
**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): June 28, 2019

PARTY CITY HOLDCO INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-37344
(Commission
File Number)

46-0539758
(I.R.S. Employer
Identification Number)

**80 Grasslands Road
Elmsford, New York**
(Address of principal executive offices)

10523
(Zip code)

Registrant's telephone number, including area code: (914) 345-2020

Former name or former address, if changed since last report: N/A

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:

- ☐ 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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.01/share	PRTY	New York Stock Exchange

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. ☐

Item 1.01 Entry into a Material Definitive Agreement.

On June 28, 2019, certain subsidiaries of Party City Holdco Inc. (the “Company”) completed the sale of its Chester, New York distribution center, its Eden Prairie, Minnesota metallic balloons manufacturing facility and its Los Lunas, New Mexico injection molded plastics manufacturing facility to Spirit Realty, L.P., in connection with a sale-leaseback transaction (the “Sale-Leaseback Transaction”).

The Company will receive \$128 million of proceeds from the sale and will use half of the net proceeds to repay amounts outstanding under its term loan credit agreement and half of the net proceeds to repay amounts outstanding under its ABL credit agreement.

The foregoing description of the Purchase and Sale Agreement does not purport to be complete, and is qualified in its entirety by reference to the Purchase and Sale Agreement, filed as Exhibit 10.1 to this Current Report on Form 8-K, which is incorporated herein by reference.

Under the terms of the Master Lease Agreement, the Company will lease each of the three facilities for 20 years. Additionally, the agreement contains four renewal periods of five years each. The total annual rent for all three facilities will start at \$8.32 million and will increase by 2% per year.

The foregoing description of the Master Lease Agreement does not purport to be complete, and is qualified in its entirety by reference to the Master Lease Agreement, filed as Exhibit 10.2 to this Current Report on Form 8-K, which is incorporated herein by reference.

Also on June 28, 2019, certain of the Company’s subsidiaries entered into (i) the Third Amendment to Term Loan Credit Agreement, among Party City Holdings Inc. (the “Borrower Agent”), Party City Corporation (the “Subsidiary Borrower”, and together with the Borrower Agent, the “Borrowers”), PC Intermediate Holdings, Inc. (“Holdings”), Deutsche Bank AG New York Branch (the “TLB Agent”) and each of the Lenders party thereto (the “Third Term Loan Amendment”), which amends the Credit Agreement, dated as of August 19, 2015 by and among the Borrowers, Holdings, the TLB Agent, DBNY, as collateral agent, the subsidiaries of the Borrowers party thereto from time to time and the Lenders party thereto from time to time, and (ii) the Fourth Amendment to ABL Credit Agreement, among the Borrowers, PC Intermediate Holdings, Inc. (“PC Intermediate”), a wholly-owned indirect subsidiary of the Company, JPMorgan Chase Bank, N.A. (the “ABL Agent”) and each of the Lenders party thereto (the “Fourth ABL Amendment”), which amends the ABL Credit Agreement, dated as of August 19, 2015 by and among the Borrowers, PC Intermediate, the ABL Agent, the various lenders party thereto and the other agents named therein, to permit the Sale-Leaseback Transactions. The foregoing description of the Third Term Loan Agreement and the Fourth ABL Amendment does not purport to be complete, and is qualified in its entirety by reference to the Third Term Loan Agreement and the Fourth ABL Amendment, filed as Exhibits 10.3 and 10.4, respectively, to this Current Report on Form 8-K.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibit

- 10.1 [Purchase and Sale Agreement, dated June 28, 2019, by and between Spirit Realty, L.P. and Amscan Inc., Anagram Eden Prairie Property Holdings LLC, and Amscan NM Land, LLC](#)
- 10.2 [Master Lease Agreement, dated June 28, 2019, by and between Spirit Realty, L.P. and Party City Holdings Inc.](#)
- 10.3 [Third Amendment to Term Loan Credit Agreement, dated June 28, 2019.](#)
- 10.4 [Fourth Amendment to ABL Credit Agreement, dated June 28, 2019.](#)

SIGNATURES

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

PARTY CITY HOLDCO INC.

Date: July 3, 2019

By: /s/ Michael Correale

Michael Correale

Interim Chief Financial Officer

PURCHASE AND SALE AGREEMENT
(Party City [acquisition])

entered into by and between

SPIRIT REALTY, L.P.
(as Purchaser)

and

AMSCAN INC.,
ANAGRAM EDEN PRAIRIE PROPERTY HOLDINGS LLC, AND
AMSCAN NM LAND, LLC
(as Seller)

regarding those certain improved real properties located at:

7700 Anagram Drive, Eden Prairie, Minnesota 55344
2800 Purple Sage, Los Lunas, New Mexico 87031
47 Elizabeth Drive, Chester, New York 10918

PURCHASE AND SALE AGREEMENT
(Party City [acquisition])

THIS PURCHASE AND SALE AGREEMENT is entered into by and between SPIRIT REALTY, L.P., a Delaware limited partnership, as purchaser, and Amscan Inc., Anagram Eden Prairie Property Holdings LLC, and Amscan NM Land, LLC, collectively as seller.

Witnesseth:

For and in consideration of the mutual covenants and promises hereinafter set forth, Purchaser and Seller hereby mutually covenant and agree as follows:

ARTICLE I

DEFINED TERMS

The following terms shall have the following meanings for all purposes of this Agreement:

“**Additional Title Objections**” means a title encumbrance and/or defect that appears for the first time on an updated Title Commitment, or an updated Survey, and was not created by or with the consent of Purchaser.

“**Affiliate**” or any derivation thereof, means any Person which directly or indirectly controls, is under common control with, or is controlled by any other Person. For purposes of this definition, “controls”, “under common control with” and “controlled by” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or otherwise.

“**Agreement**” means this Purchase and Sale Agreement, and shall include all assignments, amendments and/or modifications thereto.

“**Allocations**” means the allocation of the aggregate Purchase Price between each Property as set forth on **Exhibit “H”** to this Agreement.

“**Assignment of Warranties**” means that certain Assignment of Warranties, in form and substance as set forth on **Exhibit “C”**, attached hereto and incorporated herein by reference, or if not assignable, evidence satisfactory to Purchaser, in Purchaser’s reasonable discretion, that it will receive coverages and/or or protections acceptable for the matters covered by such warranties.

“**Authorized Broker**” means HFF, Seller’s authorized broker.

“**Bill of Sale**” means that certain Bill of Sale, in form and substance as set forth on **Exhibit “B”**, attached hereto and incorporated herein by reference.

“**Brokerage Commission**” means the amount of money due Authorized Broker from Seller if the subject Property is sold.

“**Business Day**” means any day on which national banks in New York, New York are open for business (ending at 11:59 pm on the Business Day).

“**Certificate of Occupancy**” means, with respect to each Property, if required by applicable law, a certificate of occupancy that demonstrates to all third-parties that proper city officials have determined that a building is ready for occupancy and complies with all zoning ordinances (collectively, the “**Certificates of Occupancy**”).

“**Closing**” means the process involved to close the Transaction on the Closing Date.

“**Closing Date**” means June 28, 2019 (Friday), or such earlier date as the parties may otherwise agree in writing.

“**Closing Escrow Instruction Letter**” means one or more closing escrow instruction letters prepared in connection with the closing of a commercial real estate transaction, executed by the Title Company and Seller or Purchaser, as applicable, identifying parties’ duties and obligations in connection with the closing.

“**Closing Settlement Statement**” means, with respect to the Properties, a closing settlement statement prepared by the Title Company and executed by the Title Company and Purchaser or Seller, as applicable, that accurately reflects the credits, prorations and adjustments provided for in this Agreement.

“**Conveyance Documents**” means the Deed and the Bill of Sale.

“**Corporate Certificate**” means a certificate of an officer, general partner, manager or sole member (as applicable) of Seller, together with copies Sellers, or Seller’s general partner’s or managing member’s (as applicable):

- (i) Certificate of incorporation, certificate of formation or certificate of limited partnership;
- (ii) Bylaws, operating agreement, or limited partnership agreement; and
- (iii) Resolutions - - -
 - a. authorizing the Transaction,
 - b. authorizing the execution of this Agreement and the other Transaction Documents, and
 - c. identifying the Person(s) authorized to execute this Agreement and the other Transaction Documents and close the Transaction contemplated herein.

“**Deed**” means, with respect to each Real Property, that certain special or limited warranty deed, as agreed to by Seller and Purchaser, whereby Seller conveys to Purchaser marketable fee simple title to all of Seller’s right, title and interest in and to such Real Property, subject only to the Permitted Encumbrances (collectively, the “**Deeds**”).

“**Earnest Money Deposit**” means \$1,280,000.00, which shall include any and all interest earned and/or accrued thereon and shall be reduced by an amount equal to the Independent Consideration.

“**Effective Date**” means June 28, 2019.

“**Evidence of Corporate Status**” means certificates, documents and/or materials confirming the existence and good standing of Seller’s legal status including, without limitation, certificates of good standing, fact, existence and/or qualification.

“**Environmental Reports**” means, collectively and obtained by Purchaser in connection with the Inspections and/or any of Purchaser’s other due diligence activities on the Properties, any (x) Phase I or other noninvasive environmental investigation report(s), and (y) Phase II or other subsurface, invasive environmental investigation report if approved by Seller pursuant to Section 3.09 below.

“**Existing ROFR**” means a right of first refusal, right of first offer or other preferred purchase right, to purchase a Property, which exists in favor of a third (3rd) party.

“**Facility**” means, with respect to each Real Property, the improvements on, and Tenant’s uses of, such Real Property that are more particularly described on **Exhibit “E”**, attached hereto and incorporated herein by reference (collectively, the “**Facilities**”).

“**Flood Insurance**” means flood insurance maintained on the Properties by Tenant in amounts and on terms and conditions reasonably satisfactory to Purchaser, which is required with respect to a Real Property if a Survey indicates that a Real Property is within the 100-year flood plain or identified as a “Special Flood Hazard Area” by the Federal Emergency Management Agency.

“**Funds**” means United States federal funds.

“**Governmental Authority**” means the United States of America, any state or other political subdivision thereof, any other entity exercising executive, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

“**Hazardous Materials**” means:

(a) Oil or other petroleum products (including any and all constituents and additives), explosives, radioactive materials or any other materials that are defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “toxic substances”, “contaminants”, “pollutants”, “regulated substances” or words of similar import under any applicable Hazardous Materials Law or under the regulations adopted, orders issued, or publications promulgated pursuant thereto, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §5101, et seq.; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq.; (iv) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, et seq.; and (v) regulations adopted and publications promulgated pursuant to the aforesaid laws;

(b) Asbestos in any form which is or could become friable, urea formaldehyde foam insulation or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million contained in transformers or other equipment; and

(c) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority pursuant to Hazardous Materials Law because it could pose a hazard to the health and safety of the occupants of a Property or the owners and/or occupants of any property adjoining a Property.

“**Hazardous Materials Laws**” means any and all federal, state and local laws, rules, regulations, statutes, and requirements pertaining or relating to the protection of the environmental condition of a Property or human health and safety with respect to exposure to Hazardous Materials at a Property.

“**Indemnified Party(ies)**” means Purchaser, Purchaser’s Affiliates, and their respective officers, directors, shareholders, managers, members, partners, employees, representatives, successors and assigns, as applicable.

“Independent Consideration” means \$100.00, which shall be deposited with the Title Company as part of the Earnest Money Deposit.

“Insolvency Event” means (a) a Person’s (i) admitting in writing its inability to pay its debts generally; or (ii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against any Person (i) seeking to adjudicate it a bankrupt or insolvent; (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency, or reorganization or relief of debtors; or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property, and in the case of any such proceeding instituted against any such Person, either such proceeding shall remain undismissed for a period of 120 days or any of the actions sought in such proceeding shall occur; or (c) any Person taking any corporate or other formal action to authorize any of the actions set forth above in this definition.

“Inspection Period” means June 28, 2019 (Friday).

“Inspections” means, with respect to each Property, any non-invasive investigations, tests and/or due diligence activities conducted by members of Purchaser’s Due Diligence Team that Purchaser reasonably deems necessary and reasonably appropriate to evaluate a Property in connection with the Transaction; *provided, however*, if Purchaser requires access to a Property to conduct an Inspection, the Inspection (x) will be conducted during normal business hours, (y) will not unreasonably interfere with Seller’s or Tenant’s business operations at such Property, and (z) Purchaser must provide Seller at least 24 hours prior written notice (which notice may be delivered by email to: (1) Mike Kostue - Mkostue@amscan.com for the Los Luna, New Mexico property, (2) Paul Ansolabehere - Ansolabe@anagramintl.com for the Eden Prairie, Minnesota property, and (3) Jason Kretschmer - Kretsch@amscan.com for the Chester, New York property).

“Lease Agreement” means that certain Master Lease Agreement with respect to the Properties to be entered into at Closing by and between Purchaser, as landlord, and Tenant as tenant, in form and substance as set forth on **Exhibit “F”**, attached hereto and incorporated herein by reference.

“Lease Guaranty” means that certain Unconditional Guaranty of Payment and Performance to be entered into at Closing by Party City Holdco, Inc., a Delaware corporation, as guarantor, for the benefit of Purchaser, as landlord, in form and substance as set forth on **Exhibit “J”**, attached hereto and incorporated herein by reference.

“Lease Proof of Insurance” means insurance certificates, in form and substance reasonably satisfactory to Purchaser, that evidence and confirm the insurance coverages, limits and policies required to be carried by Tenant pursuant to the terms of the Lease Agreement currently exist and are in full force and effect.

“Legal Requirements” means all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders and approvals of each Governmental Authority having jurisdiction over a Property, including, without limitation, all health, building, fire, safety and other codes, ordinances and requirements, the Americans With Disabilities Act of 1990, and all rules of common law, in each case, as amended, and any judicial or administrative interpretation thereof, including any judicial order, consent, decree or judgment applicable to a Property, Tenant or Seller.

“**Letter of Intent**” means that certain Letter of Intent, dated May 23, 2019, signed by Purchaser and Seller with respect to the Transaction, including any and all amendments, modifications and/or supplements thereto.

“**Liens**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

“**Losses**” means any and all claims, lawsuits, suits, liabilities (including, without limitation, strict liabilities), actions, causes of action, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, interest, charges, fees, expenses, judgments, decrees, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, reasonable attorneys’ fees, court costs and costs incurred in the investigation, defense and settlement of claims).

“**Memorandum of Lease Agreement**” means any recorded or unrecorded memorandum of the Lease Agreement.

“**Non-Foreign Seller Certificate**” means a “non-foreign” tax affidavit, in form and substance reasonably acceptable to Purchaser.

“**Notices**” means any and all notices, demands, designations, certificates, requests, consents, approvals, appointments and other instruments delivered pursuant to and in accordance with the terms of this Agreement.

“**OFAC List**” means the list of specially designated nationals and blocked Persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any Legal Requirements, including, without limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States. The OFAC List currently is accessible through the internet website <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>.

“**Owner’s Title Policy**” means, with respect to each Property, an owner’s policy of title insurance in accordance with Purchaser’s approved pro forma owner’s title insurance policy, or marked-up Title Commitment, which shall (a) be in an amount not to exceed the Purchase Price; (b) insure title by means of an ALTA Owner’s Policy 6-17-06; (c) show Purchaser’s good and marketable fee simple title in the Property; (d) commit to insure Purchaser’s interest in the Property, subject only to Permitted Encumbrances; and (e) contain endorsements as Owner may reasonably require (collectively, the “**Owner’s Title Policies**”).

“**Permitted Encumbrances**” means:

(a) With respect to each Property, the lien of any real estate taxes and/or water and sewer charges, not yet due and payable;

(b) With respect to each Property, the recorded easements, restrictions, encumbrances, rights-of-way, encroachments, restrictive covenants, any other matters of record (but subject to (a) above, expressly excluding Liens) set forth as exceptions on the Title Commitment for the applicable Property and all matters reflected on the Surveys and which are either (x) expressly approved in writing by Purchaser, or (y) deemed approved because of Purchaser’s written waiver of, or failure to timely and properly object to, same; and

(c) The Lease Agreement and the rights, privileges and entitlements of Tenant thereunder.

“ **Person** ” means any natural person, firm, corporation, partnership, limited liability company, or other entity, any state, political subdivision of any state, the United States of America, or agency or instrumentality of the United States of America, or any other public body or other organization or association.

“ **Property** ”, when referring to an individual Real Property, or “ **Properties** ” when referring collectively to the Real Properties, means:

- (i) a Real Property or the Real Properties, as applicable, including all fixtures affixed thereto;
- (ii) All plans, specifications and studies pertaining to a Real Property or the Real Properties, as applicable, in Seller’s possession or under its control;
- (iv) All mineral, oil and gas rights, water rights, sewer rights and other utility rights allocated to a Real Property or the Real Properties, as applicable;
- (v) All leases and rental agreements relating to a Real Property or the Real Properties, as applicable, or any portion thereof, including without limitation, all rent, prepaid rent, security deposits and other payments and deposits; and
- (vi) All appurtenances, easements, licenses, privileges and other property interests belonging or appurtenant to a Real Property or the Real Properties, as applicable.

“ **Property Condition Report** ” means, with respect to each Property, current property condition assessments and limited compliance audits from one (1) or more inspection companies selected and ordered by Purchaser.

“ **Purchase Price** ” means \$128,000,000.00.

“ **Purchaser** ” means Spirit Realty, L.P., a Delaware limited partnership, and its successors and assigns.

“ **Purchaser’s Due Diligence Team** ” mean any one (1) or more of Purchaser, and/or any of Purchaser’s officers, employees, agents, independent contractors, advisors, architects, contractors, subcontractors, engineers and/or designees.

“ **Purchaser Event of Default** ” means the events listed in Sections 7.04 below.

“ **Purchaser Obligation** ” means any covenant, requirement and/or obligation imposed on Purchaser pursuant to this Agreement.

“ **Purchaser’s Title Objections** ” means, with respect to each Property, Purchaser’s initial written notification to Seller and the Title Company of Purchaser’s objection(s) to any exceptions or other matters shown on the applicable Title Commitment or Survey.

“**Questionnaire**” means that certain Questionnaire, in form and substance as set forth on **Exhibit “D”**, attached hereto and incorporated herein by reference.

“**Real Properties**” means the parcels of real property more particularly described on **Exhibit “A”**, attached hereto and incorporated herein by reference, and any and all improvements located thereon and appurtenances thereto (each, a “**Real Property**”).

“**Regulated Substances**” means “petroleum” and “petroleum-based substances” or any similar terms described or defined in any Hazardous Materials Laws and any applicable federal, state, county or local laws applicable to or regulating USTs.

“**Release of Existing ROFR**” means, with respect to each Property, a termination or full release of any Existing ROFR, which shall be in recordable form and otherwise sufficient to remove any Existing ROFR from the applicable Property.

“**Seller**” means, collectively, Amscan Inc., Anagram Eden Prairie Property Holdings LLC, and Amscan NM Land, LLC, and their successors and assigns.

“**Seller Entity(ies)**” means individually or collectively, as the context may require, Seller and any Affiliate of Seller.

“**Seller Event of Default**” means the events listed in Section 7.01 below.

“**Seller Obligation**” means any covenant, requirement and/or obligation imposed on Seller pursuant to this Agreement.

“**Seller’s Historical Documents**” means, collectively, the following items, to the extent they are in Seller’s possession or control, that relate to the ownership, leasing, construction, and/or maintenance of a Property:

- (a) “as-built” plans, specifications, drawings and engineering reports; temporary and/or final Certificate of Occupancy for each Property (or their jurisdictional equivalent);
- (b) surveys;
- (c) historical phase I and phase II environmental investigation reports or any other material environmental reports;
- (d) property condition reports;
- (e) owner policies of title insurance;
- (f) guaranties and warranties with regard to each Property;
- (g) a copy of the most current tax bills;
- (h) a full and complete copy of any lease encumbering a Property, including the Lease Agreement, any guaranties related thereto, together with all assignments, amendments and/or modifications;
- (i) the completed and executed Questionnaire; and
- (j) other documents, materials and/or information as reasonably requested by Purchaser.

“**Survey**” means, with respect to each Real Property, a current ALTA/ACSM “as built” survey for the Real Property from one (1) or more surveyors selected by Purchaser, in Purchaser’s sole discretion certified to Purchaser and the Title Company, and drawn in accordance with Purchaser’s survey standards (collectively, the “**Surveys**”).

“**Tenant**” means Party City Holdings Inc.

“**Title Commitment**” means, with respect to each Property, a current commitment for title insurance (owner’s policy) issued by the Title Company, to Purchaser on ALTA 2006 Standard Form in the amount of the portion of the Purchase Price allocated to the applicable Property as set forth in the Allocations (collectively, the “**Title Commitments**”).

“**Title Company**” means First American Title Insurance Company, National Commercial Services, 2425 East Camelback Road, Suite 300, Phoenix, Arizona 85016, Attn: Kristin Brown (kribrown@firstam.com), (602) 567-8139 (telephone).

“**Title Company Affidavit**” means an affidavit as to debts, liens and parties-in-possession, in the form attached hereto as **Exhibit I**.

“**Transaction**” means the purchase and sale of each Property in accordance with the terms, provisions, covenants and conditions contained within this Agreement.

“**Transaction Costs**” means, collectively, all out-of-pocket costs and expenses incurred in connection with the Transaction (whether or not the Transaction closes) including, but not limited to, amounts incurred in connection with obtaining any of the following items: Title Commitments, Property Condition Reports, Environmental Reports, Zoning Evidence, Valuations, Title Company escrow fee, recording costs, taxes and related charges imposed on conveyances of real property (e.g. transfer taxes, documentary stamp taxes, intangibles taxes, mortgage taxes, leasehold taxes, privilege taxes, etc., but expressly excluding any taxes imposed on the gross income of a party, etc.), Owner’s Title Policies and endorsements thereto requested by Purchaser, local law charges (per Section 8.07 below), and professional advisors fees (e.g. legal, accounting, and other similar types of professional advisors).

“**Transaction Documents**” means, collectively and only if applicable, the following documents: this Agreement and the Lease Agreement, Deeds, the Memorandum of Lease Agreement, Bill of Sale, Assignment of Warranties, Non-Foreign Seller Certificate, Lease Proof of Insurance, and any and all documents referenced in this Agreement or any of the Transaction Documents, as well as such other documents, instruments and certificates (including, without limitation, an owner’s title affidavit and gap indemnity) as are reasonably requested by the Title Company.

“**USTs**” means any one or combination of underground tanks and associated product piping systems used in connection with storage, dispensing and general use of Regulated Substances.

“**Valuations**” means, with respect to each Property, appraisals, brokers opinions of value, current site inspections and/or valuations of any kind from one (1) or more parties selected and ordered by Purchaser, in its sole discretion.

“**Wiring Instructions**” means the wiring instructions for the Title Company, Purchaser and Seller as set forth on **Exhibit “G”**, attached hereto and incorporated herein by reference.

“**Zoning Evidence**” means, with respect to each Property, a zoning report that certifies, among other things, whether the applicable Property complies with all zoning ordinances of the Governmental Authority having jurisdiction over such Property and, if such Property does not comply, identifies the areas of non-compliance.

ARTICLE II

PURCHASE OF PROPERTY

Section 2.01 Agreement to Purchase .

- (a) In accordance with the terms, provisions, covenants and conditions set forth in this Agreement, Purchaser agrees to purchase, and Seller agrees to sell, all of Seller's right, title and interest in and to the Properties.
- (b) In connection therewith, Purchaser agrees to pay the Purchase Price to Seller for the Properties. On the Closing Date, the Purchase Price, as adjusted pursuant to this Agreement, shall be paid by Purchaser to Seller (through the Title Company, as escrow agent) in immediately available United States funds pursuant to, among other things, separate Closing Settlement Statements executed and delivered by Purchaser and Seller, respectively, for each Property.

Section 2.02 Earnest Money Deposit. Within three (3) Business Days after the Effective Date, Purchaser shall deposit with the Title Company the Earnest Money Deposit by wire transfer of immediately available United States funds, to be held in federally insured interest-bearing account(s) and otherwise in accordance with this Agreement. Purchaser's failure to timely deposit with the Title Company the Earnest Money Deposit shall entitle Seller, at Seller's sole option, to immediately terminate this Agreement and thereafter neither Purchaser nor Seller shall have any further rights or obligations hereunder except (x) for those obligations that expressly survive termination of this Agreement, and (y) that Purchaser shall return to Seller all of Seller's Historical Documents.

Section 2.03 Independent Consideration. The Independent Consideration has been bargained for and agreed upon as consideration for Seller's execution and delivery of this Agreement, is in addition to and independent of all other consideration provided for in this Agreement, and is nonrefundable in all events, but shall be applied to the Purchase Price if the Transaction closes. Immediately after the Title Company receives the Earnest Money Deposit, the Title Company is authorized and directed to release the Independent Consideration to Seller, which shall be nonrefundable in all respects.

Section 2.04 Purchase Price. On or before the Closing Date, the Purchase Price (less a credit for the Earnest Money Deposit) and plus or minus prorations and adjustments required by this Agreement) shall be paid by Purchaser to Seller in immediately available United States funds by wire transfer as designated by the Title Company, for the Title Company's subsequent transfer on the Closing Date to an account(s) designated in writing by Seller. The Allocations as set forth on Exhibit "J" shall be used solely for the purpose of determining the title insurance and transfer taxes payable with respect to each Property.

Section 2.05 Prorations. There shall be no proration of insurance, taxes, special assessments, utilities or any other costs related to the Properties between Seller and Purchaser at Closing, as all such costs relating to any period prior to Closing shall be paid by Seller. All real and personal property and other applicable taxes and assessments, utilities and any other costs or charges relating to the Properties commencing on the Closing Date shall be paid by the Tenant in accordance with the terms of the Lease, except that Seller shall pay (or cause Tenant to pay) at the Closing all insurance costs, real estate taxes, special assessments, utilities, or any other costs relating to the Properties which are due and payable with respect to such Property as of Closing. For all periods prior to the Closing Date, Seller represents and warrants to Purchaser that Seller

has paid (or will pay, to the extent payment is not yet due) all state and local income, franchise, and other taxes (and any applicable interest or penalties) imposed upon, or payable by, Seller in the state where each Property is located and Purchaser will not inherit any liability associated with "successor liability laws". Seller shall indemnify, defend and hold harmless Purchaser of and from any claims, demands and causes of action asserted against Purchaser as a result of a breach of the foregoing representation and covenant. Such indemnification obligation shall survive the Closing for a period of twelve (12) months.

Section 2.06 Transaction Costs. Seller and Purchaser shall be responsible for the payment of the Transaction Costs as follows:

- (a) Seller shall pay for (if applicable) - - -
 - (i) The title costs of title searches, title commitments, and the base premium for the Owner's Title Policy (other than all other costs for the Owner's Title Policy, including premiums for any extended coverage or any lender title policy or endorsements, which are the obligation of Purchaser hereunder);
 - (ii) The Surveys;
 - (iii) The Brokerage Commission;
 - (iv) Any recording costs and transfer taxes, documentary stamp taxes, and like charges associated with the sale and conveyance of the Properties;
 - (v) All fees and expenses of Seller's respective legal counsel, accountants and other professional advisers;
 - (vi) The costs and expenses related to Seller's compliance with any local law requirements as discussed in Section 8.23 below; and
 - (vii) one-half (1/2) of all escrow charges.
- (b) Purchaser shall pay for (if applicable) - - -
 - (i) Zoning Evidence;
 - (ii) Valuations;
 - (iii) Property Condition Reports;
 - (iv) Environmental Reports;
 - (v) Fees and expenses of Purchaser's legal counsel, accountants and other professional advisers and, further, if Seller requested that Purchaser provide any such documents, Seller shall pay Purchaser's attorney's fees and costs for the production of same, such fees to be paid at Closing;
 - (vi) all other costs for the Owner's Title Policy, including premiums for any extended coverage or any lender title policy or endorsements (other than the base premium for the Owner's Title Policy, which are the obligation of Seller hereunder);
 - (vii) one-half (1/2) of all escrow charges; and
 - (viii) Provided that the Closing occurs on June 28, 2019, Purchaser agrees to pay \$400,000.00 (FOUR HUNDRED THOUSAND AND NO/100 DOLLARS) in connection with any fees imposed by Seller's lender associated with the transaction discussed herein.

The provisions of this Section 2.06 shall survive Closing or the earlier termination or expiration of this Agreement.

Section 2.07 Existing ROFR. If an Existing ROFR is known or discovered by Purchaser or Seller with respect to a Property, within two (2) Business Days following the later of the Effective Date or discovery of an Existing ROFR, Seller shall provide the holder of an Existing ROFR with notice of such Existing ROFR and an opportunity to permit such holder to exercise its Existing ROFR within the time frame and in the manner provided therein. The form of such notice shall be approved in writing by Purchaser, in Purchaser's reasonable discretion, before being delivered to Seller. If the holder of an Existing ROFR timely and properly exercises such Existing ROFR, Seller shall give Purchaser written notice thereof, whereupon this Agreement shall terminate with respect to each Property subject to such Existing ROFR, that portion of the Earnest Money Deposit applicable to the Property (or the Properties) subject to such Existing ROFR shall be immediately refunded to Purchaser, and neither Purchaser nor Seller shall have any further duties or obligations pursuant to this Agreement as to such Property, except as otherwise provided herein. If the holder of an Existing ROFR does not timely and properly exercise such Existing ROFR, or such holder gives Seller written notice of such holder's intention not to exercise an Existing ROFR, Seller shall promptly give Purchaser and the Title Company written notice thereof (with photocopies of any notices or other correspondence of any type received from any such holder).

ARTICLE III

DUE DILIGENCE

Section 3.01 Title Insurance.

(a) **Title Company.** The Title Company shall be employed by Seller and Purchaser to act as escrow closing agent in connection with the Transaction. Subject to Purchaser's Closing Escrow Instruction Letter and Seller's Closing Escrow Instruction Letter, this Agreement shall be used as instructions to the Title Company, as escrow agent, which may provide its standard conditions of acceptance of escrow; *provided, however*, that in the event of any inconsistency between such standard conditions of acceptance and the terms of this Agreement, the terms of this Agreement shall prevail.

(b) **Title Company Actions.** The Title Company is authorized to pay, at Closing, from any funds held by it for Purchaser's and/or Seller's respective credit, all amounts necessary to procure the delivery of the Transaction Documents and to pay, on behalf of Purchaser and Seller, all charges and obligations payable by them hereunder, respectively. Seller and Purchaser will pay to the Title Company all charges payable by them. The Title Company shall not close the Transaction unless and until it receives separate written instructions from each of Purchaser and Seller. The Title Company is authorized, in the event any conflicting demand is made upon the Title Company and memorialized in either Seller's or Purchaser's Closing Escrow Instruction Letter, at its election, to hold any documents and/or funds deposited hereunder until an action shall be brought in a court of competent jurisdiction to determine the rights of Seller and Purchaser or to interplead such documents and/or funds in an action brought in any court of competent jurisdiction.

(c) **Title Commitment.** Purchaser has ordered the Title Commitments prior to the Effective Date. Upon receipt, the Title Company shall forward a copy of each Title Commitment to Seller.

(d) **Purchaser's Title Objections .**

(i) Within five (5) Business Days after Purchaser's receipt of the later of a Title Commitment for each property (including legible copies of all title exceptions listed therein), or a Survey for each Property, but in no event later than June 19, 2019, Purchaser shall deliver Purchaser's Title Objections for each Property to Seller. Purchaser's failure to timely and properly deliver Purchaser's Title Objections for a Property to Seller shall be deemed Purchaser's acceptance of the items disclosed in the Title Commitment, Zoning Evidence and/or Survey relating to such Property, and each item shall become a Permitted Encumbrance.

