and received or nationally recognized overnight courier service, addressed as set forth below or to such other address as either Party shall have furnished to the other in writing in accordance herewith. All notices, requests, demands and other communications shall be deemed to have been duly given (i) when delivered by hand, if personally delivered, (ii) when delivered by courier or overnight mail, if delivered by commercial courier service or overnight mail, and (iii) on receipt of confirmed delivery, if sent by email.

If to the Company: C-Bond Systems, Inc.
Attn: Scott R. Silverman
6035 South Loop East
Houston, TX 77033
Email: ssilverman@cbondsystems.com

If to Executive:

Michael Wanke
2029 Pat Booker Road
Universal City, TX 78148
Email: mike@a1glasscoating.com

22. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

23. Rule of Construction. The general rule of construction for interpreting a contract, which provides that the provisions of a contract should be construed against the Party preparing the contract, is waived by the Parties hereto. Each Party acknowledges that such Party was represented by separate legal counsel in this matter who participated in the preparation of this Agreement or such Party had the opportunity to retain counsel to participate in the preparation of this Agreement but elected not to do so.

24. Execution in Counterparts, Electronic Transmission. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. The signature of any party to this Agreement which is transmitted by any reliable electronic means such as, but not limited to, a photocopy, electronically scanned or facsimile machine, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature or an original document.

[Signatures appear on following page]



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

C-Bond Systems, Inc.

By: */s/ Scott R. Silverman*
Name: Scott R. Silverman,
Chief Executive Officer, Chairman of the Board of Directors

Michael Wanke

By: */s/ Michael Wanke*
Name: Michael Wanke

**Exhibit 10.6**

# FORM OF COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement ("Agreement" or "Lease") is entered into as of the undersigned date by and between the undersigned "Landlord" and "Tenant." The undersigned "Guarantor", if any, is acknowledging this Agreement and agreeing to be bound to the terms of this Agreement in accordance with the personal guarantee provided hereunder. Landlord, Tenant, and Guarantor may hereinafter collectively be referred to – from time to time – as the "Parties" or individually referred to as a "Party".

## FUNDAMENTAL LEASE PROVISIONS

**1. LANDLORD**: MDW Management, LLC

**NOTICE ADDRESS**: 24710 Creek Loop
San Antonio, Texas 78266

**WITH A MANDATORY COPY TO:** Tiwari, PLLC
11844 Bandera Rd #725
Helotes, TX 78023

**PAYMENT ADDRESS:** 24710 Creek Loop
San Antonio, Texas 78266

**2. TENANT**: Mobile Tint, LLC d/b/a A-1 Glass

**TRADE NAME:** A-1 Glass

**NOTICE ADDRESS:** 2029 Pat Booker Rd
Universal City, TX 78148

**3. LEASED PREMISES**: The "Building" and Grounds (additionally defined below) or land and improvements thereon being commonly known as 2029 Pat Booker Rd., Universal City, TX 78148, as additionally described in this Lease and as shown on Exhibit "A." The Leased Premises may also be referred to simply as the "Premises" or as the "demised premises."

**4. LEASE TERM:** 60 Months ("Primary Lease Term")

**COMMENCEMENT DATE:** The date of Execution hereof.

**RENT COMMENCEMENT:** Month 1 of the Lease as set forth in Section 5 of these Fundamental Lease Provisions.

**RENEWAL OPTIONS:** Tenant shall be provided two (2) Five year options to renew (extend) the Primary Lease Term as additionally set forth in the Lease.

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**5. MINIMUM RENT:**

**Primary Lease Term:**

| Lease Months | Monthly Minimum Rent $ |
|---|---|
| 1-60 | $ 5,600.00 |

**Renewal Option:**

| Months | Monthly Minimum Rent |
|---|---|
| 61-120 | Primary Lease Rent (Months 1-60) plus 2% escalation |
| 121-180 | Renewal Option 1 Rent (Months 61-120) plus 2% escalation |

"Renewal Option One/1" and the "First Option," or "Renewal Option Two/2" and "Second Option," shall be synonymous, whether capitalized or not, wherever used in this Lease.

**6. PERMITTED USE:** For the operation of a commercial business involving glass coatings and related operations. No other use is permitted without the express written consent of Landlord.

**7. SECURITY DEPOSIT:** None.

**8. PREPAID RENT:** None.

**9. ADDITIONAL RENT:** Additional Rent shall commence on and become payable on Month 1 of the Lease.

**TAX PAYMENT:** $819.85 [$9,838.20 annually as of 2021].

**INSURANCE PAYMENT:** ____TBD_____.

**Total Additional Rent** (**subject to adjustment*): _____TBD_____/month or ___TBD___/sf annual, estimated*

**10. GUARANTORS**: C-Bond Systems, Inc.

THE SUBMISSION OF THIS LEASE FOR EXAMINATION BY TENANT AND/OR EXECUTION THEREOF BY TENANT DOES NOT CONSTITUTE A RESERVATION OF OR OPTION FOR THE LEASED PREMISES AND THIS LEASE SHALL BECOME EFFECTIVE ONLY UPON EXECUTION BY ALL PARTIES HERETO AND DELIVERY OF A FULLY EXECUTED COUNTERPART HEREOF BY LANDLORD TO TENANT.

I. Leased Premises, Building, and Grounds.

a. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises.

b. The Leased Premises is the "Building" and the "Grounds" on which the Building is located, both terms being additionally described on Exhibit "A" of this Lease. Exhibit "A" shows, among other things, the principal improvements comprising the Leased Premises.

c. Landlord shall have the right at its sole discretion to place in, under, over or through the Leased Premises pipes, wires, lines, and other facilities. Landlord reserves the right to make similar installations under or over the Leased Premises.

d. This Lease is made by Landlord and accepted by Tenant subject to any and all matters of record affecting the Leased Premises including declarations or other covenants affecting the Leased Premises. Tenant must conduct its own due diligence regarding applicable restrictions, and Landlord shall not be responsible for issues preventing or restricting Tenant's use arising from zoning or other municipal laws, restrictive covenants, or any other items filed for record or reasonably discoverable affecting the Leased Premises.

e. The Leased Premises is leased on a pre-determined monthly rental amount, not a measurable square foot basis or guaranteed land area basis. Similarly, Additional Charges or Additional Rents are based on fixed sums for the Leased Premises as a whole as determined by the Landlord.

f. Certain areas of this Lease may require adjustment by Landlord or the insertion of additional information to be determined later to correct or adjust items marked as "_____," "***" or "TBD," among other things. So long as any such modifications to the Lease to not materially alter the business terms or Tenant's obligations under the Lease, the Parties agree to execute an amendment to this Lease reflecting the same or a revised Lease when such information is available but no later than the Commencement Date. Tenant's failure to execute such non-material revision within ten (10) days after written notice thereof shall be deemed a default under this Lease.

II. Term

a. The term of this Lease shall commence on the Commencement Date and shall terminate at the end of the Primary Lease Term, unless renewed or sooner terminated as set forth herein.

b. This Lease shall be fully binding and in full force and effect from and after execution by Landlord and Tenant regardless of whether the Commencement Date or Rent commencement dates are intended to begin later.

c. Optional Renewal.

i. Tenant is granted the option to extend the term of this Lease for two terms of five years provided: (a) Tenant is not in default at the time of exercise of the option; (b) Tenant was not in default under the Primary Lease Term or first renewal more than three (3) times during either the Primary Lease Term or first renewal; and (c) Tenant gives written notice of its exercise of the renewal option to Landlord at least one hundred twenty (120) days prior to the expiration of the original term (or first renewed term, if applicable). Each extension term shall be upon the same terms and conditions as this Lease except: (a) Tenant shall have no further right of renewal after using the last renewal option shown on the Fundamental Lease Provisions; (b) the monthly Minimum Rent applicable during the extension term shall be as set forth under the Fundamental Lease Provisions for the applicable renewal term; and (c) Additional Charges / Additional Rents will be consistent with the rates then assessable in accordance with this Lease. Tenant's failure to timely exercise either renewal option shall constitute a waiver of Tenant's renewal option.



ii. The term "Market Rate" shall mean the greater of the annual Minimum Rent being marketed to other potential Tenants for the Building or the annual Minimum Rent that a willing tenant would pay, and that a willing landlord would accept, at arm's length, for space comparable to the Premises within other comparable buildings in the San Antonio, Texas area (the "Comparable Buildings"), based upon binding lease transactions for tenants in Comparable Buildings ("Comparable Leases"). Comparable Leases shall include renewal and new non-renewal tenancies, but shall exclude subleases and leases of space subject to another tenant's expansion rights. Rent rates payable under Comparable Leases shall be adjusted to account for variations between this Lease and the Comparable Leases with respect to: (a) the length of the Extension Term compared to the lease term of the Comparable Leases; (b) the rental structure, including, without limitation, rental rates per rentable square foot (including whether gross or net, and if gross, adjusting for base year or expense stop), additional rental, all other payments and escalations; (c) the size of the Premises compared to the size of the premises of the Comparable Leases; (d) the location, floor levels and efficiencies of the floor(s) of the Premises compared to the premises of the Comparable Lease; (e) free rent, moving expenses and other cash payments, allowances or other monetary concessions affecting the rental rate; (f) the age and quality of construction of the Building compared to the Comparable Building; (g) the leasehold improvements and/or allowances, including the amounts thereof in renewal leases, and taking into account, in the case of renewal leases (including this Lease), the value of existing leasehold improvements to the renewal tenant, (h) access and proximity to major roads or thoroughfares, (i) the amenities available to tenants in the Building compared to amenities available to tenants in Comparable Buildings; (j) the energy efficiencies and environmental elements of the Building compared to Comparable Buildings (k) the brokerage commissions, (l) the availability of parking, the parking ratio and parking charges if any, and (m) the relative market rent rates within the geographic area referenced in the definition of Comparable Buildings.

d. Definition of Lease Year.

i. Where used herein, the term "Lease Year" means:

a. in the case of the first Lease Year, the period which commences with the Commencement Date and terminates on the last day of the twelfth (12th) full calendar month after the Commencement Date. Such first Lease Year shall include the partial month, if any, at the beginning of the lease term if the Commencement Date is not the first day of a calendar month.

b. Each subsequent "Lease Year" shall mean a period of twelve (12) full calendar months commencing with the date following the last day of the first Lease Year, and commencing with each subsequent annual anniversary of such day.

c. The last Lease Year of the lease term shall be the period which commences on the day immediately following the last day of the preceding Lease Year and terminates on the last day of the applicable lease term. Accordingly, such last Lease Year may be less than twelve (12) full calendar months, depending upon the date of termination of the lease term.

II. Rent and Failure to Pay Rent.

a. The Minimum Rent and Additional Rent together may simply be referred to in this Lease as the "Rent."

b. Tenant covenants and agrees to pay Landlord the Rent at the Payment Address or at such other address as Landlord may from time to time designate in writing. All Rent payments shall be made in advance on the first day of each calendar month during the Term of this Lease.

c. Beginning on the Rent Commencement date, Tenant shall pay Landlord Minimum Rent for the first full calendar month of the Lease Term. Tenant covenants and agrees to pay Landlord the Additional Rent beginning on the Commencement Date if the Rent Commencement Date and Commencement Date differ.

d. Landlord agrees to prorate the first payment of Minimum Rent or Additional Rent if the first date on which either is due does not fall on the first day of a calendar month.

e. All other sums and charges required to be paid by Tenant to Landlord pursuant to the terms of this Lease constitute additional rent (whether or not specifically designated as "Additional Rent") and Tenant's failure to timely pay such other sums or charges due under this Lease may be treated by Landlord as a failure by Tenant to pay Minimum Rent. All rent and other sums Tenant owes under this Lease shall be due and payable by without demand, deduction, abatement or setoff unless otherwise expressly provided herein. Past due Rent and other past due payments shall bear interest from maturity at twelve percent (12%) per annum commencing five (5) days after the date due until paid.

f. If any payment due under this Lease from Tenant to Landlord is returned or rejected for insufficient funds, a stop payment, or similar cause, Tenant agrees to pay Landlord the greater of: Landlord's actual bank and other charges assessed for returned items; or $30.00 per returned item/instrument or such greater amount permitted by applicable law. If Tenant's payment of Minimum Rent or Additional Rent is returned or rejected for insufficient funds more than two (2) times during the applicable Lease Term, on Landlord's demand, Tenant agrees that Tenant must pay future Minimum Rent and Additional Rent payments via readily available funds (cashier's check, money order, cash, or similar methods whereby funds for settlement are immediately available).

III. Utilities

a. Commencing upon the sooner to occur of the Delivery Date (if applicable) or tender of possession of the Leased Premises to Tenant, Tenant shall obtain all utilities and related services in Tenant's name. Tenant shall at its own cost and expense pay for all gas, electricity and other utilities used in the Leased Premises and will save and hold Landlord harmless from any charge or liability for same. Such payments shall be made directly to the supplier of any utility separately metered (or submetered) to the Leased Premises. These costs include all costs associated with providing utility access to the Leased Premises including, but not limited to, connection costs, impact fees and other costs associated with installing or improving connections for utilities.



b. An interruption or malfunction of any utility services shall NOT, regardless of the cause:

i. constitute an eviction or disturbance of Tenant's use and possession of the Leased Premises;

ii. constitute a breach by Landlord of any of its obligations hereunder;

iii. render Landlord liable for any damages;

iv. relieve Tenant from any of its obligations hereunder; or

v. grant Tenant any right of off-set or recoupment.

