THE STATE OF TEXAS § COUNTY OF BRAZORIA §

#### TAX ABATEMENT AGREEMENT WITH BRASK, INC.-NEELA AND NEELILA, LLC FOR PROPERTY LOCATED IN THE <u>CITY OF PEARLAND REINVESTMENT ZONE #30</u>

This Tax Abatement Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between Brazoria County ("County") and NEELILA, LLC, a limited liability company authorized to do business in Texas ("Owner"), the owner of taxable real property in Brazoria County, Texas, and BRASK, INC. – NEELA, a corporation authorized to do business in Texas and the lessee of the property described in this agreement ("Brask"). This agreement is relative to property located in the CITY OF PEARLAND REINVESTMENT ZONE #30 ("Reinvestment Zone").

#### I. AUTHORIZATION

**1.01** This Agreement is authorized by the Texas Property Redevelopment and Tax Abatement Act, V.A.T.S. Tax Code, Chapter 312, as amended, and by Order of the Brazoria County Commissioners Court approving this abatement.

#### **II. DEFINITIONS**

- 2.01 As used in this Agreement, the following terms shall have the meanings set forth below:
- a. Certified Appraised Value means the January 1st appraised value of the property within the Reinvestment Zone as certified by the Brazoria County Appraisal District as of the January 1st valuation date.
- b. Abatement means the full or partial exemption from ad valorem taxes of certain property in a reinvestment zone designated for economic development purposes.
- c. Eligible Property means the buildings, structures, tangible personal property as defined in the Texas Tax Code including fixed machinery and equipment, process units, site improvements, and related fixed improvements necessary to the operation and administration of the facility. New Eligible Property means Eligible Property construction of which commences subsequent to the date of Commissioners Court Action approving the Tax Abatement. During the construction phase of the New Eligible Property, Brask may make such change orders to the New Eligible Property as are reasonably necessary to accomplish its intended use.
- d. Incligible property means land, existing improvements, tangible personal property that the Brazoria County Appraisal District classifies as inventory and supplies, tools, furnishings and other forms of movable personal property, vehicles, vessels, aircraft, housing, hotel accommodations, retail facilities, and deferred maintenance investments, tangible personal property located in the reinvestment zone prior to the effective date of the tax abatement agreement, real property with a productive life of less than 10 years, property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the State of

Texas, or any other property for which abatement is not allowed by State law.

e. The phrase "actual productive life" in this Agreement means the actual period of time the improvements were in active service and operation as part of a facility operating in a producing capacity, and this definition supersedes any other definition stated elsewhere.

**2.02** The Guidelines and Criteria for Granting Tax Abatement in a Reinvestment Zone created in Brazoria County, adopted by the Brazoria County Commissioners Court, are attached hereto as "Exhibit B" and made a part hereof. All definitions set forth therein are applicable to this Agreement unless otherwise defined or stated in the Agreement.

#### **III. SUBJECT PROPERTY**

3.01 CITY OF PEARLAND REINVESTMENT ZONE #30 (the "Reinvestment Zone") is an area generally described as 18.055 acres located within the Replat No. 1 of the Minor Plat of Jud's Development No. I, Section A, in Brazoria County, Texas as recorded in File No. 2023020999 in the Official Public Records of Brazoria County, Texas. The legal description of the Reinvestment Zone is attached hereto as "Exhibit C."

**3.02** The Brazoria County Appraisal District has established values for land, personal property, and improvements of the Owner in the subject property or of certain tracts of land from which the subject tract of land is derived as of January 1, 2023. Such values are attached hereto as "Exhibit D."

#### **IV. VALUE AND TERM OF ABATEMENT**

**4.01** This Tax Abatement shall be effective January 1, 2025 and shall continue for a period of five (5) years, or one-half (½) the productive life of the improvements, whichever is less. Fifty percent (50%) of the value of New Eligible Properties shall be abated subject to Section 4.03 herein below.

**4.02** Pursuant to the above-provisions and subject to Section 4.03 herein below, the term of abatement under this agreement shall commence January 1, 2025 and continue through December 31, 2029. The benefits of abatement shall continue throughout the last year in which abatement is applied as long as the property and property owner continue to qualify for abatement throughout the last year.

4.03 If pursuant to the above Section 4.01, it is determined upon completion of improvements, or at any time thereafter (including after the term of abatement otherwise granted under this agreement) that one-half ( $\frac{1}{2}$ ) the productive life of improvements is less than the term of years of abatement under this agreement, the term of abatement shall be reduced to one-half ( $\frac{1}{2}$ ) the productive life of the improvements and Brask shall pay to County the full amount of taxes otherwise abated in each year in which the term of abatement exceeded one-half ( $\frac{1}{2}$ ) of the actual productive life of the improvements. The amount of taxes for part of a year, if applicable, shall be determined by proration (by multiplying the amount of abated taxes for the entire year by a fraction, the denominator of which is 365 and the numerator of which is the number of days in excess of the term of abatement

represented by one-half (½) of the actual productive life of the improvements). Any recapture hereunder shall be payable within sixty (60) days of written notice. Brask shall certify by statement to County and the Brazoria County Appraisal District the estimated productive life of improvements upon completion of the construction; provided, however Brask's estimate of productive life shall not control the operation of this subsection.

**4.04** The payment obligation under Section 4.03 is a continuing obligation. Brask understands and agrees that this Agreement mandates that Brask's abated improvements be in active service and operation as part of a facility operating in a producing capacity for a period of ten (10) years from the effective commencement date of this agreement (to December 31, 2034) in order for Brask to receive five (5) full years of abatement that are not subject to the term reduction and recapture/payment obligation provisions of Section 4.03 of this agreement.

#### V. TAXABILITY

5.01 During the period that this Tax Abatement is effective, taxes shall be payable as follows:

- (a) The value of Ineligible Property shall be fully taxable;
- (b) the Certified Appraised Value of existing Eligible Property as determined each year shall be fully taxable; and
- (c) the value of New Eligible Property shall be abated as set forth in Section IV herein.

#### VI. PLANNED IMPROVEMENTS AND EMPLOYMENT

**6.01** As set forth in the Application attached as "Exhibit A," Brask represents that it will construct an expansion to its existing facility that will include an additional 40,000 square feet of manufacturing space and 9,400 square feet of office space that will allow Brask to develop a new product line which utilizes state of the art cleaning technologies for refining and petrochemical customers. The estimated value of eligible improvements to be owned by Brask at the end of this abatement agreement indicated in the application is \$8,500,000.00.

**6.02** Brask represents and warrants that this project will retain 52 jobs and additionally create 25 full-time jobs for employees to be employed by Brask. In addition, Brask represents and warrants that the level of employment stated in the abatement application and/or in this Agreement (including the projected creation or retention of employment) will be maintained for the duration of the abatement period. It is further represented that this project will provide an estimated 25 construction jobs at the beginning of construction, with a peak load of 40 construction jobs during the course of construction, and 15 such jobs upon completion.

- 6.03 All improvements shall be completed in accordance with all applicable law.
- 6.04 The Owner and Brask shall not make any use of the property that is inconsistent with

the general purpose of encouraging development or redevelopment of the reinvestment zone during the period that the property tax exemptions are in effect.

6.05 Brask estimated in its application that construction of the improvements would begin in the second quarter of 2024 with completion estimated in the first quarter of 2025.

#### **VII. EVENT OF DEFAULT**

7.01 During the abatement period covered by this Agreement, the County may declare a default hereunder by the Owner and/or Brask if the Owner or Brask:

- (a) fails to commence construction of the New Facility described in Section VI above, and the Application attached hereto as Exhibit A within two (2) years from the date this Agreement is executed;
- (b) fails to construct the New Facility described in Section VI above;
- (c) refuses or neglects to comply with any of the terms of this Agreement;
- (d) if any representation made by the Owner or Brask in this Agreement is false or misleading in any material respect; or
- (e) the constructed facility fails to meet the economic qualifications of Section 2(h) of the Brazoria County Guidelines & Criteria for granting tax abatement. The economic qualifications of Section 2(h) of the Brazoria County Guidelines and Criteria For Granting Tax Abatement expressly include the requirement that the level of employment stated in the abatement application for the property that is the subject of the tax abatement agreement be maintained for the duration of the abatement period.

7.02 Should the County determine the Owner or Brask to be in default of this Agreement, the County shall notify the Owner and Brask in writing prior to the end of the abatement period, and if such default is not cured within sixty (60) days from the date of such notice ("Cure Period"), then this Agreement may be terminated; provided, however, that in the case of a default that for causes beyond Owner or Brask's reasonable control cannot with due diligence be cured within such sixty-day period, the Cure Period shall be deemed extended if Owner or Brask (i) shall immediately, upon the receipt of such notice, advise the County of Owner's and/or Brask's intention to institute all steps necessary to cure such default and (ii) shall institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

7.03 In the event the Owner or Brask allows its ad valorem taxes owed to the County to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or if the Owner or Brask defaults and/or violates any of the terms and conditions of this Agreement and fails to cure during the Cure Period, this Agreement may then be terminated and all taxes previously abated by virtue of this Agreement will be recaptured and paid within sixty (60) days of termination.

7.04 In the event the facility contemplated herein is completed and begins producing product or service, but Brask fails to maintain the level of employment (including the projected creation or retention of employment) stated in the abatement application for the property that is the subject of the

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abatement agreement, the County may elect to: 1. Declare a default and terminate the abatement agreement without recapturing prior years' abated taxes; 2. Declare a default, terminate the agreement and order a recapture of all or part of the previous years' abated taxes; 3. Set specific terms and conditions for the continuation of the abatement exemption for the duration of the term of the agreement under its present terms or alter the amount of the abatement for the remaining term of the agreement; or 4. Order recapture pursuant to the provisions of Section 4.03 of this Agreement, if applicable.

#### VIII. ADMINISTRATION

**8.01** This Agreement shall be administered on behalf of the County by the Commissioners Court and/or other persons appointed by the Commissioners Court. The Owner and Brask shall allow authorized employees and/or representatives of the County who have been designated and approved by Commissioners Court to have access to this Reinvestment Zone during the term of this Agreement to inspect the facility to determine compliance with the terms and conditions of this Agreement. All inspections will be made at a mutually agreeable time after the giving of forty-eight (48) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the Owner and/or Brask and in accordance with Owner's and Brask's safety standards.

**8.02** Upon completion of the contemplated construction, the Tax Abatement Review Committee and/or other persons appointed by Commissioners Court shall annually evaluate the facility to ensure compliance with the terms and provisions of this Agreement and shall report possible defaults to the Commissioners Court.

**8.03** The Chief Appraiser of the Brazoria County Appraisal District annually shall determine (i) the taxable value pursuant to the terms of this abatement of the real and personal property comprising this Reinvestment Zone and (ii) the full taxable value without abatement of the real and personal property comprising this Reinvestment Zone. The Chief Appraiser shall record both the abated taxable value and the full taxable value in the appraisal records. The full taxable value figure listed in the appraisal records shall be used to compute the amount of abated taxes that are required to be captured and paid in the event this Agreement is terminated in a manner that results in recapture. Each year Brask shall furnish the Chief Appraiser with such information outlined in Chapter 22, V.A.T.S. Tax Code, as may be necessary for the administration of the abatement specified herein.

**8.04** If the County terminates this Agreement, it shall provide Owner and Brask written notice of such termination. If Owner or Brask believes that such termination was improper, Owner or Brask may file suit in the Brazoria County District Courts appealing such termination within ninety (90) days after receipt from the County of written notice of the termination. If an appeal suit is filed, Owner shall remit to the County, within sixty (60) days after receipt of the notice of termination, any additional and/or recaptured taxes as may be payable during the pendency of the litigation pursuant to the payment provisions of Section 42.08 V.A.T.S. Tax Code. If the final determination of the appeal increases Owner's or Brask's tax liability above the amount of tax paid, Owner or Brask shall remit the additional tax to the County pursuant to Section 42.42, V.A.T.S. Tax Code. If the final determination

of the appeal decreases Owner's or Brask's tax liability, the County shall refund to Owner or Brask the difference between the amount of tax paid and the amount of tax for which Owner or Brask is liable pursuant to Section 42.43, V.A.T.S. Tax Code.

#### IX. INFORMATION PROVIDED BY OWNER AND BRASK, INC. - NEELA

**9.01** Pursuant to Section 5(a)(7) of the Brazoria County Guidelines and Criteria for granting tax abatement, Brask shall annually furnish information necessary for County's evaluation of compliance with the terms and conditions of this tax abatement agreement and the Brazoria County Guidelines and Criteria (in the form of an annual report/statement of compliance to be mailed to the Office of the County Judge on or before January 31<sup>st</sup> of each year of the tax abatement contract term).

**9.02** Additionally, Brask shall furnish the following information or written statements to County upon request during the term of this agreement:

- Statement by Brask certifying the commencement and/or completion date of the contemplated improvements described in paragraph VI. herein and in Brask's application;
- (b) Statement by Brask of the number of permanent employees, contract employees and construction employees actually employed at the facility location;
- (c) Statement by Brask describing the status of construction of the contemplated improvements, percentage of construction completed, construction schedule and Owner's estimate of taxable value of constructed improvements on the date of the statement; or
- (d) In lieu of the above statements, Brask may furnish documents and records verifying the above requested information.
- (e) Any information, documents or records of any kind reasonably necessary for County's evaluation of Owner's and Brask's compliance with the terms and conditions of this agreement and Brazoria County guidelines, provided that Owner and Brask shall not be required to furnish any information, documents or records which a reasonably prudent owner or company under the same or similar circumstances would consider to be harmful to its business operations.

**9.03** Brask's statements described above shall be verified by Brask's project manager or other appropriate official. Failure to provide any requested statement or information without just cause within sixty (60) days of the request or presentation of any false or misleading statement may at the County's option, be construed as a default by Brask under this agreement and cause for immediate termination of this agreement and recapture of all previously abated taxes, if after written notice of default, Brask has not cured such default prior to the expiration of thirty (30) days from such written notice. The Cure Period provisions of Paragraph VII are not applicable to a default and termination under this paragraph.

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**9.04** Owner and Brask have a continuing obligation for a period of ten (10) years from the effective commencement date of this agreement (to December 31, 2034) to report to the County any plant closure or permanent cessation of production at the abated facility and to furnish to County upon request a written confirmation as to whether or not the abated improvements are in service as part of a producing facility or, if applicable, a statement of the beginning and ending dates of production from and/or the beginning and ending dates of operation of the abated facility improvements; or to provide other similar information necessary to determine the actual or estimated productive life of the abated improvements.

**9.05** Pursuant to Section 5(a)(8) and Section 7(f) of the Brazoria County Guidelines and Criteria for Granting Tax Abatement, Brask shall, upon expiration of the tax abatement agreement, begin annually reporting the status of the abated improvements regarding active service and operation as part of a facility operating in a producing capacity. Reporting will be for the same amount of years as the tax abatement period and in the form of a "Productive Life Report" to be mailed to the Office of the County Judge on or before January 31<sup>st</sup> of each year for five years following the expiration of the tax abatement contract).

#### X. INDEMNIFICATION

**10.01** Owner and Brask agree to indemnify and hold harmless County, its Commissioners Court, officers and employees from and against all obligations, claims, demands and causes of action of every kind and character (including the amounts of judgments, penalties, interest, court costs and legal fees incurred in defense of same) arising in favor of other governmental entities and agencies or third parties (including employees of Owner or Brask) as a result of or arising out of, the covenants to be performed by Owner and Brask under this agreement, or any rights and provisions granted in this agreement.

#### XI. ASSIGNMENT

**11.01** Owner or Brask may assign this agreement to a new owner or lessee of the same facility upon the approval by resolution of the Commissioners Court of Brazoria County subject to the financial capacity of the assignee and provided that all conditions and obligations in the abatement agreement are guaranteed by the execution of a new contractual agreement with the County. No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessees are liable to County or any affected jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

#### XII. ANNUAL PAYMENT TO ECONOMIC DEVELOPMENT FUND

**12.01** In accordance with Section 2(h)(7) of the Brazoria County Guidelines and Criteria for granting tax abatement, Owner and/or Brask agree to pay to County the annual contributions described in that provision.

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Tax Abatement Agreement Neelila, LLC and Brask, Inc. - Neela

# XIII. MODIFICATION OR TERMINATION

**13.01** At any time before the expiration of this agreement the parties may, upon mutual consent, modify or terminate the original agreement. Such modification or termination shall be done in accordance with Property Redevelopment and Tax Abatement Act, V.A.T.S., Chapter 312, Section 312.208 of Subchapter B.

#### XIV. AGREEMENT OF OWNER, NEELILA, LLC

**14.01** Pursuant to Section 2(f) of the Guidelines and Criteria for Granting Tax Abatement in a Reinvestment Zone created in Brazoria County, Owner, as lessor of the existing real property upon which improvements will be constructed, joins in execution of this tax abatement agreement and agrees to be bound by all terms and provisions in this agreement. The lease agreement by and between Neelila, LLC and Brask is attached hereto as "Exhibit E." Owner agrees to be responsible for and pay any recapture of taxes due to Brazoria County from Brask pursuant to the Agreement in the event of Brask's failure to pay the recapture amount due. Owner also agrees to be responsible for and pay any recapture of taxes due Brazoria County from Brask in the event of Brask's failure to employee to meet the employment criteria of Section 2 (h) (2) of the Guidelines and Criteria for Granting Tax Abatement in a Reinvestment Zone created in Brazoria County (Exhibit B attached hereto).

#### XV. AUTHORITY OF AGENT

**15.01** By acceptance of this Agreement and/or any benefits conferred hereunder, Owner and Brask represent that the undersigned agents have complete and unrestricted authority to enter into this Tax Abatement Agreement and to obligate and bind Owner and Brask to all of the terms, covenants and conditions contained in this Agreement.

#### **XVI. NOTICE**

**16.01** Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the County, Owner, or Brask at the following addresses. If mailed, any notice or communications shall be deemed to be received three days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To the Owner:

8720 Indu	str	ial	D	r.
Pearland,	ΤX	77	58	4
Attn:Bal	Sar	een	;	CE

To the Lessee:	
	BRASK, INC NEELA
	2300 Alleman Parkway
	Sulphur, Louisiana 70663
	Attn: Lovkesh Kevin Sareen, President
To the County:	
	Commissioners Court, Brazoria County
	Brazoria County Courthouse
	111 East Locust Street
	Angleton, Texas 77515

Attn: County Judge

Either party may designate a different address by giving the other party ten days written notice.

#### **XVII. DATE**

**17.01** The County executes this Agreement by and through the County Judge acting pursuant to Order of the Commissioners Court of Brazoria County, Texas, so authorizing, and the effective execution date of this Agreement is the date of the countersignature of the County Judge.

This Agreement has been executed by the parties in multiple originals, each having full force and effect.

BRAZORIA COUNTY

By:

COUNTY JUDGE BRAZORIA COUNTY, TEXAS

Date signed:

NEELILA, LLC OWNER

By: Name: Lovkesh Sareen President Title:

Date signed: 4-8-24

#### SIGNATURES CONTINUE ON NEXT PAGE

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# BRASK, INC. - NEELA LESSEE

By: en Name: Lovkesh Sareen Title: President

Date signed: \_\_\_\_\_4-8-24

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# **EXHIBIT** A

Application for Tax Abatement in Brazoria County by Brask, Inc. – Neela

# APPLICATION FOR TAX ABATEMENT IN BRAZORIA COUNTY

#### INSTRUCTIONS FOR COMPLETION OF APPLICATION:

1. Attach additional pages if there is not enough space allotted to answer questions on the application.

2. Applicants and projects must meet the requirements established by the Brazoria County Guidelines and Criteria (attached) in order to receive positive consideration. PLEASE READ THE CRITERIA PRIOR TO COMPLETING THE APPLICATION.

3. Applicants must submit an application processing fee in the amount of ONE THOUSAND & NO/100 (\$1,000.00) DOLLARS.

4. Applicants must submit an adequately definitive legal description that sufficiently describes the tract(s) of land comprising the proposed tax abatement area (reinvestment zone) upon which the new facility, expansion or modernization project will be located. Applications with insufficient or indefinite legal descriptions will be returned to the applicant for amendment and such applications will not be considered for hearing until corrected.

5. Applicant must submit the attached "Certification of Appraised Value of Properties" form, which is a part of this application. This certification should cover the proposed tax abatement area and it is the responsibility of the applicant to obtain this information from the Brazoria County Appraisal District.

#### PART I

#### APPLICANT'S INFORMATION

The taxing unit may consider applicant's financial capacity in determining whether to enter into an abatement agreement. Established companies for which public information is available, or the wholly owned businesses of such companies, should include with the new application a copy of their latest annual report to the stockholders. Other applicants and new companies should attach a statement showing (1) when the company was established; (2) business references [name, contact and telephone number of principal bank, accountant and attorney]; and (3) may be required to submit an audited financial statement and business plan. Attach as Exhibit "A".

#### PARTS II & III PROJECT INFORMATION

Only facilities listed in Section 2(a) of the Guidelines may receive abatement without applying for a variance. Check guidelines definitions in Section 1 to see if project qualifies.

If the project is a Regional Entertainment Facility, Regional Service Facility, Regional Distribution Center Facility, or other basic industry, include the following items: (1) market studies; (2) business plans; and (3) agreements or other materials demonstrating that the facility is intended to serve a market of which the majority is substantially outside the Brazoria County region. See Part III of the Application – Required Exhibits.

# PART IV ECONOMIC IMPACT INFORMATION

#### Permanent Employment Estimates

In estimating the permanent employment, include the total number of jobs retained or created at this site by your firm as well as known permanent jobs of service contractors required for operation.

#### Estimated Appraised Value on Site

The value on January 1 preceding abatement should be the value established by the Brazoria County Central Appraisal District. If the applicant must estimate value because the taxable value is not known or is combined with other properties under a single tax account, please so state. To qualify, the abated properties must be expected to result in an addition to the tax base of at least one million dollars after the period of abatement expires. Projections of value should be a "best estimate" based on taxability in Texas. The projection of project values not abated should include personal property and ineligible project related improvements such as an office in excess of that used for plant administration, housing, etc. Attach as Exhibit "B".

#### PARTS V & VI

Self-explanatory.

# APPLICATION FOR TAX ABATEMENT IN BRAZORIA COUNTY, TEXAS

#### FILING INSTRUCTIONS:

This application should be filed at least NINETY (90) DAYS prior to the beginning of construction or the installation of equipment. This filing acknowledges familiarity and assumed conformance with "GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT IN A REINVESTMENT ZONE IN BRAZORIA COUNTY" (Copy attached). This application will become part of any later agreement or contract and knowingly false representations thereon will be grounds for the voiding of any later agreement or contract.

# ORIGINAL COPY OF THIS APPLICATION AND ATTACHMENTS SHOULD BE SUBMITTED TO:

#### COUNTY JUDGE L.M. "MATT" SEBESTA, JR. BRAZORIA COUNTY COURTHOUSE 111 E. LOCUST SUITE 102A ANGLETON, TEXAS 77515

# PART I - APPLICANT INFORMATION

Company Name: Brask, IncNe	ela	Submittal Date: <u>2-14-24</u>
Address/City: 2300 Alleman Parkway, Sulphur, LA		1
Phone: 281-201-0006		
Name/Address/Phone of Company Cor 2300 Alleman Parkway, Sulphur, LA 70663	ntact on this Project	Kevin Sareen,
281-201-0006		
E-mail address of Company Contact: Ksar	reen@ieeinc.net	
Type of Structure: Corporation $(\checkmark)$	Partnership (	Proprietorship ( )
Total number employed: 104		nual Sales Per Year:
Annual Report Submitted: Yes ( )	No ( ) (see in	

#### PART II – PROJECT INFORMATION

Check type of facility to be abated:

Manufacturing	$\checkmark$	Regional Distribution	()	
Regional Service	( )	Regional Entertainment Center	i.	
Research	( )	Other Basic Industry	C.	

Proposed Facility Address and Legal Description: Attach Exhibit "C".

Attach a map showing site. Attach Exhibit "D".

Abatement Term Requested: 10 years Percentage Requested: 100%

Proposed facility located in the following taxing jurisdictions:

School District:	Alvin ISD
College District:	Alvin Community College
Drainage District:	Brazoria County Drainage District # 4
Hospital District:	
City:	Pearland
Other Taxing Jurisdictions:	Brazoria County
09-57=1	Brazoria County Road & Bridge
Describe Product or	
service to be provided:	Bandadad provided to an extension of the second state of the

This application is for a:

New Plant ( ) Expansion ( ) Modernization ( )

# PART III - OTHER POSSIBLE LOCATIONS FOR PROJECT

If Company is considering another county in Texas to build; construct this project, identify all possible counties:

If Company is considering another state to build/construct this project, identify the city, county and state:

Sulphur, Calcasieu Parish, Louisiana.

If any documentation has been provided to other potential Counties or States, provide copies attached as **Exhibit** "J". NA

PART IV - PROJECT DESCRIPTION

Please attach a statement (1) fully explaining the project; (2) describing the site and existing improvements; (3) describing all proposed improvements; and (4) providing a list of improvements and fixed equipment for which abatement is requested. Attach Exhibit "E".

If applicable, please describe, any additional property located outside of the proposed reinvestment zone that would add to the overall value of the project.

#### PART V - ECONOMIC IMPACT INFORMATION

.1.	Estimated cost of improvements	12.5_Million		 			
В.	Permanent employment estimate If existing facility, the current pla	unt employment:	104	 			
	Estimated number of plant jobs		(	52	Jobs created:	)	25 Total
	Number of employees anticipare	d at start-up:	Ĺ	52	within one year (	7	3 at end of Year 1
( <u>`</u>	Construction employment estimation	ares:					
	Construction to start:	Month: March			Year: <u>2024</u>		
	Construction to be completed:	Month: February			Year: 2025		
	Number of construction jobs an	ticipated:					
	At start: 25	Pcak: 40			Finish: 15	10000000	

D.	School District impact estimates: 0	
	Number or children added to ISDs :	
E.	City Impact estimates: Volume of treated water required from city:	< 1000 GPD
	Volume of effluent water to be treated by city:	< 1000 GPD

<u>Please provide statement by Addendum relative to planned water and sewer treatment methods and disposal of effluent if the facility is to be located outside city systems. If effluent is not treated by municipal facilities, by Addendum, include an explanation of the manner of treatment and by whom.</u> Attach Exhibit "F".

Has permitting been started	Yes ( )	No $(\checkmark)$
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F. Estimated appraised value on site:	LAND	PERSONAL PROPERTY	IMPROVEMENTS
Valuation of existing property as of January 1, preceding this abatement application:	_265,060 s	<u>s</u> 0	s
Estimated value of Personal Property and improvements, <b>not subject to</b> <b>abatement, excluding exempt Pollution</b> <b>Control Equipment</b> , upon completion of the project subject to this application:		s	
Estimated value of abated improvements at the completion of construction:			s
Estimated value of Tangible Personal Property, <b>subject to abatement</b> :		s	
Estimated value of abated improvements after abatement agreement expires:			s8,500,000
Estimated value of abated Tangible Persona Property, after abatement agreement expires		1,500,000 S	
Estimated value, upon completion of projec of exempt pollution control equipment:	t,		5
G. Minimum Production Life of Equip	<sub>ment:</sub> 10 years		

H. Variance: Is a variance being sought under any provision of the "Guidelines"?

Yes ( ) No (

1. Statement on planned efforts to use Brazoria County Vendors and Services: Please attach a statement describing willingness and planned efforts to use qualified Brazoria County vendors and services where applicable in the construction and operation of the facility. (See Section 2 (h) (6) of the Guidelines and Criteria for Granting Tax Abatement.). Attach Exhibit "H".

J. Tangible Personal Property Abatement Request: Attach a detailed list describing all tangible personal property sought to be abated. Said list must include projected life, cost, and value after abatement agreement expires. Attach Exhibit "I".

#### PART VI - DECLARATION

To the best of my knowledge, the above information is an accurate description of project details.

Company Official Signature

# Kevin Sareen, President

Printed Name & Title of Company Official

#### **REQUIRED ATTACHMENTS**

- EXHIBIT "A" Latest Annual Report or Information on Establishment of the Company, Business References, audited financial statement and business plan
- EXHIBIT "B" Certification of Appraised Value of Properties as of January 1, 20\_
- EXHIBIT "C" Proposed Facility Address and Legal Description
- EXHIBIT "D" Map Showing Site
- EXHIBIT "E" Project Description including Time Schedule for Undertaking and Completing Project
- EXHIBIT "F" Planned Water and Sewer Treatment Methods and Disposal of Effluent
- EXHIBIT "G" Letter/Statement regarding Variance Requests
- EXHIBIT "H" Statement on Planned Use of Brazoria County Vendors
- EXHIBIT "I" Detailed Itemized List of Tangible Personal Property requesting to be abated
- EXHIBIT "J" Application for Abatement with Other Taxing Jurisdictions

EXHIBIT "A" – Latest Annual Report or Information on Establishment of the Company, Business References, audited financial statement and business plan

# COMBINED FINANCIAL STATEMENTS AND INDEPENDENT ACCOUNTANTS' REVIEW REPORT

Year Ended December 31, 2022

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COY T. VINCENT, C.P.A. MICHELLE LEE, C.P.A. BRADLEY J. CASIDAY, C.P.A., C.V.A. BRIAN MCCAIN, C.P.A.

GRAHAM A. PORTUS, E.A.

KATHRYN BLESSINGTON, C.P.A. BLAKE MANUEL, C.P.A. JENNIFER DOUCET, C.P.A.

#### INDEPENDENT ACCOUNTANTS' REVIEW REPORT

June 5, 2023

To the Board of Directors Brask, Inc. Brask, Inc. – Neela Neelila, LLC Sulphur, LA

We have reviewed the accompanying combined financial statements of Brask, Inc., Brask, Inc. – Neela, and Neelila, LLC, which comprise the combined balance sheet as of December 31, 2022, and the related combined statements of income, changes in stockholders/members' equity and cash flows for the year then ended, and the related notes to the financial statements. A review includes primarily applying analytical procedures to management's financial data and making inquiries of company management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements as a whole. Accordingly, we do not express such an opinion.

#### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the combined financial statements that are free from material misstatement, whether due to fraud or error.

#### Accountants' Responsibility

Our responsibility is to conduct the review engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. Those standards require us to perform procedures to obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the combined financial statements for them to be in accordance with accounting principles generally accepted in the United States of America. We believe that the results of our procedures provide a reasonable basis for our conclusion.

We are required to be independent of Brask, Inc., Brask, Inc. – Neela, and Neelila, LLC and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our review.

145 East Street • Lake Charles, LA 70601 Mailing Address: P.O. Drawer 1847 • Lake Charles, LA 70602-1847 phone: 337.439 1986 • fax: 337.439.1366 • www.gcgcpa.com To the Board of Directors June 5, 2023 Page Two

#### Accountants' Conclusion

Based on our review, we are not aware of any material modifications that should be made to the accompanying combined financial statements in order for them to be in accordance with the accounting principles generally accepted in the United States of America.

#### **Supplemental Information**

The supplemental information included in the accompanying schedules is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the financial statements. The supplemental information has been subjected to the review procedures applied in our review of the basic financial statements. We are not aware of any material modifications that should be made to the supplemental information. We have not audited the information and do not express an opinion on such information.

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# **BALANCE SHEET - COMBINED**

# December 31, 2022

#### ASSETS

CURRENT ASSETS	
Cash - unrestricted	\$ 3,578,598
Investments	10,331,762
Accounts receivable	
Contracts, net of allowance for doubtful	
accounts of \$0	21,149,019
Other	567,115
Contract assets	6,060,944
Due from shareholders	18,052
Due from Sarbak, LLC	129
Inventory	461,920
Prepaid income and franchise tax, state	150,000
Prepaid expenses and other current assets	186,000
Total current assets	42,503,539
PROPERTY, PLANT AND EQUIPMENT	
Land	2 565 902
Furniture and fixtures	2,565,892
Machinery and equipment	451,759 11,627,200
Transportation equipment	211,283
Small tools	21,134
Other equipment Buildings and improvements	96,332 9,229,876
Buildings and improvements	24,203,476
Loss assumulated depresiston	
Less accumulated depreciaton	<u>(14,248,476)</u> 9,955,000
OTHER ASSETS	9,955,000
	90.060
Goodwill, net	89,960
Note receivable - CoFlo Technologies, LLC Investment-LLC	725,000
	17,944
Organization costs, net	
Start-up costs, net	
	832,904
	\$ 53,291,443

See accompanying notes and independent accountants' review report.

Continued

# BALANCE SHEET - COMBINED - CONTINUED

# December 31, 2022

# LIABILITIES AND STOCKHOLDER'S EQUITY

CURRENT LIABILITIES Current maturities of long-term debt Notes payable - line of credit Due to Sarbak, LLC Due to sharholder Accounts payable Accrued expenses Deferred tax Notes payable - shareholders Contract liabilities Total current liabilities	\$	252,292 996,181 - - 5,851,118 456,063 113,364 941,009 8,153,748 16,763,775
LONG-TERM DEBT Notes payable - long term, less current maturities		2,109,469
STOCKHOLDER'S EQUITY Common stock Voting(Neela) - no par value; 100,000 shares authorized; 2000 shares issued and outstanding at December 31, 2022 Voting(Brask) - no par value; 2,000 shares authorized; 341 shares issued and outstanding at December 31, 2022 Non-voting(Brask) - no par value; 8,000 shares authorized;		2,000
499 shares issued and outstanding at December 31, 2022 Retained earnings/Members' equity		591,458 <u>37,134,741</u> 37,728,199
Less: Treasury stock (Brask) - 49 shares voting; 511 shares non-voting at December 31, 2022, at cost	1	(3,310,000) 34,418,199
	\$	53,291,443

# STATEMENT OF INCOME - COMBINED

# Year Ended December 31, 2022

Contract income Direct contract costs Gross profit	\$ 74,425,348 (55,797,540) 18,627,808
General and Administrative Expenses	10,858,146
Income (loss) from operations	7,769,662
Other income (expense) Bonuses paid and accrued (non stockholder) Investment income (loss) Interest expense Employee retention credit Gain or (loss) on sale of investments Other income Income before stockholder bonus and income taxes	(223,920) (2,339,784) (75,373) 2,012,825 540,849 542,227 456,824 8,226,486
Stockholder bonus	
Income before income taxes	8,226,486
Income tax benefit (expense) Current Deferred	<u>134,570</u> 134,570
Net income (loss)	\$ 8,361,056

# STATEMENT OF CHANGES IN RETAINED EARNINGS/MEMBERS' EQUITY - COMBINED

Year Ended December 31, 2022

Ending Balance, December 31, 2021	\$ 32,340,805
Distributions	(4,567,120)
Capital contribution	1,000,000
Net income (loss)	8,361,056
Ending Balance, December 31, 2022	\$ 37,134,741

#### STATEMENT OF CASH FLOWS - COMBINED

# Year Ended December 31, 2022

CASH FLOWS FROM OPERATING ACTIVITIES		
Net income (loss)	\$	8,361,056
Adjustments to reconcile net income (loss) to net cash		
provided by operating activities:		
Amortization expense		50,638
Depreciation expense		1,047,885
Gain or (loss) on sale of investments		(540,849)
(Increase) decrease in assets:		
Accounts receivable		(8,165,916)
Other receivables		(567,115)
Inventory		(226,204)
Prepaid expenses		809,249
Contract assets		(3,310,385)
Increase (decrease) in liabilities:		
Accounts payable		1,288,363
Accrued expenses		75,321
Deferred tax liability		(134,569)
Income tax payable, state		-
Contract liabilities		3,657,422
CASH PROVIDED BY (USED FOR) OPERATING ACTIVITIES		2,344,896
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of fixed assets		(1,294,421)
(Purchase) sale of investments		(3,516,893)
(Income) loss on investments		2,646,649
(Income) loss on investments		13,868
Capital contributions		1,000,000
Proceeds from sale of investment		3,607,914
CASH PROVIDED BY (USED FOR) INVESTING ACTIVITIES		2,457,117
CASH FLOWS FROM FINANCING ACTIVITIES		
Distributions		(4,567,120)
Change in loans from affiliates		(545,781)
Net change in loans to shareholders		(870,835)
Net borrowings (payments) on notes payable-line of credit		996,181
Principal payments on notes payable-shareholders		(394,845)
CASH PROVIDED BY (USED FOR) FINANCING ACTIVITIES	_	(5,382,400)
NET INCREASE (DECREASE) IN CASH		(580,387)
CASH AT BEGINNING OF YEAR		4,158,985
CASH AT END OF YEAR	\$	3,578,598
	-	
SUPPLEMENTAL DISCLOSURES:	¢	75 272
Cash paid for interest Cash paid for income taxes	\$	75,373
	φ	-

#### NOTES TO COMBINED FINANCIAL STATEMENTS

#### December 31, 2022

# NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### Nature of Operations

Brask, Inc. (Brask) began operations in 1961, and is located in Calcasieu Parish, Louisiana. It operates in the manufacturing industry performing engineering, fabrication, and repair and maintenance on products for companies in local industry and nationwide. The Company concentrates in various product lines. The upstream business concentrates on equipment such as "Tank Within a Tank", portable tanks, blending units, cargo tanks, transport trailers and single and double pump skid units. The downstream business utilizes management's vast experience in the fabrication and repair of shell and tube heat exchangers. The Company contracts with its customers for such items and produces the equipment according to approved specifications.