(ii) Within three (3) Business Days after Seller's receives Purchaser's Title Objections, Seller shall notify Purchaser in writing of those Purchaser's Title Objections that Seller (x) agrees to satisfy, or cause to be satisfied, at or prior to the Closing and at no cost and expense to Purchaser, and (y) cannot or will not satisfy, or cause to be satisfied. Seller's failure to timely respond to Purchaser's Title Objections shall be deemed Seller's election not to cure any of Purchaser's Title Objections.

(iii) If Seller chooses not to satisfy any, or all, of the items to which Purchaser has timely and properly objected, Purchaser shall have the option, in its sole discretion to:

(A) terminate this Agreement by delivering written notice of said termination to Seller, whereupon the Earnest Money Deposit shall be immediately refunded to Purchaser and, except as otherwise provided in this Agreement, neither Seller nor Purchaser shall have any further liability or obligation under this Agreement; or

(B) waive Seller's failure to cure any or all of the Purchaser's Title Objections and proceed with Closing, whereupon such Purchaser's Title Objections shall become Permitted Encumbrances.

(iv) If, on or prior to the Closing Date, Seller is unable or unwilling to satisfy (or cause to be satisfied) any of Purchaser's Title Objections that Seller previously agreed to satisfy, Purchaser shall have the option, at Purchaser's sole discretion and without limiting any other rights and remedies herein, to:

(A) terminate this Agreement by delivering written notice to Seller, in which event the Earnest Money Deposit shall be immediately refunded to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein; or

(B) waive Seller's failure to cure any or all of the Purchaser's Title Objections and proceed with Closing, whereupon such Purchaser's Title Objections shall become Permitted Encumbrances.

(v) If Seller is unable or unwilling to satisfy any of Purchaser's Title Objections and Purchaser does not terminate this Agreement pursuant to Section 3.01(d)(iii) or Section 3.01(d)(iv), then such Purchaser's Title Objections which Seller is unable or unwilling to satisfy shall be deemed waived and approved by Purchaser and shall thereafter be deemed Permitted Encumbrances.

(vi) If any update to a Title Commitment or a Survey discloses Additional Title Objections, within two (2) Business Days following receipt of such update, Purchaser may notify Seller in writing of Purchaser's objection thereto. If any Additional Title Objections are not removed or resolved by Seller to Purchaser's satisfaction at least two (2) days before the Closing Date, then on or before the Closing Date, Purchaser shall have the option, at Purchaser's sole discretion and without limiting any other rights or remedies which Purchaser may have under this Agreement, to:

(A) terminate this Agreement by delivering written notice to Seller, in which event the Earnest Money Deposit shall be immediately refunded to Purchaser; and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein; or

(B) waive such Additional Title Objections and proceed with the Closing, in which case each such waived Additional Title Objections shall be deemed a Permitted Encumbrance. If Purchaser does not terminate this Agreement by reason of an Additional Title Objections, then such Additional Title Objections shall be deemed waived and approved by Purchaser and shall thereafter be deemed a Permitted Encumbrance.

(vii) Notwithstanding anything set forth in this Agreement to the contrary, any mortgage lien, deed of trust lien, tax lien, judgment lien, mechanics liens and/or other monetary lien affecting a Property shall automatically be deemed a Purchaser's Title Objection or an Additional Title Objection, as applicable, and must be paid and satisfied, or bonded off the applicable Real Property by Seller at or before Closing.

(viii) If Seller is unable to convey title to a Real Property free and clear of the lien of any state or local tax to the extent such liens are not Permitted Encumbrances, Seller shall be responsible for either paying such tax or providing to the Title Company security (such as a cash deposit) so that the Title Company can issue the Owner's Title Policies with respect to the Properties to Purchaser free and clear of such liens, whether or not Purchaser includes such liens in Purchaser's Title Objections or the Additional Title Objections.

Section 3.02 Seller's Historical Documents. On or before three (3) Business Days after the Effective Date, Seller shall deliver to Purchaser Seller's Historical Documents to the extent they exist and are in Seller's possession or control.

Section 3.03 Survey. In its sole discretion, Purchaser may order a Survey for each Property, which shall be drawn in accordance with Purchaser's survey standards and certified to Purchaser, any requested Affiliate of Purchaser, and the Title Company, and otherwise in a manner reasonably acceptable to Purchaser. Purchaser shall be obligated to furnish Seller with a copy of any Survey if Purchaser delivers any objections to any such Survey pursuant to Section 3.01(d) above.

Section 3.04 Environmental. In its sole discretion, Purchaser may order a current complete Phase I environmental site assessment report for each Property. If any such environmental site assessment report recommends additional subsurface investigation of a Property, Purchaser may request, and Seller shall not be obligated to but may, in its sole discretion, permit Purchaser to perform such additional subsurface investigation as is set forth in a proposed scope delivered by Purchaser to Seller, including specific locations for such additional subsurface investigation, from one (1) or more environmental inspection companies selected by Purchaser and reasonably acceptable to Seller, detailing and analyzing certain aspects of such Property; *provided, however,* that, notwithstanding the foregoing, if Seller fails or refuses to permit any such additional subsurface investigation, Purchaser may elect to (A) terminate this Agreement, whereupon the Earnest Money Deposit shall be immediately refunded to Purchaser and, except for those provisions expressly surviving termination hereof, Seller's and Purchaser's obligations hereunder shall terminate, or (B) terminate this Agreement as to any Property (or Properties) for which Seller fails or refuses to permit any additional subsurface investigation, in which event (i) the Purchase Price shall be adjusted based on the Allocations; (ii) that portion of the Earnest Money Deposit allocable to the Property (or Properties) terminated pursuant to this subsection (B) shall be immediately refunded to Purchaser; (iii) except as otherwise provided in this Agreement, neither Seller nor Purchaser shall have any further liability or obligation under this Agreement with respect to the terminated Property (or Properties); and (iv) Seller and Purchaser shall proceed to close with respect to the remaining Properties. Purchaser shall use reasonable efforts to keep confidential any information Purchaser obtains through environmental assessments or investigations conducted pursuant to this Section 3.04 or that is otherwise included in any Environmental Report, except that Purchaser may share such information with members of Purchaser's Due Diligence Team, provided that Purchaser instructs them to treat such information as confidential. Purchaser shall not disclose the results of any environmental assessments or investigations conducted by it or on its behalf, or provide copies of any Environmental Reports, to any Seller Entity unless Seller requests such results or Environmental Reports in writing.

Section 3.05 Valuations. Purchaser may order Valuations for the Properties, separately stating values for each Property. Purchaser shall not be obligated to deliver to Seller copies of the Valuations.

Section 3.06 Property Condition Reports. With respect to each Property, Purchaser may order a Property Condition Report, which shall be in form and substance acceptable to Purchaser, in Purchaser's sole discretion, and shall be certified to Purchaser and any requested Affiliate of Purchaser. Purchaser shall be obligated to deliver to Seller copies of any Property Condition Report upon request by Seller; provided, that such report shall be delivered without any representation or warranty whatsoever and Seller further acknowledges and agrees that Seller may not rely on said reports under any circumstance whatsoever.

Section 3.07 Zoning. With respect to each Property, Purchaser may order Zoning Evidence and, upon receipt, shall be obligated to furnish Seller with a copy of the Zoning Evidence upon request by Seller; provided, that such report shall be delivered without any representation or warranty whatsoever and Seller further acknowledges and agrees that Seller may not rely on said reports under any circumstance whatsoever.

Section 3.08 Insurance. In addition to all other conditions precedent to Purchaser's obligations herein, Purchaser's obligation to close the Transaction is further subject to the condition precedent that prior to Closing, Purchaser shall have received the Lease Proof of Insurance.

Section 3.09 Inspections.

(a) Beginning on the Effective Date and continuing until expiration of the Inspection Period, Purchaser may conduct Inspections consistent with the terms and conditions set forth herein (including, for the avoidance of doubt, in Section 3.04), Seller shall provide members of Purchaser's Due Diligence Team with reasonable access to each Property to conduct the Inspections.

(b) Purchaser shall indemnify, defend and hold harmless Seller from and against any third (3rd) party claims against Seller arising out of the Inspections (other than as to any matters discovered by a Purchaser during the Inspections) and shall repair damage to any of the Properties caused by the Inspections. This indemnification shall survive the Closing for a period of twelve (12) months. Prior to entry upon the Properties, Purchaser shall provide Seller with copies of certificates of insurance evidencing commercial general liability insurance policies (naming Seller as an additional insured) that shall be maintained by Purchaser and by any consultants or other third parties engaged by Purchaser in connection with Purchaser's and such consultants' and third parties' investigations upon the Properties, with limits of not less than \$1,000,000 per occurrence / \$1,000,000 in the aggregate for property damage, bodily or personal injury or death. Without limitation on the foregoing, in no event shall Purchaser: (a) conduct any invasive physical testing (environmental, structural or otherwise) at the Properties (such as soil borings, water samplings or the like) or take physical samples from the Properties without Seller's express written consent, which consent, as to such intrusive physical testing or sampling, may be given or withheld in Seller's sole discretion (and Purchaser shall in all events promptly return the Property to its prior condition and repair thereafter); or (b) contact any Governmental Authority having jurisdiction over the Properties without Seller's express written consent other than ordinary contact normally associated with routine due diligence examinations that does not involve any discussions with governmental officials (except to the extent necessary to request records).

Section 3.10 Purchaser's Right to Terminate. Notwithstanding any provision contained in this Agreement, in addition to its right to terminate this Agreement as set forth in Section 2.07 (Existing ROFR), Section 3.01(d) (Title Objections), Section 3.04 (Environmental), Section 7.02 (Purchaser's Remedies), or Section 8.03(a) (Risk of Loss), Section 8.03(b) (Casualty), Purchaser may elect, for any reason or for no reason, in Purchaser's sole discretion, so long as Purchaser timely and properly provides written notice thereof to Seller on or before expiration of the Inspection Period, to terminate this Agreement and receive a refund of the Earnest Money Deposit, in which event neither Seller nor Purchaser shall have any further duties or obligations under this Agreement except as otherwise provided herein.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 4.01 Seller's Representations, Warranties and Covenants. Seller represents and warrants to, and covenants with, Purchaser as follows:

(a) **Organization and Authority.** Seller is duly organized or formed, validly existing and in good standing under the laws of the State of Delaware, and is qualified to do business in any jurisdiction where such qualification is required. Seller has all requisite power and authority to own and operate the Properties, to execute, deliver and perform its obligations under this Agreement and all of the other Transaction Documents, and to carry out the Transaction. The Person who has executed this Agreement on behalf of Seller has been duly authorized to do so.

(b) **Enforceability of Documents .** Upon execution by Seller of this Agreement and the other Transaction Documents to which Seller is a party, this Agreement and such other Transaction Documents shall constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(c) **No Other Agreements and Options .** Except as set forth in the Title Commitments, neither Seller nor any Property is subject to any commitment, obligation, or agreement, including, without limitation, any right of first refusal or offer or similar right to purchase or lease or option to purchase or lease granted to a third (3rd) party, other than the Lease Agreement, which will (x) prevent Seller from completing, or impair Seller's ability to complete, the sale of the Properties under this Agreement, or (y) bind Purchaser subsequent to consummation of the Transaction, and Seller shall not enter into any such commitment, obligation or agreement from the Effective Date until Closing or the earlier termination of this Agreement.

(d) **No Violations; No Successor Liability.** The authorization, execution, delivery and performance of this Agreement and the other Transaction Documents will not:

- (i) violate any provisions of the charter or other organizational documents of Seller;
- (ii) result in a violation of or a conflict with, or constitute a default (or an event which, with or without due notice or lapse of time, or both, would constitute a default) under any other document, instrument or agreement to which Seller is a party or by which Seller or a Property is subject or bound;
- (iii) result in the creation or imposition of any Lien, restriction, charge or limitation of any kind, upon Seller or a Property;
- (iv) violate any law, statute, regulation, rule, ordinance, code, rule or order of any court or Governmental Authority applicable to Seller or a Property; or

(v) transfer to Purchaser any tax liability owed by a Seller Entity to a Governmental Authority pursuant to any applicable successor liability laws.

(e) **Compliance.** Except for any item that has been resolved or cured, to Seller's knowledge, Seller has not received any written notice that a Real Property or the use thereof is not in compliance with:

(i) all Legal Requirements;

(ii) all restrictions, covenants and encumbrances with respect to such Property; and

(iii) all agreements, contracts, insurance policies (including, without limitation, to the extent necessary to prevent cancellation thereof and to insure full payment of any claims made under such policies), agreements and conditions applicable to such Property or the ownership, operation, use or possession thereof.

(f) **Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws .** Without in any way limiting the provisions of Section 4.01(e) above, Seller is not, and to Seller's knowledge, no individual or entity owning directly or indirectly any interest in Seller, is currently identified on the OFAC List or is a Person with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States.

(g) **Real Properties.** The Real Properties described on Exhibit "A" are owned by Seller and are the land that is to be acquired by Purchaser pursuant to this Agreement.

(h) **Litigation.** To Seller's knowledge and except as set forth in the Title Commitments, there is no material unresolved legal, administrative, arbitration or other dispute, proceeding, claim or action of any nature or investigation pending against or involving, or to Seller's knowledge, threatened against, Seller with respect to a Property.

(i) **Utilities .** To Seller's knowledge, each Real Property is served by sufficient public utilities to permit full utilization of such Property for its intended purposes and all utility connection fees and use charges will have been paid in full.

(j) **Condemnation; Blighted Areas .** Seller has not received written notice of condemnation or eminent domain proceedings affecting a Real Property and Seller has no knowledge that any such proceedings are contemplated. To Seller's knowledge, the areas where the Real Properties are located have not been declared blighted by any Governmental Authority.

(k) **Environmental .** To Seller's knowledge, no Seller Entity has received any written notice from any Person (including but not limited to a Governmental Authority) relating to a violation of Hazardous Materials Laws with respect to Hazardous Materials, Regulated Substances or USTs at the Real Properties, or possible liability of any Person (including without limitation, Tenant) pursuant to any Hazardous Materials Laws in connection with the Real Properties, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing.

(l) ***Questionnaire, Information and Financial Statements.***

(i) The Questionnaire, financial statements and other information concerning Seller Entities delivered by or on behalf of Seller to Purchaser are true, correct and complete in all material respects, and no adverse change has occurred with respect to the information provided in the Questionnaire, or any such financial statements provided to Purchaser since the date such Questionnaire, and financial statements were prepared or delivered to Purchaser. Seller understands that Purchaser is relying upon such Questionnaire, and financial statements and Seller represents that such reliance is reasonable. All such financial statements were prepared in accordance with generally accepted accounting principles consistently applied and accurately reflect, as of the date of this Agreement and the Closing Date, the financial condition of each individual or entity to which they pertain.

(m) ***Solvency.*** There is no contemplated, pending or threatened Insolvency Event or similar proceedings, whether voluntary or involuntary, affecting Seller Entity.

(n) ***Franchise Agreements.*** Intentionally Deleted.

(o) ***Fueling, Branding and Jobbing Agreements.*** Intentionally Deleted.

(p) ***Restrictions.*** Beginning on the Effective Date and continuing through the Closing Date or the earlier termination of this Agreement, Seller shall not, without the prior written consent of Purchaser, place any easement, covenant, condition, right-of-way or restriction on a Real Property, amend or modify any such instrument, or voluntarily take any other action that materially and adversely affects title to a Real Property as same exists on the Effective Date.

(q) ***Satisfaction of Conditions Precedent.*** Beginning on the Effective Date and continuing through the Closing Date, Seller shall use its good faith efforts to satisfy all conditions precedent set forth in Section 4.01 below on or prior to the Closing Date.

(r) Michael Correale, the person referenced immediately below, has personal knowledge about the Property and is knowledgeable about the matters discussed in this Section 4.01 and is therefore, the correct person within Seller's organization to make the representations and warranties listed herein.

As used in this Agreement, the words "**Seller's knowledge**" or words of similar import shall be deemed to mean, and shall be limited to, the actual (as distinguished from implied, imputed or constructive) knowledge of Michael Correale, with no duty of inquiry or investigation, and shall not be construed to refer to the knowledge of any other officer, agent or employee of Seller or any affiliate thereof.

All representations and warranties of Seller made in this Agreement shall (i) be true as of the Effective Date and (ii) be deemed to have been made again and be true, as of the Closing Date, except as expressly stated otherwise herein. The right to prosecute an action based on a breach of a representation or warranty contained in this Section 4.01 shall survive Closing for six (6) months following the Closing Date.

Section 4.02 Purchaser. Purchaser represents and warrants to, and covenants with, Seller as follows:

(a) **Organization and Authority.** Purchaser is duly organized, validly existing and in good standing under the laws of its state of formation. Purchaser has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and all of the other Transaction Documents to which it is a party and to carry out the Transaction. The Person who has executed this Agreement on behalf of Purchaser has been duly authorized to do so.

(b) **Enforceability of Documents .** Upon execution by Purchaser, this Agreement and the other Transaction Documents to which it is a party, shall constitute the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(c) **Litigation.** To the best of Purchaser's knowledge, there are no actions or proceedings pending against or involving Purchaser before any Governmental Authority which in any way adversely affect or may adversely affect Purchaser or Purchaser's ability to perform under this Agreement and the other Transaction Documents to which it is a party.

(d) **Satisfaction of Conditions Precedent .** Beginning on the Effective Date and continuing through the Closing Date, Purchaser agrees to use its best efforts to satisfy all conditions precedent set forth in Section 4.02.

All representations and warranties of Purchaser made in this Agreement shall (i) be true as of the Effective Date and (ii) be deemed to have been made again and be true, as of the Closing Date, except as expressly stated otherwise herein. The right to prosecute an action based on a breach of a representation or warranty contained in this Section 4.02 shall survive Closing for one (1) year following the Closing Date.

ARTICLE V

CONDITIONS PRECEDENT TO CLOSING

Section 5.01 Purchaser's Conditions to Closing. Purchaser shall not be obligated to close and fund the Transaction until the following conditions precedent are satisfied or waived in writing by Purchaser:

(a) On or Before the Closing Date Seller shall have delivered to the Title Company (with a copy to Purchaser by email) one (1) or more original of the following documents, executed by Seller - - -

- (i) Seller's Closing Escrow Instruction Letter;
- (ii) Seller's Closing Settlement Statement;
- (iii) Deeds;
- (iv) Memorandum of Lease Agreement;
- (v) Bill of Sale;
- (vi) Non-Foreign Seller Certificate;
- (vii) A Release of Existing ROFR for each Existing ROFR (if applicable);
- (viii) Title Company Affidavit; and
- (ix) Seller's Corporate Certificate.

(b) Purchaser or the Title Company shall have received (with a copy being provided to the other party by electronic mail) the following items on or before the Closing Date, unless an earlier delivery is required elsewhere in this Agreement - - -

- (i) Lease Agreement;
- (ii) Lease Guaranty;
- (iii) Memorandum of Lease Agreement;
- (iv) Evidence of Flood Insurance for each Property (if applicable);
- (v) Lease Proof of Insurance;
- (vi) Seller's Evidence of Corporate Status; and
- (vii) Any other document required to be delivered pursuant to this Agreement and/or the other Transaction Documents and such further documents as may be reasonably required in order to legally close the Transaction.

(c) The representations and warranties of Seller set forth in Section 4.01 above and elsewhere in this Agreement shall have been true and correct in all material respects when made and shall continue to be true and correct in all material respects as of the Closing Date.

(d) Purchaser shall have received the Title Company's irrevocable commitment and unconditional agreement to issue to Purchaser the Owner's Title Policies and such endorsements and additional coverages as requested by Purchaser (if applicable).

(e) There shall be no outstanding Seller Event of Default.

(f) All real estate taxes due and payable that are not Permitted Encumbrances with respect to each Real Property shall be paid in full by Seller.

(g) No event shall have occurred, or condition exist, which would, upon the Closing Date or the giving of notice and/or passage of time, constitute a breach or default pursuant to Section 7.01 below; provided, however Purchaser shall not have the right to terminate this Agreement pursuant to this Section 5.01(g) until after the expiration of any applicable notice and cure period.

Section 5.02 Seller's Conditions Precedent to Closing. Seller shall not be obligated to close the Transaction until the following conditions precedent are satisfied or waived in writing by Seller:

(a) On or Before the Closing Date Purchaser shall have delivered to the Title Company (with a copy to Seller by email) one (1) or more original of the following documents, executed by Purchaser - - -

- (i) Purchaser's Closing Settlement Statement;
- (ii) Purchaser's Closing Escrow Instruction Letter; and
- (iii) any other document required to be delivered pursuant to this Agreement and/or the other Transaction Documents, and such further documents as may be required in order to legally close the Transaction.

(b) Purchaser shall have deposited with the Title Company the amounts due from Purchaser as listed on Purchaser's Closing Settlement Statement.

(c) No Purchaser Event of Default shall exist.

(d) All covenants, agreements and conditions required to be performed or complied with by Purchaser prior to or at the time of Closing in connection with the Transaction shall have been duly performed or complied with by Purchaser in all material respects or waived in writing by Seller prior to or at such time.

(e) No event shall have occurred, or condition exist, which would, upon the Closing Date or the giving of notice and/or passage of time, constitute a breach or default pursuant to Section 7.04 below or under any other Transaction Document.

ARTICLE VI

CLOSING

Section 6.01 Closing and Funding.

(a) Subject to the satisfaction of all conditions precedent set forth in Section 5.01 and Section 5.02 above and the termination rights provided for throughout this Agreement, the Closing shall occur on the Closing Date.

(b) When all conditions precedent have been satisfied (or waived in writing), no Seller Event of Default is outstanding (or Purchaser has provided a written waiver thereof), no Purchaser Event of Default outstanding (or Seller has provided a written waiver thereof) and the Title Company has confirmed that it has actual physical possession of all Transaction Documents and related items necessary to Close and fund the Transaction, then Seller and Purchaser shall instruct the Title Company to Close the Transaction pursuant to Purchaser's Closing Escrow Instruction Letter and Seller's Closing Escrow Instruction Letter.

Section 6.02 Possession. Possession of the Properties, free and clear of all tenants and other parties-in-possession (except for Tenant pursuant to the Lease Agreement), shall be delivered to Purchaser on the Closing Date.

ARTICLE VII

DEFAULTS; REMEDIES

Section 7.01 Seller Event of Default. Each of the following shall constitute a Seller Event of Default:

(a) If any representation or warranty of Seller contained herein is false in any material respect and such false representation or warranty is not cured with five (5) Business Days after the first to occur of Seller becoming aware of such false representation or warranty or Seller's receipt of Purchaser's written notice of same;

(b) If any representation or warranty of Seller contained in a Transaction Document is false in any material respect and such false representation or warranty is not cured with five (5) Business Days after the first to occur of Seller becoming aware of such false representation or warranty or Seller's receipt of Purchaser's written notice of same;

(c) If Seller represents to Purchaser a materially false statement about any portion of this Agreement or the Transaction and such false statement is not cured with five (5) Business Days after the first to occur of Seller becoming aware of such false statement or Seller's receipt of Purchaser's written notice of same;

(d) If Seller fails to timely and properly perform a Seller Obligation and does not cure the default within five (5) Business Days from when Seller actually, physically receives Purchaser's written notice identifying the unperformed Seller Obligation and declaring the default; or

(e) An Insolvency Event occurs with respect to a Seller Entity.

Section 7.02 Purchaser's Remedies. In the event a Seller Event of Default occurs, Purchaser may elect, in Purchaser's sole discretion, either (a) or (b) below (each of which shall include [c] below) as Purchaser's sole and exclusive remedy for the Seller Event of Default:

(a) Terminate this Agreement by timely and properly delivering to Seller written notice of Purchaser's termination, in which case Purchaser shall be entitled to receive a refund of the Earnest Money Deposit and thereafter neither Seller nor Purchaser shall have any further obligations or liabilities herein, save and except those obligations or liabilities that expressly survive the Closing of the Transaction or earlier termination of this Agreement;

(b) Bring an action for specific performance; or

(c) Notwithstanding the foregoing, upon a Seller Event of Default Purchaser shall also be entitled to recover from Seller all of Purchaser's out-of-pocket costs and expenses incurred in connection with this Agreement (including without limitation, the Transaction Costs, any other due diligence costs, reasonable attorneys' fees) not to exceed \$100,000.00 (such amount to be paid to Purchaser upon receipt by Seller of evidence of the incurrence thereof by Purchaser), and neither party shall have any further obligation or liability, except for the obligations set forth herein, the provisions of which are expressly stated to survive terminations of this Agreement.

Notwithstanding the foregoing, nothing contained in this Section 7.02 shall be construed to effect in any way Seller's indemnities set forth in (x) Section 2.05 above (regarding Seller's indemnity of Purchaser for any state and local income, franchise, and other taxes [and any applicable interest or penalties] imposed upon, or payable by, Seller in the state where the Properties are located), and (y) Section 8.06.

Section 7.03 Purchaser's Remedies Cumulative. Notwithstanding any provision contained herein, Purchaser's remedies set forth in this Article VII are cumulative and shall survive termination of this Agreement, and the exercise of any one (1) or more of the remedies provided for herein (or other applicable law) shall not be construed as a waiver of any of the other remedies available herein, at law or in equity.

Section 7.04 Purchaser Event of Default. Each of the following shall constitute a Purchaser Event of Default:

(a) If Purchaser fails to timely and properly perform a Purchaser Obligation and does not cure the default within five (5) Business Days from when Purchaser receives Seller's written notice identifying the unperformed Purchaser Obligations; or

(b) An Insolvency Event occurs with respect to Purchaser.

Notwithstanding the foregoing, nothing contained in this Section 7.04 shall be construed to effect in any way Purchaser's limited indemnity set forth in Section 3.09 above (regarding Purchaser's limited indemnity of Seller for third [3rd] party claims against Seller arising out of Purchaser's inspections).

Section 7.05 Seller's Sole Remedy. In the event a Purchaser Event of Default occurs, Seller's sole and exclusive sole remedy shall be to terminate this Agreement by delivering to Purchaser written notice of Seller's termination, in which event Seller shall be entitled to receive the Earnest Money Deposit as liquidated damages (and not as a penalty) and thereafter neither Seller nor Purchaser shall have any further obligations or liabilities herein, save and except those obligations or liabilities that expressly survive termination of this Agreement. SELLER AND PURCHASER HEREBY ACKNOWLEDGE AND AGREE THAT SELLER'S DAMAGES IN THE EVENT OF A PURCHASER EVENT OF DEFAULT WOULD BE DIFFICULT OR IMPOSSIBLE TO ASCERTAIN OR DETERMINE, THAT THE AMOUNT OF THE EARNEST MONEY DEPOSIT IS SELLER'S AND PURCHASER'S BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES SELLER WOULD SUFFER IN THE EVENT OF A PURCHASER EVENT OF DEFAULT, AND THAT THE AMOUNT OF THE EARNEST MONEY DEPOSIT IS REASONABLE WHEN CONSIDERING ALL OF THE FACTS AND CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Further Assurances. Each of Purchaser and Seller agrees, as reasonably requested to do so by the other party or the Title Company, to execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, assignments, confirmations, satisfactions, releases, instruments, or other documents as may be necessary, expedient or proper, in order to complete any and all conveyances, transfers, sales and assignments herein provided and to do any and all other acts and to execute, acknowledge and deliver any and all documents as so requested in order to carry out the Transaction and the intent and purpose of this Agreement.

Section 8.02 Transaction Characterization.

(a) Purchaser and Seller intend that all components of the Transaction be considered a single integrated transaction and not be severable.

(b) Purchaser and Seller intend that Seller's conveyance of the Property to Purchaser be an absolute conveyance in form and substance, and that the Conveyance Documents to be delivered at Closing shall not serve or operate as a mortgage, equitable mortgage, deed of trust, security agreement, trust conveyance or financing or trust arrangement of any kind, nor as a preference or fraudulent conveyance against any creditors of Seller. After the execution and delivery of the Conveyance Documents, Seller will have no legal or equitable interest or any other claim or interest in the Properties (except to the extent set forth in the Lease Agreement). Purchaser and Seller also intend for the Lease Agreement to be a true lease and not a transaction creating a financing lease, capital lease, equitable mortgage, mortgage, deed of trust, security interest or other financing arrangement, and the economic realities of the Lease Agreement are those of a true lease. Neither Purchaser nor Seller shall contest the

validity, enforceability or characterization of the sale and purchase of the Properties as an absolute conveyance by Seller to Purchaser pursuant to this Agreement, and Purchaser and Seller shall support the intent expressed herein that the purchase of the Properties by Purchaser pursuant to this Agreement provides for an absolute conveyance and does not create a joint venture, partnership, equitable mortgage, trust, financing device or arrangement, security interest or the like, if, and to the extent that, any challenge occurs.

(c) Each of Purchaser and Seller hereto agrees that it will not, nor will it permit any Affiliate to, at any time, take any action or fail to take any action with respect to the preparation or filing of any statement or disclosure to Governmental Authority, including without limitation, any income tax return (including an amended income tax return), to the extent that such action or such failure to take action would be inconsistent with the intention of Purchaser and Seller expressed in this Section 8.02.

Section 8.03 Risk of Loss.

(a) **Condemnation.** If, prior to Closing, action is initiated to take the Property, or any portion of a Property, by eminent domain proceedings or by deed in lieu thereof, within three (3) Business Days from when Seller received notice of the taking, Seller shall give Purchaser prompt written notice of the commencement of such action and Purchaser or Seller may elect at or prior to Closing, to:

(i) terminate this Agreement and Purchaser shall receive a refund of the Earnest Money Deposit, in which event Seller and Purchaser shall be relieved and discharged from any further obligation or liability herein, except as expressly stated otherwise herein;

(ii) terminate this Agreement as to any Property (or Properties) subject to the taking, in which event (a) the Purchase Price shall be adjusted based on the Allocations; (b) that portion of the Earnest Money Deposit allocable to the Property (or Properties) terminated pursuant to this subsection (ii) shall be immediately refunded to Purchaser; (c) except as otherwise provided in this Agreement, neither Seller nor Purchaser shall have any further liability or obligation under this Agreement with respect to the terminated Property (or Properties); and (d) Seller and Purchaser shall proceed to close with respect to the remaining Properties; or

(iii) proceed to close, in which event all of Seller's assignable right, title and interest in and to the award of the condemning authority shall be assigned to Purchaser at the Closing and there shall be no reduction in the Purchase Price.

(b) **Casualty.** Within three (3) Business Days following a casualty event, Seller shall give Purchaser prompt written notice of the casualty event. Seller assumes all risks and liability for damage to or injury occurring to a Property by fire, storm, accident, or any other casualty or cause until the Closing has been consummated. If a Property, or any part thereof, suffers any damage prior to the Closing from fire or other casualty which Seller, at its sole option, does not elect to fully repair, and the cost of such repair is estimated by a contractor reasonably acceptable to Seller and Purchaser to exceed five percent (5%) of the Purchase Price allocated to such Property, Purchaser or Seller may elect at or prior to Closing, to:

(i) terminate this Agreement and Purchaser shall receive a refund of the Earnest Money Deposit, in which event Seller and Purchaser shall be relieved and discharged from any further obligation or liability herein, except as expressly stated otherwise;

(ii) terminate this Agreement as to any Property (or Properties) which suffers damage prior to the Closing from fire or other casualty which Seller does not elect to fully repair and adjust the Purchase Price based on the Allocations, in which event (a) the Purchase Price shall be adjusted based on the Allocations; (b) that portion of the Earnest Money Deposit allocable to the Property (or Properties) terminated pursuant to this subsection (ii) shall be immediately refunded to Purchaser; (c) except as otherwise provided in this Agreement, neither Seller nor Purchaser shall have any further liability or obligation under this Agreement with respect to the terminated Property (or Properties); and (d) Seller and Purchaser shall proceed to close with respect to the remaining Properties; or

(iii) proceed to Close, in which event all of Seller's assignable right, title and interest in and to the proceeds of any insurance policy covering such casualty (less an amount equal to any expense and cost reasonably incurred by Seller to repair or restore the Properties, which shall be payable to Seller upon Seller's delivery to Purchaser of satisfactory evidence thereof) shall be assigned to Purchaser at Closing, and Purchaser shall be entitled to a credit in the amount of Seller's (or Tenant's, as the case may be) deductible at Closing.

