

**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): April 17, 2013



U.S. AUTO PARTS NETWORK, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-33264
(Commission
File Number)

68-0623433
(IRS Employer
Identification No.)

16941 Keegan Avenue, Carson, CA 90746
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code (310) 735-0092

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- 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))

Item 1.01. Entry into a Material Definitive Agreement.

On April 17, 2013, our wholly-owned subsidiary, Whitney Automotive Group, Inc. (“WAG”), closed the sale of its facility located at 761-765 Progress Parkway, LaSalle, Illinois 61301 (the “Property”) for \$9,750,000 pursuant to the purchase and sale agreement dated April 17, 2013 between WAG and STORE Capital Acquisitions, LLC (the “Agreement”). The description of the Agreement set forth above does not purport to be complete and is qualified in its entirety by reference to the complete text of the Agreement, a copy of which is attached as Exhibit 10.1 and is incorporated herein by reference.

Under the terms of the Agreement, simultaneously with the execution of the Agreement and the closing of the sale of the Property, we entered into a lease agreement (the “Lease”) with STORE Master Funding III, LLC (“STORE”) whereby we leased back the Property for our continued use as an office, retail and warehouse facility for storage, sale and distribution of automotive parts, accessories and related items.

The Lease has a term of 20 years (the “Term”) commencing upon the execution of the Lease and terminating on April 30, 2033. Pursuant to the terms of the Lease, our initial base annual rent is \$853,125 for the first year (the “Base Rent Amount”), after which the rental amount will increase annually on May 1 by the lesser of 1.5% or 1.25 times the change in the Consumer Price Index as published by the U.S. Department of Labor’s Bureau of Labor Statistics, except that in no event will the adjusted annual rental amount fall below the Base Rent Amount. We were not required to pay any security deposit.

Under the terms of the Lease, we are required to pay all taxes associated with the Lease, pay for any required maintenance on the Property, maintain certain levels of insurance and indemnify STORE for losses incurred that are related to our use or occupancy of the Property.

The description of the Lease set forth above does not purport to be complete and is qualified in its entirety by reference to the complete text of the Lease, the form of which is attached as Exhibit 10.2 and is incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets

See Item 1.01 above regarding a real estate sale-leaseback transaction involving the Company.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Purchase and Sale Agreement dated April 17, 2013 by and among Whitney Automotive Group, Inc. and STORE Capital Acquisitions, LLC
10.2	Lease Agreement dated April 17, 2013 by and among U.S. Auto Parts Network, Inc. and STORE Master Funding III, LLC

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.

Dated: April 22, 2013

U.S. AUTO PARTS NETWORK, INC.

By: /s/ Bryan P. Stevenson

Bryan P. Stevenson
VP, General Counsel

INDEX TO EXHIBITS

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of April 17, 2013 ("Effective Date"), by and between **STORE CAPITAL ACQUISITIONS, LLC**, a Delaware limited liability company ("Purchaser"), and **WHITNEY AUTOMOTIVE GROUP, INC.**, a Delaware corporation ("Seller"). Except as otherwise expressly defined herein, capitalized terms will have the meanings set forth on Exhibit A attached hereto and incorporated herein by this reference. For and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby mutually covenant and agree as follows:

ARTICLE I**PURCHASE OF PROPERTY**

Section 1.01. Agreement to Purchase. Purchaser agrees to purchase, and Seller agrees to sell, in accordance with the terms, conditions and stipulations set forth in this Agreement (the "Transaction"), all of Seller's right, title and interest in and to (a) the parcel or parcels of real property, as more particularly described on Exhibit B attached hereto, and any and all improvements thereon and appurtenances thereto, except for the Special Equipment (collectively, the "Real Property"); (b) all fixtures affixed thereto, except for the Special Equipment (c) all plans, specifications and studies pertaining to the Real Property in Seller's possession or under its control; (d) all mineral, oil and gas rights, water rights, sewer rights and other utility rights allocated to the Real Property; (e) at Purchaser's option, all leases and rental agreements relating to the Real Property or any portion thereof, including without limitation, all rent, prepaid rent, security deposits and other payments and deposits; and (f) all appurtenances, easements, licenses, privileges and other property interests belonging or appurtenant to the Real Property, but excluding any warranties or guarantees (all of the foregoing items in clauses (a) through (f) above, now or hereafter existing, the "Property"). Notwithstanding anything to the contrary in this Agreement, the Property shall not include (i) the racks, automated equipment and other fixtures installed by Seller or Lessee at the Real Property and more particularly described on attached Exhibit E (the "Special Equipment"), even if and to the extent that the Special Equipment constitutes real property under the laws of the State of Illinois, and (ii) any warranties or guaranties, which are to be assigned by Seller to Lessee at the Closing.

Section 1.02. Purchase Price. The purchase price to be paid by Purchaser to Seller for the Property is Nine Million Seven Hundred Fifty and 00/100 Dollars (\$9,750,000) (the "Purchase Price"). Adjustments, if any, to the Purchase Price shall be made in accordance with the terms of this Agreement, including without limitation, pursuant to the provisions of Sections 1.04, 1.05 and 2.05 below. The Purchase Price, as adjusted pursuant to requirements of this Agreement, shall be paid by Purchaser in immediately available federal funds at Closing.

Section 1.03. Lease of Property. On or before the expiration of the Inspection Period, Lessee and Purchaser shall agree upon the Lease Agreement, pursuant to which Purchaser shall lease the Property to Lessee, at the rent and pursuant to the terms and conditions contained therein (the "Lease Agreement"). At least two (2) Business Days prior to the Closing Date, Seller shall obtain and deliver to Purchaser the Lease Proof of Insurance. Notwithstanding anything contained herein to the contrary, in the event Seller fails to deliver the Lease Proof of Insurance, then Purchaser shall have the right to terminate this Agreement, and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein.

Section 1.04. Prorations. In view of the subsequent lease of the Property to Lessee pursuant to the Lease Agreement and Lessee's obligations thereunder, there shall be no proration of insurance, taxes, special assessments, utilities or any other costs related to the Property between Seller and Purchaser at Closing. All real and personal property and other applicable taxes and assessments, utilities and any other charges relating to the Property which are due and payable on or prior to the Closing Date shall be paid by Seller at or prior to Closing, and all other taxes and assessments shall be paid by Lessee in accordance with the terms of the Lease Agreement.

Section 1.05. Transaction Costs.

(a) Seller shall be responsible for the payment of all Transactions Costs incurred by Seller and Purchaser in connection with the Transaction, whether or not the Transaction closes; *provided, however*, that subject to the provisions of Section 6.01, Seller and Purchaser shall each be responsible for the payment of the fees and expenses of their respective legal counsel, accountants and other professional advisers.

(b) Notwithstanding anything to the contrary in this Agreement, (i) in the absence of any Closing under this Agreement, in no event shall Seller be responsible for more than \$35,000 of Transaction Costs or any reimbursements, expenses or costs under this Agreement and (ii) if the Closing occurs under this Agreement, in no event shall Seller be responsible for more than \$35,000 of additional Transaction Costs or any reimbursements, expenses or costs under this Agreement (which shall be in addition to the amount of \$35,000 set forth in the preceding clause (i)).

The provisions of this Section 1.05 shall survive Closing or termination of this Agreement for any reason.

ARTICLE II

DUE DILIGENCE

Section 2.01. Title Insurance.

(a) **Title Commitment and Title Policy.** Within three (3) Business Days of the Effective Date, Purchaser shall order an owner's title insurance commitment (the "Title Commitment") with respect to the Property issued by the Title Company, for such ALTA Owner's Extended Coverage Title Insurance Policy, together with any endorsements, that Purchaser may require (the "Title Policy"). Purchaser shall cause copies of the Title Commitment to be delivered to Seller. All costs related to the Title Policy, escrow fees and other closing costs are included as Transaction Costs, payable by Seller.

(b) **Title Company.** The Title Company is hereby employed by the parties to act as escrow agent in connection with this Transaction. 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. The Title Company's receipt of this Agreement and the opening of an escrow pursuant to this Agreement shall be deemed to constitute conclusive evidence of the Title Company's agreement to be bound by the terms and conditions of this Agreement pertaining to the Title Company. Purchaser and Seller shall execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control; and further provided Seller and Purchaser shall not be required to enter into any additional or supplementary escrow instructions that purport to require the Seller or Purchaser to release or indemnify the Title Company for its own negligent or fraudulent acts.

(c) **Title Company Actions.** The Title Company is authorized to pay, from any funds held by it for each party's respective credit, all amounts necessary to procure the delivery of any documents and to pay, on behalf of Purchaser and Seller, all charges and obligations payable by them hereunder, respectively. Seller and Purchaser will pay all charges payable by them to the Title Company. The Title Company shall not cause the Transaction to close unless and until it has received written instructions from Purchaser and Seller to do so. The Title Company is authorized, in the event any conflicting demand is made upon it concerning these instructions or the escrow, 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 such court. Deposit by the Title Company of such documents and funds, after deducting therefrom its reasonable charges, expenses and attorneys' fees incurred in connection with any such court action, shall relieve the Title Company of all further liability and responsibility for such documents and funds.

(d) **Title Objections.** As of the Effective Date, Purchaser has approved the Commitment. All exceptions identified in the Commitment are deemed to be Permitted Encumbrances.

Section 2.02. Seller Documents. With reasonable promptness, but in no event later than three (3) Business Days following the Effective Date, Seller shall deliver (or make available at Seller's offices at the Property) to Purchaser the following items to the extent the same exist and are in Seller's possession or under its control: (a) "as-built" plans and specifications for the Property; (b) a certificate of occupancy (or its jurisdictional equivalent) for the Property; (c) all surveys related to the Property; (d) all environmental reports related to the Property (including without limitation, Phase I and Phase II environmental investigation reports); (e) all appraisals or valuations related to the Property; (f) all guaranties and warranties in effect with respect to all or any portion of the Property; (g) full and complete copies of any existing leases and current rent rolls related thereto and all other agreements related to the Property, together with all amendments and modifications thereof; (h) Lessee's financial statements for the previous three years as filed with the Securities and Exchange Commission; (i) all property condition reports related to the Property; and (j) all other documents related to the ownership, lease and operation of the Property, and reasonably requested by Purchaser, all subject to Section 4.04.

Section 2.03. Survey. If Seller does not have possession or control of, or fails to deliver, the surveys referenced in Section 2.02(c), or if such surveys are delivered and either such surveys are not "as built" surveys or the Title Company or Purchaser requires updates

thereof or revisions thereto, Purchaser shall order a current ALTA/ACSM “as built” survey as required for the Property from a surveyor selected by Purchaser (the “Survey”). The Survey shall show all improvements and shall plot all exceptions shown on the Title Commitment (to the extent plottable), certified in favor of Purchaser and Seller, any requested Affiliate of Purchaser and Title Company in a manner reasonably acceptable to Purchaser and prepared in accordance with the appropriate “ALTA/ACSM” minimum standards. The cost of the Survey shall be paid by Seller and shall be included in the Transaction Costs.

Section 2.04. Environmental. If Seller does not have possession or control of, or fails to deliver, the environmental reports referenced in Section 2.02(d), or if such environmental reports are delivered and Purchaser, in its sole discretion, requires updates thereof, Purchaser shall order a current complete Phase I environmental investigation report for the Property, and, if any environmental investigation report recommends additional subsurface investigation of the Property, Purchaser may, subject to Seller’s prior written approval which shall not be unreasonably withheld, perform such additional subsurface investigation (each Phase I environmental investigation report and each additional subsurface investigation report, an “Environmental Report”), from environmental inspection company selected by Purchaser (subject to Section 4.03), detailing and analyzing certain aspects of the Property (which Purchaser shall cause to be certified to Seller and Lessee and delivered to Seller); *provided, however*, that, notwithstanding the foregoing, if Seller fails or refuses to permit any such additional subsurface investigation, Seller shall be deemed to have elected to terminate this Agreement, whereupon, except for those provisions expressly stated to survive termination hereof (including without limitation, the payment of Transaction Costs and the other expenses as set forth in Section 1.05), the parties’ obligations hereunder shall terminate. The costs of the Environmental Reports shall be paid by Seller and shall be included as Transaction Costs.

Section 2.05. Valuation. Purchaser shall order current site inspection and valuation of the Property, separately stating values for the Real Property and improvements for the Property, from party selected by Purchaser (the “Valuation”). The cost of the Valuation shall be paid by Seller and shall be included in the Transaction Costs. Notwithstanding any provision contained herein, Purchaser’s obligation to consummate the Transaction shall be conditioned upon, among the other items set forth in this Agreement, the Valuation confirming a concluded value (the “Concluded Value”) that supports the Purchase Price. If the Concluded Value is less than the Purchase Price, Seller will be given the opportunity to proceed with the Transaction based upon a reduction in the Purchase Price to the Concluded Value. If Seller does not agree to the reduced Purchase Price, Seller shall be deemed to have elected to terminate this Agreement, whereupon this Agreement and the parties’ obligations hereunder shall terminate except for those provisions expressly stated to survive termination hereof (including without limitation, the payment of Transaction Costs and the other expenses as set forth in Section 1.05).

Section 2.06. Property Condition Report. If Seller does not have possession or control of, or fails to deliver, the property condition reports referenced in Section 2.02(j), or if such property condition reports are delivered and Purchaser requires updates thereof, Purchaser shall order a current property condition assessment and limited compliance audit as required for the Property from an inspection company selected by Purchaser (subject to Section 4.03) (the “Property Condition Report”). The Property Condition Report shall be in form and substance acceptable to Purchaser, and shall be certified to Seller, Lessee, Purchaser and any requested Affiliate of Purchaser. The cost of the Property Condition Report shall be paid by Seller and shall be included in the Transaction Costs.

Section 2.07. Zoning. At least seven (7) Business Days prior to the expiration of the Inspection Period Purchaser shall have received evidence reasonably satisfactory to Purchaser to the effect that the Property fully complies with all zoning ordinances of the Governmental Authority having jurisdiction over the Property ("Zoning Evidence"), which evidence can be in the form of a municipal zoning letter, the issuance of 3.1 zoning endorsement to the Title Policy, or a PZR report (or similar report of a zoning consultant).

Section 2.08. Inspections. Subject to Section 4.03, from the Effective Date and until April 4, 2013 (the "Inspection Period"), (a) Purchaser may perform whatever investigations, tests and inspections (collectively, the "Inspections") with respect to the Property that Purchaser deems reasonably appropriate; and (b) Seller shall, at all reasonable times, (i) provide Purchaser and Purchaser's officers, employees, agents, advisors, attorneys, accountants, architects, and engineers with access to the Property, all drawings, plans, specifications and all engineering reports for and relating to the Property in the possession or under the control of Seller, the files and correspondence relating to the Property, and the financial books and records relating to the ownership, lease (if applicable), operation, and maintenance of the Property, and (ii) allow such Persons to make such inspections, tests, copies, and verifications as Purchaser considers necessary.

Section 2.09. Purchaser's Right to Terminate. Notwithstanding any provision contained herein, if (a) Purchaser determines, in its sole discretion, that the Property is not satisfactory, and Purchaser provides written notice thereof to Seller on or before expiration of the Inspection Period, or (b) Purchaser and Lessee are unable to agree upon the terms and conditions of the Lease Agreement as provided in Section 1.03, or (c) Purchaser fails to obtain the approval of any material modification to the Transaction from Purchaser's Investment Committee, and in any such event, Purchaser provides written notice thereof to Seller on or before expiration of the Inspection Period, then Purchaser shall have the option to terminate this Agreement in which event neither Seller nor Purchaser shall have any further duties or obligations under this Agreement except for any duties and obligations that expressly survive the termination of this Agreement (including without limitation, the payment of Transaction Costs and the other expenses as set forth in Section 1.05).

ARTICLE III

CLOSING

Section 3.01. Closing Date. Subject to the provisions of Article V of this Agreement, the closing date of the Transaction contemplated by this Agreement (the "Closing") shall be set by mutual agreement of Seller and Purchaser (the "Closing Date"); *provided, however,* that the Closing Date shall not extend beyond the Closing Deadline. The parties shall deposit with the Title Company all documents (including without limitation, the executed Transaction Documents) as necessary to comply with the parties' respective obligations hereunder on or before the Closing Date or as otherwise mutually agreed upon by the parties. The parties shall deposit all funds required hereunder with the Title Company on or before the Closing Date.

Section 3.02. Funding. Notwithstanding any provision contained in this Agreement, funding of the Transaction by Purchaser shall be contingent upon the delivery of the executed Transaction Documents, satisfaction of the conditions precedent set forth herein, receipt and approval of other original documents by the Title Company or Purchaser's counsel, and confirmation by Purchaser's counsel that it or the Title Company has possession of all Transaction Documents required by Purchaser.

Section 3.03. Possession. Possession of the Property, free and clear of all tenants or other parties in possession, except in accordance with the Lease Agreement, shall be delivered to Purchaser on the Closing Date.

ARTICLE IV

REPRESENTATIONS WARRANTIES AND COVENANTS

Section 4.01. Seller. Seller represents and warrants to, and covenants with, Purchaser as follows:

(a) **Organization and Authority.** Seller is duly incorporated, validly existing and in good standing under the laws of its state of incorporation, and is qualified as a foreign corporation to do business in the State of Illinois. Seller has all requisite corporate power and authority to own and operate the Property, 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 and Lessee, respectively, this Agreement and the other Transaction Documents to which each is a party, shall constitute the legal, valid and binding obligations of Seller and Lessee, enforceable against Seller and Lessee 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.** None of Seller, Lessee, or the Property is subject to any commitment, obligation, or agreement, including, without limitation, any right of first refusal, option to purchase or lease granted to a third party, which could or would (i) prevent Seller from completing, or impair Seller's ability to complete, the sale of the Property under this Agreement or the subsequent lease of the Property pursuant to the Lease Agreement, or (ii) bind Purchaser subsequent to consummation of the Transaction.

(d) **No Violations.** The authorization, execution, delivery and performance of this Agreement and the other Transaction Documents will not (i) violate any provisions of the articles of incorporation or other charter documents of Seller and Lessee, (ii) except pursuant to the Credit Agreement and related instruments (if consummated without Lender consent), 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 or Lessee are parties or by which Seller, Lessee, the Property or any of the property of Seller or Lessee are subject or bound, (iii) result in the creation or imposition of any Lien, restriction, charge or limitation of any kind, upon Seller or Lessee or the Property, or (iv) violate any law, statute, regulation, rule, ordinance, code, rule or order of any court or Governmental Authority applicable to Seller or the Property.