IV. Use and Use Restrictions

a. Tenant's Permitted Use is as stated under the Fundamental Lease Provisions. Tenant agrees to operate in conformance with best commercial practices/standards for similar operations engaged in the Permitted Use operating in the county where the Leased Premises is located ("Similar Services"). Tenant agrees to only advertise as and operate under Tenant's name or Trade Name shown on the Fundamental Lease Provisions or such other name approved by Landlord in writing.

b. Tenant's use of the Leased Premises shall not constitute a nuisance, either public or private. Without limiting the foregoing, Tenant shall not permit the storage of any items which could create a public or private nuisance, or which would violate applicable law, including but not limited to any ordinances regarding construction materials, recycling materials, and/or waste. Without limitation on what may constitute a nuisance, and with Landlord reserving the right to determine what constitutes a disturbing level of any item below, Tenant further shall not cause or allow and shall take affirmative action to prevent:

i. Noise emanating from the Leased Premises that offends neighboring properties or that exceeds noise levels allowable under applicable ordinances, whether caused by Tenant or any of Tenant's employees, agents, contractors, guests, invitees, patrons, licensees, or otherwise;

ii. fumes, odors, or smoke that is noxious, irritating, or objected to by Landlord or a third party; or

iii. Unlawful activities by patrons, invitees, guests, or trespassers at the Leased Premises of any kind.

c. Tenant will use the Leased Premises solely for the Permitted Use and no other purpose without the express written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant, at its own expense, shall:

i. promptly comply with all present and future laws, ordinances, orders, rules, recorded restrictions/covenants, regulations and requirements of all governmental authorities having jurisdiction over the Leased Premises, Property, Tenant, or Tenant's business, the Permitted Use, and observe and comply with all covenants and restrictions of record and all notices from Landlord's mortgagee, affecting or applicable to the Leased Premises or affecting or applicable to the Leased Premises or the cleanliness, safety, occupancy and use of the same, whether or not any such law, ordinance, order, rule, regulation, covenant, restriction or other requirement is substantial, or foreseen or unforeseen, or ordinary or extraordinary, or shall necessitate structural changes or improvements, shall interfere with the use or enjoyment of the Leased Premises, or shall be directed to or imposed upon Tenant or Landlord, and Tenant shall hold Landlord harmless from any and all cost or expense on account thereof;



ii. not permit any person to use the Leased Premises or any part thereof for conducting a resale store (except that, if approved as part of the Permitted Use, Tenant may sell refurbished items), or any auction or bankruptcy or fire or "lost-our-lease" or "going-out-of-business" or similar sale; and

iii. comply with such rules or regulations as Landlord may promulgate for the Leased Premises including but not limited to rules regarding sanitation, cleanliness and other matters, including without limitation removal of garbage, trash and other waste.

d. Without the Landlord's advance written permission (which Landlord may withhold at its sole discretion), Tenant shall not place or permit any radio, screen, television, loudspeaker or amplifier on the roof or outside the Leased Premises or where the same can be seen or heard from outside the building; nor place any antenna, equipment, awning or other projection on the exterior of the Leased Premises; nor permit any immoral practice to be carried on or committed on the Leased Premises based on morality laws for the State, county and/or city in which the Leased Premises is located; nor do anything which would tend to injure the reputation of the Landlord or Property.

e. Tenant shall not use any septic system or plumbing facilities upon the Leased Premises for any purpose other than that for which they were constructed, nor dispose of any foreign substances therein that are not designed for use within standard plumbing or septic systems. As additionally set forth below, Tenant shall be responsible at its own cost and expense for all maintenance associated with any such septic or plumbing systems.

f. Tenant must not interfere with the use of other leased areas by another tenant to the extent applicable.

g. Tenant shall not offer massage, spa, or similar services at the Leased Premises unless Landlord otherwise agrees in writing.

h. Tenant shall not permit any "adult" entertainment or nudity upon the Property, and shall not sell, distribute or display any paraphernalia commonly used in the use or ingestion of illicit drugs, or any x-rated, pornographic or so-called "adult" newspaper, book, magazine, film, picture, video or other similar representation or merchandise of any kind. Tenant shall not permit any electronic device housed within the Leased Premises to distribute such material.

i. Tenant must place all of its trash from the normal operation of its business activities at the Leased Premises (excluding construction of any kind) into such refuse receptacles as are provided by Landlord if applicable (as set forth below), Tenant's contractor for dumpster services, or the municipal government providing such services.



i. Tenant shall be responsible, at its sole cost and expense, for all costs associated with the removal of its trash and rubbish from the Leased Premises and any janitorial services for the Leased Premises.

ii. Landlord may, at Landlord's sole option and in Landlord's sole discretion, contract for the supplying of one or more "dumpsters" for Tenant's use for the placement of rubbish originating from the Leased Premises. If Landlord provides one or more dumpsters, then Tenant shall place all of its trash from the normal operation of its business activities at the Leased Premises (excluding any construction) into the dumpster(s) made available by Landlord. In consideration for Landlord's supplying such dumpster and contracting for that service, Tenant shall reimburse Landlord for the costs/fees of the dumpster service with payments of Additional Rent. Once initiated, upon ten (10) days written notice to Tenant, Landlord may terminate Tenant's right to use Landlord's dumpster service program and require that Tenant contract separately for trash disposal services. Thereafter, Tenant shall be responsible, at its sole cost and expense, for the removal of its trash and rubbish, and Additional Rent shall not include fees for such services.

j. Tenant binds and obligates itself to occupy and use the entire Leased Premises continuously during the entire term of this Lease for a minimum of four (4) days per week during reasonable business hours for Similar Services. Notwithstanding the foregoing, Tenant may close temporarily in connection with the following circumstances ("Temporary Closures"):

1. for taking inventory, performing major cleaning or similar minor occurrences; provided, however, the aggregate number of days Tenant may close for such purposes shall not exceed three (3) days in any calendar Lease Year;

2. for performing repairs, alterations, redecorating, or remodeling approved by Landlord in writing; provided, however, the aggregate number of days Tenant may close for such purposes shall not exceed thirty (30) days during any five (5) year period. If a major remodel is required and expected to take longer than thirty (30) days to complete, Tenant may close for up to sixty (60) days subject to Landlord's prior written approval;

3. for legal holidays observed by other business providing Similar Services; and/or

4. for events of Force Majeure (as defined in this Lease)

k. Absent the express written permission of Landlord, Tenant shall not alter any locking system on or in the Leased Premises or Building.

l. Tenant shall not use or obstruct any sidewalks, service drives, or driveways on the Leased Premises or other area outside the Leased Premises unless Tenant has received Landlord's prior written approval to do so.

m. In addition to other portions of this Lease concerning taxes and fees, Tenant shall pay before delinquency any and all taxes, assessments and public charges levied, assessed or imposed upon Tenant's business, or upon Tenant's fixtures, furnishings or equipment in the Leased Premises, or upon any leasehold interest or personal property of any kind, owned by or placed in, on or about the Leased Premises by Tenant, including without limitation any transfer taxes and service payments in lieu of taxes, and pay when and as due all license fees, permit fees and charges of a similar nature relating to the conduct by Tenant or any subtenant or concessionaire of any business or undertaking authorized hereunder to be conducted in, on or from the Leased Premise. Within thirty (30) days after notice from Landlord, Tenant shall furnish Landlord a true copy of receipts evidencing such payment by Tenant from the governmental authority or other taxing authority assessing such charges.

V. Rules

a. Tenant must comply with any zoning rules and restrictive covenants affecting the Leased Premises, which Tenant shall investigate and comply with at Tenant's own cost and expense. Tenant shall reimburse Landlord on demand for any fines or other charges assessed against Landlord arising from or relating to Tenant's direct or indirect violation of any covenants of record, laws/regulations, or zoning rules affecting the Leased Premises.

b. Landlord shall have the right, from time to time, to establish, modify and enforce additional non-discriminatory rules and regulations with respect to the Building or Grounds and may enforce the same. Landlord agrees to provide Tenant with written notice of any such rules and regulations prior to attempting to enforce them against Tenant. Tenant is solely responsible for Tenant's employees', customers' and invitees' compliance with such rules.

VI. Assignment and Subletting

a. Landlord shall have the right to sell, transfer, and/or assign this Lease and the Property (that is, the Grounds and/or Leased Premises, without limitation). Landlord may subdivide and lease the Grounds, thereby reducing the size of the Grounds and without reducing the Minimum Rent hereunder, provided that the Building remains intact and sums for Additional Rent are adjusted pro rata. In the event of the transfer and assignment by Landlord of its interest in this Lease (or such other aspects of the Property) and/or Leased Premises to a person assuming Landlord's obligations under this Lease, Landlord shall thereby be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of the Landlord for performance of such obligations. Any security given by Tenant to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor in interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

b. Tenant shall not assign this Lease or sublease the Leased Premises without Landlord's written approval, which shall be at Landlord's reasonable discretion and will not be unnecessarily conditioned or delayed, or any part thereof or mortgage, pledge or hypothecate its leasehold interest or grant any concession or license within the Leased Premises or Property or sublease any operating department therein, and any attempt to do any of the foregoing without prior Landlord approval in writing shall be void and of no effect. Without limiting the scenarios in which reasonable consent to an assignment may be withheld, it shall be reasonable for Landlord to withhold consent to an assignment of this Lease if the proposed assignee is not as creditworthy as Tenant or the Guarantor, if the proposed assignee's potential use of the Leased Premises differs from the Permitted Use, if the proposed assignment would increase Landlord's costs associated with the Leased Space, or if Landlord's lender /mortgagee does not approve of such assignment. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

c. If Tenant is a corporation, limited liability company, partnership, series or other type of entity, business organization or trust, then any transfer of this Lease from Tenant by merger, consolidation, conversion or dissolution or any change in ownership or power to vote fifty one percent (51%) or more of the voting interests in Tenant outstanding at the time of execution of this Agreement (or at any future time) or any removal of a Guarantor who is an owner of Tenant from Tenant shall constitute an assignment for the purpose of this Lease. For purposes of this Section, the phrase "voting interests" shall refer to shares, membership interest(s), units, or other instruments of entity ownership regularly entitled to vote on matters pertaining to the relevant entity as specified in any applicable law or the entity's governing documents.



d. If this Lease is assigned or if the Leased Premises or Property is subleased (whether in whole or in part) or in the event of the mortgage, pledge or hypothecation of the leasehold interest or grant of any concession or license within the Leased Premises or if the Leased Premises is occupied in whole or in part by anyone other than Tenant, Landlord may nevertheless collect rent from the assignee, sublessee, pledgee, mortgagee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and apply the net amount collected to the rent payable hereunder, but no such transaction or collection of rent or application thereof by Landlord shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties and obligations hereunder.

VII. Repair and Maintenance

a. It is intended that this Lease be a "net lease" such that Landlord shall have no obligation for maintenance or repair of any portion of the Leased Premises. TENANT IS SOLELY RESPONSIBLE FOR ALL DAMAGE OF ANY KIND THAT OCCURS TO THE LEASED PREMISES. TENANT IS SOLELY RESPONSIBLE FOR ALL MAINTENANCE AND REPAIR OF THE PROPERTY AT TENANT'S SOLE COST AND EXPENSE. Landlord shall not have any repair obligations regarding the Leased Premises whatsoever (except for any items that Landlord elects to perform because of Tenant's default under this Lease).

b. Unless Landlord otherwise agrees in writing, Tenant must at all times use contractors approved by Landlord for the provision of such maintenance and repairs. Without limiting the generality of Section VII(a), Tenant shall be responsible for, without limitation:

i. re-surfacing and re-paving paved, concrete or asphalted areas serving the Leased Premises that are damaged or in disrepair;

ii. promptly fixing any potholes or similar abnormalities that arise on or about the Grounds;

iii. keeping the Leased Premises reasonably free of pests and vermin, including but not limited to any termite control or other wood/paper destroying insect control;

iv. maintaining service drives and service areas, driveways servicing the Leased Premises, landscaped areas, sidewalks not maintained by any municipality, roofs, gutters and downspouts, pylon signs/ billboard within the Leased Premises, plate glass, plumbing, closets, electrical, heating, air conditioning, parking lot, walls, pipes and fixtures belonging thereto and the signs and fascias;

v. the repair, replacement and maintenance in good and tenantable condition the Leased Premises and every part thereof, and including without limitation, the roof, exterior walls, structural parts of the Leased Premises and foundation floor covering (including carpeting, tile, terrazzo or other special flooring installed by or at the request of Tenant), utility meters, pipes and conduits, all fixtures, air-conditioning and heating equipment serving the Leased Premises and other equipment therein, the store front or store fronts, Tenant's signs, locks and closing devices, and window sashes, casements or frames, door and door frames and to do all such items of repair, maintenance and improvement or reconstruction as may at any time or from time to time be required by a governmental agency having jurisdiction thereof.

c. Tenant shall further be responsible for the cost of repairing all damages to the exterior and other portions of the building of which the Leased Premises are a part, including the roof and other interior lease spaces, which are caused by Tenant, Tenant's employees, invitees and guests, regardless of whether the cause of the damage was known or unknown by Tenant. All glass, both exterior and interior, is at the sole risk of Tenant, and any glass broken shall be promptly replaced by Tenant with glass of the same kind, size and quality. Tenant shall also repair any damage to the Leased Premises in connection with any burglary, graffiti, acts of vandalism, or forcible entry into the Leased Premises at Tenant's sole expense.

d. Upon any surrender of the Leased Premises, Tenant shall deliver the Leased Premises to Landlord in good order, condition and state of repair, ordinary wear and tear excepted.