(c) ***Post-Closing in the event of a Condemnation and/or Casualty.*** If, prior to Closing, an action is initiated to take the Property, or any portion of a Property, by eminent domain proceedings or by deed in lieu thereof or there is a casualty event and neither party elects to terminate this Agreement, the Lease Agreement will govern the use and application of all proceeds and restoration to the Property or Properties affected by such casualty and/or condemnation.

Section 8.04 Notices.

(a) All Notices shall be in writing and given by (a) hand delivery, (b) express overnight delivery service (e.g. Fed Ex), (c) electronic mail, or (d) certified or registered mail, return receipt requested.

(b) All Notices shall be deemed to have been delivered upon:

(i) receipt, if hand delivered;

(ii) the next Business Day, if delivered by a reputable express overnight delivery service (e.g. Fed Ex);

(iii) receipt of an email confirming the electronic mail was successful transmitted, if delivered by electronic mail; or

(iv) the third (3rd) Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested.

(c) Notices shall be provided to Purchaser and Seller as specified below:

If to Seller: Party City Holdings Inc.
80 Grasslands Road
Elmsford, New York 10523
Attn: Michael Correale
Telephone: (914) 784 - 4050
E-Mail: mcorreale@amscan.com

With a copy to: Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn: John G. Caruso, Esq.
Telephone: (312) 862- 2712
E-Mail: jcaruso@kirkland.com

If to Purchaser: Spirit Realty, L.P.
2727 N. Harwood, Suite 300
Dallas, Texas 75201
Attention: Rochelle Thomas, Esq.
Telephone: (972) 476-1937
E-Mail: rthomas@spiritrealty.com

With a copy to: Thompson & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Attn: Mark Weibel, Esq.
Telephone: (214) 969-1111
E-Mail: Mark.Weibel@tklaw.com

or to such other address or such other Person as Purchaser or Seller may from time to time hereafter specify to the other party in a written notice delivered in the manner provided above. Whenever in this Agreement the giving of Notice is required, it may be waived in writing at any time by the Person or Persons entitled to receive such Notice.

A copy of any Notice delivered pursuant to this Section 8.04 shall contemporaneously be delivered in the manner provided for herein to any assignee of Purchaser's interest that previously notified Seller in writing of its name and address.

Section 8.05 Assignment. Purchaser may assign its rights under this Agreement in whole or in part at any time to any Affiliate without notice to, or consent of, Seller. Upon any unconditional assignment of Purchaser's entire right and interest hereunder, Purchaser shall automatically be relieved, from and after the date of Closing, from liability for the performance of Purchaser's obligations herein. Seller shall not, without the prior written consent of Purchaser, which consent may be withheld in Purchaser's sole discretion, sell, assign, transfer, mortgage, convey, encumber or grant any easements or other rights or interests of any kind in the Properties, any of Seller's rights under this Agreement or any interest in Seller, whether voluntarily, involuntarily or by operation of law or otherwise, including, without limitation, by merger, consolidation, dissolution or otherwise.

Section 8.06 Indemnity. In addition to the indemnity provided by Seller to Purchaser set forth in Section 2.05 above, if the Closing occurs, Seller (or Tenant) shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all Losses arising from a breach of Seller's representations, warranties, and/or covenants under this Agreement. The Indemnity in this Section 8.06 shall survive Closing for a period of one (1) year following the Closing Date.

Section 8.07 Brokerage Commission . Each of Purchaser and Seller represents and warrants to the other that neither Purchaser nor Seller has dealt with, negotiated through or communicated with any broker in connection with this Transaction, except that Seller represents to Purchaser that Seller has retained the Broker, whose commission shall be paid by Seller at Closing pursuant to a separate agreement between Seller and the Broker. Either Purchaser or Seller, as applicable, shall indemnify, defend and hold harmless the other party from and against any and all claims, loss, costs and expenses, including reasonable attorneys' fees, resulting from any claims that may be made against the Indemnified Party by any broker claiming a commission or fee by, through or under such indemnifying party. Purchaser's and Seller's respective obligations under this Section 8.07 shall survive Closing or termination of this Agreement.

Section 8.08 Reporting Requirements. Purchaser and Seller agree to comply with any and all reporting requirements applicable to the Transaction which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, and further agree upon request, to furnish the other party with evidence of such compliance.

Section 8.09 Disclosures. Except as expressly set forth in Section 8.08, this Section 8.09, Section 8.16 and as required by law or judicial action, prior to Closing neither Seller nor Purchaser will make any public disclosure of this Agreement, the Transaction, the Transaction Documents (including provisions contained within the Transaction Documents) without the prior consent of the other party hereto. Purchaser and Seller further agree that, notwithstanding any provision contained in this Agreement, either Purchaser or Seller (and each employee, representative or other agent of any party) may disclose to any and all Persons, without limitation of any kind, any matter required under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

Section 8.10 Time is of the Essence. Purchaser and Seller expressly agree that time is of the essence with respect to the performance of this Agreement.

Section 8.11 Non-Business Days. If the Closing Date, or the date for delivery of a Notice, or performance of a party's covenant or obligation falls on a Saturday, Sunday or legal holiday in the state in which any Property is located, the Closing Date or such notice or performance shall be postponed until the next Business Day.

Section 8.12 Waiver and Amendment. No provision of this Agreement shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any prior or future occasion.

Section 8.13 Purchaser's and Seller's Liability.

(a) Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Agreement by Purchaser, that:

(i) there shall be absolutely no personal liability on the part of any director, officer, manager, partner, member, employee or agent of Purchaser with respect to any of the terms, covenants and conditions of this Agreement;

(ii) Seller waives all claims, demands and causes of action against Purchaser's directors, officers, managers, members, partners, employees and agents in the event of any breach by Purchaser of any of the terms, covenants and conditions of this Agreement to be performed by Purchaser; and

(iii) Seller shall look solely to the assets of Purchaser for the satisfaction of each and every remedy of Seller in the event of any breach by Purchaser of any of the terms, covenants and conditions of this Agreement to be performed by Purchaser, such exculpation of liability to be absolute and without any exception whatsoever, subject to the other provisions of this Agreement which may limit recourse of Seller against Purchaser to the Earnest Money Deposit.

(b) Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Agreement by Seller, that:

(i) there shall be absolutely no personal liability on the part of any director, officer, manager, member, employee or agent of Seller with respect to any of the terms, covenants and conditions of this Agreement;

(ii) Purchaser waives all claims, demands and causes of action against Seller's directors, officers, managers, members, partners, employees and agents in the event of any breach by Seller of any of the terms, covenants and conditions of this Agreement to be performed by Seller; and

(iii) Purchaser shall look solely to the assets of Seller for the satisfaction of each and every remedy of Purchaser in the event of any breach by Seller of any of the terms, covenants and conditions of this Agreement to be performed by Seller, such exculpation of liability to be absolute and without any exception whatsoever.

Section 8.14 Headings; Internal References. The headings of the various sections and exhibits of this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying the express terms and provisions of this Agreement. Unless stated to the contrary, any references to any section, subsection, exhibit and the like contained herein are to the respective section, subsection, exhibit and the like of this Agreement.

Section 8.15 Construction Generally. This is an agreement between parties who are experienced in sophisticated and complex matters similar to the Transaction, and this Agreement and the other Transaction Documents, are entered into by Purchaser and Seller in reliance upon the economic and legal bargains contained herein and therein, and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of Purchaser and Seller or the domicile of either one. Each of Seller and Purchaser was represented by legal counsel competent in advising them of their obligations and liabilities hereunder.

Section 8.16 Securitizations and Other Transactions . As a material inducement to Purchaser's willingness to complete the Transaction, Seller hereby acknowledges and agrees that Purchaser may, from time to time:

- (a) advertise, issue press releases, send direct mail or otherwise disclose information regarding the Transaction for marketing purposes; and
- (b) engage in all or any combination of the following, or enter into agreements in connection with any of the following or in accordance with requirements that may be imposed by applicable securities, tax or other laws:
 - (i) sell, assign, grant, bargain, convey, transfer, finance, re-finance, purchase or re-acquire the Property, the Lease Agreement or any other Transaction Document, Purchaser's right, title and interest in the Property, the Lease Agreement or any other Transaction Document, the servicing rights with respect to any of the foregoing, or participations in any of the foregoing; or
 - (ii) a securitization and related transactions.

Section 8.17 Attorneys' Fees. In the event of any controversy, claim, dispute or proceeding between Purchaser and Seller concerning this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled. The provisions of this Section 8.17 shall survive the Closing or earlier termination of this Agreement.

Section 8.18 Entire Agreement. This Agreement and all other Transaction Documents, and all other certificates, instruments or agreements to be delivered hereunder and therein constitute the entire agreement between Purchaser and Seller with respect to the subject matter hereof, and there are no other representations, warranties or agreements, written or oral, between Seller and Purchaser with respect to the subject matter of this Agreement. Notwithstanding anything in this Agreement to the contrary, upon the execution and delivery of this Agreement by Seller and Purchaser:

- (a) this Agreement shall supersede any previous discussions, letters of intent, agreements and/or term or commitment letters relating to the Transaction, including without limitation, the Letter of Intent and any and all agreements related to confidentiality, exclusivity, non-competition, non-solicitation of employees, non-solicitation or pursuit of any business opportunity represented by the Transaction, or any other term or condition which restricts any business activity of Purchaser or its Affiliates. During the term of this Agreement, Seller and Seller's agents and representatives shall not show, offer, market or negotiate to sell any Property or any portion thereof or any interest therein to any party other than Purchaser, nor will Seller conduct discussion with any other party with respect to same. Seller and Seller's agents and representatives shall keep this Agreement confidential, and shall not, without the prior written consent of Purchaser, which consent may be withheld in Purchaser's sole and absolute discretion, disclose the existence or terms of this Agreement to any other Person (other than to Seller's accountants, attorneys, or agents who need to know and whom Seller has directed to treat such information as confidential). The terms of this Section shall survive Closing under this Agreement.

(b) the terms and conditions of this Agreement shall control notwithstanding that such terms are inconsistent with, or vary from, those set forth in any of the foregoing agreements; and

(c) this Agreement may only be amended by a written agreement executed by Purchaser and Seller.

The provisions of this Section 8.18 shall survive the Closing or earlier termination of this Agreement.

Section 8.19 Forum Selection; Jurisdiction; Venue . For purposes of any action or proceeding arising out of this Agreement, Purchaser and Seller hereto expressly submit to the jurisdiction of all federal and state courts located in the State of New York. Seller consents that it may be served with any process or paper by registered mail or by personal service within or without the State where a Property is located in accordance with applicable law. Furthermore, Seller waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. Nothing contained in this Section 8.19 shall limit or restrict the right of Purchaser to commence any proceeding in the federal or state courts located in the state or states in which a Property is located to the extent Purchaser deems such proceeding necessary or advisable to exercise remedies available under this Agreement.

Section 8.20 Separability; Binding Effect; Governing Law. Each provision hereof shall be separate and independent, and the breach of any provision by Purchaser shall not discharge or relieve Seller from any of its obligations hereunder. Each provision hereof shall be valid and shall be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Subject to the provisions of Section 8.05 (Assignment), all provisions contained in this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors and assigns of Purchaser and Seller, including, without limitation, any United States trustee, any debtor-in-possession or any trustee appointed from a private panel, in each case to the same extent as if each successor and assign were named as a party hereto. This Agreement shall be governed by, and construed with, the laws of the applicable state or states in which a Property is located, without giving effect to any state's conflict of laws principles.

Section 8.21 WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, PURCHASER AND SELLER HERETO SHALL, AND THEY HEREBY DO, INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF PURCHASER AND SELLER HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR ANY CLAIM OR INJURY OR DAMAGE RELATED THERETO. SELLER FURTHER WAIVES THE RIGHT IT MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM PURCHASER IN ANY ACTION, PROCEEDING OR COUNTERCLAIM WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO.

Section 8.22 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument, and Purchaser and Seller agree that the use of pdf signatures (by email) for the negotiation and execution of this Agreement shall be legal and binding and shall have the same full force and effect as if originally signed.

Section 8.23 Local Law Provisions. Seller shall be responsible for complying (at its expense) with any local law requirements (such as required inspections) which are conditions for the conveyance of a Property and/or the Closing of the Transaction as contemplated herein. In addition, the following local law provisions shall apply:

(a) If any local law requires an inspection of a Real Property or a certificate from a local municipality, Seller shall be required to undertake and pay for such inspection and/or shall obtain such certificate and pay for the same.

Section 8.24 Confidentiality. The terms of the transaction contemplated in this Agreement, including, without limitation, the Purchase Price and all other financial terms, shall remain confidential and shall not be disclosed by any party hereto without the written consent of the other except (a) to such party's directors, officers, partners, employees, legal counsel, accountants, lenders, engineers, architects, brokers, owners, members, investors, financial advisors and similar professionals and consultants, to the extent such party deems it necessary or appropriate in connection with the transaction contemplated hereunder (and such party shall inform each of the foregoing parties of such party's obligations under this Section and shall secure the agreement of such parties to be bound by the terms hereof), or (b) as otherwise required by Laws or regulation (including the rules and regulations of a securities exchange). Unless and until the transaction contemplated by this Agreement shall close, Purchaser shall also keep confidential all documents, reports and information concerning the Properties obtained from Seller or through the due diligence investigation of the Properties by Purchaser or its agents, except to the extent permitted by clauses (a) or (b) above. Notwithstanding any terms to the contrary contained in this Agreement, Purchaser shall have right to disclose information regarding the transaction contemplated by this Agreement, including the name of Tenant, the cap rate and the Purchase Price, in connection with Purchaser's earnings calls conducted any time after the Effective Date. The provisions of this Section shall survive any termination of this Agreement or the Closing (as applicable).

[Remainder of page intentionally left blank; signature page(s) to follow]

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement to be enforceable on the Effective Date.

PURCHASER:

SPIRIT REALTY, L.P.,

a Delaware limited partnership

By: Spirit General OP Holdings, LLC
a Delaware limited liability company,
its general partner

By: /s/ Daniel Rosenberg

Printed Name: Daniel Rosenberg

Title: Senior Vice President

SELLER:

AMSCAN INC.,
a New York corporation

By: /s/ Michael A. Correale
Printed Name: Michael A. Correale
Title: Vice President

**ANAGRAM EDEN PRAIRIE PROPERTY HOLDINGS
LLC,**
a Delaware limited liability company

By: PARTY CITY HOLDINGS INC., a Delaware
corporation, as sole member

By: /s/ Michael A. Correale
Printed Name: Michael A. Correale
Title: Senior Vice President

AMSCAN NM LAND, LLC,
a Delaware limited liability company

By: AMSCAN INC., a New York corporation,
its Manager

By: /s/ Michael A. Correale
Printed Name: Michael A. Correale
Title: Vice President

EXHIBITS

Exhibit “A” - Legal Description / Property Address

Exhibit “B” - [form] Bill of Sale

Exhibit “C” - [form] Assignment of Warranties

Exhibit “D” - Questionnaire

Exhibit “E” - Description of Facilities

Exhibit “F” - Master Lease Agreement

Exhibit “G” - Wiring Instructions

Exhibit “H” - Allocations

Exhibit “I” - Title Company Affidavit

Exhibit “J” - Lease Guaranty

EXHIBIT “A”

to that certain
Purchase and Sale Agreement

Street Address / Legal Description

Street Address : 7700 Anagram Drive, Eden Prairie, Minnesota 55344
2800 Purple Sage, Los Lunas, New Mexico 87031
47 Elizabeth Drive, Chester, New York 10918

Legal Description:

Minnesota

Real property in the City of Eden Prairie, County of Hennepin, State of Minnesota, described as follows:

Lots 1, 2 and 4, Block 1, Anagram Park

Torrens Property-Certificate of Title No. 1011966

New Mexico

The following described real estate in the County of Valencia and State of New Mexico, to wit:

Tract “B” of Los Morros Business Park, as said tract is shown and designated on the plat thereof, filed in the Office of the County Clerk of Valencia County, New Mexico, on November 21, 1997, in Plat Cabinet “J”, Page 183.

New York

ALL THAT CERTAIN PIECE AND PARCEL OF LAND SITUATE IN THE VILLAGE OF CHESTER, ORANGE COUNTY, NEW YORK AND SHOWN ON A MAP ENTITLED, “FINAL SUBDIVISION PLAT, LOT LINE CHANGE OF TAX MAP PARCEL, SECTION 117, BLOCK 1, LOT 2 & SECTION 117, BLOCK 1, LOT 4, CHESTER INDUSTRIAL PARK, VILLAGE OF CHESTER, ORANGE COUNTY, NEW YORK” AS PREPARED BY T.M. DEPUY ENGINEERING AND LAND SURVEYING, P.C. AND DATED FEBRUARY 9, 2000, LAST REVISED AUGUST 21, 2000 AND FILED AUGUST 24, 2000 IN THE ORANGE COUNTY CLERK’S OFFICE AS MAP NO. 156-00.

BEGINNING AT A SET 5/8” IRON ROD WITH RED CAP FLUSH WITH THE GROUND BEING IN THE

SOUTHWESTERLY BOUNDS OF ELIZABETH DRIVE AND BEING THE NORTHERLY CORNER OF LANDS OF ISOMEDIX OPERATION, INC., LIBER 3600 OF DEEDS, PAGE 144;

THENCE ALONG THE NORTHEASTERLY AND SOUTHEASTERLY BOUNDS OF SAID ISOMEDIX OPERATION, INC. ON THE FOLLOWING TWO COURSES AND DISTANCES:

1. SOUTH 42° 09' 45" WEST 600.84 FEET TO A SET 5/8" IRON ROD WITH RED CAP WITH A 1" REVEAL;
2. SOUTH 47° 50' 15" EAST 394.52 FEET TO A POINT BEING IN THE NORTHERLY BOUNDS OF SAID LANDS OF STATE STREET BANK AND TRUST COMPANY, LIBER 5179 OF DEEDS, PAGE 138;

THENCE ALONG SAID NORTHERLY BOUNDS OF STATE STREET BANK & TRUST COMPANY AND GENERALLY DOWN THE CENTER LINE OF DRAINAGE DITCH ON THE FOLLOWING FOUR COURSES AND DISTANCES;

1. SOUTH 65° 43' 44" WEST 353.14 FEET TO A POINT;
2. SOUTH 74° 45' 33" WEST 96.08 FEET TO A POINT;
3. SOUTH 67° 33' 42" WEST 654.26 FEET TO A POINT;
4. NORTH 78° 20' 26" WEST 188.16 FEET TO A POINT BEING IN THE CENTER OF BLACK MEADOW CREEK AND BEING IN THE EASTERLY BOUNDS OF LANDS OF CONCRETE PROPERTIES, LIBER 5179 OF DEEDS, PAGE 138;

THENCE GENERALLY ALONG THE CENTER LINE OF THE BLACK MEADOW CREEK FOR A PORTION OF THE WAY AND ALONG THE EASTERLY BOUNDS OF SAID LANDS OF CONCRETE PROPERTIES ON THE FOLLOWING NINE COURSES AND DISTANCES:

1. NORTH 28° 33' 43" WEST 254.14 FEET TO A POINT;
2. NORTH 53° 04' 13" WEST 224.74 FEET TO A POINT;
3. NORTH 35° 43' 13" WEST 58.83 FEET TO A POINT;
4. NORTH 01° 47' 17" EAST 90.43 FEET TO A POINT;
5. NORTH 15° 29' 13" WEST 129.63 FEET TO A POINT;
6. NORTH 31° 30' 13" WEST 136.05 FEET TO A POINT;
7. NORTH 43° 24' 13" WEST 267.04 FEET TO A POINT;
8. NORTH 19° 54' 13" WEST 154.32 FEET TO A POINT;
9. NORTH 39° 01' 13" WEST 144.43 FEET TO A POINT BEING IN THE SOUTHERLY BOUNDS OF LANDS OF ANDREW L. PALMER ASSOCIATES, LP, LIBER 1877 OF DEEDS, PAGE 1058;

THENCE ALONG THE SOUTHERLY BOUNDS OF SAID LANDS OF ANDREW L. PALMER ASSOCIATES, LP ON THE FOLLOWING FIVE COURSES AND DISTANCES:

1. NORTH 42° 41' 39" EAST 158.08 FEET TO A POINT;
2. NORTH 86° 36' 09" EAST 103.47 FEET TO A POINT;

3. NORTH 76° 00' 09" EAST 79.19 FEET TO A POINT;

4. NORTH 73° 32' 39" EAST 48.40 FEET TO A POINT;

5. NORTH 04° 43' 09" EAST 19.53 FEET TO THE SOUTHWEST CORNER OF OTHER LANDS OF ANDREW L. PALMER ASSOCIATES, LP, LIBER 1877 OF DEEDS, PAGE 1058;

THENCE ALONG THE SOUTHERLY BOUNDS OF SAID OTHER LANDS OF ANDREW L. PALMER ASSOCIATES, LP AND GENERALLY DOWN THE CENTER LINE OF THE BLACK MEADOW CREEK ON THE FOLLOWING SEVEN COURSES AND DISTANCES:

1. SOUTH 77° 48' 51" EAST 230.33 FEET TO A POINT;

2. NORTH 73° 34' 09" EAST 115.51 FEET TO A POINT;

3. NORTH 59° 04' 09" EAST 116.24 FEET TO A POINT;

4. NORTH 42° 16' 09" EAST 176.39 FEET TO A POINT;

5. NORTH 31° 53' 09" EAST 99.87 FEET TO A POINT;

6. NORTH 48° 56' 09" EAST 161.23 FEET TO A POINT;

7. NORTH 88° 00' 09" EAST 244.61 FEET TO A POINT BEING THE SOUTHERLY CORNER OF LANDS OF CHESTER INDUSTRIAL PARK ASSOCIATES, LLP, LIBER 3151 OF DEEDS, PAGE 165 AND BEING LOT #1 OF MAP #9513;

THENCE ALONG THE SOUTHERLY BOUNDS OF SAID LOT #1 ON THE FOLLOWING TWO COURSES AND DISTANCES:

1. NORTH 67° 37' 16" EAST 24.44 FEET TO A POINT;

2. NORTH 42° 09' 45" EAST 17.99 FEET TO A POINT;

THENCE ALONG THE SOUTHWESTERLY BOUNDS OF REVISED TAX LOT SECTION 117, BLOCK 1, LOT 2 AND OTHER LANDS OF CHESTER INDUSTRIAL PARK, LP SOUTH 47° 50' 15" EAST 415.32 FEET TO A SET 5/8" IRON ROD WITH RED CAP FLUSH WITH THE GROUND AND BEING THE NORTHWESTERLY CORNER OF THE INTERSECTION OF ELIZABETH DRIVE AND NUCIFORA BOULEVARD;

THENCE ALONG THE SOUTHWESTERLY BOUNDS OF SAID ELIZABETH DRIVE SOUTH 47° 50' 15" EAST 578.65 FEET TO THE PLACE AND POINT OF BEGINNING.

EXHIBIT “B”

to that certain
Purchase and Sale Agreement

Bill of Sale

[see attached]

Spirit / Party City (acquisition)

P URCHASE AND S ALE A GREEMENT

BILL OF SALE
(Party City [acquisition])

June ____, 2019 (the “ **Effective Date** ”)

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration (including the Purchase Price), the receipt and sufficiency of which are hereby acknowledged, [PARTY CITY HOLDCO INC., a Delaware corporation] (“ **Transferor** ”), does hereby grant, bargain, sell, convey, assign, deliver and transfer to SPIRIT REALTY, L.P., a Delaware limited partnership (“ **Transferee** ”), all of Transferor’s right, title and interest in and to the personal property and general intangible assets of Transferor (collectively, the “ **Assets** ”) described on **Exhibit “A”**, attached hereto and incorporated herein by reference, to have and to hold the same by Transferee and its successors and assigns forever.

Transferor represents and warrants that it holds title to the Assets free and clear of any and all Liens and has full power and authority to execute this Bill of Sale.

Capitalized terms used in this Bill of Sale and in **Exhibit “A”**, attached hereto and not otherwise defined herein or therein shall have the meaning ascribed thereto in that certain Purchase and Sale Agreement (the “ **Purchase Agreement** ”), dated as of June ____, 2019, as may be assigned, amended and/or modified, between Transferor and Transferee.

Executed as of June ____, 2019.

TRANSFEROR :

PARTY CITY HOLDCO INC.,
a Delaware Corporation

By: _____

Printed Name: _____

Title: _____

Spirit / Party City (acquisition)

PURCHASE AND SALE AGREEMENT

Exhibit “A”

to that certain
Bill of Sale

Assets

All of Seller’s right, title and interest in and to all fixtures, machinery, apparatus, equipment, fittings and appliances of every kind and nature whatsoever now or hereafter affixed or attached to or installed in or on any of the land or improvements with respect to the Real Property (as defined in the Purchase Agreement), including all electrical, anti-pollution, heating, lighting (including hanging fluorescent lighting), light poles, incinerating, power, air cooling, air conditioning, humidification, sprinkling, plumbing, lifting (including any hydraulic lifts), cleaning, fire prevention, fire extinguishing and ventilating systems, devices and machinery and all engines, pipes, pumps, tanks (including exchange tanks and above-ground fuel storage tanks), signs, canopies, motors, conduits, ducts, steam circulation coils, blowers, steam lines, compressors, oil burners, boilers, doors, windows, loading platforms, lavatory facilities, stairwells, fencing (including cyclone fencing), passenger and freight elevators, overhead cranes and garage units; but specifically excluding all trade fixtures, USTs, sinks, fire extinguishers, Transferor’s inventory, and furniture presently located on the Real Property.

Spirit / Party City (acquisition)

P URCHASE AND S ALE A GREEMENT

EXHIBIT “C”

to that certain
Purchase and Sale Agreement

Assignment of Warranties

[see attached]

Spirit / Party City (acquisition)

P URCHASE AND S ALE A GREEMENT

ASSIGNMENT OF WARRANTIES
(Party City [acquisition])

June ____, 2019 (the “ **Effective Date** ”)

THIS ASSIGNMENT OF WARRANTIES (this “ **Assignment** ”) is entered into by and between PARTY CITY HOLDCO INC., a Delaware corporation (“ **Assignor** ”), as assignor, and SPIRIT REALTY, L.P., a Delaware limited partnership (“ **Assignee** ”), as assignee.

Recitals

A. Pursuant to the terms of that certain Purchase and Sale Agreement (the “ **Purchase and Sale Agreement** ”), dated as of June ____, 2019, as may be assigned, amended and/or modified, entered into by and between Assignor and Assignee, Assignor agreed to sell to Assignee, and Assignee agreed to purchase from Assignor, *inter alia* , certain real property, the improvements located thereon and certain rights appurtenant thereto owned by Assignor, all as more particularly described in the Purchase Agreement (collectively, the “ **Property** ”). Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Purchase Agreement.

B. The Purchase Agreement provides, *inter alia and only to the extent they are assignable*, that Assignor shall assign to Assignee all of Assignee’s right, title and interest in and to all guaranties and warranties relating to the Property and that Assignor and Assignee shall enter into this Assignment.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, Assignor and Assignee hereto hereby agree as follows:

Assignment

1. Assignment of Warranties. On the Effective Date, Assignor hereby assigns, sets over, transfers and conveys to Assignee all of Assignor’s right, title and interest in, to and under any and all guaranties and warranties in effect with respect to all or any portion of the Property as of the date hereof. Assignee hereby accepts the foregoing assignment of guaranties and warranties.

2. Severability. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.

3. Counterparts. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument, and Purchaser and Seller agree that the use of pdf signatures (by email) for the negotiation and execution of this Assignment shall be legal and binding and shall have the same full force and effect as if originally signed.

Spirit / Party City (acquisition)

PURCHASE AND SALE AGREEMENT

4. Miscellaneous. This Assignment and the obligations of Assignor and Assignee herein shall (x) survive the closing of the Transaction (defined in the Purchase and Sale Agreement), (y) not be merged therein, and (z) be binding upon and inure to the benefit of Assignor and Assignee hereto, their respective legal representatives, successors and assigns and may not be modified or amended in any manner other than by a written agreement signed by the party to be charged therewith.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment to be enforceable on the Effective Date.

ASSIGNOR :

PARTY CITY HOLDCO INC., a Delaware corporation

By: _____
Printed Name: _____
Title: _____

ASSIGNEE :

SPIRIT REALTY, L.P.,
a Delaware limited partnership

By: Spirit General OP Holdings, LLC
a Delaware limited liability company,
its general partner

By: _____
Printed Name: _____
Title: _____

Spirit / Party City (acquisition)
PURCHASE AND SALE AGREEMENT

EXHIBIT “D”

to that certain
Purchase and Sale Agreement

Questionnaire

[see attached]

Spirit / Party City (acquisition)

P URCHASE AND S ALE A GREEMENT

SPIRIT REALTY CAPITAL

QUESTIONNAIRE

Please complete this Questionnaire promptly and return it to:

Spirit Realty Capital
2727 North Harwood Street, Suite 300
Dallas, TX 75201
Attention: Closing Department

Spirit cannot complete its underwriting and credit analysis in connection with the contemplated transaction until it has received a completed and executed copy of this Questionnaire from you.

SELLER

Name: Amscan Inc.
Principal Place of Business: 80 Grasslands Road, Elmsford, New York 10523
Type of Entity: Corporation
State of Formation or Country of Citizenship: New York
Tax ID or Social Security Number: 13-1771353

Name: Amscan NM Land, LLC
Principal Place of Business: 80 Grasslands Road, Elmsford, New York 10523
Type of Entity: Limited liability company
State of Formation or Country of Citizenship: Delaware
Tax ID or Social Security Number: 13-1771353

Name: Anagram Eden Prairie Property Holdings LLC
Principal Place of Business: 80 Grasslands Road, Elmsford, New York 10523
Type of Entity: Limited liability company
State of Formation or Country of Citizenship: Delaware
Tax ID or Social Security Number: 41-1918309

TENANT(S) LOCATED AT SUBJECT PROPERTY OR PROPERTIES

(Attach additional sheets if necessary)

Name: Party City Holdings Inc.
Principal Place of Business: 80 Grasslands Road, Elmsford, New York 10523
Type of Entity: Corporation
State of Formation or Country of Citizenship: Delaware
Tax ID or Social Security Number: 20-1033029

EQUITY OWNERS ¹ (Attach additional sheets if necessary) Complete this Equity Owners section for all Equity Owners of Seller, and Tenant.

EQUITY OWNER OF AMSCAN INC. (Seller of 47 Elizabeth Drive)

Name: Party City Holdings Inc.

Principal Place of Business: 80 Grasslands Road, Elmsford, New York 10523

Type of Entity: corporation

State of Formation or Country of Citizenship: Delaware

Tax ID or Social Security Number: 20-1033029

EQUITY OWNER OF ANAGRAM EDEN PRAIRIE PROPERTY HOLDINGS LLC (Seller of Minnesota Property)

Name: Party City Holdings Inc.

Principal Place of Business: 80 Grasslands Road, Elmsford, New York 10523

Type of Entity: corporation

State of Formation or Country of Citizenship: Delaware

Tax ID or Social Security Number: 20-1033029

EQUITY OWNER OF AMSCAN NM LAND, LLC (Seller of Los Lunas Property)

Name: Amscan Inc.

Principal Place of Business: 80 Grasslands Road, Elmsford, New York 10523

Type of Entity: Corporation

State of Formation or Country of Citizenship: New York

Tax ID or Social Security Number: 13-1771353

¹ “**Equity Owners**” are defined as:

- Each person or entity having an equity interest of 10% or more in Seller or a Tenant;
- Each general partner (regardless of equity interest percent) of a general partnership or limited partnership and each person or entity having an equity interest of 10% or more in the general partner of the general partnership;
- Each managing member of a limited liability company (regardless of equity interest percent) and each person or entity having an equity interest of 10% or more in the managing member of the limited liability company;
- Individual or entity who signs a promissory note, loan guaranty or similar instrument;
- If a trust, please contact Spirit Realty Capital for instructions on ownership information to be supplied on this form.