Brask, Inc. – Neela (Neela) was incorporated in 2007, began operations in August 2011 and is located in Pearland, TX. It operates in the manufacturing industry performing engineering, fabrication, and repair and maintenance on products for companies in local industry and nationwide. The Company is primarily engaged to provide services to end users in terms of repairs and replacement parts. The vision for Brask, Inc. – Neela is to provide high quality, quick turnaround services in replacement of shell and tube heat exchangers.

Neelila, LLC (Neelila) began operations in August of 2011, and is located in Pearland, TX. It owns land and a building which receives rent from a manufacturing facility (a related entity) which performs engineering, fabrication, and repair and maintenance on products for companies in local industry and nationwide.

#### Basis of Accounting

The financial statements are prepared using the accrual basis of accounting where revenues are recognized when earned and expenses are recognized when incurred. This basis of accounting conforms to accounting principles generally accepted in the United States of America.

#### Cash and Cash Equivalents

For purposes of the statement of cash flows, cash equivalents include time deposits, certificates of deposit, and all highly liquid debt instruments with original maturities of 90 days or less.

#### Principles of Combining

The combined financial statements include Brask, Inc., Brask, Inc. – Neela, and Neelila, LLC. All significant intercompany and/or related party transactions and balances have been eliminated in combining.

#### NOTES TO COMBINED FINANCIAL STATEMENTS

### December 31, 2022

#### NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

#### Investments

Investments consist of equities, mutual funds and mutual bonds with a cost of \$10,446,870 at December 31, 2022, which do not meet the Company's definition of cash equivalents. The investments are carried at their fair values on the balance sheet. Unrealized gains and losses are included in the statement of income. Accumulated unrealized appreciation (depreciation) in assets classified as investments at December 31, 2022 was \$(115,108).

#### Revenue and Cost Recognition

The Company adopted Accounting Standards Codification Topic 606, "Revenue from Contracts with Customers" ("ASC 606") on January 1, 2019. In accordance with ASC 606, revenue is recognized when promised goods or services are transferred to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. ASC 606 requires recognition of revenues based on performance obligations. Brask, Inc. and Brask, Inc. - Neela meet the "over time" recognition requirement of this performance obligation.

The Company recognizes revenues over time as the performance creates or enhances an asset that the customer controls as it is created or enhanced. The fixed fee construction projects generally use a percentage-of-completion method to measure the progress towards complete satisfaction for the performance obligation as the Company believes it best depicts the transfer of control to the customer which occurs as the Company incurs costs on the contract. Under the percentage-of-completion method, the extent of progress towards completion is measured based on the ratio of costs incurred to date to the total estimated costs at completion of the performance obligation.

The asset "Contract asset," represents revenues recognized in excess of amounts billed. The liability, "Contract liability," represents billings in excess of revenues recognized.

The Company recognizes revenue on Cost-Plus projects based upon an established percentage of profit relative to cost incurred.

The Company recognizes revenue from non-fixed fee projects at the closing of a sale. During construction, all direct material and labor costs and those indirect costs related to acquisition and construction are capitalized. Capitalized costs are charged to earnings upon closing of a sale.

For income tax purposes, the Company recognizes income on manufacturing contracts when the product is shipped and accepted by customers.

#### NOTES TO COMBINED FINANCIAL STATEMENTS

#### December 31, 2022

#### NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

#### Accounts receivable - Contracts

The Company uses the reserve for bad debt method of valuing doubtful accounts receivable, which is based on historical experience, coupled with a review of the current status of existing receivables. The balance of the reserve for doubtful accounts, against accounts receivable to properly reflect the realizable value, is \$0 at December 31, 2022.

#### Inventory

Stock inventory is stated at cost using the first in, first out method. All inventory is stated at the lower of cost or net realizable value.

#### Income Taxes

Effective January 1, 2010, Brask, Inc., with the consent of its shareholder, has elected under the Internal Revenue Code to be an S corporation. In lieu of corporation income taxes, the shareholder of an S corporation is taxed on the Company's taxable income. For 2022, the Company elected to utilize the Louisiana's Pass-through entity tax election. The entity will pay the Louisiana income tax for the individuals and recognize the expense at the Company level.

Deferred taxes results primarily from using different depreciation methods, recognition of jobs in progress and unrealized gain on investments for financial reporting from those used for income tax reporting. The deferred tax liability represents the future tax consequences of those differences that will either be taxable or deductible. The net deferred tax liability of \$113,364 results from the following:

Depreciation	\$ 49,842
Recognition of jobs in progress	62,336
Unrealized gain on investments	1,186
Net Deferred tax liability	<u>\$113,364</u>

Effective January 1, 2008, Neela, with the consent of its shareholders, has elected under the Internal Revenue Code to be an S corporation. In lieu of corporation income taxes, the shareholder of an S corporation is taxed on the Company's taxable income. Therefore, no provision or liability for income taxes has been included in the financial statements.

Neelila is a limited liability company, and therefore, is treated as a disregarded entity for federal income tax purposes. The members are taxed individually on the net income of the Company.

#### NOTES TO COMBINED FINANCIAL STATEMENTS

# December 31, 2022

#### NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

#### Property, Plant and Equipment

All property, plant and equipment is recorded at cost and depreciated, using the straight-line method over their estimated useful lives as shown below.

	Useful Lives
Furniture and fixtures	3-7 years
Machinery and equipment	3-15 years
Transportation equipment	5-7 years
Small tools	3-5 years
Other equipment	10 years
Land improvements	15 years
Buildings and improvements	5-39 years

Repairs and maintenance charges which do not increase the useful lives of the assets are charged to operations as incurred. Expenditures for additions, improvements and replacements are capitalized. Upon sale or retirement, the cost and related accumulated depreciation are eliminated from the respective accounts, and the resulting gain or loss is included in the results of operations.

Depreciation expense was \$1,047,885 for the year ended December 31, 2022.

#### Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

#### Advertising costs

Advertising costs are charged to operations as incurred. Advertising cost expensed for the year ended December 31, 2022 was \$25,927.

#### Subsequent Events

Management has evaluated subsequent events through June 5, 2023, the date the financial statements were available to be issued.

#### NOTES TO COMBINED FINANCIAL STATEMENTS

#### December 31, 2022

# NOTE 2 – ACCOUNTS RECEIVABLE - CONTRACTS

Receivables on contracts at December 31, 2022 consist of:

Completed contracts	\$12,763,436
Uncompleted contracts	8,385,583
Retainages	
	21,149,019
Less allowance for doubtful accounts	
	\$21,149,019

Brask, Inc. had contract receivable balances from five customers that amounted in total to 52% of its receivables at December 31, 2022.

Neela had contract receivable balances from six customers that amounted in total to 71% of its receivables at December 31, 2022.

NOTE 3 – OTHER ASSETS

Included in other assets are the following:

Organization costs Less accumulated amortization	\$ 13,232 <u>13,232</u> <u>\$ -</u>
Start-up costs Less accumulated amortization	\$ 124,844 <u>124,844</u> \$

Goodwill, net of accumulated amortization (calculated on 10 years) is as follows:

Goodwill	\$ 522,827
Amortization	432,867
	<u>\$ 89,960</u>

Amortization expense at December 31, 2022 is \$44,980.

#### NOTE 4 – INVESTMENTS

The Investment - LLC consists of membership in Preferred Contractors of Louisiana, LLC (workers' compensation) of \$17,944 and is stated at cost and does not exceed estimated net realizable value.

#### NOTES TO COMBINED FINANCIAL STATEMENTS

#### December 31, 2022

#### NOTE 5 – FAIR VALUE MEASUREMENT

The fair values of assets measured on a recurring basis at December 31, 2022 is as follows:

	Fair Va	alue Measuren	nents	_
	Quoted prices	Significant		
	In Active	Other	Significant	
	Markets for	Observable	Unobservabl	e
	Identical assets	Inputs	Inputs	
	( <u>Level 1)</u>	(Level 2)	(Level 3)	<u>Total</u>
Equities	\$ 6,144,308	\$-	\$-	\$ 6,144,308
Mutual funds	733,500	-	-	733,500
Fixed income		3,453,954		3,453,954
Totals	<u>\$6,877,808</u>	\$ 3,453,954	<u>\$</u> -	<u>\$10,331,762</u>

The Company categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs. The company has the following recurring fair value measurements as of December 31:

Level 1 inputs – quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date have a value of \$6,877,808.

Level 2 inputs – Municipal bonds totaling \$3,453,954 are valued using the market-based approach comprised of a combination of directly observable quoted prices and a matrix pricing technique that relies on the securities' relationship to other benchmark quoted securities.

#### NOTE 6 – NOTE RECEIVABLE

At December 31, 2022, the Brask, Inc. had a master promissory note for commercial line of credit from CoFlo Technologies, LLC (CoFlo) the amount of \$1,000,000. This line of credit bears a variable interest rate equal to 3.00 percentage points over LIBOR rate. At December 31, 2022, the balance of this line of credit was \$725,000. Interest on aggregate amount of all unpaid loan advances shall be payable monthly on the first business day of each calendar month beginning December 1, 2018. This note shall mature and shall be paid in full on the earlier of one hundred twenty (120) days after demand for payment or immediately upon default.

#### NOTES TO COMBINED FINANCIAL STATEMENTS

#### December 31, 2022

#### NOTE 7 – LINES OF CREDIT

At December 31, 2022, Brask, Inc. and Neela had a revolving lines of credit with Hancock Whitney Bank (the bank) in the amount of \$2,000,000 and \$2,000,000, respectively. These lines of credit are secured by a UCC priority lien on accounts receivable, inventory, equipment and fixtures and deposit accounts and bear a variable interest rate to 0.75 percentage points under Prime rate for the U.S. as published in the "money Rates" section of the Wall Street Journal (the "Index"), not to be less than four percent (4%) per annum. At December 31, 2022, the balance of these lines of credit for Brask, Inc. and Neela was \$0 and \$996,181, respectively.

The Business Loan Agreements for both companies contain certain requirements and covenants including maintenance of debt to tangible net worth ratio not exceeding 2.50 to 1.00 and minimum debt service coverage of 1.25 to 1.00. Debt Service Coverage is defined as net income after income tax expense, plus interest, amortization and depreciation expenses, less distributions made for the then twelve months then ending, to interest expense, plus current maturities of long term debt plus current maturities of capital leases. The combined financial statements are in compliance with all requirements and covenants for December 31, 2022.

#### NOTE 8 – LONG-TERM DEBT

Following is a summary of long-term debt of Neelila at December 31, 2022.

Note payable to Bal Sareen, dated May 4, 2016	
and; payable in equal monthly payments in the	
amount of \$26,685, including interest at a rate of 3%,	
maturing May 4, 2031, collateralized by the building.	\$ 2,379,206
Less current maturities of long-term debt	252,292
Long-term portion	2,126,914
Less Bond acquisition costs and finance fees, net	17,445
	\$ 2,109,469

Following are maturities of long-term debt:

Year Ending	
December 31,	
2023	\$ 252,292
2024	259,965
2025	267,873
2026	276,020
2027	284,415
Thereafter	1,038,641

# NOTES TO COMBINED FINANCIAL STATEMENTS

### December 31, 2022

### NOTE 8 – LONG-TERM DEBT - CONTINUED

Bond acquisition costs and finance fees, net are as follows:

Bond acquisition costs Less accumulated amortization	\$ 80,185 <u>63,036</u> <u>\$ 17,149</u>
Finance fees Less accumulated amortization	\$ 1,384 <u>1,088</u> <u>\$ 296</u>

Amortization expense is calculated based on 173 months which is the original life of the loan.

# NOTE 9 – RELATED PARTY TRANSACTIONS

In addition to the long-term debt in Note 8, at December 31, 2022, the companies were indebted to its shareholders in the amount of \$941,009. The debt is due on demand and bears interest at current market rates. \$0 of interest was paid on this debt for 2022. Also, at December 31, 2022, the companies have a shareholder receivable of \$18,052.

At December 31, 2022, Brask, Inc. had a receivable of \$129 from Sarbak, LLC, a related party.

#### NOTE 10 - CONCENTRATION OF RISK

The Companies maintains its cash in bank deposit accounts which, at times throughout the year, may exceed Federal Deposit Insurance Corporation (FDIC).

Brask performs substantially all of its work within the states of Louisiana and Texas. Neela performs substantially all of its work within the state of Texas. Neelila has geographical risk since it is located in the Houston, TX area.

For 2022, Brask and Neela had six and five customers that made up 48% and 47% of the Companies' total revenues, respectively.

#### NOTES TO COMBINED FINANCIAL STATEMENTS

#### December 31, 2022

#### NOTE 12 – DEFINED CONTRIBUTION PENSION PLAN

Brask adopted a 401(k) profit-sharing plan effective May 1, 2000. As of January 2012, Neela adopted Brask, Inc.'s plan. Employees are eligible to participate in the plan if at least 21 years of age and after completion of twelve months of continuous service with a minimum of 1,000 hours worked. The Plan allows for discretionary employer matching contributions and discretionary profit sharing contributions to be determined each year.

Employer contributions vest according to the following schedule:

Years of Vesting Service	Vested Percentage
1	0%
2	20%
3	40%
4	60%
5	80%
6	100%

For the year ended December 31, 2022, Brask and Neela made a matching contribution of 50% of the first 6% of employee contributions amounting to \$95,144.

## SUPPLEMENTAL INFORMATION

## **BALANCE SHEETS - COMBINING**

#### December 31, 2022

#### ASSETS

	Brask, Inc.	Brask, Inc Neela
CURRENT ASSETS		
Cash - unrestricted	\$ 2,512,429	\$ 1,010,539
Investments	9,653,212	678,550
Accounts receivable	3,000,212	070,000
Contracts, net of allowance for doubtful		
accounts of \$0	9,312,235	11,836,784
Other	2,136	564,979
Contract assets	2,210,591	3,850,353
Due from Brask, Inc.		2,065,590
Due from Neelila, LLC	51,962	372,116
Due from Sarbak, LLC	129	-
Due from shareholders	18,052	=
Inventory	378,464	83,456
Prepaid income and franchise tax, state	150,000	-
Prepaid expenses and other current assets	93,000	93,000
Total current assets	24,382,210	20,555,367
PROPERTY, PLANT AND EQUIPMENT		
Land	242,595	1-
Furniture and fixtures	312,614	139,145
Machinery and equipment	6,398,971	5,228,229
Transportation equipment	150,919	60,364
Small tools	21,134	27
Other equipment	96,332	
Buildings and improvements	4,501,411	714,730
Lorenze and the Linear state of the	11,723,976	6,142,468
Less accumulated depreciaton	(7,842,411)	(4,850,236)
	3,881,565	1,292,232
OTHER ASSETS	00.000	
Goodwill, net	89,960	-
Note receivable - CoFlo Technologies, LLC	725,000	-
Investment-LLC	17,944	-0
Organization costs, net		-
Start-up costs, net	832,904	
	032,904	
	\$ 29,096,679	\$ 21,847,599

See independent accountants' review report.

Continued

## BALANCE SHEETS - COMBINING - CONTINUED

## December 31, 2022

## ASSETS - CONTINUED

	Neelila, LLC	_Eliminations	Total
CURRENT ASSETS			
Cash - unrestricted	\$ 55,630	\$ -	\$ 3,578,598
Investments	¢ 00,000 -	÷ -	10,331,762
Accounts receivable			10,001,102
Contracts, net of allowance for doubtful			
accounts of \$0	21	-	21,149,019
Other	_	-	567,115
Contract assets		_	6,060,944
Due from Brask, Inc.	-	(2,065,590)	-
Due from Neelila, LLC	-	(424,078)	-
Due from Sarbak, LLC	_	-	129
Due from shareholders	=	-	18,052
Inventory	_	-	461,920
Prepaid income and franchise tax, state	-	-	150,000
Prepaid expenses and other current assets	-	-	186,000
Total current assets	55,630	(2,489,668)	42,503,539
PROPERTY, PLANT AND EQUIPMENT			
Land	2,323,297		2,565,892
Furniture and fixtures	2,020,207	-	451,759
Machinery and equipment			11,627,200
Transportation equipment	_	_	211,283
Small tools	_	-	21,134
Other equipment	_	-	96,332
Buildings and improvements	4,013,735	-	9,229,876
	6,337,032	-	24,203,476
Less accumulated depreciaton	(1,555,829)	) -	(14,248,476)
	4,781,203	-	9,955,000
OTHER ASSETS			
Goodwill, net	-	-	89,960
Note receivable - CoFlo Technologies, LLC	» <b>-</b>	-	725,000
Investment-LLC		<u>- 1</u> 2	17,944
Organization costs, net	-	-	
Start-up costs, net	-		-
			832,904
	\$ 4,836,833	\$ (2,489,668)	\$ 53,291,443

See independent accountants' review report.

## BALANCE SHEETS - COMBINING - CONTINUED

#### December 31, 2022

## LIABILITIES AND STOCKHOLDER'S EQUITY

	Bras	sk, Inc.		sk, Inc Jeela
CURRENT LIABILITIES				
Current maturities of long-term debt	\$	<b></b>	\$	-
Due to Brask, Inc.				
Due to Brask, Inc Neela	2,	065,590		-
Due to Sarbak, LLC		-		-
Due to sharholder		-		-
Notes payable - line of credit	0	-	0	996,181
Accounts payable Accrued expenses	•	438,682	3	,412,436
Deferred tax		276,868 113,364		179,195
Notes payable - shareholders		-		- 941,009
Contract liabilities	4	061,844	4	,091,904
Total current liabilities		956,348		,620,725
Notes payable - long term, less current maturities STOCKHOLDER'S EQUITY Common stock Voting(Neela) - no par value; 100,000 shares authorized; 2000 shares issued and outstanding at December 31, 2022 Voting(Brask) - no par value; 2,000 shares authorized; 341 shares issued and outstanding at December 31, 2022 Non-voting(Brask) - no par value; 8,000 shares authorized; 499 shares issued and outstanding at December 31, 2022 Retained earnings/Members' equity Less: Treasury stock (Brask) - 49 shares voting; 511 shares non-voting at December 31, 2022, at cost	23	- 591,458 ,858,873 ,450,331 ,310,000) ,140,331	12	2,000 2,224,874 2,226,874 2,226,874
	20	, 140,331	12	2,220,074
	\$ 29	,096,679	<u>\$ 2</u> ^	1,847,599

See independent accountants' review report.

Continued

#### BALANCE SHEETS - COMBINING - CONTINUED

#### December 31, 2022

#### LIABILITIES AND STOCKHOLDER'S EQUITY - CONTINUED

	Neelila, LLC	Eliminations	Total
CURRENT LIABILITIES			
Current maturities of long-term debt	\$ 252,292	\$ -	\$ 252,292
Due to Brask, Inc.	φ 232,292 51,962	پ (51,962)	ψ 252,292
Due to Brask, Inc Neela	372,116	(2,437,706)	-
Due to Sarbak, LLC	572,110	(2,437,700)	-
Due to sharholder		-	
Notes payable - line of credit	-	-	- 996,181
Accounts payable		-	5,851,118
Accrued expenses	-		An and a set of the second second
Deferred tax	-	-	456,063
	-	-	113,364
Notes payable - shareholders Contract liabilities	-	-	941,009
Total current liabilities	-	-	8,153,748
rotar current liabilities	676,370	(2,489,668)	16,763,775
LONG-TERM DEBT			
Notes payable - long term, less current maturities	2,109,469		2,109,469
STOCKHOLDER'S EQUITY Common stock Voting(Neela) - no par value; 100,000 shares authorized; 2000 shares issued and outstanding at December 31, 2022 Voting(Brask) - no par value; 2,000 shares authorized; 341 shares issued and outstanding at December 31, 2022 Non-voting(Brask) - no par value; 8,000 shares authorized; 499 shares issued and outstanding at December 31, 2022 Retained earnings/Members' equity	- 	- - -	2,000 591,458 <u>37,134,741</u> 37,728,199
Less: Treasury stock (Brask) - 49 shares voting; 511 shares	opinite≢ stand standonn≢nister 383 – 62		na an ann an a' shaal an da charanna dharanna an
non-voting at December 31, 2022, at cost		<u> </u>	(3,310,000)
	2,050,994		34,418,199
	¢ 4,000,000	¢ (0.400.000)	¢ 50.004.440
	\$ 4,836,833	\$ (2,489,668)	\$ 53,291,443

See independent accountants' review report.

## STATEMENTS OF INCOME - COMBINING

## Year Ended December 31, 2022

Contract income Rental income	Brask, Inc. \$37,797,750	Brask, Inc Neela \$37,445,601
Direct contract costs	(28,595,966)	(28,019,577)
Gross profit	9,201,784	9,426,024
General and Administrative Expenses	5,824,257	5,232,369
Income (loss) from operations	3,377,527	4,193,655
Other income (expense) Bonuses paid and accrued (non stockholder)	(223,920)	-
Investment income (loss)	(2,043,475)	(296,309)
Interest expense	-	-
Employee retention credit	1,220,681	792,144
Gain or (loss) on sale of investments	540,849	-
Other income	272,826	269,401
	(233,039)	765,236
Income before stockholder bonus and income taxes	3,144,488	4,958,891
Stockholder bonus		
Income before income taxes	3,144,488	4,958,891
Income taxes benefit (expense) Current	_	
Deferred	134,570	_
20.0.04	134,570	
Net income (loss)	\$ 3,279,058	\$ 4,958,891

See independent accountants' review report.

Continued

## STATEMENTS OF INCOME - COMBINING - CONTINUED

## Year Ended December 31, 2022

Contract income Rental income Direct contract costs Gross profit	Neelila, LLC \$- 330,000 - 330,000	Eliminations \$ (818,003) (330,000) 818,003 (330,000)	Total \$74,425,348 - (55,797,540) 18,627,808
General and Administrative Expenses	131,520	(330,000)	10,858,146
Income (loss) from operations	198,480	-	7,769,662
Other income (expense) Bonuses paid and accrued (non stockholder) Investment income Interest expense Employee retention credit Gain or (loss) on sale of investments Other income	- (75,373) - - - - (75,373)		(223,920) (2,339,784) (75,373) 2,012,825 540,849 542,227 456,824
Income before stockholder bonus and income taxes	123,107	-	8,226,486
Stockholder bonus			
Income before income taxes	123,107	-	8,226,486
Income taxes benefit (expense) Current Deferred			- 134,570 134,570
Net income (loss)	\$ 123,107	\$ -	\$ 8,361,056

See independent accountants' review report.

#### STATEMENTS OF CHANGES IN RETAINED EARNINGS/MEMBERS' EQUITY - COMBINING

#### Year Ended December 31, 2022

	Brask, Inc.	Brask, Inc Neela	Neelila, LLC	Total
Ending Balance, December 31, 2021	\$ 22,741,427	\$ 8,671,491	\$ 927,887	\$ 32,340,805
Distributions	(3,161,612)	(1,405,508)	-	(4,567,120)
Capital contribution	<b>a</b> .	-	1,000,000	1,000,000
Net income (loss)	3,279,058	4,958,891	123,107	8,361,056
Ending Balance, December 31, 2022	\$ 22,858,873	\$ 12,224,874	\$ 2,050,994	\$ 37,134,741

See independent accountants' review report.

#### STATEMENTS OF CASH FLOWS - COMBINING

#### Year Ended December 31, 2022

Year Ended December 31, 2022		
	Brask, Inc.	Brask, Inc Neela
CASH FLOWS FROM OPERATING ACTIVITIES		and the relation of the state
Net income (loss)	\$ 3,279,058	\$ 4,958,891
Adjustments to reconcile net income (loss) to net cash		
provided by operating activities:		
Amortization expense	44,980	-
Depreciation expense	601,055	342,474
Gain or (loss) on sale of investments	(540,849)	-
(Increase) decrease in assets:		
Accounts receivable, net	(2,005,712)	(6,160,204)
Other receivables	(2,136)	(564,979)
Inventory	(160,893)	(65,311)
Prepaid expenses	174,947	634,302
Contract assets	(1,042,205)	(2,268,180)
Increase (decrease) in liabilities:	(1,042,200)	(2,200,100)
Accounts payable	(955 707)	2 1 4 4 1 6 0
Accrued expenses	(855,797)	2,144,160
Deferred tax liability	7,310	68,011
	(134,569)	
Income tax payable, state	-	-
	943,578	2,713,844
CASH PROVIDED BY (USED FOR) OPERATING ACTIVITIES	308,767	1,803,008
CASH FLOWS FROM INVESTING ACTIVITIES		
Cash paid for purchases of fixed assets	(76,199)	(116,027)
(Purchase) sale of investments	(3,385,016)	(131,877)
(Income) loss on investments	2,350,340	296,309
Decrease (increase) in investment	13,868	230,303
Capital contributions	13,000	-
Proceeds from sale of investment	2 607 014	-
	3,607,914	-
CASH PROVIDED BY (USED FOR) INVESTING ACTIVITIES	2,510,907	48,405
CASH FLOWS FROM FINANCING ACTIVITIES		
Distributions	(3,161,612)	(1,405,508)
Change in loans from affiliates	497,699	(1,166,733)
Net change in loans to shareholder	(991,970)	121,135
Net borrowings (payments) on notes payable-line of credit	(001,010)	996,181
Net borrowings (payments) on notes payable-shareholders	-	(150,000)
CASH PROVIDED BY (USED FOR) FINANCING ACTIVITIES	(3,655,883)	(1,604,925)
NET INCREASE (DECREASE) IN CASH	(836,209)	246,488
CASH AT BEGINNING OF YEAR	3,348,638	764,051
CASH AT END OF YEAR	\$ 2,512,429	\$ 1,010,539
SUPPLEMENTAL DISCLOSURES:		
Cash paid for interest	\$	\$ -
Cash paid for income taxes	φ - Φ	φ <u>-</u>
Cash palu lui incume laxes	<u>Ф</u> -	<u>р -</u>

See independent accountants' review report.

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## STATEMENTS OF CASH FLOWS - COMBINING - CONTINUED

## Year Ended December 31, 2022

	N	eelila, LLC	Total
CASH FLOWS FROM OPERATING ACTIVITIES	¢	100 107	¢ 0.004.050
Net income (loss) Adjustments to reconcile net income (loss) to net cash	\$	123,107	\$ 8,361,056
provided by operating activities:			
Amortization expense		5,658	50,638
Depreciation expense		104,356	1,047,885
Gain or (loss) on sale of investments		-	(540,849)
(Increase) decrease in assets:			
Accounts receivable, net		-	(8,165,916)
Other receivables		-	(567,115)
Inventory		-	(226,204)
Prepaid expenses		-	809,249
Contract assets		-	(3,310,385)
Increase (decrease) in liabilities:			
Accounts payable		1 <u></u>	1,288,363
Accrued expenses		-	75,321
Deferred tax liability Income tax payable, state		-	(134,569)
Contract liabilities		-	3,657,422
CASH PROVIDED BY (USED FOR) OPERATING ACTIVITIES		233,121	2,344,896
		200,121	2,011,000
CASH FLOWS FROM INVESTING ACTIVITIES			
Cash paid for purchases of fixed assets		(1,102,195)	(1,294,421)
(Purchase) sale of investments		1.77	(3,516,893)
(Income) loss on investments		-	2,646,649
Decrease (increase) in investment Capital contributions		- 1,000,000	13,868 1,000,000
Proceeds from sale of investment		1,000,000	3,607,914
CASH PROVIDED BY (USED FOR) INVESTING ACTIVITIES		(102,195)	2,457,117
		(102,100)	2,107,117
CASH FLOWS FROM FINANCING ACTIVITIES			
Distributions			(4,567,120)
Change in loans from affiliates		123,253	(545,781)
Net change in loans to shareholder		-	(870,835)
Net borrowings (payments) on notes payable-line of credit		-	996,181
Net borrowings (payments) on notes payable-shareholders CASH PROVIDED BY (USED FOR) FINANCING ACTIVITIES	-	(244,845) (121,592)	(394,845) (5,382,400)
NET INCREASE (DECREASE) IN CASH		9,334	(580,387)
CASH AT BEGINNING OF YEAR		46,296	4,158,985
CASH AT END OF YEAR	_\$	55,630	\$ 3,578,598
SUPPLEMENTAL DISCLOSURES:			
Cash paid for interest	\$	75,373	\$ 75,373
Cash paid for income taxes	\$		\$ -
			Ψ

See independent accountants' review report.

EXHIBIT "B" - Certification of Appraised Value of Properties as of January 1, 20\_\_\_

## EXHIBIT "B-1" - Certification of Appraised Value of Properties

## **Personal Property**

Account No 8900-0623-000

Account No

### Land

Account No 5498-1002-002

Account No 5498-1002-003

## Improvements

Account No ABAT-NEEL-001

#### CERTIFICATION OF APPRAISED VALUE OF PROPERTIES AS OF JANUARY 1, 2023

TO: BRAZORIA COUNTY

FROM: BRAZORIA COUNTY APPRAISAL

12/18/2023 DISTRICT DATE:\_\_\_

The Brazoria County Appraisal District hereby certifies that the following appraised values for Neelila LLC as of January 1, 2023, attached hereto are listed in the records of Brazoria County Appraisal District and indicated by the following account numbers:

Property ID	2023 Market Valu	
614904	\$	325,470
703936	\$	306,770

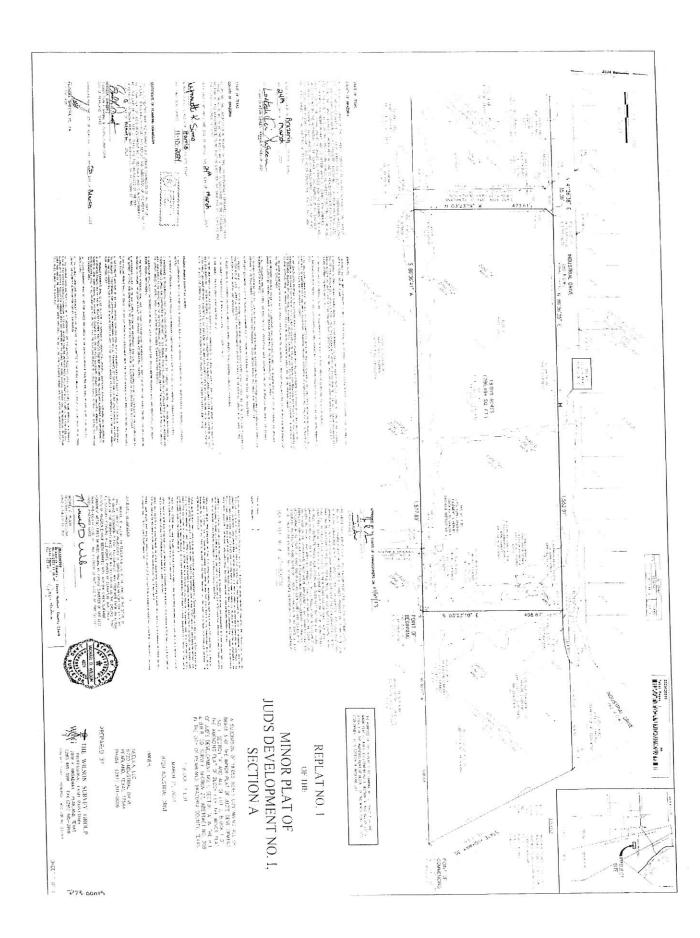
18th day of Certified this \_\_\_\_ 20 23.

CHIEF APPRAISER BRAZORIA COUNTY APPRAISAL BY:

## EXHIBIT "C" - Proposed Facility Address and Legal Description

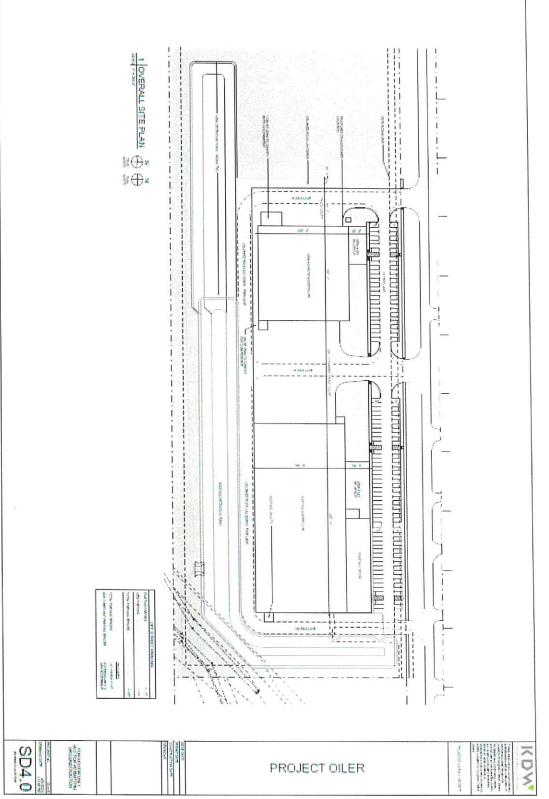
8720 Industrial Drive Pearland, Texas 77584

See attached Plat



## EXHIBIT "D" – Map Showing Site





# EXHIBIT "E" – Project Description including Time Schedule for Undertaking and Completing Project

Brask is a leading manufacturer of Shell and Tube Heat Exchangers. Brask has two locations strategically located on the Gulf Coast to serve its customers. In 2011, Brask worked with the City of Pearland and PEDC to construct a 100,000 square foot manufacturing facility on Industrial Drive near State Highway 35. Brask specializes in the design and fabrication of custom packaged heat exchangers for the oil and gas downstream market. The Pearland facility includes offices and production areas and currently has 104 employees. Both the City of Pearland and Brazoria County provided tax abatements for the initial facility.