e. If the Building or Leased Premises contains air conditioning and/or heating equipment ("HVAC") dedicated to servicing the Leased Premises, on or before the Commencement Date of this Lease or within thirty (30) days of the installation of the HVAC system, Tenant shall enter into a maintenance contract ("Contract") with an air conditioning maintenance contractor ("HVAC Contractor") approved by Landlord for the maintenance and service of the HVAC system. Such Contract shall provide for maintenance of the HVAC system not less than quarterly and changing of the air filters not less than monthly. Tenant shall be responsible for the total cost of the basic charge of the Contract and shall have total responsibility for HVAC maintenance, repair and replacement in accordance with the preceding provisions.

f. Tenant shall not commit waste but shall maintain the Leased Premises in a clean, attractive condition and in good repair. Tenant shall also keep all storefront glass clean. Upon termination, Tenant shall surrender to Landlord all keys and other access devices to the Leased Premises and Building, if applicable. Tenant shall be responsible for any damage to the Leased Premises or Property caused by Tenant's removal of Tenant's equipment and furnishings or any fixtures from the Leased Premises.

g. If Tenant fails, refuses or neglects to properly maintain the Leased Premises after five (5) days notice and an opportunity to cure the same, or to commence or to complete repairs promptly and adequately, or if Landlord finds it necessary to make any repairs or replacements otherwise required to be made by Tenant, then Landlord may, without further notice to Tenant, in addition to all other remedies, but without obligation to do so, enter the Leased Premises and proceed forthwith to have such maintenance, repairs or replacements made, and Tenant shall pay to Landlord, on demand, the cost and expenses therefor as Additional Rent plus a charge of twenty percent (20%) of such costs and expenses to compensate Landlord for its administrative and overhead costs.

h. Landlord shall have a right to enter and inspect the Grounds and any portion the Building open to the general public at any time and without advance notice to Tenant. Upon 24-hour prior notice to Tenant, Landlord shall have a right to enter the Building and any portion of the Leased Premises not open to the public at any reasonable time (including during Tenant's business hours) to inspect the condition thereof, to make necessary repairs or to repair or maintain pipes, wires, and other facilities serving other premises in the Property (such repairs being made at Landlord's discretion and solely if Tenant has failed to maintain the same in accordance with Tenant's complete maintenance and repair obligations under this Lease). Notwithstanding the foregoing, in case of an emergency, Landlord shall have the right to enter the Leased Premises at any time without having given Tenant prior written notice. In any instance where Landlord exercises its rights to enter the Leased Premises, Landlord shall use reasonable efforts to not interfere with Tenant's business operations at the Leased Premises. Landlord shall not be liable for any damage or injury to persons or property caused by any act, failure to act, or grossly negligent, willful, or wanton act or omission of Landlord, its agents, employees or contractors resulting from their entry onto the Leased Premises or repair or any other work performed in the Leased Premises.



i. Tenant shall not permit the filing of any mechanic's liens or other liens or affidavits claiming liens to be filed against the Leased Premises or Property. Tenant is not an agent of Landlord, and Landlord shall not be responsible for any costs of labor or materials furnished by Tenant or Tenant's contractors or employees. Should any mechanic's liens or other liens or affidavits claiming liens be filed against the Leased Premises or the Property for any reason whatsoever incident to the acts or omissions of Tenant, its agents or contractors, Tenant shall cause the same to be immediately cancelled and discharged of record by payment, bonding or otherwise. If Tenant fails to cause the aforesaid lien to be cancelled and discharged, Landlord shall have the right to do so by any manner the Landlord deems fit – including but not limited to paying the lien without inquiring as to its validity - and Landlord's cost incurred in doing so plus twenty-five percent (25%) shall be payable to Landlord by Tenant upon Landlord's demand or invoice for the same. If Landlord requests, Tenant must file a bond to secure the release, satisfaction, or discharge of any lien filed against the Leased Premises within seventy-two (72) hours of Landlord's request for the same or must replace Landlord's posted bond discharging such lien within the same time period. Landlord shall further have the right to setoff and deduct from any allowance funds provided under Exhibit "C" hereunder such sums, costs, fees, and other expenses Landlord incurs to challenge, resolve, or release any lien Tenant has permitted to be filed against the Property or Leased Premises.

VIII. Improvements, Additions, and Fixtures

a. Tenant shall not make any Tenant improvements or exterior or structural alterations or additions to the Leased Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. At such time as Tenant requests the written consent of Landlord, Tenant shall submit plans and specifications for any proposed improvement or alterations or additions to Landlord. Tenant agrees to provide Landlord with a copy of any check paid for plans, drawings, and other items within three (3) days of issuing the same and agrees to provide Landlord with a copy of any contract with a design professional of Tenant's choice. Tenant is solely responsible for compliance with all municipal, State and Federal rules, regulations, and laws which govern Tenant's construction and occupancy of the Leased Premises (including, without limitation, compliance with the requirements of The Americans with Disabilities Act [hereinafter referred to as the "**ADA**"] within the Building or on the Grounds). Except as set forth in Landlord's and Tenant's Work letter, Tenant acknowledges and agrees that Landlord has not undertaken to perform any modifications, alterations or improvements to the Leased Premises. Landlord's approval of Tenant's plans and specifications is to satisfy a condition precedent to the commencement of Tenant's construction and should not be relied upon by Tenant as a representation or express or implied warranty by Landlord of any kind or nature, all of which are hereby disclaimed. In approving any such plans, Landlord is not making any representation or warranty that Tenant's proposed construction is structurally sound, is in compliance with the above-mentioned rules, regulations, or laws, or is sufficient to obtain all required permits. If and when structural alterations are approved by Landlord, Tenant must obtain and submit an all bills paid affidavit and provide a copy of the same within 5 days of issuing a draw payment or final payment to any contractor retained for such structural work.



b. If Tenant makes any alterations, repairs, additions or improvements in or to the Leased Premises, Tenant agrees to carry, or cause its contractor to carry, "Builder's All Risk" insurance in an amount reasonably approved by Landlord covering the performance of the same, workers' compensation coverage where required by law, and such other insurance Landlord may reasonably require.

c. Subject to the lien and security interest and other rights of Landlord referred to in this Lease, Tenant shall remove only "Removable Trade Fixtures", as hereinafter defined, (excluding all components of the HVAC system, pipes, paneling or other wall covering or floor covering, items for which utility connections or roof penetrations were made, and any other item considered a "fixture" by law). The phrase "Removable Trade Fixtures" includes: moveable cabinetry that is not permanently installed, computers, monitors, signs, tables, chairs, desks, wall brackets, hang-rods, shelves, mirrors, marking equipment, non-affixed business machines, electronic equipment, telephones, and other removable equipment. Removable Trade Fixtures excludes any leased or other items not solely owned by Tenant including items provided by vendors for Landlords or Tenant's use. In addition to other applicable provisions of this Lease regarding such removal, the following shall apply:

i. such removal must be made prior to the termination of the term of this Lease;

ii. such removal must be effected without damage to the Leased Premises and Tenant must promptly repair all damage caused by such removal;

iii. all plumbing or electrical wiring connections exposed as a result of the removal of Tenant's Removable Trade Fixtures, or other alterations, additions, fixtures, equipment and property installed or placed by it in the Leased Premises (if such removal is so requested by Landlord in relation to Tenant's vacation of the Leased Premises) shall be capped by Tenant in a safe and workmanlike manner.

d. Before undertaking any alterations, additions, improvements or construction permitted hereunder, Tenant or Tenant's contractor must obtain at its expense a commercial general liability insurance policy insuring Tenant and Landlord against any liability which may arise on account of such proposed alterations, additions, improvements or construction, on an occurrence basis, with the minimum limits set forth in this Section. The commercial general liability policy maintained by Tenant's contractor shall name Landlord (and any designees of Landlord, including any mortgagees of Landlord) as an additional insured, shall include completed operations coverage, and shall be primary to any insurance or self-insurance maintained by Landlord (with no "other insurance" provision to be applicable to Landlord or its affiliates, subsidiaries or related entities). All insurance carried by Tenant's contractor shall be maintained in full force and effect during the term of construction and shall not be cancelled, altered or amended unless thirty (30) days prior written notice is furnished to Landlord.



IX. Casualty Losses and Destruction of Premises.

a. Tenant shall give immediate written notice to Landlord of any damage caused to the Leased Premises by fire or other casualty.

b. Tenant shall be solely responsible for all costs associated with damage or destruction to/of the Leased Premises (for the avoidance of doubt, the Building and Grounds) by any casualty arising from Tenant's negligence, gross negligence, or other acts or omissions.

c. Except as set forth for casualties caused by Tenant, if the Leased Premises are damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance and Landlord does not elect to terminate this Lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at its cost and expense to rebuild and repair the Leased Premises, except that Tenant shall pay any deductible applicable under Landlord's insurance with respect to any casualty. Landlord shall have no obligation to repair or reconstruct the Leased Premises or Building if the Leased Premises (i) are destroyed or substantially damaged by a casualty not covered by Landlord's insurance; or (ii) are destroyed or rendered untenantable by a casualty covered by Landlord's insurance; or (iii) are damaged to such extent that the remaining Term of this Lease is not sufficient to amortize the cost of reconstruction in Landlord's sole opinion. Should Landlord elect to terminate this Lease, it shall give written Notice of such election to Tenant within thirty (30) days after the occurrence of such casualty or within thirty (30) days of discovery of conditions that make it unsuitable to repair or rebuild the Leased Premises, whichever occurs later. If Landlord does not elect to terminate this Lease, Landlord shall proceed with reasonable diligence to rebuild and repair the Leased Premises, subject to matters of force majeure and other matters outside Landlord's control. In the event of any damage or destruction to the Leased Premises, Tenant shall, upon notice from Landlord, promptly remove, at Tenant's sole cost and expense, such portion or all of Tenant's equipment and Removable Trade Fixtures and all other property belonging to Tenant or Tenant's licensees from such portion or all of the Leased Premises as Landlord requests.

d. Tenant agrees that during any period of reconstruction or repair of the Leased Premises it will continue the operation of its business within the Leased Premises to the extent practicable. There shall be no abatement or other reduction in rent during such time period, unless Tenant is unable to operate its business in the Leased Premises due to the inability to occupy at least 50% of the Leased Premises, in which event Tenant shall receive an abatement of Minimum Rent as may be fair and reasonable under the circumstances provided however that Tenant shall continue to be responsible for Additional Rent.

e. Notwithstanding anything herein to the contrary, in the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Property requires that the insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease by delivering written Notice of termination to Tenant within fifteen (15) days after such requirement is made by any such holder, whereupon all rights and obligations hereunder shall cease and terminate.

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



X. Liability and Indemnity

a. Tenant shall be solely responsible for the safety and personal wellbeing of Tenant's employees within the Leased Premises and anywhere else upon the Property.

b. TENANT AGREES TO INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LANDLORD'S AFFILIATES, OWNERS, AGENTS AND EMPLOYEES ("LANDLORD PARTIES") HARMLESS FROM AND AGAINST ALL LOSSES, CLAIMS (INCLUDING BUT NOT LIMITED TO CLAIMS UNDER THE AMERICANS WITH DISABILITY ACT), SUITS, ACTIONS, DAMAGES, AND LIABILITY (INCLUDING COSTS AND EXPENSES OF DEFENDING AGAINST ALL OF THE AFORESAID) RELATING TO OR ARISING (OR ALLEGED TO ARISE) FROM ANY ACT OR OMISSION OF TENANT OR TENANT'S AGENTS, EMPLOYEES, ASSIGNEES, SUBTENANTS, CONTRACTORS, CUSTOMERS/PATIENTS OR INVITEES, OR ARISING FROM ANY INJURY TO OR DEATH OF ANY PERSON OR PERSONS OR DAMAGE TO OR DESTRUCTION OF THE LEASED PREMISES AND/OR PROPERTY OF ANY PERSON OR PERSONS OCCURRING IN THE LEASED PREMISES AND/OR PROPERTY AND TENANT ASSUMES RESPONSIBILITY FOR THE CONDITION OF THE LEASED PREMISES AND PROPERTY.

c. EXCEPT FOR MATTERS ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LANDLORD PARTIES, TENANT AGREES TO INDEMNIFY, DEFEND, AND HOLD LANDLORD PARTIES HARMLESS FROM AND AGAINST ALL LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES, AND LIABILITY (INCLUDING COSTS AND EXPENSES OF DEFENDING AGAINST ALL OF THE AFORESAID) RELATING TO OR ARISING (OR ALLEGED TO ARISE) FROM ANY ACT OR OMISSION OF LANDLORD OR LANDLORD'S AGENTS, EMPLOYEES, ASSIGNEES, SUBTENANTS, CONTRACTORS, CUSTOMERS/PATIENTS OR INVITEES, OR ARISING FROM ANY INJURY TO OR DEATH OF ANY PERSON OR PERSONS OR DAMAGE TO OR DESTRUCTION OF THE PROPERTY OF ANY PERSON OR PERSONS OCCURRING IN OR ABOUT THE LEASED PREMISES AND/OR PROPERTY.

d. UNLESS CAUSED BY THE GROSS NEGLIGENCE (BUT NOT ORDINARY NEGLIGENCE) OR WILLFUL MISCONDUCT OF LANDLORD PARTIES, AND WITHOUT LIMITING THE MUTUAL WAIVER OF SUBROGATION RIGHTS IN THIS LEASE, LANDLORD SHALL NOT BE LIABLE TO TENANT FOR ANY CLAIMS, ACTIONS, DEMANDS, COSTS, EXPENSES, DAMAGE OR LIABILITY OF ANY KIND (i) arising out of the use, occupancy or enjoyment of the Leased Premises by Tenant or any person therein or holding under Tenant or by or through the acts or omissions of any of their respective employees, officers, agents, invitees or contractors, (ii) occasioned by act of God, strike, insurrection, war, court order, requisition, or order of governmental body or authority, (iii) which may arise through repair or alteration of any part of the Property or the Leased Premises, or failure to make any such repairs, (iv) caused by or arising out of fire, explosion, falling sheetrock, gas, electricity, water, rain, snow or dampness, or leaks in any part of the Leased Premises, (v) caused by or arising out of damage to the roof, pipes, appliances or plumbing works or any damage to or malfunction of heating, HVAC or ventilation or air conditioning equipment, (vi) caused by tenants or any persons either in the Leased Premises or elsewhere in the Property or by occupants of property adjacent to the Grounds or by the public or by the construction of any private, public or quasi-public work or (vii) caused by any act, neglect or negligence of Tenant. In no event shall Landlord be liable to Tenant for any loss of or damage to property of Tenant or of others located in the Leased Premises or any other part of the Property by reason of theft or burglary.