EQUITY OWNER OF TENANT

Name: Party City Holdco Inc.

Principal Place of Business: 80 Grasslands Road, Elmsford, New York 10523

Type of Entity: Corporation

State of Formation or Country of Citizenship: Delaware

Tax ID or Social Security Number: 46-0539758

The foregoing information is provided for informational purposes only and Purchaser agrees and acknowledges that Seller makes no representations or warranties whatsoever with regarding to the foregoing information.

Signature: _____
Printed Name: Michael A. Correale
Title: Vice President
Entity: Party City Holdco Inc., Party City Holdings Inc., Party City Holdings Inc. as Member of Anagram Eden Prairie Property Holdings, LLC Amscan Inc., and for Amscan Inc. as Manager of Amscan NM Land, LLC

June __, 2019

EXHIBIT “E”

to that certain
Purchase and Sale Agreement

Description of Facilities

Approximately 896,000 square foot building primarily used as a distribution center located in Chester, New York

Approximately 115,600 square foot building primarily used as a manufacturing facility located in Eden Prairie, Minnesota

Approximately 105,082 square foot building primarily used as a manufacturing facility located in Los Lunas, NM.

EXHIBIT “F”

to that certain
Purchase and Sale Agreement

Master Lease Agreement

[see attached]

EXHIBIT “G”

to that certain
Purchase and Sale Agreement

Wiring Instructions

Title Company :

Bank Name: _____
ABA No.: _____
Account No.: _____
Account Name: _____
References: _____

Purchaser :

Bank Name: _____
ABA No.: _____
Account No.: _____
Account Name: _____
References: _____

Seller :

Bank Name: _____
ABA No.: _____
Account No.: _____
Account Name: _____
References: _____

EXHIBIT “H”

to that certain
Purchase and Sale Agreement

Allocations

1.	7700 Anagram Drive, Eden Prairie, Minnesota 55344:	\$	13,223,235.03
2.	2800 Purple Sage, Los Lunas, New Mexico 87031:	\$	12,285,254.69
3.	47 Elizabeth Drive, Chester, New York 10918:	\$	102,491,510.28

EXHIBIT "I"

to that certain
Purchase and Sale Agreement

Title Company Affidavit

SELLER TITLE CERTIFICATE

PROPERTY:

COUNTY:

STATE:

_____, a _____ ("Seller"), as seller, and _____, a _____ ("Buyer"), as buyer, are parties to that certain Purchase and Sale Agreement (the "Purchase Agreement") dated _____, 20____, [as the same has been amended and modified], relating to the improved real property (the "Real Property") referred to in Exhibit "A" attached hereto and made a part hereof.

In connection with the consummation of the transactions contemplated by the Purchase Agreement, Seller hereby represents and warrants to First American Title Insurance Company the following:

Seller is a _____ organized and existing under the laws of the State of _____, and authorized to do business in the State of _____.

To Seller's actual knowledge, (i) Seller's _____ agreement is in full force and effect, and (ii) no proceedings are pending for the dissolution of the Seller.

To Seller's actual knowledge, the leases described on Exhibit "B" attached hereto constitute all of the written leases affecting the Real Property with the current tenants of the Real Property.

To Seller's actual knowledge, except as disclosed in Exhibit "C" attached hereto and made a part hereof, (a) there is no capital improvement work currently being constructed (or that was constructed during the last four (4) months) on the Real Property that is the subject of a written contract with Seller which could give rise to a mechanic's or materialman's lien on the Real Property, and (b) Seller has not entered into any contracts for the furnishing of labor, materials, or services for construction purposes with respect to the Real Property to be furnished subsequent to the date of this affidavit.

To Seller's actual knowledge, Seller has not received notice of any special assessments that are not otherwise publicly noticed or available by searching the public records of the jurisdiction where the Property is located.

Seller shall not hereafter cause any encumbrances or other instruments to be recorded against the Property (other than the recording of a deed (the "Deed") transferring fee title to the Real Property to Buyer) through the effective date of such title insurance policy or policies or other title evidence issued to Buyer.

For purposes hereof, the “actual knowledge” of Seller shall be limited to the actual knowledge (and not implied, imputed or constructive), with no duty of inquiry. This Title Affidavit is being executed for the sole and exclusive benefit of First American Title Insurance Company and no other party or person shall have any rights hereunder.

Executed as of _____, 20__.

EXHIBIT “J”

to that certain
Purchase and Sale Agreement

Lease Guaranty

[see attached]

MASTER LEASE AGREEMENT

by and between

SPIRIT REALTY, L.P.,
as Landlord

and

PARTY CITY HOLDINGS INC. ,
as Tenant

Made as of June 28, 2019

47 Elizabeth Drive, Chester, NY
7700 Anagram Drive, Eden Prairie, MN
2800 Purple Sage, Los Lunas, NM

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MASTER LEASE AGREEMENT

THIS MASTER LEASE AGREEMENT (this “Lease”) is made as of June 28, 2019 (the “Effective Date”), by and between SPIRIT REALTY, L.P., a Delaware limited partnership (“Landlord”), whose address is 2727 North Harwood Street, Suite 300, Dallas, Texas 75201 and PARTY CITY HOLDINGS INC., a Delaware corporation (“Tenant”), whose address is 80 Grasslands Road, Elmsford, New York 10523. Capitalized terms not defined herein shall have the meanings set forth in ARTICLE I below.

In consideration of the mutual covenants and agreements herein contained, Landlord and Tenant hereby covenant and agree as follows:

ARTICLE I

DEFINED TERMS

The following terms shall have the following meanings for all purposes of this Lease:

“*Adjustment Date*” means that date set forth in Section 2.07.

“*Affected Party*” means each direct or indirect participant or investor in a proposed or completed Securitization, including, without limitation, any prospective owner, any rating agency or any party to any agreement executed in connection with the Securitization.

“*Affiliate*” means any Person which directly or indirectly controls, is under common control with or is controlled by any other Person. For purposes of this definition, “controls,” “under common control with,” and “controlled by” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

“*Anti -Money Laundering Laws*” means all applicable laws, regulations and government guidance on the prevention and detection of money laundering, including, without limitation, (a) 18 U.S.C. §§ 1956 and 1957; and (b) the Bank Secrecy Act, 31 U.S.C. §§ 5311 et seq., and its implementing regulations, 31 CFR Part 103.

“*Applicable Rent Reduction Percentage*” means, for each Property, the product (expressed as a percentage) equal to (A) the quotient (expressed as a percentage), which quotient in any event shall not be greater than 1, equal to (1) the amount of the Net Award payable to Landlord with respect to such Property, divided by (2) the amount for such Property listed on Exhibit E to this Lease, multiplied by (2) the quotient obtained by dividing the amount for such Property listed on Exhibit E to this Lease by the sum of all amounts for all Properties listed on Exhibit E to this Lease and which Properties (including such Property) are still subject to this Lease as of the Property Termination Date for such Property.

“*Bankruptcy Code*” means the United States Bankruptcy Code, 11 U.S.C. Sec. 101 et seq., as amended.

“*Base Annual Rental*” means the Initial Base Annual Rental amount set forth in Section 2.05 as adjusted as set forth in Sections 2.06, 2.07 and 5.02.

“*Base Monthly Rental*” means, for any month, an amount equal to 1/12 of the applicable Base Annual Rental for the period in which such month falls.

“ *Business Day* ” means any day on which banks in Dallas, Texas are open for business other than a Saturday, Sunday or a legal holiday, ending at 5:00 P.M. Dallas, Texas time.

“ *Casualty* ” means any loss of or damage to any property included within or related to the Properties or arising from an adjoining property caused by an Act of God, fire, flood or other catastrophe.

“ *Code* ” means the Internal Revenue Code of 1986, as the same may be amended from time to time.

“ *Condemnation* ” means a Taking and/or a Requisition.

“ *Confidential Information* ” means financial statements, documents and data regarding Tenant delivered by Tenant to Landlord pursuant to the terms of this Lease. Notwithstanding the foregoing, Confidential Information shall not include such information (a) of which Landlord was aware or which was in Landlord’s possession prior to any disclosure by or through Tenant; (b) which is publicly available; (c) which Landlord can demonstrate was obtained by Landlord from a third person who, to Landlord’s knowledge, is not prohibited from transmitting the information by a contractual, legal or fiduciary obligation; or (d) which is independently developed by Landlord without the use of other Confidential Information.

“ *Costs* ” means all reasonable costs and expenses incurred by a Person, including, without limitation, reasonable attorneys’ fees and expenses, court costs, expert witness fees, costs of tests and analyses, travel and accommodation expenses, deposition and trial transcripts, copies and other similar costs and fees, brokerage fees, escrow fees, title insurance premiums, appraisal fees, stamp taxes, recording fees, recordation taxes and transfer taxes or fees, as the circumstances require.

“ *Default Rate* ” means 12% per annum or the highest rate permitted by Law, whichever is less.

“ *Discontinue Operations* ” means to fail to operate the entire or substantially all of a Property except during a period when such Property is not operated as a result of a Permitted Closure.

“ *EBITDA* ” means, for any Person for any period, the net income (loss) of such Person and its subsidiaries determined on a consolidated basis in accordance with GAAP for the 12 months ending on the last day of such period, PLUS (a) the sum of the following amounts of such Person and its subsidiaries for such 12-month period determined on a consolidated basis in conformity with GAAP to the extent included in the determination of such net income (loss): (i) depreciation expense, (ii) amortization expense and other non-cash charges, (iii) interest expense, (iv) federal, state, local and foreign income tax expense, (v) extraordinary losses (and other losses on asset sales not otherwise included in extraordinary losses determined on a consolidated basis in conformity with GAAP), plus (vi) any discretionary management fees to the extent included in the determination of net income (loss), LESS (b) the sum of the following amounts of such Person and its subsidiaries for such 12-month period: (i) the extraordinary gains and non-recurring income of such Person and its subsidiaries determined on a consolidated basis in conformity with GAAP to the extent included in the determination of such net income (loss), and (ii) if such Person is a subsidiary of another Person (such other Person is referred to herein as a “Parent”), such Person’s proportional share of such Parent’s general overhead and administrative expenses (based on the amount by which such Person’s gross revenues in the ordinary course of business bears to Parent’s gross revenues in the ordinary course of business), (iii) all non-cash items increasing net income/loss for such period, and (iv) all federal, state, local and foreign tax credits of such Person and its subsidiaries for such period.

“*EBITDAR*” means, for any Person for any period, the net income (loss) of such Person and its subsidiaries determined on a consolidated basis in accordance with GAAP for the 12 months ending on the last day of such period, PLUS (a) the sum of the following amounts of such Person and its subsidiaries for such 12-month period determined on a consolidated basis in conformity with GAAP to the extent included in the determination of such net income (loss): (i) depreciation expense, (ii) amortization expense and other non-cash charges, (iii) interest expense, (iv) federal, state, local and foreign income tax expense, (v) extraordinary losses (and other losses on asset sales not otherwise included in extraordinary losses determined on a consolidated basis in conformity with GAAP), (vii) all rent expenses, plus (viii) any discretionary management fees to the extent included in the determination of net income (loss), LESS (b) the sum of the following amounts of such Person and its subsidiaries for such 12-month period: (i) the extraordinary gains and non-recurring income of such Person and its subsidiaries determined on a consolidated basis in conformity with GAAP to the extent included in the determination of such net income (loss), and (ii) if such Person is a subsidiary of another Person (such other Person is referred to herein as a “Parent”), such Person’s proportional share of such Parent’s general overhead and administrative expenses (based on the amount by which such Person’s gross revenues in the ordinary course of business bears to Parent’s gross revenues in the ordinary course of business), (iii) all non-cash items increasing net income/loss for such period, and (iv) all federal, state, local and foreign tax credits of such Person and its subsidiaries for such period.

“*Effective Date*” has the meaning set forth in the introductory paragraph of this Lease.

“*Environmental Assessment*” has the meaning set forth in Section 9.04(f).

“*Environmental Laws*” means federal, state and local laws, ordinances, common law requirements, regulations, rules, and other governmental requirements, and administrative rulings and court judgments and decrees having the effect of law, in effect now or in the future and including all amendments, that relate to Hazardous Materials, Regulated Substances, or USTs, and/or the protection of human health (with respect to exposure to Hazardous Materials) or the environment, or to liability for Costs of Remediation or prevention of Releases, and apply to Tenant and/or the Properties, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq. (“*CERCLA*”); (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §5101, et seq.; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq. (“*RCRA*”); (iv) the Toxic Substances Control Act, as amended, 15 U.S.C. §2601, et seq.; and (v) regulations adopted and publications promulgated pursuant to the aforesaid laws.

“*Environmental Lien*” means any lien filed or recorded against any Property pursuant to Environmental Law.

“*Event of Default*” has the meaning set forth in Section 13.01.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Expiration Date*” means the Initial Term Expiration Date and, if the Initial Term is extended in accordance with this Lease, the last day of any applicable Extension Term.

“*Extension Option*” has the meaning set forth in Section 4.02.

“*Extension Term*” has the meaning set forth in Section 4.02.

“*Force Majeure Event*” has the meaning set forth in Section 18.01.

“*GAAP*” means generally accepted accounting principles in the United States of America, consistently applied from period to period.

“*Governmental Authority*” means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority of the United States, any state or any political subdivision thereof with authority to adopt, modify, amend, interpret, give effect to or enforce any federal, state and local laws, statutes, ordinances, rules or regulations, including common law, or to issue court orders.

“*Guarantor*” means Party City Holdco, Inc., a Delaware corporation, any other Person executing and delivering to Landlord a Guaranty, or any additional or replacement guarantor(s) approved by Landlord in its sole and absolute discretion, and any reference to Guarantor or a Guaranty shall be applicable only if there is a named Guarantor.

“*Guaranty*” means that certain Unconditional Guaranty of Payment and Performance dated on the Effective Date and executed by Party City Holdco, Inc., a Delaware corporation, and any other guaranty of any part or all of the Tenant’s obligations pursuant to this Lease, as the same may be amended from time to time.

“*Hazardous Materials*” means: (a) oil or other petroleum products (including any and all constituents and additives), explosives, radioactive materials, or any other materials that are defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “toxic substances”, “contaminants”, “pollutants”, or words of similar import under any applicable Environmental Law or under the regulations adopted, orders issued, or publications promulgated pursuant thereto; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million contained in transformers or other equipment; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority pursuant to Environmental Laws because it could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of any property adjoining the Property.

“*Indebtedness*” of any Person means, without duplication, (a) all obligations of such Person and its subsidiaries for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person and its subsidiaries evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person and its subsidiaries upon which interest charges are customarily paid (excluding current taxes, water and sewer charges and assessments and current trade liabilities incurred in the ordinary course of business in accordance with customary terms), (d) all obligations of such Person and its subsidiaries under conditional sale or other title retention agreements relating to property acquired by such Person (other than current trade liabilities incurred in the ordinary course of business in accordance with customary terms), (e) all obligations of such Person and its subsidiaries in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien or security interest on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all guarantees by such Person of Indebtedness of others, (h) all capital lease obligations of such Person and its subsidiaries, (i) all obligations, contingent or otherwise, of such Person as an account party or applicant in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (k) all obligations of such Person to purchase or redeem any shares of equity securities issued by such Person, including obligations under so-called forward equity purchase contracts to the extent such obligations are not payable solely in equity interests, (l) all obligations of such Person in respect of any forward contract, futures contract, swap or other agreement, the value of which is dependent upon interest rates or currency exchange rates, and (m) all obligations of such Person in respect of any so-called “synthetic lease” (i.e., a lease of property which is treated as an operating lease under GAAP and as a loan

for U.S. income tax purposes). The Indebtedness of any Person shall also include the Indebtedness of any other entity (for example, any partnership in which such Person or its subsidiary is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity.

"*Indemnified Parties*" means Landlord, Lender, and their respective members, managers, officers, directors, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns, including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of the assets and business of Landlord or Lender, as applicable.

"*Initial Term*" has the meaning set forth in Section 4.01.

"*Initial Term Expiration Date*" has the meaning set forth in Section 4.01.

"*Insolvency Event*" means (a) a Person's (i) failure to generally pay its debts as such debts become due; (ii) admitting in writing its inability to pay its debts generally; or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against any Person (i) seeking to adjudicate it bankrupt or insolvent; (ii) seeking liquidation, dissolution, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any Law relating to bankruptcy, insolvency, or reorganization or relief of debtors; or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property, and in the case of any such proceeding instituted against any Person, either such proceeding shall remain undismissed for a period of one hundred twenty (120) days or any of the actions sought in such proceeding shall occur; or (c) any Person taking any corporate action to authorize any of the actions set forth above in this definition.

"*Landlord Entity*" or "*Landlord Entities*" means individually or collectively, as the context may require, Landlord and all Affiliates of Landlord

"*Law(s)*" means any constitution, statute, rule of law, code, ordinance, order, judgment, decree, injunction, rule, regulation, requirement or administrative or judicial determination, even if unforeseen or extraordinary, of every duly constituted Governmental Authority, court or agency, now or hereafter enacted or in effect.

"*Lease Adjusted Leverage Ratio*" means, for any Person as of the last day of any period, the ratio of (a) the sum of (i) Operating Lease Expense for the 12 months ending on the last day of such period, multiplied by 8, and (ii) Total Outstanding Indebtedness as of the last day of such period, to (b) EBITDAR for the 12 months ending on the last day of such period.

"*Lease Term*" shall have the meaning described in Section 4.01.

"*Legal Requirements*" means the requirements of all present and future Laws and Environmental Laws (including, without limitation, Laws relating to accessibility to, usability by, and discrimination against, disabled individuals), all binding judicial and administrative interpretations thereof, including any judicial order, consent decree or judgment, and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Tenant or to any of the Properties, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or restoration of any of the Properties, even if compliance therewith necessitates structural changes or improvements or results in interference with the use or enjoyment of any of the Properties. Legal Requirements shall specifically include (i) The Architectural Barriers Act of 1968, The Rehabilitation Act of 1973, The Americans With Disabilities Act, and the accessibility code(s), if any, of the States in which the Properties are located, and all regulations

promulgated under any and all of the foregoing, as the same may be amended from time to time and (ii) CERCLA, RCRA, and any federal, state or local act, law, or code, and any applicable rules and regulations (including 40 Code of Federal Regulations, Part 280 and analogous state and local rules and regulations), concerning USTs.

“*Lender*” means any lender who has made a loan or extension of credit, now or hereafter existing, secured by Landlord’s interest in any or all of the Properties, and any servicer, collateral agent and/or trustee with respect to any such loan or extension of credit.

“*Losses*” means any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, Costs, diminutions in value, fines, penalties, interest, charges, fees, judgments, awards, amounts paid in settlement and damages of whatever kind or nature, inclusive of bodily injury and property damage to third parties (including, without limitation, reasonable attorneys’ fees and other Costs of defense).

“*Material Adverse Effect*” means a material adverse effect on (a) any of the Properties, including, without limitation, the operation of any of the Properties as Permitted Facilities and/or the value of any of the Properties; (b) Tenant’s ability to perform its obligations under this Lease; or (c) any Guarantor’s ability to perform its obligations under the Guaranty.

“*Minnesota Property*” means that certain Property located at 7700 Anagram Drive, Eden Prairie, Minnesota.

“*Monetary Obligations*” has the meaning set forth in Section 5.03.

“*Mortgages*” means, collectively, the mortgages, deeds of trust or deeds to secure debt, assignments of rents and leases, security agreements and fixture filings, now or hereafter in existence, executed by Landlord for the benefit of Lender with respect to any or all of the Properties, as such instruments may be amended, modified, restated or supplemented from time to time and any and all replacements or substitutions.

“*Net Award*” means (a) the entire award payable with respect to a Property by reason of a Condemnation whether pursuant to a judgment or by agreement or otherwise; or (b) the entire proceeds of any insurance required under Section 7.03 payable with respect to a Property, as the case may be, and in either case, less any Costs incurred by Landlord in collecting such award or proceeds.

“*Net Leverage Ratio*” means, for any Person as of the last day of any period, the ratio of (a) Total Outstanding Indebtedness as of the last day of such period, to (b) EBITDA for the 12 months ending on the last day of such period.

“*New Mexico Property*” means that certain Property located at 2800 Purple Sage, Los Lunas, New Mexico.

“*New York Property*” means that certain Property located at 47 Elizabeth Drive, Chester, New York.

“*OFAC Laws*” means Executive Order 13224 issued by the President of the United States, and all regulations promulgated thereunder, including, without limitation, the Terrorism Sanctions Regulations (31 CFR Part 595), the Terrorism List Governments Sanctions Regulations (31 CFR Part 596), the Foreign Terrorist Organizations Sanctions Regulations (31 CFR Part 597), and the Cuban Assets Control Regulations (31 CFR Part 515), and all other present and future federal, state and local laws, ordinances, regulations, policies, lists (including, without limitation, the Specially Designated Nationals and Blocked Persons List) and any other requirements of any Governmental Authority (including without limitation, the U.S. Department of the Treasury Office of Foreign Assets Control) addressing, relating to, or

attempting to eliminate, terrorist acts and acts of war, each as supplemented, amended or modified from time to time after the Effective Date, and the present and future rules, regulations and guidance documents promulgated under any of the foregoing, or under similar laws, ordinances, regulations, policies or requirements of other states or localities.

“*Operating Lease Expense*” means, for any Person for any period, of the sum of rent expense of such Person and its subsidiaries for such period pursuant to leases (other than payments pursuant to capital leases that are treated as payments of interest or principal in accordance with GAAP).

“*Other Agreements*” means, collectively, all agreements and instruments now or hereafter entered into between, among or by the Tenant and/or any Guarantor (if any), with, or for the benefit of, any of the Landlord Entities, including, without limitation, leases, promissory notes and guaranties, but excluding this Lease and all other Transaction Documents.

“*Partial Condemnation*” means a Condemnation which is not a Total Condemnation.

“*Permitted Amount*” shall mean a level or quantity of Hazardous Materials or Regulated Substances in any form or combination of forms which does not constitute a violation of any Environmental Laws.

“*Permitted Closure*” means to fail to operate the entire or substantially all of a Property as a result of (i) a Casualty or Condemnation, (ii) a Remediation, (iii) a major remodeling of a Property (not to occur more often than one (1) time per every five (5) year period and for no longer than ninety (90) consecutive days), (iv) any material repairs, replacements, improvements or alterations to a Property (not to exceed thirty (30) consecutive days), or (v) a Force Majeure Event (not to exceed sixty (60) consecutive days).

“*Permitted Facility*” or “*Permitted Facilities*” means, with respect to each Property, the uses identified on Exhibit A with respect to each Property, and all related purposes such as ingress, egress and parking and uses incidental thereto.

“*Person*” means any individual, partnership, corporation, limited liability company, trust, unincorporated organization, Governmental Authority or any other form of entity.

“*Personalty*” has the meaning set forth in Section 17.01.

“*Properties*” means those parcels of real estate legally described on Exhibit A attached hereto, all rights, privileges, and appurtenances associated therewith, and all buildings, fixtures and other improvements now or hereafter located on such real estate (whether or not affixed to such real estate), but shall exclude the Personalty.

“*Property*” means any one of the Properties.

“*Property Termination Date*” has the meaning assigned to such term in Section 12.02(c).

“*Property Termination Date-Total Condemnation*” has the meaning assigned to such term in Section 12.03(a).

“*Purchase and Sale Agreement*” means that certain Purchase and Sale Agreement dated as of June 28, 2019 between Landlord (as buyer) and Amscan Inc., Anagram Eden Prairie Property Holdings LLC, and Amscan Custom Injection Molding, LLC, collectively as seller

“*Taxes*” has the meaning set forth in Section 7.01(b).

“*Regulated Substances*” means “petroleum” and “petroleum-based substances” or any similar terms described or defined in any of the Environmental Laws and any applicable federal, state, county or local laws applicable to or regulating USTs.

“*REIT*” means a real estate investment trust as defined under Section 856 of the Code.

“*Release*” means any release, deposit, discharge, emission, leaking, spilling, seeping, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other migration of Hazardous Materials or Regulated Substances into the environment.

“*Release Criteria*” shall mean, after giving effect to the Transfer: (i) the assignee shall have averaged a minimum EBITDA per annum for the trailing twelve months of at least \$350,000,000 or greater, (ii) the Net Leverage Ratio with respect to the assignee for the trailing twelve months does not exceed, and has not exceeded, 4.5:1 (iii) the Lease Adjusted Leverage Ratio with respect to the assignee for the trailing twelve months does not exceed, and has not exceeded, 5.5:1, and (iv) the assignee shall have a Tangible Net Worth of \$200,000,000.00 or greater.

“*Remediation*” means any response, remedial, removal, or corrective action to cleanup, detoxify, decontaminate, contain or otherwise remediate any Release of Hazardous Materials or Regulated Substances, or the presence of any Hazardous Materials or Regulated Substances in the environment, and any action to prevent, cure or mitigate any such Release or presence, that is required to comply with any Environmental Laws or with any permits issued pursuant thereto, and any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation conducted in connection with any of the foregoing.

“*Rent*” means the Rental, the Monetary Obligations, and all other amounts due and payable by Tenant to Landlord hereunder.

“*Rental*” means the Base Annual Rental and Base Monthly Rental.

“*Rental Adjustment*” has the meaning set forth in Section 2.06 as adjusted as set forth in Section 2.07.

“*Requisition*” means any temporary requisition or confiscation of the use or occupancy of any of the Properties by any Governmental Authority, civil or military, whether pursuant to an agreement with such Governmental Authority in settlement of or under threat of any such requisition or confiscation, or otherwise.

“*Securities*” has the meaning set forth in Section 18.11.

“*Securities Act*” means of the Securities Act of 1933, as amended.

“*Securitization*” has the meaning set forth in Section 18.11.

“*SNDA*” means subordination, nondisturbance and attornment agreement.

“*Sublease*” has the meaning assigned to such term in Section 15.04.

“*Subtenant*” means a subtenant pursuant to a Sublease.

“*Successor Landlord*” has the meaning set forth in Section 14.04.

“ *Taking* ” means (a) any taking or damaging of all or a portion of the Properties (i) in or by condemnation or other eminent domain proceedings pursuant to any Law, general or special; (ii) by reason of any agreement with any condemnor in settlement of or under threat of any such condemnation or other eminent domain proceeding; or (iii) by any other means; or (b) any de facto condemnation. The Taking shall be considered to have taken place as of the later of the date actual physical possession is taken by the condemnor, or the date on which the right to compensation and damages accrues under the Law applicable to the Properties.

“ *Tangible Net Worth* ” of a Person means the tangible net worth of such Person and its consolidated subsidiaries determined in accordance with GAAP.

“ *Tax Reserve* ” has the meaning set forth in Section 7.01(b).

“ *Temporary Taking* ” has the meaning set forth in Section 12.04.

“ *Tenant Entity* ” or “ *Tenant Entities* ” means individually or collectively, as the context may require, Tenant and Guarantor (if any).

“ *Total Condemnation* ” means a Condemnation of all or substantially all of any Property, including a Condemnation (other than for a temporary use) of such a substantial part of such Property resulting in the portion of the Property remaining after such Condemnation being unsuitable for use as a Permitted Facility, as determined by Tenant in the exercise of good faith business judgment.

“ *Total Outstanding Indebtedness* ” means, means, for any Person as of any date, the sum, without duplication, of the amount of Indebtedness of such Person and its subsidiaries, determined in accordance with GAAP, as of the end of the last day of such period.

“ *Transaction* ” has the meaning set forth in Section 15.01.

“ *Transaction Documents* ” means this Lease, the Purchase and Sale Agreement, and all documents related thereto.

“ *Transfer* ” has the meaning assigned to such term in Section 15.02 of this Agreement.

“ *U.S. Publicly Traded Entity* ” means an entity whose securities are listed on a national securities exchange or quoted on an automated quotation system in the United States or a wholly-owned subsidiary of such an entity.

“ *USTs* ” means any one or combination of underground tanks and associated product piping systems used in connection with storage, dispensing and general use of Regulated Substances.

ARTICLE II

BASIC LEASE TERMS

Section 2.01 Properties . The street addresses of the Properties are set forth on Exhibit A attached hereto.

Section 2.02 Initial Term Expiration Date . June 30, 2039.

Section 2.03 Extension Options . Four (4) extensions of five (5) years each, as described in Section 4.02.

Section 2.04 Expiration Date (if fully extended) . June 30, 2059.

Section 2.05 Initial Base Annual Rental . \$8,320,000.00 as described in Article V.

Section 2.06 Rental Adjustment . 2% of the Base Annual Rental then in effect, as described in Section 5.02.

Section 2.07 Adjustment Date . July 1, 2020 and the first day of each July thereafter during the Lease Term (including any Extension Term).

Section 2.08 Guarantor(s) . Party City Holdco, Inc., a Delaware corporation.

Section 2.09 Tenant Tax Identification No . 20-1033029.

Section 2.10 Landlord Tax Identification No . 20-1127940.

ARTICLE III

LEASE OF PROPERTIES

Section 3.01 Lease . In consideration of Tenant's payment of the Rent and Tenant's performance of all other obligations hereunder, Landlord hereby leases to Tenant, and Tenant hereby takes and hires, the Properties, "AS IS" and "WHERE IS" without representation or warranty by Landlord, and subject to the existing state of title, the parties in possession, any statement of facts which an accurate survey or physical inspection might reveal, and all Legal Requirements now or hereafter in effect.

Section 3.02 Quiet Enjoyment . So long as an Event of Default has not occurred and is continuing hereunder and this Lease is in full force and effect, Tenant shall have, subject and to the terms and conditions set forth herein, the right to peacefully and quietly have, hold and occupy the Properties free of any interference from Landlord or anyone claiming by, through or under Landlord; *provided, however* , in no event shall Tenant be entitled to bring any action against Landlord to enforce its rights hereunder if an Event of Default shall have occurred and be continuing.

ARTICLE IV

LEASE TERM; EXTENSION

Section 4.01 Initial Term . The initial term of this Lease (" Initial Term ") shall commence as of the Effective Date and shall expire at midnight on June 30, 2039 (" Initial Term Expiration Date "), unless terminated sooner as provided in this Lease and as may be extended as provided herein. The time period during which this Lease shall actually be in effect, including any Extension Term, is referred to as the " Lease Term ."

Section 4.02 Extensions . Unless this Lease has expired or has been sooner terminated, or an Event of Default has occurred and is continuing at the time any Extension Option is exercised, Tenant shall have the right and option (each, an " Extension Option ") to extend the Initial Term for all and not less than all of the Properties for four (4) additional successive periods of five (5) years each (each, an " Extension Term "), pursuant to the terms and conditions of this Lease then in effect.

Section 4.03 Notice of Exercise . Tenant may only exercise an Extension Option by giving written notice thereof to Landlord of Tenant's election to do so (a) no later than twelve (12) months prior to the Expiration Date, and (b) no earlier than eighteen (18) months prior to the Expiration Date. If written notice of the exercise of any Extension Option is not received (or deemed received) by Landlord by the date described above, then this Lease shall terminate on the Initial Term Expiration Date or, if applicable, the last day of the Extension Term then in effect. Upon the request of Landlord or Tenant, the parties hereto will execute and exchange an instrument in recordable form setting forth the extension of the Lease Term in accordance with this Section 4.03.