Brask is considering constructing an additional 40,000 square feet of manufacturing space and 9,400 square feet of office at its Pearland location. Brask would invest \$12.5 million in facilities and equipment for the expansion that would be built on land currently owned by Brask. The expansion will result in the retention of 48 jobs and the creation of an additional 25 jobs over five years. This project will allow Brask to develop a new product line with another company that utilizes state of the art cleaning technologies. Once operational, Brask will be able to help our refining and petrochemical customers reduce their carbon footprint. This is an ESG (Environmental Social Governance) Project which creates a positive impact on society and the environment. Brask is looking at multiple locations.

If the Pearland site is selected Brask would begin construction in March/April of 2024 and would anticipate completion in early 2025.

## EXHIBIT "F" - Planned Water and Sewer Treatment Methods and Disposal of Effluent

The proposed facility will be serviced by the City of Pearland. The city provides both water and wastewater. Brask will utilize both. There will be minimal water/wastewater usage.

EXHIBIT "G" - Letter/Statement regarding Variance Requests

NA

## EXHIBIT "H" - Statement on Planned Use of Brazoria County Vendors

Brask will endeavor to utilize Brazoria County Vendors in the construction of its new facilities and with the continued operations when it is economically feasible.

EXHIBIT "I" - Detailed Itemized List of Tangible Personal Property requesting to be abated.

NA

## EXHIBIT "J" - Application for Abatement with Other Taxing Jurisdictions

City of Pearland Application

#### **RESOLUTION NO. R2023-315**

A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into a Tax Abatement Agreement with Brask, Inc.-Neela.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:

Section 1. That certain Tax Abatement Agreement, a copy of which is attached hereto

as Exhibit "A" and made a part hereof for all purposes, is hereby authorized and

Section 2. That the City Manager or his designee is hereby authorized to execute and

the City Secretary to attest a Tax Abatement Agreement.

PASSED, APPROVED and ADOPTED this the 18th day of December, A.D., 2023.

DocuSigned by: 2 Cd

J. KEVIN COLE MAYOR

ATTEST:

-DocuSigned by:

Frances Aguilar

FRANCES AGUILAR, TRMC, MMC CITY SECRETARY



APPROVED AS TO FORM:

DocuSigned by:

DARRIN M. COKER CITY ATTORNEY

## THE STATE OF TEXAS COUNTIES OF BRAZORIA, FORT BEND, AND HARRIS

#### TAX ABATEMENT AGREEMENT

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This Tax Abatement Agreement ("Agreement") is entered into by and between the City of Pearland, Texas, a home rule city and Municipal Corporation of Brazoria, Fort Bend, and Harris Counties, Texas, duly acting by and through its City Manager ("the City"), and Brask, Inc.-Neela, a Texas corporation ("the Company"), duly acting by and through Kevin Sareen its President.

## WITNESSETH

**WHEREAS**, on the 16 day of 2023 the City Council of the City passed Ordinance No  $k_{2023}$ -3/5 establishing Reinvestment Zone # \_\_\_\_ in the City for general business tax abatement, as authorized by Chapter 312, Tax Code, V.A.T S as amended ("Code"), and

WHEREAS, the City previously adopted Resolution No R2023-85, establishing appropriate guidelines and criteria for governing reinvestment zones and tax abatement agreements to be entered into by the City as contemplated by the Code, and

WHEREAS, the City's objective is to maintain and/or enhance the general business economic and employment base of the Pearland area for the long term interest and benefit of the City, in accordance with Resolution No R2023-85 and the Code, and

WHEREAS, the contemplated use of the Premises, as hereinafter defined, and the contemplated improvements to the Premises in the amount as set forth in this Agreement and the other terms hereof are consistent with encouraging development of said Reinvestment Zone in accordance with the purposes for its creation and are in compliance with Resolution No R2023-85 and the guidelines and criteria adopted by the City and all applicable law; and

**WHEREAS**, the Improvements, as defined below, constitute a major investment within the Reinvestment Zone that will substantially increase the appraised value of property within the zone and will contribute to the retention or expansion of primary and secondary employment within the City; and WHEREAS, there will be no substantial adverse affect on the provision of city services or on its tax base and the planned use of the Premises will not constitute a hazard to public safety, health, or welfare, and,

**WHEREAS**, but for the benefits provided through this Tax Abatement Agreement the Improvements as defined below would not be made in the City; and

WHEREAS, the Company has declared that it will be the sole beneficiary of the benefits provided through this Tax Abatement Agreement and that the Company will not share any portion of the proceeds of the benefits received through this Tax Abatement Agreement with any other party as compensation or award for consulting or other services received by the Company contingent upon the successful execution of this agreement;

**NOW, THEREFORE,** for and in consideration of the mutual agreements and obligations set forth below, the sufficiency of which is hereby acknowledged by the parties hereto, the Company and City mutually agree as follows

## 1 **DEFINITIONS.**

**a.** Effective Date: The words "Effective Date" mean the January 1<sup>st</sup> valuation date immediately following the date of execution of this Agreement.

**b. Fixed Improvements:** The words "Fixed Improvements" mean real property and/or leasehold improvements

**c. Premises:** The property subject to this Agreement shall be only that property described by metes and bounds and map showing the expansion of a new second building located west of the improvements listed in the Brazoria County Appraisal District as Property ID 621485 attached hereto as **Exhibit "A"** (the "Premises") Company acknowledges and agrees that the abatement of property taxes provided by the Agreement shall be limited to the New Premises identified on Exhibit "A," and that Company shall not be entitled to the abatement of any property taxes associated with the Existing Premises identified on Exhibit "A."

**d. Base Value of Premises:** Means the assessed value of property located at the Premises at the time of execution of this Agreement, which shall consist of the assessed value of the Premises as of January 1 immediately preceding the execution of this Agreement plus the agreed upon value of the Fixed Improvements made thereafter, but before the execution of this Agreement.

**Tangible Personal Property** The words "Tangible Personal Property" has е the same meaning as Section 1 04(5) of the Texas Tax Code, as amended, and means (i) personal property that can be seen, weighed, measured, felt, or otherwise perceived by the senses, (ii) that is owned for its role in contributing directly to the business's ability to generate profit but does not include, furniture and fixtures such as laptop computers, desktop computers, printers, chairs, desks. decorations. reprographics devices, machinery and equipment, inventory, supplies and other similar appurtenances which may indirectly contribute to the business' ability to generate a profit. Tangible Personal Property also does not include intangibles which shall include a document or other perceptible object that constitutes evidence of a valuable interest, claim, or right and has negligible or no intrinsic value, and Tangible Personal Property that was located within the reinvestment zone prior to execution of the Agreement with the City or located in the reinvestment zone subsequent to the execution of the Agreement with the City but not specifically identified in the Agreement.

**f** Ineligible Property<sup>-</sup> The following types of property shall be ineligible for abatement; land, tools, furnishings, machinery and equipment; inventory; supplies, computers and other forms of moveable personal property which meet the definition of Tangilbe Personal Property set forth above, vehicles, vessels, aircraft; housing and dwellings, retail facilities, and Deferred Maintenance

2. CONFLICT OF INTEREST: The City represents and warrants that the Premises does not include any property that is owned by a member of its council or boards, agencies, commissions, other governmental bodies or employees approving, or having responsibility for the approval of, this Agreement.

3. **ABATEMENT** Subject to the terms and conditions of this Agreement, and subject to the rights and holders of any outstanding bonds of the City, a portion of ad valorem property taxes assessed to the Premises and Improvements only as defined herein and otherwise owed to the City shall be abated The City hereby acknowledges that it is not aware of any terms or conditions of any outstanding bonds which would invalidate this Agreement or would conflict with the provisions of this Agreement. This Agreement shall be effective with the January 1<sup>st</sup> valuation date immediately following the date of execution of this Agreement (the "Effective Date") In each year that this Agreement is in effect, the amount of abatement shall be an amount equal to the percentage indicated below of the taxes assessed upon the increased value of the Premises due to the Improvements defined herein, exclusive of future or other capital investment made at the Premises not contemplated herein, over the market value as of January 1<sup>st</sup> in the year in which this Agreement is executed The abatement as herein provided shall be for the following years and in the following amounts 1) Fifty percent (50%) of the taxes assessed upon the increased value of the Fixed Improvements set forth below exclusive of future or other capital investment made at the Premises, annually for a period of **five** (5) years beginning <u>January 1, 2025</u> and ending <u>December 31, 2029</u>.

/

4. **FUNDING CONDITIONS.** The Company must meet all of the following abatement Capital Improvement and Job Creation conditions ("Funding Conditions"), or Company shall be subject to liquidated damages and/or repayment of abated taxes in accordance with this Agreement:

a. Capital Improvements. The Company shall construct various improvements on the Premises, which when complete shall have a minimum investment value of eight million dollars (\$8,000,000) for the real property and/or improvements ("Fixed Improvements") and four million five hundred thousand dollars (\$4,500,000) in other "Ineligible Property" which shall be substantially complete on or before March 31, 2025 (the "Improvement Completion Date"), provided, that the Company shall have such additional time to complete the Improvements as may be required in the event of "force majeure" (as set forth herein) if the Company is diligently and faithfully pursuing completion of the Improvements. The Improvement Completion Date shall be defined as the date a Final Certificate of Occupancy is issued by the City

**b. Job Creation:** The Company shall create a total of 25 new "Employment Positions", as defined herein, in accordance with the following schedule

- 1) Employment Positions 10 total by December 31, 2026
- 2) Employment Positions 17 total by December 31, 2027
- 3) Employment Positions 25 total by December 31, 2028

Company shall demonstrate compliance with this Section by maintaining a minimum of ninety five percent (95%) or more of the required Employment Positions at the Premises for the entire duration of this Agreement. Employment Positions, for purposes of this Agreement, shall only be counted if the number of Employment Positions is greater than the total number of Employment Positions located at the Company's operations in the City at the time this Agreement is executed (the "Threshold") The

parties agree that for purposes of this Agreement, the Threshold shall be 104 Employment Positions

- **c. Employment Positions.** For the purposes of this Agreement, "Employment Positions" shall be defined as the Company's jobs meeting all of the following criteria
  - 1) New full-time employment positions (at least 2000 hours annually per employee) in the City that work at the Premises, and
  - 2) The Employment Positions must have an average annual gross compensation of at least \$60,000 00 per year (excluding benefits), and
  - 3) Medical benefits must be provided for each Employment Position

**5. APPLICATION FOR TAX ABATMENT**. The Company agrees and covenants that the information provided in the Application for Tax Abatement attached hereto as **Exhibit "B"** is true and correct and that any materially false or misleading information provided to applicable taxing jurisdictions shall be an event of default and grounds for termination of this Agreement.

6. GOOD FAITH, COMPLIANCE AND CONSIDERATION. The Company agrees and covenants that it will diligently and faithfully, in a good and workmanlike manner, pursue completion of the Improvements as a good and valuable consideration of this Agreement. The Company further covenants and agrees that all construction of the Improvements will be in accordance with all applicable federal, state and local laws and regulations or valid waiver thereof In further consideration, the Company shall thereafter, from the date a Final Certificate of Occupancy is issued until the expiration of this Agreement, continuously operate and maintain the Premises and limit the use of said Premises to that use which is consistent with the terms of this Agreement and the general purpose of encouraging development or redevelopment of the Reinvestment Zone during the period that this Agreement is in effect.

7 ANNUAL COMPLIANCE VERIFICATIONS. No later than 60 days after December 31, 2024, and continuing every year thereafter through 2030, the Company shall deliver to the City an Annual Compliance Verification, in the form of **Exhibit "C"** attached hereto, signed by a duly authorized representative of the Company certifying the following information

- a. the number Employment Positions created and maintained by the Company on the Premises, the general description the Employment Positions existing as of December 31st of the preceding year and the wage information for all Employment Positions, and
- b. the appraised value, as determined by the Central Appraisal District, of the Fixed Improvements as defined herein, supporting evidence that the Fixed Improvements were constructed or installed on or before the Improvements Completion Date and a general description of the Fixed Improvements existing as of December 31st of the preceding year
- **c.** Company shall annually submit the Application for Property Tax Abatement Exemption Form, in the form of Exhibit D of the County annually to qualify for its abatement and shall submit a copy to the City as a part of its Annual Compliance Verification

There shall be a total of six (6) Annual Compliance Verifications submitted to the City in years 2025 through 2030 Each Annual Compliance Verification shall include specific back-up information supporting the Employment Position data Furthermore, all Annual Improvement Compliance Verifications shall consist of a certified copy of the appraised value of the Improvements as shown by the Central Appraisal District supported by all correspondence, renditions, appeals or contests and settlement of appraised value and shall provide appropriate back-up data for the Improvements exclusive of other investments made at the Premises

**8 CERTIFICATION OF GOOD STANDING/DELINQUENT TAXES** By execution of this Agreement, the Company certifies that the Company is in good standing under the laws of the State in which it was formed or organized, and has provided the City evidence of such In addition, the Company certifies that the Company owes no delinquent taxes to any taxing unit of the State of Texas, the City or any other local tax levying political subdivision with jurisdiction to levy taxes in or on the operations and property of the Company at the Premises

**9. CERTIFICATION RELATING TO UNDOCUMENTED WORKERS:** By execution of this Agreement, the Company, including any business, branch, division, and department of the Company, certifies that it does not and will not knowingly employ an undocumented worker (as defined by Texas Government Code Section 2264 001(4)) If after any abatement of taxes under the Agreement, the Company, or a business, branch, division, or department of the Company, is convicted of a violation under 8 U S C Section 1324a(f), the Company shall repay the amount of any funds abated plus interest at the

rate of 8% per year The repayment shall be due and owing not later than the 120th day after the date the City notifies the Company of the violation and required repayment.

ACCESS TO PREMISES. The Company further agrees that the City. its 10. agents and employees shall have the right to enter upon the Premises at any reasonable time to inspect the Improvements in order to determine whether the construction of the Improvements is in accordance with this Agreement and all applicable federal, state, and local laws, ordinances, and regulations or valid waiver thereof After completion of the Improvements, the City shall have the continuing right to enter upon and inspect the Premises at any reasonable time, after twenty-four (24) hours' notice has been provided, to determine whether the Premises are thereafter maintained and operated in accordance with this Agreement and all applicable federal, state, and local law, ordinances, and regulations. The City shall conduct at least one inspection annually to ensure compliance with the guidelines contained in Resolution No R2023-85 Notwithstanding any other provision of this Agreement, if the City determines that a violation of a federal, state, or local law, ordinance or regulation exists on the Premises, the City may, in addition to any other authorized enforcement action, provide to the Company written notice of such violation For the purposes of this Agreement, the Company shall have ten (10) days from the date of the notice to cure or remedy such violation If the Company refuses to cure or remedy the violation within the ten (10) day period, the Company is subject to the forfeiture, at the discretion of the City, of any right to any tax abatement for a portion of the period or the entire period covered by this Agreement.

## 11. LIQUIDATED DAMAGES.

a. Funding Condition Targets. As set forth above, during the term of this Agreement through <u>2030</u>, the Company shall deliver to the City an Annual Compliance Verification demonstrating compliance with the Funding Conditions of this Agreement for the preceding year If the Company fails to timely provide an Annual Compliance Verification or provides an Annual Compliance Verification that demonstrates Company failed to meet a Funding Condition target(s) for that year, then the City may, at its sole discretion and in addition to all other remedies for the recapture of lost tax revenue provided herein, require the Company to pay liquidated damages up to the amount of the abatement received for the year in which the Company did not meet the Funding Conditions

**b.** General Provisions Related to Liquidated Damages: Liquidated damages provided for herein shall be construed in accordance with Section 312.205, Tax Code, V.A.T S, as amended, and shall include all taxes which otherwise would have been paid to the City without the benefit of abatement (but without the addition of penalty; interest will be charged at

the statutory rate for delinquent taxes as determined by Section 33 01 of the Tax Code) and shall become a debt to the City and shall be due, owing and paid to the City as liquidated damages subject to the expiration of any cure period or the termination date, whichever is applicable The City shall retain all remedies for the recapture and collection of the lost tax revenue as provided generally in the Tax Code for the collection of delinquent property taxes and in accordance with Resolution No R2023-85

#### 12. DEFAULTS AND REMEDIES<sup>1</sup>

**a.** Each of the following acts or omissions of the Company or occurrences shall constitute an act of default under this Agreement:

- 1) The Company fails to meet the Capital Improvements Funding Conditions by the Improvement Completion Date
- 2) The Company fails to provide or submit Annual Compliance Verification Report(s) as required by this Agreement.
- 3) The Company fails to meet any Capital Improvement or Job Creation Funding Conditions of this Agreement.
- 4) The Company fails to submit annually the Application for Property Tax Abatement Exemption Form with the County
- 5) The Company allows its ad valorem taxes owed to any taxing jurisdiction to become delinquent, and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes.

**b** In the event of a default of the terms of this Agreement, the City shall provide the Company written notice of such default, which notice shall be delivered by personal delivery or certified mail to

Kevin Sareen Brask Inc., Neela 8720 Industrial Drive Pearland, TX 77584 c. If Company fails to satisfactorily cure a default under this Agreement within thirty (30) days of the date of receiving written notice, this Agreement may be terminated by the City at its discretion without further notice or liability to Company In the event Company fails to cure a default within thirty (30) days of receiving notice, the Company shall immediately refund to the City any amounts abated under this Agreement plus interest at the rate of 8% per year, compounded annually from January 1 of the year prior to the Default Year to the date of payment of the refunded taxes.

**d** The Company shall provide the City a written notice a minimum of thirty (30) days before any of the Employment Positions or Improvements are moved from the Premises that would result in a reduction below the then required Employment Positions In the event the Company shall move any of the Employment Positions or Improvements required by this Agreement from the Premises during the term of the Agreement, the City in its sole discretion, may, terminate this Agreement and require the Company to immediately refund, to the City, all or a portion of the taxes previously abated under this Agreement, plus interest at the rate of 8% per year, compounded annually from January 1 of the year following the execution of this Agreement to the date of repayment.

e. All taxes abated herein shall be deemed due and owing to the City at any point that the Company cannot pay its bills as they come due If after the Company is no longer able to pay its bills as they come due, it files for protection from its creditors by any chapter of the bankruptcy code the City may, at its discretion, pursue the abated taxes as a creditor in the bankruptcy for unpaid property taxes subject to any and all tax liens applicable thereto

## 13 CITY AUDIT RIGHTS:

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**a. Duty to Maintain Records.** The Company shall maintain adequate records to support its compliance with the terms of this Agreement. The Company shall also maintain such records as are reasonably deemed necessary by the City and auditors of City, or such other persons or entities designated by City, to ensure proper accounting for all costs and performances related to this Agreement.

**b. Records Retention.** The Company shall maintain and retain for a period of four (4) years after the submission of the final Annual Compliance Verification report, or until full and final resolution of all audit or litigation matters which arise after the expiration of the four (4) year period after the

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submission of the final Annual Compliance Verification report, whichever time period is longer, such records as are necessary to fully disclose the extent of services provided under this Agreement, including but not limited to any daily activity reports and time distribution and attendance records, and other records which may show the basis for the calculation of full time positions

Audit Trails. Appropriate audit trails shall be maintained by the C. Company to provide accountability for updates and changes to automated personnel and financial systems Audit trails maintained by the Company shall, at a minimum, identify the changes made, the individual making the change and the date the change was made. An adequate history of transactions shall be maintained by the Company to permit an audit of the system by tracing the activities of individuals through the system The Company's automated systems provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, or modification of information related to the performances of this Agreement. The Company agrees that its failure to maintain adequate audit trails and corresponding documentation shall create a presumption that the performances were not performed

The Company shall, upon reasonable advance notice, d. Access grant the City, or such other persons or entities designated by City for the purposes of inspecting, auditing, or copying such books and records, access, during normal business hours on a not to interfere basis, to all paper and electronic records, books, documents, accounting procedures, practices or any other items relevant to the performance of this Agreement. All records, books, documents, accounting procedures, practices or any other items relevant to the performance of this Agreement shall be subject to examination or audit by City, or such other persons or entities designated by City in accordance with all applicable state and federal laws, regulations or directives The Company will direct any subcontractor with whom it has established a contractual relationship to discharge the Company's obligations to likewise permit access to, inspection of, and reproduction of all books and records of the Company's subcontractor(s) which pertain to this Agreement.

e. Location and Reimbursement. Any audit authorized herein shall be conducted at the Company's Premises in the City during normal business hours and conducted at City's expense and in a manner not to unreasonably interfere with Brask, Inc.,-Neela business provided all reasonable costs incurred by City in conducting any such audit shall be reimbursed by the Company in the event such audit reveals an aggregate discrepancy in any of the Company's reporting of compliance as required by this Agreement. If any audit or examination reveals that the Company's reports for the audited period are not accurate for such period, the Company shall reimburse the City in accordance with Section 11 of this Agreement.

f **Corrective Action Plan.** If an audit reveals any discrepancies or inadequacies which must be remedied in order to maintain compliance with this Agreement. applicable laws, regulations. the Company's responsibilities or performance standards, the Company agrees that within thirty (30) calendar days after the Company's receipt of the audit findings, to propose and submit to the City a corrective action plan to correct such discrepancies or inadequacies subject to the approval of the City The Company further agrees, at the sole cost of the Company, to complete the corrective action approved by the City within thirty (30) calendar days after the City approves the Company's corrective action plan

**g. Reports.** The Company shall provide to the City periodic status reports in accordance with the City's audit procedures regarding the Company's resolution of any audit-related compliance activity for which the Company is responsible

14. **REPORTS AND BRIEFINGS** In a manner consistent with the need to protect privacy and the intellectual property of the Company and third parties, the Company will provide periodic briefings as reasonably requested by the City on the general activities, economic impact and progress of the new project development and business operations in Texas

15. USE AND RETENTION OF CITY CRAFTSMEN, TRADES AND SUPPLIERS: Although not an event of default or a condition to this Agreement, the City requests that the Company satisfies its need for additional employees from City of Pearland, Texas, residents and purchase all materials, supplies and services necessary to affect the occupancy of the property from City of Pearland merchants and businesses

16 COMMUNITY INVOLVEMENT. Although not an event of default or condition of any advance hereunder, the Company agrees to actively participate in community and charitable organizations and/or activities, the purpose of which are to improve the quality of life in the City of Pearland, Texas, and to actively encourage its employees to be involved in such organization and/or activities.

**17 FINANCIAL INFORMATION** The Company shall furnish the City, if requested, on an annual basis by February 28, of each year throughout the term of this Agreement, information regarding the general business status, market and general summary financial updates regarding the Company

18. INDEMNITY AND HOLD HARMLESS. THE COMPANY RELEASES, ACQUITS, INDEMNIFIES, AND HOLDS HARMLESS THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS, AND ASSIGNS, FROM ANY AND ALL KINDS OF CLAIMS, DEMANDS, LOSSES, DAMAGES, INJURIES, RIGHTS, CAUSES OF ACTION, OR JUDGMENTS OF WHATSOEVER CHARACTER OR NATURE, INCLUDING ATTORNEYS' FEES, WHICH MAY ARISE AS A RESULT OF THIS AGREEMENT THE PROVISIONS OF THIS SECTION REFLECT THE EXPRESSED INTENTIONS OF THE COMPANY AND THE CITY AND SHALL SURVIVE THE TERMINATION, EXPIRATION, OR CANCELLATION OF THIS AGREEMENT

19. EXPRESS NEGLIGENCE. THE INDEMNITY SET FORTH IN THIS AGREEMENT IS INTENDED TO BE ENFORCEABLE AGAINST THE COMPANY AND ITS SUCCESSORS AND ASSIGNS IN ACCORDANCE WITH THE EXPRESS TERMS AND SCOPE HEREOF NOTWITHSTANDING TEXAS' EXPRESS NEGLIGENCE RULE OR ANY SIMILAR DIRECTIVE THAT WOULD PROHIBIT OR OTHERWISE LIMIT INDEMNITIES BECAUSE OF THE NEGLIGENCE (WHETHER SOLE, CONCURRENT, ACTIVE OR PASSIVE) OR OTHER FAULT OR STRICT LIABILITY OF THE CITY

#### 20 GENERAL PROVISIONS

**a. Authority.** Each party represents that it has obtained all necessary authority to enter into this Agreement.

**b.** Relationship of Parties and Disclaimer of Liability The parties will perform their respective obligations under this Agreement as independent contractors and not as agents, employees, partners, joint ventures, or representatives of the other party Neither party can make representations or commitments that bind the other party The Company is not a "governmental body" by virtue of this Agreement or the City's granting of an abatement.

**c.** Limitation of Liability. In no event will either party be liable to the other party for any indirect, special, punitive, exemplary, incidental or consequential damages This limitation will apply regardless of whether or not the other party has been advised of the possibility of such damages.

**d. Term** The term of this Agreement commences on the Effective Date of this Agreement and continues until December 31, 2030 unless terminated earlier pursuant to the terms of this Agreement.

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e. Termination for Cause. Either party may terminate this Agreement for Cause upon thirty (30) days prior written notice to the other party "Cause" is any failure to perform a material obligation under this Agreement within the specified time, including Company's failure to comply with any Funding Conditions contained herein The sole remedy for any termination for Cause (and for the "cause" giving rise to the termination) shall be that each party is relieved of its obligation to perform hereunder, however, following termination by the City, the Company will continue to be obligated to the City for liquidated damages and/or repayment of abated taxes in accordance with applicable provisions of this Agreement.

#### f. Dispute Resolution and Applicable Law

- 1) Informal Meetings. The parties' representatives will meet as needed to implement the terms of this Agreement and will make a good faith attempt to informally resolve any disputes
- 2) Applicable Law and Venue. This Agreement is made and entered into in the state of Texas, and this Agreement and all disputes arising out of or relating thereto shall be governed by the laws of the state of Texas, without regard to any otherwise applicable conflict of law rules or requirements. The Company agrees that any action, suit, litigation or other proceeding (collectively "litigation") arising out of or in any way relating to this Agreement, or the matters referred to therein, shall be commenced exclusively in the State of Texas in any court with proper jurisdiction to hear this matter closest to the City Hall of the City of Pearland, and hereby irrevocably and unconditionally consent to the exclusive jurisdiction of those courts for the purpose of prosecuting and/or defending such litigation The Company hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action or proceeding, any claim that (a) the Company is not personally subject to the jurisdiction of the above-named courts, (b) the suit, action or proceeding is brought in an inconvenient forum or (c) the venue of the suit, action or proceeding is improper

#### 21 MISCELLANEOUS PROVISIONS

**a. Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in establishing proof of this Agreement to produce or account for more than one such counterpart.

**b. Merger** This document constitutes the final entire agreement between the parties and supersedes any and all prior oral or written communication, representation or agreement relating to the subject matter of this Agreement.

**c. Severability** Any term in this Agreement prohibited by, or unlawful or unenforceable under, any applicable law or jurisdiction is void without invalidating the remaining terms of this said Agreement. However, where the provisions of any such applicable law may be waived, they are hereby waived by either party, as the case may be, to the fullest extent permitted by the law, and the affected terms are enforceable in accordance with the parties' original intent.

**d.** Survival of Promises. Notwithstanding any expiration, termination or cancellation of this Agreement, the rights and obligations pertaining to payment or repayment of abated taxes and/or liquidated damages, confidentiality, disclaimers and limitation of liability, indemnification, and any other provision implying survivability will remain in effect after this Agreement ends

e Binding Effect. This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the parties and their successors and all other state agencies and any other agencies, departments, divisions, governmental entities, public corporations and other entities which shall be successors to each of the parties or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of each of the parties hereto

**f. Successors and Assigns/Notice.** The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement may be transferred or assigned by the Company only upon written permission by the City in accordance with Resolution R2023-85, which permission shall not be unreasonably withheld. No assignment shall be approved if the assignor or assignee is indebted to the

City for ad valorem taxes or other obligations The Company, or any legal successor thereto or prior assignee thereof, may assign its rights and obligations under this Agreement, including by merger or operation of law, to any legal successor or any person or entity that acquires all or substantially all of its business and operations. In addition, with the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, the Company, or any legal successor company thereto or prior assignee thereof, may assign its rights and obligations under this Agreement to any parent or wholly owned subsidiary that it currently has in place or later establishes, if it is constituted as a separate legally recognized business entity Any such assignment will be made without additional consideration being payable to the City This Agreement shall survive any sale, change of control or similar transaction involving the Company, any successor thereto or prior assignee thereof and no such transaction shall require the consent of the City The Company shall provide the City written notice of any assignment, sale, change of control or similar transaction pursuant to this section as soon as possible and in no event not later than thirty (30) calendar days following such event.

**g** Force Majeure. Neither party shall be required to perform any obligation under this Agreement or be liable or responsible for any loss or damage resulting from its failure to perform so long as performance is delayed by force majeure or acts of God, including but not limited to strikes, lockouts or labor shortages, embargo, riot, war, revolution, terrorism, rebellion, insurrection, flood, natural disaster, interruption of utilities from external causes.

**h** Notice. All notices, requests, demands and other communications will be in writing and will be deemed given and received (i) on the date of delivery when delivered by hand or via electronic mail, (ii) on the following business day when sent by confirmed simultaneous telecopy and (iii) on the following business day when sent via overnight courier (eg, Federal Express)

22. AGRICULTURAL VALUATION: It is understood and agreed by the City and the Company that if the Premises has been designated and taxed as agricultural land pursuant to Chapter 23, Subchapter C, Tax Code, V.A.T S, that this Agreement shall not be effective and no abatement granted until the Company has removed the agricultural use designation and all taxes due pursuant to Section 23.55, Tax Code, V.A.T S, as amended, (roll back taxes) have been paid

**23. CITY AUTHORIZATION.** This Agreement was authorized by Resolution of the City Council at its council meeting on the  $\underline{1\&}$  day of  $\underline{becenb@02}$ , authorizing the City Manager to execute the Agreement on behalf of the City

Witness our hands this <u>9</u> day of <u>December</u>

ATTEST

By.

City Secretary

CITY

By<sup>.</sup>

Trent Epperson

**City Manager** 

APPROVED AS TO FORM

By. Darrin M Coker

**City Attorney** 

BRAS	SK, INC , NEELA.	
By <sup>.</sup>	Kevin Sareen President	

THE STATE OF TEXAS

BEFORE ME, the undersigned Notary Public, on this day personally appeared Trent Epperson, City Manager for the City of Pearland, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 19 DAY OF

nted Name Commission Expires

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HYLAN CADMUS
ic, State of Texas 👂
ission Expires
per 17, 2024
ID 1166200-6

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THE STATE OF $\underline{TX}$	,
COUNTY OF Brazoria	,

BEFORE ME, the undersigned Notary Public, on this day personally appeared Kevin Sareen, President of Brask, Inc., Neela known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS DO DAY OF

NOTARY PUBLIC, STATE OF Sme Printed Name

Commission Expires.

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Exhibit "A"

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## PREMISES

Property Description 8720 Industrial Drive, Pearland, Texas 77584

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Exhibit "B"

APPLICATION FOR TAX ABATEMENT IN THE CITY

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# EXHIBIT "C"

# FORM OF ANNUAL EMPLOYMENT COMPLIANCE VERIFICATION

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## EXHIBIT D COUNTY APPLICATION FOR PROPERTY TAX ABATEMENT FORM

I.

# APPLICATION FOR TAX ABATEMENT IN THE CITY OF PEARLAND

It is recommended that this application be filed at least 90 days prior to the beginning of construction or the installation of equipment. The filing of this document acknowledges familiarity and conformance with Guidelines and Criteria for Granting Tax Abatement in a Reinvestment Zone Created in the City of Pearland. This application will become part of the agreement and any knowingly false representations will be grounds for the City to void the agreement. Original copy of this request should be submitted to the Pearland Economic Development Corp. President, 3519 Liberty Drive, Suite 350, Pearland, Texas 77581, 281.997.3000, www.pearlandedc.com. Please attach exhibits and additional information.

## **Applicant Information**

Name of Business: Brask, IncNeela		Date: 9-5-2023		
Address: 8720 Industria	l Dr.			
City: Pearland	Pearland State: TX		Zip: 77584	
Contact Person: Lovkes	h Kevin Sareen		Title: President	
Phone: 281-201-0006	Fax	281-201-5235	Email: lsims@braskinc.com	
NAICS Codes for prima	ry business operati	ons: 3324		
Federal ID Number: 77	-0695782			
Does the Business f If yes, please also p			ifferent tax ID number? 🔲 Yes	No No
What is your State of	of Texas tax ID nu	mber:		
Is the contact person list Yes	ted above authorize	ed to obligate the B	usiness?	
	rovide the name an esh Kevin Sareen	d title of a company	officer authorized to obligate the Business:	
<b>Business Inform</b>	nation			
Provide a brief descripti	on and history of t	he Business. Includ	le information about the Business' products or	services

and markets served. Brask is a leading manufacturer of Shell and Tube Heat Exchangers. Brask has two locations strategically located on the Gulf Coast to serve its customers. In 2011, Brask worked with the City of Pearland and PEDC to construct a 100,000 square foot manufacturing facility on Industrial Drive near State Highway 35. Brask specializes in the design and fabrication of custom packaged heat exchangers for the oil and gas downstream market. The Pearland facility includes offices and production areas and currently has 93 employees.

Busmess Structure:		<ul> <li>Limited Liability Company</li> <li>Sole Proprietorship</li> </ul>	Not for Profit
State of Incorporation:	Texas	Years in business: 12	
Identify the Business' ow	mers and percent ownershi	p: Privately owned	
Annual Sales (Most Rece	nt): \$32,000,000		
Projected Total Sales:	Year 1: \$36,200,000	Year 2: \$37,400,000	Year 3: \$39,500,000

How many employees are currently employed by the Business including all locations, subsidiaries, divisions worldwide? List the Business' Texas Locations and the Current Number of full-time equivalent (FTE) Employees at each Location (including Pearland if applicable): 228 - Sulphur, LA - 115 / Pearland - 93

Current annual payroll of Pearland facility excluding any benefits (if applicable): \$8.9M

Does the Business offer medical and dental insurance? Xes I No If yes, please describe. Brask 100% health insurance for employee only

Does the Business offer a pension plan, 401(k) plan, and/or retirement-plan? If yes, please describe. Match 50% up to 6% Yes 🗌 No

Please provide a brief description of the Business' involvement in the community(ies) that it has locations.