(e) **Compliance.** Seller's and Lessee's use and occupation of the Property, and the condition thereof, comply with (i) all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders and approvals of each Governmental

Authority having jurisdiction over the Property, including, without limitation, all health, building, fire, safety and other codes, ordinances and requirements, the Americans With Disabilities Act of 1990, and all policies or 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 the Property, Lessee, or Seller (collectively, the “**Legal Requirements**”), (ii) all restrictions, covenants and encumbrances of record with respect to the 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 the Property or the ownership, operation, use or possession thereof. No Seller Entity has received any notification that it or the Property is in violation of any of the foregoing, including without limitation, the Legal Requirements.

(f) **Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws.** Without in any way limiting the provisions of Section 4.01(e), Seller, and to the best of Seller’s knowledge, each of the Seller Entities is not currently identified on the OFAC List, and is not 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) **Litigation.** There is no legal, administrative, arbitration or other proceeding, claim or action of any nature or investigation pending or involving or, to the best of Seller’s knowledge, threatened against, Seller, the Seller Entities or the Property before any Governmental Authority, except as has been disclosed in writing by Seller, which in any way adversely affects or may adversely affect the Property, the business performed and to be performed on the Property, the condition, worth or operations of any of the Seller Entities, the ability of any of the Seller Entities to perform under this Agreement or any other Transaction Documents, or which questions or challenges any of the Seller’s Entities’ participation in the Transaction contemplated by this Agreement or any other Transaction Document; and to the best of Seller’s knowledge, there is no valid basis for any such legal, administrative, arbitration or other proceeding, claim or action of any nature or investigation.

(h) **No Mechanics’ Liens.** There are no outstanding accounts payable, mechanics’ liens, or rights to claim a mechanics’ lien in favor of any materialman, laborer, or any other Person in connection with labor or materials furnished to or performed on any portion of the Property, which will not have been fully paid for on or before the Closing Date or, to Seller’s knowledge, which might provide the basis for the filing of such liens against the Property or any portion thereof. No work has been performed or is in progress nor have materials been supplied to the Property or agreements entered into for work to be performed or materials to be supplied to the Property prior to the date hereof, which will not have been fully paid for on or before the Closing Date or which might provide the basis for the filing of such liens against the Property or any portion thereof. Seller shall be responsible for any and all claims for mechanics’ liens and accounts payable that have arisen or may subsequently arise due to agreements entered into for and/or any work performed on, or materials supplied to the Property prior and subsequent to the Closing Date, and Seller shall and does hereby agree to defend, indemnify and forever hold Purchaser and Purchaser’s designees harmless from and against any and all such mechanics’ lien claims, accounts payable or other commitments relating to the Property.

(i) **Title to Property; Surveys.** Title to the Property is vested in Seller, or Seller has an option or right to acquire the Property. Upon Closing, title to the Property shall be vested in Purchaser or its nominee or assigns (if any), free and clear of all Liens except the Permitted Encumbrances. The address set forth on Exhibit B hereto is the true and correct street address of the Property. Each Survey is correct and a complete representation of all improvements now located on the Property. No Seller Entity has made or caused to be made any structural improvements or structural additions to existing improvements on the Property since the date of the Survey.

(j) **Condition of Property.** The Property, including the fixtures and equipment located thereon, is of good workmanship and materials, fully equipped and operational, in good condition and repair, free from structural defects, clean, orderly and sanitary, safe, well-lit and well-maintained.

(k) **Intended Use; Zoning; Access.** Seller or Lessee uses, and Lessee will continue to use, the Property solely for the operation of the Facility and related ingress, egress and parking, and for no other purposes; such use does not and will not violate any zoning or other requirement of any Governmental Authority applicable to the Property. There are adequate rights of access to public roads and ways available to the Property to permit full utilization of the Property for its intended purpose and, to the best of Seller's knowledge, all such public roads and ways have been completed and dedicated to public use.

(l) **Utilities.** The Property is served by sufficient public utilities to permit full utilization of the Property for its intended purpose and all utility connection fees and use charges will have been paid in full.

(m) **Condemnation; Blighted Areas; Wetlands.** No condemnation or eminent domain proceedings affecting the Property have been commenced or, to the best of Seller's knowledge, are contemplated. To the best of Seller's knowledge, the area where the Property is located has not been declared blighted by any Governmental Authority, and the Property and/or the real property bordering the Property is not designated by any Governmental Authority as wetlands.

(n) **Licenses and Permits.** Seller possesses, and upon Closing, Lessee will possess, all required licenses, permits and other authorizations, both governmental and private, presently required by applicable provisions of law, including statutes, regulations and existing judicial decisions, and by the property and contract rights of third persons, necessary to permit the operation of the business in the manner in which it presently is conducted at the Property.

(o) **Intellectual Property.** Seller possesses, and upon Closing, Lessee will possess and have the right to use all intellectual property, licenses and other rights as are material and necessary for the conduct of business at the Property, and with respect to which it is, and will be at Closing, in compliance, with no known conflict with the valid rights of others. No event or any other condition has occurred that permits or, to the best of Seller's knowledge, after notice or the lapse of time, or both, could reasonably be expected to permit, the revocation or termination of any such intellectual property, license or other right.

(p) **Environmental.** Without limiting in any way the representations and warranties contained elsewhere in this Agreement, Seller hereby represents and warrants to Purchaser, to the best of Seller's current actual knowledge, as follows:

(i) No Hazardous Materials or Regulated Substances, except in Permitted Amounts, exist on, under or about the Property or have been transported to or from the Property or used, generated, manufactured, stored or disposed of on, under or about the Property. The Property is not in violation of any Hazardous Materials Laws relating to industrial hygiene or the environmental conditions on, under or about the Property, including, without limitation, air, soil and groundwater conditions, and this representation and warranty would continue to be true and correct following disclosure to the applicable Governmental Authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Property.

(ii) There is no past or present non-compliance with Hazardous Materials Laws, or with permits issued pursuant thereto, in connection with the Property; all uses and operations on or of the Property, whether by Seller or any other Person, have been in compliance with all Hazardous Materials Laws and environmental permits issued pursuant thereto; all USTs, if any, located on or about the Property are in full compliance with all Hazardous Materials Laws, and as of the date hereof, Seller is in compliance with the requirements of the UST Regulations with respect to those "petroleum underground storage tanks" (as such term is defined under the UST Regulations) located at the Property. The Property has been kept free and clear of all Environmental Liens and Seller has not allowed any tenant or other user of the Property (including without limitation, Lessee) to do any act that increased the dangers to human health or the environment, posed an unreasonable risk of harm to any Person (whether on or off the Property), impaired the value of the Property in any material respect, is contrary to any requirement of any insurer, constituted a public or private nuisance, constituted waste, or violated any covenant, condition, agreement or easement applicable to the Property.

(iii) No Seller Entity has received any written notice from any Person (including but not limited to a Governmental Authority) relating to Hazardous Materials, Regulated Substances or USTs, or remediation thereof, of possible liability of any Person (including without limitation, Lessee) pursuant to any Hazardous Materials Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing.

(q) **Insurance.** Seller has in place and in force such insurance with such coverages and in such amounts that are equal to or greater than those customarily maintained by similar businesses in the same geographic area in which the Property is located.

(r) **Information and Financial Statements.** The financial statements and other information concerning the Seller Entities in all respects, and no adverse change

has occurred with respect any such financial statements, or other information provided to Purchaser since the date such financial statements and other information were prepared or delivered to Purchaser. Seller understands that Purchaser is relying upon such financial statements and information and Seller represents that such reliance is reasonable. All such financial statements, through December 29, 2012, were prepared in accordance with generally accepted accounting principles consistently applied.

(s) **Solvency.** There is no contemplated, pending or threatened Insolvency Event or similar proceedings, whether voluntary or involuntary, affecting the Seller Entities, or to Seller's knowledge, any of their shareholders. The fair saleable value of the assets of each of the Seller Entities as a going concern as of the date hereof exceeds the probable liability (including contingent liability) of each Seller Entity on its debts as of such date. Each Seller Entity does not intend to, nor does each Seller Entity believe that it will, incur debts or liabilities beyond its ability to pay as such debts and liabilities mature, and each Seller Entity believes that it will be able to pay its debts as they mature. Each Seller Entity does not have unreasonably small capital to conduct its business. For purposes hereof, the amount of any contingent liability shall be computed as the amount that, in light of all the facts and circumstances, existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

(t) **No Reliance.** Seller acknowledges that Purchaser did not prepare or assist in the preparation of any of the projected financial information used by Seller in analyzing the economic viability and feasibility of the Transaction contemplated by this Agreement or the other Transaction Documents, and that Seller has not relied on any report or statement by Purchaser in entering into this Agreement or the other Transaction Documents.

(u) **Satisfaction of Conditions Precedent.** From the Effective Date through the Closing Date, Seller shall use its commercially reasonable good faith efforts to satisfy all conditions set forth in Section 5.01 of this Agreement on or prior to the Closing Date.

(v) **No Bankruptcy Petition.** Seller hereby agrees that it shall not institute against, or join any other Person in instituting against, Purchaser, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or any other proceeding under any federal or state bankruptcy or similar law. The provisions of this Section shall survive the Closing or termination of this Agreement. Notwithstanding the foregoing, the provisions of this Section shall in no way limit any other rights Seller may have with respect to this Agreement, either at law or in equity.

All representations and warranties of Seller made in this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing Date, shall be true at and as of the Closing Date as a condition to the Closing, but none of such representations and warranties shall survive the Closing in any manner (Purchaser's sole recourse following the Closing to be under the Lease Agreement) and Purchaser's sole remedy for a breach of any representation or warranty shall be to terminate this Agreement, except that the representation and warranty set forth in Section 4.01(a) and Section 4.01(b) shall survive Closing for a period six (6) months.

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.** 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.** From the Effective Date through the Closing Date, Purchaser agrees to use its best efforts to satisfy all conditions set forth in Section 5.02 of this Agreement on or prior to the Closing Date.

All representations and warranties of Purchaser made in this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing Date, shall be true at and as of the Closing Date, and, together with the covenants made by Purchaser herein, shall survive Closing for a period of six (6) months.

Section 4.03. Inspections and Related Matters.

(a) Purchaser agrees to engage only nationally recognized, bonded and insured vendors to conduct Purchaser's due diligence activities. Purchaser agrees further to request such vendors add Seller as an additional certified party to the reports and deliver copies of such reports to Seller.

(b) Purchaser and its designated agents and independent contractors (collectively, "Purchaser's Representatives") shall have the right to enter upon the Property to conduct surveys, investigations and studies. In no event shall any of Purchaser's employees make any access to or on the Property or any portion thereof or otherwise be part of any of the inspections hereunder.

(c) At least one (1) Business Day prior to any entry and inspection of any common area or any other portion of the Property, Purchaser or Purchaser's Representatives shall (i) deliver to Seller written or verbal notice of its intention to enter the Property to conduct such inspection, a description of the inspection to be conducted, and the proposed time of such entry (and Seller shall have the right to reasonably approve such timing and shall have the right to have one or more of its agents or

representatives accompany Purchaser and Purchaser's Representatives at all times while Purchaser or Purchaser's Representatives are on the Property), (ii) with respect to any intrusive or destructive tests on the Property, provide Seller at least three (3) Business Days advance written notice describing the nature and extent of such testing and obtain Seller's prior written approval of such testing, which approval may be withheld in Seller's sole and absolute discretion, and (iii) comply with the provisions of Section C below and Section E below.

(d) Any entry by Purchaser upon the Property requires that (i) such activities do not unreasonably interfere with Seller's ownership, operation and maintenance of the Property, (ii) Purchaser shall not construct, erect or place on the Property any monuments or improvements, (iii) Purchaser shall perform all work permitted under this Agreement in a safe manner, (iv) Purchaser shall not cause any dangerous or hazardous conditions to exist, (v) Purchaser shall comply with all applicable laws and governmental regulations, and (vi) Purchaser shall obtain any and all permits required to be obtained from any governmental agencies. Purchaser shall repair any damage caused by Purchaser or its agents or independent contractors to the Property. Purchaser shall indemnify, protect, defend (with legal counsel reasonably acceptable to Seller) and hold Seller harmless from and against any and all costs, expenses, liabilities, losses and damages (but excluding consequential losses and damages), and demands (including without limitation claims of mechanic's liens and attorneys' costs and reasonable attorneys' fees) and third party claims, threatened, incurred or sustained by Seller either prior or subsequent to the termination of this Agreement caused by the conduct of Purchaser, its agents or independent contractors. Notwithstanding the foregoing, Purchaser shall not indemnify or otherwise be liable to Seller due to Purchaser's mere discovery of adverse information about the Property, even if such discovery leads to a decrease in the value of the Property; however, the foregoing shall not limit Purchaser's obligations under Section I below. The covenants contained in this Section shall survive the termination of this Agreement and shall be binding on Purchaser until all such actions against Seller are absolutely barred by the applicable statute of limitations.

(e) Prior to and during any entry on the Property, Purchaser or its Purchaser's Representatives shall secure and maintain at their expense, and provide confirmation to Seller of, the following policies of insurance, which are to include coverage of Purchaser, its agents or employees' activities on the Property, in commercially reasonable amounts: (i) comprehensive general liability and property damage insurance, including direct contractual and contingent liability; and (ii) comprehensive automobile liability insurance.

Section 4.04. Confidentiality.

(a) Subject to the exclusions set forth in this Section 4.04, Purchaser shall maintain as confidential and not disclose to any other person without Seller's prior written consent, which shall be in Seller's sole and absolute discretion, (i) the provisions of this Agreement and the transactions contemplated by this Agreement, and (ii) all information and documents furnished to Purchaser by Seller under or in connection with this Agreement, or made available to Purchaser in Seller's offices (collectively, the "Information"). Purchaser shall return to Seller or destroy the Information promptly upon the termination of this Agreement, except that Purchaser may retain one copy of the

Information provided that Purchaser so notifies Seller of such retention and provided that such retained copy of the Information shall remain subject to the provisions of this Section 4.04. Such return shall not abrogate Purchaser's continuing obligations under this Section 4.04. Notwithstanding anything to the contrary contained herein, Purchaser and Purchaser's Representatives may retain copies of the Information to the extent Purchaser or Purchaser's Representatives is required to do so by applicable law, including without limitation the Investment Advisers Act of 1940, as amended, and ERISA, and Purchaser and Purchaser's Representatives shall not be required to destroy or expunge any Information that is delivered or stored in electronic form to the extent such deletion would be technologically impracticable or inconsistent with the archival retention policy of Purchaser or Purchaser's Representatives.

(b) Notwithstanding the foregoing, the Information may be disclosed to Purchaser's Representatives and Purchaser's affiliated entities, directors, consultants, advisors, employees, accountants, investors, and legal counsel (collectively, "Purchaser's Affiliates"), if and to the extent that each of Purchaser's Affiliates (i) is advised in advance of the terms of this Section 4.04 applicable to the Information (provided that Purchaser shall remain liable for any disclosure of any of the Information by any of Purchaser's Affiliates that is not expressly permitted by this Section 4.04 and that occurred prior to the Effective Date) and (ii) needs to know the particular Information (or portion thereof) for the sole purpose of evaluating or purchasing the Property in accordance with this Agreement.

(c) This Section 4.04 shall be inoperative as to particular portions of the Information (and such materials shall not be deemed Information) if and to the extent that such Information (i) was or becomes generally available to the public other than as a result of a disclosure by Purchaser or Purchaser's Affiliates, (ii) was or becomes available to Purchaser on a non-confidential basis prior to its disclosure to Purchaser by Seller, (iii) was or becomes available to Purchaser on a non-confidential basis from a source other than Seller or Seller's Broker when such source is, to Purchaser's knowledge, entitled to make the disclosure to Purchaser or (iv) is or was developed by employees or agents of Purchaser who had no access to any of the Information.

(d) Purchaser acknowledges that the breach of this Section 4.04 will cause Seller irreparable damage which is not fully compensable by monetary damages, and that Seller therefore may have no adequate remedy at law if Purchaser or Purchaser's Affiliates violate any of the terms of this Section 4.04. Therefore, in addition to any other rights or remedies Seller may have, Seller shall be entitled to seek injunctive relief to restrain any breach or threatened breach and/or specific enforcement of such terms in the event of any breach of the provisions of this Section 4.04. Neither Purchaser nor Purchaser's Affiliates shall oppose the granting of such relief.

(e) If Purchaser or Purchaser's Affiliates are requested or required in any legal or administrative proceeding (by deposition, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Information, then Purchaser or Purchaser's Affiliates may, without notice of any kind to any party, disclose such Information, provided, that (i) Purchaser or Purchaser's Affiliates shall exercise reasonable efforts to have the requesting governmental or regulatory agency accord confidential treatment to such Information and (ii) if Purchaser or Purchaser's Affiliates receive such a request, Purchaser shall provide Seller with notice of such request(s) as soon as reasonably practicable if such

notification does not violate the terms of such request or applicable law. If, failing the entry of a protective order or the receipt of a waiver hereunder, Purchaser or Purchaser's Affiliates are, in the opinion of Purchaser's counsel, compelled to disclose Information under risk of liability for contempt or other censure or penalty for failure to do so, Purchaser may disclose all or such portion of the Information in accordance with such requirement without liability hereunder.

(f) This Section 4.04 terminates upon the one (1) year anniversary of the earlier of (i) the Closing, or (ii) any termination of this Agreement.