Section 4.04 Removal of Personality . At any time during the Lease Term and upon the expiration of the Lease Term, Tenant may remove from the Properties furniture, trade fixtures, equipment or other personal property located upon any Property, including without limitation, the equipment set forth on Schedule 4.04 attached hereto (collectively, the “Personalty”), such Personality being the property of Tenant. Tenant shall repair any damage caused by such removal and, at the end of the Lease Term, shall leave all of the Properties clean and in good and working condition, subject to normal wear and tear, casualty and condemnation. Any property of Tenant left on the Properties on the tenth day following the expiration of the Lease Term shall, at Landlord’s option, automatically and immediately become the property of Landlord.

ARTICLE V

RENTAL AND OTHER MONETARY OBLIGATIONS

Section 5.01 Base Monthly Rental . During the Lease Term, on or before the first day of each calendar month, Tenant shall pay in advance the Base Monthly Rental then in effect for each such month. If the Effective Date is a date other than the first day of the month, Tenant shall pay to Landlord on the Effective Date the Base Monthly Rental prorated by multiplying the Base Monthly Rental by a fraction, the numerator of which is the number of days remaining in the month (including the Effective Date) for which Rental is being paid, and the denominator of which is the total number of days in such month.

Section 5.02 Adjustments . During the Lease Term (including any Extension Term), on the first Adjustment Date and on each Adjustment Date thereafter, the Base Annual Rental then in effect shall increase by an amount equal to the Rental Adjustment.

Section 5.03 Monetary Obligations . In addition to Base Annual Rental and Base Monthly Rental, Tenant shall pay and discharge all sums of money required to be paid or reimbursed by Tenant under this Lease to Landlord, to any party on behalf of Landlord, to any third party or to any Indemnified Party (the obligations described in this sentence are referred to collectively as the “Monetary Obligations”). Tenant shall pay and discharge any Monetary Obligations when the same shall become due, provided that amounts which are billed to Landlord or any third party, but not to Tenant, shall be paid within fifteen (15) days after Landlord’s demand for payment thereof or, if later, when the same are due. In no event shall Tenant be required to pay to Landlord any Monetary Obligation that Tenant is obligated to pay and has paid to any third party pursuant to any provision of this Lease.

Section 5.04 Rentals To Be Net to Landlord . (a) The Base Annual Rental payable hereunder shall be net to Landlord, so that this Lease shall yield to Landlord the Rentals specified during the Lease Term, and all Costs and obligations of every kind and nature whatsoever relating to the Properties (even if an obligation relating to the Properties is, pursuant to Legal Requirements or pursuant to a recorded agreement, the obligation of the fee owner of the Property) shall be performed and paid by Tenant, including without limitation, common area maintenance charges, if any, related to the Properties. Tenant shall perform all of its obligations under this Lease at its sole cost and expense. All Rent which Tenant is required to pay hereunder shall be the unconditional obligation of Tenant and shall be payable in full when due and payable, without notice or demand, and without any setoff, abatement, deferment, deduction or counterclaim whatsoever.

(b) Simultaneous with each payment to Landlord of Base Monthly Rental, Tenant shall pay to Landlord any applicable state sales tax and any applicable county or local sales tax. Tenant shall also pay to Landlord sales tax on any other payments which are subject to payment of any state or local sales tax, such sales tax payment to be made to Landlord at the same time as the payments subject to sales tax is paid by Tenant.

Section 5.05 ACH Authorization . Upon execution of this Lease, Tenant shall deliver to Landlord a complete Authorization Agreement – Pre-Arranged Payments in the form of Exhibit B attached hereto and incorporated herein by this reference, together with a voided check for account verification, establishing arrangements whereby payments of the Base Monthly Rental, impound payments (if any), sales tax or real property tax (if any), and any other Monetary Obligations are transferred by Automated Clearing House Debit initiated by Landlord from an account established by Tenant at a United States bank or other financial institution to such account as Landlord may designate. Tenant shall continue to pay all Rental and other Monetary Obligations by Automated Clearing House Debit unless otherwise directed by Landlord.

Section 5.06 Late Charges; Default Interest . Any delinquent payment of Base Monthly Rental shall, in addition to any other remedy of Landlord, incur a late charge of five percent (5%) (which late charge is intended to compensate Landlord for the cost of handling and processing such delinquent payment and should not be considered interest) and bear interest at the Default Rate, such interest to be computed from and including the date such payment was due through and including the date of the payment; *provided, however* , in no event shall Tenant be obligated to pay a sum of late charge and interest higher than the maximum legal rate then in effect. Any payment of a Monetary Obligation which is not paid to Landlord by Tenant on or prior to the date such payment is due to Landlord shall bear interest at a rate of interest per annum equal to the Default Rate.

Section 5.07 Holdover . If Tenant remains in possession of any one or more of the Properties after the expiration of the term hereof, Tenant, at Landlord's option and within Landlord's sole discretion, may be deemed a tenant on a month-to-month basis and shall continue to pay Rentals and Monetary Obligations in the amounts herein provided, except that the Base Monthly Rental shall be automatically increased to one hundred fifty percent (150%) of the last Base Monthly Rental payable under this Lease, and Tenant shall comply with all the terms of this Lease; *provided that* nothing herein nor the acceptance of Rental by Landlord shall be deemed a consent to such holding over. Tenant shall defend, indemnify, protect and hold the Indemnified Parties harmless from and against any and all Losses resulting from Tenant's failure to surrender possession upon the expiration of the Lease Term, including, without limitation, any claims made by any succeeding lessee.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF TENANT

The representations and warranties of Tenant contained in this ARTICLE VI are being made as of the Effective Date to induce Landlord to enter into this Lease, and Landlord has relied upon such representations and warranties. Tenant represents and warrants to Landlord as follows:

Section 6.01 Organization, Authority and Status of Tenant . Tenant has been duly organized or formed, is validly existing and in good standing under the laws of its state of Delaware and is qualified as a foreign corporation to do business in any jurisdiction where such qualification is required. All necessary corporate action has been taken to authorize the execution, delivery and performance by Tenant of this Lease and of the other documents, instruments and agreements provided for herein, including without limitation, the Transaction Documents. Tenant is not, and if Tenant is a "disregarded entity," the owner of such disregarded entity is not, a "nonresident alien," "foreign corporation," "foreign partnership," "foreign trust," "foreign estate," or any other "person" that is not a "United States Person" as those terms are defined in the Code and the regulations promulgated thereunder. The Person who has executed this Lease on behalf of Tenant is duly authorized to do so.

Section 6.02 Enforceability . This Lease constitutes the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and principles of equity.

Section 6.03 Property Condition . As of the Effective Date, Tenant has physically inspected all of the Properties and has examined title to the Properties, and has found all of the same satisfactory in all respects for all of Tenant's purposes.

Section 6.04 Litigation . As of the Effective Date, there are no suits, actions, proceedings or investigations pending, or to the best of its knowledge, threatened against or involving any Tenant Entity or the Properties before any arbitrator or Governmental Authority which might reasonably result in any Material Adverse Effect.

Section 6.05 Absence of Breaches or Defaults . As of the Effective Date, Tenant is not in default under any document, instrument or agreement to which Tenant is a party or by which Tenant, the Properties or any of Tenant's property is subject or bound, which has had, or could reasonably be expected to result in, a Material Adverse Effect. The authorization, execution, delivery and performance of this Lease and the documents, instruments and agreements provided for herein will not result in any breach of or default under any document, instrument or agreement to which Tenant is a party or by which Tenant, the Properties or any of Tenant's property is subject or bound, except for such breaches or defaults which individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect.

Section 6.06 Licenses and Permits . Tenant has obtained all required licenses and permits, both governmental and private, to use and operate the Properties as Permitted Facilities.

Section 6.07 Financial Condition; Information Provided to Landlord . As of the Effective Date, the financial statements heretofore delivered to Landlord by or with respect to the Tenant Entities and the Properties in connection with this Lease or relating to the Tenant Entities or the Properties are true, correct and complete in all material respects; there have been no amendments thereto since the date such items were prepared or delivered to Landlord; all financial statements provided were prepared in accordance with GAAP, and fairly present as of the date thereof the financial condition of each individual or entity to which they pertain; and no change has occurred to any such financial statements, financial data, documents and other information not disclosed in writing to Landlord, which has had, or could reasonably be expected to result in, a Material Adverse Effect.

Section 6.08 Compliance With OFAC Laws . Neither Tenant nor, to Tenant's knowledge, any holder of a direct or indirect interest in Tenant, is an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws or is otherwise in violation of any of the OFAC Laws; *provided, however* , that the representation contained in this sentence shall not apply to any Person to the extent such Person's interest is in or through a U.S. Publicly Traded Entity.

Section 6.09 Solvency . As of the Effective Date, there is no contemplated, pending or threatened Insolvency Event or similar proceedings, whether voluntary or involuntary, affecting Tenant or Guarantor, or to Tenant's knowledge, its respective shareholders members, partners or Affiliates. As of the Effective Date, Tenant does not have unreasonably small capital to conduct its business.

Section 6.10 Ownership . To Tenant's knowledge, no Person that actually or constructively owns ten percent (10%) or more of the outstanding capital stock of Landlord owns, as of the Effective Date, directly or indirectly, (a) ten percent (10%) or more of the total combined voting power of all classes of voting capital stock of Tenant, or (b) ten percent (10%) or more of the total value of all classes of capital stock of Tenant.

Section 6.11. Disclaimer of Warranties. TENANT ACKNOWLEDGES THAT LANDLORD (WHETHER ACTING AS LANDLORD HEREUNDER OR IN ANY OTHER CAPACITY) AND THE OTHER LANDLORD ENTITIES HAVE NOT MADE AND WILL NOT MAKE, NOR SHALL LANDLORD OR ANY OF THE LANDLORD ENTITIES BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPERTY, INCLUDING ANY WARRANTY OR REPRESENTATION AS TO (i) ITS FITNESS, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE, (ii) THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, (iii) THE EXISTENCE OF ANY DEFECT, LATENT OR PATENT, (iv) LANDLORD'S TITLE THERETO, (v) VALUE, (vi) COMPLIANCE WITH SPECIFICATIONS, (vii) LOCATION, (viii) USE, (ix) CONDITION, (x) MERCHANTABILITY, (xi) QUALITY, (xii) DESCRIPTION, (xiii) DURABILITY, (xiv) OPERATION, INCOME, EXPENSES, ENTITLEMENTS OR ZONING, (xv) THE EXISTENCE OF ANY HAZARDOUS MATERIALS, RELEASE OR VIOLATION OF ENVIRONMENTAL LAWS, OR (xvi) COMPLIANCE OF THE PROPERTIES WITH ANY LAW OR LEGAL REQUIREMENT; AND ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY TENANT. TENANT ACKNOWLEDGES THAT THE PROPERTIES ARE OF ITS SELECTION AND TO ITS SPECIFICATIONS AND THAT THE PROPERTIES HAVE BEEN INSPECTED BY TENANT AND ARE SATISFACTORY TO IT. IN THE EVENT OF ANY DEFECT OR DEFICIENCY IN ANY OF THE PROPERTIES OF ANY NATURE, WHETHER LATENT OR PATENT, LANDLORD AND ALL OTHER LANDLORD ENTITIES SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT). THE PROVISIONS OF THIS SECTION 6.11 HAVE BEEN NEGOTIATED, AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES BY LANDLORD OR ANY LANDLORD ENTITY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE PROPERTIES, ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT OR ARISING OTHERWISE.

ARTICLE VII

TAXES AND ASSESSMENTS; UTILITIES; INSURANCE

Section 7.01 Taxes .

(a) **Payment** . Subject to the provisions of this Article VII, Tenant shall pay, prior to the earlier of delinquency or the accrual of interest on the unpaid balance (except as otherwise set forth in Section 7.01 (a)(iii), all taxes and assessments of every type or nature assessed against or imposed upon the Properties, Tenant or Landlord during or prior to the Lease Term or arising out of this Lease and the activities of the parties hereunder, including, without limitation (collectively, the "Taxes"):

(i) All real estate taxes or assessments upon the Properties or any part thereof and upon any personal property, trade fixtures and improvements located on the Properties, whether belonging to Landlord or Tenant, or any tax or charge levied in lieu of such taxes and assessments;

(ii) all taxes, charges, license fees and or similar fees imposed by reason of the use of the Properties by Tenant;

(iii) all recordation taxes, realty transfer taxes and similar taxes due and payable by Landlord as a result of the transactions contemplated by the Transaction or any of the Transaction Documents; and

(iv) all excise, franchise, transaction, privilege, license, sales, use and other taxes upon the Rent hereunder (and which are not assessed against all gross income of the Landlord), the leasehold estate of either party or the activities of either party pursuant to this Lease, which such taxes shall be paid to Landlord simultaneously with any payment to Landlord of Base Monthly Rental or a Monetary Obligations, as the case may be.

Notwithstanding the foregoing, but without limiting the preceding obligation of Tenant to pay all taxes described in Section 7.01(a)(i)-(iv), in no event will Tenant be required to pay any net income, franchise or similar taxes based on or measured by the net income of Landlord (unless such franchise tax is imposed in lieu of other taxes that would otherwise be the obligation of Tenant under this Lease, including, without limitation, any "gross receipts tax" or any similar tax based upon gross income, revenue or receipts of Landlord).

All taxing authorities shall be instructed to send all tax and assessment invoices directly to Tenant. Within thirty (30) days after each tax and assessment payment is required by this Section 7.01 is to be paid, Tenant shall, upon prior written request of Landlord, provide Landlord with evidence reasonably satisfactory to Landlord that such payment was made in a timely fashion.

(b) **Reserves** . Notwithstanding any provision contained in this Lease, in the event that Tenant defaults in the payment of Taxes described in Section 7.01(a) (i) and (ii), or upon the occurrence of any Event of Default, Landlord shall have the right, upon written notice to Tenant and without waiving any default, require Tenant to pay to Landlord on the first day of each month after such notice (or commencing on the date specified in the notice), the amount that Landlord reasonably estimates will be necessary in order to accumulate with Landlord sufficient funds to pay any and all such Taxes for:

(i) the ensuing twelve (12) months, and

(ii) at least thirty (30) days prior to the date or dates any or all of such Taxes are due (which shall not be deemed a trust fund) (the "Tax Reserve"). Landlord shall, upon prior written request of Tenant, provide Tenant with evidence reasonably satisfactory to Tenant that payment of such Taxes was made in a timely fashion. In the event that the Tax Reserve does not contain sufficient funds to timely pay any such Taxes, upon Landlord's written notification thereof, Tenant shall, within five (5) Business Days of such notice, provide funds to Landlord in the amount of such deficiency. Landlord shall pay or cause to be paid directly to the applicable taxing authorities any such Taxes then due and payable for which there are funds in the Tax Reserve; *provided, however*, that in no event shall Landlord be obligated to pay any such Taxes in excess of the funds held in the Tax Reserve, and Tenant shall remain liable for any and all such Taxes, including fines, penalties, interest or additional costs imposed by any taxing authority (unless incurred as a result of Landlord's failure to timely pay such Taxes for which it had funds in the Tax Reserve). Tenant shall cooperate fully with Landlord in assuring that such Taxes are timely paid. Landlord may deposit all Tax Reserve funds in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Landlord. Interest or other gains from such funds, if any, shall be the sole property of Landlord. Upon an Event of Default, in addition to any other remedies, Landlord may apply all Tax Reserve funds against any sums due from Tenant to Landlord. Landlord shall give to Tenant an annual accounting showing all credits and debits to and from such Tax Reserve funds received from Tenant. At any time that a Tax Reserve is no longer required under this Section 7.01, any Tax Reserve held by Landlord shall promptly be returned to Tenant.

(c) **Right to Contest** . Tenant may, at its own expense, contest or cause to be contested (in the case of any item involving more than \$10,000, after prior written notice to Landlord), by appropriate legal proceedings conducted in good faith and with due diligence, any above-described item or lien with respect thereto (which shall exclude the right to contest Taxes described in Section 7.01(a)(iv), including, without limitation, the amount or validity or application, in whole or in part, of any such item, provided that

- (i) neither the Properties nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings;
- (ii) no Event of Default has occurred and is continuing;
- (iii) Tenant posts a bond or takes other steps reasonably acceptable to Landlord that remove such lien or stay enforcement thereof within sixty (60) days after Tenant receives notice of such lien;
- (iv) Tenant shall promptly provide Landlord with copies of all notices received or delivered by Tenant and filings made by Tenant in connection with such proceeding; and
- (v) upon termination of such proceedings, it shall be the obligation of Tenant to pay the amount of any such tax and assessment or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including reasonable attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith.

Section 7.02 Utilities . Tenant shall contract, in its own name, for and pay when due all charges for the connection and use of water, gas, electricity, telephone, garbage collection, sewer use and other utility services supplied to the Properties during the Lease Term. Unless resulting from Landlord's gross negligence or willful misconduct, under no circumstances shall Landlord be responsible for any interruption of any utility service; *provided, however* , that the term "gross negligence" as used herein shall not include gross negligence imputed as a matter of law to Landlord solely by reason of Landlord's interest in any Property or Landlord's failure to act in respect of matters which are or were the obligation of Tenant under this Lease

Section 7.03 Insurance .

(a) **Coverage** . Throughout the Lease Term, Tenant shall maintain, with respect to each Property, at Tenant's sole expense, the following types and amounts of insurance:

- (i) Insurance against loss or damage to the Properties, including, without limitation, the Personalty under a special cause of loss insurance policy, which shall include coverage against all risks of direct physical loss, including but not limited to loss by fire, lightning, wind, terrorism, and other risks normally included in the standard ISO special form (and shall also include National Flood and Excess Flood insurance if the Property is located within a 100-year floodplain (FEMA Zones A and V) and earthquake insurance if a Property is located within a moderate to high earthquake hazard zone as determined by an approved insurance company set forth in Section 7.03(b)(x) below). Such policy shall also include coverage for ordinance or law covering the loss of value of the undamaged portion of the Properties, costs to demolish and the increased costs of construction if any of the improvements located on, or the use of, the Properties

shall at any time constitute legal non-conforming structures or uses. Ordinance or law limits shall be in an amount equal to the full replacement cost for the loss of value of the undamaged portion of the Properties (Coverage A) and a combined sublimit of \$10,000,000.00 for costs to demolish and the increased cost of construction (Coverages B and C). Such insurance shall be in amounts sufficient to prevent Landlord from becoming a co-insurer under the applicable policies, and in any event, after application of deductible, in amounts not less than 100% of the full insurable replacement cost values and sublimits satisfactory to Landlord, as determined from time to time at Landlord's request but not more frequently than once in any 12-month period.

(ii) Commercial general liability insurance, including (a) products and completed operation liability, covering Landlord and Tenant against bodily injury liability, property damage liability, products and completed operations and personal and advertising injury (in an amount not less than \$2,000,000.00 per occurrence and \$4,000,000.00 general aggregate per location), (b) if the use and occupancy of the Property include any activity or matter that is or may be excluded from coverage under a commercial general liability policy [e.g., the sale, service or consumption of alcoholic beverages], Tenant shall obtain such endorsements to the commercial general liability policy or otherwise obtain insurance to insure all liability arising from such activity or matter [including liquor liability, garagekeepers liability or bailee customers personal property, if applicable] in such amounts as Landlord may reasonably require, including without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Property or adjoining ways, streets, parking lots or sidewalks. The commercial general liability policy shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Tenant's obligations under ARTICLE XI hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of Tenant or Landlord because of the negligence or other acts of the other, shall be in amounts of not less than \$2,000,000.00 per occurrence for bodily injury and property damage, and \$4,000,000.00 general aggregate per location, together with Excess or Umbrella liability with a limit of not less than \$5,000,000 per occurrence (which shall provide coverage excess of the commercial general liability, auto liability and employers' liability), or, following the expiration of the Initial Term, such higher limits as Landlord may reasonably require from time to time, and shall be of form and substance satisfactory to Landlord. These limits may be satisfied through commercial general liability and umbrella liability policies.

(iii) Statutory workers' compensation insurance and Employers Liability insurance in the amount of \$1,000,000 covering all persons employed by Tenant on the Properties in connection with any work done on or about any of the Properties for which claims for death or bodily injury could be asserted against Landlord, Tenant or the Properties.

(iv) Rental value insurance, equal to 100% of the Base Annual Rental (as the same may adjusted hereunder) for a period of not less than twelve (12) months basic period plus a six (6) month extended period of indemnity, which insurance shall be carved out of Tenant's business interruption coverage for a separate rental value insurance payable to Landlord, or if rental value insurance is included in Tenant's business interruption coverage, the insurer shall provide priority payment to any rent obligations, and such obligations shall be paid directly to Landlord. Such insurance is to follow form of the special cause of loss coverage and is not to contain a co-insurance clause.

(v) Equipment Breakdown insurance against loss or damage from explosion of any steam or pressure boilers or similar apparatus, if any, located in or about the each Property and in an amount equal to the lesser of 25% of the 100% replacement cost of each Property or \$5,000,000.00.

(vi) Automobile Liability Insurance not less than \$1,000,000 per occurrence covering all owned and non-owned vehicles.

(vii) Builder's Risk Insurance, but only prior to the commencement of and during the construction of any permitted rehabilitation, replacement, reconstruction, restoration, renovation or alteration of the Properties, and only to the extent that such coverage is not being maintained by Tenant's contractor(s) pursuant to a policy or policies reasonably acceptable to Landlord.

(b) **Insurance Provisions** . All insurance policies shall:

(i) provide

(A) for a waiver of subrogation by the insurer as to claims against Landlord, its employees and agents;

(B) that the insurer shall not deny a claim and that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Tenant, its officers, directors, employees or agents, or anyone acting for Tenant or any subtenant or other occupant of the Properties; and

(C) that any losses otherwise payable thereunder shall be payable notwithstanding any act or omission of Landlord or Tenant which might, absent such provision, result in a forfeiture of all or a part of such insurance payment;

(ii) be primary and provide that any "other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by Landlord and the insurance policy shall not be brought into contribution with insurance maintained by Landlord;

(iii) contain deductibles or self-insured retention amounts not to exceed \$250,000 (except deductibles for workers' compensation insurance, which shall not exceed \$500,000); provided, however, such deductibles may change from time to time upon Tenant's request, subject to Landlord's consent, not to be unreasonably withheld, conditioned, or delayed;

(iv) contain a standard non-contributory mortgagee clause or endorsement in favor of any Lender designated by Landlord;

(v) provide that the policy of insurance shall not be cancelled without at least thirty (30) days' prior written notice to Landlord and to any Lender covered by any standard mortgagee clause or endorsement;

(vi) provide that the insurer shall not have the option to restore the Properties if Landlord elects to terminate this Lease in accordance with the terms hereof;

(vii) be in amounts sufficient at all times to satisfy any coinsurance requirements thereof;

(viii) except for workers' compensation insurance referred to in Section 7.03(a)(ii) above, name Landlord and any Landlord Affiliate or Lender requested by Landlord, as an "additional insured" with respect to general liability insurance, and as a "loss payee" with respect to all real property, Personalty and rental value insurance, as appropriate and as their interests may appear;

(ix) be evidenced by delivery to Landlord and any Lender designated by Landlord of an Acord Form 28 for property, rental value and boiler & machinery coverage (or any other form requested by Landlord) and an Acord Form 25 for commercial general liability, automobile, workers' compensation and umbrella coverage (or any other form requested by Landlord); provided that in the event that either such form is no longer available, such evidence of insurance shall be in a form reasonably satisfactory to Landlord and any Lender designated by Landlord; and

(x) be issued by insurance companies licensed to do business in the states where the Properties are located and which are rated A:VIII or better by Best's Insurance Guide or are otherwise approved by Landlord.

(c) **Additional Obligations** . It is expressly understood and agreed that

(i) if any insurance required hereunder, or any part thereof, shall expire, be withdrawn, become void by breach of any condition thereof by Tenant, or become void or in jeopardy by reason of the failure or impairment of the capital of any insurer, Tenant shall immediately obtain new or additional insurance reasonably satisfactory to Landlord and any Lender designated by Landlord;

(ii) the minimum limits of insurance coverage set forth in this Section 7.03 shall not limit the liability of Tenant for its acts or omissions as provided in this Lease;

(iii) Tenant shall procure policies for all insurance for periods of not less than one year and shall provide to Landlord and any servicer or Lender of Landlord certificates of insurance or, upon Landlord's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Lease is in effect at all times;

(iv) Tenant shall pay as they become due all premiums for the insurance required by this Section 7.03;

(v) in the event any insurance policy required to be maintained by Tenant hereunder contains any breach of warranty provisions, Tenant shall not cause any violations of the policy warranties, declarations or conditions in such policy; and

(vi) in the event that Tenant fails to comply with any of the requirements set forth in this Section 7.03, within ten (10) days of the giving of written notice by Landlord to Tenant,

(A) Landlord shall be entitled to procure such insurance; and

(B) any sums expended by Landlord in procuring such insurance shall be a Monetary Obligation (and not Rental) and shall be repaid by Tenant, together with interest thereon at the Default Rate, from the time of payment by Landlord until fully paid by Tenant immediately upon written demand therefor by Landlord.

(d) **Blanket Policies** . Notwithstanding anything to the contrary in this Section 7.03, any insurance which Tenant is required to obtain pursuant to this Section 7.03 may be carried under a “blanket” policy or policies covering other properties or liabilities of Tenant provided that such “blanket” policy or policies otherwise comply with the provisions of this Section 7.03.

(e) **Change in Operation** . Landlord reserves the right to require additional and/or other insurance if Tenant has a change in operation or use of any of the Properties.

ARTICLE VIII

MAINTENANCE; ALTERATIONS

Section 8.01 Condition of Property; Maintenance . Tenant hereby accepts the Properties “AS IS” and “WHERE IS” with no representation or warranty of Landlord as to the condition thereof. Tenant shall, at its sole cost and expense, be responsible for:

(a) keeping all of the building, structures and improvements erected on each of the Properties in good order and repair, subject to the terms of Article XII of this Lease, free from actual or constructive waste, including without limitation, the roof and the HVAC and other electrical and mechanical systems;

(b) subject to the terms of Article XII of this Lease, the repair or reconstruction of any building, structures or improvements erected on the Properties damaged or destroyed by a Casualty;

(c) subject to Section 8.02, making all necessary structural, non-structural, exterior and interior repairs and replacements to any building, structures or improvements erected on the Properties, including without limitation, completion of the repairs described on the Physical Condition Assessment schedule attached hereto as Exhibit D;

(d) operating, remodeling, updating and modernizing the Properties in accordance with those standards adopted from time to time on a system-wide basis for the Permitted Facilities; and

(e) paying all operating costs of the Properties in the ordinary course of business. Tenant waives any right to require Landlord to maintain, repair or rebuild all or any part of the Properties or make repairs at the expense of Landlord pursuant to any Legal Requirements at any time in effect.

Section 8.02 Alterations and Improvements . During the Lease Term, Tenant shall not alter the exterior, structural, plumbing or electrical elements of the Properties in any manner without the consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; *provided, however* , Tenant may undertake nonstructural alterations to (i) the New Mexico Property and the Minnesota Property, individually, costing less than \$250,000, and (ii) the New York Property costing less than \$500,000, in any calendar year without Landlord’s prior written consent. No USTs may be installed at any Property without Landlord’s written consent. If Landlord’s consent is required hereunder and Landlord consents to the making of any such alterations, the same shall be made by Tenant at Tenant’s sole expense by a licensed contractor and according to plans and specifications reasonably approved by Landlord and subject to such other conditions as Landlord shall reasonably require. Any work at any time commenced by Tenant on the Properties shall be prosecuted diligently to completion, shall be of good workmanship and materials and shall comply in all material respects with all the terms of this Lease and all Legal Requirements. Upon completion of any alterations individually costing \$50,000 or more, Tenant shall promptly provide Landlord with evidence of full payment to all laborers and materialmen contributing to the alterations. Additionally, upon completion of any alterations, Tenant shall promptly provide Landlord with:

(a) an architect’s certificate certifying the alterations to have been completed in conformity with the plans and specifications (if the alterations are of such a nature as would require the issuance of such a certificate from the architect);

(b) a certificate of occupancy (if the alterations are of such a nature as would require the issuance of a certificate of occupancy); and

(c) any other documents or information reasonably requested by Landlord. Tenant shall keep the Properties free from any liens arising out of any work performed on, or materials furnished to, the Properties. Tenant shall execute and file or record, as appropriate, a "Notice of Non-Responsibility," or any equivalent notice permitted under applicable Law in the states where the Properties are located which provides that Landlord is not responsible for the payment of any costs or expenses relating to the additions or alterations. Any addition to or alteration of the Properties shall be deemed a part of the Properties and belong to Landlord, and Tenant shall execute and deliver to Landlord such instruments as Landlord may require to evidence the ownership by Landlord of such addition or alteration.

In no event shall the provisions of this Section 8.02 be deemed to limit Tenant's rights or obligations with respect to any Personality.

Section 8.03 Encumbrances. During the Lease Term, upon not less than twenty (20) days' notice to Tenant (which notice shall include a copy of any proposed easement), Landlord shall have the right to grant easements on, over, under and above the Properties without the prior consent of Tenant, provided that such easements will not interfere with Tenant's use of the Properties or result in any additional material costs payable by Tenant. Tenant shall comply with and perform all obligations of Landlord, at Tenant's sole cost and expense, under all easements, declarations, covenants, restrictions and other items of record now or hereafter encumbering the Properties (including the payment of any sums due thereunder). Without Landlord's prior written consent, Tenant shall not grant any easements on, over, under or above the Properties.

ARTICLE IX

USE OF THE PROPERTIES; COMPLIANCE

Section 9.01 Use . During the Lease Term, each of the Properties shall be used solely for the operation of a Permitted Facility. Except during any Permitted Closure (and provided that Tenant continues to strictly comply with the other terms and conditions of this Lease), Tenant shall at all times during the Lease Term occupy the Properties and shall diligently operate (as presently conducted) its business on the Properties. Notwithstanding the foregoing and anything to the contrary contained herein, Tenant shall be permitted to Discontinue Operations at either the New Mexico Property or the Minnesota Property; provided, that in no event shall Tenant be permitted to Discontinue Operations at the New York Property nor Discontinue Operations at more than one (1) Property at any time. If Tenant does Discontinue Operations at a Property, Tenant shall (i) give written notice to Landlord as promptly as practicable after Tenant elects to Discontinue Operations at such Property, but no later than ninety (90) days prior to the date that Tenant actually commences to Discontinue Operations, (ii) provide protection and maintenance of any such Property during any period of vacancy in the same manner as required under this Lease, (iii) comply with all Laws and otherwise comply with the terms and conditions of this Lease, and (iv) such discontinuance of operations shall not activate, make applicable or otherwise trigger any right of any person or entity to acquire any such Property whether by option, right of first refusal, right of first offer or otherwise. The other terms and provisions of this Lease and Tenant's obligations hereunder shall remain in full force and effect in accordance with its terms, and not be deemed to be waived by Landlord with respect to such Property where Tenant elects to Discontinue Operations.

Section 9.02 Alternative Use. Tenant shall not, by itself or through any assignment, sublease or other type of transfer, convert any of the Properties to an alternative use during the Lease Term without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed; *provided, however*, that Landlord's consent shall not be deemed unreasonably withheld if Landlord's decision is based on any or all of the following:

- (a) whether the rental paid to Landlord would be equal to or greater than the anticipated rental assuming continued existing use;
- (b) whether the proposed rental to be paid to Landlord is reasonable considering the converted use of such Property and the customary rental prevailing in the community for such use;
- (c) whether the converted use will be consistent with the highest and best use of such Property;
- (d) whether the converted use will increase Landlord's risks or decrease the value of such Property;
- (e) whether the converted use will adversely affect Landlord's status as a REIT; and
- (f) whether Landlord is able to obtain approval of its Lender to any such change in use provided Landlord shall use commercially reasonable efforts to obtain approval of its Lender.