Brask is involved in the Pearland and Houston community which is part of our core values. Brask has a relationship with Pearland Chamber of Commerce, Forgotten Angels, Adult Reading Center, India House, Indo Chamber of Commerce of Greater Houston, and other local schools/charitable organizations in which volunteering and financially compensations are donated on yearly basis.

#### **Project Information**

Location and legal description of the area to be designated as reinvestment zone (Provide map showing site and metes and bounds description in attachment A5): See attached

Type of Business Project:	Modernization of Existing Pearland Facility
Type of Facility: Manufacturing Regional Service Other Basic Industry	Reg. Distribution Center Reg. Entertainment Center

Briefly describe the proposed project for which assistance is being sought. (Include project facility size, infrastructure improvements, proposed products/services, any new markets, etc.)

Brask is considering constructing an additional 40,000 square feet of manufacturing space at its location. Brask would invest \$14 million in facilities and equipment for the expansion that would be built on land currently owned by Brask. The expansion will result in the retention of 93 jobs and the creation of an additional 22 jobs. This project will allow Brask to develop a new product line with another company that utilizes state of the art cleaning technologies. Once operational, Brask will be able to help our refining and petrochemical customers reduce their carbon footprint. This is an ESG (Environmental Social Governance) Project which creates a positive impact on society and the environment. Brask is looking at multiple locations. The support from City of Pearland will impact the decision on location. Based on past experiences dealing with City of Pearland plus current market conditions, cost continue to escalate.

Has any part of the project started? If yes, please explain.

When would construction begin? 2023

What is the anticipated completion date to begin operations? 2024

Identify the Business' competitors. If any of these competitors have Pearland locations, please explain the nature of the competition (e.g. competitive business segment, estimated market share, etc.) and explain what impact the proposed project may have on the Pearland competitor.

No competitors are in the Pearland area however Brask has competition in the Houston market.

Will any of the current Pearland employees lose their jobs if this project does not proceed in Pearland? (Existing Pearland Companies only) X Yes X No

If yes, please explain why and identify those jobs as "retained jobs" in the Project Jobs section. Brask's business model with this new facility is to get into the repair and maintenance business. If this project does not move forward, Brask cannot sustain current headcount on new fabrication at the Pearland facility, 48

Is the Business actively considering locations outside of Pearland?

X Yes No

If yes, where and what assistance is being offered? Sulphur, LA

Will any State or Federal Permits be needed for the project? If yes, please describe each and current time-frame for receiving each?

Will the project be seeking LEED certification?	Yes.	No No
If yes, what level of certification is being s	ought?	
Project Jobs		

List the jobs that will be created and/or retained as the result of this project. (A retained job is an existing job that would be eliminated or moved to another location if the project does not proceed in Pearland.) For jobs to be created, include the starting and final hourly wage rate. For retained jobs, include the current hourly wage rate.

Is the hourly wage rate based on a 40 hour work week, 52 weeks per year? 🔀 Yes 📃 No If no please explain:

Full-Time CREATED Jobs	(Add additional rows as needed)			
Job Title/Classification	Number of CREATED Jobs	Starting Wage (Average would be ok)	Number of Jobs Created at End of Year 3	Wage at End of Year Three
Shop Employee	17	\$850,000		
Office Employee	8	\$1,000,000		
The second second second		\$		
		\$		
		\$		
		\$		
		\$		
	1 1 1 1 1 1	\$		
		\$		
		\$		
		\$		
	1.1.1	\$		
		\$		
		\$		
		5		
Total CREATED Jobs	25	\$1,850,000		11.4

Full-Time RETAINED Jobs*	(Add additional rows as needed)		
Job Title/Classification	Number of RETAINED Jobs	Current Wage	
All jobs	48	\$3,360,000	
		\$	
		\$	
		\$	
		\$	
		5	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
Total RETAINED Jobs		\$3,360,000	

\*Existing jobs based in Pearland

#### Tax Abatement Information

Description of eligible improvements (real property) to be constructed including fixed equipment fixed equipment, buildings, parking lots, etc (Provide detail in attachment A6): Construction of an 40,000 SF manufacturing building which will have areas for production, warehousing and office.

Description of ineligible property to be included in project, including inventory and personal property: Equipment, machinery, furniture, computers. See attachment

This would be something similar as what was in the 2008 Application

The proposed reinvestment zone is located in:

County:	Brazoria
Drainage District:	Brazoria County Drainage District # 4
School District:	Alvin ISD
College District:	Alvin Community College
Other Taxing Jurisdict	ions:

What is the parcel(s) tax identification number(s)?: 614903, 614904, 703936

Tax Abatement Requested: 50% of eligible property for a term of 5 years (or) requesting staggered tax abatement terms as follows:

Is the applicant seeking a variance under Section 3 (f) of the Guidelines: Yes 🗌 No 🕅 If yes, attached required supplementary information in attachment A8.

Has company made application for abatement for this project by another taxing jurisdiction or nearby counties: Yes 🗌 No 🔀

If yes, provide dates of application, hearing dates, if held or scheduled, name of jurisdictions and contacts, and letters of intent. Brask will apply to Brazoria County for an abatement if granted by the City of Pearland

Construction Estimates

Commencement Date:	2023	
Construction Man Years:		
Completion Date:	2024	
Peak Construction Jobs:		

If Modernization Estimated Economic Life of Existing Plant in years: Added Economic Life from Modernization in years:

2022_APPRAISED BASE VALUE ON SITE		ESTIMATED VALUE OF NEW VALUE ADDED	
Land	265,060	Land	\$1,000,000
Improvements	\$0	Improvements	\$8,000,000
	11 11 11 11 11 11	Training	\$ 500,000
Personal Property – computers, furniture and fixtures, inventory, machinery and other equipment, raw materials, supplies and work in progress	\$0	Personal Property – computers, furniture and fixtures, inventory, machinery and other equipment, raw materials, supplies and work in progress	\$4,500,000
Total of Pre-existing Value	\$265,060	Total of New Value Added	\$14,000,000
Total Value of Pre-existing and New Value	\$265,060		

	AMOUN	TS BUDGETED			
Use of Funds	Cost	Source	Commitment Status		
Land Acquisition	\$1,000,000		Land Acquired		
Site Preparation					
Cost of Utilities to Site			1		
Building Acquisition	1				
Building Construction	\$8,000,000	Comerica	Approved		
Building Remodeling		1			
Machinery & Equip.					
Computer Hardware					
Computer Software					
Furniture & Fixtures					
Working Capital					
Moving Expenses					
For all the above	\$4,500,000				
Job Training	\$500,000				
TOTAL	\$14,000,000				

If yes, please provide the Annual Base Rent Payment (lease payment minus property taxes, insurance, and operating/maintenance expenses) and the length of the lease agreement.

Financial assistance is need-based, please explain why assistance is needed: Brask is considering two locations and incentives are needed to offset the cost of development of the site and for increasing cost of construction

Any recipient of tax abatement is expected to provide security to the City. The security will be exercised, when necessary, due to non-performance. In addition to a lien and/or mortgage, personal guarantees are expected for businesses not publicly traded, and corporate guarantees are expected when the business recipient has a parent (or holding) company. What security will be offered to secure financial assistance and describe what seniority or position the City will have on any lien or mortgage? Brask will sign a Tax Abatement Agreement with the City of Pearland

#### Attachments

Please attach the following documents:

- A1 Completed Economic Impact Data Sheet plat attached
- A2 Business Plan (If requested)
- A3 Copy of the most recent payroll report for one pay period must be in Excel format and include the following information: (If requested)
  - Company name, date of payroll and source of payroll information
  - Employee name and/or employee identification number
  - · Current hourly wage do not include bonuses or other benefit values
  - Indicate if the employee is full time (40 hours per week, 52 weeks per year) or part time.
- A4 Financial Information (If requested)
  - Audited profit and loss statements and balance sheets for past three year-ends;
  - Current YTD profit and loss statement and balance sheet; and
  - Schedule of aged accounts receivable;
  - Schedule of aged accounts payable; and
  - Schedule of debts.
- A5 Map showing boundaries of proposed site.
- A6 Statement explaining general nature and extent of the project, describing existing site and improvements; describe all proposed improvements and provide a list of all improvements and equipment for which abatement s requested.
- A7 Proposed timeline for undertaking and completing the planned implements not yet available

A8 Variance Request (if applicable)

#### Certification & Release of Information

I hereby give permission to the City of Pearland and the Pearland Economic Development Corporation (PEDC) to research the Business' history, make credit checks, contact the Business' financial institutions, insurance carriers, and perform other related activities necessary for reasonable evaluation of this application.

I understand that all information submitted to the City and PEDC related to this application is subject to Texas Public Information Act.

I understand this application is subject to final approval by the City of Pearland City Council and the Project may not be initiated until final approval is secured.

I understand that the City reserves the right to negotiate the financial assistance. Furthermore, I am aware that tax abatement is not available until an agreement is executed within a reasonable time period following approval.

I certify the Business has not, within the last five years, been cited or convicted for violating any state or federal statutes, rules, and regulations, including environmental, worker safety and immigration regulations, or, if such violations have occurred, that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

I hereby certify that all representations, warranties, or statements made or furnished to the City and PEDC in connection with this application are true and correct in all material respect. I understand that it is a violation under Texas law to engage in deception and knowingly make, or cause to be made, directly or indirectly, a false statement in writing for the purpose of procuring economic development assistance.

For the Busi Signature

Name and Title (typed or printed)

#### INSTRUCTIONS

Applicants and projects must meet the requirements established by the City of Pearland *Guidelines and Criteria for Granting Tax Abatement in a Reinvestment Zone* found in Resolution No. R2019-36 (attached) in order to receive positive consideration. Section 2 of the Guidelines, for example, sets out regulations governing eligible facilities, eligible and ineligible improvements, terms and economic qualifications. Conformance with all sections, however, is required for eligibility.

#### APPLICANT INFORMATION

The taxing unit may consider applicant financial capacity in determining whether to enter into an abatement agreement. Established companies for which public information is available, or the wholly owned businesses of such companies, should include with the application a copy of their latest annual report to stockholders. Other applicants and new companies should attach a statement showing when the company was established, business references (name, contact and telephone number of principal bank, accountant and attorney) and may be required to submit an audited financial statement and business plan.

#### **PROJECT INFORMATION**

Only facilities listed in Section 2(a) of the *Guidelines* may receive abatement without applying for a variance. Check guideline definitions in Section 1 to see if project qualifies.

#### TAX ABATEMENT INFORMATION

Estimated Appraised Value on Site - The value as of January 1 immediately preceding abatement should be the value established by the Appraisal District. If the applicant must estimate value because the taxable value is not known or is combined with other properties under a single tax account, please so state. Projections of value should be a "best estimate" based on taxability in Texas. The projection of project values not abated should include personal property and ineligible project-related improvements such as office space in excess of that used for plant administration, housing, etc.



# CITY OF PEARLAND TAX ABATEMENT ANNUAL INVESTMENT AND EMPLOYMENT COMPLIANCE VERIFICATION

Verification should be submitted to the Pearland Economic Development Corporation President, 3519 Liberty Drive, Suite 350, Pearland, Texas 77581, 281.997.3000, www.pearlandedc.com. Please attach exhibits and additional information.

## **Company Information**

Name of Business: 1	Brask, Inc Neela		Date:
Address: 8720 Indus	strial Drive		
City: Pearland	State: TX		Zip: 77584
Contact Person: Kevin Sareen			Title:
Phone:	Fax;	Email:	

## **Annual Compliance Verification**

Please check the box that applies:

First Time Filing Subsequent Filing If subsequent, date last compliance submitted:

Report Covers Period: Begin Date: End Date:

This is compliance of \_

## **Employment-Position Information**

All positions must be full-time (2,000 hours or more annually) and permanent, with the Company.

- 1. Total Number of Employment Positions Reported (previously certified and new):
- 2. Total Number of Employment Positions Previously Certified:
- 3. Total Number of New Employment Positions Submitted for Certification (line 1 line 2):
- 4. Total Payroll for all Employment Positions Reported this Claim Period:

\$

5. Average annual gross compensation at this Company/Project Facility (line 3/line 4):

Did the Company meet the "Job Target" for this reporting period? 
Yes No If no, please explain why:

Does the Company provide medical and dental benefits to all employees? 🗌 Yes 🗌 No

#### **Investment Information**

- 1. Total new value previously certified:
- 2. Total new value submitted for certification this claim period:
- 3. Total value reported (previously certified and new line 1 and 2):

Generally describe the improvements existing as of December 31 of the preceding year?

Did the Company install or construct all improvements before the Improvements Completion Date? 🗌 Yes 🗌 No If no, please explain why:

TAXABLE VALUE ON SITE	20 ORIGINAL BASE VALUE	TAX YEAR 20	TOTAL INCREASE OVER 20 BASE
Land	\$	\$	\$
Improvements	\$	\$	\$
Personal Property – computers, furniture and fixtures, inventory, machinery	\$	\$	\$
and other equipment, raw materials, supplies and work in progress			
Total Value	\$	\$	\$

Please attach the Business Personal Property Rendition form submitted to the Appraisal District.

## Attachments

Please attach the following documents:

A1 Employment Verification

A2 Certified copy of the appraised and settled value of the Improvements as shown by the appropriate Central Appraisal District supported by all correspondence, renditions, appeals or contests and settlement of appraised value and shall provide appropriate back-up data for the Improvements exclusive of other investments made at the Premises.

A3 Business Personal Property Rendition of Taxable Property Form

## Certification

I certify the appraised value of the improvements as defined in our agreement with the City of Pearland.

I certify the Business has not, within the reporting period, been cited or convicted for violating any state or federal statutes, rules, and regulations, including environmental, worker safety and immigration regulations

Under penalty of perjury, I declare that the information in this document and any attachments are true and correct to the best of my knowledge and belief.

For the Business:

Signature

Date

Name and Title (typed or printed)

# ANNUAL EMPLOYMENT COMPLIANCE VERIFICATION

#### ABC Company, Inc. Project Approved: 10/23/2018

Job Certification Period: January 1, 2019 through December 31, 2019 ABC Company 114 Oak Drive Bluebonnet, Texas 77777

Job No.	Position Title	Social Security Number	Employee Name	Wages During Claim Period	Hours Worked During Claim Period	Date Hired to Position/Date Left Position	City of Pearland Resident
PREVIOU	PREVIOUSLY CERTIFIED JOBS (updated):						
001	Division Director	###-##-# <b>Ì</b> ###	Dennis Director	\$68,987	2,318	09/01/18 to Present	N
002	Office Manager	###-##-#####	Mary Worker	\$15,236	1,200	01/15/18 to 8/31//18	Y
002A		###-##-####	Lindsey Sellsmith	\$12,008	900	9/1/18 to Present	Y
NEW JOE	NEW JOBS THIS CERTIFICATION:						
003	Sales Manager	###-##-#####	Delores Incharge	\$29,695	2,080	09/01/19 to Present	Ν
004	Print Shop Manager	###-##-#####	Adam Typeset	\$32,450	2,056	09/01/19 to Present	Y

#### Total Jobs Created: 4 Total Payroll: \$###,### Vacant Positions: 0

#### TOTAL # OF JOBS ON THIS PAGE 4

#### PAGE # 1 of 1

TOTAL # OF JOBS ON THIS CLAIM 4

# EXHIBIT B

Tax Abatement Guidelines Brazoria County, Texas

# GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT IN A REINVESTMENT ZONE CREATED IN BRAZORIA COUNTY

WHEREAS, the creation, retention and diversification of job opportunities that bring new wealth are among the highest civic priority; and

WHEREAS, the purpose of tax abatement is to provide an incentive offered by the tax-payers, i.e. citizens of Brazoria County, to attract investments, that lead to better quality of life and better services. The wealth created by these enterprises leads to more service and retail businesses, which in addition to improving quality of life, increases the tax base. In summary, by giving incentive in terms of tax abatement, the citizens agree to give up short term tax benefits, for long term benefits; and

WHEREAS, new jobs, investment and industrial diversification will benefit the area economy, provide needed opportunities, strengthen the real estate market and generate tax revenue to support local services; and

WHEREAS, the communities within Brazoria County must compete with other localities across the nation currently offering tax inducements to attract new plant and modernization projects; and

**WHEREAS**, any tax incentives offered in Brazoria County would reduce needed tax revenue unless strictly limited in application to those new and existing industries that bring new wealth to the community; and

WHEREAS, the abatement of property taxes, when offered to attract capital investment and primary jobs in industries which bring in money from outside a community instead of merely recirculating dollars within a community, has been shown to be an effective method of enhancing and diversifying an area of economy; and

**WHEREAS**, Texas law requires any eligible taxing jurisdiction to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting of any future tax abatement, and said Guidelines and Criteria to be unchanged for a two year period unless amended by a three-quarters vote;

WHEREAS, Texas law requires a public hearing regarding the proposed adoption, amendment, repeal, or reauthorization of tax abatement guidelines and criteria;

**WHEREAS**, a public hearing was held and these Guidelines and Criteria for Grating Tax Abatement in a Reinvestment Zone in Brazoria County was approved under Court Order 6.0.3 dated June 28, 2022.

Now, therefore, be it resolved that Brazoria County does hereby adopt these Guidelines and Criteria for granting tax abatement in reinvestment zones in Brazoria County.

#### **DEFINITIONS Section 1**

- (a) "<u>Abatement</u>" means the full or partial exemption from ad valorem taxes on certain property in a reinvestment zone designated by Brazoria County for economic development purposes.
- (b) "<u>Abatement Period</u>" means the period during which all or a portion of the value of real property or tangible personal property that is the subject of a tax abatement agreement is exempt from taxation.

- (c) "<u>Abated Facility Site</u>" (or "proposed abated facility site") means the tract(s) or area of land underlying the proposed improvements to be abated.
- (d) "<u>Agreement</u>" means a contractual agreement between a property owner and/or lessee and Brazoria County for the purpose of tax abatement.
- (e) "<u>Base year value</u>" means the assessed value of eligible property January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the agreement.
- (f) "<u>Brazoria County Vendor and Services</u>" means a company that employs Brazoria County residents and pays Brazoria County taxes.
- (g) "<u>Deferred maintenance</u>" means the improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (h) "<u>Distribution Center Facility</u>" means buildings and structures, including machinery and equipment, used or to be used primarily to receive, store, service, or distribute goods or materials owned by the facility operator where seventy percent (70%) of the goods or services are distributed outside of Brazoria County.
- (i) "<u>Economic Development</u>" means participation in or support of an organized program or entity which for the purpose of its mission, engages in activities designed to encourage employment opportunities development/commercial and manufacturing business/industry to locate and/or expand in Brazoria County, thus expanding and diversifying the tax base as well as increasing the economic strength and stability of Brazoria County.
- (j) "<u>Eligible jurisdiction</u>" means Brazoria County and any municipality or other local taxing jurisdictions eligible to abate taxes according to Texas law, the majority of which is located in Brazoria County that levies ad valorem taxes upon and provides services to reinvestment zone designated by Brazoria County.
- (k) "<u>Employee</u>" for the purposes of the economic qualifications of Section 2(h)(2) of these Guidelines and Criteria shall include all persons directly employed by the owner of the planned improvement at the abated facility site/reinvestment zone together with any independent contractor or employee of independent contractors employed on a full-time (40 hours per week equivalent) basis at the facility site/reinvestment zone continuously for the duration of the abatement agreement.
- (1) "<u>Existing facility</u>" is the facility described in Section 2 (a) that will be expanded or modernized and which contains the proposed improvements to be abated. A manufacturing or processing unit or units of a larger plant complex that separately comprise a manufacturing or production sub-unit of the larger plant shall be considered the existing facility for purposes of the Section 2 (h) (2) employment retention requirement (that the planned improvements cause the retention or prevention of loss of employment of 10 employees or 50% of the employees of the existing facility, whichever is greater). For example, if an existing facility has 100 employees, an expansion or modernization of all or part of that facility must result in the retention of at least 50 employees employed at or in connection with the expanded or modernized "existing facility" in order for the facility improvements to qualify for abatement.
- (m) "<u>Expansion</u>" means the addition of buildings, structures, machinery or equipment for purposes of increasing production capacity.

- (n) "<u>Facility</u>" means property improvements completed or in the process of construction which together comprise an integral whole.
- (o) "<u>Manufacturing Facility</u>" means buildings and structures, including machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.
- (p) "<u>Modernization</u>" means the replacement and upgrading of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, or repairing.
- (q) "<u>New Facility</u>" means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- (r) "<u>Other Basic Industry</u>" means buildings and structures including fixed machinery and equipment not elsewhere described, used or to be used for the production of products or services which serve a market primarily outside Brazoria County.
- (s) "Productive Life" means the number of years a property improvement is expected to be in service. After a cessation of production, the productive life of property improvements may be deemed to end, at County's election, on the date of cessation of production either upon (1) a determination by the County that it is unlikely the improvement(s) will be reactivated as an integral part of a producing facility, and/or (2) the expiration of eighteen (18) continuous or non-consecutive months of non-production in any twenty-four (24) month period following the date the property improvement(s) cease to be in active service as part of a facility operating in a producing capacity. Upon cessation of production and for calculation of the recapture amount of taxes, the "productive life" will be determined to begin on the effective date of the tax abatement as set forth in the Agreement.
- (t) "<u>Qualified Vendors and Services</u>" means those vendors and services that meet the company's individual stated requirements, which can include but are not limited to: safety, financial condition, environmental record, quality or ability to perform.
- (u) "<u>Regional Entertainment Facility</u>" means buildings and structures, including machinery and equipment, used or to be used to provide entertainment through the admission of the general public where seventy percent (70%) of users reside at least 50 miles from its location in Brazoria County.
- (v) "<u>Research Facility</u>" means buildings and structures, including machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.
- (w) "<u>Regional Service Facility</u>" means buildings and structures, including machinery and equipment, used or to be used to service goods where seventy percent (70%) of the goods being serviced originate outside of Brazoria County.
- (x) "<u>Tangible personal property</u>" means tangible personal property classified as such under state law, but excludes inventory and/or supplies, ineligible property as defined herein, and tangible personal property

that was located in the reinvestment zone at any time before the period covered by the agreement with the County.

#### **ABATEMENT AUTHORIZED Section 2**

- (a) Authorized Facility. A facility may be eligible for abatement if it is a: Manufacturing Facility, Research Facility, Distribution Center or Regional Service Facility, Regional Entertainment Facility, Other Basic Industry, or a facility that Commissioners Court determines would enhance job creation and the economic future of Brazoria County.
- (b) Creation of New Value. Abatement may only be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between Brazoria County and the real property owner, tangible personal property owner, leasehold interest, and/or lessee, subject to such limitations as Brazoria County may require.
- (c) New and Existing Facilities. Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.
- (d) Eligible Property. Abatement may be extended to the value of buildings, structures, tangible personal property as defined in the Tax Code including fixed machinery and equipment, site improvements and related fixed improvements necessary to the operation and administration of the facility.

Tangible Personal Property: Abatement may be granted with the owner of tangible personal property located on real property in a reinvestment zone to exempt from taxation (1) all or a portion of the value of the real property, (2) all or a portion of the value of the tangible personal property located on the real property, or (3) all or a portion of the value of both.

An abatement may be granted with the owner of tangible personal property or an improvement located on tax-exempt real property that is located in a designated reinvestment zone to exempt all or a portion of the value of the tangible personal property or improvement located on the real property.

- (e) Ineligible Property. The following type of property shall be fully taxable and ineligible for tax abatement: land, existing improvements, tangible personal property that the Brazoria County Appraisal District classifies as inventory or supplies, tools, furnishings, and other forms of movable personal property; vehicles, watercraft, aircraft, housing, convalescent homes, assisted living homes/centers, hotel accommodations, retail facilities, deferred maintenance investments, property to be rented or leased except as provided in Section 2(f), tangible personal property located in the reinvestment zone prior to the effective date of the tax abatement agreement, property already subject to real or personal property tax(es) moved from one location in Brazoria County to the reinvestment zone, real property with a productive life of less than 10 years, property owned or used by the State of Texas or its political subdivisions or by any organizations owned, operated or directed by a political subdivision of the State of Texas, or any other property for which abatement is not allowed by State law.
- (f) Leased Facilities. Leasehold Interest: Abatement may be granted with the owner of a leasehold interest in tax-exempt real property located in a reinvestment zone designated to exempt all or a portion of the value of the leasehold interest in the real property.

Lessee Interest: Abatement may be granted with a lessee of taxable real property located in a reinvestment zone to exempt from taxation (1) all or a portion of the value of the fixtures, improvements, or other real property owned by the lessee and located on the property that is subject to the lease, (2) all or a portion of the value of tangible personal property owned by the lessee and located on the real property that is the subject of the lease, or (3) all or a portion of the value of both the fixtures, improvements, or other real property and the tangible personal property defined herein.

Leasehold Interest/Lessee shall be required to submit with its application a copy of the executed lease agreement between lessor/lessee demonstrating a minimum lease term double the abatement term granted.

(g) Value and Term of Abatement. Abatement shall be granted effective with the January 1 valuation date immediately following the date of the Commissioners Court Order granting the abatement and approving the abatement application. Commissioners Court shall determine the percent of value and the term of the abatement based upon the overall value of the project, the number and types of new jobs being created, the extent to which local labor or local subcontractors will be used in the construction phase, the types and values of public improvements to be made, and the extent to which local vendors and suppliers will be used during the productive life of the project. Commissioners Court may vary the length and abatement percentage on a case by case basis upon consideration of the factors above and any other relevant factors. The term of abatement may be up to 10 years or one-half (1/2) of the productive life of the tax abatement and the date the equipment ceased to be in service. The abatement may be extended through an initial agreement and a subsequent agreement may be required to comply with state law regarding the term of the reinvestment zone. *See Exhibit "A" attached hereto.* 

If it is determined that the abatement period would better benefit the County and the Applicant by deferring the commencement date beyond the January 1 following the Commissioners Court Order granting the abatement and approving the abatement application, the County may defer the commencement date of the abatement period to a future date certain. The deferral of the commencement date will not allow the duration of the abatement period to extend beyond ten (10) years. However, in no event shall the abatement begin later than the January 1 following the commencement of construction.

If a modernization project includes facility replacement, the abated value shall be the value of the new unit(s) less the value of the old unit(s).

New eligible properties must be in active service and operation as part of a facility operating in a producing capacity for a period equal to double the abatement period (*i.e.* seven year abatement, then in producing capacity for 14 years) in order to receive the full term of the abatement granted and not be subject to the term reduction and recapture/payment obligation provisions.

- (h) Economic Qualification. In order to be eligible for designation as a reinvestment zone and to qualify for tax abatement the planned improvement:
  - (1) must be reasonably expected to increase and must actually increase the value of the property in the amount of \$1 million or more;
  - (2) must create employment for at least 10 people on a full-time (40 hours per week equivalent) basis in Brazoria County for the duration of the abatement period at the abated facility site

described in the tax abatement application; or alternatively, must retain and prevent the loss of employment of 10 employees or fifty percent (50%) of the existing number of employees, at the time of application, employed at or in connection with the existing facility containing the abated facility site described in the tax abatement application, whichever is greater, for the duration of the abatement period. The following is applicable to the employment retention/preventing loss of employment requirement:

a. "Existing facility" is the facility described in Section 2 (a) that will be expanded or modernized and which contains the proposed improvements to be abated. A manufacturing or processing unit or units of a larger plant complex that separately comprise a manufacturing or production sub-unit of the larger plant shall be considered the existing facility for purposes of the Section 2(h)(2) employment retention requirement (that the planned improvements cause the retention or prevention of loss of employment of 10 employees or 50% of the employees of the existing facility, whichever is greater). For example, if a large plant complex has a sub-unit that produces chlorine and 100 employees are employed at or in connection with that unit, an expansion or modernization of all or part of that facility must result in the retention of at least 50 employees employed at or in connection with the expanded or modernized "existing facility" in order for the facility improvements to qualify for abatement.

b. Employees of a larger plant unit transferred or assigned to and employed at or in connection with a new sub-unit containing the planned improvements, constructed on undeveloped land constituting the proposed abated facility site/reinvestment zone shall be considered "created" employment for purposes of this sub-section.

The proposed number of employees to be employed at the abated facility as stated in the abatement application for the property that is the subject of the tax abatement agreement (including the projected creation or retention of employment) must be maintained for the duration of the abatement period at the abated facility site. For purposes of this sub-section, in order for a planned improvement to be considered as preventing the loss of employment or retaining employment, the abated facility/project must be necessary in order to retain or keep employment at levels as indicated in the application and in order to retain the proposed number of employees at the abated facility as indicated in the application. The owner/Applicant seeking to qualify on the basis of retention or preventing loss of employment must provide a detailed statement as an attachment to its application affirmatively representing compliance with this subsection and explaining the necessity of this project to approval of Commissioners Court in accordance with the variance section of these Guidelines & Criteria.

- (3) must be not expected to solely or primarily have the effect of transferring employment from one part of the county to another part of the county. A variance may be requested relative to this provision which approval shall be at the sole discretion of the County.
- (4) must be necessary because capacity cannot be provided efficiently utilizing existing improved property;

Additionally, the owner of the project:

- (5) must provide for and pay, at the time of filing an application for tax abatement, a non-refundable application fee of \$1,000. A part of the application fee will be dedicated by Brazoria County to economic development programs authorized by Local Government Code, Section 381.004.
- (6) must file a plan statement with application demonstrating willingness and planned efforts to use qualified Brazoria County union and/or nonunion vendors and services where applicable in the construction and operations of the facility. Brazoria County vendors and services must be competitive with non-county union and/or nonunion vendors and services regarding price, quality, safety, availability and ability to perform. It is preferred that applicant seek qualified workers who are United States citizens and veterans and also legal residents prior to seeking workers from other countries.
- (7) will annually, for the term of the abatement, contribute .000207 of the value reported in "Part IV Section F" of the abatement application (estimated value of abated improvements at the conclusion of the abatement period). Air carriers receiving abatement will contribute an amount equal to .000207 of the estimated value of the personal property of the air carrier indicated in its Application. Each project will contribute no more than \$25,000 for projects \$500 million or less in capital investment and no more than \$50,000 for project greater than \$500 million in capital investment nor less than \$2,000 annually to be used specifically to fund economic development in Brazoria County as authorized by Local Government Code, Section 381.004. The annual contribution shall be paid to Brazoria County through the County Auditor's Office on or before January 1 of each year of the tax abatement contract term.
- (8) must not file with the Brazoria County Appraisal District a valuation or taxpayer protest or notice of protest pursuant to the Texas Property Tax Code during the abatement period legally protesting the valuation of the abated improvements of a manufacturing facility pursuant to an appraisal method that produces a valuation of improvements based on each improvement's value as a separate item of personal property rather than the improvements' value as integral fixtures of a producing manufacturing facility. An owner's legal protest of the improvements' value pursuant to the Texas Property Tax Code must be based on and use accepted appraisal methods and techniques allowed by law (Texas Property Tax Code) and uniform standards of professional appraisal practice. The filing of a valuation protest or notice of protest contrary to this standard shall cause the tax abatement agreement to be subject to termination and recapture of all previously abated taxes.
- (9) must not be a defendant in any litigation by the County seeking recovery or recapture of previously abated taxes.
- (10) will be wholly responsible for all County roads and right-of-way (including bridges, culverts, ditches, etc.) and damages caused thereto as a result of the construction, ongoing maintenance, and operations of the Abated Facility Site as well as associated facilities to the Abated Facility Site, including but not limited to, the following:
  - Cost to maintain the roads utilized for construction of the Abated Facility Site in an effort to keep the road safe for the traveling public will be tracked by the County and invoiced on a regular basis to the Abatee.
  - Cost to reconstruct the roadway, if needed, will be actual cost to reconstruct the County roads and right-of way incurred by the County and invoiced to the Abatee.

These costs will include all construction costs as well as all related professional services for the repair work.

- Abatee shall coordinate with the County Engineering Department regarding any and all use of County roads and right-of-way for construction, maintenance and operation of Abated Facility Site in accordance with County regulations in place for use of County facilities. In order to comply with County regulations, Abatee shall schedule and attend a pre-development meeting with the County Engineering Department prior to commencing construction. Abatee shall submit a road use plan to the County Engineering Department at least 3 days prior to attending the pre-development meeting. The road use plan should identify all County roads that may be affected by construction or use of the Abated Facility Site, as well as, the routes of any related pipelines.
- Abatee shall execute a Developer Agreement relating to the reconstruction and repair of affected County roads. Abatee shall not begin construction, of the Abated Facility until the Developer Agreement has been fully executed. Beginning construction prior to the execution of a Developer Agreement will result in the cancellation of the Abatement.
- (11) will dedicate to the County, prior to the issuance of any permits, any right-of-way on Applicant's property considered necessary by the Brazoria County Engineer.
- (12) will dedicate to the County or a drainage district with jurisdiction, any drainage easement(s) considered necessary by the Brazoria County Engineer or an engineer from the appropriate drainage district.
- (i) Taxability. From the execution of the abatement contract to the end of the agreement period, taxes shall be payable as follows:
  - (1) The value of ineligible property as provided in Section 2(e) shall be fully taxable;
  - (2) the base year value of existing eligible property as determined each year shall be fully taxable; and
  - (3) the additional value of new eligible property shall be taxable in the manner described in Section 2(g).

#### **APPLICATION Section 3**

- (a) The Application for tax abatement may be obtained from the County Judge's Office or on the Brazoria County website at www.brazoria-county.com. Applicant may contact the Judge's Office at (979) 864-1200 or (281) 756-1200.
- (b) Any present or potential owner of taxable property in Brazoria County may request the creation of a reinvestment zone and tax abatement by filing a tax abatement application with Brazoria County. The application shall be filed with the County Judge by providing two (2) hardcopies and an electronic

version. The application provided will be furnished to each member of Commissioners Court and the Tax Abatement Review Committee (TARC). After filing the application, the Applicant shall provide an economic impact analysis report, in a format comparable to the Texas Governor's economic impact analysis report, to the County Judge's Office prior to the TARC meeting on the Applicant's tax abatement application.