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 fulfillment (or written waiver by Purchaser) of all of the following conditions:

- (a) Purchaser shall have received and approved all of the items and materials as provided in Article II hereof.
- (b) Purchaser shall have inspected and approved the Property as provided in Article II.
- (c) Seller and Lessee, as appropriate, shall have delivered to Purchaser or the Title Company, as applicable, the following items:
 - (i) The Deed, pursuant to which the Property is conveyed to Purchaser, free of all Liens, restrictions encroachments and easements, except the Permitted Encumbrances;
 - (ii) Such documents evidencing the legal status and good standing of Seller and Lessee that may be required by Purchaser and/or the Title Company for issuance of the Title Policy, including, without limitation, certificates of good standing;
 - (iii) Fully executed originals of (A) the Lease Agreement, together with fully executed originals of the memorandum thereof (the "Memorandum of Lease"), (B) an Assignment of Warranties in the form of Exhibit D attached hereto (the "Assignment of Warranties"), and (C) all of the other Transaction Documents;
 - (iv) Certificates evidencing the insurance coverage, limits and policies to be carried by Lessee under and pursuant to the terms of the Lease Agreement, on the forms and containing the information required by Purchaser, as landlord ("Lease Proof of Insurance");
 - (v) A certificate of an officer, manager or general partner, as applicable, of each of Seller and Lessee, together with copies of each entity's (1) articles of organization or certificate of formation, as applicable, amended to date; (2) operating agreement, bylaws or partnership agreement, as applicable,

amended to date; (3) resolutions authorizing the Transaction and the execution of this Agreement and the other Transaction Documents, and identifying the Person(s) authorized to execute this Agreement and the other Transaction Documents; and (4) original certificates of good standing or similar documents from the states in which each entity was organized or formed, and original certificates of qualification or similar documents from the state where the Property is located;

(vi) A duly executed affidavit from Seller stating that Seller is not a “foreign person” as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and 1984 Tax Reform Act, in the form attached hereto as Exhibit C (“Non-Foreign Seller Certificate”);

(vii) The Title Company’s Owner Affidavit in form as acceptable to Seller;

(viii) Closing settlement statements approved by Seller and Purchaser to reflect the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement;

(ix) To the extent not previously provided, the most recent financial statements available for Seller and Lessee;

(x) All documents required to be delivered by this Agreement and the other Transaction Documents;

(xi) Illinois Real Estate Transfer Declaration (P-TAX203) and the Supplemental Form A (P-TAX203A); and

(xii) Such further documents as reasonably may be required in order to fully and legally close this Transaction, including any required assignments and assumptions of operating agreements related to the Property.

(d) Purchaser shall have received the Title Commitment and the Title Company’s irrevocable commitment to insure title by means of the Title Policy which shall (i) subject to Section 5.01(c)(i), show good and marketable title in Seller, (ii) be in an amount equal to the Purchase Price, (iii) commit to insure Purchaser’s fee simple ownership in the Property subject only to Permitted Encumbrances, and (iv) contain such endorsements as Purchaser may require.

(e) Intentionally omitted.

(f) There shall have been no material adverse change in the financial condition of Seller, Lessee or the Property from the Effective Date.

(g) All (i) representations and warranties of Seller set forth herein shall have been true and correct in all respects when made, and (ii) all covenants, agreements and conditions required to be performed or complied with by Seller prior to or at the time of Closing in connection with the Transaction shall have been duly performed or complied with by Seller prior to or at such time or waived in writing by Purchaser.

(h) No event shall have occurred or condition shall exist which would, upon the Closing Date, or, upon the giving of notice and/or passage of time, constitute a breach or default hereunder or under any other Transaction Document, or any other agreements between or among Purchaser, Seller or Lessee.

(i) Seller and Lessee shall have caused all leases and, unless otherwise agreed to in writing by Purchaser, all subleases of any or all of the Property and any other documents affecting the Property existing at Closing, at Purchaser's sole option, to be cancelled as of the Closing Date or subordinated to the Lease Agreement pursuant to subordination agreements in form and substance satisfactory to Purchaser.

Upon the fulfillment or Purchaser's written waiver of all of the above conditions, Purchaser shall deposit funds necessary to close this Transaction with the Title Company and this Transaction shall close in accordance with the terms and conditions of this Agreement. Unless otherwise agreed, all of the documents to be delivered at Closing shall be dated as of the Closing Date.

Section 5.02. Seller's Conditions Precedent to Closing. Seller shall not be obligated to close the Transaction until the fulfillment (or written waiver by Seller) of all of the following conditions:

(a) Purchaser shall have delivered to the Title Company the Purchase Price, as adjusted pursuant to the requirements of this Agreement;

(b) Purchaser shall have caused to be executed and delivered to the appropriate Persons fully executed originals of all Transaction Documents, including without limitation, the Lease Agreement, together with the Memorandum of Lease and the Assignment of Warranties;

(c) Purchaser shall have delivered to the Title Company Closing settlement statements approved by Seller and Purchaser to reflect the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement;

(d) Purchaser shall have delivered to Seller and/or the Title Company such further documents as may reasonably be required in order to fully and legally close this Transaction; and

(e) Seller shall have received approval of this Agreement and the Lease Agreement from JPMorgan Chase Bank, N.A., ("Lender") the administrative agent for certain lenders under a Credit Agreement dated April 26, 2012, as amended (the "Credit Agreement") by and among Lender, Seller and certain other lenders and affiliates of Seller;

(f) Seller shall have obtained a Release or Payoff Letter from Lender. As used herein, (i) "Security Instruments" means all mortgages, assignments of leases and rents, financing statements or other security instruments that are related to the Credit Agreement and that are a lien against or otherwise affect all or any portion of the Property, (ii) "Release" means a Release of Mortgage and any and all other releases necessary to release the Security Instruments, each in form as acceptable to the Title Company in order for it to delete from the Title Policy all title exceptions related to the Security Instruments, and (iii) "Payoff Letter" means a payoff letter from Lender in form

as acceptable to Title Company in order for it to delete from the Title Policy all title exceptions related to the Security Instruments. Seller agrees to use commercially reasonable efforts to obtain a Release or Payoff Letter prior to the Closing Date, provided that Seller's failure to obtain the same shall not be a breach of this Agreement

(g) 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 or waived in writing by Seller prior to or at such time.

ARTICLE VI

DEFAULTS; REMEDIES

Section 6.01. Default. Each of the following shall be deemed an event of default by Seller (each, an "Event of Default"):

(a) If any representation or warranty of Seller set forth in this Agreement or any other Transaction Document is false in any material respect;

(b) If Seller fails to perform in any material respect any of its obligations under this Agreement and such failure continues for five (5) business days after Seller's receipt of written notice of the same.

Section 6.02. Remedies. In the event of any Event of Default, Purchaser shall be entitled to exercise, at its sole and exclusive remedy, either of the following:

(a) Purchaser may terminate this Agreement by giving written notice to Seller in which case neither party shall have any further obligation or liability, except for the obligations set forth herein (including without limitation, those set forth in Sections 1.05, 7.05 and 7.06 hereof), the provisions which are expressly stated to survive termination of this Agreement and Purchaser may recover from Seller an amount equal to the lesser of (i) all of Purchaser's reasonable out of pocket costs and expenses incurred hereunder or (ii) \$70,000; or

(b) Purchaser may bring an action to require Seller specifically to perform its obligations hereunder.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Transaction Characterization.

(a) The parties intend that (i) all components of the Transaction shall be considered a single integrated transaction and shall not be severable; and (ii) the Lease Agreement shall constitute a lease of the Property and a unitary, unseverable instrument pertaining to the Property.

(b) The parties intend that the conveyance of the Property to Purchaser be an absolute conveyance in effect as well as form, and that the instruments of

conveyance 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 Deed, Seller will have no legal or equitable interest or any other claim or interest in the Property, other than the interest, if any, set forth in the Lease Agreement. The parties 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. Notwithstanding the existence of the Lease Agreement, neither party shall contest the validity, enforceability or characterization of the sale and purchase of the Property by Purchaser pursuant to this Agreement as an absolute conveyance, and both parties shall support the intent expressed herein that the purchase of the Property 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 the parties 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 the parties expressed in this Section 7.01. The parties agree to provide each other with timely notice of any communications they receive from a Governmental Authority that concern the characterization of the Transaction or the Lease Agreement in a manner different from that set forth in this Section 7.01, and they agree to cooperate and consult with respect to such communications.

Section 7.02. Risk of Loss.

(a) **Condemnation.** If, prior to Closing, action is initiated to take any of the Property, or any portion thereof, by eminent domain proceedings or by deed in lieu thereof, Purchaser may elect at or prior to Closing, to (i) terminate this Agreement, in which event Seller and Purchaser shall be relieved and discharged of any further liability or obligation under this Agreement, except as otherwise expressly set forth herein (including without limitation, the payment of Transaction Costs and the other expenses as set forth in Section 1.05), or (ii) 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.** Seller assumes all risks and liability for damage to or injury occurring to the Property by fire, storm, accident, or any other casualty or cause until the Closing has been consummated. If the 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, Purchaser may elect at or prior to Closing, to (i) terminate this Agreement, in which event Seller and Purchaser shall be relieved and discharged of any further liability or obligation under this Agreement, except as otherwise expressly set forth herein (including without limitation, the payment of Transaction Costs and the other expenses as set forth in Section 1.05), or (ii) consummate the Closing, in which event all of Seller's right, title and interest in and to the proceeds of any insurance covering such

damage (less an amount equal to any expense and costs reasonably incurred by Seller to repair or restore the Property, which shall be payable to Seller upon Seller's delivery to Purchaser of satisfactory evidence thereof), to the extent that the amount of such insurance does not exceed the Purchase Price, shall be assigned to Purchaser at Closing, and Purchaser shall be entitled to a credit in the amount of Seller's deductible at Closing.

(c) **Maintenance of Property and Insurance.** From the Effective Date until Closing, Seller shall continue to maintain the Property or cause the Property to be maintained in good condition and repair, and shall continue to maintain or cause to be maintained all insurance for the Property in the same or greater amounts, with the same or greater coverage, and subject to the same or lower deductibles as in existence as of the Effective Date.

Section 7.03. Notices. All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Agreement (collectively called "Notices") shall be in writing and given by (a) hand delivery, (b) express overnight delivery service, (c) email or facsimile transmission, or (d) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon actual receipt or attempted (but refused) delivery. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Seller: Whitney Automotive Group, Inc.
16941 Keegan Ave.
Carson, CA 90746
Attention: Bryan Stevenson
Facsimile: 310-735-0092
Email: bstevenson@usautoparts.com

With a copy to: Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
Attention: Michael Levinson
Facsimile: (858) 550-6420
Email: mlevinson@cooley.com

And with a copy to: K&L Gates
70 West Madison Street, Suite 3100
Chicago, Illinois 60602-4207
Attention: Lawrence A. Eiben
Facsimile: 312.827.1268
Email: larry.eiben@klgates.com

If to Purchaser: STORE Capital Acquisitions, LLC
8501 E. Princess Drive, Suite 190
Scottsdale, AZ 85255
Attention: Michael T. Bennett – Executive Vice
President - Operations
Facsimile: (480) 256-1101
Email: mbennett@storecapital.com

With a copy to: Kutak Rock LLP
1801 California Street, Suite 3100
Denver, CO 80202
Attention: Kelly G. Reynoldson, Esq.
Facsimile: (303) 292-7799
Email: Kelly.reynoldson@kutakrock.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. Whenever in this Agreement the giving of Notice is required, the giving thereof may be waived in writing at any time by the Person or Persons entitled to receive such Notice.

Section 7.04. Assignment. Purchaser may assign its rights under this Agreement in whole or in part at any time. No assignment will release Purchaser (or any assignee of Purchaser) from its obligations under this Agreement. 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 Property, 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 7.05. Brokerage Commission. Each of the parties represents and warrants to the other that neither party has dealt with, negotiated through or communicated with any broker in connection with this Transaction, except for Quantum Real Estate Advisors, Inc. whose commission shall be paid by Seller pursuant to a separate agreement between Seller and such broker. Each party 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. The parties' respective obligations under this Section 7.06 shall survive Closing or termination of this Agreement.

Section 7.06. Reporting Requirements. The parties 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 7.07. Disclosures. Except as expressly set forth in Sections 4.04, 7.06 and this Section 7.07 and as required by law or judicial action, prior to Closing neither Seller nor Purchaser will make any public disclosure of this Agreement or the other Transaction Documents, the Transaction or the provisions of the Transaction Documents without the prior consent of the other party hereto. The parties further agree that, notwithstanding any provision contained in this Agreement, 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 under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

Section 7.08. Time is of the Essence. The parties hereto expressly agree that time is of the essence with respect to this Agreement.

Section 7.09. Non-Business Days. If the Closing Date or the date for delivery of a notice or performance of some other obligation of a party falls on a Saturday, Sunday or legal holiday in the state in which the Property is located, then the Closing Date or such notice or performance shall be postponed until the next Business Day.

Section 7.10. 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 future occasion.

Section 7.11. Purchaser's Liability. 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 and the Lease Agreement by Purchaser, that (a) there shall be absolutely no personal liability on the part of any director, officer, manager, member, employee or agent of Purchaser with respect to any of the terms, covenants and conditions of this Agreement, (b) Seller waives all claims, demands and causes of action against Purchaser's directors, officers, managers, members, 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 (c) 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.

Section 7.12. 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 7.13. Construction Generally. This is an agreement between parties who are experienced in sophisticated and complex matters similar to the Transaction and the other Transaction Documents, is entered into by both parties 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 the parties or the domicile of any party. Seller and Purchaser were each represented by legal counsel competent in advising them of their obligations and liabilities hereunder.

Section 7.14. Further Assurances. Each of the parties agrees, whenever and as often as reasonably requested so to do 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 intent and purpose of this Agreement.

Section 7.15. Attorneys' Fees. In the event of any controversy, claim, dispute or proceeding between the parties 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.

Section 7.16. Entire Agreement. This Agreement and all other Transaction Documents, and all other certificates, instruments or agreements to be delivered hereunder and thereunder constitute the entire agreement between the parties 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 the Cost Letter 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, (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 shall survive the Closing.

Section 7.17. Forum Selection; Jurisdiction; Venue. For purposes of any action or proceeding arising out of this Agreement, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Illinois. Seller consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Illinois 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 shall limit or restrict the right of Purchaser to commence any proceeding in the federal or state courts located in the state in which the Property is located to the extent Purchaser deems such proceeding necessary or advisable to exercise remedies available under this Agreement.

Section 7.18. 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 7.04, all provisions contained in this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors and assigns of each party hereto, 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 state in which the Property is located, without giving effect to any state's conflict of laws principles.

Section 7.19. Waiver of Jury Trial and Certain Damages. THE PARTIES 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 THE PARTIES 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. EACH OF THE PARTIES HERETO FURTHER WAIVES THE RIGHT IT MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER PARTY HERETO 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.

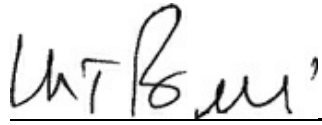
Section 7.20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all such counterparts shall be deemed to constitute one and the same instrument.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

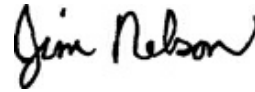
PURCHASER:

STORE CAPITAL ACQUISITIONS, LLC, a
Delaware limited liability company

By: 
Name: Michael T. Bennett
Title: Executive Vice President - Operations

SELLER:

WHITNEY AUTOMOTIVE GROUP, INC., a
Delaware corporation



By:

Name: Jim Nelson

Title: President

Exhibits:

- A: Defined Terms
- B: Legal Description / Property Address
- C: Non-Foreign Seller Certificate
- D: Assignment of Warranties

EXHIBIT A

DEFINED TERMS

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

“*Additional Title Objection*” has the meaning set forth in Section 2.01(d)(ii).

“*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.

“*Assignment of Warranties*” has the meaning set forth in Section 5.01(c)(iii).

“*Business Day*” means a day on which banks located in Scottsdale, Arizona are not required or authorized to remain closed.

“*Closing*” shall have the meaning set forth in Section 3.01.

“*Closing Date*” shall have the meaning set forth in Section 3.01.

“*Closing Deadline*” means five (5) Business Days following the expiration of the Inspection Period or any other date mutually agreed upon by Seller and Purchaser.

“*Concluded Value*” has the meaning set forth in Section 2.05.

“*Credit Agreement*” has the meaning set forth in Section 5.02(e).

“*Deed*” means that certain special warranty deed whereby Seller conveys to Purchaser all of Seller’s right, title and interest in and to the Property, but specially excluding the Special Equipment.

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

“*Environmental Liens*” means all liens and other encumbrances imposed pursuant to any Hazardous Materials Law.

“*Environmental Report*” has the meaning set forth in Section 2.04.

“*Event of Default*” has the meaning set forth in Section 6.01.

“*Facility*” means an office, retail and warehouse facility for distribution of automotive parts, and uses incidental thereto.

“*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” includes: (a) oil, petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other materials, contaminants or pollutants, the presence of which causes the Property to be in violation of any local, state or federal law or regulation, (including without limitation, any Hazardous Materials Law), or 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 local, state or federal 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. §1801, et seq.; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq.; and (iv) regulations adopted and publications promulgated pursuant to the aforesaid laws; (b) asbestos in any form which is friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; (c) underground storage tanks; and (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority.

“Hazardous Materials Laws” includes any and all federal, state and local laws, rules, regulations, statutes, and requirements pertaining or relating to the environmental condition of the Property or to Hazardous Materials.

“Indemnified Parties” has the meaning set forth in Section 7.05.

“Inspection Period” has the meaning set forth in Section 2.08.

“Inspections” has the meaning set forth in Section 2.08(a).

“Lease Agreement” has the meaning set forth in Section 1.03.

“Lease Proof of Insurance” has the meaning set forth in Section 5.01(c)(iv).

“Legal Requirements” has the meaning set forth in Section 4.01(e).

“Lessee” means U.S. Auto Parts Network, Inc., a Delaware corporation.

“Lender” has the meaning set forth in Section 5.02(e).

“Letter of Intent” means that certain Letter of Intent dated February 13, 2013 between Purchaser and Seller with respect to the Transaction, and any amendments or supplements thereto.

“Lien” 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, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, interest, charges, fees, expenses, judgments, decrees, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, attorneys’ fees, court costs and costs incurred in the investigation, defense and settlement of claims).

“*Memorandum of Lease*” has the meaning set forth in Section 5.01(c)(iii).

“*Non-Foreign Seller Certificate*” has the meaning set forth in Section 5.01(c)(viii).

“*Notices*” has the meaning set forth in Section 7.03.

“*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 www.treas.gov/ofac/t11sdn.pdf.

“*Payoff Letter*” has the meaning set forth in Section 5.02(f).

“*Permitted Amounts*” means, with respect to any given level of Hazardous Materials or Regulated Substances, that level or quantity of Hazardous Materials or Regulated Substances in any form or combination of forms, the use, storage or release of which does not constitute a violation of or require regulation under any Hazardous Materials Laws and is customarily employed in the ordinary course of business of, or associated with, similar businesses located in the state in which the Property is located.