e. Any liability of Landlord to Tenant under this Lease shall be limited to only direct, actual damages, and shall not extend to any claim for loss of profits or any other consequential damages.

f. Tenant will take out and maintain, at its own cost and expense:

i. Commercial General Liability Insurance, with premises operations, products & completed operations, broad form property damage and contractual liability endorsements and replacement cost endorsements, relating to the Leased Premises and all of Tenant's property therein and any appurtenances on an occurrence basis with a minimum single limit of Two Million Dollars ($2,000,000.00), Two Million Dollars ($2,000,000.00) in the aggregate.

ii. If Tenant owns or maintains 'company' automobiles for employee use, Automobile Liability Insurance with minimum occurrence single limit of no less than Two Hundred Fifty Thousand Dollars ($250,000.00), Two Hundred Fifty Thousand Dollars ($250,000.00) in the aggregate;

iii. Fire and Lightning, Extended Coverage, Vandalism and Malicious Mischief, loss by fire, windstorm, flood, water damage and all the risks and perils insured against in an "all risk" of physical loss insurance policy, and any other potential losses not otherwise addressed with specificity in this Lease (and such other risks as Landlord may reasonably elect to require) in an amount adequate to cover the full replacement cost of all of Tenant's personal property, decorations, trade fixtures, furnishings, equipment, and contents in the Leased Premises;

iv. Business Interruption Insurance covering risks referred to above in an amount equal to all Minimum Rent and other sums payable under this Lease for a period of Twelve (12) months commencing with the date of loss;

v. Workers' Compensation Insurance covering all persons employed, directly or indirectly, in connection with any finish work performed by Tenant or any repair or alteration authorized by this Lease or consented to by Landlord, and all employees and agents of Tenant with respect to whom death or bodily injury claims could be asserted against Landlord or Tenant, to the extent required by the law of the State of Texas. Employers liability insurance must be at least One Million Dollars ($1,000,000.00); and

vi. Such other insurance as Landlord may reasonably require by written notice that is usual and customary in the geographic region of the Leased Premises, within commercially reasonable amounts.



g. The policies of insurance required to be maintained by Tenant under the terms of this Lease may be referred to in this Section in the singular as a "Required Policy" and in the plural as "Required Policies." All Required Policies shall be in a form and with a company acceptable to Landlord and shall not be subject to material change except upon thirty (30) days prior written notice to Landlord given in the manner set forth in this Lease. Tenant agrees to initially deliver to Landlord a duplicate original or certificate of each Required Policy upon tender of possession of the Leased Premises to Tenant and at all times during the lease term, to maintain a duplicate original or a certificate of all Required Policies on deposit with Landlord.

h. All insurance shall name Landlord (and any designees of Landlord, including any mortgagees of Landlord) as an additional insured (other than the Worker's Compensation insurance) and shall be written by one or more insurance companies licensed or approved to sell insurance in Texas and rated A-/VI or better in the current Best's Rating Guide at the time such policies are issued or renewed. All insurance must contain a waiver of rights of subrogation in favor of Landlord. All insurance provided by Tenant and naming Landlord as an additional insured shall be primary to any insurance or self-insurance maintained by Landlord. In the event of payment of any loss covered by such policy, Landlord (or its designees) shall be paid first by the insurance company for Landlord's loss. The minimum limits of the commercial general liability policy of insurance shall in no way limit or diminish Tenant's liability hereunder. If Tenant fails to obtain and provide any of the insurance required, then Landlord may, but shall not be required to, purchase such insurance on behalf of Tenant and add the cost of such insurance as additional rent payable with the next installment of Minimum Rent.

i. Landlord shall not be liable for any damage includable in the coverage afforded by the standard forms of insurance policies (whether or not such coverage is in effect), no matter how caused, it being understood that Tenant will look solely to its insurer for reimbursement.

j. Tenant will comply with all of the rules and regulations of all fire insurance rating organizations having jurisdiction over the Leased Premises. If, as a result of or in connection with any failure by Tenant to comply with such rules and regulations or any act or omission or commission by Tenant, its employees, agents, contractors or licensees, or as a result of or in connection with the use to which the Leased Premises are put (notwithstanding that such use may be for the purposes hereinbefore permitted or that such use may have been consented to by Landlord), the insurance rates applicable to the Leased Premises, or the Building in which same are located, or any other premises in said building, or any adjacent property owned or controlled by Landlord, or the contents in any or all of the aforesaid properties (including rent insurance relating thereto) shall be higher than that which would be applicable for a typical tenant in the building or Property, Tenant agrees that it will pay to Landlord, on demand, as Additional Rent, such portion of the premiums for all insurance policies in force as shall be attributable to such higher rates as determined by the insurance rating organization having jurisdiction. If Tenant installs any electrical equipment that overloads the wiring in the Leased Premises or the building in which the Leased Premises are located, Tenant shall, at its own cost and expense, promptly make whatever changes are necessary to remedy such condition and to comply with all requirements of the Landlord and the insurance rating organization and any similar body and any governmental authority having jurisdiction thereof. For the purpose of this Section, any finding or schedule of the insurance rating organization having jurisdiction shall be deemed to be conclusive.



XI. Security Deposit, Attornment, and Estoppel Certificate.

a. Tenant will, promptly upon execution of this instrument, pay to Landlord the Security Deposit. Landlord may commingle the Security Deposit with its other funds.

b. The Security Deposit shall be received and held by Landlord, without liability for interest, as security for the faithful performance of all of the terms and provisions of this Lease by Tenant, including the obligation to pay rent. If Tenant defaults on any covenant, duty or obligation of Tenant hereunder, then the Security Deposit, or any part thereof, may be applied by Landlord on the damages sustained by Landlord arising from that default or on any indebtedness owing by reason of any failure of Tenant to make any required monetary payment hereunder. At any time or times when Landlord has made any such application of all or any portion of the Security Deposit, Landlord shall have the right at any time thereafter to request that Tenant pay to Landlord a sum equal to the amount(s) so applied by Landlord so that Landlord will always be in possession of a sum equal to the amount of the Security Deposit stated above.

c. In the event any proceedings are brought for the foreclosure of, or in the event of the conveyance by deed in lieu of foreclosure to, or in the event of exercise of the power of sale under, any mortgage and/or deed of trust or other security instrument made by Landlord affecting the Property or any portion thereof, or in the event Landlord sells, conveys or otherwise transfers its interest in the Leased Premises or Property or any portion thereof, this Lease shall remain in full force and effect and Tenant hereby attorns to, and covenants and agrees to execute an instrument in writing reasonably satisfactory to the new owner whereby Tenant attorns to, such successor-in-interest and recognizes such successor-in-interest as the Landlord under this Lease Payment by or performance of this Lease by any person, firm or corporation claiming an interest in this Lease or the Leased Premises by, through or under Tenant without Landlord's consent in writing shall not constitute an attornment or create any interest in this Lease or the Leased Premises.

d. Tenant shall, at its own cost and expense, at any time and from time to time, within seven (7) days after Landlord's request, execute, acknowledge and deliver to Landlord a written estoppel certificate, in a form specified by Landlord, certifying to Landlord, any mortgagee, or any purchaser of any portion of the Property or any other person designated by Landlord, as of the date of such estoppel certificate:

   i. that Tenant is in possession of the Leased Premises and has unconditionally accepted the same;

   ii. that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and setting forth such modifications);

   iii. whether or not there are then existing any set-offs or defenses against the enforcement of any right or remedy of Landlord, or any duty or obligation of Tenant, hereunder (and, if so, specifying the same in detail and, if none are stated, that none are presumed to exist);

   iv. that rent is paid currently without any offset or defense thereto;



   v. the dates, if any, to which any rent has been paid in advance;

   vi. whether or not there is then existing any claim of Landlord's default under this Lease and, if so, specifying the same in detail, with the lack of any such statement meaning that none exist;

   vii. that Tenant has no knowledge of any event having occurred that authorized the termination of this Lease by Tenant (or if Tenant has such knowledge, specifying the same in detail); and

   viii. any other matters relating to the status of this Lease that Landlord or its mortgagee may request be confirmed, provided that such facts are accurate and ascertainable.

e. In addition to Landlord's other remedies under this Lease, Tenant's failure to execute any certificate, statement or instrument in accordance with the foregoing provisions of this Lease, within the time period provided, shall constitute an irrevocable power of attorney appointing and designating Landlord or its successors or assigns as attorney-in-fact for Tenant to execute and deliver any such certificate, statement or instrument.

XII. Disposition of Possessions

a. If Landlord takes possession of the Leased Premises in accordance with this Agreement for an Event of Default (or for any other lawful reason) and provided that Landlord has first given Tenant fifteen (15) days written notice to remove all of Tenant's furniture, fixtures, equipment, inventory and other property located in the Leased Premises ("Tenant's Possessions"), Landlord shall have the right to:

   i. remove from the Leased Premises and Property as a whole (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) all or any portion of Tenant's Possessions;

   ii. place Tenant's Possessions in storage at any premises within the county in which the Leased Premises is located; and/or

iii. dispose of Tenant's Possessions in a commercially reasonable manner including, but not limited to, donating or otherwise discarding Tenant's Possessions where applicable.

b. Tenant shall be liable to Landlord for actual costs incurred by Landlord in connection with removal, storage and/or disposal of Tenant's Possessions and shall indemnify and hold Landlord harmless from all loss, damage, actual cost and expense and liability in connection with such removal, storage and/or disposal. The cost to Tenant for the removal, storage and/or disposal of Tenant's furniture, fixtures and equipment shall not exceed the competitive rate for such work. Tenant stipulates and agrees that the rights herein granted Landlord are commercially reasonable.

c. This Lease shall constitute a lien on all furniture, fixtures, and equipment in the Leased Premises. Upon Tenant's written request and where such subordination is a condition of Tenant's receipt of such financing, Landlord shall subordinate its lien to Tenant's financing obtained by Tenant in Tenant's ordinary course of business and further provided that such financing is used solely for the benefit of Tenant's operations at the Leased Premises but not another location. Notwithstanding the foregoing, Landlord's statutory lien for unpaid rent may become superior to other liens pursuant to the Texas Property Code.



d. If any of Tenant's Possessions include files, documents, medical records or similar confidential printed or electronic materials of third parties protected from disclosure by applicable law such as the Health Insurance Portability and Accountability Act ("Protected Records"), Tenant agrees to abide by all laws regarding the proper safeguarding and protection of such Protected Records. Tenant shall indemnify and hold Landlord harmless from and against any disclosure or inadvertent disclosure of such Protected Materials arising from Tenant's action, inaction, or failure to comply with this Lease. The following shall also apply where the Tenant has Protected Records:

i. In the event Landlord exercises any of its remedies for Default under this Lease, Landlord may provide Tenant with notice and an opportunity to retrieve and remove any Protected Records from the Leased Premises while in the presence of a designated representative for Landlord and;

ii. If the Protected Records are not removed in the manner set forth above, then Landlord may dispose of such Protected Records in the same manner as set forth in Section XIII above for Tenant's Possessions.