- (c) The application shall consist of a completed application form accompanied by: a general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements which will be a part of the facility; a map and property description; CAD data or a shapefile with the boundaries of the reinvestment zone; and a time schedule for undertaking and completing the planned improvements. In the case of modernizing, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form shall require such financial and other information as Brazoria County deems appropriate for evaluating the financial capacity and other factors of the Applicant. Applicant should not submit confidential information as part of the application. If doing so cannot be avoided, a general description in non-confidential information as an attachment and clearly marked "CONFIDENTIAL".
- (d) Upon receipt of a completed application, the County Judge shall notify in writing the presiding officer of the governing body of each eligible jurisdiction. Before acting upon the application, Brazoria County Commissioners Court shall hold a public hearing at which interested parties shall be entitled to speak and present written materials for or against the approval of the tax abatement. The public hearing shall also afford the Applicant and the designated representative of any eligible jurisdiction opportunity to show cause why the abatement should or should not be granted. Notice of the public hearing shall be clearly identified on a Brazoria County notice to be posted at least 30 days prior to the hearing.
- (e) After receipt of an application for creation of a reinvestment zone and application for abatement, the Tax Abatement Review Committee (TARC) shall prepare a feasibility study setting out the impact of the proposed reinvestment zone and tax abatement. The feasibility study shall include, but not be limited to, an estimate of the economic effect of the creation of the zone and the abatement of taxes and the benefit to the eligible jurisdiction and the property to be included in the zone. The economic impact analysis report provided by the Applicant shall be attached to the feasibility study and included as part of the feasibility study report.
- (f) If upon written request for a legal opinion or interpretation from the Commissioners Court or its members, the legal counsel for Brazoria County determines that the application does not appear to comply with the written language of the Guidelines and Criteria, a public hearing on said application if already set, shall be postponed for a period of at least thirty days from the scheduled date of public hearing to allow time for further review by the Commissioners Court or any duly appointed review committee, or if an initial setting has not been made, the hearing on such application shall be set on the Commissioners Court agenda no sooner than sixty (60) days from the time the Court enters an order to set the public hearing date.

The Applicant shall file a supplement or addendum to its application to show cause why the application should be approved and shall present reasons at the public hearing on the same.

Provided that any final decision or interpretation as to the intent and meaning or policy of any provision or its written language; any final decision as to whether or not an application complies or does not comply with the guidelines and criteria; and any final decision as to whether to grant or deny tax abatement shall be made by the Commissioners Court at its sole discretion.

- (g) Brazoria County shall not establish a reinvestment zone for the purpose of Abatement with the County if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion or new facility.
- (h) Brazoria County shall not establish a reinvestment zone for an Applicant that is not seeking an Abatement with the County under Chapter 312 of the Tax Code if construction, alteration, or installation of improvements related to a proposed modernization, expansion, or new facility has begun prior to the creation of the reinvestment zone. In order for an Applicant that is not seeking an Abatement with the County to request the creation of a reinvestment zone, the Applicant shall submit the request in writing to the County Judge. The request must include a request for the creation of a reinvestment zone by both the Applicant and the taxing entity that would be entering into an Abatement, a brief description of the project, a map or survey depicting the proposed reinvestment zone, and metes and bounds of the proposed reinvestment zone. The Applicant shall post notice, provided by the County, as required by Chapter 312 of the Tax Code.
- (i) Variance. Requests for variance from the provisions of Subsections (a) (b) (e) (g), (h) (1), (h) (2) and/or (h) (3) of Section 2 may be made in written form to the County Judge with a copy forwarded to the TARC. Such requests shall include a complete description of the circumstances explaining why the Applicant should be granted a variance. Approval of a request requires a four-fifths (4/5) vote of the Commissioners Court.
- (j) Special Variance: Air Carriers. A special variance from all applicable provisions of these guidelines and criteria, with the exception of Section 2 (h) (5) and (h) (7) may be granted allowing abatement or partial abatement of ad valorem taxes on the personal property of a certificated or non-certificated air carrier that owns or leases taxable real property in Brazoria County provided that the personal property has a value of at least \$10,000,000. Approval of a request for this variance requires a three-fourth (3/4) vote of the Commissioners Court.

#### **APPROVAL Section 4**

- (a) Neither a reinvestment zone nor abatement agreement shall be authorized if it is determined that:
  - (1) there would be a substantial adverse effect on the provision of government service or tax base;
  - (2) the Applicant has insufficient financial capacity;
  - (3) planned or potential use of the property would constitute hazard to public safety, health or morals; or,
  - (4) violation of other codes or laws.

#### **AGREEMENT Section 5**

- (a) After approval, Brazoria County Commissioners Court shall formally pass a resolution and execute an agreement with the Applicant as required which shall include:
  - (1) estimated value to be abated and the base year value;
  - (2) percent of value to be abated each year as provided in Section 2(g);
  - (3) the commencement date and the termination date of abatement;
  - (4) the proposed use of the facility; nature of construction, time schedule, map, property description and improvement list as provided in Application, Sections II and III;
  - (5) contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Sections 2(a), 2(f), 2(g), 2(h) 6, 7, and 8;
  - (6) size of investment and average number of jobs involved for the period of abatement; and
  - (7) provision that Applicant shall annually furnish information necessary for Brazoria County's evaluation of Applicant's compliance with the terms and conditions of the tax abatement agreement and these guidelines and criteria (in the form of an annual report/statement of compliance), together with an additional provision that Brazoria County may, at its election, request and obtain information from Applicant as is necessary for the County's evaluation of Applicant's compliance with the terms and conditions of the tax abatement agreement and these guidelines and criteria. See Attachment A.
  - (8) provision that, upon expiration of the tax abatement agreement, Applicant shall begin annually reporting the status of the abated improvements regarding active service and operation as part of a facility operating in a producing capacity. Reporting will be for the same amount of years as the tax abatement period (*e.g.* seven year abatement, then follow-up reporting for seven more years). See Attachment B.
- (b) Such agreement shall be executed within sixty (60) days after the Applicant has forwarded all necessary information and documentation to Brazoria County.

#### **RECAPTURE** Section 6

(a) In the event the facility contemplated herein is completed and begins producing product or service, but the company fails to maintain the level of employment (including the projected creation or retention of employment) stated in the abatement application for the property that is the subject of the abatement agreement, the County may elect to: (1) Declare a default and terminate the abatement agreement without recapturing prior years' abated taxes; (2) Declare a default, terminate the agreement and order a recapture of all or part of the previous years' abated taxes; or (3) Set specific terms and conditions for the continuation of the abatement exemption for the duration of the term of the agreement under its present terms or alter the amount of the abatement for the remaining term of the agreement.

- (b) Should Brazoria County determine that the company or individual is in default according to the terms and conditions of its agreement, Brazoria County shall notify the company or individual in writing at the address stated in the agreement and if such is not cured within sixty (60) days from the date of such notice ("Cure Period"), then the agreement may be terminated.
- (c) In the event that the company or individual (1) allows its ad valorem taxes owed the County to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or (2) violates any of the terms and conditions of the abatement agreement and fails to cure during the Cure Period, the agreement then may be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination.
- (d) Failure to provide any requested statement or information pursuant to the provisions described in Section 5(a)(7) without just cause within sixty (60) days of the request for the information or the presentation of any false or misleading statement may, at the County's option, be construed as a default by the company or individual and cause for immediate termination of the tax abatement agreement and recapture of all previously abated taxes, if after written notice of default, the company or individual has not cured such default prior to the expiration of thirty (30) days from such written notice. The Cure Period provisions of sub-sections (b) and (c) above are not applicable to a default and termination under this paragraph.

#### ADMINISTRATION Section 7

- (a) The Chief Appraiser of the County shall annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving abatement shall furnish the assessor with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the eligible jurisdictions which levy taxes on the amount of the assessment.
- (b) The agreement shall stipulate that TARC of Brazoria County will have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such a manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with their safety standards.
- (c) Tax Abatement Review Committee:

The Commissioners Court shall appoint a standing Tax Abatement Review Committee (TARC) for purposes of (i) reviewing the tax abatement application and preparing the feasibility study report required by Section 3(d) of these guidelines; (ii) conducting annual inspections and/or evaluations of the abated facilities to insure compliance with the terms/conditions of the tax abatement agreement.

(d) The Tax Abatement Review Committee shall be comprised of, but not limited to, a representative appointed by each Commissioners Court member. The County Auditor, County Treasurer, District Attorney representative, and County Tax Assessor Collector shall serve as ex-officio members of the Committee to advise on abatement qualifications and procedures. The County Judge and the Commissioner of the Precinct in which a proposed abated facility will be located will serve on the Committee during the period when the Committee is preparing the feasibility study report and conducting the annual inspection and/or evaluation of the facility.

- (e) Upon commencement of construction, the owner of an abated facility must submit a written report/statement of compliance annually during the life of the abatement to the Brazoria County Commissioners Court and the Tax Abatement Review Committee clearly detailing the status of the facility and how it is complying with the abatement guidelines. The Committee shall annually evaluate each abated facility and report possible violations to the contract and agreement to the Brazoria County Commissioners Court. The form of annual report that shall be used by the owner is attached as Attachment A.
- (f) Upon expiration of the Tax Abatement term, the owner of the abated improvements must submit a written report/statement of compliance annually, beginning January 1 after the expiration of the tax abatement term, documenting that the abated improvements remain in active service and operation as part of a facility operating in a producing capacity for an additional period equal to the abatement period granted and completed (*e.g.* seven year abatement, then in producing capacity for an additional 7 years after expiration of the tax abatement agreement) in order to receive the full term of the abatement granted and not be subject to the term reduction and recapture/payment obligation provisions. The Report shall be delivered to the County Judge. The Committee shall annually evaluate each abated facility and report possible violations to the contract and agreement to the Brazoria County Commissioners Court. A form of annual report that may be used by the owner is attached as Attachment B to these Guidelines & Criteria, and the owner's annual report shall, at a minimum, contain the information shown in the Attachment B form.
- (g) The County shall timely file with the Texas Department of Commerce and the Property Tax Division of the State Comptroller's office all information required by the Tax Code.

#### ASSIGNMENT AND MODIFICATION Section 8

Abatement may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by resolution of Brazoria County subject to the financial capacity of the assignee and provided that all conditions and obligations in the abatement agreement are guaranteed by the execution of a new contractual agreement with Brazoria County. Assignee shall submit a tax abatement application, including financial information to the County Judge's office prior to consideration of assignment. Full assignment of the abatement requires approval by the TARC in addition to approval through public hearing in Commissioners Court. No assignment or transfer shall be approved if the new parties to the existing agreement, the new owner or new lessee are liable to Brazoria County or any eligible jurisdiction for delinquent taxes or other obligations. Approval shall not be unreasonably withheld.

Abatement may be modified or amended. A modification or amendment, except those that change the commencement date, correct clerical errors, or make administrative changes (including changes to the notification section or the company name) requires approval through public hearing in Commissioners Court.

#### **PROVISIONS REGARDING CITY-INITIATED ABATEMENTS Section 9**

- (a) This section is applicable to tax abatement applications for property located in a reinvestment zone designated by a city and applications by Applicants who have previously entered into a tax abatement agreement with a city regarding that property.
- (b) All provisions of these Guidelines & Criteria are applicable to city-initiated reinvestment zones and

abated areas within a city's territorial limits unless otherwise stated herein or provided by law.

- (c) An Applicant shall file a tax abatement application on the County's application form together with all attachments and statements described in the application instructions and in subsection (d) herein below.
- (d) Upon receipt of a tax abatement application applicable to property within a city-designated reinvestment zone subject to a city's tax abatement agreement, the application shall be reviewed for approval as to (a) correct application form, (b) represented compliance with economic value estimates and employment criteria of Section 2(h) of the Guidelines & Criteria, (c) legal description requirements, (d) attachment of a correct copy of the city's ordinance designating the area as a reinvestment zone and granting abatement and (e) attachment of a correct copy of the fully executed tax abatement agreement between the city and the Applicant.
- (e) After review (and subject to approval of the matters in (d) above) and meeting of the TARC, the application will be placed on the next Commissioners Court meeting for consideration. If there are any compliance problems with the application (including any problems to be resolved or amendments to the application to be made), the County Judge and Precinct Commissioners shall be advised of these compliance problems/matters to be resolved in a memo from the Civil Division-District Attorney's Office. No Application shall be placed on the Agenda if the application fails to attach both the ordinance designating reinvestment zone and the copy of the fully executed tax abatement agreement between the city and the Applicant, or which is deficient as to application form or legal description. In such case the Applicant shall be informed of the necessity of attaching those documents or making necessary corrections, and there will be no further processing of the application until the same are received.
- (f) The notice provisions of Section 3(d) are not applicable to an application under this section.
- (g) The percentage of property value abated and the term of abatement shall be the same as that stated in the city's tax abatement agreement unless otherwise specifically ordered in the Commissioners Court order granting abatement.

#### **SUNSET PROVISION Section 10**

- (a) These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years, at which time all reinvestment zones and tax abatement contracts created pursuant to its provisions will be reviewed by Brazoria County to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed or eliminated, provided that such actions shall not affect existing contracts or applications for tax abatement filed prior to the expiration of said Guidelines and Criteria. Applications for abatement filed prior to the expiration of the Guidelines and Criteria shall be governed by the provisions of these Guidelines and Criteria regardless of any subsequent modification or amendment.
- (b) This policy is mutually exclusive of existing Industrial District Contracts and owners of real property in areas deserving of special attention as agreed by the eligible jurisdictions.
- (c) These guidelines and policies for Tax Abatement shall be effective June 28, 2022, and shall remain in force until June 28, 2024, unless amended or superseded, modified, renewed, or eliminated by Commissioners Court prior to that date.

	Tier 3	\$300,000,001 - \$500,000,000	Abatement Abatement		2 100%	3 90%	4 90%	5 90%	6 80%	7 80%	8 70%
JATED SCALE		00,000		<b></b>	-	-		-	-		-
EXHIBIT A AX ABATEMENT GRADUATED SCALE	Tier 2	\$100,000,001 - \$300,000,000	Abatement	100%	100%	%06	%06	80%	80%	70%	
ΤΑΧ ΑΒΑΤΙ		\$1		1	2	ſ	4	Ŋ	9	7	
	Tier 1	\$1,000,000 - \$100,000,000	Abatement	100%	100%	80%	80%	70%	70%	70%	
		\$1	, cov	1	2	c	4	ъ	9	7	

	Tier 4		Tier 5	
\$500);	\$500,000,001 - \$1,000,000,000		\$1,000,000,001+	NOTES:
	Abatement		Abatement	Commissioners Court shall determine the percent of value and
Year	Amount	Year	Amount	the term of the abatement based upon the overall value of the
1	100%	1	100%	project, the humber and types of new jobs being created, the
2	100%	2	100%	extent to writch local labor of local subcontractors will be used in the construction phase the types and values of nublic
ŝ	100%	ſ	100%	improvements to be made, and the extent to which local
4	%06	4	100%	vendors and suppliers will be used during the productive life of
ъ	%06	ъ	100%	the project. Commissioners Court may vary the length and
9	80%	9	80%	abatement percentage on a case by case basis upon
7	80%	7	80%	consideration of the factors above and any other relevant
∞	70%	8	80%	factors. [Guidelines and Criteria for Granting Tax Abatement in
		6	80%	a Reinvestment Zone Created in Brazoria County, Page 5,
		10	80%	Paragraph (g) ]

# ATTACHMENT A

(TO THE BRAZORIA COUNTY GUIDELINES & CRITERIA FOR GRANTING TAX ABATEMENT) (*This form is located at <u>www.brazoria-county.com</u>)* 

ANNUAL REPORT FORM

#### ANNUAL REPORT PURSUANT TO SECTION 5(a)(7) AND 7(e) OF THE BRAZORIA COUNTY GUIDELINES & CRITERIA ON TAX ABATEMENT

#### RE: TAX ABATEMENT AGREEMENT

\_ .

(Company/Owner Name)

REINVESTMENT ZONE (RZ) NO. (Number of RZ, if applicable)

1. Commencement and/or completion date of the contemplated improvements described in the tax abatement agreement.

Date of commencement of construction:

Date of completion all contemplated improvements:

2. Number of permanent employees, contract employees and temporary contract employees currently employed by you at the tax abated facility location or construction site as of the date of this Report. (See definitions below).

Permanent Employees:
*Permanent Contract Employees
(* List contract employees employed
on a full-time, 40 hours per week
equivalency basis and who are
expected to be employed on a full-time

basis for the duration of the abatement period. Do not include temporary contract employees.)

- \*\*Temporary Contract Employees (\*\*List temporary contract employees who are employed for a temporary period ending prior to expiration of the tax abatement term)
- 3. Status of construction of the contemplated improvements, percentage of construction completed and Owner's estimate of taxable value of constructed improvements on the date of the Report.

4. Status of production of the completed facility and the productive service capacity of the improvements. (*only applicable to a completed facility that has previously commenced production*)

Is the abated facility currently producing the or similar product described in the tax abate		Check One ( ) Yes or ( ) No
If the answer to the above question is "No", please state the date or time period when pr and attach a narrative explanation of the rea of production as Attachment B.	oduction ceased	
If production at this abated facility is shut down, please state the expected date or time period, if any, at which/during you expect the facility to resume production If you do not expect to resume production a abated facility, please state "plant closed" in the blank space.	operations. t this	
State your estimate of the expected productive life of the abated facility and its measured from the beginning date of produc permanent cessation of production ( <i>or in ot</i> ) of years, if any, that you expect the abated f in service as part of the operations of a production in your total any previous years of production	ction until the expected <i>her words</i> , the total number acility improvements to be lucing facility, including	
Include a list of Brazoria County vendors an and attach the same as Attachment A to this		sed
Is the list of Brazoria County vendors and s attached?		Check One ) Yes or ( ) No
To the best of my knowledge, the above inf	ormation and estimates are	true and correct.
Owner:		
By:		
	Printed Name:	
	Title/Position	
Date:		

5.

# ATTACHMENT B

(TO THE BRAZORIA COUNTY GUIDELINES & CRITERIA FOR GRANTING TAX ABATEMENT) (*This form is located at <u>www.brazoria-county.com</u>)* 

> REPORT FORM After the initial term of the Tax Abatement Agreement

#### **PRODUCTIVE LIFE REPORT TAX ABATEMENT TERM COMPLETED** PURSUANT TO SECTION 5(a)(8) AND 7(f) OF THE BRAZORIA COUNTY GUIDELINES & CRITERIA ON TAX ABATEMENT

#### RE: TAX ABATEMENT AGREEMENT

1.

	(Company/Owner Name)
REINVESTMENT ZONE (RZ) NO.	(Number of RZ, if applicable)
Effective Date of Tax Abatement:	
Status of production of the completed faci	ility and the productive service capacity of the improvement
Is the abated facility currently producing to or similar product described in the tax aba	
If the answer to the above question is "No please state the date or time period when p and attach a narrative explanation of the re of production as Attachment A.	production ceased
If production at this abated facility is shut down, please state the expected date or time period, if any, at which/during you expect the facility to resume production If you do not expect to resume production abated facility, please state "plant closed" the blank space.	on operations. at this
State your estimate of the expected productive life of the abated facility and it measured from the beginning date of prod permanent cessation of production ( <i>or in c</i> of years, if any, that you expect the abated in service as part of the operations of a pro- in your total any previous years of product	luction until the expected other words, the total number I facility improvements to be oducing facility, including
To the best of my knowledge, the above ir	nformation and estimates are true and correct.
Owne	pr:
By:	
	Printed Name:
	Title/Position
Date:	

### **EXHIBIT C**

Legal Description of City of Pearland Reinvestment Zone # 30

### TRACT 1

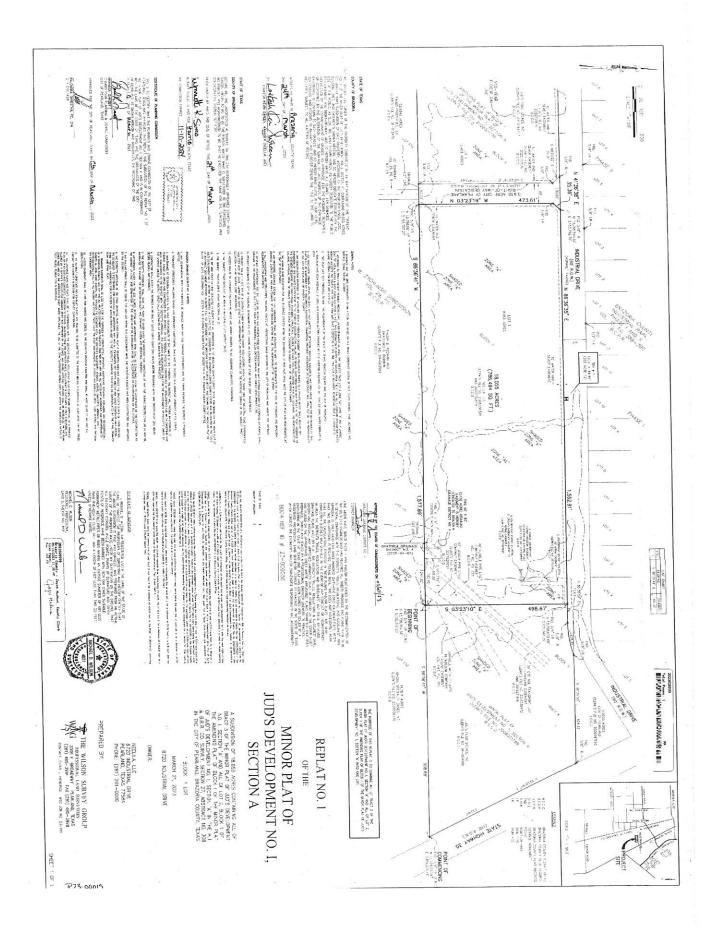
Jud's Development No. I, Section A, Block 2 Lot 3 (9.4675 Acres)

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### TRACT 2

Jud's Development No. I, Section A, Block 1 Lot 2 (8.585 Acres)

Said Tracts 1 and 2 consisting of 18.0525 total acres.



## **EXHIBIT D**

Brazoria County Appraisal District established values for Subject property as of January 1, 2023

#### CERTIFICATION OF APPRAISED VALUE OF PROPERTIES AS OF JANUARY 1, 2023

TO: BRAZORIA COUNTY

FROM: BRAZORIA COUNTY APPRAISAL

12/18/2023 DISTRICT DATE:\_\_\_

The Brazoria County Appraisal District hereby certifies that the following appraised values for Neelila LLC as of January 1, 2023, attached hereto are listed in the records of Brazoria County Appraisal District and indicated by the following account numbers:

Property ID	2023 N	/larket Value
614904	\$	325,470
703936	\$	306,770

18th day of Certified this \_\_\_\_ 20 23.

CHIEF APPRAISER BRAZORIA COUNTY APPRAISAL BY:

## EXHIBIT E

Lease Agreement by and between Neelila, LLC and Brask, Inc. - Neela

#### SECOND AMENDMENT TO FABRICATION FACILITY LEASE AGREEMENT

This second amendment effective <u>3/13</u>, 20<u>24</u>to the Fabrication Facility Lease Agreement (the "Lease") effective as of the 9<sup>th</sup> day of February, 2009 and first amended March \_\_, 2024, between NEELILA, L.L.C., a Texas limited liability company ("Landlord"), whose address for purposes hereof is 8720 Industrial Drive, Pearland, Texas 77584, and Brask, Inc. – NEELA (formerly NEELA, Inc.), a Texas corporation (herein referred to as "Tenant"), whose address for purposes hereof is 8720 Industrial Drive, Pearland, Texas 77584 modifies the Lease as follows:

1. Section 1 is supplemented to include as the Leased Premises the real property shown on Exhibit A plus all improvements currently on that real property and those to be constructed.

All other terms of the Lease, as first amended, remain the same.

IN WITNESS WHEREOF, the Landlord and Tenant, acting herein by duly authorized individuals, have executed this Second Amendment to the Fabrication Facility Lease Agreement in multiple counterparts, each of which shall have the force and effect of an original, as of the date first above stated.

LANDLORD:

NEELILA, L.L.C. BY:

Bal K. Sareen - Manager

TENANT:

**BRASK, INC. – NEELA** (FORMERLY NEELA, INC.)

BY: esh Kevin Sareen - President

#### EXHIBIT A

#### TRACT 1

Jud's Development No. I, Section A, Block 2 Lot 3 (9.4675 Acres)

.

#### TRACT 2

Jud's Development No. I, Section A, Block 1 Lot 2 (8.585 Acres)

Said Tracts 1 and 2 consisting of 18.0525 total acres.

#### FIRST AMENDMENT TO FABRICATION FACILITY LEASE AGREEMENT

This first amendment effective  $\underline{July 1}$ ,  $20\underline{20}$ to the Lease Agreement (the "Lease") effective as of the 9<sup>th</sup> day of February, 2009, between NEELILA, L.L.C., a Texas limited liability company ("Landlord"), whose address for purposes hereof is 8720 Industrial Drive, Pearland, Texas 77584, and Brask, Inc. – NEELA (formerly NEELA, Inc.), a Texas corporation (herein referred to as "Tenant"), whose address for purposes hereof is 8720 Industrial Drive, Pearland, Texas 77584 modifies the Lease as follows:

1. Section 1 is supplemented to include any new construction by Tenant as part of the Leased Premises.

2. Section 2(a) is amended to read in its entirety as follows:

"(a) Subject to and upon the terms and conditions set forth herein, or in any exhibit or addendum hereto, the term of this Lease (the "Term") shall continue in force for an initial term of thirty-five (35) years, beginning on June 30, 2010 (the "Commencement Date"), and ending thirty-five (35) years after the Commencement Date, or such later date as may be applicable as hereinafter provided in Sections 2(b) and (c)."

All other terms of the Lease remain the same.

IN WITNESS WHEREOF, the Landlord and Tenant, acting herein by duly authorized individuals, have executed this Lease in multiple counterparts, each of which shall have the force and effect of an original, as of the date first above stated.

LANDLORD:

NEELILA, L.L.C. BY:

Bal K. Sareen - Manager

TENANT:

BRASK, INC. - NEELA (FORMERLY NEELA, INC.) BY: LovKish Lovkesh Kevin Sareen - President

#### FABRICATION FACILITY LEASE AGREEMENT

This Lease Agreement (this "Lease") is made and entered into to be effective as of the 9<sup>th</sup> day of February, 2009, between NEELILA, L.L.C., a Texas limited liability company ("Landlord"), whose address for purposes hereof is 8907 Dakota Court, Missouri City, Texas 77459, and NEELA, Inc., a Texas corporation (herein referred to as "Tenant"), whose address for purposes hereof is 8907 Dakota Court, Missouri City, Texas 77459, prior to the Commencement Date (as defined below), and (TO BE DETERMINED) after the Commencement Date.

1. Leased Premises. Subject to and upon the terms, provisions and conditions hereinafter set forth, and each in consideration of the duties, covenants and obligations of the other hereunder, Landlord does hereby lease to Tenant and Tenant does hereby lease from Landlord the premises (the "Leased Premises") consisting of approximately 412,404 square feet of Net Rentable Area (hereinafter defined) (disregarding minor variations resulting from actual construction of the Leased Premises) situated in the building known as the Fabrication Facility, or such other name as Landlord may designate as herein provided (the "Building") which Landlord has or will have constructed on a parcel of land located in the Pearland Industrial Park, Pearland, Texas, on the real property (the "Property") more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof for all purposes. The approximate eventual location of said Leased Premises is outlined on the floor plan drawing(s) attached hereto as Exhibit "B" and made a part hereof for all purposes. The Property, the Building, the parking area serving the Building (the "Parking Area") and the other estates, structures and facilities appurtenant to the Property, Building and Parking Area are hereinafter sometimes collectively referred to as the "Complex". Landlord agrees to construct: the Building (and other improvements to be located on the Property) and Parking Area substantially in accordance with the project plans and specifications and substantially in the location depicted on Exhibit "B-1." If Landlord fails to substantially complete the construction of the Building (and other improvements to be located on the Land) and Parking Area on or before June 30, 2010 (subject to extensions for delays resulting from construction delays and events of force majeure and those delays caused by Tenant or its agents, employees, contractors or subcontractors as defined herein), Tenant may, as its sole and exclusive remedy receive one (1) day of abatement in Rent for each day after June 30, 2010, that Landlord fails to delivery possession of the Leased Premises to Tenant (subject to extensions for delays resulting from construction delays and events of force majeure and those delays caused by Tenant or its agents, employees, contractors or subcontractors as defined herein). Certain details of the construction of the Building (and other improvements to be located on the Land) and Parking Area may change, including the area, height" and number of levels above or below grade, but, subject to other provisions of this Lease, the position of the Leased Premises shall be substantially as shown on Exhibit "B". Nothing in Exhibit "B" shall be treated as a representation that such improvements shall be located precisely within the areas shown on Exhibit "B-1 ", or that such improvements shall be of the dimensions or shapes shown, it being the intention of Exhibit "B-1" only generally to show diagrammatically, rather than precisely, the development of the Building (and other

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improvements to be located on the Land) and Parking Area as presently contemplated. The terms "substantial completion," "substantially completed," "substantially complete," or words of similar import as used herein shall mean in all cases that the construction of the Building (and other improvements to be located on the Land) and Parking Area described in this Lease has been completed except for punch list items which do not unreasonably interfere with Tenant's use of the Leased Premises. In the event Landlord's construction and Tenant's construction of its improvements in the Leased Premises shall progress simultaneously, Landlord shall not be liable for any injury to person or damage to property of Tenant, or of Tenant's employees, licensees, agents, contractors, subcontractors, suppliers, or invitees from any cause whatsoever occurring upon or about the Demised Premises, and TENANT SHALL INDEMNIFY, DEFEND AND HOLD LANDLORD HARMLESS FROM ANY AND ALL LIABILITY AND CLAIMS ARISING OUT OF OR CONNECTED WITH ANY SUCH INJURY OR DAMAGE UNLESS SUCH LIABILITY IS THE RESULT OF LANDLORD'S (OR ITS EMPLOYEE'S, AGENT'S, CONTRACTOR'S, SUBCONTRACTOR'S, OR SUPPLIER'S) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Further, Tenant agrees not to unreasonably interfere, or to permit its contractors, subcontractors or suppliers to unreasonably interfere, with the performance of Landlord's construction in any respect, and Landlord agrees not to unreasonably interfere, or to permit its contractors, subcontractors or suppliers to unreasonably interfere, with the performance of Tenant's construction of its improvements in the Leased Premises in any respect.

The term "Net Rentable Area" (NRA) as used herein, and is hereby stipulated for all purposes to be 412,404 square feet, whether the same should be more or less as a result of variations resulting from actual construction and completion of the Leased Premises for occupancy.

By occupying the Leased Premises Tenant shall be deemed to have accepted the same in its "as is" condition and to have acknowledged that the same complies fully with Landlord's covenants and obligations hereunder Tenant accepts and assumes responsibility of the Leased Premises to the fullest extent allowed by Texas law. LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED OR EXPRESS WARRANTIES OF HABITABILITY, SUITABILITY, MERCHANTABILITY, QUALITY, CONDITION OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY THAT THE LEASED PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE, AND TENANT'S OBLIGATION TO PAY THE RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE LEASED PREMISES OR THE PERFORMANCE BY LANDLORD OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PAY RENT, WITHOUT ABATEMENT, SETOFF, OR DEDUCTION NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.

#### 2. Term.

(a) Subject to and upon the terms and conditions set forth herein, or in any exhibit or addendum hereto, the term of this Lease (the "Term") shall continue in force for an initial term of ten (10) years, beginning on June 30, 2010 (the "Proposed Occupancy Date"), or the date on which Landlord tenders possession of the Leased Premises in accordance with Section 2(b), whichever first occurs (the "Commencement Date"), and ending ten (10) years after the Commencement Date, or such later date as may be applicable as hereinafter provided in Sections 2(b) and (c).

(b)If the Leased Premises are not ready for occupancy by the Proposed Occupancy Date for any reason or cause, Landlord shall not be liable or responsible for any claims, damages or liabilities in connection therewith or by reason thereof and, in such event, the Term of this Lease and Tenant's obligation to pay Rent (as defined below) hereunder shall commence from the time that the Leased Premises have been prepared and are ready for the occupancy of Tenant and Landlord tenders possession thereof to Tenant, which date shall then be the Commencement Date of the Term of this Lease. Landlord shall not tender possession of the Leased Premises unless and until construction of the Leased Premises has been substantially completed (other than punch list items). Landlord shall periodically advise Tenant of the status of construction of the Leased Premises, and as substantial completion of construction approaches Landlord shall notify Tenant in writing of the date on which Landlord anticipates tendering possession of the Leased Premises to Tenant, such notice from Landlord to be given at least three (3) days prior to such anticipated tender date. In the event the Leased Premises are not ready for occupancy by the Proposed Occupancy Date, due to no fault of Tenant, the stated Term of this Lease shall commence upon the revised Commencement Date, and the expiration date shall be extended so as to give effect to the full stated Term. When the Term of this Lease commences in accordance with the provisions hereof, Landlord and Tenant will, at the request of either, execute a declaration specifying the Commencement Date of the Term of this Lease.

(c) Provided no Act of Default exists and Tenant is occupying the entire Leased Premises at the time of such renewal, Tenant may renew this Lease for two (2) additional periods of five (5) years each (the "Extended Term") on the same terms set forth in this Lease (except as stated below), by delivering written notice of the exercise thereof to Landlord not later than twelve (12) months before the expiration of the initial Term and one hundred eighty (180) days before expiration of the first Extended Term. On or before the commencement date of each Extended Term, Landlord and Tenant shall execute an amendment to this Lease evidencing the Extended Term on the same terms provided in this Lease, except as follows:

(1) The Base Rental payable during each Extended Term shall be as calculated using the CPI escalator is Section 4(c), below:

(2) Tenant shall have no further renewal options unless expressly granted by Landlord in writing after expiration of the second Extended Term.

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(3) Any termination of this Lease or any assignment or subletting by Tenant other than is provided in Section 17 of the Lease shall terminate the right of Tenant to renew the Term.

3. Use. The Leased Premises are to be used and occupied by Tenant solely for the purpose of a fabrication facility and ancillary support services thereof, and for no other purpose. Tenant shall not occupy or use, or allow any portion of the Leased Premises to be occupied or used for any business or purpose which is unlawful, is disreputable, which lowers, or with the lapse of time would tend to lower, the character of the Building, or which may be deemed to be extra hazardous on account of fire, or permit anything to be done within the Leased Premises by Tenant's agents or employees which would in any way increase the rate of fire insurance coverage on the Building or its contents. Tenant shall conduct its business and control its agents and employees in such manner as not to create any nuisance, or unreasonably interfere with, or disturb any other tenant or Landlord in its operation of the Building.

4(a). Base Rental. Tenant hereby agrees to pay a base rental ("Base Rental") equal to the total cost of constructing the Building and Parking Lot amortized over 20 years at 8% interest said amount paid per month through the initial ten (10) year term, at which time the Base Rental shall be adjusted pursuant to the CPI adjuster specified below. The Base Rental shall be adjusted annually on January 1 of every year as detailed below.

In consideration of this Lease, Tenant promises and agrees to pay Landlord the (b)Base Rental, without demand, deduction or set off, on or before the first day of each month of the Term, and all extensions thereof, commencing on the Commencement Date. The first such monthly installment of Base Rental shall be payable by Tenant to Landlord on the Commencement Date, continuing thereafter on or before the first day of each calendar month during the Term, as the same may be extended. In the event any installment of Base Rental is not received within five (5) days after the due date thereof (without in any way implying Landlord's consent to such late payment), Tenant, to the extent permitted by law, agrees to pay, in addition to said installment of Base Rental, a late payment charge equal to ten percent (10%) of the late installment of Base Rental, it being understood that said late payment charge shall constitute liquidated damages (but shall not void the occurrence of a default or eliminate any of Landlord's remedies therefor) and shall be for the purposes of reimbursing Landlord for the additional costs and expenses which Landlord presently expects to incur in connection with the handling and processing of a late installment payment of Base Rental. Tenant and Landlord agree that the damages suffered by Landlord in the event of any such late payments are not capable of being ascertained precisely, and that the foregoing amount constitutes a reasonable and good faith estimate by the parties of the extent of such damages. Notwithstanding the foregoing, such late charges shall not apply to any Additional Rent which becomes due and owing by Tenant to Landlord pursuant to the provisions of this Lease. Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to Landlord as Rent shall constitute rent for the purpose

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of Section 502(b)(7), as it may be amended, of the Federal Bankruptcy Code, 11 U.S.C. §101 et seq. (the "Bankruptcy Code").