“*Permitted Encumbrances*” means (a) the lien of any real estate taxes, water and sewer charges, not yet due and payable; (b) those recorded easements, restrictions, liens and encumbrances set forth as exceptions in the Title Commitment and in the Title Policy to be issued by Title Company to Purchaser and approved by Purchaser in its sole discretion in connection with this Agreement; (c) the Lease Agreement; and (d) any easements, restrictions, liens and encumbrances created or permitted by Purchaser.

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

“*Property*” has the meaning set forth in Section 1.01.

“*Property Condition Report*” has the meaning set forth in Section 2.06.

“*Purchase Price*” means the amount specified in Section 1.02.

“*Real Property*” has the meaning set forth in Section 1.01.

“*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*” has the meaning set forth in Section 5.02(f).

“*Security Instruments*” has the meaning set forth in Section 5.02(f).

“*Seller Entity*” or “*Seller Entities*” means individually or collectively, as the context may require, Seller and Lessee.

“*Special Equipment*” has the meaning set forth in Section 1.01.

“*Survey*” has the meaning set forth in Section 2.03.

“*Title Commitment*” has the meaning set forth in Section 2.01(a).

“*Title Company*” means First American Title Insurance Company located in Phoenix, Arizona, or an alternative title insurance company selected by Purchaser.

“*Title Objection*” has the meaning set forth in Section 2.01(d)(i).

“*Title Policy*” has the meaning set forth in Section 2.01(a).

“*Transaction*” has the meaning set forth in Section 1.01.

“*Transaction Costs*” means all out-of-pocket costs and expenses incurred in connection with the Transaction (whether or not the Transaction closes), including but not limited to (a) the procurement, or if the same is provided by Seller, the update, of the Property Condition Report, Environmental Report, Survey, Title Commitment, Title Policy, and all endorsements required by Purchaser, (b) the Valuation, and (c) all taxes (including stamp taxes and transfer taxes), escrow, closing, transfer and recording fees.

“*Transaction Documents*” means this Agreement, the Lease Agreement, the Memorandum of Lease, the Deed, the Lease Proof of Insurance, the Non-Foreign Seller Certificate, the Assignment of Warranties, any and all documents referenced herein and therein, and such other documents, payments, instruments and certificates as are reasonably required by Purchaser and/or the Title Company.

“*UST Regulations*” means 40 C.F.R. § 298 Subpart H – Financial Responsibility, or any equivalent state law, with respect to petroleum underground storage tanks (as such term is defined under 40 C.F.R. § 290.12 or any equivalent state law).

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

“*Valuation*” has the meaning set forth in Section 2.05.

“*Zoning Evidence*” has the meaning set forth in Section 2.07.

EXHIBIT B

LEGAL DESCRIPTION / PROPERTY ADDRESS

Street Address:

<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
761-765 Progress Parkway	LaSalle	Illinois	61301

Legal Description:

LOT 1 IN CANNON INDUSTRIAL PARK FIRST ADDITION, LOCATED IN THAT PART OF THE NORTH HALF OF SECTION 5, TOWNSHIP 33 NORTH, RANGE 2, EAST OF THE THIRD PRINCIPAL MERIDIAN, SITUATED IN LASALLE COUNTY, ILLINOIS, EXCEPT THAT PART CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION BY DEED RECORDED JUNE 19, 2008 AS DOCUMENT 2008-13925, DESCRIBED AS FOLLOWS:

A PART OF LOT 1 IN CANNON INDUSTRIAL PARK FIRST ADDITION, A SUBDIVISION OF PART OF THE NORTH HALF OF SECTION 5, TOWNSHIP 33 NORTH, RANGE 2 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED MAY 14, 1996 AS DOCUMENT NUMBER 96-07841 IN THE RECORDER'S OFFICE OF LASALLE COUNTY, STATE OF ILLINOIS, DESCRIBED AS FOLLOWS, USING BEARINGS BASED ON AN ASSUMED DATUM:

COMMENCING AT AN IRON PIN AT THE SOUTHEAST CORNER OF LOT 1 IN SAID SUBDIVISION; THENCE NORTH 0 DEGREES 46 MINUTES 12 SECONDS EAST, 1,204.22 FEET (RECORDED 1,204.44 FEET) ON THE EAST LINE OF SAID LOT 1 TO THE NORTHEAST CORNER THEREOF, BEING ALSO THE SOUTHERLY RIGHT OF WAY LINE OF FAI ROUTE 80 AND THE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 46 MINUTES 12 SECONDS WEST, 17.59 FEET ON SAID EAST LINE OF SAID LOT 1; THENCE NORTH 89 DEGREES 43 MINUTES 58 SECONDS WEST, 223.13 FEET, TO THE SOUTHERLY RIGHT OF WAY LINE OF FAI ROUTE 80; THENCE EASTERLY ON SAID RIGHT OF WAY LINE, 222.14 FEET ON A CURVE TO THE LEFT, HAVING A RADIUS OF 15,048.72 FEET, WHOSE CHORD BEARS SOUTH 88 DEGREES 15 MINUTES 13 SECONDS EAST, 222.13 FEET, TO THE POINT OF BEGINNING, SITUATED IN LASALLE COUNTY, ILLINOIS.

EXHIBIT C

NON-FOREIGN SELLER CERTIFICATE

STATE OF _____)
) ss:
COUNTY OF _____)
_____, being first duly sworn deposes and states under penalty of perjury:

1. That he/she is a _____ of [_____] , a [_____] , the transferor of the Property described on Schedule I attached hereto.
2. That the transferor’s office address is at _____.
3. That the United States taxpayer identification number for the transferor is _____.
4. That the transferor is not a “foreign person” as that term is defined in Section 1445(f) of the United States Internal Revenue Code of 1986, as amended (the “Code”).
5. That the transferor is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the regulations promulgated under the Code.

This affidavit is given to _____, a _____, the transferee of the Property described in paragraph 1 above, for the purpose of establishing and documenting the nonforeign affidavit exemption to the withholding requirement of Section 1445 of the Code. The transferor understands that this affidavit may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

[_____] , a
[_____]

By: **EXHIBIT – NOT FOR SIGNATURE**
Name: _____
Title: _____

Subscribed and sworn to before me this _____ day of _____, 2 _____.

Notary Public: _____

(SEAL)

My Commission Expires: _____

**Schedule I
to Non-Foreign Seller Certificate**

PROPERTY

C-2

EXHIBIT D

ASSIGNMENT OF WARRANTIES

THIS ASSIGNMENT OF WARRANTIES (this "Assignment"), is made as of [____], 2013 by and among [____], a [____] ("Assignor"), [____], a [____] ("Purchaser"), and [____], a [____] ("Lessee").

WITNESSETH:

WHEREAS, pursuant to the terms of that certain Purchase and Sale Agreement, dated as of April __, 2013, by and between Assignor and Purchaser (the "Purchase Agreement"), Assignor agreed to sell to Purchaser, *inter alia*, certain real property, the improvements located thereon and certain rights appurtenant thereto, all as more particularly described in the Purchase Agreement (collectively, the "Property"). Initially capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Purchase Agreement; and

WHEREAS, the Purchase Agreement provides, *inter alia*, that Assignor shall assign to Lessee rights to all guaranties and warranties relating to the Property and that Assignor, Purchaser and Lessee shall enter into this Assignment.

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

1. Assignment of Warranties. Assignor hereby assigns, sets over and transfers to Lessee 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, if and only to the extent the same may be assigned or quitclaimed by Assignor without (i) expense to Assignor, (ii) the consent of any third party or (iii) invalidating or terminating the coverage or protection provided by any such guaranty or warranty. Lessee hereby accepts the foregoing assignment of guaranties and warranties. Purchaser acknowledges and consents to such assignment of guaranties and warranties to Lessee.

2. Miscellaneous. This Assignment and the obligations of the parties hereunder shall survive the closing of the transaction referred to in the Purchase Agreement and shall not be merged therein, shall be binding upon and inure to the benefit of the parties 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.

3. 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.

4. Counterparts. This Assignment may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date first set forth hereinabove.

ASSIGNOR:

[_____] , a
[_____]

By: EXHIBIT – NOT FOR SIGNATURE
Name: _____
Title: _____

PURCHASER:

[_____] , a
[_____]

By: EXHIBIT – NOT FOR SIGNATURE
Name: _____
Title: _____

LESSEE:

[_____] , a
[_____]

By: EXHIBIT – NOT FOR SIGNATURE
Name: _____
Title: _____

EXHIBIT E

LIST OF SPECIAL EQUIPMENT

<u>Category</u>	<u>subcategory</u>
Inventory storage	Racking, shelving
Inventory Processing	Portable Scales, carts, dollies, scanners, WMS terminals, stock chasers, accordion conveyor, powered conveyors, sortation, mezzanine, extendable conveyors, carton erectors/ sealers, cubiscan, weight in line scales, label printers, banding machines, tape guns, knives, cutters, cash registers
Material Handling	Order pickers, dock stockers, walkie/ riders, pallet jacks, reach trucks, swing reach trucks, storage trailers, spotter, battery chargers, lanyards, harnesses
Maint. Equip.	pickup trucks, ride on floor scrubber, walk behind floor scrubber, walk behind sweeper, Show trailer, 60'JLG, tractor w/lawn and snow removal equipment, hand/ power tools, meters, gauges, pumps, jacks, battery watering systems, JCW signage
Life Safety/ security	Clocks, Time clocks, fire extinguishers, radios, security cameras/ DVR, Defibrillator
Office Equip	Chairs, desks, tables, files cabinets, artwork, cubicles, general office equipment, historical & collector items, desktop computers, telephony, copiers and network printers, folding tables, stacking chairs, projectors & screens, safes
Kitchen/ cafeteria	cooktops, stoves, warmers, microwaves, refrigerators, freezer, washer/ dryer, deep fryers, tables, stack chairs, lockers, picnic tables and chairs
IT Equipment	PDUs, Servers, Racks, switches

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of April 17, 2013 (the "Effective Date"), by and between **STORE MASTER FUNDING III, LLC**, a Delaware limited liability company ("Lessor"), whose address is 8501 E. Princess Drive, Suite 190, Scottsdale, Arizona 85255, and **U.S. AUTO PARTS NETWORK, INC.**, a Delaware corporation ("Lessee"), whose address is 16941 Keegan Avenue, Carson, California 90746. Capitalized terms not defined herein shall have the meanings set forth in Exhibit A hereto.

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

ARTICLE I**BASIC LEASE TERMS**

Section 1.01. Property. The street address of the Property is set forth on Exhibit B attached hereto.

Section 1.02. Initial Term Expiration Date. April 30, 2033.

Section 1.03. Extension Options. None.

Section 1.04. Term Expiration Date (if fully extended). April 30, 2033.

Section 1.05. Initial Base Annual Rental. \$853,125, as described in Article IV.

Section 1.06. Rental Adjustment. The lesser of (i) 1.5%, or (ii) 1.25 times the change in the Price Index, as described in Section 4.02.

Section 1.07. Adjustment Date. May 1, 2014 and every year thereafter during the Lease Term.

Section 1.08. Security Deposit. None.

Section 1.09. Guarantor(s). None.

Section 1.10. Lessee Tax Identification No. 68-0623433.

Section 1.11. Lessor Tax Identification No. 46-1045910.

ARTICLE II**LEASE OF PROPERTY**

Section 2.01. Lease. In consideration of Lessee's payment of the Rental and other Monetary Obligations and Lessee's performance of all other obligations hereunder, and except as expressly set forth elsewhere in this Lease, Lessor hereby leases to Lessee, and Lessee hereby takes and hires, the Property, "AS IS" and "WHERE IS" without representation or

warranty by Lessor, 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 2.02. Quiet Enjoyment. So long as Lessee shall pay the Rental and other Monetary Obligations provided in this Lease, and shall keep and perform all of the terms, covenants and conditions on its part contained herein, Lessee shall have, subject to the terms and conditions set forth herein, the right to the peaceful and quiet enjoyment and occupancy of the Property.

ARTICLE III

LEASE TERM

Section 3.01. Initial Term. The initial term of this Lease ("Initial Term") shall commence as of the Effective Date and shall expire at midnight on April 30, 2033 ("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 is referred to as the "Lease Term."

Section 3.02. Extensions. Intentionally deleted.

Section 3.03. Notice of Exercise. Intentionally deleted.

Section 3.04. Removal of Personalty. Upon the expiration of the Lease Term, and if Lessee is not then in breach hereof, Lessee may remove from the Property all personal property belonging to Lessee. Lessee shall repair any damage caused by such removal. Subject to the provisions of Section 7.01, Lessee shall leave the Property clean and in good and working condition and repair inside and out, subject to normal wear and tear, casualty and condemnation. Any property of Lessee left on the Property on the tenth day following the expiration of the Lease Term shall, at Lessor's option, automatically and immediately become the property of Lessor.

ARTICLE IV

RENTAL AND OTHER MONETARY OBLIGATIONS

Section 4.01. Base Monthly Rental. During the Lease Term, on or before the first day of each calendar month, Lessee shall pay in advance the Base Monthly Rental then in effect. If the Effective Date is a date other than the first day of the month, Lessee shall pay to Lessor 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 4.02. Adjustments. During the Lease Term, on the first Adjustment Date and on each Adjustment Date thereafter, the Base Annual Rental shall increase by an amount equal to the Rental Adjustment; *provided, however*, that in no event shall Base Annual Rental be reduced as a result of the application of the Rental Adjustment.

Section 4.03. Additional Rental. Lessee shall pay and discharge, as additional rental (“Additional Rental”), all sums of money required to be paid by Lessee under this Lease which are not specifically referred to as Base Annual Rental. Lessee shall pay and discharge any Additional Rental when the same shall become due, provided that amounts which are billed to Lessor or any third party, but not to Lessee, shall be paid within thirty (30) days after Lessor’s demand for payment thereof. In no event shall Lessee be required to pay to Lessor any item of Additional Rental that Lessee is obligated to pay and has paid to any third party pursuant to any provision of this Lease.

Section 4.04. Rentals To Be Net to Lessor. The Base Annual Rental payable hereunder shall be net to Lessor, so that this Lease shall yield to Lessor the Rentals specified during the Lease Term. Lessee shall perform all of its obligations under this Lease at its sole cost and expense. All Rental and other Monetary Obligations which Lessee is required to pay hereunder shall be the unconditional obligation of Lessee and shall be payable in full when due and payable without any setoff, abatement, deferment, deduction or counterclaim whatsoever.

Section 4.05. ACH Authorization. Upon execution of this Lease, Lessee shall deliver to Lessor a complete Authorization Agreement – Pre-Arranged Payments in the form of Exhibit C 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, any Additional 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 Lessor from an account established by Lessee at a United States bank or other financial institution to such account as Lessor may designate. Lessee shall continue to pay all Rental and other Monetary Obligations by Automated Clearing House Debit unless otherwise directed by Lessor.

Section 4.06. Late Charges; Default Interest. Any delinquent payment shall, in addition to any other remedy of Lessor, incur a late charge of five percent (5%) (which late charge is intended to compensate Lessor 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 Lessee be obligated to pay a sum of late charge and interest higher than the maximum legal rate then in effect.

Section 4.07. Holdover. If Lessee remains in possession of the Property after the expiration of the term hereof, Lessee shall be deemed a tenant on a month-to-month basis and shall continue to pay Rentals and other Monetary Obligations in the amounts herein provided, except that the Base Monthly Rental shall be automatically increased to one hundred fifteen percent (115%) of the last Base Monthly Rental payable under this Lease, and Lessee shall comply with all the terms of this Lease; *provided that* nothing herein nor the acceptance of Rental by Lessor shall be deemed a consent to such holding over.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF LESSEE

The representations and warranties of Lessee contained in this Article V are being made to induce Lessor to enter into this Lease, and Lessor has relied, and will continue to rely, upon such representations and warranties. Lessee represents and warrants to Lessor as of the Effective Date as follows:

Section 5.01. Organization, Authority and Status of Lessee. Lessee has been duly organized or formed, is validly existing and in good standing under the laws of its state of formation and is qualified as a foreign corporation to do business in the State of Illinois. All necessary corporate action has been taken to authorize the execution, delivery and performance by Lessee of this Lease. Lessee is not, and if Lessee 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 Lessee is duly authorized to do so.

Section 5.02. Enforceability. This Lease constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms.

Section 5.03. Property Condition. Lessee has physically inspected the Property and has examined title to the Property, and has found all of the same satisfactory in all respects for all of Lessee’s purposes.

Section 5.04. Litigation. To the best of the actual current knowledge of Lessee, with a reasonable duty of inquiry, and except as otherwise disclosed in Lessee’s most recent filing with the Securities and Exchange Commission, there are no suits, actions, proceedings or investigations pending, or to the best of its knowledge, threatened against or involving Lessee or the Property before any arbitrator or Governmental Authority which might reasonably result in any Material Adverse Effect.

Section 5.05. Absence of Breaches or Defaults. Lessee is not in default under any document, instrument or agreement to which Lessee is a party or by which Lessee, the Property or any of Lessee’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 Lessee is a party or by which Lessee, the Property or any of Lessee’s property is subject or bound.

Section 5.06. Licenses and Permits. Lessee has obtained all required licenses and permits, both governmental and private, to use and operate the Property as a Permitted Facility.

Section 5.07. Financial Condition; Information Provided to Lessor. Except as otherwise disclosed in Lessee’s most recent filing with the Securities and Exchange Commission, the financial statements, all financial data and all other documents and information heretofore delivered to Lessor by or with respect to Lessee and the Property in connection with this Lease or relating to Lessee or the Property 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 Lessor; all financial statements provided through December 29, 2012 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 Lessor, which has had, or could reasonably be expected to result in, a Material Adverse Effect.

Section 5.08. Compliance With OFAC Laws. Neither Lessee nor any individual or entity owning directly or indirectly any interest in Lessee, 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 5.09. Solvency. There is no contemplated, pending or threatened Insolvency Event or similar proceedings, whether voluntary or involuntary, affecting Lessee, or to the best of Lessee's knowledge, its shareholders or its Affiliates. Lessee does not have unreasonably small capital to conduct its business.

Section 5.10. Ownership. To the best of Lessee's actual current knowledge, no Person that actually or constructively owns ten percent (10%) or more of the outstanding capital stock of Lessor owns, directly or indirectly, (a) ten percent (10%) or more of the total combined voting power of all classes of voting capital stock of Lessee, or (b) ten percent (10%) or more of the total value of all classes of capital stock of Lessee.