Section 9.03 Compliance . Tenant shall, at Tenant's sole cost and expense, ensure the use and occupation of each of the Properties (whether by Tenant or any Subtenant), and the condition thereof, complies in all material respects with all Legal Requirements and all restrictions, covenants and encumbrances of record (even if an obligation relating to the Properties is, pursuant to Legal Requirements or pursuant to a recorded agreement, the obligation of the fee owner of the Property). Without in any way limiting the foregoing provisions, Tenant shall comply with all Legal Requirements relating to anti-terrorism, trade embargos, economic sanctions, Anti-Money Laundering Laws, and the Americans with Disabilities Act of 1990, as such act may be amended from time to time, and all regulations promulgated thereunder, as they affect the Properties, now or hereafter in effect. Upon Landlord's written request from time to time during the Lease Term, but in no event more than one time per calendar year, Tenant shall certify in writing to Landlord that Tenant's representations, warranties and obligations under Section 6.07 and this Section 9.03 remain true and correct and have not been breached. Tenant shall promptly notify Landlord in writing if any of such representations, warranties or covenants are no longer true or have been breached or if Tenant has a reasonable basis to believe that they may no longer be true or have been breached. In connection with such an event, Tenant shall (and shall cause each Subtenant to) comply in all material respects with all Legal Requirements and directives of Governmental Authorities and, at Landlord's prior written request, provide to Landlord copies of all notices, reports and other communications exchanged with, or received from, Governmental Authorities relating to such an event. Tenant shall also reimburse Landlord for all Costs incurred by Landlord in evaluating the effect of such an event on the Properties and this Lease, in obtaining any necessary license from Governmental Authorities as may be necessary for Landlord to enforce its rights under the Transaction Documents, and in complying with all Legal Requirements applicable to Landlord as the result of the existence of such an event and for any penalties or fines imposed upon Landlord as a result thereof. Tenant will use its best efforts to prevent any act or condition to exist on or about the Properties which will materially increase any insurance rate thereon, except when such acts are required in the normal course of its business and Tenant shall pay for such increase. Tenant will defend, indemnify and hold harmless the Indemnified Parties from and against any and all Losses caused by, incurred or resulting from Tenant's failure to comply with its obligations under this Section 9.03.

Section 9.04 Environmental .

(a) *Representations and Warranties* . The representations and warranties of Tenant contained in this Section 9.04(a) are being made as of the Effective Date to induce Landlord to enter into this Lease, and Landlord has relied upon such representations and warranties. Tenant represents and warrants to Landlord the following:

(i) To the knowledge of Tenant, there are no conditions on the Properties that are in violation of Environmental Laws, or that require Remediation, and could reasonably be expected to result in a Material Adverse Effect. The Properties are not subject to any pending or, to Tenant's knowledge, threatened investigations or inquiries by any Governmental Authorities regarding any alleged violation of Environmental Laws or any Remediation, in each case, that could reasonably be expected to have a Material Adverse Effect. Tenant has not received any written notice from any Person of:

(A) any violation of Environmental Laws with respect to Hazardous Materials, Regulated Substances or USTs at a Property;

(B) possible liability of any Person pursuant to any Environmental Law with respect to a Property;

(C) any Remediation at a Property;

(D) other environmental conditions at a Property;

(E) any actual or potential administrative or judicial proceedings in connection with any of the foregoing; or

(F) any pending or threatened lawsuits under any Environmental Laws or related to any environmental conditions on the Properties;

in each case of (A) - (F), that could reasonably be expected to have a Material Adverse Effect.

(ii) all uses and operations on or of the Properties, whether by Tenant or, to Tenant's knowledge, any other Person, are in compliance with all Environmental Laws and environmental permits issued pursuant thereto;

(iii) there have been no Releases in, on, under or from any of the Properties, or, to Tenant's knowledge, from other property migrating toward any of the Properties, except in Permitted Amounts;

(iv) there are no Hazardous Materials, Regulated Substances or USTs in, on, or under any of the Properties, except in Permitted Amounts; and

(v) The Properties are free and clear of all Environmental Liens.

(b) Covenants.

(i) Tenant covenants to Landlord during the Lease Term, subject to the limitations of subsection (ii) below, as follows:

(A) All uses and operation of the Properties by Tenant or its officers, directors, employees or agents, or anyone acting for Tenant or any subtenant or other occupant of the Properties, shall be in compliance in all material respects with all Environmental Laws, permits issued pursuant thereto, and with any order by any Governmental Authority issued pursuant to Environmental Law.

(B) Tenant shall not permit any Releases in, on, under or from the Properties, except in Permitted Amounts.

(C) Tenant shall not permit any Hazardous Materials or Regulated Substances in, on or under the Properties, except in Permitted Amounts.

(D) The Property shall be kept free and clear of all Environmental Liens due to any act or omission of Tenant or its officers, directors, employees or agents, or anyone acting for Tenant or any subtenant or other occupant of the Properties, or (to the extent within Tenant's reasonable control) any other Person.

(E) Tenant shall not allow any Subtenant or other user of the Properties to do any act that poses an unreasonable risk of harm to any Person or the environment (whether on or off any of the Properties), impairs the value of any of the Properties in any material respect, constitutes a public or private nuisance, constitutes waste, or violates in any material respect any covenant, condition, agreement or easement applicable to any of the Properties.

(F) If Landlord reasonably believes there exists a material violation of the covenants set forth in subsections (A)–(E) above, then Tenant shall, upon ten (10) Business Days' prior written notice from Landlord, perform an environmental site assessment or other investigation of environmental conditions in connection with the Properties as may be reasonably requested by Landlord to investigate such violation, and share with Landlord the reports thereof. The cost of such environmental site assessment or other investigation shall be paid by Landlord, unless a violation of the covenants set forth in subsections (A)–(E) above is confirmed, in which case the cost shall be paid by Tenant.

(ii) Notwithstanding any provision of this Lease to the contrary, an Event of Default shall not be deemed to have occurred as a result of the failure of Tenant to satisfy any one or more of the covenants set forth in subsections (A) through (E) above provided that Tenant shall be in compliance in all material respects with Environmental Laws and the requirements of any Governmental Authority with respect to the discovery or Remediation of any Release at the Properties.

(c) **Notification Requirements** . Tenant shall notify Landlord in writing within ten (10) Business Days of Tenant obtaining actual knowledge of:

(i) any Releases in, on, under or from any of the Properties other than in Permitted Amounts;

(ii) any non-compliance with any Environmental Laws related in any way to any of the Properties;

(iii) any Environmental Lien;

(iv) any Remediation of environmental conditions relating to any of the Properties required by applicable Governmental Authorities; and

(v) any written notice or other communication, including but not limited to a notice of violation (“NOV”), issued by a Governmental Authority to Tenant relating to a violation of Environmental Laws with respect to Hazardous Materials, Regulated Substances or USTs at the Properties, a Release or Remediation thereof at or on any of the Properties (other than in Permitted Amounts), possible liability of any Person relating to any of the Properties pursuant to any Environmental Law, or any actual or threatened administrative or judicial proceedings in connection with any of the foregoing.

(d) **Remediation** . Tenant shall, at its sole cost and expense, and without limiting any other provision of this Lease, effectuate any Remediation required by any Governmental Authority with respect to the Properties and take any other action required by Environmental Law or any Governmental Authority for protection of human health or the environment with respect to the Properties. Should Tenant fail to undertake such Remediation in accordance with the preceding sentence, Landlord, after written notice to Tenant and Tenant’s failure to promptly undertake such Remediation, shall be permitted to complete such Remediation, and all Costs incurred in connection therewith shall be paid by Tenant. Any Cost so paid by Landlord, together with interest at the Default Rate, shall be deemed to be a Monetary Obligation hereunder (and not Rental) and shall be immediately due from Tenant to Landlord.

(e) **Indemnification** . Tenant shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless each of the Indemnified Parties from and against any and all Losses arising out of or in any way relating to any violation of Environmental Laws or Release of Hazardous Materials or Regulated Substances (including with respect to USTs) at the Properties, in each case prior to or during the Lease Term, including, but not limited to, all fines, penalties, claims or expenses imposed pursuant to any Environmental Law and all Costs of Remediation (whether or not performed voluntarily), except to the extent caused by an Indemnified Party’s gross negligence or willful misconduct; *provided, however* , that the term “gross negligence” as used herein shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Landlord’s interest in any Property or Landlord’s failure to act in respect of matters which are or were the obligation of Tenant under this Lease. It is expressly understood and agreed that Tenant’s obligations under this Section 9.04(d) shall survive the expiration or earlier termination of this Lease for any reason.

(f) **Right of Entry** . Notwithstanding anything to the contrary in Section 10.02 below, Landlord and its authorized representatives shall have the right, but not the obligation, to enter upon the Properties during normal business hours, upon reasonable prior written notice to Tenant, to assess any and all aspects of the environmental condition of any Property and its use and to ensure compliance with Environmental Laws and the requirements of any Governmental Authority issued pursuant thereto, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Landlord’s sole and absolute discretion) (any such entry onto a Property, an “*Environmental Assessment*”); *provided, however*, that unless the condition set forth in Section 9.04(b)(i)(F) has been met, Landlord shall not access any Property more than twice per year for purposes of conducting an Environmental Assessment. Tenant shall reasonably cooperate with and provide access to Landlord and its authorized representatives in connection with any Environmental Assessment. Any such Environmental Assessment shall be paid for by Landlord, except as set forth in Section 9.04(b)(i)(F) above.

(g) **No Operation of USTs** . Tenant represents and warrants to Landlord that no USTs are currently located on the Properties and none shall be installed in the future.

ARTICLE X

ADDITIONAL COVENANTS

Section 10.01 Performance at Tenant ' s Expense . Tenant acknowledges and confirms that Landlord may impose reasonable documented out-of-pocket processing or review fees, and collect reasonable documented out-of-pocket attorneys' fees, costs and expenses incurred by Landlord or its servicer or management company, in connection with:

- (a) any extension, renewal, modification, amendment and termination of this Lease but excluding any such action requested by Landlord and any assignment by Landlord pursuant to Section 15.01;
- (b) any request for release or substitution of Properties by Tenant whether or not approved in writing by Landlord;
- (c) the procurement of consents, waivers and approvals with respect to the Properties or any matter related to this Lease;
- (d) the review of any assignment or sublease or proposed assignment or sublease or the preparation or review of any subordination or non-disturbance agreement; and
- (e) the collection, maintenance and/or disbursement of reserves created under this Lease or the other Transaction Documents.

Section 10.02 Inspection . Landlord and its authorized representatives shall have the right during normal business hours upon giving reasonable prior written notice (except in the event of an emergency, in which case no prior written notice shall be required), to enter the Properties or any part thereof and inspect the same. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Properties and any other loss occasioned by such entry, but, subject to Section 11.01, excluding damages arising as a result of the gross negligence or intentional misconduct of Landlord or its authorized representatives and provided Landlord repairs any damage caused by such entry and/or inspection.

Section 10.03 Financial Information .

(a) **Financial Statements** . Within forty five (45) days after the end of the first three fiscal quarters of each fiscal year and within one hundred twenty (120) days after the end of each fiscal year of Tenant or Guarantor, as applicable, Tenant shall deliver to Landlord complete financial statements of the Tenant and Guarantor including a balance sheet, profit and loss statement, and statement of changes in financial condition and all other related schedules for the fiscal period then ended. All such financial statements shall be prepared in accordance with GAAP, and shall be certified to be accurate and complete by an officer or director of Tenant or Guarantor, as applicable, shall separately set forth revenue received from Subleases, and shall identify any Subtenant which is in default. Tenant understands that Landlord will rely upon such financial statements and Tenant represents that such reliance is reasonable. The annual financial statements delivered to Landlord shall be audited.

(b) Notwithstanding the foregoing, so long as Tenant's and/or Guarantor's financial reports are the financial reports of a publicly traded company and so long as such publicly traded company's financial reports are available to the public, Tenant's obligations to deliver financial reports of Tenant and/or Guarantor pursuant to Section 10.03(a) shall be deemed to be satisfied.

Section 10.04 OFAC Laws . Upon receipt of notice or upon actual knowledge thereof, Tenant shall immediately notify Landlord in writing if any Person owning (directly or indirectly) any interest in the Tenant, or any director, officer, shareholder, member, manager or partner of any of such holders is a Person whose property or interests are subject to being blocked under any of the OFAC Laws, or is otherwise in violation of any of the OFAC Laws, or is under investigation by any Governmental Authority for, or has been charged with, or convicted of, drug trafficking, terrorist-related activities or any violation of the Anti-Money Laundering Laws, has been assessed civil penalties under these or related laws, or has had funds seized or forfeited in an action under these or related laws; *provided, however* , that the covenant in this Section 10.04 shall not apply to any Person to the extent such Person's interest is in or through a U.S. Publicly Traded Entity.

Section 10.05 Estoppel Certificate . At any time, and from time to time, Tenant shall, within ten (10) days after a written request from Landlord or any Lender or mortgagee of Landlord, execute, acknowledge and deliver to Landlord or such Lender or mortgagee, as the case may be, a certificate in the form supplied by Landlord, certifying:

- (a) that Tenant has accepted the Properties;
- (b) that this Lease is in full force and effect and has not been modified (or if modified, setting forth all modifications), or, if this Lease is not in full force and effect, the certificate shall so specify the reasons therefor;
- (c) the commencement and expiration dates of the Lease Term;
- (d) the date to which the Rentals have been paid under this Lease and the amount thereof then payable;
- (e) whether there are then any existing defaults by Landlord in the performance of its obligations under this Lease, and, if there are any such defaults, specifying the nature and extent thereof;
- (f) that no notice has been received by Tenant of any default pursuant to this Lease which has not been cured, except as to defaults specified in the certificate;
- (g) that Tenant has no option to purchase, right of first refusal or similar rights;
- (h) the capacity of the Person executing such certificate, and that such Person is duly authorized to execute the same on behalf of Tenant;
- (i) that neither Landlord nor any Lender or mortgagee has actual involvement in the management or control of decision making related to the operational aspects or the day-to-day operation of the Properties, including any handling or disposal of Hazardous Materials or Regulated Substances; and
- (j) any other information reasonably requested by Landlord or any Lender or mortgagee, as the case may be.

Section 10.06 Sale of Assets . Except as otherwise expressly permitted by the terms of this Lease, during the term of this Lease, Tenant will not transfer or dispose of all or substantially all of its assets (a “Material Asset Sale”) without Landlord’s consent, which consent shall not be unreasonably withheld, conditioned or delayed, unless the buyer of such assets assumes all of the obligations of Tenant under this Lease. In addition, if such buyer satisfies the Release Criteria, Tenant shall be released from all obligations under the Lease. Notwithstanding any provision to the contrary in this Section 10.06, the sale of the retail business of Tenant shall not constitute a Material Asset Sale.

ARTICLE XI

RELEASE AND INDEMNIFICATION

Section 11.01 Release and Indemnification . Tenant agrees to use and occupy the Properties at its own risk and hereby releases Landlord and Landlord’s agents and employees from all claims for any damage or injury to the full extent permitted by Law; provided, however, that such release shall not apply to any claim, damage or injury to the extent caused by the gross negligence or willful misconduct of Landlord, its agents or employees. Tenant agrees that Landlord shall not be responsible or liable to Tenant or Tenant’s employees, agents, customers, licensees or invitees for bodily injury, personal injury or property damage occasioned by the acts or omissions of any other lessee or any other Person; provided, however, that such release shall not apply to any claim, damage or injury to the extent caused by the gross negligence or willful misconduct of Landlord, its agents or employees. Tenant agrees that any employee or agent to whom the Properties or any part thereof shall be entrusted by or on behalf of Tenant shall be acting as Tenant’s agent with respect to the Properties or any part thereof, and neither Landlord nor Landlord’s agents, employees or contractors shall be liable for any loss of or damage to the Properties or any part thereof. Tenant shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses (excluding Losses suffered by an Indemnified Party arising out of the gross negligence or willful misconduct of any Indemnified Party; *provided, however* , that the term “gross negligence” as used herein shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Landlord’s interest in any Property or Landlord’s failure to act in respect of matters which are or were the obligation of Tenant under this Lease) relating in any way to the Properties or caused by, incurred or resulting from Tenant’s operations at or by Tenant’s use and occupancy of the Properties, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Tenant or any Person thereon, supervision or otherwise, or from any breach of, default under, or failure to perform, any term or provision of this Lease by Tenant, its officers, employees, agents or other Persons. It is expressly understood and agreed that Tenant’s obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason whatsoever.

Section 11.02. Non-Recourse to Landlord . Anything contained herein to the contrary notwithstanding, any claim based on or in respect of any liability of Landlord under this Lease shall be enforced only against the Landlord’s interest in the Properties not against any other assets, properties or funds of (i) Landlord, (ii) Landlord’s members, and any entity controlling, controlled by, or in common control of Landlord or Landlord’s members, any director, officer, general partner, shareholder, limited partner, beneficiary, employee, attorney, consultant, contractor or agent of Landlord or any general partner of Landlord or any of its general partners (or any legal representative, heir, estate, successor or assign of any thereof), (iii) any predecessor or successor limited liability company, partnership or corporation (or other entity) of Landlord or any of its members, managers, general partners, shareholders, officers, directors, employees or agents, either directly or through Landlord or its general partners, shareholders, officers, directors, employees or agents or any predecessor or successor partnership or corporation (or other entity), (iv) any Lender, and any lender to a Person holding an interest in Landlord, (v) any Person affiliated with any of the foregoing, or any director, officer, employee or agent of any thereof; or (vi) the heirs, successors, personal representatives and assigns of any of the foregoing.

ARTICLE XII

CONDEMNATION AND CASUALTY

Section 12.01 Notification . Tenant shall promptly give Landlord written notice of:

- (a) any Condemnation of any of the Properties;
- (b) the commencement of any proceedings or negotiations which might result in a Condemnation of any of the Properties; and
- (c) any Casualty to any of the Properties or any part thereof. Such notice shall provide a general description of the nature and extent of such Condemnation, proceedings, negotiations or Casualty, and shall include copies of any documents or notices received in connection therewith. Thereafter, Tenant shall promptly send Landlord copies of all notices, correspondence and pleadings relating to any such Condemnation, proceedings, negotiations or Casualty.

Section 12.02 Partial Condemnation or Casualty . Except as otherwise provided in Section 12.03 and Section 12.04, in the event of a Partial Condemnation or a Casualty:

(a) **Net Awards** . Subject to Section 12.07, all Net Awards shall be paid to Landlord.

(b) **Election To Continue or Terminate Lease** . Landlord shall have the option,

(i) subject to the right of Tenant to elect otherwise as set forth in subsection (d) below, to terminate this Lease with respect to the applicable Property affected, by notifying Tenant in writing within thirty (30) days after Tenant gives Landlord notice

(A) of such Partial Condemnation or Casualty, or

(B) that title has vested in the condemning authority; or

(ii) to continue this Lease in effect (subject to Tenant's right to terminate as set forth in Section 12.02(b)(iii)), which election shall be evidenced by either a notice from Landlord to Tenant, or Landlord's failure to notify Tenant in writing that Landlord has elected to terminate this Lease with respect to such Property within such thirty (30) day period. Tenant shall have a period of ninety (90) days after receipt of Landlord's notice to terminate referenced above during which to elect, despite such Landlord notice of termination, to continue this Lease with respect to such Property on the terms herein provided.

(iii) Tenant shall have the option to terminate the Lease with respect to the applicable Property affected provided that (i) the Casualty has caused 20% or more of the usable square footage of the primary structure on the applicable Property to be untenable, or the Partial Condemnation has resulted in the Taking of 20% or more of the usable square footage of the primary structure on the applicable Property, and (ii) such Casualty or Partial Condemnation occurs during the last two (2) years of the Lease Term. Such termination election shall be effected by delivery of written notice to Landlord within thirty (30) days after the applicable Casualty or Condemnation.

(c) **No Continuance of Lease** . If either Landlord or Tenant elects to terminate the Lease as to a Property (and if Landlord elects to terminate the Lease as to a Property, Tenant does not elect to continue this Lease with respect to such Property or shall fail during such ninety (90) day period to notify Landlord of Tenant's intent to continue this Lease with respect to such Property), then this Lease shall terminate with respect to such Property as of the later of (i) the last day of the month in which such termination notice is delivered and (ii) the date of the actual taking or permanent termination of use of such Property as a result of such Partial Condemnation or Casualty (the "Property Termination Date"). Tenant shall vacate and surrender such Property by such Property Termination Date, in accordance with the provisions of this Lease, and all obligations of either party hereunder with respect to such Property shall cease as of the date of termination; *provided, however* , Tenant's obligations to the Indemnified Parties under any indemnification provisions of this Lease with respect to such Property and Tenant's obligations to pay Rental and all other Monetary Obligations (whether payable to Landlord or a third party) accruing under this Lease with respect to such Property prior to the date of termination shall survive such termination. In such event, Landlord may retain all Net Awards related to the Partial Condemnation or Casualty, and Tenant shall immediately pay Landlord an amount equal to the insurance deductible applicable to any Casualty. From and after the Property Termination Date with respect to a Property, the Base Annual Rental shall be reduced by an amount equal to the product of (i) Applicable Rent Reduction Percentage for such Property, and (ii) the Base Annual Rental in effect immediately preceding the Property Termination Date.

(d) **Continuance of Lease** . If Landlord elects not to terminate this Lease, or if Landlord elects to terminate this Lease with respect to such Property but Tenant elects to continue this Lease with respect to such Property, then this Lease shall continue in full force and effect upon the following terms:

(i) All Rental and other Monetary Obligations due under this Lease shall continue unabated.

(ii) Tenant shall promptly commence and diligently prosecute restoration of such Property to the same condition, as nearly as practicable, as prior to such Partial Condemnation or Casualty as reasonably approved by Landlord. Subject to the terms and provisions of the Mortgages and upon the written request of Tenant (accompanied by evidence reasonably satisfactory to Landlord that such amount has been paid or is due and payable and is properly part of such costs, and that Tenant has complied with the terms of Section 8.02 in connection with the restoration), Landlord shall promptly make available in installments, subject to reasonable conditions for disbursement imposed by Landlord, an amount up to but not exceeding the amount of any Net Award (after deducting all Costs incidental to the collection of the Net Award) received by Landlord with respect to such Partial Condemnation or Casualty. Prior to the disbursement of any portion of the Net Award with respect to a Casualty, Tenant shall provide evidence reasonably satisfactory to Landlord of funds available to Tenant to pay restoration expenses (a) up to the amount of the insurance deductible applicable to such Casualty and (b) which are in excess of the amount of the Net Award. Landlord shall be entitled to keep any portion of the Net Award which may be in excess of the cost of restoration, and Tenant shall bear all additional Costs of such restoration in excess of the Net Award.

Section 12.03 Total Condemnation . In the event of a Total Condemnation of any Property, other than a Temporary Taking, then, in such event:

(a) **Termination of Lease** . All obligations of either party hereunder with respect to the applicable Property shall cease as of the earlier to occur of (i) the date that Landlord receives 100% of the Net Award for such Total Condemnation, or (ii) the date that the Total Condemnation occurs (such earlier date, the "Property Termination Date-Total Condemnation")

that the Total Condemnation occurs; *provided, however*, that Tenant's obligations to the Indemnified Parties under any indemnification provisions of this Lease with respect to such Property and Tenant's obligation to pay Rental and all other Monetary Obligations (whether payable to Landlord or a third party) accruing under this Lease with respect to such Property prior to the Property Termination Date-Total Condemnation shall survive such termination. From and after the Property Termination Date-Total Condemnation with respect to a Property, the Base Annual Rental shall be reduced by an amount equal to the product of (i) Applicable Rent Reduction Percentage for such Property, and (ii) the Base Annual Rental in effect immediately preceding the Property Termination Date-Total Condemnation.

(b) **Net Award** . Subject to Section 12.07, Landlord shall be entitled to receive the entire Net Award in connection with a Total Condemnation without deduction for any estate vested in Tenant by this Lease, and Tenant hereby expressly assigns to Landlord all of its right, title and interest in and to every such Net Award and agrees that Tenant shall not be entitled to any Net Award or other payment for the value of Tenant's leasehold interest in this Lease.

Section 12.04 Temporary Taking . In the event of a Condemnation of all or any part of any Property for a temporary use (a "Temporary Taking"), this Lease shall remain in full force and effect without any reduction of Base Annual Rental or any other Monetary Obligation payable hereunder. Except as provided below and subject to the terms and provisions of the Mortgages, Tenant shall be entitled to the entire Net Award for a Temporary Taking, unless the period of occupation and use by the condemning authorities shall extend beyond the date of expiration of this Lease, in which event the Net Award made for such Temporary Taking shall be apportioned between Landlord and Tenant as of the date of such expiration. At the termination of any such Temporary Taking, Tenant will, at its own cost and expense and pursuant to the provisions of Section 8.02, promptly commence and complete restoration of such Property.

Section 12.05 Adjustment of Losses . Any loss under any property damage insurance required to be maintained by Tenant shall be adjusted by Landlord and Tenant (except that if an Event of Default has occurred and is continuing, Landlord may adjust such claim without the written consent of Tenant). Subject to the terms and provisions of the Mortgages, any Net Award relating to a Total Condemnation or a Partial Condemnation shall be adjusted by Landlord or, at Landlord's election, Tenant. Notwithstanding the foregoing or any other provisions of this Section 12.05 to the contrary, but subject to the terms and provisions of the Mortgages, if at the time of any Condemnation or any Casualty or at any time thereafter an Event of Default shall have occurred and be continuing, Landlord is hereby authorized and empowered but shall not be obligated, in the name and on behalf of Tenant and otherwise, to file and prosecute Tenant's claim, if any, for a Net Award on account of such Condemnation or such Casualty and to collect such Net Award and apply the same to the curing of such Event of Default and any other then existing Event of Default under this Lease and/or to the payment of any amounts owed by Tenant to Landlord under this Lease, in such order, priority and proportions as Landlord in its discretion shall deem proper.

Section 12.06 Tenant Obligation in Event of Casualty . During all periods of time following a Casualty, Tenant shall take reasonable steps to ensure that the related Property is secure and does not pose any risk of harm to any adjoining property and Persons (including owners or occupants of such adjoining property).

Section 12.07 Tenant Awards and Payments . Notwithstanding any provision contained in this ARTICLE XII, Tenant shall be entitled to claim and receive any award or payment from the condemning authority expressly granted for the Taking of any Personalty owned by Tenant, any insurance proceeds with respect to any Personalty owned by Tenant, the interruption of its business and moving expenses (subject, however, to the provisions of Section 7.03(a) (iv) above), but only if such claim or award does not adversely affect or interfere with the prosecution of Landlord's claim for the Condemnation or Casualty, or otherwise reduce the amount recoverable by Landlord for the Condemnation or Casualty, including payments or proceeds related to any Personalty then owned by Landlord.

Section 12.08 Uninsured Losses . Nothing contained herein shall relieve Tenant of its obligations under this Article XII if the destruction or damage is not covered, either in whole or in part, by insurance.

ARTICLE XIII

DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES AND MEASURE OF DAMAGES

Section 13.01 Event of Default . Each of the following shall be an event of default by Tenant under this Lease (each, an “Event of Default”):

- (a) if any representation or warranty of Tenant set forth in this Lease is false in any material respect when made;
- (b) if any Rental or other Monetary Obligation due under this Lease is not paid when due; provided, however, that not more than twice in any twelve (12) month period, any such failure to pay Rental or other Monetary Obligation due under this Lease shall not be an Event of Default unless Tenant fails to pay such amount when due and such failure continues for five (5) days or more after written notice from Landlord;
- (c) Subject to Section 7.01, if Tenant fails to pay, prior to delinquency, any Taxes, assessments or other charges the failure of which to pay will result in the imposition of a lien against any of the Properties and such failure continues for ten (10) days or more after written notice from Landlord; provided, however, Landlord shall not be required to provide such notice more than once in any twelve (12) month period, and any subsequent failure to pay any Taxes, assessments or other charges due under this Lease prior to delinquency during such twelve (12) month period shall be an immediate Event of Default without any further notice.
- (d) if Tenant fails to maintain any insurance required to be maintained by Tenant pursuant to this Lease and such failure continues for five (5) days or more after written notice from Landlord; provided, however, Landlord shall not be required to provide such notice more than once in any twelve (12) month period, and any subsequent failure to maintain any insurance required to be maintained by Tenant during such twelve (12) month period shall be an immediate Event of Default without any further notice.
- (e) if there is an Insolvency Event with respect to Tenant or any Guarantor;
- (f) except as expressly permitted pursuant to the terms of this Lease, if Tenant vacates or abandons any Property;
- (g) if Tenant fails to observe or perform any of the other covenants, conditions or obligations of Tenant in this Lease; *provided, however* , if any such failure does not involve the payment of any Monetary Obligation, is not willful or intentional, does not place any Property or any rights or property of Landlord in immediate jeopardy, and is within the reasonable power of Tenant to promptly cure, all as determined by Landlord in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Landlord shall have given Tenant written notice thereof and a period of thirty (30) days shall have elapsed, during which period Tenant may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured

within such thirty (30) day period, as determined by Landlord in its reasonable discretion, and Tenant is diligently pursuing a cure of such failure, then Tenant shall have a reasonable period to cure such failure beyond such thirty (30) day period, which shall in no event exceed one hundred twenty (120) days after receiving notice of such failure from Landlord. If Tenant shall fail to correct or cure such failure within such one hundred twenty (120) day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required

(h) if a final, non-appealable judgment is rendered by a court against Tenant which has a Material Adverse Effect, or which does not have a Material Adverse Effect but which is in the amount of \$4,000,000.00 or more, and in either event is not discharged or provision made for such discharge within ninety (90) days from the date of entry thereof;

(i) if Tenant shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution, and if any such proceeding is involuntary, Tenant does not cause such proceedings to cease within ninety (90) days;

(j) if the estate or interest of Tenant in any of the Properties shall be levied upon or attached in any proceeding and such estate or interest is about to be sold or transferred or such process shall not be vacated or discharged within ninety (90) days after it is made;

(k) a Transfer occurs without the written consent of Landlord (except to the extent that such consent is not required and Tenant otherwise complies with the provisions of Article 15 of this Lease); or

(l) if there is an Event of Default (as defined in the Guaranty).