(c) Commencing on January 1, 2011, and on January 1 of each calendar period thereafter, including the extension terms, if any, the Base Rental shall be adjusted, in relation to the Consumer Price Index for all items relating to urban consumers compiled and published by the United States Department of Labor, Bureau of Labor Statistics, hereinafter abbreviated CPI. The monthly rental for each calendar year period after December 31, 2010 shall be calculated by dividing the CPI for the applicable immediately preceding December by the CPI for the previous December. The quotient thereof shall be multiplied by the Base Rental for the immediate proceeding December, the result being the monthly rental payments for that particular calendar year period.

For example, assuming that the base rent for 2010 was \$10,000 and that the CPI for December of 2009 would be 200 and the CPI for December of 2010 would be 202, the monthly rental payments for the period January 1, 2011 to December 31, 2012 would be computed as follows:

- (1)  $\frac{\text{CPI, December 2010 (assumed)}}{\text{CPI, December 2009 (assumed)}} = 202 = 1.01$
- (2)  $1.01 \ge 10,000 = 10,100$
- (3) Monthly rental from January 1, 2011 to December 31, 2012 = \$10,100

However, in no event shall the Base Rental decrease irrespective of decreases, if any, in the CPI.

If either the Landlord or the Tenant claims to be entitled to an adjustment of the rental in accordance with the above provisions, such party shall send a notice to the other setting forth the new rental claimed to be payable. Tenant shall not be responsible for adjusting the rental payments until Landlord renders this information to Tenant by written notice. It is understood that there will be some delay in obtaining the updated CPI and that until such is received, the rental shall be paid by Tenant in the same amounts as in the previous year, and upon receipt of the updated CPI, the additional payments or reduction in rental, as the case may be, necessary to adjust for the previous months in the lease year shall be made in conjunction with the next monthly rental payment.

In the event that an amendment is made by the Government in calculating the CPI hereinabove referred to, or if a substantial change is made in the method of establishing such CPI, then the CPI shall be adjusted to the figure that would have resulted had no change occurred in the manner of computing such CPI. In the event that such CPI (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the CPI shall be used in lieu of such CPI.

In the event of any dispute between the parties as to the manner of computing any adjustment in the annual rental, or as to the CPI to be used, or as to any other matter arising under this section, such dispute shall be determined by arbitration by appraisers. During any such arbitration, the Tenant shall continue to pay rent at the rate theretofore applicable under the terms of this lease.

Tenant shall also pay, as additional rent, all other sums of money as shall become (d) due and payable by Tenant to Landlord under this Lease ("Additional Rent"). The Landlord shall have the same remedies for default in the payment of additional rent as are available to Landlord in the case of a default in the payment of Base Rental. Base Rental, together with any adjustments of Rent provided for herein then in effect, shall be due and payable on or before the first day of each calendar month during the Term hereof, and Tenant hereby agrees to so pay such Rent to Landlord in lawful money of the United States of America at Landlord's address as provided herein (or to such other party or place as Landlord may designate from time to time in a written notice to Tenant) monthly in advance without demand, counterclaim or set-off. If the Term of this Lease as heretofore established commences on other than the first day of a month or terminates on other than the last day of a month, then the installment of Base Rental of such month or months shall be prorated and the installment or installments so prorated shall be paid in advance. All past due installments of Rent shall bear interest, from the date due until paid, at (the "Default Rate"). Base Rental, Additional Rent, Parking Rental, Tenant's Share of Operating Costs and Taxes and any other sums of money that shall become due and payable by Tenant to Landlord under this Lease shall be referred to herein as "Rent".

#### 5. Payment of Operating Costs.

(a) All costs and expenses ("Operating Costs") of every kind and nature (including, without limitation, reasonable reserves) incurred in maintaining and repairing the Leased Premises that are the responsibility of Tenant, shall be paid by and Tenant. Operating Costs shall include (but shall not be limited to) (i) all taxes on furniture, fixtures, and equipment, whether permanently affixed or otherwise, and other taxes arising out of the use and/or occupancy of the Leased Premises imposed by federal, state or local governmental authority or any other taxing authority having jurisdiction over the Complex, but shall exclude inheritance, estate, succession, transfer, gift, corporation, income, profit tax, capital stock, or taxes personal in nature to Landlord, (ii) water, electricity, gas, sewer, storm water drainage, and other utility charges; (iii) utility system installation charges and assessments; and (iv) real estate fees or commissions which are paid by Landlord to lease Tenant's space in the Building. Operating Costs shall also exclude the following: (i) costs recovered under any of Landlord's insurance policies or warranties; (ii) any costs incurred as a result of Landlord's sole or gross negligence or Landlord's default under this Lease; (iii) costs to correct construction defects or to correct damage caused by subsidence or adverse or substandard soil conditions; (iv) amounts reimbursable by third parties; or (v) legal fees to settle disputes regarding Landlord's title.

(b) All costs and expenses ("Management Costs") of every kind and nature paid or incurred by Landlord (including, without limitation, reasonable reserves) in overseeing, operating, managing maintaining and repairing those Building and Complex items required of Landlord, accounting, equipping, controlling, decorating, external lighting, enhancing, leasing, and showing the Complex (excluding the Building) shall be paid by Landlord. Management Costs shall likewise include (but shall not be limited to) (i) Real Estate Taxes (as defined below), (ii) insurance premiums for liability, property, worker's compensation, employers' liability and other casualty and/or risk insurance for Landlord's employees obtained by Landlord in connection with the Complex (including all such insurance with respect to parking facilities for the entire Complex); (iii) costs of all roof and other maintenance and repairs performed by Landlord (except those required of Tenant or to the extent caused by casualty or condemnation); (iv) costs of holiday decorations; (v) management expenses of the Complex, including, without limitation, Landlord's personnel, overhead, home office, and administrative expenses directly or equitably attributable to the management, operation and maintenance of the Complex; (vi) Landlord's accounting costs; Landlord employee unemployment taxes, social security taxes and personal property taxes; fees for permits and licenses; scheduling and compensation of security personnel, traffic directors and/or parking attendants (if and to the extent provided by Landlord); equipment, operation and repairs of loudspeakers and any equipment supplying music or intercom capability to the Complex (other than the Building); all costs and expenses of planting, replanting and replacing all flowers and landscaping; all costs and expenses of mowing and maintaining property adjacent to the Complex; repair and rental costs for, and reasonable depreciation of, equipment used in the operation and maintenance of the Complex; costs and expenses of cleaning and removal of rubbish, dirt and debris from the Complex (other than from the Leased Premises);

(c) Definitions. The term "Real Estate Taxes" shall mean all taxes and assessments (special or otherwise) levied or assessed against the Complex (land and buildings), including without limitation, any tax on rents, franchise tax or other tax levied or assessed against Landlord or the Leased Premises in lieu of or supplementing all or any portion of the foregoing taxes, The term "Insurance premiums" as used in this Lease means the total annual insurance premiums which accrue on all fire and extended coverage insurance, boiler insurance, public liability and property damage insurance, rent insurance and other insurance which, from time to time, may at Landlord's election be carried by Landlord with respect to the Complex during any applicable calendar year (or portion thereof) occurring during the term of this Lease; provided, however, in the event that during any such calendar year all or any part of such coverage is written under a "blanket policy" or otherwise in such manner that Landlord was not charged a specific insurance premium applicable solely to the Complex, then in such event, the amount considered to be the insurance premiums with respect to such coverage for such calendar year shall be determined in good faith by Landlord's insurance agent. If the insurance policies maintained by Landlord with respect to the Complex contain any nature of deductible feature, then Tenant, in the event of a loss, shall pay to Landlord Tenant's Share thereof, based upon the amount of such deductible feature. Tenant shall pay such amounts to Landlord within ten (10) days following receipt from Landlord of a statement therefor and payment thereof by Tenant shall be a condition precedent to Landlord's obligations to repair or restore the Leased Premises.

(d) On-Site Management. Landlord will provide on-site management through an On-Site Manager. Tenant shall provide reasonable space in the Building from which Landlord's manager may operate. The Landlord's manager shall be available during normal business hours to provide the management services required of Landlord under this Lease.

(e) Off-Site Management. The On-Site Manager employed by Landlord will answer to the Landlord's Off-Site Management Committee. In the event the On-Site Manager is not responsive to a request of Landlord the request should be directed by Tenant to Landlord's Off-Site Management Committee. The Off-Site Management Committee shall (i) approve all architectural changes, (ii) approve all structural changes, (iii) approve all landscaping, (iv) approve all plans relative to repairs or remodeling in excess of \$5,000, (v) approve all maintenance contracts, (vi) hire and fire the On-Site Manager, (vii) address all Tenant complaints; and (viii) approve all contractors performing work at the Complex.

6. Parking.

Subject to the provisions of Section 6(b) below, Tenant shall, during the (a) Term of this Lease, lease parking rights for one hundred (100) vehicles in the Parking Area, including twelve (12) reserved spaces in the portion of the Parking Area designated for reserved parking and eighty-eight (88) unreserved spaces. The location of such reserved spaces shall be as depicted on the drawing attached hereto as Exhibit "E" and made a part hereof. The parking rental for each reserved space shall initially be \$30.00 per month, and for each unreserved space shall initially be \$20.00 per month, commencing on the Commencement Date. All parking space rental rates are subject to change upon thirty (30) days prior written notice from Landlord to conform with the then prevailing rates established by Landlord from time to time in its sole discretion provided Landlord shall not charge Tenant any parking space rental unless and until the other tenants or occupants of the Building are charged a parking space rental and such parking space rental rate charged to Tenant shall not exceed the parking space rental rate charged to other tenants or occupants of the Building. It is the intention of Landlord and Tenant that the parking rentals herein set forth be net to Landlord of any sales or other tax based upon the sales or sale of parking services and required by law to be paid by Landlord or collected from Landlord's parking customers; and the parking rates herein established (and as hereafter adjusted) shall be increased from time to time by (and Tenant covenants and agrees to pay) the amount of any such sale taxes, if and when imposed. The parking rental provided to be paid pursuant to this Section 6 is hereinafter referred to as the "Parking Rental". The monthly Parking Rental shall be due and payable in advance on the first day of each and every calendar month during the Term, and a pro rata portion of such sum shall be payable for the first partial calendar month in the event the Commencement Date is other than the first day of a calendar month. Tenant's obligation to pay the Parking Rental shall be considered an obligation to pay rent for all purposes hereunder and shall be secured in like manner as is Tenant's obligation to pay Base Rental.

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(b) All parking spaces leased by Tenant hereunder shall be on a self-park, inand-out privilege basis. Landlord may, from time to time, make, modify and enforce reasonable rules and regulations relating to the parking of automobiles in the Parking Area, and Tenant will comply (and cause its agents and employees to comply) with such rules and regulations. Noncompliance which continues for ten (10) days after written notice from Landlord to Tenant specifying such noncompliance in reasonable detail will entitle Landlord, in addition to (and not in lieu of) its other remedies as set forth herein, to terminate Tenant's right to use the parking spaces as to which such non-compliance occurs. Termination of Tenant's right to use such parking spaces, or an eviction or constructive eviction of Tenant from the Leased Premises, or otherwise entitle Tenant to any reduction or abatement of Rent (except the monthly rental for such parking spaces as to which Tenant's rights were terminated) or entitle Tenant to terminate this Lease.

7. Security Deposit. Tenant shall pay to Landlord a security deposit (the "Security Deposit") of \$0.00 on the date this Lease is executed by Tenant as security for the performance by Tenant of all the terms, covenants and conditions of this Lease upon Tenant's part to be performed. Upon the occurrence of any Act of Default by Tenant, Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any damage, injury, expense or liability caused to Landlord by such Act of Default and Tenant shall immediately upon written demand by Landlord, replace the amount applied by Landlord to cure any such default so that Landlord shall have the full Security Deposit on hand at all times during the Term of this Lease. The Security Deposit shall not be considered a measure of Landlord's damages in case of default by Tenant. In the event of a sale of the Leased Premises, Landlord shall have the right to transfer the Security Deposit to the buyer, and Landlord shall thereupon be released from all liability for the return of the Security Deposit and Tenant shall look solely to the new Landlord for the return of the Security Deposit and this provision shall apply to every transfer or assignment made of the Security Deposit to a new Landlord. The Security Deposit shall not be assigned or encumbered by Tenant without the written consent of Landlord and any such assignment or encumbrance shall be void. No interest shall be paid by Landlord on the Security Deposit and the Security Deposit may be commingled with Landlord's general funds. In no event shall the Security Deposit be deemed or treated as prepaid Rent for any rental installment due hereunder, whether the last monthly installment or otherwise. Provided Tenant has fully performed hereunder, the Security Deposit, or portion thereof remaining after application by Landlord as provided herein, shall be returned to Tenant within forty-five (45) days after the termination of this Lease.

8. Services to be Furnished by Landlord. Provided there is no Act of Default existing under this Lease, Landlord agrees to furnish to Tenant while occupying the Leased Premises at cost of Tenant and during normal business hours for the Building (normal business hours being defined as 6:30 a.m. through 6 p.m., Monday through Friday [except Building

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holidays, as set forth in the Building Rules and Regulations attached hereto as Exhibit "D" and made a part hereof for all purposes], and 8 a.m. through 1 p.m. on Saturday):

(a) Water. Hot and cold water at those points of supply provided for general use of Tenants in the Building; central heat and air conditioning in season in the enclosed office, at such temperatures and in such amounts as are deemed reasonable and necessary by Landlord, but such service at times during week days other than normal business hours for the Building, Sundays and Building holidays (as set forth in the Building Rules and Regulations) to be furnished only upon the request of Tenant, who shall bear the entire cost thereof allocable to Tenant (which may in part be determined by the relationship between the Leased Premises and the zone or area of the Building provided such service as well as the existence of other tenants within such zone or area also requesting such service during such time period); routine maintenance and electric lighting service for all public areas and special service areas of the Building in the manner and to the extent deemed reasonable and necessary by Landlord;

(b) Janitorial Service. None. Tenant shall, at its sole cost and expense, provide specialized janitorial service for the Building for each day Tenant conducts business in the Building;

(c)Electrical Connections. At tenants expense, electric energy that Tenant shall reasonably require for normal office equipment such as personal computers, standard business office word processing, photocopying equipment, telecopiers, typewriters, dictation machines, calculators, coffee machines, microwave ovens, and other machines of similar electrical consumption, and lighting in the Leased Premises, provided that (i) Tenant's electrical requirements shall not exceed six (6) watts per square foot of connected load or two (2) watts per square foot of demand load multiplied by the number of normal business hours in each month (as measured by one or more separate watt hour meters), or require a voltage greater than 120 volts single phase or require more than 500 watts for any piece of equipment (the "Building Standard Electrical Load"), and (ii) Landlord shall not be obligated to provide (unless otherwise specifically agreed in writing) dedicated circuits or electrical power in excess of the foregoing. If Landlord determines that Tenant will require, or is consuming, special lighting in excess of Building standard or electrical energy in excess of the Building Standard Electrical Load, Tenant shall reimburse Landlord for the cost of any additional equipment, such as transformers, electrical panels, risers and supplemental air conditioning equipment, which Landlord's engineer reasonably deems necessary to accommodate such above standard consumption (without implying any obligation on the part of Landlord to accommodate such use), and Landlord may install separate meters to all or a portion of the Leased Premises at the cost of Tenant. If separate utility meters are provided to the Leased Premises, Landlord may elect to have all charges for the separately metered utilities billed directly to Tenant;

(d) Lights. None. Tenant shall provide at its expense standard fluorescent bulb replacement in all areas; and

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(e) Security. None. Tenant shall at its expense furnish any and all security necessary for the Complex.

No interruption or malfunction of any such services shall constitute an eviction or disturbance of Tenant's use and possession of the Leased Premises or the Building, or a breach by Landlord of any of its obligations hereunder, or otherwise render Landlord liable for damages or entitle Tenant to be relieved from any of its obligations hereunder or work an abatement of the rent provided for hereunder or grant Tenant any right of set-off or recoupment. Landlord shall use reasonable diligence to restore such service.

In the event that Tenant desires air conditioning or heating at any time or times or area or areas other than previously specified as standard for the Building and Landlord consents to the furnishing of such service at the time or times requested by Tenant (which consent shall not be unreasonably withheld or delayed), Tenant shall be charged for such air conditioning or heating furnished by Landlord during such periods at Landlord's then standard hourly rate applicable during the periods when such services are furnished.

The obligations of Landlord to provide the services and utilities herein provided for shall be subject to governmental regulation thereof (e.g., rationing, temperature control) and any such regulation which requires Landlord to provide such services or utilities other than as herein provided shall not constitute a default hereunder but rather avoidance of a violation of such regulations shall be deemed to be compliance with the obligations and agreements of Landlord hereunder.

9. Keys and Locks. Landlord agrees to furnish Tenant on the Commencement Date six (6) keys for each corridor door entering the Leased Premises. Additional keys will be furnished at a reasonable charge by Landlord upon request signed by Tenant or Tenant's authorized representative. All such keys shall remain the property of Landlord. No additional locks shall be allowed on any door of the Leased Premises without Landlord's permission (which permission shall not be unreasonably withheld), and Tenant shall not make, or permit to be made any duplicate keys, except those furnished by Landlord. Upon termination of this Lease, Tenant shall surrender to Landlord all keys of the Leased Premises, and give to Landlord the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Leased Premises.

10. Graphics. In no event shall any signs (of any kind or nature), symbols or identifying markers be put in the halls, elevators, staircases, entrances or parking areas without the prior written approval of Landlord, acting in its sole discretion.

11. Improvements to be made by Landlord. The Landlord shall construct or have constructed the Building in accordance with Exhibit "B2." Any and all improvements in or to the Leased Premises (other than movable equipment or furniture owned by Tenant), shall at once become the property of Landlord and shall be surrendered to Landlord upon the termination of

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this Lease by lapse of time or otherwise without cost to Landlord. All installations agreed to or requested by Tenant, in addition to that provided in Exhibit "C" attached hereto shall be for Tenant's account and shall be paid in full by Tenant. Additionally, Tenant shall pay all ad valorem taxes and increased insurance premiums, if any, that are payable on account of any of Tenant's improvements that are in addition to the Allowance. Failure by Tenant to pay any sums described in this Section 11 or in Exhibit "C" in full within fifteen (15) days after Tenant's receipt of an invoice therefor will constitute failure to pay rent when due and an Act of Default by Tenant hereunder, giving rise to all remedies available to Landlord under this Lease or otherwise for nonpayment of rent. IT IS STIPULATED THAT TIME IS OF THE ESSENCE IN CONNECTION WITH TENANT'S COMPLIANCE WITH THE TERMS OF EXHIBIT "C."

12. Peaceful Enjoyment. Tenant shall peacefully have, hold and enjoy the Leased Premises, subject to the other terms hereof, provided that Tenant pays Rent and performs all of Tenant's covenants and agreements herein contained. It is understood and agreed that this covenant and any and all other covenants of Landlord contained in this Lease shall be binding upon Landlord and its successors only with respect to breaches occurring during its and their respective ownerships of the Landlord's interest hereunder. This Lease is accepted by Tenant subject to each and every royalty or mineral reservation, restriction, covenant, or condition existing in favor of a third party and appearing of record in the Office of the County Clerk of Brazoria County, Texas, to the extent that the same are applicable and validly exist with respect to the Leased Premises.

13. Limitation of Landlord's Personal Liability. Tenant specifically agrees to look solely to Landlord's interest in the Complex for the recovery of any judgment against Landlord, it being agreed that neither Landlord nor Landlord's employees, officers, directors, members, managers, or partners shall ever be personally liable for any such judgment.

14. Maintenance, Repair and Replacement Obligations.

(a) Subject to Tenant's obligation to pay all Operating Costs, Landlord shall maintain and repair the structural portions of the Building; the exterior windows; the public lobby areas, stairs, corridors and corridor walls; public restrooms; the roof; parking areas; and the facilities and equipment providing electricity, water, heating, ventilating, air conditioning, and elevator services for the Building. All such maintenance and repairs shall be furnished at such times, in such manner and to such extent as is required to maintain the aforesaid property in good order and condition. Unless otherwise stipulated herein, Landlord shall not be required to make any improvements or repairs of any kind or character to the Leased Premises during the Term of this Lease, except such repairs as may be required for normal maintenance operations as provided in this Section 14.

(b) Tenant shall keep the interior of the Building in good repair and condition at Tenant's expense, and shall not commit or allow any waste or damage to be committed by Tenant's agents, employees, contractors or invitees in any portion of the Leased Premises, and at

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the termination of this Lease, by lapse of time or otherwise shall deliver up the Leased Premises to Landlord in as good condition as at date of possession by Tenant, ordinary wear and tear, condemnation and casualty loss not caused by Tenant, excepted. Tenant, at its own cost and expense, shall repair or replace any damage or injury done to the Building, or any part thereof, caused by any negligent, reckless, willful or intentional wrongful act or omission of Tenant or Tenant's agents, employees, contractors or invitees. The repair or replacement of any such damage or injury for which Tenant is responsible as herein provided shall be made by a contractor selected and retained by Landlord but at Tenant's expense (or selected and retained by Tenant if expressly approved in writing by Landlord, acting in its sole discretion); and if such contractor is retained by Landlord, then Tenant shall repay the reasonable costs thereof to Landlord on demand plus a construction management fee in the amount of ten percent (10%) of such costs.

(c) If Tenant should fail to perform any of its obligations hereunder with respect to maintenance, repairs or replacements, then Landlord may, if it so elects but expressly without any obligation to do so, following the expiration of any applicable notice and cure period, in addition to any other remedies provided herein, effect same. Any out-of-pocket sums expended by Landlord in effecting such maintenance, repairs or replacements shall be deemed to be Additional Rent owing by Tenant to Landlord and shall be due and payable, on demand, together with interest thereon at the Default Rate from the date of each such expenditure by Landlord to the date of repayment by Tenant.

(d) Tenant hereby represents, warrants and agrees that Tenant shall not cause any Hazardous Substances to be installed, used, or incorporated into any alterations or improvements made by Tenant to the Leased Premises in violation of any applicable Environmental Laws (as defined below). Tenant shall inform Landlord of any pending or threatened information request, inspection, investigation, administrative order, enforcement, or litigation with respect to Hazardous Substances relating to the Leased Premises of which Tenant has actual knowledge, and promptly notify Landlord if Tenant shall receive any communication from or on behalf of any governmental authority regarding an actual or suspected environmental condition which may violate any Environmental Laws (as defined below). Tenant agrees to not use, manage, handle, generate, manufacture, produce, store, release, discharge, or dispose of, on, under, from, or about the Leased Premises any Hazardous Substances or allow any other person or entity to do so, except Tenant may keep small amounts of materials in the Leased Premises which are offered for sale by Tenant in the ordinary course of its business, or which are used by Tenant to clean the Leased Premises, subject to compliance by Tenant with all Environmental Laws.

TENANT HEREBY RELEASES THE LANDLORD AND ITS MEMBERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, LENDERS, ATTORNEYS, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES", AND INDIVIDUALLY, AN "INDEMNIFIED PARTY") AND AGREES THAT TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED

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PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, PROCEEDINGS, ACTIONS, DEMANDS, LIABILITIES, (INCLUDING WITHOUT LIMITATION FOR INDEMNIFIED PARTIES' OWN NEGLIGENCE, STRICT LIABILITY AND STATUTORY STRICT LIABILITY) DAMAGES (INCLUSIVE OF ALL LOSS THAT RESULTS IN THE ORDINARY COURSE OF EVENTS), FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ALL LITIGATION COSTS AND ATTORNEYS' AND OTHER ADVISORS' FEES IN CONNECTION WITH ANY ADMINISTRATIVE PROCEEDING, TRIAL, APPEAL OR PETITION FOR REVIEW) AND AMOUNTS PAID IN SETTLEMENT (COLLECTIVELY, "LOSSES") OF ANY NATURE WHATSOEVER, WHETHER CONTINGENT OR ACCRUED, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATING TO (i) THE ACTUAL OR ALLEGED PRESENCE, USE, TREATMENT, STORAGE, GENERATION, MANUFACTURE, TRANSPORT, RELEASE, LEAK, SPILL, DISPOSAL OR OTHER HANDLING OF HAZARDOUS SUBSTANCES IN. ON, UNDER, FROM OR AFFECTING ALL OR ANY PORTION OF THE LEASED PREMISES, OR (ii) ANY VIOLATION OR CLAIM OF VIOLATION OF ANY ENVIRONMENTAL LAWS, EXCEPT FOR SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD, ITS AGENTS, EMPLOYEES, SUCCESSOR OR ASSIGNS (THE "LANDLORD RESPONSIBLE PARTIES"), OR (iii) ANY LIEN IMPOSED ON THE LEASED PREMISES FOR THE COST OF INVESTIGATION, REMOVAL, REMEDIATION OR OTHER RESPONSE ACTION RELATING TO HAZARDOUS SUBSTANCES RESULTING FROM ANY OCCURRENCE UNDER CLAUSES (i) OR (ii) ABOVE. THE INDEMNITY AND RELEASE SET FORTH ABOVE SHALL APPLY REGARDLESS OF CAUSATION, INCLUDING, WITHOUT LIMITATION, AN INDEMNIFIED PARTY'S ACTS, OMISSIONS OR NEGLIGENCE (WHETHER SUCH NEGLIGENCE IS JOINT, COMPARATIVE, CONTRIBUTORY, OR CONCURRENT), OR BASED ON ANY THEORY OF LEASED PREMISES LIABILITY (WHETHER FOUNDED IN WHOLE OR IN PART ON NEGLIGENCE OR STRICT LIABILITY), OR ANY THEORY OF STRICT LIABILITY, INCLUDING, WITHOUT LIMITATION, ANY THEORIES OF PRODUCTS LIABILITY; HOWEVER, THERE IS EXPRESSLY EXCLUDED FROM THE FOREGOING INDEMNITY AND RELEASE ANY LOSSES RESULTING FROM THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNIFIED PARTY.

In addition to and without limitation of the items included above, the term "Losses" shall include (i) the cost of any investigation, removal, remediation or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, that is necessary or appropriate to prevent any such order from being issued or that otherwise is reasonable under the circumstances, (ii) capital expenditures necessary to cause the Leased Premises or the operations or business of Tenant and/or Landlord, as the care may be, to be in compliance with any and all requirements of Environmental Laws, (iii) Losses for injury or death of any person, including any Indemnified Party, (iv) Losses for damage to the property of any Indemnified Party or any other person,

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including diminution in value or loss of use, and (v) Losses arising under Environmental Laws enacted after the execution of this Lease.

#### 15. Tenant's Utility and Permit Obligations.

(a) Tenant shall pay at its sole cost and expense the sums required to have connected all utility services to the Building, including, but not limited to, any and all utility deposits and tap and meter fees. Tenant shall promptly pay all charges for electricity, water, gas (if any), telephone service and all other utilities furnished to the Building. Any or all utility service(s) furnished to the Building may, at Landlord's election, be separately metered. If separate metering is so used, Tenant shall, at Landlord's election, either make payments for use of such utility service(s) directly to the public utility which provides the service(s) or to Landlord who (provided Tenant is not in default hereunder) shall make the required payments to the public utility. If separate metering is not used for any or all utility service(s), Tenant shall pay to Landlord Tenant's Share of the cost of providing such service(s) to the Building. Landlord makes no representation or warranty as to the sufficiency of any such utility services and capacities for Tenant's Use, and Landlord shall not have any obligation hereafter for providing such utility services and capacities except as otherwise expressly and specifically stated herein.

(b) Landlord shall in no event be liable for any interruption or failure of any utility services on or to the Leased Premises and Tenant shall not be entitled to any abatement of Rent on account thereof.

(c) Tenant shall, at its sole cost and expense, obtain and keep in force during the Term, and all extensions thereof, all licenses, certificates and permits necessary or desirable for it to use the Leased Premises in accordance with applicable laws and restrictive covenants.

(d) If Tenant should fail to perform any of its obligations hereunder with respect to paying for any utilities or obtaining and maintaining any licenses, certificates or permits, then Landlord may, if it so elects but expressly without any obligation to do so, following the expiration of any applicable notice and cure period, in addition to any other remedies provided herein, make such payments or obtain such licenses, certificates or permits. Any out-of-pocket sums expended by Landlord with respect to any of the foregoing shall be deemed to be Additional Rent owing by Tenant to Landlord and shall be due and payable, on demand, together with interest thereon at the Default Rate from the date of each such expenditure by Landlord to the date of repayment by Tenant.

16. Tenant's Tax Obligations.

(a) Commencing on the Commencement Date, Tenant agrees to pay, before they become delinquent, all taxes, assessments and governmental charges of any kind and nature whatsoever (hereinafter collectively referred to as "Taxes") lawfully levied or assessed against the personal property, furniture and fixtures of Tenant located on the Leased Premises including

equipment permanently affixed to the Building. Tenant shall furnish to Landlord, not later than fifteen (15) days after the date any such taxes would become delinquent if not paid, official receipts of the appropriate taxing authority or other evidence satisfactory to Landlord evidencing payment thereof. If Tenant should fail to pay any Taxes required to be paid by Tenant hereunder, in addition to any other remedies provided herein, Landlord may, if it so elects but with no obligation to do so, pay such Taxes. Any out-of-pocket sums expended by Landlord to pay such Taxes (including all penalties, interest and attorneys fees which have accrued due to Tenant's failure to pay) shall be deemed to be Additional Rent owing by Tenant to Landlord and shall be due and payable, on demand, together with interest thereon at the Default Rate from the date of each such expenditure by Landlord to the date of repayment by Tenant.

(b) Tenant agrees that, as between Tenant and Landlord, Landlord has the sole and absolute right to contest taxes levied against the Leased Premises and the Complex (other than taxes levied directly against Tenant's personal property within, or sales made from, the Leased Premises). Therefore, Tenant, to the fullest extent permitted by law, irrevocably waives any and all rights that Tenant may have to receive from Landlord a copy of notices received by Landlord regarding the appraisal or reappraisal, for tax purposes, of all or any portion of the Leased Premises or the Building Complex. Additionally, Tenant, to the fullest extent permitted by law, hereby irrevocably assigns to Landlord and waives (i) any and all rights of Tenant to protest or appeal any governmental appraisal or reappraisal of the value of all or any portion of the Leased Premises or the Complex and (ii) any obligation of Landlord to Tenant to provide to Tenant any reapproval or valuation notice received by Landlord. Tenant agrees without reservation that it will not protest or appeal any such appraisal or reappraisal before a governmental taxing authority without the express written authorization of Landlord.

17. Assignment or Sublease. Neither Tenant nor Tenant's legal representatives or successors in interest, by operation of law or otherwise, shall assign this Lease or sublease the Leased Premises or any part thereof or mortgage, pledge or hypothecate its leasehold interest or grant any concession or license within the Leased Premises without the prior express written consent of Landlord (which consent shall not be unreasonably withheld or delayed, subject to the options of Landlord as hereinbelow set forth, including the option to terminate this Lease as to the space so affected) in accordance with the terms of this Section 17 and any attempt to do any of the foregoing without Landlord's consent shall be void. Notwithstanding the foregoing to the contrary, Tenant may, without Landlord's consent, sublease all or a portion of the Premises or assign the Lease to a parent, subsidiary, division or successor entity controlling, controlled by or under common control with Tenant ("Affiliate"), or in connection with the sale (whether by merger, consolidation, exchange of ownership interests or the like) of Tenant, or the sale by the Tenant of all or substantially all of its assets as a whole to a successor, so long as Tenant provides the Landlord with written notice of the assignment or sublease within thirty (30) days prior to such assignment or sublease, provided, the net worth of any such assignee, sublessee or successor shall be equal to or greater than the greater of Tenant's net worth (i) on the date hereof and the date thereof; and (ii) the date Tenant delivers to Landlord written notice of such assignment or sublease and such assignee, sublessee or successor shall have, in Landlord's

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determination, satisfactory credit rating and financial condition relative to the obligations to be assumed. Notwithstanding any such consent, or any permitted assignment or sublease, Tenant will remain jointly and severally liable (along with each approved assignee or subtenant who shall automatically become jointly and severally liable for all obligations of Tenant hereunder), except as hereinbelow expressly provided, and Landlord shall be permitted to enforce the provisions of this Lease directly against Tenant or any assignee or subtenant without proceeding in any way against any other person. Notwithstanding anything in this Lease to the contrary, the obligations and undertakings of any Guarantor are continuing and irrevocable, and shall not be affected or impaired by reason of any assignment, subletting or mortgaging of all or any part of the interest of Tenant in the Lease or in the Leased Premises.

If Tenant (or any entity composing Tenant) is an entity, then any transfer of this Lease from Tenant by merger or consolidation, or any change in ownership or power to vote a majority of the voting stock or membership interests in Tenant outstanding at the time of execution of this Lease shall constitute an assignment for the purposes of this Lease.

In the event Tenant should desire to assign this Lease or sublet the Leased Premises or any part thereof, Tenant shall give Landlord written notice of such desire at least thirty (30) days in advance of the date on which Tenant desires to make such assignment or sublease. Landlord shall then have a period of twenty (20) days following receipt of such notice within which to notify Tenant in writing that Landlord elects either (i) to terminate this Lease as to the space so affected as of the date so specified by Tenant, or (ii) to permit Tenant to assign this Lease or sublet such space, subject, however, to subsequent written approval of the proposed assignee or subtenant by Landlord, which approval shall not be unreasonably withheld or delayed, or (iii) to refuse to consent (subject to Landlord's agreement not to unreasonably withhold or delay its consent) to Tenant's assignment of this Lease or subleasing of such space and to continue this Lease in full force and effect as to the entire Leased Premises. If Landlord should fail to notify Tenant in writing of such election within said twenty (20) day period, Landlord shall be deemed to have elected option (iii) above. If Landlord notifies Tenant that Landlord elects to terminate this Lease as to the space proposed for assignment or sublease, as provided in (i) above, then Tenant shall have the right to cancel such proposed assignment or subletting by delivering written notice of such cancellation to Landlord within twenty (20) days of Tenant's receipt of such notice from Landlord, in which event this Lease shall continue in full force and effect as to the entire Leased Premises.