ARTICLE VI

TAXES AND ASSESSMENTS; UTILITIES; INSURANCE

Section 6.01. Taxes.

(a) **Payment.** Subject to the provisions of Section 6.01(b) below, Lessee shall pay, prior to the earlier of delinquency or the accrual of interest on the unpaid balance (provided Lessee has received from Lessor notice thereof pursuant to Section 6.01(b) in the event such tax notices are delivered to Lessor), all taxes and assessments of every type or nature assessed against or imposed upon the Property, Lessee or Lessor allocable to the Lease Term (Lessor shall be responsible for any such taxes and assessments allocable to any period after the Lease Term) related to or arising out of this Lease and the activities of the parties hereunder, including without limitation, (i) all taxes or assessments upon the Property or any part thereof and upon any personal property, trade fixtures and improvements located on the Property, whether belonging to Lessor or Lessee, 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 Property by Lessee; (iii) all excise, franchise, transaction, privilege, license, sales, use and other taxes upon the Rental or other Monetary Obligations hereunder, the leasehold estate of either party or the activities of either party pursuant to this Lease; and (iv) all franchise, privilege or similar taxes of Lessor calculated on the value of the Property or on the amount of capital apportioned to the Property. Notwithstanding anything in clauses (i) through (iv) to the contrary, Lessee shall not be obligated to pay or reimburse Lessor for any taxes based on the net income of Lessor.

(b) **Right to Contest.** Within thirty (30) days after each tax and assessment payment is required by this Section 6.01 to be paid, Lessee shall provide Lessor with

evidence reasonably satisfactory to Lessor that taxes and assessments have been timely paid by Lessee. In the event Lessor receives a tax bill, Lessor shall use commercially reasonable efforts to forward (in accordance with Section 15.10) said bill to Lessee within fifteen (15) days of Lessor's receipt thereof. Lessee 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 Lessor), by appropriate legal proceedings conducted in good faith and with due diligence, any above-described item or lien with respect thereto, including, without limitation, the amount or validity or application, in whole or in part, of any such item, provided that (i) neither the Property nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings; (ii) if and to the extent required by the applicable taxing authority and/or Lessor, Lessee posts a bond or takes other steps acceptable to such taxing authority and/or Lessor that removes such lien or stays enforcement thereof; (iii) Lessee shall promptly provide Lessor with copies of all notices received or delivered by Lessee and filings made by Lessee in connection with such proceeding; and (iv) upon termination of such proceedings, it shall be the obligation of Lessee 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 attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith. Lessor shall at the request of Lessee, execute or join in the execution of any instruments or documents necessary in connection with such contest or proceedings, but Lessor shall incur no cost or obligation thereby.

Section 6.02. Utilities. Lessee shall contract, in its own name, for and pay when due all charges for the connection and use of any water, gas, electricity, telephone, garbage collection, sewer use and other utility services supplied to the Property during the Lease Term. Under no circumstances shall Lessor be responsible for any interruption of any utility service.

Section 6.03. Insurance.

(a) **Coverage.** Throughout the Lease Term, Lessee shall maintain, with respect to the Property, at its sole expense, the following types and amounts of insurance, in addition to such other insurance as Lessor may reasonably require from time to time:

(i) Insurance against loss or damage to real property and personal property under an "all risk" or "special form" 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 the Property is located within a moderate to high earthquake hazard zone as determined by an approved insurance company set forth in Section 6.03(b)(x) below). Such policy shall also include soft costs, a joint loss agreement, coverage for ordinance or law covering the loss of value of the undamaged portion of the Property, costs to demolish and the increased costs of construction if any of the improvements located on, or the use of, the Property 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 Property and no less than 25% of the replacement cost for costs to demolish and the increased cost of construction, or in an amount otherwise specified by Lessor. Such insurance shall be in amounts not less than 100% of the full insurable replacement cost values (without deduction for depreciation), with an agreed amount endorsement or without any coinsurance provision, and with sublimits satisfactory to Lessor, as determined from time to time at Lessor's request but not more frequently than once in any 12-month period.

(ii) Commercial general liability insurance, including products and completed operation liability, covering Lessor and Lessee against bodily injury liability, property damage liability and personal and advertising injury 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. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Lessee's obligations under Article X hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of Lessee or Lessor because of the negligence or other acts of the other, shall be in amounts of not less than \$5,000,000 per occurrence for bodily injury and property damage, and \$5,000,000 general aggregate per location, or such higher limits as Lessor may reasonably require from time to time, and shall be of form and substance satisfactory to Lessor. Such limits of insurance can be acquired through Commercial General liability and Umbrella liability policies.

(iii) Workers' compensation and Employers Liability insurance with statutorily mandated limits covering all persons employed by Lessee on the Property in connection with any work done on or about the Property for which claims for death or bodily injury could be asserted against Lessor, Lessee or the Property.

(iv) Rental value insurance, equal to 100% of the Base Annual Rental (as may adjusted hereunder) for a period of not less than twelve (12) months, which insurance shall be carved out of Lessee's business interruption coverage for a separate rental value insurance payable to Lessor, or if rental value insurance is included in Lessee's business interruption coverage, the insurer shall provide priority payment to any rent obligations, and such obligations shall be paid directly to Lessor. Such insurance is to follow form of the real property "all risk" or "special form" coverage and is not to contain a co-insurance clause. Such insurance is to have no time limitation with respect to any period of indemnity and a minimum of twelve (12) months of extended period of indemnity.

(v) Automobile liability insurance, including owned, non-owned and hired car liability insurance for combined limits of liability of \$5,000,000.00 per occurrence. The limits of liability can be provided in a combination of an automobile liability policy and an umbrella liability policy.

(vi) 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 Property and in an amount equal to the lesser of 25% of the 100% replacement cost of the Property or \$5,000,000.00.

(vii) Such additional and/or other insurance and in such amounts as at the time is customarily carried by prudent owners or tenants with respect to improvements and personal property similar in character, location and use and occupancy to the Property.

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

(i) provide (A) for a waiver of subrogation by the insurer as to claims against Lessor, 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 Lessee, its officers, directors, employees or agents, or anyone acting for Lessee or any subtenant or other occupant of the Property; and (C) that any losses otherwise payable thereunder shall be payable notwithstanding any act or omission of Lessor or Lessee 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 Lessor and the insurance policy shall not be brought into contribution with insurance maintained by Lessor;

(iii) contain deductibles not to exceed \$50,000 (and increases with the reasonable consent of Lessor);

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

(v) provide that the policy of insurance shall not be terminated, cancelled or amended without at least thirty (30) days' prior written notice to Lessor 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 Property if Lessor 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 6.03(a)(iii) above, name Lessor and any Lessor Affiliate or Lender, if applicable, requested by Lessor, as an "additional insured" with respect to general liability insurance and real property, and as a "loss payee" with respect to all real property and rental value insurance, as appropriate and as their interests may appear;

(ix) be evidenced by delivery to Lessor and any Lender designated by Lessor, if applicable, of an Acord Form 28 for property, rental value and boiler & machinery coverage (or any other form requested by Lessor) and an Acord Form 25 for commercial general liability, workers' compensation and umbrella coverage (or any other form requested by Lessor); 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 Lessor. The approved Acord Forms are attached hereto as Exhibit D; and

(x) be issued by insurance companies licensed to do business in the states where the Property is located and which are rated no less than A-X by Best's Insurance Guide or are otherwise approved by Lessor.

(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 Lessee, or become void or in jeopardy by reason of the failure or impairment of the capital of any insurer, Lessee shall immediately obtain new or additional insurance reasonably satisfactory to Lessor and any Lender designated by Lessor; (ii) the minimum limits of insurance coverage set forth in this Section 6.03 shall not limit the liability of Lessee for its acts or omissions as provided in this Lease; (iii) Lessee shall procure policies for all insurance for periods of not less than one year and shall provide to Lessor and any servicer or Lender of Lessor certificates of insurance or, upon Lessor's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Lease is in effect at all times; (iv) Lessee shall pay as they become due all premiums for the insurance required by this Section 6.03; and (v) in the event that Lessee fails to comply with any of the requirements set forth in this Section 6.03, within ten (10) days of the giving of written notice by Lessor to Lessee, (A) Lessor shall be entitled to procure such insurance; and (B) any reasonable sums expended by Lessor in procuring such insurance shall be Additional Rental and shall be repaid by Lessee, together with interest thereon at the Default Rate, from the time of payment by Lessor until fully paid by Lessee immediately upon written demand therefor by Lessor.

(d) **Blanket Policies.** Notwithstanding anything to the contrary in this Section 6.03, any insurance which Lessee is required to obtain pursuant to this Section 6.03 may be carried under a "blanket" policy or policies covering other properties or liabilities of Lessee provided that such "blanket" policy or policies otherwise comply with the provisions of this Section 6.03.

Section 6.04. Tax and Insurance Impound. Upon the occurrence of a monetary Event of Default with respect to the payment of taxes or insurance, in addition to any other remedies, Lessor may require Lessee to pay to Lessor on the first day of each month the amount that Lessor reasonably estimates will be necessary in order to accumulate with Lessor sufficient funds in an impound account (which shall not be deemed a trust fund) (the "Reserve") for Lessor to pay any and all real estate taxes ("Real Estate Taxes") and insurance premiums ("Insurance Premiums") for the Property for the ensuing twelve (12) months (only), or, if due

sooner, Lessee shall pay the required amount immediately upon Lessor's demand therefor. Lessor shall, upon prior written request of Lessee, provide Lessee with evidence reasonably satisfactory to Lessee that payment of the Real Estate Taxes and Insurance Premiums was made in a timely fashion. In the event that the Reserve does not contain sufficient funds to timely pay any Real Estate Taxes or Insurance Premiums, upon Lessor's written notification thereof, Lessee shall, within five (5) Business Days of such notice, provide funds to Lessor in the amount of such deficiency. Lessor shall pay or cause to be paid directly to the applicable taxing authorities and insurance company, as the case may be, any Real Estate Taxes and Insurance Premiums then due and payable for which there are funds in the Reserve; *provided, however*, that in no event shall Lessor be obligated to pay any Real Estate Taxes or Insurance Premiums in excess of the funds held in the Reserve, and Lessee shall remain liable for any and all Real Estate Taxes, including fines, penalties, interest or additional costs imposed by any taxing authority (unless incurred as a result of Lessor's failure to timely pay Real Estate Taxes for which it had funds in the Reserve) and Insurance Premiums. Lessee shall cooperate fully with Lessor in assuring that the Real Estate Taxes and Insurance Premiums are timely paid. Lessor may deposit all Reserve funds in accounts insured by any federal or state agency and, so long as Lessor is the owner of the Property or an Affiliate of Lessor is the property manager of the Property, Lessor may commingle such funds with other funds and accounts of Lessor. Interest or other gains from such funds, if any, shall be the sole property of Lessor. Upon an Event of Default, in addition to any other remedies, Lessor may apply all impounded funds in the Reserve against any sums due from Lessee to Lessor with respect to the Event of Default. Lessor shall give to Lessee an annual accounting showing all credits and debits to and from such impounded funds received from Lessee.

ARTICLE VII

MAINTENANCE; ALTERATIONS

Section 7.01. Condition of Property; Maintenance. Except as expressly provided elsewhere in the Lease, Lessee hereby accepts the Property "AS IS" and "WHERE IS" with no representation or warranty of Lessor as to the condition thereof. Lessee shall, at its sole cost and expense, be responsible for (a) keeping all of the building, structures and improvements erected on the Property in good order and repair, free from actual or constructive waste, including without limitation, the roof and the HVAC and other electrical and mechanical systems; (b) the repair or reconstruction of any building, structures or improvements erected on the Property damaged or destroyed by a Casualty; (c) subject to Section 7.02, making all necessary structural, non-structural, exterior and interior repairs and replacements to any building, structures or improvements erected on the Property; and (d) paying all operating costs of the Property in the ordinary course of business. Lessee waives any right to require Lessor to maintain, repair or rebuild the Property or make repairs at the expense of Lessor pursuant to any Legal Requirements at any time in effect.

Section 7.02. Alterations and Improvements. During the Lease Term, Lessee shall not alter the exterior, structural, plumbing or electrical elements of the Property in any manner without the consent of Lessor, which consent shall not be unreasonably withheld or conditioned; *provided, however*, Lessee may undertake alterations to the Property, individually, costing less than \$100,000 (provided that the total for any twelve month period is not greater than \$250,000) without Lessor's prior written consent. If Lessor's consent is required hereunder and Lessor consents to the making of any such alterations, the same shall be made by Lessee at

Lessee's sole expense by a licensed contractor and according to plans and specifications approved by Lessor and subject to such other conditions as Lessor shall reasonably require. Any work at any time commenced by Lessee on the Property shall be prosecuted diligently to completion, shall be of good workmanship and materials and shall comply fully with all the terms of this Lease and all Legal Requirements. Upon completion of any alterations individually costing \$100,000 or more, Lessee shall promptly provide Lessor with evidence of full payment to all laborers and materialmen contributing to the alterations. Additionally, upon completion of any alterations, Lessee shall promptly provide Lessor with (a) an architect's certificate certifying the alterations to have been substantially 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 Lessor. Lessee shall keep the Property free from any liens arising out of any work performed on, or materials furnished to, the Property (or, at Lessee's election, Lessee shall bond over such liens or have a title endorsement issued to Lessor's owner's policy which insures over such liens). Any addition to or alteration of the Property that isn't removable and that becomes permanently part of the Property (but not including any replacements for the Special Equipment (as defined in the Purchase and Sale Agreement) whether or not such Special Equipment that is deemed to be real property under the laws of the State of Illinois) shall be deemed a part of the Property and belong to Lessor, and Lessee shall execute and deliver to Lessor such instruments as Lessor may require to evidence the ownership by Lessor of such addition or alteration.

Section 7.03. Encumbrances. During the Lease Term, Lessor shall not have the right to grant easements on, over, under or above the Property without the prior written consent of Lessee, which shall not be unreasonably withheld and Lessee shall not be deemed to be unreasonable if Lessee does not consent to any such easements that interfere with Lessee's use of the Property or cause Lessee to incur any costs. Lessee shall comply with and perform all obligations of Lessor under all easements, declarations, covenants, restrictions and other items of record now encumbering the Property. Without Lessor's prior written consent, Lessee shall not grant any easements on, over, under or above the Property.

ARTICLE VIII

USE OF THE PROPERTY; COMPLIANCE

Section 8.01. Use. During the Lease Term, the Property shall be used solely for the operation of a Permitted Facility. Except during periods when a Property is untenable due to Casualty or Condemnation (and provided that Lessee continues to strictly comply with the other terms and conditions of this Lease), Lessee shall at all times during the Lease Term occupy the Property and shall diligently operate its business on the Property. Notwithstanding any provision contained herein, Lessee shall not be in default under this Section 8.01 (or any other provision of this Lease) and a Property shall not be considered a "go dark" location unless and until Lessee fails to continue to operate its business at the Property (excluding instances of Casualty, Condemnation and Force Majeure) for more than six (6) months. Thereafter, in the event Lessee is unable to operate the Property as a Permitted Facility due to circumstances beyond the reasonable control of Lessee (and Lessee provides to Lessor an officer's certificate executed by an officer of Lessee certifying to the same), then in such event, within sixty (60) days following such six (6) month period, Lessee shall (i) re-open the Property; or (ii) exercise

Lessee's assignment or subletting rights as permitted under this Lease; (iii) with Lessor's prior written approval, purchase the Property from Lessor at Lessor's Investment; or (iv) provide Lessor with an officer's certificate certifying the good faith business reasons Lessee is unable to complete (i), (ii) or (iii) within said six (6) month period and setting forth the additional time frame Lessee will need to comply with this Section 8.01. In the case of item (iv), Lessor shall, in its reasonable discretion based upon the certificate provided by Lessee, determine the additional time frame Lessee will have to comply with this Section 8.01. Lessee shall provide Lessor with written notice of the "go dark" Property at least ten (10) days prior to the commencement of the six (6) month period. Notwithstanding the foregoing, the terms and provisions of this Lease and Lessee's obligations hereunder shall remain in full force and effect with respect to any "go dark" period.

Section 8.02. Alternative Use. Lessee shall not, by itself or through any assignment, sublease or other type of transfer, convert the Property to an alternative use during the Lease Term without Lessor's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. In the event that Lessee shall change the use of the Property or the concept or brand operated on the Property, only as may be expressly permitted herein or consented to by Lessor in writing, Lessee shall provide Lessor with written notice of any such change and a copy of the franchise agreement related to such new concept or brand, if any.

Section 8.03. Compliance. Lessee's use and occupation of the Property, and the condition thereof, shall, at Lessee's sole cost and expense, comply fully with all Legal Requirements and all restrictions, covenants and encumbrances of record (as of the Effective Date), and any owner obligations under such Legal Requirements, or restrictions, covenants and encumbrances of record (as of the Effective Date), with respect to the Property, in either event, the failure with which to comply could have a Material Adverse Effect. Without in any way limiting the foregoing provisions, Lessee 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 it affects the Property now or hereafter in effect and Lessee shall comply with all Legal Requirements and directives of Governmental Authorities and, at Lessor's request, provide to Lessor copies of all notices, reports and other communications exchanged with, or received from, Governmental Authorities relating to such an event. Lessee shall also reimburse Lessor for all Costs incurred by Lessor in evaluating the effect of such an event on the Property and this Lease, in obtaining any necessary license from Governmental Authorities as may be necessary for Lessor to enforce its rights under the Lease, and in complying with all Legal Requirements applicable to Lessor as the result of the existence of such an event and for any penalties or fines imposed upon Lessor as a result thereof. Lessee will use its best efforts to prevent any act or condition to arise on or about the Property after the date of this Lease which will materially increase any insurance rate thereon, except when such acts are required in the normal course of its business and Lessee shall pay for such increase. Lessee agrees that it will defend, indemnify and hold harmless the Indemnified Parties from and against any and all Losses caused by, incurred or resulting from Lessee's failure to comply with its obligations under this Section.

Section 8.04. Environmental.

(a) Covenants.

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

(A) The Property and Lessee shall not be (1) in violation of any Remediation required by any Governmental Authority, or (2) subject to any Remediation obligations under any Environmental Laws. Lessee shall not be in violation of any investigation or inquiry by any Governmental Authority.