XIII. Default, Remedies and Determination of Damages

a. Each of the following acts or omissions of Tenant or occurrences shall constitute an "Event of Default":

i. Failure or refusal by Tenant to timely pay Minimum Rent, Additional Rent, or any other sum within five (5) calendar days of its due date;

ii. Failure or refusal by Tenant to comply with the Permitted Use restrictions and/or the obligations of Tenant set forth in this Lease regarding assignment/subletting and such failure or refusal continues for a period of three (3) days after written notice thereof to Tenant; provided, however, if such failure to comply cannot reasonably be cured in three (3) days, it shall not be an Event of Default hereunder so long as Tenant commences to cure within such three (3) day period and diligently pursues such cure to completion;

iii. Tenant's or Tenant's guests, invitees, or licensee's violations of rules/Landlord Rules for use of the Property where such violation continues after three (3) days notice to Tenant of such violation provided, however, if such failure to comply cannot reasonably be cured in three (3) days, it shall not be an Event of Default hereunder so long as Tenant commences to cure within such three (3) day period and diligently pursues such cure to completion; provided further, however that such violation shall be an Event of Default without notice to Tenant if Tenant or Tenant's or Tenant's guests, invitees, or licensee's have previously violated the same rule more than two (2) times during any Lease Year;

iv. Failure or refusal by Tenant to timely perform or observe any other covenant, duty or obligation under this Lease, without regard for whether such failure is expressly defined as an Event of Default in such other provision of this Lease after notice and an opportunity to cure the same within seven (7) days; provided, however, if such failure to comply cannot reasonably be cured in seven (7) days, it shall not be an Event of Default hereunder so long as Tenant commences to cure within such seven (7) day period and diligently pursues such cure to completion;

v. Except for Temporary Closures, abandonment or vacating of the Leased Premises for three (3) or more days;



vi. The entry of a decree or order for relief by a court having jurisdiction over Tenant or any guarantor of Tenant's obligations hereunder in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Tenant or any guarantor of Tenant's obligations hereunder or for any substantial part of either of said parties' property, or ordering the winding-up or liquidation of either of said parties' affairs; or

vii. The commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law.

b. In addition to all other remedies provided in this Lease, and after providing appropriate notice if required under this Lease, Landlord may, at its option:

i. Terminate this Lease or Tenant's right to possession of the Leased Premises (in either event, Tenant shall immediately surrender possession of the Leased Premises to Landlord);

ii. Enter upon and take possession of the Leased Premises and expel or remove Tenant and any other occupant therefrom, with or without having terminated the Lease (including removing Tenant's equipment and/or vehicles) without incurring liability for the same;

iii. Alter locks and other security devices at the Leased Premises as provided under Section 93.002 of the Texas Property Code (as amended from time to time). If Landlord exercises its rights to alter the locks at the Leased Premises, Landlord shall only be required to provide Tenant with a new key during Landlord's regular business hours, provided that Landlord SHALL NOT be required to provide Tenant a new key until such time as Tenant cures all defaults under the Lease and, if required by Landlord, Tenant pays to Landlord as a Security Deposit an amount equal to twice the monthly Minimum Rent and Additional Charges due hereunder as a Security Deposit;

c. Landlord's exercise of any one or more remedies under this Lease or otherwise available shall not be deemed to be an acceptance of surrender of the Leased Premises by Tenant, whether by agreement or by operation of law, it being understood that such surrender can be effected only by the written agreement of Landlord and Tenant.

d. Upon the occurrence of an Event of Default and the provision of any notice required under this Lease, Landlord shall not be obligated to give any additional notice (written or oral) regarding Landlord's exercise of any remedies hereunder. Tenant hereby waives (to the extent legally permissible) any and all notices otherwise required under statutory or common law. To the extent of any inconsistency between this Lease and any statutory or common law and to the extent permitted under applicable law, it is the agreement of the parties that this Lease shall prevail;

e. If Tenant fails to make any payment or cure any default within the time permitted under this Lease, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account of Tenant (and enter the Leased Premises for such purpose), and Tenant shall be obligated to and agrees to pay Landlord, upon demand, all actual costs, expenses and disbursements incurred by Landlord in taking such remedial action plus, except as otherwise set forth herein, an additional twelve percent (12%) of such sums to compensate Landlord for its overhead and administrative costs (unless a greater cost for administrative tasks is provided elsewhere in this Lease).



f. In the event Landlord elects to terminate this Lease because of an Event of Default, or in the event Landlord elects to terminate Tenant's right to possession of the Leased Premises without terminating this Lease, Landlord may hold Tenant liable for all rent and other indebtedness accrued to the date of such termination plus such future rent and other indebtedness as would otherwise have been required to be paid by Tenant to Landlord during the balance of the term of the Lease. Landlord may bring actions to collect amounts due by Tenant from time to time without the necessity of Landlord's waiting until expiration of such period.

g. In an Event of Default, Tenant shall also be liable for and shall pay to Landlord, in addition to any sum provided to be paid above: broker's fees incurred by Landlord in connection with reletting the whole or any part of the Leased Premises; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Leased Premises into condition acceptable to a new tenant or tenants, and all reasonable expenses incurred by Landlord in enforcing Landlord's remedies.

h. No termination of this Lease, or summary proceedings, abandonment or vacation, shall relieve Tenant of its liability and obligation under this Lease, whether or not the Leased Premises shall be relet. In any such event Tenant shall pay Landlord the rent and all other charges required to be paid by Tenant up to the time of such event. Thereafter, in addition to any other damages to which Landlord may be entitled, Tenant, until the end of the Lease Term, or what would have been such term in the absence of any such event, shall be liable to Landlord as damages for Tenant's default the equivalent of the amount of rent and other charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting effected pursuant to the provisions of this Lease, after deducting all of Landlord's reasonable expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, repairs and alterations costs, and expenses of preparation for such reletting. Tenant shall pay such current damages (herein called "**deficiency**") to Landlord on the days on which the rent would have been payable under this Lease if this Lease were still in effect, and Landlord shall be entitled to recover from Tenant each deficiency as the same shall arise. Alternatively, at the option of Landlord, Landlord may recover from Tenant all damages incurred by reason of such termination of the excess, if any, of the amount of rent and charges reserved in this Lease for the remainder of the Lease Term over the then reasonable rental value of the Leased Premises for the remainder of the Lease Term, all of which amount shall be immediately due and payable from Tenant to Landlord. In determining the rent that would be payable under this Lease subsequent to any default, the annual rental for each year of the remainder of the Lease Term shall be equal to the average of the total Minimum Rent, Additional Rent, and the charges equivalent to rent paid by Tenant from the Commencement Date to the time of default or during the preceding two (2) full calendar years, whichever period is shorter.

i. Tenant and Landlord agree that Landlord shall make a "reasonable attempt" to relet the Leased Premises if the Leased Premises becomes vacant due to an Event of Default by Tenant. Tenant agrees that Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of Landlord's failure to actually relet the Leased Premises or collect rent due as long as Landlord has fulfilled its duty to make a "reasonable attempt" to relet.



i. Landlord and Tenant agree that Landlord shall be conclusively deemed to have made a "reasonable attempt" to relet the Leased Premises by doing the following: (a) posting a "For Lease" sign on the Leased Premises, and (b) advising Landlord's in-house marketing team or at least one realtor or commercial brokerage entity familiar with the market in which the Leased Premises is located of the availability of the Leased Premises.

ii. Landlord shall not be required to:

1. give any preference or priority to the leasing of the Leased Premises over any other space that Landlord may have available in the Property;

2. take any instruction or advice given by Tenant regarding reletting the Leased Premises; accept any proposed tenant unless such tenant has a credit-worthiness reasonably acceptable to Landlord in its sole discretion; accept any proposed tenant unless such tenant leases the entire Leased Premises upon terms and conditions satisfactory to Landlord in its sole discretion (after giving consideration to all expenditures by Landlord for tenant improvements, realtor/broker's commissions and other leasing costs); or

3. consent to any assignment or sublease for a period which extends beyond the expiration of the current term or which Landlord would not otherwise be required to consent to under the provisions of this Lease.

iii. If Landlord receives any payments from the reletting of the Leased Premises, any such payments shall first be applied to any costs or expenses incurred by Landlord as a result of Tenant's Event of Default under the Lease, including but not limited to leasing and brokerage fees (including expenses to third party brokers, to Landlord's affiliates and employees of Landlord and its affiliates), reasonable attorneys' fees, and construction expenses relating to reletting the Leased Premises (whether paid to a third party contractor or to the Tenant as a construction allowance) and in no event shall Tenant be entitled to any excess of rent (or rent plus other sums) obtained by reletting over and above the rent herein reserved.

j. In recovery under an Event of Default under this Lease, the non-defaulting party shall be entitled to recover and the defaulting party shall be responsible for the non-defaulting party's reasonable attorney's fees and costs of collection incurred including mediator's fees and collection agency fees, if any. For the purposes of such recovery, the "non-defaulting" party must also meet the criteria for a "prevailing party" under applicable law in order to recover reasonable attorney's fees under this clause.

k. In addition to the general provisions for reasonable attorney's fees set forth in this Lease, if Landlord hires an attorney to provide any notice to Tenant under this Lease as a result of Tenant's breach of this Lease or commission of an Event of Default, Tenant shall reimburse Landlord for Landlord's costs and reasonable attorney's fees incurred upon Landlord's demand. This recovery includes, without limitation, attorney's fees and costs arising from any Tenant bankruptcy proceeding or receivership that Landlord files a claim in.



l. Unless otherwise provided in this Lease, in the event of any default by Landlord, Tenant's exclusive remedy shall be an action for damages or an action for specific performance in connection with a default by Landlord, but prior to any such action Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall have a reasonable period of no less than thirty (30) days in which to cure any such default; provided, however, in the event such default reasonably requires more than thirty (30) days to cure, such failure to cure shall not be deemed to be an "Event of Default" if Landlord shall have commenced the curing process within the thirty (30) day period. Unless and until Landlord fails to commence to cure any default after notice or, having commenced the curing process thereafter fails to exercise reasonable diligence to complete such curing, Tenant shall not have any remedy or cause of action by reason thereof. All obligations of Landlord hereunder will be construed as independent covenants, not conditions, and all such obligations will be binding upon Landlord only during the period of its possession of the Leased Premises and not thereafter. Without limiting the foregoing in any way, Tenant expressly acknowledges, understands and agrees that Landlord shall have no liability or obligation whatsoever for damage to the Leased Premises where caused by another tenant or occupant of the Building or that tenant/occupant's facilities such as pipes, wiring, and ducts, including but not limited to damage arising from flooding or other water damage in the Leased Premises.

m. If, by reason of inability to obtain and utilize labor, materials, or supplies, or by reason of circumstances directly or indirectly the result of any state of war or national or local emergency, or by reason of any laws, rules, orders, regulations or requirements of any governmental authority now or hereafter in force, or by reason of strikes or riots, or by reason of accidents in, damage to or the making of repairs, replacements or improvements to, the Leased Premises or any of the equipment thereof, or by reason of force majeure, Acts of God or any other cause beyond the reasonable control of the Landlord, the Landlord shall be unable to perform or shall be delayed in the performance of any of its obligations hereunder, such nonperformance or delay in performance shall not give rise to any claim against the Landlord for damages or constitute a total or partial eviction, constructive or otherwise;, or, except as specifically provided herein, relieve Tenant of any of its obligations hereunder.

n. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent or any other sums due under this Lease will cause Landlord to incur various expenses not contemplated by this Lease, the exact amount of which are presently difficult to ascertain. Accordingly, if any payment of Rent or any other sum due from Tenant under this Lease is not received by Landlord when due, then in addition to such required payment and other assessments due under this Lease, Tenant shall also pay to Landlord a "Late Charge" equal to $150.00.

    i. Landlord and Tenant agree that the Late Charge represents a fair and reasonable estimate of the expenses that Landlord will incur by reason of any late payment by Tenant. Acceptance of the Late Charge by Landlord shall not constitute a waiver of Tenant's default with respect to any past due amounts, nor shall it prevent Landlord from exercising any other rights and remedies granted to Landlord under this Lease, at law, or in equity. The Late Charge shall constitute additional rental payable by Tenant under this Lease and is in addition to, and separate from, the Minimum Rent and other charges payable under this Lease by Tenant.



o. The exercise of any remedy by Landlord shall not be deemed an election of remedies or preclude Landlord from exercising any other remedies in the future. Additionally, Tenant shall defend, indemnify and hold harmless Landlord, Landlord's Mortgagee and their respective representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys' fees) arising from Tenant's failure to perform its obligations under this Lease. Any and all remedies set forth in this Lease:

    i. shall be in addition to any and all other remedies Landlord may have at law or in equity,

    ii. shall be cumulative, and

    iii. may be pursued successively or concurrently as Landlord may elect.

p. Neither Tenant's interest in this Lease, any guarantor of this Lease, any estate hereby created in Tenant nor any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law, except as may specifically be provided pursuant to the Bankruptcy Code (11 USC §101 et. seq.), as the same may be amended from time to time.

q. It is understood and agreed that this Lease is a lease of real property. Upon the filing of a petition by or against Tenant or any guarantor of this Lease under the Bankruptcy Code, Tenant or any guarantor of this Lease, as debtor and as debtor-in-possession, and any trustee who may be appointed with respect to the assets of or estate in bankruptcy of Tenant or any guarantor of this Lease, agree to pay monthly in advance on the first day of each month, as reasonable compensation for the use and occupancy of the Leased Premises, an amount equal to all Minimum Rent, additional rent and other charges otherwise due pursuant to this Lease. Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of the assumption and/or assignment of this Lease are the following:

    i. the cure of any monetary defaults and reimbursement of pecuniary loss within not more than thirty (30) days of assumption and/or assignment;

    ii. the deposit of a sum equal to not less than three (3) months' Minimum Rent and additional rent, which sum shall be determined by Landlord, in its sole discretion, to be a necessary deposit to secure the future performance under this Lease of Tenant or its assignee;

    iii. the use of the Leased Premises as set forth in this Lease, and the quality, quantity and/or lines of merchandise, goods or services required to be offered for sale being unchanged; and

    iv. the prior written consent of any mortgagee to which this Lease has been assigned as collateral security.

r. Should Tenant be in default for the same cause three (3) or more times during any Lease Year, regardless of whether Tenant has cured previous defaults, Landlord may elect to terminate this Lease and whether or not this Lease is terminated, re-enter the Leased Premises and take possession thereof, and remove all persons therefrom, without liability therefore, and Tenant shall have no further claim therein or hereunder.

XIV. Landlord's Mortgagee

a. Tenant agrees that its interest under this Lease shall be subordinate to any mortgage, deed of trust or similar device now or hereafter placed upon the Leased Premises by Landlord. Tenant agrees to execute any instruments required to evidence such subordination; provided, however, any such subordination instruments shall provide that, in the event of foreclosure or conveyance in lieu of foreclosure, Tenant's rights under this Lease shall not be disturbed by the mortgagee or beneficiary so long as Tenant is not in default of any of its obligations under this Lease.

b. Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written notice by certified mail, return receipt requested, specifying the default in reasonable detail, to any Landlord's Mortgagee whose address has been given to Tenant or who is shown of record in a deed of trust, and affording such Landlord's Mortgagee a reasonable opportunity to perform Landlord's obligations hereunder for a period of no less than sixty ( 60) days in length (from the date of such notice).

c. If any current or prospective mortgagee or a mortgagee or beneficiary of a deed of trust encumbering all or any portion of the Property requires, as a condition to financing, modifications to this Lease, then, provided such modifications do not increase the rent to be paid hereunder, Landlord shall submit to Tenant a written amendment with such required modifications and if Tenant fails to execute and return the same within thirty (30) days after the amendment has been submitted Landlord shall be entitled to its remedies as specified in this Lease for an Event of Default. Nothing herein shall require Tenant to execute an amendment or amendments to accomplish changes which would change:

i. the Minimum Rent payable by Tenant;

ii. the permitted use;

iii. the size, dimensions or location of the Leased Premises; or

iv. the length of the Lease Term.