If however, such prior express written consent of Landlord is granted, and if the rent due and payable under any sublease, assignment, license or other transfer (or a combination of the rent payable plus any bonus or other consideration therefor or incident thereto), less the reasonable costs incurred by Tenant in making such sublease for brokerage fees, fit-up costs and tenant inducements, exceeds the rental payable under this Lease, then Tenant shall be bound and obligated to pay Landlord 100% of such excess rental within ten (10) days following receipt thereof by Tenant from such subtenant assignee, licensee or other transferee, as the case might be. Tenant shall furnish to Landlord true and complete copies of all instruments evidencing any such assignment, sublease, mortgage, pledge, hypothecation, concession or license, and of any and all amendments, supplements or other modifications thereto or terminations thereof, m each case within ten (10) days after the execution and entering thereof by Tenant.

Consent by Landlord to a particular assignment or sublease or other transaction shall not be deemed a consent to any other or subsequent transaction. If this Lease be assigned or if the Leased Premises be subleased (whether in whole or in part) or in the event of the mortgage, pledge or hypothecation of the leasehold interest or the grant of any concession or license within the Leased Premises without the prior express written consent of Landlord, or if the Leased Premises be occupied in whole or in part by anyone other than Tenant without the prior express written consent of Landlord, Landlord may nevertheless collect rent from the assignee, subtenant, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and apply the net amount collected to the rent payable hereunder, but no such transaction or collection of rent or application thereof by Landlord shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of Tenant's covenants, duties and obligations hereunder.

Landlord shall have the right to assign or transfer, in whole or in part, every feature of Landlord's right and obligations hereunder and in the Complex, the Building, and the Leased Premises. Such assignments or transfers may be made to a corporation, trust, trust company, individual or group of individuals, and howsoever made shall be in all things respected and recognized by Tenant.

#### 18. Alterations, Additions, Improvements

After the Commencement Date, Tenant, at its sole cost and expense, shall (a) have the right to install within the Leased Premises any fixtures, equipment, facilities and other improvements (all of which are referred to as "Tenant Improvements"), required by Tenant for the conduct of Tenant's business on the Leased premises; provided however, Tenant shall not permit the Leased Premises to be used for any purpose other than that stated in the use clause hereof, or make or allow to be made any alterations or physical additions in or to the Leased Premises not expressly provided for herein without first obtaining the written consent of Landlord, which consent shall not' be unreasonably withheld. Any and all such alterations or physical additions in or to the Leased Premises shall be made, at Tenant's cost, by a contractor selected by Landlord or a contractor selected by Tenant but approved in writing by Landlord, which approval shall not be unreasonably withheld. Tenant shall not install within the Leased Premises, without the specific written consent of Landlord, any food or other vending machines (but Tenant may install a soft drink machine for use by Tenant and Tenant's employees and patients only), nor any apparatus or device that will result in an unusually heavy load on the floor, or require unusual demand for electrical power.

(b) Tenant shall be responsible, at Tenant's cost and expense, to ensure that any alterations, physical additions or improvements to the Complex comply with the

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Accessibility Laws (as defined below). Consent by Landlord to any Tenant alteration, addition or improvement shall not be deemed to be a representation, warranty or certification by Landlord that such alteration, addition or improvement is in compliance with the Accessibility Laws. All alterations, physical additions or improvements (other than Tenant's unattached, readily movable furniture and office equipment) which may be made or installed by either party upon the Complex shall at Landlord's option remain upon and be surrendered with the Leased Premises and become the property of Landlord at the termination of this Lease, unless Landlord requests the removal, in which event Tenant shall remove the same and restore the Complex to its original condition at Tenant's expense. All construction work done by Tenant within the Complex shall be performed in a good and workmanlike manner, in compliance with all governmental requirements and Landlord's requirements, and in such manner as to cause a minimum of interference with other construction in progress and with the transaction of business in the Building. TENANT AGREES TO INDEMNIFY, DEFEND AND HOLD LANDLORD HARMLESS FROM AND AGAINST ANY LOSS, LIABILITY OR DAMAGE RESULTING FROM SUCH WORK, AND TENANT SHALL, IF REQUESTED BY LANDLORD, FURNISH BOND OR OTHER SECURITY SATISFACTORY TO LANDLORD AGAINST ANY SUCH LOSS, LIABILITY OR DAMAGE. Tenant shall not create or permit to be created or to remain, and shall discharge, any lien (including, but not limited to, the liens of mechanics, laborers or materialmen for work or materials alleged to be done or furnished in connection with the Leased Premises), encumbrance or other charge upon the Complex or any part thereof or upon Tenant's leasehold interest therein.

(c) Tenant agrees to comply with all laws, rules and orders of federal, state and municipal governments and all departments thereof, and the Board of Fire Underwriters, at Tenant's sole expense. Specifically, but not by way of limitation, Tenant agrees that, within the Leased Premises, it solely shall be responsible for and shall pay all costs in order to continuously cause the Leased Premises to be in compliance with the Americans With Disabilities Act (42 U.S.C. §12101 et seq.) ("ADA") and all rules, regulations, and guidelines promulgated thereunder, and any similar federal, state or local laws, ordinances, or codes. The ADA, and any other similar federal, state, or local laws, ordinances, or codes are hereinafter collectively referred to as the "Accessibility Laws." Tenant agrees to cooperate fully with Landlord to enable Landlord to timely comply with any Accessibility Laws to the extent of Landlord's obligation hereunder and to immediately forward to Landlord any notice Tenant receives regarding complaints, injuries, or claims by anyone claiming that those items which are the responsibility of the Landlord do not comply with the Accessibility Laws. Tenant shall be responsible for any requirements under the Accessibility Laws as relating to the Leased Premises (which Tenant acknowledges as a "public accommodation" under the terms of the Accessibility Laws), including, without limitation, Tenant's Work and the positioning of Tenant's furnishings within the Leased Premises. Specifically, and without limitation, Tenant shall be responsible for the cost of all inspections of the Leased Premises and any subsequent remedial measures which are required by any Accessibility Laws. TENANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS LANDLORD, THE MANAGER OF THE BUILDING, AND THEIR RESPECTIVE MEMBERS, MANAGERS, OFFICERS, DIRECTORS, BENEFICIARIES,

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SHAREHOLDERS, PARTNERS, AGENTS, AND EMPLOYEES FROM ALL FINES, SUITS, PROCEDURES, CLAIMS, AND ACTIONS OF EVERY KIND, AND ALL COSTS ASSOCIATED THEREWITH (INCLUDING ATTORNEYS' AND CONSULTANTS' FEES) ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY VIOLATION OR ALLEGED VIOLATION OF ANY ACCESSIBILITY LAWS AT THE LEASED PREMISES, OR WHICH ARISES AT ANY TIME FROM TENANT'S USE OR OCCUPANCY OF THE LEASED PREMISES, OR FROM TENANT'S FAILURE TO TAKE ALL STEPS REQUIRED UNDER THE ACCESSIBILITY LAWS.

#### 19. Laws and Regulations; Rules of Building.

(a) Tenant, at its own cost and expense, will comply with all federal, state, municipal and other laws, ordinances, rules and regulations applicable to the Complex and the business conducted therein by Tenant (including, without limitation, any temperature control restrictions); will not engage in any activity which would cause Landlord's fire and extended coverage insurance to be cancelled or the rate thereof to be increased (or, at Landlord's option, will pay any such increase); will not commit any act, and will not permit any act to be committed by its agents, employees, invitees or visitors, which is a nuisance or annoyance to Landlord or to others, or which might, in the exclusive judgment of Landlord, damage Landlord's goodwill or reputation, or tend to injure or depreciate the Building; will not commit or permit waste in the Leased Premises or Building; will comply with rules and regulations from time to time promulgated by Landlord, applicable to the building; and, will not paint, erect or display any sign, advertisement, placard or lettering which is visible in the corridors or lobby of the Building or from the exterior of the Building without Landlord's prior written approval.

(b) Tenant shall not, except to designate Tenant's business address (and then only in conventional manner and without emphasis or display), use the name or mark of the Building for any purpose whatsoever. Landlord shall have the right at any time and from time to time to rename the Building, and the prohibitions of this Section 19 shall apply to any and all such building names.

(c) Fabrication and other related equipment, machines and devices may be installed in the Leased Premises provided they are (i) installed completely at Tenant's sole cost and expense, (ii) in accordance with all the terms and conditions of the Lease, including, without limitation, rules, regulations and requirements of the local board of fire underwriters, the local fire insurance exchange, and all federal, state, and municipal governmental and quasi-governmental authorities having jurisdiction thereof, and (iii) properly electrically filtered and insulated so that there is no interference in the Building with telephonic, video, fiber optic, data processing, radio, television or other similar or dissimilar communication, transmission or reception whether now existing or hereafter invented. All walls, ceilings, floors and doors of any room used for examination, diagnosis, testing or therapy shall be properly shielded and shall comply with all rules, regulations ordinances, and other requirements from time to time in effect whether now or in the future of any and all federal, state, and municipal authorities having

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jurisdiction thereof. All of the foregoing equipment shall remain the property of Tenant and may be removed by Tenant upon expiration or earlier termination of this Lease, provided (1) such removal is made prior to the termination or expiration of this Lease; (2) Tenant is not then in default in the timely performance of any obligation or covenant under this Lease; and (3) Tenant promptly repairs all damage caused by such removal.

(d) Tenant covenants and agrees that the storage, handling, removal and disposal of all waste matter at or from the Leased Premises shall be done in compliance with all applicable laws and/or legal requirements now or hereafter existing and shall be performed by Tenant at Tenant's sole cost and expense.

(e) If Tenant receives notice of any claimed violation of any law, rule or regulation applicable to the Leased Premises, it shall give prompt written notice thereof to Landlord.

(f) Tenant, at its sole cost, shall be responsible for compliance with the Americans With Disabilities Act and any and all similar federal, state, or local laws, ordinances, or codes (collectively, the "Disability Laws") with respect to (1) the Leased Premises, (2) all alterations, additions and improvements made to the Leased Premises or any other acts of Tenant after the Commencement Date, (3) all requirements of Disability Laws that relate to the employer-employee relationship or that are not required to be provided generally, including, without limitation, requirements related to auxiliary aids and graphics installed by or on behalf of Tenant, and (4) all requirements of Disability Laws that relate to private restrooms constructed by or at the special request of Tenant. Neither party shall be in default under this Section 19(f) for its failure to comply with Disability Laws so long as the responsible party is either contesting in good faith, and by legal means, the enforcement of Disability Laws, or undertaking diligent efforts to comply with Disability Laws.

(g) Tenant shall comply with the Building Rules and Regulations listed in Exhibit "D" attached hereto. Landlord may, at any time and from time to time, change such Building Rules and Regulations for the safety, care, or cleanliness of the Building and related facilities, provided that such changes will not unreasonably interfere with Tenant's use of the Leased Premises. Tenant shall be responsible for the compliance with such Building Rules and Regulations by its employees, agents, and invitees.

20. Entry for Repairs and Inspection. Landlord and its employees, agents and representatives shall have the right to enter into and upon any part of the Leased Premises upon reasonable advance notice, except in the case of emergency in which event no prior notice shall be required, at all reasonable hours to inspect same, clean or make repairs, alterations or additions thereto, as Landlord may deem necessary or desirable, and Tenant shall not be entitled to any abatement or reduction of rent by reason thereof Landlord agrees to exercise its rights

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under this Section 20 in such manner as may be reasonable in view of the prevailing circumstances, so as to cause the least interruption to Tenant's business as may be practicable.

Building Mortgages. This Lease is and shall always be subject to the lien of any 21. mortgages or deeds of trust which are now or shall at any future time be placed upon the Complex, the Property, the Building, the Leased Premises, or Landlord's rights hereunder, and to any and all renewals, extensions, rearrangements, modifications or consolidations of any such mortgage or deed of trust. This clause shall be self-operative and no further instrument of subordination need be required by any mortgagee. In confirmation of such subordination, however, Tenant, at Landlord's request, shall execute promptly any appropriate certificate or instrument that Landlord may reasonably request. In the event of the enforcement by the trustee or the beneficiary under any such mortgage or deed of trust of the remedies provided for by law or by such mortgage or deed of trust, Tenant, will, upon request of any person or party succeeding to the interest of Landlord as a result of such enforcement, automatically become the Tenant of such successor in interest without change in the terms or other provisions of this Lease; provided, however, that such successor in interest (i) shall not be bound by any payment of rent or additional rent for more than one month in advance except prepayments in the nature of security for the performance by Tenant of its obligations under this lease, (ii) shall not be bound by any amendment or modification of this Lease made without the written consent of such trustee or such beneficiary or such successor in interest, (iii) shall not be obligated, upon or in connection with any foreclosure or conveyance in lieu of foreclosure, to assume liability or responsibility for any act or omission of the prior owner of the Complex occurring prior to the date of such foreclosure or conveyance in lieu of foreclosure, and (iv) shall not by subject to any offsets or defenses which Tenant might have against the prior owner of the Complex. Upon request by such successor in interest, Tenant shall execute and deliver an instrument or instruments confirming the herein provided attornment.

Upon Tenant's written request, Landlord agrees to use reasonable efforts to obtain for Tenant from the holder of each mortgage hereafter placed on the Complex (the "mortgagee") an instrument evidencing the agreement of each such mortgagee that so long as Tenant is not in default under the terms and provisions of this Lease, and attorns to such mortgagee as herein provided, then notwithstanding the foreclosure by such mortgagee of its mortgage or deed of trust lien on the Complex (or the exercise of any other remedies by such mortgagee), such mortgagee will not disturb Tenant's possession of the Leased Premises and will not terminate this Lease as a result of such foreclosure. By making such written request, Tenant obligates itself to pay all fees, costs and expenses incurred by Landlord in connection therewith, including, but not limited to, reasonable attorney's fees.

22. Estoppel Certificate. Tenant agrees that it will from time to time within ten (10) days after written request by Landlord execute and deliver to such persons as Landlord shall request an estoppel agreement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have

been paid, stating the Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

23. Hazardous Materials. Without Landlord's prior written consent, Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Leased Premises by Tenant, its agents, employees, contractors or invitees, except for small quantities of such Hazardous Material incidental to Tenant's business. Any Hazardous Material permitted on the Leased Premises, and all containers therefore, shall be used, kept, stored and disposed of in a manner that complies with all Environmental Laws. Tenant shall, at Tenant's sole cost, risk and expense, dispose of all waste generated by Tenant in, on or about the Leased Premises in strict accordance and compliance with the Building Rules and Regulations and all applicable laws and/or legal requirements now or hereafter existing for the storage, handling, removal and disposal of its waste. Tenant shall engage a duly qualified and licensed waste disposal service provide to Landlord reasonable proof upon Landlord's request at any time and from time to time that Tenant has done so and is continuing to do so.

Tenant shall not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if that material (as is reasonably determined by the Landlord or any governmental authority) does or may pollute or contaminate the same or may adversely affect (a) the health, welfare or safety or persons, whether located on the Leased Premises or elsewhere, or (b) the condition, use or enjoyment of the Building or any other real or personal property and which would result in a violation of any Environmental Laws.

At the commencement of each Lease Year (as defined below), Tenant shall disclose to Landlord the names and approximate amounts of all Hazardous Material that Tenant intends to store, use or dispose of on the Leased Premises in the coming Lease Year. In addition, at the commencement of each Lease Year (beginning with the second Lease Year), Tenant shall disclose to Landlord the names and amounts of all Hazardous Material that to Tenant's knowledge were actually used, stored or disposed of on the Leased Premises, if those materials were not previously identified to Landlord at the commencement of the previous Lease Years. The term "Lease Year" shall mean and refer to that period of twelve (12) full consecutive calendar months beginning with the first (1<sup>st</sup>) full calendar month of the Term and each subsequent period of twelve (12) consecutive calendar months during the Term, provided that if the Term commences on other than the first (1<sup>st</sup>) day of a calendar month, then the initial fractional month of the Term plus the next succeeding twelve (12) full calendar months shall constitute the first (1<sup>st</sup>) Lease Year of the Term.

The term "Environmental Laws" shall mean the Clean Air Act (42 USC 7401 et seq.), the Federal Water Pollution Control Act (Clean Water Act) (33 USC 1251 et seq.), the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act and the Hazardous

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and Solid Waste Amendments (42 USC 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as amended by the Superfund Amendment & Reauthorization Act (42 USC 9601 et seq.), the Toxic Substances Control Act (15 USC 2601 et seq.) and state analogues of each of the foregoing and all other federal, state and local statutes, ordinances, regulations and rules pertaining to the protection of human health and the environment, all as the same may be amended, supplemented or replaced from time to time.

The term "Hazardous Material" shall mean and include all hazardous substances, hazardous materials, hazardous wastes, special wastes, and toxic substances, as each is defined by Environmental Laws, as well as radioactive materials, asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), crude oil and any fractions thereof, pollutants, contaminants and any other materials or substances that are regulated under any of the Environmental Laws.

Tenant hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, handling, removal and disposal of Hazardous Material or waste kept on the Leased Premises by the Tenant, and the Tenant shall give immediate notice to the Landlord of any violation or potential violation of the provisions of this Section 23. TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD AND ITS MEMBERS, MANAGERS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY CLAIMS, DEMANDS. PENALTIES, FINES. LIABILITIES. COSTS OR EXPENSES (INCLUDING SETTLEMENTS, DAMAGES, WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS AND LITIGATION EXPENSES) OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO (a) THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE OF ANY HAZARDOUS MATERIAL OR WASTE AT THE COMPLEX; (b) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIAL OR WASTE; (c) ANY LAWSUIT BROUGHT OR THREATENED, SETTLEMENT REACHED OR GOVERNMENT ORDER RELATING TO HAZARDOUS MATERIAL OR WASTE; OR (d) ANY VIOLATION OF ANY LAWS APPLICABLE THERETO, TO THE EXTENT DUE TO TENANT'S USE OF THE LEASED PREMISES OR TO THE ACTS OR OMISSIONS OF TENANT, ITS EMPLOYEES, AGENTS, CONTRACTORS, GUESTS OR INVITEES. The provisions of this Section 23 shall be in addition to any other obligations and liabilities Tenant may have to Landlord at law or in equity and shall survive the transactions contemplated herein and shall survive the termination of this Lease.

24. Indemnification. TENANT HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD LANDLORD AND LANDLORD'S MEMBERS, MANAGERS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR EXPENSES ARISING

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OUT OF (a) TENANT'S USE OF THE LEASED PREMISES, (b) ANY AND ALL CLAIMS ARISING FROM ANY BREACH OR DEFAULT IN THE PERFORMANCE OF ANY OBLIGATION OF TENANT UNDER THIS LEASE, AND/OR (c) ANY ACT, OMISSION OR NEGLIGENCE OF TENANT, ITS EMPLOYEES, AGENTS, CONTRACTORS, GUESTS OR INVITEES, EVEN IF THE CLAIM IS THE RESULT OF OR CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF LANDLORD OR ANY PARTY RELATED TO LANDLORD. IF ANY SUCH CLAIM IS MADE AGAINST ANY LANDLORD, TENANT SHALL, AT TENANT'S SOLE COST AND EXPENSE, DEFEND SUCH CLAIM BY OR THROUGH ATTORNEYS REASONABLY ACCEPTABLE TO LANDLORD. The indemnity obligations of Tenant hereunder shall not apply to a claim arising out of the gross negligence or intentional misconduct of Landlord or its employees or agents. Tenant agrees to procure and keep in force during the Term hereof a contractual liability endorsement to its public liability policy, specifically endorsed to cover the indemnity provision of this Section 24.

25. Performance of Tenant's Obligations. If Tenant fails to perform anyone or more of its obligations under this Lease within the time periods herein stipulated, in addition to the other rights of Landlord hereunder, Landlord shall have the right (but not the obligation) to perform such obligations of Tenant. Within fifteen (15) days after receipt by Tenant of a demand therefor from Landlord, Tenant shall reimburse Landlord for the cost to Landlord of performing such obligations plus interest thereon, from the date paid by Landlord until repaid by Tenant, at twelve percent (12%) per annum above the per annum.

26. Condemnation. If the Leased Premises shall be taken or condemned for any public purpose to such an extent as to render at least fifty percent (50%) of the Leased Premises untenantable then this Lease shall, at the option of either party exercised within thirty (30) days after such taking, forthwith cease and terminate. All proceeds from any taking or condemnation of the Leased Premises shall belong to and be paid to Landlord; provided, however, that Tenant shall have the right to seek and obtain an award or judgment against the condemning authority for the taking of or damage to Tenant's properties and any special damages to which Tenant might show itself entitled.

27. Damages From Certain Causes. Landlord shall not be liable or responsible to Tenant for any loss or damage to any property or person occasioned by theft, fire, act of God, governmental act, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or for any damage or inconvenience which may arise through repair or alteration of any part of the Building, or failure to make any such repairs, except to the extent caused by the sole gross negligence of Landlord or its employees or agents. Tenant further releases Landlord and Landlord's officers, directors, shareholders, employees and agents from liability and for any damages sustained by Tenant or any other person claiming by, through or under Tenant due to the Leased Premises or any part thereof or any appurtenances thereto becoming out of repair, or due to the happening of any accident including but not limited to, any damage caused by water, snow, windstorm, hurricane, tornado, gas, steam, electrical wiring, sprinkler system, plumbing, sewer, heating and air conditioning apparatus and from any

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acts or omissions of co-tenants or other occupants of the Building, except to the extent caused by the sole gross negligence of Landlord or its employees or agents. Landlord and Landlord's agents and employees shall not be liable for any damage to or loss of Tenant's personal property, inventory, fixtures or improvements, from any cause whatsoever except the affirmative acts of proven gross negligence or willful misconduct of Landlord or its employees or agents, and then only to the extent not covered by insurance required to be obtained by Tenant in accordance with the terms of this Lease.

28. Liens. To secure the payment of Rent due and to become due hereunder, and the faithful performance of all of the other covenants of this Lease required of Tenant to be performed, Tenant hereby grants to Landlord an express contract lien on and security interest in and to all property, chattels or merchandise which may be placed in the Leased Premises and also upon all proceeds of any insurance which may accrue to Tenant by reason of damage to or destruction of any such property; provided, however, that so long as Tenant is not then in default hereunder, Tenant may, from time to time and without first obtaining Landlord's consent, replace any such property with substitute property, or remove any such property that is or becomes surplus to the conduct of Tenant's business in and from the Leased Premises. All exemption laws are hereby waived by Tenant. This lien and security interest may be foreclosed with or without court proceedings, by public or private sale, with or without notice, and Landlord shall have the right to become purchaser upon being the highest bidder at such sale. Upon request of Landlord, Tenant agrees to execute Uniform Commercial Code financing statements relating to the aforesaid security interest. Landlord, as secured party, shall be entitled to all the rights and remedies afforded a secured party under said Uniform Commercial Code, which rights and remedies shall be in addition to and cumulative of the Landlord's liens and rights provided by law or by the other terms and provisions of this Lease.

Landlord agrees to subordinate the lien granted to Landlord herein to any lien or other security interest which secures the payment of the deferred portion of the purchase price of any furnishings, inventory, equipment or fixtures of Tenant placed in or on the Leased Premises, provided any such subordination instruments requested by a purchase money lender is reasonably satisfactory in form and content to Landlord and counsel for Landlord and includes reasonable assurances that any such purchase money lender removing any property of Tenant from the Leased Premises shall notify Landlord in writing prior to such removal and shall repair any damage to the Leased Premises occasioned by such removal.

Tenant shall not permit any mechanics', materialmen's or other liens to remain undischarged against the Leased Premises and agrees to discharge (either by payment, by filing of the necessary bond or by other means acceptable to Landlord) any mechanics', materialmen's or other lien which is allegedly fixed or placed against the Leased Premises within twenty (20) days after receipt by Tenant of written notice of the filing of any affidavit alleging any such lien.

29. Holding Over. If Tenant should remain in possession of the Leased Premises after the expiration or termination of this Lease, without the execution by Landlord and Tenant of a

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new Lease or a written renewal or extension of the Term of this Lease, then Tenant shall be deemed to be occupying the Leased Premises as a tenant-at-sufferance, subject to all of the covenants and obligations of this Lease except that Tenant shall pay as rental for the Leased Premises (i) during the first month of such period an amount equal to one hundred fifty percent (150%) of the rental (including Base Rental and adjustments thereto) being payable by Tenant as of the expiration or termination of this Lease, and (ii) during the remainder of such period an amount equal to two hundred percent (200%) of the Rent (including Base Rental and adjustments thereto) being paid by Tenant as of the expiration or termination of this Lease. No holding over by Tenant after the Term of this Lease without the written consent and acquiescence of Landlord shall operate to extend the Term of this Lease, and any holding over with the consent of Landlord in writing shall thereafter constitute a lease from month to month. In the event Tenant shall be or become a holdover tenant, Tenant shall indemnify Landlord against all claims for damages against Landlord as a result of Tenant's possession of the Leased Premises, including, without limitation, claims for damages by any Tenant to whom Landlord may have leased the Leased Premises, or any portion thereof, for, a term commencing after the expiration or termination of this Lease.

30. Casualty. In the event of partial destruction of the Leased Premises or the Building by any cause, Landlord (except as hereinafter provided) shall use reasonable diligence to restore the Building and/or the Leased Premises with reasonable promptness, subject to delays beyond Landlord's control in the making of insurance adjustments. No such partial destruction shall in any way annul or void this Lease; provided, however, Tenant shall be entitled to a proportionate reduction of Base Rental while such restoration is being made, such proportionate reduction to be based upon the extent to which the Leased Premises is untenantable due to such destruction as reasonably determined by Landlord and Tenant. The words "restoration" and "restore" as used in this paragraph shall include repairs. If the damage or destruction results from the willful or intentional wrongful act of Tenant, or its agents, employees or invitees, Tenant shall not be entitled to any abatement or reduction in the rentals hereunder.

Notwithstanding the above, in the event of (i) damage or destruction to the Building and/or the Leased Premises by fire or other casualty covered by fire and extended coverage insurance to such an extent that the cost of restoration, as reasonably estimated by Landlord, will equal or exceed thirty percent (30%) of the replacement cost of the Building (excluding foundations) in its condition just prior to the occurrence of said damage or destruction, or (ii) damage or destruction to the Building and/or the Leased Premises by a cause other than that covered by fire or extended coverage insurance or (iii) damage or destruction to the Leased Premises by any cause during the last two (2) years of the initial or any extended Term hereof, such that the cost of restoration will exceed ten percent (10%) of the then replacement cost of the Building (excluding foundations), or (iv) damage or destruction which, according to reasonable projections made by a competent architect or engineer selected by Landlord, could not reasonably be expected to be repaired by the application of diligent efforts within six (6) months after the occurrence of such damage or destruction, so that at such time the Leased Premises is restored substantially to the condition in which it existed prior to such damage or destruction

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with parking, air conditioning, elevator service and other services substantially equivalent to those which existed prior to such damage or destruction, then in any such event, Landlord shall have the right to terminate this Lease by giving Tenant written notice of such election within sixty (60) days following the date of such damage or destruction. In such event, this Lease shall terminate on the third day after the giving of said notice and Tenant shall surrender possession of the Leased Premises within a reasonable time thereafter and the Base Rental and additional rentals then payable hereunder shall be apportioned as of the date of such termination and any such rent paid for any period beyond said date shall be refunded to Tenant.

Landlord shall not be required to repair any injury or damage to any panels, decoration, office fixtures, partitions, or other property installed in the Leased Premises and owned by Tenant, and Tenant shall not be entitled to any compensation or damages from Landlord (other than the rental abatement herein expressly provided) for the loss of the use of the whole or any part of the Leased Premises, or any inconvenience or annoyance occasioned by such restoration.

31. Attorney's Fees and Interest on Past Due Amounts. Tenant shall pay to Landlord on demand all attorney's fees, costs and expenses incurred by Landlord in recovery of any Rent or enforcement of Landlord's rights under this Lease. Further, if Landlord or Tenant employs an attorney to assert or defend any action arising out of the breach of any term, covenant or provision of this Lease, or to bring legal action for the unlawful detainer of the Leased Premises, the prevailing party shall be entitled to recover from the non-prevailing party attorney's fees and costs of suit incurred in connection therewith.

32. Default by Tenant. Each of the following shall be deemed an "Act of Default" (herein so called) by the Tenant and a material breach of this Lease:

(a) Failure to pay Rent required to be paid under this Lease within five (5) days following written demand from Landlord to Tenant for such Rent; failure to pay any Parking Rentals required to be paid under this Lease within five (5) days following written demand from Landlord to Tenant for such Parking Rentals; or failure to pay any other payments required to be paid under this Lease within fifteen (15) days (or such longer period as may be expressly provided in this Lease) following written demand from Landlord to Tenant for such additional rentals or other payments, provided Landlord shall not be required to give Tenant such notice more than twice during any Lease Year and upon the third (3<sup>rd</sup>) late payment in any Lease Year, Tenant shall be in default without any notice from Landlord; or

(b) Failure to do, observe, keep and perform any of the terms, covenants, conditions, agreements and provisions of this Lease on the part of the Tenant to be done, observed, kept and performed (other than the payment of Rent and Parking Rentals), for a period of thirty (30) days after the giving of written notice by Landlord to Tenant of such failure; or

(c) The taking by execution of judgment or other process of law of all or any part of the leasehold interest of Tenant unless any such judgment or process is set aside within sixty (60) days after its commencement; or

(d) The adjudication of Tenant or any Guarantor to be a bankrupt; or the filing by Tenant or any Guarantor or any of a voluntary petition in bankruptcy; or the making by Tenant or any Guarantor of a general assignment for the benefit of its creditors; or the appointment of a receiver of all or any of Tenant's or any Guarantor's interest in the Leased Premises in any action, suit, or proceeding by or against Tenant or Guarantor; or any other voluntary or involuntary proceedings instituted by or against Tenant or any Guarantor under any bankruptcy or similar laws, unless any such involuntary receivership or proceeding is dismissed or stayed within sixty (60) days thereafter; or

(e) The abandonment or vacating of the Leased Premises or any substantial portion thereof while in default in the payment of Rent or any other sum payable by Tenant to Landlord hereunder.

If Tenant or any Guarantor commits an Act of Default hereunder, Landlord, at any time thereafter prior to the curing of such Act of Default and without waiving any other rights herein available to Landlord or at law or in equity may either terminate this Lease or terminate Tenant's right to possession without terminating the Lease. In either event, Landlord may without additional notice and without court proceedings, re-enter and repossess the Leased Premises and remove all persons and property therefrom using such force as may be necessary and may alter locks and other security devices at the Leased Premises. Tenant hereby waives any claim arising by reason or issuance of any distress warrant or writ of sequestration and agrees to hold Landlord harmless from any such claim. Should Landlord elect to terminate this Lease, it may treat the Act of Default of Tenant as an entire breach of this Lease and Tenant immediately shall become liable for damages for the entire breach in an amount equal to the difference between (i) the total rental and all other payments due for the balance of the Term of this Lease, and (ii) the fair market rental value of the Leased Premises for the balance of the Term as of the time of default, such difference to be discounted at the rate of eight percent (8%) per annum to present value.

If Landlord should elect to terminate Tenant's right to possession without terminating the Lease, Landlord may relet the Leased Premises or any part thereof to any person or persons at such rental (granting reasonable concessions if necessary) and for such term as Landlord deems practical for the account of Tenant and credit to Tenant any rental thus received, less the reasonable expense of repossession and releting. Tenant shall be liable for any deficiency of such rental below the total rental and all other payments herein provided for the unexpired balance of the Term of this Lease. Landlord shall have the right to enforce such liability for deficiency by bringing suits at any time.

TO THE EXTENT ALLOWED BY LAW, TENANT WAIVES ANY OBLIGATION ON LANDLORD TO MITIGATE ITS DAMAGES. If Landlord undertakes to mitigate its

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damages, Landlord shall be deemed to have satisfied any duty to mitigate as long as Landlord's marketing activities related to the Leased Premises are substantially comparable to the marketing efforts Landlord has historically taken for similarly sized, situated and configured space in the Building. Landlord is not required to specially market the Leased Premises, send out any special fliers to the real estate brokerage community, take out any advertisements in magazines, newspapers or other periodicals, or to provide any leasing incentives, whether to potential tenants or their real estate broker. Landlord specifically has the right to lease other available space in the Building, preferentially to the Leased Premises and Tenant waives any obligation to do so. Tenant stipulates that the following action shall constitute sufficient efforts by Landlord to satisfy its duty to mitigate: (1) posting a notice on the door on the Leased Premises that it is available for rent; (2) notifying by letter the tenants adjacent to the Leased Premises that the Leased Premises is available for rent; (3) including the Leased Premises within any generally distributed listing of available space in the Building, within a reasonable period of time after Landlord retakes actual possession of the Leased Premises pursuant to its rights under this Lease; and (4) the third party leasing agent for the Building, if any, is authorized to relet the Leased Premises. No duty to mitigate shall commence until Landlord has obtained full possession of the Leased Premises. Landlord is deemed not to have full possession of the Leased Premises for the purposes of mitigating damages in the event there is any litigation or other proceeding pending wherein Tenant asserts any right to regain possession of the Leased Premises. In the event Tenant has breached any provisions of the Lease regarding the condition of the Leased Premises at the time Tenant vacated the Leased Premises, Landlord shall not be required to commence litigation of damages until Tenant has cured the default, specifically including removing all personal property and trash, repairing all damage to the Leased Premises, etc. Landlord shall make reasonable accommodations for Tenant to have access to the Leased Premises to accomplish such activities, subject to reasonable rules and regulations to ensure that the Leased Premises are protected and any repair/mediation work is performed in accordance with Landlord's standards.

In case of an Act of Default, Tenant shall also be liable for and shall pay to Landlord, upon demand by Landlord, in addition to any sum provided to be paid above: reasonable broker's fees and attorney's fees incurred by Landlord in connection with releasing the whole or any part of the Leased Premises; the reasonable costs of removing and storing Tenant's or other occupant's property; the reasonable costs of remodeling or restoring the Leased Premises (to Building standard); and all other reasonable expenses incurred by Landlord in enforcing Landlord's remedies.

The remedies of Landlord set forth in this Section 32 are not exclusive, and shall be in addition to and not in lieu of any of its other remedies set forth in this Lease, or otherwise available to Landlord at law or in equity.

33. Non-Waiver. Neither acceptance of Rent by Landlord nor failure by either party hereto to complain of any action, non-action or default of the other party, or to declare the other party in default, whether singular or repetitive, shall constitute a waiver of any of such non-

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defaulting party's rights hereunder. Waiver by either party of any right upon any default of the other party shall not constitute a waiver of any right for either a subsequent default of the same obligation or any other default. No act or thing done by Landlord or its agents shall be deemed to be an acceptance of surrender of the Leased Premises and no agreement to accept a surrender of the Leased Premises shall be valid unless it is in writing and signed by a duly authorized officer or agent of Landlord. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

34. Casualty Insurance. Landlord shall maintain fire and extended coverage insurance on the Building, including additions and improvements by Tenant which are required to be made by Tenant by this Lease and which have become or are to become the property of Landlord upon vacation of the Leased Premises by Tenant. Said insurance shall be maintained with an insurance company authorized to do business in Texas, in an amount equal to not less than ninety percent (90%) of the replacement cost, with payments for losses thereunder to be made solely to Landlord. If the annual premiums to be paid by Landlord shall exceed the standard rates because Tenant's operations, contents of the Leased Premises, or improvements with respect to the Leased Premises result in extra-hazardous exposure, Tenant shall promptly pay the excess amount of the premium upon request by Landlord. Tenant shall maintain at its expense fire and extended coverage insurance and boiler and machinery coverage on all of its personal property, including removable trade fixtures, located in the Leased Premises and on all additions and improvements made by Tenant and not required to be insured by Landlord above, in an amount equal to full replacement cost and endorsed to provide that Tenant's insurance is primary in the event of any overlapping coverage with the insurance carried by Landlord. Such insurance shall contain an endorsement satisfactory to Landlord naming the Landlord (and any mortgagee designated by Landlord) as a loss payee thereunder.