(B) All uses and operations on or of the Property, whether by Lessee or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto.

(C) There shall be no Releases in, on, under or from the Property, except in Permitted Amounts.

(D) There shall be no Hazardous Materials or Regulated Substances in, on or under the Property, except in Permitted Amounts. Above and below ground storage tanks shall be properly permitted and only used as permitted.

(E) Lessee shall keep the Property or cause the Property to be kept free and clear of all Environmental Liens, whether due to any act or omission of Lessee or any other Person.

(F) Lessee shall not act or fail to act or allow any other tenant, occupant, guest, customer or other user of the Property under Lessee's control to act or fail to act in any way that (1) materially increases a risk to human health or the environment, (2) poses an unreasonable or unacceptable risk of harm to any Person or the environment (whether on or off the Property), (3) has a Material Adverse Effect, (4) is contrary to any material requirement set forth in the insurance policies maintained by Lessee or Lessor, (5) constitutes a public or private nuisance or constitutes waste, (6) violates any covenant, condition, agreement or easement applicable to the Property, or (7) would result in any reopening or reconsideration of any prior investigation or causes a new investigation by a Governmental Authority having jurisdiction over the Property.

(G) Lessee shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property as may be reasonably requested by Lessor (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lessor the reports and other results thereof, and Lessor and the other Indemnified Parties shall be entitled to rely on such reports and other results thereof.

(H) Lessee shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to this Section 8.04, including but not limited to providing all relevant information and making knowledgeable persons available for interviews.

(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 Lessee to satisfy any one or more of the covenants set forth in subsections (A) through (F) above provided that Lessee shall be in compliance with the requirements of any Governmental Authority with respect to the Remediation of any Release at the Property.

(b) **Notification Requirements.** Lessee shall immediately notify Lessor in writing upon Lessee obtaining actual knowledge of (i) any Releases or Threatened Releases in, on, under or from the Property other than in Permitted Amounts, or migrating towards the Property; (ii) any non-compliance with any Environmental Laws related in any way to the Property; (iii) any actual or potential Environmental Lien or activity use limitation; (iv) any required or proposed Remediation of environmental conditions relating to the Property required by applicable Governmental Authorities; and (v) any written or oral notice or other communication of which Lessee becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to Hazardous Materials, Regulated Substances or above or below ground storage tanks, or Remediation thereof at or on the Property, other than in Permitted Amounts, possible liability of any Person relating to the Property pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Section. Lessee shall, upon Lessor's written request, deliver to Lessor a certificate stating that Lessee is and has been in full compliance with all of the environmental representations, warranties and covenants in this Lease.

(c) **Remediation.** Lessee shall, at its sole cost and expense, and without limiting any other provision of this Lease, effectuate any Remediation required by any Governmental Authority of any condition (including, but not limited to, a Release or Threatened Release) in, on, under or from the Property and take any other reasonable action deemed necessary by any Governmental Authority for protection of human health or the environment. Should Lessee fail to undertake any required Remediation in accordance with the preceding sentence, Lessor, after written notice to Lessee and Lessee's failure to immediately undertake such Remediation, shall be permitted to complete such Remediation, and all Costs incurred in connection therewith shall be paid by Lessee. Any Cost so paid by Lessor, together with interest at the Default Rate, shall be deemed to be Additional Rental hereunder and shall be immediately due from Lessee to Lessor.

(d) **Indemnification.** Lessee 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, including, but not limited to, all Costs of Remediation

required by a Governmental Authority, arising out of or in any way relating to any Environmental Laws, Hazardous Materials, Regulated Substances, above or below ground storage tanks, or other environmental matters concerning the Property. It is expressly understood and agreed that Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason.

(e) **Right of Entry.** Lessor and any other Person designated by Lessor, including but not limited to any receiver, any representative of a Governmental Authority, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times (including, without limitation, in connection with the exercise of any remedies set forth in this Lease) to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lessor's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Lessee shall cooperate with and provide access to Lessor and any other Person designated by Lessor. Any such assessment or investigation shall be at Lessee's sole cost and expense if Lessor's right of entry was triggered by Lessee's violation of an Environmental Law.

(f) **Inspections.** At its sole cost and expense, Lessee shall have the Property inspected as may be required by any Environmental Law for seepage, spillage and other environmental concerns. Lessee shall maintain and monitor all above and below ground storage tanks in accordance with all Environmental Laws. Lessee shall provide Lessor with written certified results of all inspections performed on the Property. All costs and expenses associated with the inspection, preparation and certification of results, as well as those associated with any corrective action, shall be paid by Lessee. All inspections and tests performed on the Property shall be in compliance with all applicable Environmental Laws.

(g) **UST Compliance.** Lessee shall comply or cause the compliance with all applicable federal, state and local regulations and requirements regarding above and below ground storage tanks, including, without limitation, any of such regulations or requirements which impose (i) technical standards, including, without limitation, performance, leak prevention, leak detection, notification reporting and recordkeeping; (ii) corrective action with respect to confirmed and suspected Releases; and (iii) financial responsibility for the payment of costs of corrective action and compensation to third parties for injury and damage resulting from Releases. Lessee shall immediately notify Lessor, in writing, of (A) the presence on or under the Property, or the Release from any above or below ground storage tank on, above or under the Property, of any Hazardous Materials or Regulated Substances, apparent or real; and (B) any and all enforcement, clean-up, remedial, removal or other governmental or regulatory actions threatened, instituted or completed pursuant to any of the Environmental Laws affecting the Property. Upon any such Release from any USTs on, above or under the Property of any Hazardous Materials or Regulated Substances, Lessee shall immediately remedy such situation in accordance with all Environmental Laws and any request of Lessor. Should Lessee fail to remedy or cause the remedy of such situation in accordance with all Environmental Laws, Lessor shall be permitted to take such actions in its sole discretion to remedy such situation and all Costs incurred in connection therewith, together with interest at the Default Rate, will be paid by Lessee.

(h) **Survival.** The obligations of Lessee and the rights and remedies of Lessor under this Section 8.04 for any conditions caused by Lessee or otherwise accruing during the Term of this Lease shall survive the termination, expiration and/or release of this Lease for a period of five (5) years.

ARTICLE IX

ADDITIONAL COVENANTS

Section 9.01. Performance at Lessee's Expense. Lessee acknowledges and confirms that Lessor may impose reasonable administrative fees not to exceed \$1000 in each instance in connection with Lessee's request for (a) any release or substitution of Property; (b) the procurement of consents, waivers and approvals with respect to the Property or any matter related to this Lease; and (c) the review of any assignment or sublease or proposed assignment or sublease or the preparation or review of any subordination or non-disturbance agreement.

Section 9.02. Inspection. Lessor and its authorized representatives shall have the right, at all reasonable times and upon giving reasonable prior notice (except in the event of an emergency, in which case no prior notice shall be required), to enter the Property or any part thereof and inspect the same. Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Property and any other loss occasioned by such entry, but excluding damages arising as a result of the negligence or intentional misconduct of Lessor or Lessor's officers, employees, contractors, agents, directors or other representatives ("Lessor's Representatives").

Section 9.03. Financial Information. The provisions of Sections 9.03(a) and 9.03(b) shall apply only if and when Lessee is not a U.S. Publicly Traded Entity.

(a) **Financial Statements.** Within forty five (45) days after the end of each fiscal quarter and within one hundred twenty (120) days after the end of each fiscal year of Lessee, Lessee shall deliver to Lessor (i) complete financial statements of Lessee including a balance sheet, profit and loss statement, statement of changes in financial condition and all other related schedules for the fiscal period then ended; and (ii) income statements for the business at the Property. 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 Lessee. Lessee understands that Lessor will rely upon such financial statements and Lessee represents that such reliance is reasonable. In the event that Lessee's property and business at the Property are ordinarily consolidated with other business for financial statements purposes, such financial statements shall be prepared on a consolidated basis showing separately the sales, profits and losses, assets and liabilities pertaining to the Property with the basis for allocation of overhead of other charges being clearly set forth. The financial statements delivered to Lessor need not be audited, but Lessee shall deliver to Lessor copies of any audited financial statements of Lessee which may be prepared, as soon as they are available.

(b) **Other Information.** Notwithstanding any provision contained herein, upon request at any time, Lessee will provide to Lessor any and all financial information and/or financial statements (and in the form or forms) (i) requested by Lessor in connection with Lessor's filings with or disclosures to any Governmental Authority, including, without limitation, the financial statements required in connection with Securities and Exchange Commission filings by Lessor or its Affiliates; and (ii) as reasonably requested by Lessor.

Section 9.04. OFAC Laws. Upon receipt of notice or upon actual knowledge thereof, Lessee shall immediately notify Lessor in writing if any Person owning (directly or indirectly) any interest in Lessee, 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 9.04 shall not apply to any Person to the extent such Person's interest is in or through a U.S. Publicly Traded Entity.

Section 9.05. Estoppel Certificate. At any time, and from time to time, Lessee shall, promptly and in no event later than ten (10) Business Days after a request from Lessor or any Lender or mortgagee of Lessor, execute, acknowledge and deliver to Lessor or such Lender or mortgagee, as the case may be, a certificate in the form supplied by Lessor, certifying: (a) that Lessee has accepted the Property; (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 Base Monthly Rentals have been paid under this Lease and the amount thereof then payable; (e) to the best of Lessee's knowledge, whether there are then any existing defaults by Lessor 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 Lessee of any default under this Lease which has not been cured, except as to defaults specified in the certificate; (g) the capacity of the Person executing such certificate, and that such Person is duly authorized to execute the same on behalf of Lessee; (h) to the extent accurate, that Lessor has no actual involvement in the management or control of decision making related to the operational aspects or the day-to-day operation of the Property, including any handling or disposal of Hazardous Materials or Regulated Substances; and (i) any other information reasonably requested by Lessor. At any time, and from time to time, Lessor shall, promptly and in no event later than ten (10) Business Days after a request from Lessee, execute, acknowledge and deliver to Lessee an estoppel certificate in form reasonably acceptable to Lessor.

ARTICLE X

RELEASE AND INDEMNIFICATION

Section 10.01. Release and Indemnification. Lessee agrees to use and occupy the Property at its own risk and hereby releases Lessor and Lessor's agents and employees from all claims for any damage or injury (except to the extent caused by the negligent or intentional

acts or omissions of Lessor or Lessor's Representatives) to the full extent permitted by Law. Lessee agrees that Lessor shall not be responsible or liable to Lessee or Lessee'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 (other than any of Lessor's Representatives). Lessee agrees that any employee or agent to whom the Property or any part thereof shall be entrusted by or on behalf of Lessee shall be acting as Lessee's agent with respect to the Property or any part thereof, and neither Lessor nor Lessor's agents, employees or contractors shall be liable for any loss of or damage to the Property or any part thereof (except to the extent caused by the negligent or intentional acts or omissions of Lessor or Lessor's Representatives). Lessee 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 negligence or willful misconduct of such Indemnified Party) caused by, incurred or resulting from Lessee's operations or by Lessee's use and occupancy of the Property, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Lessee 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 Lessee, its officers, employees, agents or other Persons. It is expressly understood and agreed that Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason whatsoever.

ARTICLE XI

CONDEMNATION AND CASUALTY

Section 11.01. Notification. If Lessor or Lessee receives notice of a pending or threatened condemnation of the Property, such party shall promptly give the other party written notice of (a) any Condemnation of the Property, (b) the commencement of any proceedings or negotiations which might result in a Condemnation of the Property, and (c) any Casualty to the Property 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, each party shall promptly send the other copies of all notices, correspondence and pleadings such party receives relating to any such Condemnation, proceedings, negotiations or Casualty.

Section 11.02. Total Condemnation. In the event of a Condemnation of all or substantially all of the Property or a Condemnation (other than a Temporary Taking) of a portion of the Property resulting in the portion of the Property remaining after such Condemnation being unsuitable for use as a Permitted Facility, as determined by Lessee in the exercise of good faith business judgment (and Lessee provides to Lessor an officer's certificate executed by an officer of Lessee certifying to the same) (each such event, a "Total Condemnation"), then, in such event:

(a) **Termination of Lease.** On the date of the Total Condemnation, either party can terminate the Lease and all obligations of either party hereunder shall cease; *provided, however*, that Lessee's obligations to the Indemnified Parties under any indemnification provisions of this Lease and Lessee's obligation to pay Rental and all other Monetary Obligations (whether payable to Lessor or a third party) accruing under this Lease prior to the date of termination shall survive such termination. If the date of

such Total Condemnation is other than the first day of a month, the Base Monthly Rental for the month in which such Total Condemnation occurs shall be apportioned based on the date of the Total Condemnation.

(b) *Net Award*. Lessor shall be entitled to receive the entire Net Award in connection with a Total Condemnation subject to Section 11.07.

Section 11.03. Partial Condemnation or Casualty. In the event of a Condemnation which is not a Total Condemnation (each such event, a "Partial Condemnation"), or in the event of a Casualty:

(a) *Net Awards*. All Net Awards shall be paid to Lessor.

(b) *Lessor Election To Continue or Terminate Lease*. Lessor shall have the option, (i) subject to the right of Lessee to elect otherwise as set forth in subsection (c) below, to terminate this Lease by notifying Lessee in writing within thirty (30) days after Lessee gives Lessor notice (A) of such Partial Condemnation or Casualty, or (B) that title has vested in the condemning authority; or (ii) subject to the right of Lessee to elect otherwise as set forth in subsection (e) below, to continue this Lease in effect, which election shall be evidenced by either a notice from Lessor to Lessee, or Lessor's failure to notify Lessee in writing that Lessor has elected to terminate this Lease within such thirty (30)-day period. Lessee shall have a period of sixty (60) days after receipt of Lessor's notice to terminate referenced above during which to elect, despite such Lessor notice of termination, to continue this Lease on the terms herein provided.

(c) *Continuance of Lease*. If this Lease is not terminated in accordance with the terms of Section 11.03:

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

(ii) Lessee shall promptly commence and diligently prosecute restoration of the Property to the same condition, as nearly as practicable, as prior to such Partial Condemnation or Casualty as approved by Lessor. Subject to the terms and provisions of the Mortgages and upon the written request of Lessee (accompanied by evidence reasonably satisfactory to Lessor that such amount has been paid or is due and payable and is properly part of such costs, and that Lessee has complied with the terms of Section 7.02 in connection with the restoration), Lessor shall promptly make available in installments, subject to reasonable conditions for disbursement imposed by Lessor, an amount up to but not exceeding the amount of any Net Award received by Lessor with respect to such Partial Condemnation or Casualty. Prior to the disbursement of any portion of the Net Award with respect to a Casualty, Lessee shall provide evidence reasonably satisfactory to Lessor of the payment of restoration expenses by Lessee up to the amount of the insurance deductible applicable to such Casualty. Lessor shall be entitled to keep any portion of the Net Award which may be in excess of the cost of restoration, and Lessee shall bear all additional Costs of such restoration in excess of the Net Award.

(d) **No Continuance of Lease.** If this Lease is terminated in accordance with the terms of Section 11.03, then this Lease shall terminate as of the date of the Partial Condemnation or Casualty, as applicable (unless sooner terminated pursuant to the terms hereof). Lessee shall vacate and surrender the Property by such termination date, in accordance with the provisions of this Lease, and on the termination date, all obligations of either party hereunder shall cease; *provided, however*, Lessee's obligations to the Indemnified Parties under any indemnification provisions of this Lease and Lessee's obligations to pay Rental and all other Monetary Obligations (whether payable to Lessor or a third party) accruing under this Lease prior to the date of termination shall survive such termination. In such event, Lessor may retain all Net Awards related to the Partial Condemnation or Casualty (subject to Section 11.07), and Lessee shall promptly pay Lessor an amount equal to the insurance deductible applicable to any Casualty, if applicable.

(e) **Right to Termination.** Notwithstanding any other provision to the contrary contained in this Article XI, in the event that, as a result of a Casualty, Lessee shall reasonably estimate in the exercise of good faith business judgment that the Property cannot be used for the same purpose and substantially with the same utility as before such Casualty (and Lessee provides to Lessor an officer's certificate executed by an officer of Lessee certifying to the same), then, subject to the terms and conditions set forth in this subsection (e), Lessee shall have the right, exercisable by written notice given to Lessor no later than sixty (60) days following such Casualty, to terminate this Lease. If Lessee elects to terminate, this Lease shall terminate as of the date of the Casualty (unless sooner terminated pursuant to the terms hereof). Lessee shall vacate and surrender the Property by such termination date, in accordance with the provisions of this Lease, and all obligations of either party hereunder shall cease as of the date of termination; *provided, however*, Lessee's obligations to the Indemnified Parties under any indemnification provisions of this Lease for claims that arise prior to the date of termination and Lessee's obligations to pay Rental and all other Monetary Obligations (whether payable to Lessor or a third party) accruing under this Lease prior to the date of termination shall survive such termination. In such event, Lessor may retain all Net Awards related to the Casualty, and Lessee shall promptly pay Lessor an amount equal to the insurance deductible applicable to any Casualty.

Section 11.04. Temporary Taking. In the event of a Condemnation of all or any part of the Property for a temporary use (a "Temporary Taking"), this Lease shall remain in full force and effect without any reduction of Base Annual Rental, Additional Rental or any other Monetary Obligation payable hereunder. Except as provided below and subject to the terms and provisions of the Mortgages, Lessee 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 Lessor and Lessee as of the date of such expiration. At the termination of any such Temporary Taking, Lessee will, at its own cost and expense and pursuant to the provisions of Section 7.02, promptly commence and complete restoration of the Property.

Section 11.05. Adjustment of Losses. Any loss under any property damage insurance required to be maintained by Lessee shall be adjusted by Lessor and Lessee. 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 Lessor or, at Lessor's election, Lessee. Notwithstanding the foregoing or any other provisions of this Section 11.05 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, Lessor is hereby authorized and empowered but shall not be obligated, in the name and on behalf of Lessee and otherwise, to file and prosecute Lessee'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 Lessee to Lessor under this Lease, in such order, priority and proportions as Lessor in its discretion shall deem proper.

Section 11.06. Lessee Obligation in Event of Casualty. During all periods of time following a Casualty, Lessee shall take reasonable steps to ensure that the 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 11.07. Lessee Awards and Payments. Notwithstanding any provision contained in this Article XI, Lessee shall be entitled to claim and receive any award or payment from the condemning authority expressly granted to Lessee, whether granted in a separate award or as a portion of any Net Award (so long as such portion is specifically allocated to Lessee's interests). The termination of the Lease pursuant to this Article XI shall not affect rights of Lessee to claim and receive any such awards.