XV. Non-waiver

a. Neither Landlord's acceptance of rent or any other sums payable by Tenant nor failure by Landlord to complain of any action, non-action or default of the other shall constitute a waiver as to any breach of any covenant or condition contained herein nor a waiver of any of Landlord's or Tenant's rights hereunder. Waiver by Landlord of any right for any default shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any prior or subsequent default of any other obligation. No right or remedy of Landlord or covenant, duty or obligation of Tenant hereunder shall be deemed waived unless such waiver is in writing, and signed by Landlord.

XVI. Landlord-Tenant Relation

a. The relation created by this Lease Contract is that of landlord and tenant. No provision of this Lease shall be construed in such a way as to constitute Landlord and Tenant joint venturers or co-partners or to make Tenant the agent of Landlord or to make Landlord liable for the debts of Tenant.



XVII. Eminent Domain

a. If one hundred percent (100%) of the Property, or any portion of the Leased Premises that exceeds twenty-five percent (25%), is taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective on the date physical possession is taken by the condemning authority. However, if any portion of the Leased Premises is taken for public or quasi-public use that is less than or equal to twenty-five percent (25%), this Lease shall continue in full force and effect. If this Lease remains in effect but the leasable Floor Area of the Leased Premises is reduced by eminent domain, Landlord agrees to reduce the Minimum Rent and Additional Rent as may be fair and reasonable based on such reduction provided however, that Landlord shall not be required to reduce the rates at which Minimum Rent is assessed.

b. Landlord, at Landlord's sole discretion, may also terminate this Lease upon Notice to Tenant if twenty-five percent (25%) or more of the Grounds but not the Building are taken for public or quasi-public use as set forth above and below.

c. All sums awarded or agreed upon between Landlord and the condemning authority for the taking of the fee or the leasehold interest, whether as damages or as compensation, will be the property of Landlord. Tenant hereby assigns to Landlord all proceeds, whether by way of compensation or damages, otherwise payable to Tenant for the leasehold interest by reason of such taking.

i. If this Lease is terminated due to a complete or partial taking of the Leased Premises, and to the extent (and only to the extent) then compensable under Texas law, Tenant may apply to the condemning authority for (i) the value of any non-removable personal property and equipment, or the unamortized cost of leasehold improvements installed or made by Tenant in the Leased Premises, (ii) interruption or damage to Tenant's business; and (iii) moving and relocation expenses; provided, however, in no event whatsoever shall compensation to Tenant for any of the foregoing reduce (and Tenant shall have no interest in) the award to Landlord provided in this Section.

d. If this Lease is terminated under any provision of this Section, rental and other sums due and payable by Tenant hereunder shall be payable up to the date that possession is taken by the taking authority, and Landlord will refund to Tenant an equitable portion of any such rental and other sums paid in advance but not yet earned by such date, and Landlord will refund any Security Deposit (subject to deductions set forth in this Lease, if any).

e. If any authority having the power of eminent domain requests that Landlord convey to such authority all or any portion of the Leased Premises or Property, Landlord shall have the right to make a voluntary conveyance to such authority of all or any portion of the Property whether or not proceedings have been filed by such authority; and in the event of any such voluntary conveyance, it shall nevertheless for all purposes hereunder be deemed that there has been a taking by such authority of the property voluntarily conveyed by Landlord.

f. If all or any portion of the Property becomes subject to a taking by eminent domain or a similar law for a limited period of time ("Temporary Taking"), this Lease shall remain in full force and effect and Tenant shall continue to perform all of the terms, conditions and covenants of this Lease, including the payment of rent and all other amounts required hereunder. If any such Temporary Taking terminates prior to the expiration of the Term, Tenant shall restore the Leased Premises as nearly as possible to the condition prior to such Temporary Taking, at Tenant's sole cost and expense. Landlord shall be entitled to receive the entire award for any such Temporary Taking, except that Tenant shall be entitled to receive the portion of such award which:

i. compensates Tenant for its loss of use of the Leased Premises within the applicable Lease Term; and



ii. reimburses Tenant for the reasonable out-of-pocket costs actually incurred by Tenant to restore the Leased Premises as required by this Section.

g. Landlord shall not be liable to Tenant for – and Tenant will hold Landlord harmless form and against - any interruptions in Tenants business or losses suffered by Tenant for any temporary road closures, impairments of access to the Property, or other interruptions in access to the Leased Premises caused by any third party, including but not limited to a governmental authority.

XVIII.Holding Over

a. If Tenant should remain in possession of the Leased Premises after the expiration of the term of this Lease, without the execution of a new lease, then Tenant shall be deemed to be occupying the Leased Premises as a tenant from month-to-month, subject to all the covenants and obligations of this Lease, except that as liquidated damages by reason of such holding over, the monthly amounts payable by Tenant under this Lease shall be increased to one hundred fifty percent (150%) of the monthly amounts payable in the last month of the stated term.

b. The above-described tenancy from month-to-month may be terminated by either party upon thirty (30) days notice to the other.

c. Any rent due after notice has been given shall be calculated on a prorated basis as provided in this Lease. If upon notice of termination by Landlord, Tenant tenders rent in excess of the amount due and payable and Landlord accepts such payment, the acceptance of such payment will not operate as a waiver by Landlord of the notice of termination, unless such waiver is in writing and signed by Landlord. Any such excess amounts tendered and accepted will be promptly refunded by Landlord, after deducting any amounts owed Landlord.

d. The Tenant shall also be liable to Landlord for all damage which Landlord suffers because of any holding over by Tenant, and Tenant shall indemnify Landlord against all claims made by any other tenant or prospective tenant against Landlord resulting from the delay by Landlord in delivering possession of the Leased Premises or a portion thereof to such other tenant or prospective tenant.

XIX. Additional Rent

a. Tenant shall pay to Landlord as Additional Rent a "Tax Payment" and "Insurance Payment" in the amounts provided in this Lease, subject to adjustment as hereinafter set forth.



i. "Taxes", as used herein, shall mean all taxes, assessments, impositions, levies, charges, excises, fees, licenses and other sums levied, assessed, charged or imposed by any governmental authority or other taxing authority or which accrue on the Leased Premises (Building and Grounds) for each calendar year (or portion thereof) during the term of this Lease., including, without limitation, professional fees and expenses incurred by Landlord for ad valorem tax consultants or tax-rendering services and all penalties, interest and other charges (with respect to Taxes) payable by reason of any delay in or failure or refusal of Tenant to make timely payment as required under this Lease. The term "Taxes" includes all amounts collected by any taxing authority, whether classified as ad valorem taxes or non-ad valorem assessments and shall include, without limitation, any tax attributable to operation of the Property and payable by Landlord pursuant to Texas Tax Code, Section 171.001, et seq., as such statute may be amended or recodified from time to time. Tenant waives any rights it may have pursuant to statutory or common law to protest the appraised value of the Property or to appeal the same (and all rights to receive notices of reappraisal as set forth in Sections 41.413 and 42.015 of the Texas Tax Code). Taxes shall not include local, state or federal net income taxes assessed against Landlord. Also, Taxes will not include late payment charges, interest, or penalties incurred by Landlord due to Landlord's acts or omissions. In the event Landlord secures a reduction in Taxes for any tax year for which Tenant has paid its pro rata share of Taxes as provided herein, Tenant shall be entitled to a refund equal to Tenant's share or pro rata share of the actual net amount of any such reduction received by Landlord from the taxing authority. In such event, Landlord will, at Landlord's sole option, either credit the amount of such refund against the next ensuing installment(s) of Taxes, or refund such amount to Tenant. If any Taxes or special assessment may, at Landlord's option, be paid in installments, Landlord may exercise such option so as to maximize the number of installments regardless of whether interest or additional sums will become due.

1. Tenant has no right to protest the real property tax rate applicable to the Property and/or Leased Premises, or the appraised value of the Property and/or Leased Premises determined by any appraisal review board or other taxing entity with authority to determine tax rates and/or appraised values (each a "Taxing Authority"). Tenant hereby knowingly, voluntarily and intentionally waives and releases any right, whether created by law or otherwise, to do any of the following: (1) to file or otherwise protest before any Taxing Authority any such rate or value determination even though Landlord may elect not to file any such protest; (2) to appeal any order of a Taxing Authority which determines any such protest; and (3) to receive, or otherwise require that Landlord deliver to Tenant, a copy of any reappraisal notice received by Landlord from any Taxing Authority. The foregoing waiver and release covers and includes any and all rights, remedies and recourse of Tenant, now or at any time hereafter, under Section 41.413 and Section 42.015 of the Texas Tax Code (as currently enacted or hereafter modified) together with any other or further laws, rules or regulations covering the subject matter thereof. Tenant acknowledges and agrees that the foregoing waiver and release was bargained for by Landlord and Landlord would not have agreed to enter into this Lease in the absence of this waiver and release.

ii. "Insurance Premiums" shall mean the total annual insurance premiums which accrue on all fire and extended coverage insurance, boiler insurance, public liability and property damage insurance, rent insurance and other insurance which, from time to time, may at Landlord's election be carried by Landlord with respect to the Property during any applicable calendar year (or portion thereof) occurring during the term of this Lease; provided, however that, if during any such calendar year all or any part of such coverage is written under a "blanket policy" or otherwise in such manner that Landlord was not charged a specific insurance premium applicable solely to the Property, then in such event, the amount considered to be the Insurance Premium with respect to such coverage for such calendar year shall be that amount which would have been the annual insurance premium payable under the rates in effect on the first day of such applicable calendar year for a separate Texas Standard Form insurance policy generally providing such type and amount of coverage (without any deductible amount) with respect to the Property (considering the type of construction and other relevant matters) irrespective of the fact that Landlord did not actually carry such type policy.



b. Unless and until there is an adjustment in amounts paid by Landlord for Taxes and and/or Insurance Premiums, Tenant shall pay the Tax Payment and Insurance Payment monthly in advance for each and every month during the term of this Lease (charges for any partial month to be pro-rated).

c. Landlord shall have the right, exercisable by written notice not more than one time per Lease Year, to adjust amounts payable by Tenant for the Tax Payment and/or Insurance Payment to reflect cost increases incurred by Landlord and any of the aforesaid items as to which Landlord shall have given such notice are collectively referred to in this Section as "Changed Costs."

i. If Landlord gives notice to Tenant as provided in the preceding Section, then (with respect to any costs as to which Landlord shall have so given notice) the following shall apply:

1. Landlord may give notice to Tenant of Landlord's estimate of Tenant's responsibility for any Changed Costs, and thereafter Tenant shall pay Landlord on the first day of each month, monthly in advance, one-twelfth (1/12th) of the amount(s) so estimated by Landlord.

2. At the end of each calendar year, including the calendar year during which this Lease terminates, Landlord will give Tenant notice of (a) the total amount(s) paid by Tenant for such calendar year and (b) the actual amount of any Changed Costs for such calendar year. If the actual amount of any Changed Costs exceeds the aggregate amount(s) paid by Tenant, Tenant shall pay to Landlord the deficiency within thirty (30) days following notice from Landlord. If the aggregate amount(s) previously paid by Tenant with respect thereto exceeds any Changed Costs, then Landlord will either credit the surplus (net of any amounts then owing by Tenant to Landlord) against the next ensuing installment(s) of any of Changed Costs payable by Tenant, or refund the net surplus to Tenant within sixty (60) days after the aforesaid statement.

d. If there is presently in effect or hereafter adopted any nature of sales tax, franchise tax, use tax or other tax on rents or other sums received by Landlord under this Lease (herein referred to as "Rent Sales Tax"), then in addition to all rent and other payments to be made by Tenant as provided above, Tenant will also pay Landlord a sum equal to the amount of such Rent Sales Tax. The term "Rent Sales Tax" shall not include any income taxes applicable to Landlord.



e. Tenant shall have the right to audit the foregoing costs no more than once during any Lease Year at Tenant's own cost and expense. If such audit fails to reveal an overcharge by Landlord in excess of five percent (5%), Tenant shall also reimburse Landlords' costs incurred during such audit within five (5) days of written request from Landlord not to exceed $5,000.00; otherwise, Landlord shall bear its own costs. If such audit reveals an overcharge by Landlord in excess of five percent (5%), Landlord shall reimburse Tenants' costs incurred in connection with such audit in an amount not to exceed $5,000.00 within five (5) days of written request from Tenant. Any credit or debit arising from such audit shall be applied to the next installment(s) of Additional Rent then due.

XX. Notice

a. Any notice which may or shall be given under the terms of this Lease shall be in writing and shall be either delivered to the Notice Address of either Landlord or Tenant, by hand, or by national or regional overnight courier service that provides written confirmation of delivery ("Courier Service") or sent by United States Registered or Certified Mail, adequate postage prepaid, return receipt requested. The initial Notice addresses are set forth on the Fundamental Lease Provisions. Either party's address may be changed from time to time by such party by giving notice as provided above. No change of address of either party shall be binding on the other party until notice of such change of address is given as herein provided. A post office receipt for registration of such notice or signed return receipt shall be conclusive that such notice was delivered in due course of mail if mailed as provided above. For purposes of the calculation of various time periods referred to herein, notice delivered by hand or by Courier Service shall be deemed received when delivered to the place for giving notice to a party referred to above (or on the date delivery is refused) and notice mailed in the manner provided above shall be deemed completed upon the earlier to occur of (i) actual receipt as indicated on the signed return receipt, or (ii) three (3) days after mailing as herein provided. Finally, any written notice addressed as provided hereinabove and actually received by the addressee, shall constitute sufficient notice for all purposes under this Lease. Unless otherwise expressly stated in another provision of this Lease, the term "notice" or "Notice" as between Landlord and Tenant or for notices to Landlord's mortgagee or the beneficiary of a deed of trust for the Property means notice submitted in accordance with this Lease provision.

b. Notices may also be sent by electronic mail to the maximum extent permitted by applicable law as set forth in the Miscellaneous terms hereunder.