Section 13.02 Remedies . Upon the occurrence of an Event of Default, with or without notice or demand, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Tenant, Landlord shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at Law or in equity, including, without limitation, any one or more of the following:

(a) to terminate this Lease, whereupon Tenant's right to possession of the Properties shall cease and this Lease, except as to Tenant's liability, shall be terminated;

(b) to the extent not prohibited by applicable law, and without being deemed guilty in any manner of trespass or becoming liable for any loss or damage resulting therefrom, without resort to legal or judicial process, procedure or action, and without terminating (or being deemed to terminate) this Lease, to re-enter and take possession of the Properties (or any part thereof), and, to the extent permissible, all permits and other rights or privileges of Tenant pertaining to the use and operation of the Properties;

(c) to expel Tenant and those claiming under or through Tenant, without being deemed guilty in any manner of trespass or becoming liable for any loss or damage resulting therefrom, without resort to legal or judicial process, procedure or action. No notice from Landlord hereunder or under a forcible entry and detainer statute or similar Law shall constitute an election by Landlord to terminate this Lease unless such notice specifically so states. If Tenant shall, after default, voluntarily give up possession of the Properties to Landlord, deliver to Landlord or its agents the keys to the Properties, or both, such actions shall be deemed to be in compliance with Landlord's rights and the acceptance thereof by Landlord or its agents shall not be deemed to constitute a termination of the Lease. Landlord reserves the right following any re-entry and/or re-letting to exercise its right to terminate this Lease by giving Tenant written notice thereof, in which event this Lease will terminate;

(d) to bring an action against Tenant for any damages sustained by Landlord or any equitable relief available to Landlord and to the extent not prohibited by applicable Law;

(e) to re-let the Properties or any part thereof for such term or terms (including a term which extends beyond the original Lease Term), at such rentals and upon such other terms as Landlord, in its sole discretion, may determine, with all proceeds received from such re-letting being applied to the Rental and other Monetary Obligations due from Tenant in such order as Landlord may, in its sole discretion, determine, which other Monetary Obligations include, without limitation, all repossession costs, brokerage commissions, attorneys' fees and expenses, alteration, remodeling and repair costs and expenses of preparing for such re-letting. Except to the extent required by applicable Law, Landlord shall have no obligation to re-let the Properties or any part thereof and shall in no event be liable for refusal or failure to re-let the Properties or any part thereof, or, in the event of any such re-letting, for refusal or failure to collect any rent due upon such re-letting, and no such refusal or failure shall operate to relieve Tenant of any liability under this Lease or otherwise to affect any such liability. Landlord reserves the right following any re-entry and/or re-letting to exercise its right to terminate this Lease by giving Tenant written notice thereof, in which event this Lease will terminate as specified in said notice;

(f) to accelerate and recover from Tenant all Rent due and owing and scheduled to become due and owing under this Lease both before and after the date of such breach for the entire original scheduled Lease Term, discounted to present value, less the fair rental value of the Properties for the balance of the term;

(g) to recover from Tenant all Costs paid or incurred by Landlord as a result of such breach, regardless of whether or not legal proceedings are actually commenced;

(h) to immediately or at any time thereafter, and with or without notice, at Landlord's sole option but without any obligation to do so, correct such breach or default and charge Tenant all Costs incurred by Landlord therein. Any sum or sums so paid by Landlord, together with interest at the Default Rate, shall be deemed to be a Monetary Obligation hereunder (and not Rental) and shall be immediately due from Tenant to Landlord. Any such acts by Landlord in correcting Tenant's breaches or defaults hereunder shall not be deemed to cure said breaches or defaults or constitute any waiver of Landlord's right to exercise any or all remedies set forth herein;

(i) to immediately or at any time thereafter, and with or without notice, except as required herein, set off any money of Tenant held by Landlord under this Lease against any sum owing by Tenant hereunder;

(j) without limiting the generality of the foregoing or limiting in any way the rights of Landlord under this Lease or otherwise under applicable Laws, at any time after the occurrence, and during the continuance, of an Event of Default, Landlord shall be entitled to apply for and have a receiver appointed under applicable Law by a court of competent jurisdiction in any action taken by Landlord to enforce its rights and remedies hereunder in order to protect and preserve Landlord's interest under this Lease or in the Properties, and in connection therewith, TENANT HEREBY IRREVOCABLY CONSENTS TO AND WAIVES ANY RIGHT TO OBJECT TO OR OTHERWISE CONTEST THE APPOINTMENT OF A RECEIVER AFTER THE OCCURRENCE, AND DURING THE CONTINUANCE, OF AN EVENT OF DEFAULT; and/or

(k) to seek any equitable relief available to Landlord, including, without limitation, the right of specific performance.

Section 13.03 Cumulative Remedies . (a) All powers and remedies given by Section 13.02 to Landlord, subject to applicable Law, shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to Landlord under this Lease, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of Tenant contained in this Lease, and no delay or omission of Landlord to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any other or subsequent Event of Default or impair any rights or remedies consequent thereto. Every power and remedy given by this Section or by Law to Landlord may be exercised from time to time, and as often as may be deemed expedient, by Landlord, subject at all times to Landlord's right in its sole judgment to discontinue any work commenced by Landlord or change any course of action undertaken by Landlord.

Section 13.04 Tenant Waiver . Tenant hereby expressly waives, for itself and all Persons claiming by, through and under Tenant, including creditors of all kinds,

(a) any right and privilege which Tenant has under any present or future Legal Requirements to redeem the Properties or to have a continuance of this Lease for the Lease Term after termination of Tenant's right of occupancy by order or judgment of any court or by any legal process or writ, or under the terms of this Lease;

(b) the benefits of any present or future Legal Requirement that exempts property from liability for debt or for distress for rent;

(c) any present or future Legal Requirement relating to notice or delay in levy of execution in case of eviction of a tenant for nonpayment of rent; and

(d) any benefits and lien rights which may arise pursuant to any present or future Legal Requirement.

ARTICLE XIV

MORTGAGE, SUBORDINATION AND ATTORNMEN

Section 14.01 No Liens . Landlord's interest in this Lease and/or the Properties shall not be subordinate to any liens or encumbrances placed upon the Properties by or resulting from any act of Tenant, and nothing herein contained shall be construed to require such subordination by Landlord. NOTICE IS HEREBY GIVEN THAT TENANT IS NOT AUTHORIZED TO PLACE OR ALLOW TO BE PLACED ANY LIEN, MORTGAGE, DEED OF TRUST, DEED TO SECURE DEBT, SECURITY INTEREST OR ENCUMBRANCE OF ANY KIND UPON ALL OR ANY PART OF THE PROPERTIES OR TENANT'S LEASEHOLD INTEREST THEREIN, AND ANY SUCH PURPORTED TRANSACTION SHALL BE VOID, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN.

Section 14.02 Subordination . This Lease at all times shall automatically be subordinate to the lien of any and all ground leases and Mortgages now or hereafter placed upon any of the Properties by Landlord, and Tenant covenants and agrees to execute and deliver, upon written demand, such further instruments subordinating this Lease to the lien of any or all such ground leases and Mortgages as shall be reasonably desired by Landlord, or any present or proposed mortgagees under trust deeds, upon the condition that Tenant shall have the right to remain in possession of the Properties under the terms of this Lease, notwithstanding any default in any or all such ground leases or Mortgages, or after the foreclosure of any such Mortgages, so long as no Event of Default shall have occurred and be continuing. If requested by Landlord in writing, Tenant shall execute an SNDA with a Lender holding a Mortgage, and Tenant agrees to promptly execute and return such SNDA to Landlord within fifteen (15) days of request therefor.

Section 14.03 Election To Declare Lease Superior . If any mortgagee, receiver or other secured party elects to have this Lease and the interest of Tenant hereunder, be superior to any Mortgage and evidences such election by notice given to Tenant, then this Lease and the interest of Tenant hereunder shall be deemed superior to any such Mortgage, whether this Lease was executed before or after such Mortgage and in that event such mortgagee, receiver or other secured party shall have the same rights with respect to this Lease as if it had been executed and delivered prior to the execution and delivery of such Mortgage and had been assigned to such mortgagee, receiver or other secured party.

Section 14.04 Attornment . In the event any purchaser or assignee of any Lender at a foreclosure sale acquires title to any of the Properties, or in the event that any Lender or any purchaser or assignee otherwise succeeds to the rights of Landlord as landlord under this Lease, Tenant shall attorn to Lender or such purchaser or assignee, as the case may be (a “Successor Landlord”), and recognize the Successor Landlord as lessor under this Lease, and, subject to the provisions of this Article XIV, this Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant, provided that the Successor Landlord shall only be liable for any obligations of Landlord under this Lease which accrue after the date that such Successor Landlord acquires title. The foregoing provision shall be self-operative and effective without the execution of any further instruments.

Section 14.05 Execution of Additional Documents . Upon written request by Landlord, Tenant shall execute and deliver whatever instruments may be reasonably required for such purposes within fifteen (15) days of request therefor to further evidence Tenant’s obligations under this Article XIV, and Landlord shall execute and deliver or shall use reasonable efforts to cause Lender or other superior interest holder to execute and deliver whatever instruments may be reasonably required to further evidence Tenant’s rights under this Article XIV.

Section 14.06 Notice to Lender . Tenant shall give written notice to any Lender having a recorded lien upon any of the Properties or any part thereof of which Tenant has been notified of any breach or default by Landlord of any of its obligations under this Lease and give such Lender at least thirty (30) days beyond any notice period to which Landlord might be entitled to cure such default before Tenant may exercise any remedy with respect thereto.

ARTICLE XV

ASSIGNMENT AND SUBLETTING

Section 15.01 Assignment by Landlord . As a material inducement to Landlord’s willingness to enter into the transactions contemplated by this Lease (the “Transaction”) and the other Transaction Documents, Tenant hereby agrees that Landlord may, from time to time and at any time and without the consent of Tenant, engage in all or any combination of the following, or enter into agreements in connection with any of the following or in accordance with requirements that may be imposed by applicable securities, tax or other Laws:

(a) Subject to the last paragraph of this Section 15.01, the sale, assignment, grant, conveyance, transfer, financing, re-financing, purchase or re-acquisition of all, less than all or any portion of the Properties, this Lease or any other Transaction Document, Landlord’s right, title and interest in this Lease or any other Transaction Document, the servicing rights with respect to any of the foregoing, or participations in any of the foregoing; or

(b) a Securitization and related transactions. Without in any way limiting the foregoing, the parties acknowledge and agree that Landlord, in its sole discretion, may assign this Lease or any interest herein to another Person (including without limitation, a taxable REIT subsidiary) in order to maintain Landlord's or any of its Affiliates' status as a REIT. In the event of any such sale or assignment other than a security assignment, Tenant shall attorn to such purchaser or assignee (so long as Landlord and such purchaser or assignee notify Tenant in writing of such transfer and such purchaser or assignee expressly assumes in writing the obligations of Landlord hereunder from and after the date of such assignment). Upon prior written request of Landlord, Tenant will execute such documents confirming the sale, assignment or other transfer and such other agreements as Landlord may reasonably request, provided that the same do not increase the liabilities and obligations of Tenant hereunder. Landlord shall be relieved, from and after the date of such transfer or conveyance, of liability for the performance of any obligation of Landlord contained herein, except for obligations or liabilities accrued prior to such assignment or sale.

Notwithstanding any provision to the contrary in Section 15.01(a), in the event that Landlord desires to assign its interest in this Lease with respect to one or more of the Properties, then (i) Landlord and Tenant, each in their reasonable discretion, shall mutually agree upon the Base Annual Rental as to any Properties covered by such assignment (the "Allocated Base Annual Rental"), (ii) Landlord shall prepare a new lease agreement in substantially the same form of this Lease with respect to any such Properties (each, a "New Lease Agreement"); and (iii) upon the assignment by Landlord, this Lease shall be amended to exclude any such Properties from this Lease, and the Base Annual Rental hereunder shall be reduced by the Allocated Base Annual Rental.

Section 15.02 Assignment by Tenant . (a) Tenant acknowledges that Landlord has relied both on the business experience and creditworthiness of Tenant and upon the particular purposes for which Tenant intends to use the Properties in entering into this Lease. Any (i) assignment, sublease, transfer, conveyance, pledge or mortgage by Tenant, whether voluntary or involuntary, whether by operation of Law or otherwise, of any part or all of this Lease, or of any part or all of the leasehold estate created by this this Lease, or any interest herein, or (ii) any assignment, transfer, conveyance, pledge or mortgage of any stock, partnership, membership or other direct or indirect equity interests in Tenant, Guarantor or any Person or group of Persons controlling Tenant or Guarantor that results in a direct or indirect change of control of Tenant, whether voluntary or involuntary, whether by operation of law (for example, by merger) or otherwise, is defined in this Agreement as a "Transfer". For purposes of this Article XV, "control" or "controlling" means shall mean, as applied to any Person or entity, the possession, directly or indirectly, of the power to direct the management and policies of that Person or entity, whether through ownership, voting control, by contract or otherwise. Except as otherwise expressly provided in this Lease, no Transfer shall occur without the prior written consent of Landlord, which consent will not be unreasonably withheld, conditioned or delayed by Landlord with respect to an assignment (but not a mortgage or pledge) of this Lease in its entirety by Tenant, considering such matters as the experience and financial strength of any assignee, the assumption by any assignee of all of Tenant's obligations hereunder by undertakings enforceable by Landlord, and the transfer to or procurement by the proposed assignee of all necessary licenses and franchises in order to continue operating the Properties for the purposes herein provided, so long as Landlord is given at least 30 days prior written notice of such assignment accompanied by information about the proposed assignee (including financial statements of the proposed assignee and its direct and indirect equity owners), and provided further that at the time of such assignment no Event of Default (assuming with the giving of notice or the passage of time) will occur and be continuing. At the time of any assignment of this Lease which is approved in writing by Landlord, the assignee shall assume all of the obligations of Tenant under this Lease pursuant to a written assumption agreement in form and substance reasonably acceptable to Landlord. Such assignment of this Lease shall not relieve Tenant or Guarantor of its obligations respecting this Lease unless otherwise agreed to by Landlord. Any consent to any Transfer shall not be deemed to be a consent to any subsequent Transfer. Any transfer, mortgage, assignment or pledge of this Lease by Tenant in violation of the terms of this Lease shall be void.

(b) Notwithstanding any provision to the contrary in this Article XV, Tenant shall have the right to effect the following Transfers, without the prior written consent of Landlord provided, that (i) Tenant delivers to Landlord at least ten (10) days' prior notice of such Transfer, together with a copy, if applicable, of any proposed assignment (pursuant to which the proposed assignee shall assume all of the obligations of Tenant under this Lease), or other instrument required to comply with this Lease, as well as, if applicable, reasonable supporting documentation or information to evidence that such assignee is a Permitted Assignee, (ii) the Transfer is for a legitimate business purpose and not intended to circumvent the restrictions of this Article XV, and (iii) an Event of Default does not exist as of the delivery of Tenant's notice to Landlord and as of the effective date of the applicable Transfer (each, a "Permitted Transfer"):

- (i) an assignment of this Lease to any Affiliate of Tenant;
- (ii) an assignment of this Lease made in connection with any merger, consolidation or sale of Tenant;
- (iii) subject to Section 10.06, an assignment of this Lease to a Person acquiring all or substantially all of the assets of Tenant;
- (iv) any assignment, transfer, conveyance, pledge or mortgage of any stock, partnership, membership or other direct or indirect equity interests in Tenant, Guarantor or any Person or group of Persons controlling Tenant or Guarantor that results in a direct or indirect change of control of Tenant, whether voluntary or involuntary, whether by operation of law or otherwise; or
- (v) an assignment of this Lease to a Permitted Assignee.

Additionally, except for a Transfer to a Permitted Assignee, any such Permitted Transfer shall not relieve Tenant or Guarantor of its obligations respecting this Lease unless otherwise agreed to by Landlord.

(c) As used herein, "Permitted Assignee" means Person that satisfies the Release Criteria, all as evidenced to Landlord's reasonable satisfaction. In the event of any assignment of this Lease to a Permitted Assignee in compliance with the terms of Section 15.02(b), Tenant shall be released from any liability accruing under this Lease from and after the date of such assignment.

Section 15.03 Intentionally Omitted.

Section 15.04 Subletting. (a) Except as otherwise expressly provided in this Lease, Tenant shall not sublet any or all of the Properties without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed and any such purported subletting without consent shall be void, and any Sublease shall be included in the definition of a "Transfer."

(b) As security for performance of its obligations under this Lease, Tenant hereby grants, conveys and assigns to Landlord all right, title and interest of Tenant in and to all subleases now or hereafter in effect (the "Subleases") entered into for any part or all of a Property and any and all extensions, modifications and renewals thereof and all rents, issues and profits therefrom. Nothing in this Section 15.04 shall constitute an agreement by Landlord to permit Tenant to enter into Subleases without Landlord's written consent.

(c) Each Sublease of any of the Properties which is consented to by Landlord or otherwise permitted pursuant to the terms of this Lease shall be subject and subordinate to the provisions of this Lease (and all future amendments to this Lease). No Sublease shall affect or reduce any of the obligations of Tenant hereunder, and all such obligations shall continue in full force and effect as obligations of a principal and not as obligations of a guarantor, as if no Sublease had been made. No Sublease shall impose any additional obligations on Landlord under this Lease.

(d) Tenant shall, within ten (10) days after the execution and delivery of any sublease consented to by Landlord or otherwise permitted under the terms of this Lease, deliver a duplicate original copy thereof to Landlord.

(e) Landlord shall have no obligation to recognize any or to agree to not disturb any subtenant of Tenant upon any Event of Default of Tenant under this Lease, unless Landlord shall agree to do so in writing by separate instrument, but Landlord shall have no obligation to do so. Landlord's consent to any Sublease shall not be construed as or imply any agreement on Landlord's part to recognize any Subtenant. In the event of Tenant's surrender of this Lease or the termination of this Lease for any reason or by any circumstance, Landlord may, at its option, either terminate any or all subtenancies or succeed to the interest of Tenant as sublandlord thereunder (except to the extent that Landlord has entered into a nondisturbance agreement with a Subtenant). During the time that any uncured Event of Default exists hereunder, Landlord may collect from each Subtenant all rent payable by such Subtenant pursuant to its Sublease and apply it toward Tenant's obligations under this Lease, and any Subtenant is hereby provided with notice that Subtenant shall be required to pay all sublease rent directly to Landlord upon receipt of notice from Landlord that an uncured Event of Default exists under this Lease.

(f) Notwithstanding any provision to the contrary in this Article XV, Tenant may sublease up to fifteen (15%) of any Property without Landlord's consent (a "Permitted Sublease"); provided, that any such Permitted Sublease shall be subject to all other terms and conditions of this Section 15.04 with respect to a Sublease (other than obtaining Landlord's prior consent).

ARTICLE XVI

NOTICES

Section 16.01 Notices . All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Lease shall be in writing and given by any one of the following: (a) hand delivery; (b) express overnight delivery service; (c) certified or registered mail, return receipt requested; or (d) facsimile or E-Mail transmission, and shall be deemed to have been delivered upon (i) receipt, if hand delivered; (ii) the next Business Day, if delivered by a reputable express overnight delivery service; (iii) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested; or (iv) transmission, if delivered by facsimile or E-Mail transmission. Notices shall be provided to the parties and addresses (or electronic mail addresses) specified below:

If to Tenant:	Party City Holdings Inc. 80 Grasslands Road Elmsford, New York 10523 Attn: Michael Correale Facsimile: Email: mcorreale@amscan.com
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With a copy to: Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn: John G. Caruso, Esq.
Facsimile: (312) 862-2200
Email: jcaruso@kirkland.com

If to Landlord: Spirit Realty, L.P.
c/o Spirit SPE Manager, LLC
2727 North Harwood Street, Suite 300
Dallas, Texas 75201
Attention: Portfolio Servicing
Facsimile: (800) 973-0850
Email: portfolioservicing@spiritrealty.com

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above.

ARTICLE XVII

WAIVER OF LANDLORD'S LIEN / SECURITY INTEREST

Section 17.01 Waiver of Landlord's Lien and Security Interest . Landlord acknowledges and agrees that Landlord shall not have a landlord's lien in, on and against any Personalty. Landlord shall, upon written request of Tenant, execute a landlord lien waiver and/or collateral access or similar agreement requested by Tenant's lender in a form reasonably acceptable to Landlord.

ARTICLE XVIII

MISCELLANEOUS

Section 18.01 Force Majeure . If either party shall, without fault of such party, be delayed or prevented from the performance of any act required hereunder (other than the payment of money) by reason of acts of God, strikes, lockouts, labor troubles, war, terrorism, or inability to procure materials and such party gives the other party written notice of such event within ten (10) days after such event (a "Force Majeure Event"), the financial inability of the party excepted, performance of such act shall be excused for the period of delay, and the period for the performance of any such act shall be extended by a period equal to the period of such delay; provided, however, that nothing in this Section shall excuse Tenant from the prompt payment of any Rent. In the event of a Force Majeure Event in any event such party shall proceed with all diligence to complete the performance of the act upon the cessation of the Force Majeure Event.

Section 18.02 No Merger . There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of any of the Properties by reason of the fact that the same person, corporation, firm or other entity may acquire or hold or own, directly or indirectly,

(a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate, and

(b) the fee estate or ownership of any of the Properties or any interest in such fee estate or ownership. No such merger shall occur unless and until all persons, corporations, firms and other entities having any interest in (i) this Lease or the leasehold estate created by this Lease, and (ii) the fee estate in or ownership of the Properties or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

Section 18.03 Interpretation . Landlord and Tenant acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Lease after being fully advised by said counsel as to its effect and significance. This Lease shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Whenever in this Lease any words of obligation or duty are used, such words or expressions shall have the same force and effect as though made in the form of a covenant. Whenever Landlord or an Indemnified Party is entitled to indemnification, such indemnification shall include (but shall not be limited to) the obligation of the indemnifying party to pay the reasonable documented out-of-pocket legal fees and expenses of counsel selected by Landlord or such Indemnified Party.

Section 18.04 Characterization . The following expressions of intent, representations, warranties, covenants, agreements, stipulations and waivers are a material inducement to Landlord entering into this Lease:

(a) Landlord and Tenant intend that: (i) this Lease constitutes an un-severable, unitary and single lease of all, but not less than all, of the Properties, and if at any time this Lease covers other real property in addition to the Properties, neither this Lease, nor Tenant's obligations or rights hereunder may be allocated or otherwise divided among such properties by Tenant; (ii) this Lease does not constitute separate leases contained in one document; (iii) the use of the expression "unitary lease" to describe this Lease is not merely for convenient reference, but is the conscious choice of the parties to express the intent of the parties in regard to an integral part of this transaction. To accomplish the creation of a unitary lease, the parties intend that the Rental and all other provisions of this Lease have been negotiated and agreed to based on a demise of all the Properties covered by this Lease as a single, composite, inseparable transaction; (iv) this Lease is a "true lease," is not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of this Lease are those of a true lease; (v) except as expressly provided in this Lease, the Rental payable hereunder is payable for the Properties as a single, indivisible, integrated transaction and that but for such integration, the Rental would have been computed on a different basis; and (vi) the business relationship created by this Lease and any related documents is solely that of a long-term commercial lease between Landlord and Tenant, the Lease has been entered into by both parties in reliance upon the economic and legal bargains contained herein, and none of the agreements contained herein is intended, nor shall the same be deemed or construed, to create a partnership (*de facto* or *de jure*) between Landlord and Tenant, to make them joint venturers, to make Tenant an agent, legal representative, partner, subsidiary or employee of Landlord, nor to make Landlord in any way responsible for the debts, obligations or losses of Tenant. Except as expressly provided in this Lease for specific isolated purposes (and in such cases only to the extent expressly so stated), all provisions of this Lease, including definitions, commencement and expiration dates, rental provisions, use provisions, renewal provisions, breach, default, enforcement and termination provisions and assignment and subletting provisions, shall apply equally and uniformly to all the Premises as one unit and are not severable. A default of any of the terms or conditions of this Lease occurring with respect to any one Property shall be a default under this Lease with respect to all the Properties. Except as expressly provided in this Lease for specific isolated purposes (and in such cases only to the extent expressly so stated), the provisions of this Lease shall at all times be construed, interpreted and applied such that the intention of Landlord and Tenant to create a unitary lease shall be preserved and maintained.

(b) Landlord and Tenant covenant and agree that: (i) each will treat this Lease as an operating lease pursuant to Accounting Standards Codification (ASC) 842, as amended, and as a true lease for state law reporting purposes and for federal income tax purposes; (ii) each party will not, nor will it permit any Affiliate to, at any time, take any action or fail to take any action with respect to the preparation or filing of any statement or disclosure to Governmental Authority, including without limitation, any income tax return (including an amended income tax return), to the extent that such action or such failure to take action would be inconsistent with the intention of the parties expressed in this Section 18.04; (iii) with respect to the Properties, the Lease Term (including any Extension Term) is less than eighty percent (80%) of the estimated remaining economic life of the Properties; and (iv) the Base Annual Rental is the fair market value for the use of the Properties and was agreed to by Landlord and Tenant on that basis, and the execution and delivery of, and the performance by Tenant of its obligations pursuant to, this Lease do not constitute a transfer of all or any part of the Properties.

(c) Tenant waives any claim or defense based upon the characterization of this Lease as anything other than a true lease and as a master lease of all of the Properties. Tenant stipulates and agrees: (i) not to challenge the validity, enforceability or characterization of the lease of the Properties as a true lease and/or as a single, unitary, un-severable instrument pertaining to the lease of all, but not less than all, of the Properties; and (ii) not to assert or take or omit to take any action inconsistent with the agreements and understandings set forth in this Section 18.04.

(d) Tenant acknowledges that fee simple title (both legal and equitable) is in Landlord and that Tenant has only the leasehold right of possession and use of the Properties as provided herein.

(e) For the purposes of any assumption, rejection or assignment of this Lease under 11 U.S.C. Section 365 or any amendment or successor section thereof, this is one indivisible and non-severable lease dealing with all Properties which must be assumed, rejected or assigned as a whole with respect to all (and only all) of the Properties.

Section 18.05 Disclosure . Landlord shall maintain, and shall cause its directors, officers, employees, and/or agents (including legal counsel) to maintain all Confidential Information as confidential and shall not disclose the same other than: (i) to Landlord's directors, officers, employees, advisors, partners, accountants and/or agents (including legal counsel and any third party consultant), (ii) to prospective and actual purchasers, assignees, investors and lenders to Landlord or any of the foregoing with respect to one or more of the Properties, (iii) to the directors, officers, employees, advisors, partners, accountants and/or agents (including legal counsel and any third party consultant) of any Person described in clause (ii), provided that Landlord shall advise any such party as to the confidential nature of the information, and shall instruct any such actual or prospective lenders, purchasers, assignees and investors to maintain such Confidential Information as confidential, and (iv) any information which was previously or is hereafter publicly disclosed (other than in violation of this Lease). Landlord shall indemnify Tenant for any breach of this Section 18.05. The parties agree that, notwithstanding any provision contained in this Lease, (a) any party (and each employee, representative or other agent of any party) may disclose to any and all persons, without limitation of any kind, any matter required to comply with any law, rule or regulation, including, without limitation, any matter required under the Securities Act or the Exchange Act, and (b) Landlord may disclose such Confidential Information on an aggregated basis with other information being disclosed by Landlord to any party so long as such Confidential Information is not identifiable. Landlord shall defend, indemnify, protect and hold the Tenant and/or Guarantor harmless from and against any and all Losses resulting from Landlord or any party which Landlord provides any Confidential Information to disclosing such Confidential Information in violation of the terms and conditions of this Section 18.05.

Section 18.06 Bankruptcy . As a material inducement to Landlord executing this Lease, Tenant acknowledges and agrees that Landlord is relying upon

- (a) the financial condition and specific operating experience of Tenant and Tenant's obligation to use the Properties as Permitted Facilities;
 - (b) Tenant's performance of all of its obligations under this Lease notwithstanding the entry of an order for relief under the Bankruptcy Code for Tenant; and
 - (c) all defaults under this Lease being cured promptly and this Lease being assumed within sixty (60) days of any order for relief entered under the Bankruptcy Code for Tenant, or this Lease being rejected within such sixty (60) day period and the Properties surrendered to Landlord.
- Accordingly, in consideration of the mutual covenants contained in this Lease and for other good and valuable consideration, Tenant hereby agrees that:
- (i) all obligations that accrue under this Lease (including the obligation to pay Rentals), from and after an Insolvency Event shall be timely performed exactly as provided in this Lease and any failure to so perform shall be harmful and prejudicial to Landlord;
 - (ii) any and all Rentals that accrue from and after an Insolvency Event and that are not paid as required by this Lease shall, in the amount of such Rentals, constitute administrative expense claims allowable under the Bankruptcy Code with priority of payment at least equal to that of any other actual and necessary expenses incurred after an Insolvency Event;
 - (iii) any extension of the time period within which Tenant may assume or reject this Lease without an obligation to cause all obligations under this Lease to be performed as and when required under this Lease shall be harmful and prejudicial to Landlord;
 - (iv) any time period designated as the period within which Tenant must cure all defaults and compensate Landlord for all pecuniary losses which extends beyond the date of assumption of this Lease shall be harmful and prejudicial to Landlord;
 - (v) any assignment of this Lease must result in all terms and conditions of this Lease being assumed by the assignee without alteration or amendment, and any assignment which results in an amendment or alteration of the terms and conditions of this Lease without the express written consent of Landlord shall be harmful and prejudicial to Landlord;
 - (vi) any proposed assignment of this Lease shall be harmful and prejudicial to Landlord if made to an assignee:
 - (A) that does not possess financial condition adequate to operate Permitted Facilities upon the Properties or operating performance and experience characteristics reasonably satisfactory to Landlord equal to or better than the financial condition, operating performance and experience of Tenant as of the Effective Date; or
 - (B) that does not provide guarantors of the lease obligations with financial condition equal to or better than the financial condition of the Guarantor as of the Effective Date.

(vii) the rejection (or deemed rejection) of this Lease for any reason whatsoever shall constitute cause for immediate relief from the automatic stay provisions of the Bankruptcy Code, and Tenant stipulates that such automatic stay shall be lifted immediately and possession of the Properties will be delivered to Landlord immediately without the necessity of any further action by Landlord. No provision of this Lease shall be deemed a waiver of Landlord's rights or remedies under the Bankruptcy Code or applicable Law to oppose any assumption and/or assignment of this Lease, to require timely performance of Tenant's obligations under this Lease, or to regain possession of the Properties as a result of the failure of Tenant to comply with the terms and conditions of this Lease or the Bankruptcy Code. Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as such, shall constitute "rent" for the purposes of the Bankruptcy Code. For purposes of this Section addressing the rights and obligations of Landlord and Tenant upon an Insolvency Event, the term "Tenant" shall include Tenant's successor in bankruptcy, whether a trustee, Tenant as debtor in possession or other responsible person.

Section 18.07 Attorneys' Fees . In the event of any judicial or other adversarial proceeding concerning this Lease, to the extent permitted by Law, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other Costs in addition to any other relief to which it may be entitled. Each party shall also be entitled to recover its reasonable attorneys' fees and other Costs incurred in any bankruptcy action filed by or against the other party, including, without limitation, those incurred in seeking relief from the automatic stay, in dealing with the assumption or rejection of this Lease, in any adversary proceeding, and in the preparation and filing of any proof of claim. Tenant shall be obligated to pay Landlord's reasonable attorneys' fees and other Costs incurred in connection with any act which Tenant proposes to do and which requires Landlord's consent (whether or not consent is ultimately given). For purposes of this Section 18.07, a party will be considered to be the "prevailing party" if (a) such party initiated the litigation and substantially obtained the relief which it sought (whether by judgment, voluntary agreement or action of the other party, trial, or alternative dispute resolution process), (b) such party did not initiate the litigation and either (i) received a judgment in its favor, or (ii) did not receive judgment in its favor, but the party receiving the judgment did not substantially obtain the relief which it sought, or (c) the other party to the litigation withdrew its claim or action without having substantially received the relief which it was seeking.

Section 18.08 Memoranda of Lease. Concurrently with the execution of this Lease, Landlord and Tenant are executing Landlord's standard form memorandum of lease in recordable form, indicating the names and addresses of Landlord and Tenant, a description of the Properties, the Lease Term, but omitting Rentals and such other terms of this Lease as Landlord may not desire to disclose to the public. Further, upon Landlord's prior written request, Tenant agrees to execute and acknowledge a termination of lease and/or quitclaim deed in recordable form to be held by Landlord until the expiration or sooner termination of the Lease Term. The payment of all taxes and recording fees in connection with the recording of such memorandum contemplated by this Section 18.08 shall be paid in accordance with the terms of the Purchase and Sale Agreement.

Section 18.09 No Brokerage . Landlord and Tenant represent and warrant to each other that they have had no conversation or negotiations with any broker concerning the leasing of the Properties. Each of Landlord and Tenant agrees to protect, indemnify, save and keep harmless the other, against and from all liabilities, claims, losses, Costs, damages and expenses, including attorneys' fees, arising out of, resulting from or in connection with their breach of the foregoing warranty and representation.

Section 18.10 Waiver of Jury Trial and Certain Damages . LANDLORD AND TENANT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PROPERTIES, AND/OR

ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, TENANT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM LANDLORD AND ANY OF THE AFFILIATES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS OR EMPLOYEES OF LANDLORD OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY TENANT OF ANY RIGHT IT MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

Section 18.11 Marketing . As a material inducement to Landlord's willingness to enter into the Transactions contemplated by this Lease and the other Transaction Documents but subject to Section 18.05, Tenant hereby acknowledges and agrees that Landlord may:

- (a) from time to time and at any time in connection with its marketing, advertising and reporting materials:
 - (i) advertise, issue press releases, send direct mail or otherwise disclose information regarding the Transaction (or regarding other properties owned and leased by Landlord or any of its Affiliates to Tenant or its Affiliates) for marketing purposes; and
 - (ii) use images of the Properties (which images may include the Tenant's or operator's name and/or the name of the business at the Properties and/or the Tenant's or operator's logo); and
 - (iii) use the name or logo of the Tenant or operator, or the name of the business operated at the Properties.