ARTICLE XII

DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES AND MEASURE OF DAMAGES

Section 12.01. Event of Default. Each of the following shall be an event of default by Lessee under this Lease (each, an "Event of Default"):

(a) if any Monthly Base Rental due under this Lease is not paid within three (3) Business Days of when due, or any payment of Additional Rental or other Monetary Obligation are not paid within five (5) days when due; *provided, however*, delays in payment of Rental or other Monetary Obligations which are caused by Lessor or Lessor's banking institution involved in the ACH transfer shall not give rise to an Event of Default, late penalties or default interest under this Lease;

(b) if there is an Insolvency Event with respect to Lessee;

(c) subject to Section 8.01, if Lessee vacates or abandons the Property;

(d) if Lessee fails to observe or perform any of the other covenants, conditions or obligations of Lessee in this Lease; *provided, however*, if any such failure does not involve the payment of any Monetary Obligation, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lessor shall have given Lessee notice thereof and a period of thirty (30) days shall have elapsed, during which period Lessee 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, and Lessee is diligently pursuing a cure of such failure, then Lessee shall have a reasonable period to cure such failure beyond such thirty (30)-day period, which shall in no event exceed ninety (90) days after receiving notice of such failure from Lessor. If Lessee shall fail to correct or cure such failure within such ninety (90)-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required;

(e) if a final, nonappealable judgment is rendered by a court against Lessee which has a Material Adverse Effect and is not discharged or provision made for such discharge within ninety (90) days from the date of entry thereof;

(f) if Lessee shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution; or

(g) if the estate or interest of Lessee in the Property 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 or such longer period as may be permitted by applicable law.

Section 12.02. 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 Lessee, Lessor 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 Lessee's right to possession of the Property shall cease and this Lease, except as to Lessee's liability, shall be terminated;

(b) to the extent not prohibited by applicable Law, to (i) re-enter and take possession of the Property (or any part thereof), any or all personal property or fixtures of Lessee upon the Property and, to the extent permissible, all permits and other rights or privileges of Lessee pertaining to the use and operation of the Property, and (ii) expel Lessee and those claiming under or through Lessee, 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 Lessor hereunder or under a forcible entry and detainer statute or similar Law shall constitute an election by Lessor to terminate this Lease unless such notice specifically so states. If Lessee shall, after default, voluntarily give up possession of the Property to Lessor, deliver to Lessor or its agents the keys to the Property, or both, such actions shall be deemed to be in compliance with Lessor's rights and the acceptance thereof by Lessor or its agents shall not be deemed to constitute a termination of the Lease. Lessor reserves the right following any re-entry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate;

(c) to bring an action against Lessee for any damages sustained by Lessor;

(d) to relet the Property 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 Lessor, in its sole discretion, may determine, with all proceeds received from such reletting being applied to the Rental and other Monetary Obligations due from Lessee in such order as Lessor 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 reletting. Except to the extent required by applicable Law, Lessor shall have no obligation to relet the Property or any part thereof and shall in no event be liable for refusal or failure to relet the Property or any part thereof, or, in the event of any such reletting, for refusal or failure to collect any rent due upon such reletting, and no such refusal or failure shall operate to relieve Lessee of any liability under this Lease or otherwise to affect any such liability. Lessor reserves the right following any re-entry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate as specified in said notice;

(e) to recover from Lessee all Rental and other Monetary Obligations due and owing under the Lease before the date of such Event of Default;

(f) to accelerate and recover from Lessee the discounted present value of the Base Monthly Rental scheduled to become due and owing under this Lease for the remaining original scheduled Lease Term, less the fair market rental value of the Lease for the same period;

(g) to recover from Lessee all Costs paid or incurred by Lessor 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 Lessor's sole option but without any obligation to do so, correct such breach or default and charge Lessee all Costs incurred by Lessor therein. Any sum or sums so paid by Lessor, together with interest at the Default Rate, shall be deemed to be Additional Rental hereunder and shall be immediately due from Lessee to Lessor. Any such acts by Lessor in correcting Lessee's breaches or defaults hereunder shall not be deemed to cure said breaches or defaults or constitute any waiver of Lessor'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 Lessee held by Lessor under this Lease or any other Transaction Document or any Other Agreement against any sum owing by Lessee hereunder;

(j) Without limiting the generality of the foregoing or limiting in any way the rights of Lessor under this Lease or otherwise under applicable Laws, at any time after the occurrence, and during the continuance, of an Event of Default, Lessor shall be entitled to apply for and have a receiver appointed under applicable Law by a court of competent jurisdiction (by ex parte motion for appointment without notice) in any action taken by Lessor to enforce its rights and remedies hereunder in order to protect and preserve Lessor's interest under this Lease or in the Property, and in connection

therewith, LESSEE 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 Lessor, including, without limitation, the right of specific performance.

Section 12.03. Cumulative Remedies. All powers and remedies given by Section 12.02 to Lessor, 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 Lessor under this Lease, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of Lessee contained in this Lease, and no delay or omission of Lessor 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 Lessor may be exercised from time to time, and as often as may be deemed expedient, by Lessor, subject at all times to Lessor's right in its sole judgment to discontinue any work commenced by Lessor or change any course of action undertaken by Lessor.

Section 12.04. Lessee Waiver. Lessee hereby expressly waives, for itself and all Persons claiming by, through and under Lessee, including creditors of all kinds, (a) any right and privilege which Lessee has under any present or future Legal Requirements to redeem the Property or to have a continuance of this Lease for the Lease Term after termination of Lessee'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 XIII

MORTGAGE, SUBORDINATION AND ATTORNMENT

Section 13.01. No Liens. Lessor's interest in this Lease and/or the Property shall not be subordinate to any liens or encumbrances placed upon the Property by or resulting from any act of Lessee, and nothing herein contained shall be construed to require such subordination by Lessor. SUBJECT TO SECTION 16.01, NOTICE IS HEREBY GIVEN THAT LESSEE 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 THE PROPERTY OR LESSEE'S LEASEHOLD INTEREST THEREIN, AND ANY SUCH PURPORTED TRANSACTION SHALL BE VOID.

Section 13.02. 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 the Property by Lessor, and Lessee covenants and agrees to execute and deliver, upon demand, such further instruments subordinating this Lease to the lien of any or all such ground leases and Mortgages as shall be desired by Lessor, or any present or proposed mortgagees

under trust deeds, upon the condition that Lessee shall have the right to remain in possession of the Property 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. Lessor agrees to use its commercially reasonable efforts to provide Lessee with a SNDA executed by each Lender holding a Mortgage, and Lessee agrees to promptly execute and return such SNDA to Lessor.

Section 13.03. Election To Declare Lease Superior. If any mortgagee, receiver or other secured party elects to have this Lease and the interest of Lessee hereunder, be superior to any Mortgage and evidences such election by notice given to Lessee, then this Lease and the interest of Lessee 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 13.04. Attornment. In the event any purchaser or assignee of any Lender at a foreclosure sale acquires title to the Property, or in the event that any Lender or any purchaser or assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to Lender or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and, subject to the provisions of this Article XIII, this Lease shall continue in full force and effect as a direct lease between the Successor Lessor and Lessee, provided that the Successor Lessor shall only be liable for any obligations of Lessor under this Lease which accrue after the date that such Successor Lessor acquires title. The foregoing provision shall be self-operative and effective without the execution of any further instruments.

Section 13.05. Execution of Additional Documents. Although the provisions in this Article XIII shall be self-operative and no future instrument of subordination shall be required, upon request by Lessor, Lessee shall execute and deliver such additional reasonable instruments as may be reasonably required for such purposes.

Section 13.06. Notice to Lender. Lessee shall give written notice to any Lender having a recorded lien upon the Property or any part thereof of which Lessee has been notified of any breach or default by Lessor of any of its obligations under this Lease and give such Lender at least sixty (60) days beyond any notice period to which Lessor might be entitled to cure such default before Lessee may exercise any remedy with respect thereto.

ARTICLE XIV

ASSIGNMENT

Section 14.01. Assignment by Lessor. As a material inducement to Lessor's willingness to enter into the transactions contemplated by this Lease (the "Transaction"), Lessee hereby agrees that Lessor may, from time to time and at any time and without the consent of Lessee, 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 (provided that in each such instance it shall be at not cost or liability to Lessee): (a) the sale, assignment, grant, conveyance, transfer, financing,

re-financing, purchase or re-acquisition of the Property, this Lease or any other Transaction Document, Lessor'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 Lessor, 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 Lessor's or any of its Affiliates' status as a REIT. In the event of any such sale or assignment other than a security assignment, Lessee shall attorn to such purchaser or assignee (so long as Lessor and such purchaser or assignee notify Lessee in writing of such transfer and such purchaser or assignee expressly assumes the obligations of Lessor hereunder from and after the date of such assignment). At the request of Lessor, Lessee will execute such documents confirming the sale, assignment or other transfer and such other agreements as Lessor may reasonably request, provided that the same do not increase the liabilities and obligations of Lessee hereunder. Lessor shall be relieved, from and after the date of such transfer or conveyance, of liability for the performance of any obligation of Lessor contained herein, except for obligations or liabilities accrued prior to such assignment or sale.

Section 14.02. No Assignment by Lessee.

(a) Lessee acknowledges that Lessor has relied both on the business experience and creditworthiness of Lessee and upon the particular purposes for which Lessee intends to use the Property in entering into this Lease. Lessee shall not assign, transfer, convey, pledge or mortgage this Lease or any interest herein or any interest in Lessee, whether by operation of Law or otherwise, without the prior written consent of Lessor, such consent not to be unreasonably withheld, conditioned or delayed. At the time of any assignment of this Lease which is approved by Lessor, the assignee shall assume all of the obligations of Lessee under this Lease pursuant to a written assumption agreement in form and substance reasonably acceptable to Lessor. Such assignment of this Lease pursuant to this Section 14.02 shall not relieve Lessee of its obligations respecting this Lease unless otherwise agreed to by Lessor. Any assignment, transfer, conveyance, pledge or mortgage in violation of this Section 14.02 shall be voidable at the sole option of Lessor. Any consent to an assignment given by Lessor hereunder shall not be deemed consent to any subsequent assignment.

(b) Notwithstanding anything to the contrary contained in this Section 14.02 and provided that no Event of Default has occurred and is continuing and provided further that any assignee agrees to assume all of Lessee's obligations under this Lease, Lessee shall have the right to assign or otherwise transfer all, but not less than all, of its interest in, to and under this Lease without Lessor's consent to (i) an Affiliate of Lessee, (ii) any entity which purchases or otherwise acquires all or substantially all of the assets or equity interest of Lessee in a bona fide sale for fair market value, or (iii) a Qualified Operator. A "Qualified Operator" shall mean a Person that: on a pro forma basis (i.e., following the consummation of the assignment contemplated herein): (A) has a CFCCR (defined below) of at least 3.0x, (B) generates EBITDA (defined below) of at least \$12,000,000 during a trailing twelve (12) month period, (C) has a Lease Adjusted Leverage (defined below) of no more than 2.5x; and (D) has a tangible net worth as determined in accordance with GAAP in excess of \$55,000,000 (each, a "Permitted Transfer"); *provided, however*, that Lessee may satisfy the foregoing conditions of a Qualified Operator by providing, or causing to be provided, a guaranty agreement, in

form and substance reasonably acceptable to and approved by Lessor, in writing, which guaranty shall be from an entity that meets the requirements of (A) and (B) forth in this Section 14.02(b). In the event that Lessee effects a Permitted Transfer pursuant to clause (iii), Lessee shall be released from any liability arising under this Lease from and after the date of such assignment. In the event that Lessee effects a Permitted Transfer pursuant to clauses (i) or (ii), Lessee shall not be released from liability under this Lease.

For purposes hereof:

“*CFCCR*” means with respect to the twelve month period of time immediately preceding the date of determination, the ratio calculated for such period of time, each as determined in accordance with GAAP, of (1) the sum of Net Income (excluding non-cash income), Depreciation and Amortization, Interest Expense, Operating Lease Expense and non-cash expenses to (2) the sum of Operating Lease Expense, scheduled principal payments of long term Debt, scheduled maturities of all Capital Leases, dividends and Interest Expense (excluding non-cash interest expense and amortization of non-cash financing expenses). For purposes of calculating the CFCCR, the following terms shall be defined as set forth below:

“*Capital Lease*” shall mean all leases of any property, whether real, personal or mixed, by a Person, which leases would, in conformity with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person. The term “*Capital Lease*” shall not include any operating lease.

“*Debt*” shall mean with respect to a Person, and for the period of determination (i) indebtedness for borrowed money, (ii) subject to the limitation set forth in sub-item (iv) below, obligations evidenced by bonds, indentures, notes or similar instruments, (iii) obligations under leases which should be, in accordance with GAAP, recorded as Capital Leases, and (iv) obligations under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clauses (i) through (iv) above, except for guaranty obligations of such Person, which, in conformity with GAAP, are not included on the balance sheet of such Person.

“*Depreciation and Amortization*” shall mean the depreciation and amortization accruing during any period of determination with respect to a Person, as determined in accordance with GAAP.

“*Interest Expense*” shall mean for any period of determination, the sum of all interest accrued or which should be accrued in respect of all Debt of a Person, as determined in accordance with GAAP.

“*Net Income*” shall mean with respect to the period of determination, the net income or net loss of a Person. In determining the amount of Net Income, (i) adjustments shall be made for nonrecurring gains and losses or non-cash items allocable to the period of determination, (ii) deductions shall be made for, among

other things, Depreciation and Amortization, Interest Expense, Operating Lease Expense, and (iii) no deductions shall be made for income taxes or charges equivalent to income taxes allocable to the period of determination, as determined in accordance with GAAP.

“*Operating Lease Expense*” shall mean the sum of all payments and expenses incurred by a Person under any operating leases during the period of determination, as determined in accordance with GAAP.

“*EBITDA*” means for the twelve (12) month period ending on the date of determination, the sum of a Person’s net income (loss) for such period plus, in each case to the extent previously deducted in calculating net income (loss): (1) income taxes, (2) principal and interest payments on all of its debt obligations (including any borrowings under short term credit facilities), (3) all non-cash charges including depreciation and amortization, and (4) Non-Recurring Items (defined below).

“*EBITDAR*” means the sum of a Person’s EBITDA and its total land and building rent for the twelve (12) month period ending on the date of determination.

“*Lease Adjusted Leverage*” means with respect to a Person, as of any applicable date, the sum of (1) eight (8) times such Person’s total land and building rent for the twelve (12) month period ending on the date of determination, and (2) the total current balance of such Person’s total debt obligations (including any borrowings under short term credit facilities) on such date, divided by EBITDAR.

“*Non-Recurring Items*” shall mean with respect to a Person, items of the sum (whether positive or negative) of revenue minus expenses that, in the judgment of Lessor, are unusual in nature, occur infrequently and are not representative of the ongoing or future earnings or expenses of such Person.

(c) In connection with an assignment by Lessee pursuant to this Section 14.02, Lessee shall have provided to Lessor, immediately prior to the effective date of such assignment, an officer’s certificate executed by an officer of the assignee certifying the covenant provided in Section 5.10 of this Lease, based upon a list of parties identified by Lessor as holding a ten percent (10%) interest or more in Lessor. Lessor shall provide the written list described in the preceding sentence within five (5) Business Days of written request therefor by Lessee and, in the absence of timely provision of such list, such officer’s certificate shall be based on the latest written list delivered by Lessor to Lessee.

Section 14.03. No Subletting. Lessee shall not sublet the Property without the prior written consent of Lessor, such consent not to be unreasonably withheld, conditioned or delayed.

ARTICLE XV

NOTICES

Section 15.01. Notices. All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Lease (collectively called “Notices”) shall be in writing and given by (a) hand delivery, (b) express overnight delivery service, (c) email or facsimile transmission, or (d) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon actual receipt or attempted (but refused) delivery. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

- If to Lessee: U.S. Auto Parts Network, Inc.
16941 Keegan Ave.
Carson, CA 90746
Attention: Bryan Stevenson
Facsimile: 310-735-0092
Email: bstevenson@usautoparts.com
- With a copy to: Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
Attention: Michael Levinson
Facsimile: (858) 550-6420
Email: mlevinson@cooley.com
- And with a copy to: K&L Gates
70 West Madison Street, Suite 3100
Chicago, Illinois 60602-4207
Attention: Lawrence A. Eiben
Facsimile: 312.827.1268
Email: larry.eiben@klgates.com
- If to Purchaser: STORE Capital Acquisitions, LLC
8501 E. Princess Drive, Suite 190
Scottsdale, AZ 85255
Attention: Michael T. Bennett – Executive Vice
President – Operations
Facsimile: (480) 256-1101
Email: mbennett@storecapital.com
- With a copy to: Kutak Rock LLP
1801 California Street, Suite 3100
Denver, CO 80202
Attention: Kelly G. Reynoldson, Esq.
Facsimile: (303) 292-7799
Email: Kelly.reynoldson@kutakrock.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. Whenever in this Agreement the giving of Notice is required, the giving thereof may be waived in writing at any time by the Person or Persons entitled to receive such Notice.

ARTICLE XVI

WAIVER OF LANDLORD'S LIEN

Section 16.01. Waiver of Landlord's Lien. All personal property, equipment, machinery, trade fixtures and inventory of Lessee installed on, stored on or used at the Property, including without limitation the Special Equipment (as defined in the Purchase and Sale Agreement) and any replacements thereof (collectively, "Lessee's Property"), shall not be deemed part of the Property for any purposes of this Lease, shall be and shall remain the exclusive property of Lessee and shall not be subject to any Lessor's lien or claim for any reason. Lessor hereby waives any and all right to seek the remedy of distress for rent under Illinois law.

ARTICLE XVII

MISCELLANEOUS

Section 17.01. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, acts of God, enemy or hostile governmental action, civil commotion, fire or other casualty beyond the control of the party obligated to perform (each, a "Force Majeure Event") shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, expressly excluding, however, the obligations imposed upon Lessee with respect to Rental and other Monetary Obligations to be paid hereunder.

Section 17.02. 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 the Property 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 the Property 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 Property or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

Section 17.03. Interpretation. Lessor and Lessee 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.