XXI. Tenant's Signs

a. The design, size, specifications, graphics, materials, manner of affixing, exact location, colors and lighting (if applicable) of the exterior signage of the Leased Premises, shall be subject to Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed. Tenant shall install, maintain, and repair the exterior signage at Tenant's sole cost and expenses. The signage rights granted to Tenant under this Lease may only be exercised by the named Tenant hereunder executing this Lease and may not be exercised or used by or assigned to any other person or entity other than a transferee pursuant to a permitted transfer or transferee approved by Landlord.



XXII. Terminology and Additional Terms

a. With respect to terminology in this Lease, each number (singular or plural) shall include all numbers, and each gender (male, female or neuter) shall include all genders.

b. This Lease shall be binding upon and shall accrue to the benefit of Landlord, its successors and assigns.

c. In all instances where either Landlord or Tenant is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

d. The obligation of Tenant to pay all rent and other sums hereunder provided to be paid by Tenant and the obligation of Tenant to perform Tenant's other covenants and duties hereunder constitute independent, unconditional obligations to be performed at all times provided for hereunder. Tenant waives and relinquishes all rights which Tenant might have to claim any nature of lien against or withhold, or deduct from or off-set against any rent and other sums provided hereunder to be paid Landlord by Tenant, except as explicitly allowed in this Lease; provided, however, if Tenant obtains a final judgment against Landlord in a court of competent jurisdiction, the lien evidenced by said judgment may be attached to or encumber the Leased Premises.

e. Under no circumstances whatsoever shall Landlord ever be liable hereunder for consequential damages or special damages; and all liability of Landlord for damages for breach of any covenant, duty or obligation of Landlord hereunder may be satisfied only out of the interest of Landlord in the Leased Premises (including rents, profits and proceeds therefrom) existing at the time any such liability is adjudicated in a proceeding as to which the judgment adjudicating such liability is non-appealable and not subject to further review. The term "Landlord" shall mean only the owner, of the Leased Premises, and in the event of the transfer by such owner of its interest in the Leased Premises, such owner shall thereupon be released and discharged from all covenants and obligations of Landlord thereafter accruing, but such covenants and obligations shall be binding during the lease term upon each new owner for the duration of such owner's ownership.

f. All monetary obligations of Landlord and Tenant (including, without limitation, any monetary obligation of Landlord or Tenant for damages for any breach of the respective covenants, duties or obligations of Landlord or Tenant hereunder) are performable exclusively in the county in which the Leased Premises is located.

g. The doctrine of independent covenants will apply in all matters relating to this Lease including, without limitation, all obligations of Landlord and Tenant to perform their respective obligations under this Lease.

h. Tenant hereby acknowledges and agrees that Landlord is not bound to perform or liable for the non-performance of any implied covenant or implied duty of Landlord not expressly set forth herein. **Tenant acknowledges and agrees that Landlord has made no warranty (either express or implied) that the Leased Premises are suitable for their intended commercial purpose.** Tenant agrees to perform all of its Lease obligations (including without limitation, the obligation to pay rent), notwithstanding an alleged breach by Landlord of any such implied warranty. Tenant agrees that Landlord shall incur no liability to Tenant by reason of any defect in the Leased Premises, whether apparent or latent.

i. If this Lease is executed by more than one person or entity as "Tenant," each such person or entity shall be jointly and severally liable hereunder. It is expressly understood that any one of the parties who have executed this Lease as "Tenant" (herein individually referred to as "Signatory") shall be empowered to execute any modification, amendment, exhibit, floor plan, or other document ("Future Instrument") and bind each of the Signatories who has executed this Lease regardless of whether each Signatory, in fact, executes such Future Instrument.



j. Upon written request, Tenant shall provide to Landlord, within forty-five (45) days of such request, a copy of its most recent financial statement including both a balance sheet and income statement and, if requested by Landlord, tax returns. Such request may be made by Landlord from time to time during the Lease.

k. If during the term of this Lease Tenant requests that Landlord prepare, review, or negotiate legal documentation for any reason (except in connection with an agreement solely between Landlord and Tenant), then Landlord reserves the right to charge Tenant a reasonable fee for the preparation, review and/or negotiation of such documentation. Such fee shall not exceed TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS ($2,500.00) per occurrence and shall be due and payable to Landlord on demand. Tenant represents and warrants to Landlord that Tenant is currently in compliance with, and Tenant further covenants to Landlord that Tenant shall at all times during the term of the Lease (including any extension thereof) remain in compliance with, the regulations of the Office of Foreign Assets Control ("OFAC") of the U.S. Department of Treasury (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) and any statute, executive order (including, but not limited to, Executive Order 13224, dated September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or other governmental, regulatory, or administrative action relating thereto.

XXIII. Special Terms.

a. Hazardous Material.

i. Tenant hereby covenants that during its possession and use of the Leased Premises or Property:

1. Tenant shall not transport, store, treat or dispose, nor allow or arrange for any third parties to transport, store, treat or dispose of Hazardous Substances (as defined herein) or other waste upon the Leased Premises or Property, except as permitted by law. The term "Hazardous Substances" shall mean any pollutant, toxic material, contaminant, hazardous waste, hazardous substance, or other controlled item under any applicable Environmental Law and, for the purposes of this Lease, also includes asbestos, polychlorinated biphenyls, and any substance that requires investigation, removal, or remediation under any Environmental Law (except for routine items kept as inventory, packaging, or janitorial supplies in accordance with Environmental Law). "Environmental Law" or "Environmental Laws" mean and include the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sections 9601 et seq.), Hazardous Materials Transportation Act 49 U.S.C., Section 1801 et seq, Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Toxic Substances, regulations promulgated by the Texas Commission on Environmental Quality, or any similar municipal/local, state or federal law.



2. Tenant shall not allow the storage or a Release of any Hazardous Substance on, into or beneath the surface of any parcel of the Leased Premises or Property. The term "Release" shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of substances that require remedial action under Environmental Law.

3. Tenant shall be responsible for obtaining any required permits and paying any fees and providing any testing required by any governmental agency.

4. Tenant will not allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute a public or private nuisance.

5. Prior to any Hazardous Substance being brought upon or into the Leased Premises or Property, whether with Landlord's written permission or not, Tenant will provide to Landlord any applicable material safety data sheets regarding said Hazardous Substance as well as a written description of the amount of such substance to be brought upon or into the Leased Premises or Property and the common and recognized chemical name of such Hazardous Substance.

6. Landlord or Landlord's representative shall have the right, but not the obligation to enter the Leased Premises for the purpose of inspecting the storage, use and disposal of Hazardous Substances to ensure compliance with all relevant state and federal environmental laws and regulations. If it is determined, in Landlord's sole opinion, that said Hazardous Substances are being improperly stored, used, or disposed of, then Tenant shall immediately take such corrective action as requested by Landlord. Should Tenant fail to take such corrective action within twenty-four (24) hours, Landlord shall have the right to perform such work and Tenant shall promptly reimburse Landlord for any and all costs associated with said work. If at any time during or after the term of the lease, the Property are found to be contaminated or subject to conditions in violation of applicable Environmental Laws, Tenant shall diligently institute proper and through cleanup procedures at Tenant's sole cost. In either event, such failure by Tenant shall constitute an Event of Default giving rise to Landlord's rights and remedies under this Agreement for an Event of Default.

7. TENANT BY ANY ACT OR OMISSION DIRECTLY OR INDIRECTLY THROUGH A CONTRACTOR, EMPLOYEE, SHALL NOT CAUSE THE RELEASE OF HAZARDOUS MATERIALS INTO ANY PIPES, DRAINS, OR WATER/SEWER DRAINAGE SYSTEMS WITHIN OR SERVICING THE LEASED PREMISES.

ii. TENANT AGREES TO INDEMNIFY AND HOLD HARMLESS LANDLORD FROM ANY AND ALL CLAIMS, DAMAGES, FINES, JUDGMENTS, PENALTIES, COSTS, LIABILITIES OR LOSSES (INCLUDING, WITHOUT LIMITATION, ANY AND ALL SUMS PAID FOR SETTLEMENT OF CLAIMS, REASONABLE ATTORNEY'S FEES, CONSULTANT AND EXPERT FEES) ARISING DURING THE LEASE TERM IN CONNECTION WITH THE PRESENCE OR SUSPECTED PRESENCE OF HAZARDOUS SUBSTANCES IN OR ON THE LEASED PREMISES OR PROPERTY, WHICH ARE PRESENT AS A RESULT OF NEGLIGENCE, BREACH OF THIS LEASE, WILLFUL MISCONDUCT OR OTHER ACTS OF TENANT, TENANT'S AGENTS, EMPLOYEES, CONTRACTORS OR INVITEES. Without limitation of the foregoing, this indemnification shall include any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision, which are present as a result of negligence, breach of this Lease, willful misconduct or other acts of Tenant, Tenant's agents, employees, contractors or invitees. This indemnification shall specifically include any and all costs due to Hazardous Substances which flow, diffuse, migrate or percolate into, onto or under the Leased Premises or Property after the Lease Term commences.



XXIV. Condition of Lease

a. Notwithstanding anything to the contrary contained in this Lease, Tenant shall obtain all governmental, regulatory authority and other licenses and permits authorizing Tenant to use the Leased Premises for the Permitted Use (the "Permits"). In connection with said Permits, Tenant agrees that: (i) Tenant shall be responsible for all costs and expenses in connection with said Permits; (ii) Tenant shall make application for its Permits as soon as commercially practicable following the execution date hereof and exercise diligent efforts to obtain said Permits within at least 90 days after the date of execution of this Lease; and (iii) Tenant agrees to give Landlord written notice immediately upon satisfaction of the foregoing condition.

b. Tenant understands and acknowledges that utility services to the Leased Premises and the Building housing the Leased Premises may be limited in availability, quantity, capacity, or by other restrictions, including but not limited to limitations on electrical service, water/plumbing-related connections, the lack of gas connections and other items. In addition to any language conveying the Leased Premises "as-is" and "with all faults" or other disclaimers of warranty contained in this Lease, Tenant further understands and agrees that it is Tenant's sole responsibility to determine whether the utility services and connections are adequate for Tenant's intended use, and Tenant agrees to release and hold Landlord harmless from and against any claims of any kind arising from or relating to utility services or connections at the Leased Premises being unavailable, inadequate, of the wrong capacity, in the wrong quantity, or otherwise unsuitable for Tenant's intended use. To the extent Tenant requires additional or different utility services than that which is made available with Leased Premises, Tenant shall solely bear the cost and expense of any such addition/alteration, and any construction, installation, or other work required to satisfy Tenant's needs remains subject to Landlord's right to pre-approve the same pursuant to this Lease and must be in strict compliance with the utility provider's guidelines/rules; declarations, restrictions, covenants, or other items recorded against or applicable to the Property; and applicable law.

c. Tenant stipulates that they have examined the Building and Grounds, and any other improvements comprising or adjacent to the Leased Premises, and they are all, at the date of the lease, in good order and repair and in a safe and clean condition. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS LEASE, LANDLORD HAS NOT MADE, IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES, REPRESENTATIONS, GUARANTEES OR ASSURANCE, EXPRESS OR IMPLIED, REGARDING THE PROPERTY AND EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, WARRANTIES, REPRESENTATIONS, GUARANTEES AND ASSURANCES REGARDING (1)ENVIRONMENTAL CONDITION, (2) QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION, (3)VALUE, PROFITABILITY, SUITABILITY, MERCHANTABILITY, MARKETABILITY, FAIRNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENTS; OR (4) COMPLIANCE, WITH ANY GOVERNMENTAL CONSTITUTION, STATUE, LAW, ORDINANCE, CODE, REGULATION, RULE, ORDER RULING, DECREES OR JUDGMENT OR ANY COVENANT, CONDITION, RESTRICTION OR OTHER ENCUMBRANCE. TENANT (1) AGREES TO THE DISCLAIMER SET FORTH IN THIS PARAGRAPH, AND (2) ACCEPTS THE LEASED PREMISES AND PROPERTY "AS-IS. WHERE-IS", WITH ALL FAULTS AND DEFECTS (LATENT OR PATENT). IF THE WARRANTY OF GOOD AND WORKMANLIKE REPAIR IS IMPOSED ON LANDLORD FOR ANY REASON DESPITE THE DISCLAIMERS STATED ABOVE, LANDLORD AND TENANT AGREE THAT SUCH WARRANTY SHALL BE: LIMITED TO LANDLORD'S REPAIR OBLIGATIONS SET FORTH IN THIS LEASE; SOLELY FOR THOSE ITEMS FOR WHICH LANDLORD IS RESPONSIBLE FOR REPAIRING PURSUANT TO THIS LEASE; AND FURTHER LIMITED TO LANDLORD REQUESTING WARRANTY SERVICES FROM SUCH CONTRACTOR RETAINED BY LANDLORD TO PERFORM SUCH WORK.