Section 18.12 State -Specific Provisions . The provisions and/or remedies which are set forth on the attached Exhibit C shall be deemed a part of and included within the terms and conditions of this Lease.

Section 18.13 Time Is of the Essence . Time is of the essence with respect to each and every provision of this Lease.

Section 18.14 Waiver and Amendment . No provision of this Lease shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. No acceptance by Landlord of an amount less than the Rental and other Monetary Obligations stipulated to be due under this Lease shall be deemed to be other than a payment on account of the earliest such Rental or other Monetary Obligations then due or in arrears nor shall any endorsement or statement on any check or letter accompanying any such payment be deemed a waiver of Landlord's right to collect any unpaid amounts or an accord and satisfaction.

Section 18.15 Successors Bound . Except as otherwise specifically provided herein, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of the respective heirs, successors, executors, administrators and assigns of each of the parties hereto.

Section 18.16 Captions . Captions are used throughout this Lease for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

Section 18.17 Other Documents . Each of the parties agrees to sign such other and further documents as may be necessary or appropriate to carry out the intentions expressed in this Lease.

Section 18.18 Entire Agreement . This Lease and any other instruments or agreements referred to herein, constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements except as herein provided.

Section 18.19 Forum Selection; Jurisdiction; Venue; Choice of Law . For purposes of any action or proceeding arising out of this Lease, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Texas. Tenant consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Texas in accordance with applicable Law. Furthermore, Tenant waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. Nothing contained in this Section shall limit or restrict the right of Landlord to commence any proceeding in the federal or state courts located in the states where the Properties are located to the extent Landlord deems such proceeding necessary or advisable to exercise remedies available under this Lease. This Lease shall be governed by, and construed with, the laws of the State of Texas, without giving effect to any state's conflict of laws principles.

Section 18.20 Counterparts . This Lease may be executed in one or more counterparts, each of which shall be deemed an original.

Section 18.21 Separate Leases . Landlord shall have the right to sever and split this Lease into one or more individual leases covering and demising one or more Properties. Tenant shall (at Landlord's expense) cooperate with Landlord with the foregoing; shall respond reasonably, promptly and in good faith with any Landlord requests to accomplish the foregoing; and shall execute a new lease or leases, and an amendment to this Lease, as shall be required to so sever and split this Lease into one or more separate leases. Any new lease shall be on substantially the same terms and conditions set forth in this Lease, provided, however, that in no event will such severance and split of this Lease into one or more leases reduce or modify any of the obligations and liabilities of Landlord and Tenant hereunder except that (i) Landlord and Tenant, each in their reasonable discretion, shall mutually agree upon the Base Annual Rental as to any Properties covered by such assignment, (ii) there shall be a corresponding reduction in Base Annual Rental payable under this Lease and (iii) each such lease shall not be cross-defaulted with each other lease for any Property (including this Lease).

Remainder of page intentionally left blank; signature page(s) to follow

IN WITNESS WHEREOF, Landlord and Tenant have entered into this Lease as of the date first above written.

LANDLORD:

SPIRIT REALTY, L.P.,

a Delaware limited partnership

By: Spirit General OP Holdings, LLC,
a Delaware limited liability company

Its: General Partner

By: /s/ Daniel Rosenberg

Name: Daniel Rosenberg

Title: Senior Vice President

[Signatures continued on next page]

TENANT:

PARTY CITY HOLDINGS INC.,
a Delaware corporation

By: /s/ Michael A. Correale

Printed Name: Michael A. Correale

Title: Senior Vice President

EXHIBIT A

LEGAL DESCRIPTIONS/STREET ADDRESSES OF THE PROPERTIES

A. Each Property may be used as a distribution and manufacturing center for Tenant, which may include office space incidental thereto.

The Property addresses are as follows:

1. 47 Elizabeth Drive, Chester, New York
2. 7700 Anagram Drive, Eden Prairie, Minnesota
3. 2800 Purple Sage, Los Lunas, New Mexico

B. Legal descriptions are as follows:

New York

ALL THAT CERTAIN PIECE AND PARCEL OF LAND SITUATE IN THE VILLAGE OF CHESTER, ORANGE COUNTY, NEW YORK AND SHOWN ON A MAP ENTITLED, "FINAL SUBDIVISION PLAT, LOT LINE CHANGE OF TAX MAP PARCEL, SECTION 117, BLOCK 1, LOT 2 & SECTION 117, BLOCK 1, LOT 4, CHESTER INDUSTRIAL PARK, VILLAGE OF CHESTER, ORANGE COUNTY, NEW YORK" AS PREPARED BY T.M. DEPUY ENGINEERING AND LAND SURVEYING, P.C. AND DATED FEBRUARY 9, 2000, LAST REVISED AUGUST 21, 2000 AND FILED AUGUST 24, 2000 IN THE ORANGE COUNTY CLERK'S OFFICE AS MAP NO. 156-00.

BEGINNING AT A SET 5/8" IRON ROD WITH RED CAP FLUSH WITH THE GROUND BEING IN THE SOUTHWESTERLY BOUNDS OF ELIZABETH DRIVE AND BEING THE NORTHERLY CORNER OF LANDS OF ISOMEDIX OPERATION, INC., LIBER 3600 OF DEEDS, PAGE 144;

THENCE ALONG THE NORTHEASTERLY AND SOUTHEASTERLY BOUNDS OF SAID ISOMEDIX OPERATION, INC. ON THE FOLLOWING TWO COURSES AND DISTANCES:

1. SOUTH 42° 09' 45" WEST 600.84 FEET TO A SET 5/8" IRON ROD WITH RED CAP WITH A 1" REVEAL;
2. SOUTH 47° 50' 15" EAST 394.52 FEET TO A POINT BEING IN THE NORTHERLY BOUNDS OF SAID LANDS OF STATE STREET BANK AND TRUST COMPANY, LIBER 5179 OF DEEDS, PAGE 138;

THENCE ALONG SAID NORTHERLY BOUNDS OF STATE STREET BANK & TRUST COMPANY AND GENERALLY DOWN THE CENTER LINE OF DRAINAGE DITCH ON THE FOLLOWING FOUR COURSES AND DISTANCES;

1. SOUTH 65° 43' 44" WEST 353.14 FEET TO A POINT;
2. SOUTH 74° 45' 33" WEST 96.08 FEET TO A POINT;
3. SOUTH 67° 33' 42" WEST 654.26 FEET TO A POINT;
4. NORTH 78° 20' 26" WEST 188.16 FEET TO A POINT BEING IN THE CENTER OF BLACK MEADOW CREEK AND BEING IN THE EASTERLY BOUNDS OF LANDS OF CONCRETE PROPERTIES, LIBER 5179 OF DEEDS, PAGE 138;

THENCE GENERALLY ALONG THE CENTER LINE OF THE BLACK MEADOW CREEK FOR A PORTION OF THE WAY AND ALONG THE EASTERLY BOUNDS OF SAID LANDS OF CONCRETE PROPERTIES ON THE FOLLOWING NINE COURSES AND DISTANCES:

1. NORTH 28° 33' 43" WEST 254.14 FEET TO A POINT;
2. NORTH 53° 04' 13" WEST 224.74 FEET TO A POINT;
3. NORTH 35° 43' 13" WEST 58.83 FEET TO A POINT;
4. NORTH 01° 47' 17" EAST 90.43 FEET TO A POINT;
5. NORTH 15° 29' 13" WEST 129.63 FEET TO A POINT;
6. NORTH 31° 30' 13" WEST 136.05 FEET TO A POINT;
7. NORTH 43° 24' 13" WEST 267.04 FEET TO A POINT;
8. NORTH 19° 54' 13" WEST 154.32 FEET TO A POINT;
9. NORTH 39° 01' 13" WEST 144.43 FEET TO A POINT BEING IN THE SOUTHERLY BOUNDS OF LANDS OF ANDREW L. PALMER ASSOCIATES, LP, LIBER 1877 OF DEEDS, PAGE 1058;

THENCE ALONG THE SOUTHERLY BOUNDS OF SAID LANDS OF ANDREW L. PALMER ASSOCIATES, LP ON THE FOLLOWING FIVE COURSES AND DISTANCES:

1. NORTH 42° 41' 39" EAST 158.08 FEET TO A POINT;
2. NORTH 86° 36' 09" EAST 103.47 FEET TO A POINT;
3. NORTH 76° 00' 09" EAST 79.19 FEET TO A POINT;
4. NORTH 73° 32' 39" EAST 48.40 FEET TO A POINT;
5. NORTH 04° 43' 09" EAST 19.53 FEET TO THE SOUTHWEST CORNER OF OTHER LANDS OF ANDREW L. PALMER ASSOCIATES, LP, LIBER 1877 OF DEEDS, PAGE 1058;

THENCE ALONG THE SOUTHERLY BOUNDS OF SAID OTHER LANDS OF ANDREW L. PALMER ASSOCIATES, LP AND GENERALLY DOWN THE CENTER LINE OF THE BLACK MEADOW CREEK ON THE FOLLOWING SEVEN COURSES AND DISTANCES:

1. SOUTH 77° 48' 51" EAST 230.33 FEET TO A POINT;
2. NORTH 73° 34' 09" EAST 115.51 FEET TO A POINT;
3. NORTH 59° 04' 09" EAST 116.24 FEET TO A POINT;
4. NORTH 42° 16' 09" EAST 176.39 FEET TO A POINT;
5. NORTH 31° 53' 09" EAST 99.87 FEET TO A POINT;
6. NORTH 48° 56' 09" EAST 161.23 FEET TO A POINT;
7. NORTH 88° 00' 09" EAST 244.61 FEET TO A POINT BEING THE SOUTHERLY CORNER OF LANDS OF CHESTER INDUSTRIAL PARK ASSOCIATES, LLP, LIBER 3151 OF DEEDS, PAGE 165 AND BEING LOT #1 OF MAP #9513;

THENCE ALONG THE SOUTHERLY BOUNDS OF SAID LOT #1 ON THE FOLLOWING TWO COURSES AND DISTANCES:

1. NORTH 67° 37' 16" EAST 24.44 FEET TO A POINT;
2. NORTH 42° 09' 45" EAST 17.99 FEET TO A POINT;

THENCE ALONG THE SOUTHWESTERLY BOUNDS OF REVISED TAX LOT SECTION 117, BLOCK 1, LOT 2 AND OTHER LANDS OF CHESTER INDUSTRIAL PARK, LP SOUTH 47° 50' 15" EAST 415.32 FEET TO A SET 5/8" IRON ROD WITH RED CAP FLUSH WITH THE GROUND AND BEING THE NORTHWESTERLY CORNER OF THE INTERSECTION OF ELIZABETH DRIVE AND NUCIFORA BOULEVARD;

THENCE ALONG THE SOUTHWESTERLY BOUNDS OF SAID ELIZABETH DRIVE SOUTH 47° 50' 15" EAST 578.65 FEET TO THE PLACE AND POINT OF BEGINNING.

Minnesota

Real property in the City of Eden Prairie, County of Hennepin, State of Minnesota, described as follows:

Lots 1, 2 and 4, Block 1, Anagram Park

Torrens Property-Certificate of Title No. 1011966

New Mexico

The following described real estate in the County of Valencia and State of New Mexico, to wit:

Tract "B" of Los Morros Business Park, as said tract is shown and designated on the plat thereof, filed in the Office of the County Clerk of Valencia County, New Mexico, on November 21, 1997, in Plat Cabinet "J", Page 183.

EXHIBIT B

FORM OF
AUTHORIZATION AGREEMENT – PRE-ARRANGED PAYMENTS



SPIRIT
REALTY

2727 North Harvard Street,
Suite 500 | Dallas, TX 75205

(866) 557-7474

spiritrealty.com

AUTHORIZATION AGREEMENT FOR PRE-ARRANGED PAYMENTS

I (We) (Tenant) (hereinafter called "TENANT") authorize Spirit Realty Capital, Inc. (hereinafter called "COMPANY") to initiate debit entries to my (our) _____ Checking Account or _____ Savings Account indicated below and at the bank or other financial institution named below.

BANK/FINANCIAL INSTITUTION INFORMATION

BANK/FINANCIAL INSTITUTION NAME _____

CITY _____ STATE _____ ZIP _____

NINE DIGIT TRANSIT/ABA NO. _____ ACCOUNT NO. _____

*** To insure accurate recording of account numbers we are requesting that you attach a VOIDED CHECK to this completed form.**

Automatic debits will be made on the payment due date established by the relevant lease documents, or the next subsequent business day if such date is not a business day. This authority is to remain in full force and effect until (i) the expiration or earlier termination of the relevant lease documents, or (ii) to the extent termination of this authority is permitted under the relevant lease documents, the COMPANY has received thirty (30) days written notification in advance of TENANT's intent to terminate to afford COMPANY reasonable opportunity to act upon it. In the event of a change in the assessed amount, no action is required on TENANT's part, as the ACH amount will be adjusted automatically. TENANT understands that a new ACH form only needs to be submitted if the withdrawal is to come from a new bank account/routing number. TENANT hereby authorizes COMPANY to impose a \$60.00 returned item processing fee, via ACH debit against the above referenced account if an insufficient fund or stop payment item is charged against the COMPANY account.

TENANT INFORMATION

TENANT NAME(S) _____

(Please Print)

TAX IDENTIFICATION NUMBER _____ DATE _____

(Today)

TENANT AUTHORIZED SIGNATURE(S)

[Tenant Signature Block]:

BY (signature): _____

NAME: _____ TITLE: _____

(Please Print)

CONTACT PHONE NUMBER _____ EMAIL ADDRESS _____

BEGINNING MONTH/DAY/YEAR: _____

EXHIBIT C

STATE-SPECIFIC PROVISIONS

None

C-1

EXHIBIT D

PHYSICAL CONDITION ASSESSMENT SCHEDULE

None.

D-1

EXHIBIT E

PROPERTY AMOUNTS

1.	7700 Anagram Drive, Eden Prairie, Minnesota 55344:	\$	13,223,235.03
2.	2800 Purple Sage, Los Lunas, New Mexico 87031:	\$	12,285,254.69
3.	47 Elizabeth Drive, Chester, New York 10918:	\$	102,491,510.28

THIRD AMENDMENT TO TERM LOAN CREDIT AGREEMENT

THIRD AMENDMENT TO TERM LOAN CREDIT AGREEMENT (this “**Third Amendment**”), dated as of June 28, 2019, among PARTY CITY HOLDINGS INC., a Delaware corporation (the “**Borrower Agent**”), PARTY CITY CORPORATION, a Delaware corporation (the “**Subsidiary Borrower**” and, together with the Borrower Agent, the “**Borrowers**”), PC INTERMEDIATE HOLDINGS, INC., a Delaware corporation (“**Holdings**”), DEUTSCHE BANK AG NEW YORK BRANCH (“**DBNY**”), as administrative agent (in such capacity, the “**Administrative Agent**”) and each of the Lenders (as defined below) party hereto. Unless otherwise indicated, all capitalized terms used herein and not otherwise defined shall have the respective meanings provided such terms in the Credit Agreement referred to below.

WITNESSETH:

WHEREAS, the Borrowers, Holdings, the Administrative Agent, DBNY, as collateral agent (in such capacity, including any permitted successor thereto, the “**Collateral Agent**”) under the Loan Documents, the subsidiaries of the Borrowers from time to time party thereto and each lender from time to time party thereto (the “**Lenders**”) have entered into a Credit Agreement, dated as of August 19, 2015 (as amended by the First Amendment to Term Loan Credit Agreement, dated as of October 20, 2016, the Second Amendment to Term Loan Credit Agreement, dated as of February 16, 2018, and as otherwise amended, amended and restated, supplemented or otherwise modified prior to the date hereof, the “**Credit Agreement**”); and

WHEREAS, the Borrowers, Holdings, the Administrative Agent and the Lenders party hereto desire to amend the Credit Agreement as set forth herein;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

SECTION 1. Amendment to Credit Agreement. Subject to the satisfaction of the conditions precedent set forth in Section 2 hereof, the Credit Agreement is hereby amended as follows:

(a) Section 1.01 of the Credit Agreement is hereby amended by adding the following definitions in appropriate alphabetical order as follows:

“**Third Amendment**” shall mean the Third Amendment to Term Loan Credit Agreement, dated as of June 28, 2019, by and among Holdings, the Borrowers, the Administrative Agent and each of the Lenders party thereto.

“**Third Amendment Effective Date**” has the meaning provided in the Third Amendment.

(b) Section 6.10 of the Credit Agreement is hereby amended and restated in its entirety as follows:

“ Section 6.10. Sales and Lease-Backs. The Borrowers and the Subsidiary Guarantors shall not, nor shall they permit any of their Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Borrower or Subsidiary (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Borrower Agent or any of its Subsidiaries) and (b) intends to use for substantially the same purpose as the property which has been or is to be sold or transferred by such Borrower or Subsidiary to any Person (other than the Borrower Agent or any of its Subsidiaries) in connection with such lease (such a transaction described herein, a “ **Sale and Lease-Back Transaction** ”); provided that Sale and Lease-Back Transactions shall be permitted in respect of the real properties owned by the Borrowers and/or the Subsidiary Guarantors and located at (i) 47 Elizabeth Drive, Chester, New York, (ii) 7700 Anagram Drive, Eden Prairie, Hennepin County, MN 55344 and (iii) 2800 Purple Sage Road NW, Village of Los Lunas, New Mexico, in each case, so long as (x) 50% of the net proceeds received by the Borrowers and/or the Subsidiary Guarantors in connection with such Sale and Lease-Back Transactions are used to promptly (but in no event later than five (5) Business Days after the Third Amendment Effective Date) prepay the Term Loans and (y) 50% of such net proceeds are used to promptly (but in no event later than three (3) Business Days after the Third Amendment Effective Date) prepay the loans outstanding under the ABL Credit Agreement.”

SECTION 2. Conditions of Effectiveness of this Third Amendment. This Third Amendment shall become effective on the date when the following conditions shall have been satisfied (such date, the “ **Third Amendment Effective Date** ”):

- (a) the Borrowers, Holdings, the Administrative Agent and Lenders constituting the Required Lenders under the Credit Agreement shall have signed a counterpart hereof (whether the same or different counterparts) and shall have delivered the same to the Administrative Agent;
- (b) on the Third Amendment Effective Date and after giving effect to this Third Amendment, (i) no Default or Event of Default shall have occurred and be continuing and (ii) the Administrative Agent shall have received from the Borrowers a certificate executed by a Responsible Officer of the Borrower Agent, certifying the foregoing and as to the matters set forth in Section 6 hereof;
- (c) the Administrative Agent shall have received a copy of a duly executed amendment to the ABL Credit Agreement, in form and substance reasonably satisfactory to the Administrative Agent; and
- (d) the Administrative Agent shall have received, for the benefit of each Lender that has delivered an executed counterpart to this Third Amendment on or prior to 12:00 p.m. (New York time) on June 28, 2019 (such date, the “ **Consent Deadline** ”), a consent fee (“ **Consent Fee** ”) in an amount equal to 0.10% of the aggregate principal amount of such Lender’s outstanding Loans held by it on the Business Day immediately prior to the Third Amendment Effective Date (for the avoidance of doubt, without giving effect to any prepayment required under Section 6.10 of the Credit Agreement after giving effect to the Third Amendment), the full amount of which fee shall be earned and payable on the date that is three (3) Business Days after the Consent Deadline.

SECTION 4. Costs and Expenses. Each Borrower hereby reconfirms its obligations pursuant to Section 9.03 of the Credit Agreement to pay and reimburse the Administrative Agent in accordance with the terms thereof.

SECTION 5. Remedies. This Third Amendment shall constitute a “Loan Document” for all purposes of the Credit Agreement and the other Loan Documents.

SECTION 6. Representations and Warranties. To induce the Administrative Agent and the Lenders to enter into this Third Amendment, each of the Loan Parties represents and warrants to the Administrative Agent and the Lenders on and as of the Third Amendment Effective Date that, in each case:

(a) this Third Amendment has been duly authorized, executed and delivered by it and each of this Third Amendment and the Credit Agreement (as modified by this Third Amendment) constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar laws of general applicability relating to or limiting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law; and

(b) all representations and warranties contained in the Credit Agreement and in the other Loan Documents are true and correct in all material respects (without duplication of any materiality qualifier therein) with the same effect as though such representations and warranties had been made on the Third Amendment Effective Date (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects (without duplication of any materiality qualifier therein) only as of such specified date).

SECTION 7. Reference to and Effect on the Credit Agreement and the Loan Documents.

(a) On and after the Third Amendment Effective Date, each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof” or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement, as amended by this Third Amendment.

(b) The Credit Agreement and each of the other Loan Documents, as specifically amended by this Third Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed. Without limiting the generality of the foregoing, the Collateral Documents and all of the Collateral described therein do and shall continue to secure the payment of all Secured Obligations of the Loan Parties, in each case, as amended by this Third Amendment.

(c) The execution, delivery and effectiveness of this Third Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents.

SECTION 8. Governing Law. THIS THIRD AMENDMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS THIRD AMENDMENT, WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 9. Counterparts. This Third Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which counterparts when executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A complete set of counterparts shall be lodged with the Borrowers and the Administrative Agent. Delivery by facsimile or electronic transmission of an executed counterpart of a signature page to this Third Amendment shall be effective as delivery of an original executed counterpart of this Third Amendment.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Third Amendment as of the date first above written.

PC INTERMEDIATE HOLDINGS, INC.

By: /s/ James M. Harrison
Name: James M. Harrison
Title: President

PARTY CITY HOLDINGS INC.

By: /s/ James M. Harrison
Name: James M. Harrison
Title: Chief Executive Officer and Treasurer

PARTY CITY CORPORATION

By: /s/ Michael A. Correale
Name: Michael A. Correale
Title: Vice President and Treasurer

DEUTSCHE BANK AG NEW YORK BRANCH, as
Administrative Agent

By: /s/ Yumi Okabe

Name: Yumi Okabe

Title: Vice President

By: /s/ Marguerite Sutton

Name: Marguerite Sutton

Title: Vice President

BY ITS EXECUTION OF THIS SIGNATURE PAGE, THE UNDERSIGNED LENDER HEREBY CONSENTS TO THE THIRD AMENDMENT TO WHICH THIS SIGNATURE PAGE IS ATTACHED.

[Lender signature pages on file with the Administrative Agent]

FOURTH AMENDMENT TO ABL CREDIT AGREEMENT

FOURTH AMENDMENT TO ABL CREDIT AGREEMENT (this “**Fourth Amendment**”), dated as of June 28, 2019, among PARTY CITY HOLDINGS INC., a Delaware corporation (the “**Borrower Agent**”), PARTY CITY CORPORATION, a Delaware corporation (the “**Subsidiary Borrower**” and, together with the Borrower Agent, the “**Borrowers**”), PC INTERMEDIATE HOLDINGS, INC., a Delaware corporation (“**Holdings**”), JPMORGAN CHASE BANK, N.A., as administrative agent (in such capacity, the “**Administrative Agent**”) and each of the Lenders (as defined below) party hereto. Unless otherwise indicated, all capitalized terms used herein and not otherwise defined shall have the respective meanings provided such terms in the ABL Credit Agreement referred to below.

WITNESSETH:

WHEREAS, the Borrowers, Holdings, the Administrative Agent, the subsidiaries of the Borrowers from time to time party thereto and each lender from time to time party thereto (the “**Lenders**”) have entered into an ABL Credit Agreement, dated as of August 19, 2015 (as amended by that certain First Amendment to ABL Credit Agreement, dated as of August 2, 2018, as further amended by that certain Second Amendment to ABL Credit Agreement, dated as of March 4, 2019, as further amended by that certain Third Amendment to ABL Credit Agreement, dated as of April 8, 2019, and as further amended, amended and restated, supplemented or otherwise modified prior to the date hereof, the “**ABL Credit Agreement**”); and

WHEREAS, the Borrowers, Holdings, the Administrative Agent and the Lenders party hereto desire to amend the ABL Credit Agreement as set forth herein;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

SECTION 1. Amendment to ABL Credit Agreement. Subject to the satisfaction of the conditions precedent set forth in Section 2 hereof, the ABL Credit Agreement is hereby amended as follows:

(a) Section 1.01 of the ABL Credit Agreement is hereby amended by adding the following definitions in appropriate alphabetical order as follows:

“**Fourth Amendment**” means that certain Fourth Amendment to ABL Credit Agreement, dated as of June 28, 2019 among the Loan Parties, the Lenders party thereto and the Administrative Agent.

“**Fourth Amendment Effective Date**” has the meaning provided in the Fourth Amendment.

(b) Section 6.10 of the ABL Credit Agreement is hereby amended and restated in its entirety as follows:

“ Section 6.10 . Sales and Lease-Backs. The Borrowers and the Subsidiary Guarantors shall not, nor shall they permit any of their Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Borrower or Subsidiary (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Borrower Agent or any of its Subsidiaries) and (b) intends to use for substantially the same purpose as the property which has been or is to be sold or transferred by such Borrower or Subsidiary to any Person (other than the Borrower Agent or any of its Subsidiaries) in connection with such lease (such a transaction described herein, a “ **Sale and Lease-Back Transaction** ”); provided that Sale and Lease-Back Transactions shall be permitted in respect of the real properties owned by the Borrowers and/or the Subsidiary Guarantors and located at (i) 47 Elizabeth Drive, Chester, New York, (ii) 7700 Anagram Drive, Eden Prairie, Hennepin County, MN 55344 and (iii) 2800 Purple Sage Road NW, Village of Los Lunas, New Mexico, in each case, so long as (x) 50% of the net proceeds received by the Borrowers and/or the Subsidiary Guarantors in connection with such Sale and Lease-Back Transactions are used to promptly (but in no event later than five (5) Business Days after the Fourth Amendment Effective Date) prepay the loans under the Term Loan Agreement, (y) 50% of such net proceeds are used to promptly (but in no event later than three (3) Business Days after the Fourth Amendment Effective Date) prepay the outstanding Loans and (z) the Borrower shall use commercially reasonable efforts to deliver to the Administrative Agent a Collateral Access Agreement from the purchaser or transferee of each of the foregoing real properties on terms and conditions reasonably satisfactory to the Administrative Agent.”

SECTION 2. Conditions of Effectiveness of this Fourth Amendment . This Fourth Amendment shall become effective on the date when the following conditions shall have been satisfied (such date, the “ **Fourth Amendment Effective Date** ”):

(a) the Loan Parties, the Administrative Agent and Lenders constituting the Required Lenders under the ABL Credit Agreement shall have signed a counterpart hereof (whether the same or different counterparts) and shall have delivered the same to the Administrative Agent;

(b) on the Fourth Amendment Effective Date and after giving effect to this Fourth Amendment, (i) no Default or Event of Default shall have occurred and be continuing and (ii) the Administrative Agent shall have received from the Borrowers a certificate executed by a Responsible Officer of the Borrower Agent, certifying the foregoing and as to the matters set forth in Section 6 hereof;

(c) the Administrative Agent shall have received a copy of a duly executed amendment to the Term Loan Agreement, in form and substance reasonably satisfactory to the Administrative Agent; and

(d) the Administrative Agent shall have received, for the benefit of each Lender that has delivered an executed counterpart to this Fourth Amendment on or prior to 1:00 p.m. (New York time) on June 28, 2019 (such date, the “**Consent Deadline**”), a consent fee (“**Consent Fee**”) in an amount equal to \$5,000, the full amount of which fee shall be earned and payable on the date that is three (3) Business Days after the Consent Deadline.

SECTION 4. Costs and Expenses. Each Borrower hereby reconfirms its obligations pursuant to Section 9.03 of the ABL Credit Agreement to pay and reimburse the Administrative Agent in accordance with the terms thereof.

SECTION 5. Remedies. This Fourth Amendment shall constitute a “Loan Document” for all purposes of the ABL Credit Agreement and the other Loan Documents.

SECTION 6. Representations and Warranties. To induce the Administrative Agent and the Lenders to enter into this Fourth Amendment, each of the Loan Parties represents and warrants to the Administrative Agent and the Lenders on and as of the Effective Date that, in each case:

(a) this Fourth Amendment has been duly authorized, executed and delivered by it and each of this Fourth Amendment and the ABL Credit Agreement (as modified by this Fourth Amendment) constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar laws of general applicability relating to or limiting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law; and

(b) all representations and warranties contained in the ABL Credit Agreement and in the other Loan Documents are true and correct in all material respects (without duplication of any materiality qualifier therein) with the same effect as though such representations and warranties had been made on the Fourth Amendment Effective Date (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects (without duplication of any materiality qualifier therein) only as of such specified date).

SECTION 7. Reference to and Effect on the ABL Credit Agreement and the Loan Documents.

(a) On and after the Fourth Amendment Effective Date, each reference in the ABL Credit Agreement to “this Agreement,” “hereunder,” “hereof” or words of like import referring to the ABL Credit Agreement shall mean and be a reference to the ABL Credit Agreement, as amended by this Fourth Amendment.

(b) The ABL Credit Agreement and each of the other Loan Documents, as specifically amended by this Fourth Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed. Without limiting the generality of the foregoing, the Collateral Documents and all of the Collateral described therein do and shall continue to secure the payment of all Secured Obligations of the Loan Parties, in each case, as amended by this Fourth Amendment.

(c) The execution, delivery and effectiveness of this Fourth Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents.

SECTION 8. Governing Law. THIS FOURTH AMENDMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS FOURTH AMENDMENT, WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 9. Counterparts. This Fourth Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which counterparts when executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A complete set of counterparts shall be lodged with the Borrowers and the Administrative Agent. Delivery by facsimile or electronic transmission of an executed counterpart of a signature page to this Fourth Amendment shall be effective as delivery of an original executed counterpart of this Fourth Amendment.

[The remainder of this page is intentionally left blank .]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Fourth Amendment as of the date first above written.

PC INTERMEDIATE HOLDINGS, INC.

By: /s/ James M. Harrison
Name: James M. Harrison
Title: President

PARTY CITY HOLDINGS INC.

By: /s/ James M. Harrison
Name: James M. Harrison
Title: Chief Executive Officer and Treasurer

**PARTY CITY CORPORATION
ANAGRAM INTERNATIONAL, INC.
ANAGRAM INTERNATIONAL HOLDINGS, INC.
AM-SOURCE, LLC
AMSCAN INC.
TRISAR, INC.
PARTY HORIZON INC.**

By: /s/ Michael A. Correale
Name: Michael A. Correale
Title: Vice President and Treasurer

**ANAGRAM EDEN PRAIRIE PROPERTY HOLDINGS
LLC**

By: PARTY CITY HOLDINGS INC., its sole member

By: /s/ James M. Harrison
Name: James M. Harrison
Title: Chief Executive Office and Treasurer

**AMSCAN PURPLE SAGE, LLC
AMSCAN NM LAND, LLC**

By: AMSCAN INC., its sole manger

By: /s/ Michael A. Correale
Name: Michael A. Correale
Title: Vice President and Treasurer

JPMORGAN CHASE BANK, N.A. , as Administrative
Agent, Swingline Lender and Issuing Bank

By: /s/ Donna DiForio

Name: Donna DiForio

Title: Authorized Officer

BY ITS EXECUTION OF THIS SIGNATURE PAGE, THE UNDERSIGNED LENDER HEREBY CONSENTS TO THE FOURTH AMENDMENT TO WHICH THIS SIGNATURE PAGE IS ATTACHED.

[Lender signature pages on file with the Administrative Agent]