Section 17.04. Characterization. The following expressions of intent, representations, warranties, covenants, agreements, stipulations and waivers are a material inducement to Lessor entering into this Lease:

(a) Lessor and Lessee intend that (i) this Lease constitutes an unseverable, unitary and single lease of the Property, and, if at any time this Lease covers other real property in addition to the Property, neither this Lease, nor Lessee's obligations or rights hereunder may be allocated or otherwise divided among such properties by Lessee; (ii) 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; and (iii) the business relationship created by this Lease and any related documents is solely that of a long-term commercial lease between Lessor and Lessee, 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 Lessor and Lessee, to make them joint venturers, to make Lessee an agent, legal representative, partner, subsidiary or employee of Lessor, nor to make Lessor in any way responsible for the debts, obligations or losses of Lessee.

(b) Lessor and Lessee covenant and agree that: (i) each will treat this Lease as an operating lease pursuant to Statement of Financial Accounting Standards No. 13, 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 17.04; (iii) with respect to the Property, the Lease Term is less than eighty percent (80%) of the estimated remaining economic life of the Property; and (iv) the Base Annual Rental is the fair market value for the use of the Property and was agreed to by Lessor and Lessee on that basis, and the execution and delivery of, and the performance by Lessee of its obligations under, this Lease do not constitute a transfer of the Property.

(c) Lessee waives any claim or defense based upon the characterization of this Lease as anything other than a true lease of the Property. Lessee stipulates and agrees (i) not to challenge the validity, enforceability or characterization of the lease of the Property as a true lease and/or as a single, unitary, unseverable instrument pertaining to the lease of all the Property; and (ii) not to assert or take or omit to take any action inconsistent with the agreements and understandings set forth in this Section 17.04.

(d) Lessor and Lessee agree to provide each other with timely notice of any communications they receive from a Governmental Authority that concern the characterization of the Transaction or this Lease in a manner different from that set forth in this Section 17.04, and they agree to cooperate and consult with respect to such communications

Section 17.05. Disclosure. The parties agree that, notwithstanding any provision contained in this Lease, 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 under the Securities Act or the Exchange Act.

Section 17.06. Bankruptcy. Intentionally deleted.

Section 17.07. 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.

Section 17.08. Memorandum of Lease. Concurrently with the execution of this Lease, Lessor and Lessee are executing Lessor's standard form memorandum of lease in recordable form, indicating the names and addresses of Lessor and Lessee, a description of the Property, the Lease Term, but omitting Rentals and such other terms of this Lease as Lessor may not desire to disclose to the public.

Section 17.09. No Brokerage. Lessor and Lessee represent and warrant to each other that they have no written agreements with brokers concerning the leasing of the Property. Each of Lessor and Lessee 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 17.10. Waiver of Jury Trial and Certain Damages. LESSOR AND LESSEE 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 LESSOR AND LESSEE, LESSEE'S USE OR OCCUPANCY OF THE PROPERTY, 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, LESSOR AND LESSEE EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER PARTY AND ANY OF THE OTHER PARTIES AFFILIATES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS OR EMPLOYEES 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 EACH PARTY 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 17.11. Securitizations. Lessee hereby acknowledges and agrees that Lessor may, from time to time and at any time (a) advertise, issue press releases, send direct mail or otherwise disclose information regarding the Transaction for marketing purposes; and (b) (i) act or permit another Person to act as sponsor, settler, transferor or depositor of, or a holder of interests in, one or more Persons or other arrangements formed pursuant to a trust agreement, indenture, pooling agreement, participation agreement, sale and servicing agreement, limited liability company agreement, partnership agreement, articles of incorporation or similar agreement or document; and (ii) permit one or more of such Persons or arrangements to offer and sell stock, certificates, bonds, notes, other evidences of indebtedness or securities that are directly or indirectly secured, collateralized or otherwise backed by or represent a direct or indirect interest in whole or in part in any of the assets, rights or properties described in Section 14.01 of this Lease, in one or more Persons or arrangements holding such assets, rights or properties, or any of them (collectively, the “Securities”), whether any such Securities are privately or publicly offered and sold, or rated or unrated (any combination of which actions and transactions described in both clauses (i) and (ii) in this paragraph, whether proposed or completed, are referred to in this Lease as a “Securitization”). At no additional cost to Lessee and so long as such requests do not unreasonably interfere with Lessee’s rights under this Lease, Lessee shall reasonably cooperate with Lessor and any Affected Party with respect to all reasonable requests and due diligence procedures and use reasonable efforts to facilitate such Securitization.

In no event shall Lessor take any actions under this Section 17.11 if such actions will unreasonably interfere with Lessee’s rights under the Lease. Lessor shall defend, indemnify and hold harmless Lessee from and against any and all Losses caused by, incurred or resulting directly from Lessor’s acts or omissions with respect to the Securitization, excluding Losses suffered by Lessee arising out of the negligence or willful misconduct of Lessee.

Section 17.12. State-Specific Provisions. The provisions and/or remedies which are set forth on the attached Exhibit D shall be deemed a part of and included within the terms and conditions of this Lease.

Section 17.13. Time Is of the Essence; Computation. Time is of the essence with respect to each and every provision of this Lease. If any deadline provided herein falls on a non-Business Day, such deadline shall be extended to the next day that is a Business Day.

Section 17.14. 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 Lessor 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 Lessor’s right to collect any unpaid amounts or an accord and satisfaction.

Section 17.15. 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 17.16. 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 17.17. 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 17.18. 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 17.19. 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 Illinois. Lessee consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Illinois in accordance with applicable Law. Furthermore, Lessee 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 Lessor to commence any proceeding in the federal or state courts located in the state where the Property is located to the extent Lessor 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 applicable state in which the Property is located, without giving effect to any state's conflict of Laws principles.

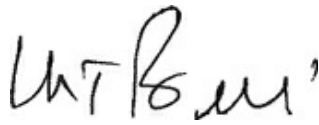
Section 17.20. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original.

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

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

LESSOR:

STORE MASTER FUNDING III, LLC, a Delaware
limited liability company

By: 
Printed Name: Michael T. Bennett
Title: Executive Vice President - Operations

LESSEE:

U.S. AUTO PARTS NETWORK, INC., a
Delaware corporation

A handwritten signature in black ink, appearing to read 'S. Evangelist', with a long horizontal flourish extending to the right.

By:
Printed Name: Shane Evangelist
Title: Chief Executive Officer

EXHIBITS

- Exhibit A: Defined Terms
- Exhibit B: Legal Description and Street Address of Property
- Exhibit C: Authorization Agreement – Pre-Arranged Payments
- Exhibit D: Approved Acord Forms

EXHIBIT A

DEFINED TERMS

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

“*Additional Rental*” has the meaning set forth in Section 4.03.

“*Adjustment Date*” has the meaning set forth in Section 1.07.

“*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.

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

“*Base Annual Rental*” means \$853,125.

“*Base Monthly Rental*” means an amount equal to 1/12 of the applicable Base Annual Rental.

“*Business Day*” means a day on which banks located in Scottsdale, Arizona are not required or authorized to remain closed.

“*Casualty*” means any loss of or damage to any property included within or related to the Property 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.

“*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.

“*Default Rate*” means 18% per annum or the highest rate permitted by Law, whichever is less.

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

“*Environmental Laws*” means federal, state and local Laws, ordinances, common law requirements and regulations and standards, rules, policies and other governmental requirements, 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, USTs, and/or the protection of human health or the environment, or relating to liability for or Costs of Remediation or prevention of Releases, and apply to Lessee and/or the Property.

“*Environmental Liens*” has the meaning set forth in Section 8.04(a)(ii).

“*Event of Default*” has the meaning set forth in Section 12.01.

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

“*Expiration Date*” has the meaning set forth in Section 3.01.

“*Force Majeure Event*” has the meaning set forth in Section 17.01.

“*GAAP*” means generally accepted accounting principles, 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.

“*Hazardous Materials*” includes: (a) oil, petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other materials, contaminants or pollutants, the presence of which causes the Property to be in violation of any local, state or federal Law or regulation, (including without limitation, any Environmental Law), or 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 local, state or federal 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.; and (iv) regulations adopted and publications promulgated pursuant to the aforesaid Laws; (b) asbestos in any form which is friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels

of polychlorinated biphenyls in excess of fifty (50) parts per million; (c) underground storage tanks; and (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority.

“Indemnified Parties” means Lessor and its 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 Lessor.

“Initial Term” has the meaning set forth in Section 3.01.

“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 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.

“Insurance Premiums” shall have the meaning in Section 6.04.

“Law(s)” means any constitution, statute, rule of law, code, ordinance, order, judgment, decree, injunction, rule, regulation, policy, 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 Term” shall have the meaning described in Section 3.01.

“Legal Requirements” means the requirements of all present and future Laws (including, without limitation, Environmental Laws and Laws relating to accessibility to, usability by, and discrimination against, disabled individuals), all 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 the Property or Lessee’s use thereof, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or restoration of the Property, even if compliance therewith necessitates structural changes or improvements or results in interference with the use or enjoyment of the Property.

“Lender” means any lender in connection with any loan secured by Lessor’s interest in the Property, and any servicer of any loan secured by Lessor’s interest in the Property.

“Lessee” has the meaning described in the introductory paragraph.

“Lessee’s Property” has the meaning described in Section 16.01.

“Lessor Entity” or “Lessor Entities” means individually or collectively, as the context may require, Lessor and all Affiliates of Lessor.

“Lessor” has the meaning described in the introductory paragraph.

“Lessor’s Investment” means the sum of (a) the gross purchase price paid (including without limitation, the outstanding balance of any existing mortgage debt assumed) for the Property by Lessor, plus (b) the closing costs and expenses incurred by Lessor with respect to the purchase of the Property, plus (c) ten percent (10%).

“Lessor’s Representatives” has the meaning described in Section 9.02.

“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, attorneys’ fees and other Costs of defense).

“Material Adverse Effect” means a material adverse effect on (a) the Property, including, without limitation, the operation of the Property as a Permitted Facility and/or the value of the Property; (b) the contemplated business, condition, worth or operations of Lessee; (c) Lessee’s ability to perform its obligations under this Lease; or (d) Lessor’s interests in the Property, this Lease or the other Transaction Documents.

“Monetary Obligations” means all Rental and all other sums payable or reimbursable by Lessee under this Lease to Lessor, to any third party on behalf of Lessor, or to any Indemnified Party.

“Mortgages” means, collectively, the mortgages, deeds of trust or deeds to secure debt, assignments of rents and leases, security agreements and fixture filings executed by Lessor for the benefit of Lender with respect to the Property, 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 the 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 6.03 payable with respect to a Property, as the case may be, and in either case, less any Costs incurred by Lessor in collecting such award or proceeds.

“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.

“*Partial Condemnation*” has the meaning set forth in Section 11.03.

“*Permitted Amounts*” shall mean, with respect to any given level of Hazardous Materials or Regulated Substances, that level or quantity or concentration of Hazardous Materials or Regulated Substances in any form or combination of forms which does not constitute a violation of any Environmental Laws.

“*Permitted Facility*” means a means an office, retail and warehouse facility for storage, sale, and distribution of automotive parts, accessories, and related items, as well as 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.

“*Price Index*” means the Consumer Price Index which is designated for the applicable month of determination as the United States City Average for All Urban Consumers, All Items, Not Seasonally Adjusted, with a base period equaling 100 in 1982 - 1984, as published by the United States Department of Labor’s Bureau of Labor Statistics or any successor agency. In the event that the Price Index ceases to be published, its successor index measuring cost of living as published by the same Governmental Authority which published the Price Index shall be substituted and any necessary reasonable adjustments shall be made by Lessor and Lessee in order to carry out the intent of Section 4.02. In the event there is no successor index measuring cost of living, Lessor shall reasonably select an alternative price index measuring cost of living that will constitute a reasonable substitute for the Price Index.

“*Property*” means that parcel of real estate legally described on Exhibit B 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), except that in no event shall Property be deemed to include Lessee’s Property.

“*Purchase and Sale Agreement*” means that certain Purchase and Sale Agreement dated the same date hereof between Lessor and Seller with respect to the Property.

“*Real Estate Taxes*” has the meaning set forth in Section 6.04.

“*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 presence, release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials, Regulated Substances or USTs.

“*Remediation*” means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Materials, Regulated Substances or USTs, any actions to prevent, cure or mitigate any Release, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or any evaluation relating to any Hazardous Materials, Regulated Substances or USTs.

“*Rental*” means, collectively, the Base Annual Rental and the Additional Rental.

“*Rental Adjustment*” means an amount equal to the lesser of (a) 1.5% of the Base Annual Rental in effect immediately prior to the applicable Adjustment Date, or (b) 1.25 multiplied by the product of (i) the percentage change between the Price Index for the month which is two months prior to the Effective Date or the Price Index used for the immediately preceding Adjustment Date, as applicable, and the Price Index for the month which is two months prior to the applicable Adjustment Date; and (ii) the then current Base Annual Rental.

“*Requisition*” means any temporary requisition or confiscation of the use or occupancy of the Property 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.

“*Reserve*” shall have the meaning in Section 6.04.

“*Securities*” has the meaning set forth in Section 17.11.

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

“*Securitization*” has the meaning set forth in Section 17.11.

“*Seller*” means Whitney Automotive Group, Inc., a Delaware corporation.

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

“*Successor Lessor*” has the meaning set forth in Section 13.04.

“*Taking*” means (a) any taking or damaging of all or a portion of the Property (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 Property.

“*Temporary Taking*” has the meaning set forth in Section 11.04.

“Threatened Release” means a substantial likelihood of a Release which requires action to prevent or mitigate damage to the soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air or any other environmental medium comprising or surrounding any Property which may result from such Release.

“Total Condemnation” has the meaning set forth in Section 11.02.

“Transaction” has the meaning set forth in Section 14.01.

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

“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 tanks and associated product piping systems used in connection with storage, dispensing and general use of Regulated Substances.

EXHIBIT B

LEGAL DESCRIPTION AND STREET ADDRESS OF THE PROPERTY

Street Address:

<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
761-765 Progress Parkway	LaSalle	Illinois	61301

Legal Description:

LOT 1 IN CANNON INDUSTRIAL PARK FIRST ADDITION, LOCATED IN THAT PART OF THE NORTH HALF OF SECTION 5, TOWNSHIP 33 NORTH, RANGE 2, EAST OF THE THIRD PRINCIPAL MERIDIAN, SITUATED IN LASALLE COUNTY, ILLINOIS, EXCEPT THAT PART CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION BY DEED RECORDED JUNE 19, 2008 AS DOCUMENT 2008-13925, DESCRIBED AS FOLLOWS:

A PART OF LOT 1 IN CANNON INDUSTRIAL PARK FIRST ADDITION, A SUBDIVISION OF PART OF THE NORTH HALF OF SECTION 5, TOWNSHIP 33 NORTH, RANGE 2 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED MAY 14, 1996 AS DOCUMENT NUMBER 96-07841 IN THE RECORDER'S OFFICE OF LASALLE COUNTY, STATE OF ILLINOIS, DESCRIBED AS FOLLOWS, USING BEARINGS BASED ON AN ASSUMED DATUM:

COMMENCING AT AN IRON PIN AT THE SOUTHEAST CORNER OF LOT 1 IN SAID SUBDIVISION; THENCE NORTH 0 DEGREES 46 MINUTES 12 SECONDS EAST, 1,204.22 FEET (RECORDED 1,204.44 FEET) ON THE EAST LINE OF SAID LOT 1 TO THE NORTHEAST CORNER THEREOF, BEING ALSO THE SOUTHERLY RIGHT OF WAY LINE OF FAI ROUTE 80 AND THE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 46 MINUTES 12 SECONDS WEST, 17.59 FEET ON SAID EAST LINE OF SAID LOT 1; THENCE NORTH 89 DEGREES 43 MINUTES 58 SECONDS WEST, 223.13 FEET, TO THE SOUTHERLY RIGHT OF WAY LINE OF FAI ROUTE 80; THENCE EASTERLY ON SAID RIGHT OF WAY LINE, 222.14 FEET ON A CURVE TO THE LEFT, HAVING A RADIUS OF 15,048.72 FEET, WHOSE CHORD BEARS SOUTH 88 DEGREES 15 MINUTES 13 SECONDS EAST, 222.13 FEET, TO THE POINT OF BEGINNING, SITUATED IN LASALLE COUNTY, ILLINOIS.

EXHIBIT C
FORM OF
AUTHORIZATION AGREEMENT – PRE-ARRANGED PAYMENTS

AUTHORIZATION AGREEMENT
PRE-ARRANGED PAYMENTS

Reference Number _____
I (We) (Tenant) authorize [_____] (Servicer) to initiate entries identified below as required. Tenant further authorizes the bank below to post such entries to the identified checking account beginning with the payment draft date of ____/____/____. A minimum of thirty (30) days advance notice is required to process first payment by ACH.

Bank Name _____ Branch _____
City _____ State _____ Zip _____

*****Transit - ABA**

Account Number Information

ACCOUNT TYPE*** Please specify checking or savings account (C/S) _____

PLEASE FILL IN BANK INFORMATION CAREFULLY
ATTACH VOIDED CHECK FOR ACCOUNT VERIFICATION

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 may be terminated upon thirty days prior written notification from the Tenant to the servicer. Tenant has the right to stop payment of any entry by notification to the bank prior to the scheduled debit date. If an erroneous entry is initiated by the servicer to the Tenant's account, Tenant shall have the right to have the amount of such entry reversed by the bank. To initiate a reversal, the Tenant must notify the bank in writing that an error has occurred and request a reversal. Such notice must be within 15 calendar days after the Tenant receives the statement of account or other written notice from the bank identifying the error. Tenant hereby authorizes the servicer to impose a \$60.00 returned item processing fee, subject to change, via ACH debit against the above-referenced account of the Tenant if a non sufficient funds or stop payment item is charged against the servicer's account.

Tenant	Tax Identification
Name(s) _____	Number _____
Date _____	
Print Authorized Name _____	
Authorized Signature _____	
Print Authorized Name _____	
Authorized Signature _____	
Contact Phone Number _____	Fax Number _____
Email Address: _____	

Return Original to: [_____]]
Attn: [_____]]
[_____]]
[_____]]
Fax Number: [_____]]

EXHIBIT D

APPROVED ACORD FORMS
(see attached)

D-1