XXV. Landlord's Lien.

a. Tenant hereby grants to Landlord a valid first security interest on all the goods, inventory, chattels, furniture, trade fixtures, and property that Tenant may own and have on the Property at any time or times during the term of this Lease, as well as on the proceeds of any insurance accruing to Tenant by reason of any destruction of or damage to any such property, to secure all rents and other sums due or to become due Landlord under this Lease, any and all exemption laws being expressly waived in favor of the security interest. It is agreed that this express security interest shall not be construed as a waiver of any statutory or other liens given or that may be given to Landlord, but shall be in addition to any such statutory or other lien. It is agreed that in the event of default by Tenant under this Lease, Landlord shall have and be entitled to exercise all right and remedies provided or granted to a secured party after default under the Uniform Commercial Code with respect to any and all personal property on the premises, including, without limitation, the right to take and retain possession of any or all such property and to sell or otherwise utilize such property at public or private sale or in any other manner authorized or provided in the Uniform Commercial Code. On request by Landlord, Tenant agrees to execute and deliver to Landlord from time to time such UCC Financing Statements as Landlord may deem necessary to perfect the security interest of Landlord in the property described above and the proceeds of such property under the provisions of the Uniform Commercial Code in force in the State of Texas.

XXVI. DTPA and Security Waiver

a. Tenant acknowledges and agrees on its own behalf and on behalf of any permitted assigns and successors of Tenant hereafter, that the Texas Deceptive Trade Practices-Consumer Protection Act, Subchapter E of Chapter 17 of the Texas Business and Commerce Code (the "DTPA"), is not applicable to this transaction. Accordingly, Tenant's rights and remedies with respect to any transaction contemplated under this Lease, and with respect to all acts or practices of Landlord, past, present or future, in connection with such transactions, shall be governed by legal principles other than the DTPA.



b. **Waiver of Consumer Rights.**

i. **Tenant waives its rights under the Texas Deceptive Trade Practices Consumer Protection Act, Section 17.41 et seq., Texas Business & Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of its own selection (or after waiving the right to such consultation), Tenant voluntarily consents to this waiver.**

c. LANDLORD MAKES NO REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, THAT ANY SECURITY WILL BE PROVIDED TO THE PROPERTY. TENANT HEREBY ACKNOWLEDGES AND AGREES THAT IT SHALL BE RESPONSIBLE AT ITS COST AND EXPENSE FOR THE INSTALLATION, MAINTENANCE, AND OPERATION OF ANY AND ALL SURVEILLANCE EQUIPMENT AND /OR SECURITY MEASURES AT THE LEASED PREMISES OR PROPERTY TO THE EXTENT THAT THE SAME IS DEEMED NECESSARY BY TENANT. SUCH SECURITY MEASURES SHOULD BE MAINTAINED AS DEEMED REASONABLE AND NECESSARY BY THE TENANT, IN A MANNER AS TO PROVIDE A SAFE AND SECURE PREMISES FOR TENANT'S AGENTS, EMPLOYEE, INVITEES, LICENSEES, AND CUSTOMERS. LANDLORD SHALL NOT BE LIABLE FOR, AND TENANT HEREBY WAIVES ANY RIGHT TO ANY CLAIM AGAINST LANDLORD FOR (1) ANY UNAUTHORIZED OR CRIMINAL ENTRY OF THIRD PARTY INTO THE PROPERTY, (2)ANY DAMAGE TO PERSONS OR PROPERTY, OR (3) ANY LOSS OF PROPERTY IN AND ABOUT PROPERTY, BY AND FROM ANY UNAUTHORIZED OR CRIMINAL ACT OF THIRD PARTIES, REGARDLESS OF ANY ACTION, INACTION, FAILURE, BREAKDOWN, MALFUNCTION OR INSUFFICIENCY OF THE SECURITY SERVICES PROVIDED BY LANDLORD, IF ANY. LANDLORD DOES NOT GUARANTEE ANY LEVEL OF SECURITY AND TENANT RELEASES LANDLORD FROM ANY RESPONSIBILITY FOR ANY CLAIMS BASED UPON ASSERTIONS THAT LANDLORD FAILED TO PROVIDE ADEQUATE SECURITY TO THE PROPERTY.

XXVII.Additional Miscellaneous Terms

a. Brokers.

i. No brokers or sales agents were used to negotiate or obtain this Lease.

b. Advice of Counsel; Due Diligence.

i. Each Party acknowledges that they are familiar with the business matters to be achieved pursuant to this Agreement and have read and understood the terms of this agreement and are signing under their own free will. Each party represents and warrants that it has entered into this agreement after seeking advice from its own attorney or after choosing not to obtain said consultation.

ii. Tenant has performed its due diligence regarding the Landlord, this Lease, the Leased Premise (Building and the Grounds) and Property. TENANT THEREFORE RELEASES LANDLORD FROM ANY CLAIMS FOR FRAUD, FRAUD IN THE INDUCEMENT, OR MISREPRESENTATION REGARDING THE ENTRY OF THIS LEASE.



c. Severability.

i. If one or more provisions of this Agreement are held to be unenforceable under applicable law, then:

1. such provision shall be excluded from this Agreement;

2. the balance of the Agreement shall be interpreted as if such provision were so excluded; and

3. the balance of the Agreement shall be enforceable in accordance with its terms.

d. Amendments.

i. Landlord must consent to any amendment of this Lease in writing and only in a written amendment specifically intended to alter the terms of this Lease.

e. Governing Law.

i. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of Texas.

f. Electronic Mail Notices.

i. Where Notice is required under this Lease, except as otherwise provided by law, the Parties may send and receive notice under this Agreement by electronic mail to the electronic mail address designated on the signature page of this Agreement (as updated from time to time by written Notice to the other Party) provided that at least one other permitted method of Notice hereunder is also used. Electronic mail correspondence sent after 5:00PM (CST) on a given day shall be deemed received on the next calendar day. In the event of a conflict between the timing of the electronic Notice and another form of Notice for the purposes of calculating deadlines under this Lease, the timing of the electronic notice shall be used.

g. Descriptive Headings.

i. The descriptive headings of any section of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provision hereof.

ii. Examples, where used, are for illustrative purposes only and, while not intended to provide contractual language, are intended to aid a court, arbiter, decision maker, or other reviewer in understanding the intent of the Parties.

h. Dispute Resolution and Forum Selection; Jury Waiver.

i. In the event of a dispute or claim arising out of or in connection with any provision of this Agreement, the Parties agree to submit themselves to the jurisdiction of a Texas court in the county in which the Leased Premises is located.

ii. The Parties agree that the State of Texas shall be the sole forum for filing any causes of action in a court of law or seeking injunctive or similar equitable relief without regard for any conflicts of laws provisions. The Parties hereby expressly waive any rights to contest the power of the courts of the State of Texas to exercise personal jurisdiction over them.



III. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE LEASED PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

i. Entire Agreement

i. This instrument (including all riders and exhibits) constitutes the entire agreement between Landlord and Tenant; no prior written or prior or contemporaneous oral promises or representations shall be binding. This Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto.

j. Force Majeure.

i. Where used in this Lease, the term "force majeure," whether capitalized or not, refers to:

1. Natural disasters or other disruptive events caused by nature or manmade events including but not limited to hurricanes, tornados, greater than average/excessive rainfall, flood, drought, and/or fire;

2. "Acts of God";

3. Acts of terrorism or war (whether war is declared or undeclared);

4. Insurrection, riots, or strike;

5. Disease/pandemic and related enforcement actions by government agencies or private entites;

6. Unavailability of, or shortages in the supply of, materials or labor; or

7. Legal prohibition, embargo, government action, or government inaction (including but not limited to delays in permit issuance, plat certification or acceptance, or infrastructure approval)

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, the Parties hereto have executed the foregoing Commercial Lease as of this the21st day of July, 2021.

LANDLORD:

MDW Management, LLC
By: Denise Wanke

Email Notice Address: mike@a1glasscoating.com
With a copy to: atiwari@texaslegalpros.com

TENANT(S):

Mobile Tint, LLC

Signature

Michael Wanke, Sole Member

Printed Name and Title

Email Notice Address: mike@a1glasscoating.com



**Exhibit "A"**

Building: 4,000 sqft +/- metal building located upon the Grounds, w/ approximately 800 sqft office space, 800 sqft of storage space, and 3400 sqft of open bays/mechanical areas. Approximately 1600 sqft of heated/cooled space.

Grounds: 0.673 acres of land, more or less, out of Lot 25, Block 1, Universal Heights Subdivision, City of San Antonio, Bexar County, Texas, a subdivision recorded in Volume 6400, Page 23, Map and Plat Records of Bexar County, Texas, being that same tract of land described by Warranty Deed with Vendor's Lien recorded in Volume 12138, Page 565, Official Public Records of Bexar County, Texas, and also in that certain Warranty Deed with Vendor's Lien filed under Document Number 20200130385, Official Public Records of Bexar County, Texas.



**Exhibit A-1**
**GUARANTY**

In order to induce MDW Management, LLC ("Landlord") to execute the foregoing Commercial Lease (the "Lease") with Mobile Tint, LLC ("Tenant"), for a certain tract of real property with improvements thereon owned by Landlord in Bexar County Texas and commonly known as 2029 Pat Booker Rd, Universal City, TX 78148 the undersigned ("Guarantor") (whether one or more than one) has guaranteed and by this instrument does hereby guarantee the payment and performance of all liabilities, obligations and duties (including, but not limited to, payment of rent) imposed upon Tenant under the terms of the Lease, as if Guarantor has executed the Lease as Tenant thereunder.

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 by Tenant under the Lease, and waives diligence, presentment and suit on the part of Landlord in the enforcement of any liability, obligation or duty guaranteed hereby.

Guarantor further agrees that Landlord shall not be first required to enforce against Tenant or any other person any liability, obligation or duty guaranteed hereby before seeking enforcement thereof against Guarantor. Suit may be brought and maintained against Guarantor by Landlord to enforce any liability, obligation or duty guaranteed hereby without joinder of Tenant or any other person. The liability of Guarantor shall not be affected by any indulgence, compromise, settlement or variation of terms which may be extended to Tenant by Landlord or agreed upon by Landlord and Tenant, and shall not be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release, or limitation of the liability of Tenant or its estate in bankruptcy, or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the Federal Bankruptcy Code, or any similar law or statute of the United States or any State thereof. Landlord and Tenant, without notice or consent by Guarantor, may at any time or times enter into such extensions, amendments, assignments, subleases, or other covenants respecting the Lease as they may deem appropriate; and Guarantor shall not be released thereby, but shall continue to be fully liable for the payment and performance of all liabilities, obligations and duties of Tenant under the Lease as so extended, amended, assigned or otherwise modified including, without limitation, any period of time during which Tenant continues to occupy the Leased Premises in excess of the Lease Term. Landlord shall not be required to make any demand on Tenant, apply any security deposit or Prepaid Rent being held by Landlord on behalf of Tenant or any other credit in favor of Tenant, or otherwise pursue or exhaust its remedies against Tenant before, simultaneously with, or after enforcing its rights and remedies hereunder against Guarantor.

The validity of this Guaranty and the liability of Guarantor hereunder shall in no way be terminated, affected or impaired by the modification, limitation, release or discharge of Tenant in any bankruptcy or other proceeding, the rejection or disaffirmance of the Lease in any such proceeding or any disability of Tenant, the assumption and assignment or transfer of the Lease by Tenant or Tenant's bankruptcy trustee, or any other relief of Tenant from any of Tenant's obligations under the Lease by operation of law, Guarantor hereby waiving all suretyship defenses.



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 Guarantor hereunder 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. Guarantor further agrees that no such action shall impair the rights of Landlord to enforce the Lease against any remaining guarantor or guarantors, including Guarantor. Notwithstanding the above, until such time as all of Tenant's obligations under the Lease are fully performed, Guarantor waives any rights that Guarantor may have against Tenant by reason of any one or more payments or acts in compliance with the obligations of Guarantor under this Guaranty, and subordinates any liability or indebtedness of Tenant held by Guarantor to the obligations of Tenant to Landlord under the Lease.

Guarantor agrees that if Landlord shall employ an attorney to present, enforce or defend all of Landlord's rights or remedies hereunder, Guarantor shall pay any reasonable attorney's fees incurred by Landlord in such connection. This Guaranty is a guaranty of payment and performance, not a guaranty of collection. This Guaranty shall be binding upon Guarantor and the successors, heirs, executors and administrators of Guarantor, and shall inure to the benefit of Landlord and Landlord's heirs, executors, administrators, and assigns. Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability hereunder to the maximum extent permitted under applicable law.

This Guaranty shall be governed by and construed in accordance with the laws of the State of Texas, applicable to agreements made and to be wholly performed within the State of Texas. Guarantor hereby consents to the jurisdiction of any competent court within Bexar County, Texas.

The signatory executing this Guaranty warrants that such signatory is duly authorized to bind the undersigned Guarantor to this Guaranty, and both the undersigned signatory and Guarantor warrant and represent to Landlord that that the form and entry of this Guaranty was duly approved and authorized in accordance with any governing documents for the Guarantor or applicable law.

Notwithstanding the foregoing, this Guaranty shall terminate upon the occurrence of earlier of the following: (i) the date of Guarantor's acquisition of 100% of the ownership interests of the Tenant; (ii) the date that Guarantor beneficially owns less than an eighty percent (80%) ownership interest in Tenant; or (iii) two (2) years from and after the effective date of this Guaranty.

EXECUTED, THIS 21st day of July, 2021 to be effective the same day as the effective day of the Lease.

GUARANTOR: C-Bond Systems, Inc.

Signature

Scott Silverman, Chief Executive Officer

Printed Name & Title

6035 South Loop East

Street Address:

Houston, TX 77033

City, State, Zip

ssilverman@cbondsystems.com

Email Address for Notice