35. Insurance. Tenant shall throughout the Term carry and maintain, at Tenant's cost and expense, the following types of insurance, in the amounts specified and in the forms hereinafter provided:

(a) Commercial General Liability Insurance of an "occurrence" type against all claims on account of liability of Tenant, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 as a general aggregate specific to the Building. Tenant's commercial general liability insurance shall include Broad Form Property Damage, Bodily Injury, Personal Injury Liability Insurance (with contractual exclusion deleted) with a limit of \$1,000,000 per occurrence, Products and Completed Operations Insurance with a limit of \$2,000,000 aggregate, Contractual Liability Insurance with a limit of \$1,000,000, Independent Contractor's Liability Insurance with a limit of \$1,000,000 and Leased Premises Damage Legal Liability Insurance with a limit of \$1,000,000;

(b) "Special Causes of Loss" or similar "All Risk" form of property insurance, including Flood, Earthquake, Back-Up of Sewers and Drains and Wind-Driven Rain, covering all the items in, on, or upon the Leased Premises exclusive only of the Building Shell, and all

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alterations, additions or changes made by Tenant pursuant to the terms of this Lease, in an amount not less than full replacement value thereof with Agreed Amount Endorsement or No Coinsurance and including improvements and betterments, alterations and additions;

(c) Workers' Compensation Insurance and Employer's Liability Insurance with the minimum acceptable limits for the Workers' Compensation Insurance as set forth in applicable statutes of the State of Texas and with a minimum limit for the Employer's Liability Insurance of \$500,000 each accident, \$500,000 each person for disease, and \$500,000 aggregate for disease (or whatever limits are required as underlying insurance for the Umbrella or Excess Liability insurance required to be carried by Tenant pursuant to this Lease);

(d) Boiler and Machinery Insurance (including equipment breakdown) in amounts as shall be reasonably required by Landlord;

(e) At all times during which construction work is being performed by or on behalf of Tenant at the Leased Premises, Tenant must maintain "Builder's Risk" insurance, covering the full replacement value of all such work being performed, naming Landlord as an "insured as its interest may appear";

(f) Rent or Rental Value Insurance or Business Interruption Insurance in an amount sufficient to pay for at least twelve (12) months of all Rent payable under the terms of this Lease;

(g) Umbrella or Excess Liability Insurance with limits of not less than \$2,000,000 each occurrence, \$2,000,000 aggregate (however, not less broad than the primary policies required to be maintained by Tenant under this Lease);

(h) Automobile Liability Insurance for all vehicles owned, non-owned, hired or otherwise used in connection with business operations on or from the Leased Premises with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage;

(i) Pollution Liability Insurance with scope and limits to be determined by Landlord; and

(i) Such other insurance against other insurable hazards as Landlord may from time to time require to the extent such insurance is required by a majority of landlords of similar buildings in the same market area as the Building.

All policies of insurance described in this Section 35 shall be issued in form reasonably acceptable to Landlord by insurance companies reasonably acceptable to Landlord and qualified to do business in the State of Texas. Each such liability policy shall be issued in the names of Tenant, Landlord and any other party in interest from time to time designated by written notice by Landlord to Tenant, and each such property policy shall name Landlord and Tenant as

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insureds as their respective interests may appear, and shall provide that Landlord is a loss payee. Such policies shall be for the mutual and joint benefit and protection of Tenant, Landlord and any such other party in interest, and executed copies of each such policy of insurance or a certificate thereof shall be delivered to each of Landlord and such other parties in interest within ten (10) days after the Commencement Date and thereafter within thirty (30) days prior to the expiration of each such policy. If any such policy shall expire or terminate, a renewal or additional policy shall be procured and maintained by Tenant in like manner and to like extent. All such policies shall contain a provision that the company writing said policy will give to Landlord and such other parties in interest at least thirty (30) days notice in writing in advance of any cancellation, lapse, or the effective date of any reduction in the amount of insurance. In addition, Tenant shall furnish Landlord a copy of the policy (policies) within ten (10) days after Landlord requests the same. All such public liability, property damage and other casualty policies shall be written as primary policies which do not contribute to and are not in excess of coverage which Landlord may carry. All such public liability and property damage policies shall contain a provision that Landlord and any such other parties in interest, although named as an insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to Landlord or any such other parties in interest, or to any of their respective servants, agents or employees by reason of the negligence of Tenant.

If Tenant fails to have a certificate of such policy on deposit with Landlord at any time during the Term (and prior thereto in the event of any entry into possession by Tenant prior to the Commencement Date or subsequent to the date of termination hereof in the event of a holdover), then Landlord shall have the right (but no obligation), and without limitation of its rights under Section 32, to take out and maintain such an insurance policy, and if Landlord does so Tenant shall pay to Landlord on demand the amount of the premium applicable to such policy of insurance plus 15% of the cost thereof (to cover Landlord's overhead and administrative costs in connection therewith).

Any insurance required of Tenant under this Lease may be furnished by Tenant under a blanket policy provided such policy:

Strictly complies with all other terms and conditions contained in this Lease; and

Contains an endorsement that: (a) identifies with specificity the particular address of the Leased Premises as being covered under the blanket policy; (b) provides a minimum guaranteed coverage amount of not less than the amounts required in this Lease; and (c) expressly waives any pro rata distribution requirement contained in Tenant's blanket policy covering the Leased Premises.

While the following checklist does not override the requirements of the preceding sentences, it is intended to give Tenant a preliminary checklist of the insurance documentation Landlord requires:

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ACORD Form 27 "Evidence of Insurance" (for special form Property Insurance, Builder's Risk Insurance, Commercial General Liability Insurance, Workers' Compensation Insurance, Boiler and Machinery Insurance, Business Interruption or Rents Insurance, Flood and Earthquake Insurance, Liquor Liability Insurance and Employer's Liability Insurance).

Copies of all additional insured endorsements (which must be on ISO Form 2026 or an ISO form which replaces such form).

Copies of all loss payee endorsements.

Copies of all mortgagee clauses.

Copies of all waivers of subrogation.

36. Security. Landlord will not provide any type of security for the Leased Premises, Building or Parking Areas. Tenant will provide all necessary security for those areas and will indemnify, defend, and hold AND LANDLORD'S MEMBERS, MANAGERS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AND AGENTS from and against any claim or damages from alleged inadequate security.

37. General Provisions with Respect to Insurance.

(a) All insurance required to be provided and maintained by Tenant under this Lease shall be obtained under valid and enforceable policies (collectively, the "Policies" or in the singular, the "Policy") and, to the extent not specified above, shall be subject to the approval of Landlord as to deductibles, loss payees and additional insureds. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished by Tenant to Landlord, certificates of insurance evidencing the Policies accompanied by evidence acceptable to Landlord of payment of the premiums then due thereunder shall be delivered by Tenant to Landlord. The Policies shall expressly state that such insurance is primary and non-contributing insurance with any other insurance available to Landlord (or any other party indemnified under this Lease). As used in this Lease, the term "Policy" or "Policies" shall include any extensions or renewals of an insurance policy.

(b) If Tenant includes the Complex in blanket coverage, Tenant may deliver to Landlord a duplicate original of the blanket insurance policy. Tenant may request that Landlord accept a certificate evidencing such insurance instead of the original of the policy, however, Landlord shall have the right to insist upon receipt of an original or duplicate original of the policy. Any blanket insurance Policy shall specifically allocate to the Leased Premises the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Leased Premises in compliance with the provisions of this Lease.

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(c) All Policies required to be provided and maintained by Tenant under this Lease (and any certificate evidencing the existence of any Policies) shall contain clauses or endorsements (if obtainable by Tenant using commercially reasonable efforts) to the effect that (i) no act or negligence of Tenant or other occupant, or failure to comply with the provisions of the Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Landlord is concerned; (ii) unless Landlord shall be given sixty (60) days prior written notice, the issuer shall not cancel the Policy and the Policy shall continue in full force and effect and the Policy shall not be materially changed (other than to increase the coverage provided thereby) without such notice; (iii) Landlord shall not be liable for any insurance premiums or subject to any assessments under the Policies; and (iv) unless Landlord shall be given sixty (60) days prior written notice, the issuer shall not cancel shall not be liable for any insurance premiums or subject to any assessments under the Policies; and (iv) unless Landlord shall be given sixty (60) days prior written notice, the issuer shall not fail to renew the Policies for any reason.

(d) All Policies required to be provided and maintained by Tenant under this Lease shall: (i) contain a cross-liability endorsement in a form acceptable to Landlord, and/or (ii) state that such insurance is primary and non-contributing insurance with any other insurance available to Landlord (or any other party indemnified under this Lease).

(e) If at any time Landlord is not in receipt of written evidence that all insurance required to be provided and maintained by Tenant under this Lease is in full force and effect, Landlord shall have the right, without notice to Tenant, to take such action as Landlord deems necessary to protect its interest in the Leased Premises, including, without limitation, obtaining such insurance coverage as Landlord in its reasonable discretion deems appropriate and all premiums incurred by Landlord in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Tenant to Landlord upon demand as additional rent hereunder.

(f) All Policies required to be provided and maintained by Tenant under this Lease shall in accordance with Landlord's instructions name as an additional insured, as its interests may appear, or as a loss payee, or as an alternate employer, Landlord, its successors and/or assigns, and such other persons or entities as Landlord may at any time and from time to time designate in writing to Tenant.

(g) In the event of the termination of this Lease by reason or in consequence of Tenant's default in the payment and/or performance of its obligations hereunder, all right, title and interest of Tenant in and to the Policies then in force with respect to the Leased Premises and all proceeds payable thereunder shall thereupon vest in the Landlord and its successors and/or assigns.

(h) The Policies shall be issued by financially sound, responsible and solvent insurance companies authorized to do business in the State of Texas which are acceptable to Landlord. The insurance companies shall at all times during the Term of this Lease have a

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policyholder's rating of "A/X" or better in the most current edition of Best's Key Rating Guide. All certificates of insurance required to be furnished to Landlord under this Lease shall specify the policyholder's rating as stated in the most current edition of Best's Key Rating Guide.

38. Waiver of Subrogation. Each party hereby waives any and every right or cause of action against the other party that arises during the Term of this Lease or any extension or renewal thereof for any and all loss of, or damage to, any of its property or for loss of any nature (whether or not such loss or damage is caused by the fault or the sole or contributory negligence of the other party or anyone for whom said other party may be responsible) which is covered by any Policies that such party is required to provide and maintain under this Lease, and the party incurring such loss or damage agrees to look solely to the proceeds, if any, under said Policies. Said waivers shall be in addition to, and not in limitation or derogation of, any other waiver, release or indemnity obligation contained in this Lease with respect to any loss or damage to property of the parties hereto. Written notice of the terms of said mutual waivers shall be given to each insurance carrier and said Policies shall be properly endorsed, if necessary, to prevent the invalidation of said insurance coverages by reason of said waivers. Each party agrees to include such an endorsement in the Policies which it is required to provide and maintain hereunder so long as the same is obtainable and is includable without extra cost, or if extra cost is chargeable therefor, such party will advise the other party thereof and the amount of such extra cost in which event the other party may at its election pay the same but shall not be obligated to do so. The mutual waivers contained in this Section 38 shall not impose any other or greater liability upon either Landlord or Tenant than would have existed in the absence of said mutual waivers.

39. Loss or Damage to the Leased Premises and/or Tenant Improvements. If the Leased Premises and/or Tenant improvements shall sustain any loss or damage which is covered by the Policies required to be carried under this Lease by or on behalf of Tenant, Tenant shall give prompt notice of such loss or damage to Landlord and shall promptly commence and diligently prosecute to completion the repair and restoration of the Leased Premises and/or Tenant Improvements as nearly as possible to the condition, character and value that existed immediately prior to such loss or damage in accordance with and subject to the provisions of Section 30 of this Lease. Tenant shall pay all costs of such repair and restoration whether or not such costs are covered by insurance. Tenant shall promptly make proof of loss provided Landlord may, but shall not be obligated to, make proof of loss upon Tenant's failure to do so promptly. Tenant may settle and adjust the claim for such loss or damage provided that (a) no Act of Default has occurred and is continuing and (b) such adjustment is carried out in a commercially reasonable and timely manner. If an Act of Default then exists, Tenant may settle and adjust such claim only with the prior written consent of Landlord (which consent shall not be unreasonably withheld, delayed or conditioned by Landlord) and Landlord shall have the opportunity to participate, at Tenant's expense, in any such settlement and adjustment of the claim. In the event Tenant fails or refuses to settle and adjust such claim in a commercially reasonable and timely manner, Landlord shall have the sole and exclusive right to settle and adjust such claim by notifying Tenant of Landlord's intention to do so, and Tenant hereby appoints and empowers Landlord as Tenant's agent and attorney-in-fact to contest, settle, adjust, compromise, litigate, and release such claim as Landlord shall deem proper on Tenant's behalf and to collect any monies, sums or other matters of value that may be due in connection therewith, and further hereby grants Landlord an interest in such claim, the Policies covering such claim, and all insurance proceeds payable under the Policies; and by said grant, Tenant intends that said power of attorney be considered to be coupled with an interest sufficient to make said power irrevocable.

40. Obligations of Successors. Landlord and Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words imparting such covenants were used in each separate paragraph hereof, and that, except as expressly provided herein to the contrary, all the provisions hereof shall bind and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and permitted assigns.

41. Severability. This Lease shall be construed in accordance with the laws of the State of Texas. If any clause or provision of this Lease is illegal, invalid, or unenforceable, under present or future laws effective during the Term hereof, then it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there shall be added as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

42. Notices. Whenever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be given or served and shall not be deemed to have been given or served unless in writing and delivered personally (which shall include delivery by a service providing a receipt for delivery) or forwarded by Certified or Registered Mail, postage prepaid, return receipt requested, to the party to be notified, at the address listed on page 1 of this Lease. Such addresses may be changed from time to time by either party by serving notices as herein provided.

43. Force Majeure. In the event either party to this Lease shall be delayed, hindered, or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor disputes, inability to produce materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, war or other cause not within the reasonable control of such party (provided, however, Tenant's lack of funds or other financial inability shall not be an event of Force Majeure hereunder), then the performance of such acts shall be excused for the period of delay and the period for performance of any such act shall be extended for a period equivalent to the period of such delay.

44. Entire Agreement; Section Captions. This instrument and any attached exhibits constitute the entire agreement between Landlord and Tenant; no prior or contemporaneous oral promises or representations shall be binding. This Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto. Section captions herein are

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for Landlord's and Tenant's convenience only, and neither limit nor amplify the provisions of this instrument. All personal pronouns used in this Lease, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular and plural of such personal pronouns shall include the other.

45. Limitation on Landlord's Efforts. Whenever in this Lease there is imposed upon Landlord the obligation to use its best efforts or reasonable efforts, Landlord shall be required to do so only to the extent the same is economically feasible and will not impose upon Landlord unreasonable financial or other burdens.

46. Lease Guaranty. Tenant hereby agrees to cause each Investor in and of the Tenant ("Guarantor") to execute and deliver to Landlord the guaranty (the "Guaranty") attached hereto as Exhibit "F" and made a part hereof for all purposes simultaneously with Tenant's execution of this Lease. Tenant acknowledges that Landlord's obligations under this Lease are conditioned upon Tenant's compliance with the foregoing covenant. If this Lease shall be guaranteed on behalf of Tenant and if there is a default by the Guarantor under the Guaranty, such default shall constitute an Act of Default by Tenant under this Lease without further notice to Tenant.

47. Incorporation of Exhibits and Schedules. The terms and provisions of the following Exhibits, which are attached hereto, are hereby incorporated into this Lease by this reference:

48. Recording. In no event shall this Lease be recorded. Tenant may record a memorandum of lease in recordable form reasonably acceptable to Landlord giving notice of the Term of this Lease, and other non-monetary terms as Tenant may reasonably request, including Tenant's option to extend the Term hereof.

49. Effectiveness. If the Landlord does not execute this Lease within thirty (30) days following execution hereof by Tenant, this Lease shall automatically be deemed null and void upon the thirty-first (31<sup>st</sup>) day thereafter, whereupon Landlord shall deliver to Tenant all sums paid to Landlord by Tenant hereunder.

Exhibits:

A - Legal Description of Property

- B Leased Premises, Floor Plan Drawing
- B1 Site Plan Drawing
- B2 Construction Contract Design-Build
- C Agreements for Construction
- D Rules and Regulations
- E Location of Reserved Parking Spaces
- F Guaranty

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IN WITNESS WHEREOF, the Landlord and Tenant, acting herein by duly authorized individuals, have executed this Lease in multiple counterparts, each of which shall have the force and effect of an original, as of the date first above stated.

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#### LANDLORD:

NEELILA, L.L.C.

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BY:

Bal K. Sareen - Manager

TENANT:

NEELA, INC. Lovkishl BY:

Lovkesh Kevin Sareen - President

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## EXHIBIT "A" [THE PROPERTY]

#### METES AND BOUNDS DESCRIPTION 9.4675 ACRES - (412,404 Square Feet)

Being all that certain 9.4675 acres (412,404 square feet) tract of land situated in Section 27, H.T. & B.R.R. Company Survey, A-308, Brazoria County, Texas; and being part of Lot 165 and Lot 166 of the W. Zychlinski Subdivision as recorded in Volume 29, Page 9, of the Deed Records of Brazoria County, and also being a portion of the land conveyed by Charles Edward Knight to Helen F. Alexander by deed dated July 10, 1946, recorded in Volume 405, Page 540, of the Deed Records of Brazoria County and being the same 44.119 acre conveyed to Jud's Food Stores, Inc. on July 01, 1990 under Brazoria County Clerk's File 94-004499, said 9.4675 of one-acre (412,404 square feet) tract being more particularly described as follows to wit:

**COMMENCING** at the southeast corner of the parent 44.119 acre tract (found 44.1077 acres) located in the westerly margin of State Highway No. 35, from which a 1/2-inch iron rod bears North 86° 36' 50" East, 1.63 feet and held for the south bearing line;

thence, South 86° 36' 50" West, with the south line of said parent call 44.119 acre tract, a distance of 920.09 feet to a <sup>3</sup>/<sub>4</sub>-inch iron rod set for the south east corner and **POINT OF BEGINNING** of herein described tract; having surface coordinates of North = 13,759,951.79 and East = 3,155,784.05: *bearings and coordinates based on the Texas State Plane Coordinate System, South Central Zone, NAD 83, U.S. foot and may be converted to grid values by applying a combined scale factor of 0.9998693755;* 

**THENCE**, South 86° 36' 50" West, with the south line of herein described tract, with the north line of that certain tract described in deed recorded in Volume 2007, Page 736 of the Brazoria County Property Records, Brazoria County, Texas and with the south line of the parent call 44.119 acre tract, at distance of 246.16 feet pass a concrete monument disturbed by tree growth and continue a total distance of 827.04 feet to a <sup>3</sup>/<sub>4</sub>-inch iron rod set for southwest corner, from which the southwest corner of the parent 44.119 acre tract, a disturbed concrete monument bears South 86°36'50" West, 2,046.48 feet;

**THENCE,** North 03° 23' 16" West, with the westerly line of herein described tract, a distance of 498.64 feet to a <sup>3</sup>/<sub>4</sub>-inch iron rod set in the south line of that certain 19-foot wide strip of land conveyed to the City of Pearland (46,583 square feet) described in deed filed for record under Brazoria County Clerk's File No. 2006032567, from which the southwest corner of said 19-foot strip corner bears, South 86° 36' 44" East, 1,466.65 feet;

**THENCE,** North 86° 36' 44" East, with the south line of said 19-foot wide strip (46,583 square foot) tract and with the north line of herein described tract, a distance of 827.04 feet to a <sup>3</sup>/<sub>4</sub>-inch iron rod set for the northeast corner of herein described tract, from which the point of the beginning of a curve corner for said 46,583 square foot tract bears, North 86° 36' 44" East, 73.63 feet;

**THENCE,** South 03° 23' 16" East, with the east line of herein described tract, a distance of 498.67 feet to a <sup>3</sup>/<sub>4</sub>-inch iron rod set at the **POINT OF BEGINNING** and containing 9.4675 of one-acre (412,404 square feet) of land.

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# EXHIBIT "B"

[LEASED PREMISES; FLOOR PLAN DRAWING]

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# EXHIBIT "B1"

# [SITE PLAN DRAWING]

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## EXHIBIT "B2"

[CONSTRUCTION CONTRACT - DESIGN-BUILD]

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#### EXHIBIT "C" [AGREEMENT FOR CONSTRUCTION]

Landlord: NEELILA, L.L.C.

Tenant: NEELA, INC.

Lease: That certain lease agreement dated February 9, 2009, between Landlord and Tenant, covering approximately 412,404 rentable square feet.

Building: Fabrication Facility

1. Construction

Landlord will construct the Tenant's Improvements substantially in accordance with the Construction Contract attached as Exhibit B2, as they may be modified from time to time.

2. Commencement of the Term

Delays in approval or preparation of Construction Plans or in the completion of construction of Tenant's Improvements caused by any of the following, together with any other delay described in the Lease or this Agreement as a Tenant Delay or Tenant Delays, shall constitute "Tenant Delays" for the purpose of this Agreement:

(a) Tenant's request for changes to any of the Construction Plans; or

(b) Any other acts or omissions of Tenant, or any person, firm or corporation employed by Tenant (including Tenant's Representative).

Landlord shall have no liability whatsoever for losses caused by Tenant Delays or for any other delays in approval or preparation of plans or in the completion of construction of the Tenant's Improvements (including, without limitation, delays caused by any act or omission of Landlord's space planner, engineer and contractor); provided, however, notwithstanding the date specified in the body of the Lease for the commencement of the Term, Tenant's obligation for the payment of Base Rent shall not commence until the earlier of (i) the date Landlord notifies Tenant that the Tenant's Improvements have been substantially completed or would have been substantially completed but for Tenant Delays, or (ii) the date Tenant accepts possession of the Leased Premises.

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## 3. Insurance

If Tenant should desire to enter the Leased Premises (or authorize its agent to do so) prior to the Commencement Date of the Lease to perform approved work not required of the Landlord, Landlord shall permit such entry if:

(a) Tenant, its contractors, workmen, mechanics, and such others as may enter the Leased Premises (collectively, "Tenant's Contractors") do not in any way disturb Landlord's space planners, engineers, contractors, or other agents or independent contractors in the performance of their work; and

(b) Tenant, its contractors and other agents provide Landlord evidence satisfactory to Landlord that each is covered under such workmen's compensation, public liability and builder's risk insurance as Landlord may consider necessary or appropriate for its protection.

Notwithstanding the foregoing, if entry of Tenant or Tenant's Contractors would cause, has caused or is causing a disturbance, then Landlord may, without notice, refuse admittance to Tenant or Tenant's Contractors causing such disturbance. Landlord shall not be liable for any injury, loss or damage to any of Tenant's installations or decorations made prior to the Commencement Date. Tenant shall indemnify and hold harmless Landlord and Landlord's space planner, engineer and contractors from and against any and all costs, expenses, claims, liabilities and causes of action arising out of or in connection with work performed in the Leased Premises by Tenant or by Tenant's Contractors.

## 4. Warranties

THE WARRANTIES HEREIN EXPRESSED ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES (INCLUDING IMPLIED WARRANTIES) AND LIABILITIES BY REASON OF THE CONSTRUCTION OF TENANT IMPROVEMENTS OR OTHERWISE. Landlord warrants the improvements constructed on the Leased Premises (including heating and air conditioning equipment) by Landlord for Tenant for a period of one year from the commencement date of the Lease against all material defects (including latent defects) and agrees during such period to correct such defects upon receiving written notice thereof from Tenant. LANDLORD'S LIABILITY UNDER THIS WARRANTY SHALL BE LIMITED STRICTLY TO THE COST OF CORRECTING SUCH DEFECTS AND SHALL IN NO EVENT INCLUDE CONSEQUENTIAL DAMAGES. SUCH WARRANTY SHALL NOT COVER ANY DEFECTS, DAMAGES, OR REPAIRS CAUSED BY OR RESULTING FROM, DIRECTLY OR INDIRECTLY, THE MOVEMENT OF THE SOIL DUE TO CHANGES IN SATURATION. LANDLORD MOISTURE MAKES NO WARRANTY OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE SUITABILITY OF THE LEASED PREMISES.

## EXHIBIT "D" [BUILDING RULES AND REGULATIONS]

1. In the event of any conflict between the terms of these rules and regulations and the express provisions of Tenant's Lease, the express, applicable provisions of the Lease shall control. Landlord reserves the right, without the approval of Tenant, to rescind, add to and amend any rules or regulations, to add new reasonable rules or regulations and to waive any rules or regulations with respect to any tenant. Tenant shall provide a copy of these rules and regulations to each of its employees to facilitate compliance with these standards.

2. The sidewalks, walks, entries, corridors, ramps, staircases and elevators of the Complex shall not be obstructed, and shall not be used by Tenant, or the employees, agents, servants, visitors or invitees of Tenant, for any purpose other than ingress and egress to and from the Building or the Leased Premises without the prior written consent of Landlord.

3. No freight, furniture or other large or bulky merchandise or equipment of any description will be received into the Complex or carried into its elevators except in such a manner, during such hours and using such elevators and passageways as may be approved or designated by Landlord, and then only upon having been scheduled in advance with Landlord. Any hand trucks, carryalls, or similar equipment used for the delivery or receipt of merchandise or equipment shall be equipped with rubber tires, side guards and such other safeguards as Landlord shall reasonably require. Although Landlord or its personnel may participate or assist in the supervision of such movement, Tenant assumes financial responsibility for all risks as to damage to articles moved and injury to persons or public engaged or not engaged in such movement, including any equipment, property or personnel of Landlord damaged or injured in connection with carrying out this services for Tenant.

4. Landlord shall have the right to prescribe the weight, position and manner of installation of safes or other heavy equipment which shall, if considered necessary by Landlord, be installed in a manner which shall insure satisfactory weight distribution. All damage done to the Complex by reason of a safe or any other article of Tenant's equipment shall be repaired at the expense of Tenant. The time, routing and manner of moving safes or other heavy equipment shall be subject to prior approval by Landlord.

5. Tenant, or the employees, agents, servants, visitors or invitees of Tenant, shall not at any time place, leave or discard any rubbish, paper, articles or objects of any kind whatsoever outside the doors of the Leased Premises or in the corridors or passageways of the Complex.

6. Tenant shall not place, or cause or allow to be placed, any sign, placard, picture, advertisement, notice or lettering whatsoever, in, about or on the exterior of the Leased Premises, Building or Complex except in and at such places as may be designated by Landlord and consented to by Landlord in writing. Any such sign, placard, advertisement, picture, notice or lettering so placed without such consent may be removed by Landlord without notice to and at

the expense of Tenant. All lettering and graphics on corridor doors shall conform to the Building standard prescribed by Landlord.

7. Canvassing, soliciting or peddling in the Building or Complex is prohibited and Tenant shall cooperate reasonably to prevent same.

8. Landlord shall have the right to exclude any person from the Complex other than during customary business hours as set forth in the Lease, and any person in the Complex will be subject to identification by employees and agents of Landlord. All persons in or entering the Complex shall be required to comply with the security policies of the Complex, including, without limitation, the showing of suitable identification and signing of a Building register when entering or leaving the Building. If Tenant desires additional security service for the Leased Premises, Tenant shall have the right (with advance written consent of Landlord) to obtain such additional service at Tenant's sole cost and expense. Tenant shall keep doors to unattended areas locked and shall otherwise exercise reasonable precautions to protect property from theft, loss or damage. Landlord shall not be responsible for the theft, loss or damage of any person. In case an invasion, mob, riot or public excitement, the Landlord reserve the right to implement reasonable measures to limit, restrict or prevent access to the Complex during the continuance of same.

9. Only workmen employed, designated or approved by Landlord may be employed for repairs, installations, alterations, painting, material moving and other similar work that may be done in or on the Complex.

10. Tenant shall not do any cooking or conduct any restaurant, luncheonette, automat or cafeteria for the sale or service of food or beverages to its employees or to others, or permit the delivery of any food or beverages to the Leased Premises, except by such persons delivering the same as shall be approved by Landlord and only under regulations fixed by Landlord. Tenant may, however, operate a coffee and beverage bar and/or microwave oven by and for its employees only.

11. Tenant shall not bring or permit to be brought or kept in or on the Leased Premises or Complex any inflammable, combustible, corrosive, caustic, poisonous, or explosive substance, or cause or permit any odors to permeate in or emanate from the Leased Premises, or permit or suffer the Complex to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Complex.

12. Lessor shall not mark, paint, drill into, or in any way deface any part of the Complex or the Leased Premises. No boring, driving of nails or screws, or cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord. Tenant shall not install any resilient tile or similar floor covering in the Leased Premises except with the prior approval of Landlord, which approval shall not be unreasonably withheld or delayed.

13. No additional locks or bolts of any kind shall be placed on any door in the Complex or the Leased Premises and no lock on any door therein shall be changed or altered in any respect. Tenant shall not make duplicate keys. All keys shall be returned to Landlord upon the termination of this Lease and Tenant shall give to Landlord the explanations of the combinations of all safes, vaults and combination locks remaining with the Leased Premises. All entrance doors to the Leased Premises shall be left closed at all times and left locked when the Leased Premises are not in use.

14. Tenant shall give immediate notice to Landlord in case of known theft, unauthorized solicitation or accident in the Leased Premises or in the Complex, or of known defects therein or in any fixtures or equipment, or of any known emergency in the Complex.

15. Tenant shall not use the Leased Premises or permit the Leased Premises to be used in any photographic, multilith or multigraph reproductions, except in connection with its own business and not as a service for others without Landlord's prior written permission.

16. No animals or birds shall be brought or kept in or about the Complex, with the exception of guide dogs accompanying visually handicapped persons.

17. The requirements of Tenant will be attended to only upon application at the office of Landlord in the Building or at such other address as may be designated by Landlord in the Lease. Employees of Landlord shall not perform any work or do anything other than their regular duties, unless under special instructions from the office of Landlord.

18. Business machines and mechanical and electrical equipment belonging to Tenant which cause noise, vibration, electrical or magnetic interference, or any other nuisance that may be transmitted to the structure or other portions of the Complex or to the Leased premises to such a degree as to be objectionable to Landlord or which interfere with the use or enjoyment by other tenants of their premises or the public portions of the Complex shall be placed and maintained by Tenant, at Tenant's expense, in settings of cork, rubber, spring type, or other vibrations eliminating devices sufficient to eliminate noise and vibrations.

19. No awnings, draperies, shutters or other interior or exterior window coverings that are visible from the exterior of the Building or from the exterior of the Leased Premises within the Building may be installed by Tenant without Landlord's prior written consent.

20. Tenant shall not place, install or operate within the Leased Premises or any other part of the Complex any engine, stove, or machinery, or conduct mechanical operations therein, without the written consent of Landlord.

21. No portion of the Leased Premises or any other part of the Complex shall at any time be used or occupied as sleeping or lodging quarters.

22. Tenant shall at all times keep the Complex neat and orderly.

23. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be placed therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by Tenant.

24. Landlord reserves the right to exclude or expel from the Complex any person who, in the judgment or Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner violate any law or any of the rules and regulations of the Complex.

25. All tenant modifications resulting from alterations or physical additions in or to the Leased Premises must conform to the City of Pearland, County of Brazoria, Texas Building and Fire Codes. Tenant shall obtain written approval from the Building management office prior to commencement of any such modifications and shall deliver "as built" plans to the Building management office upon completion.

26. The following dates shall constitute "holidays" as said term is used in this Lease:

- A. New Year's Day
- B. Good Friday
- C. Memorial Day
- D. Independence Day
- E. Labor Day
- F. Thanksgiving Day
- G. Friday following Thanksgiving Day
- H. Christmas Day

If in the case of any holidays a different day shall be observed than the respective day above-described, then that day which constitutes the day observed by national banks in Brazoria County, Texas, on account of such holiday shall constitute the holiday.

27. All window blinds shall remain down and tilted at a 45° angle toward the street to help maintain comfortable room temperature and to conserve energy. Tenant shall not tamper with or attempt to adjust temperature control thermostats in the Leased Premises. Landlord shall adjust thermostats as required to maintain the Building standard temperature. Tenant shall use no other method of heating or cooling than that supplied by Landlord.

28. Tenant agrees to place all indoor potted plants requiring water within a container capable of collecting any water overflow, such containers to be approved and/or supplied by Landlord, at Tenant's sole expense. Tenant agrees to use caution so that indoor plants do not damage or soil the Leased Premises.

29. All vehicles parked within the Parking Area must be parked within the marked spaced.

30. To insure safe traffic flow within the Parking Area, compliance with all traffic signs and signals must be observed.

31. Tenant shall not park (and shall insure that Tenant's employees, agents, and invitees do not park) in any reserved parking space in the Parking Area other than those reserved parking spaces specifically assigned to Tenant. Any vehicle improperly parked, or parked in any unauthorized parking area in the Complex, may be towed at the vehicle owner's expense and without further, or additional notice.

32. Persons using the Parking Area do so at their own risk. Landlord specifically disclaims all liability, except when caused solely by its gross negligence or willful misconduct, for any personal injury incurred by users of the Parking Area, their agents, employees, family, friends, guests or invitees, or as a result of damage to, theft of, or destruction of any vehicle or any contents thereof as a result of the operation or parking of vehicles in the Parking Area.

EXHIBIT "E" [LOCATION OF RESERVED PARKING SPACES]

 $C: \label{eq:local_loc$ 

# EXHIBIT "F1" [GUARANTY]

THIS GUARANTY AGREEMENT (the "Guaranty"), dated as of  $\underline{1-(br)ary} q^{+h}$ , 2009, is executed by Lovkesh Kevin Sareen ("Guarantor"), with an address of 8907 Dakota Court, Missouri City, TX 77459, in favor of NEELILA, L.L.C., a Texas limited liability company ("Landlord") as follows:

Landlord and NEELA, INC., a Texas corporation (herein, together with any assignee of or successor to Tenant's interest under the Lease, called the "Tenant") are entering into a Lease of even date herewith (herein, as the same may be amended or supplemented from time to time, called the "Lease") covering space located in Brazoria County, Texas.

Guarantor is executing and delivering this Guaranty in order to induce Landlord to enter into the Lease with Tenant.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the premises and intending to be legally bound by this Guaranty, Guarantor hereby agrees with Landlord as follows:

1. Subject to the last sentence of this Paragraph 1, Guarantor hereby absolutely and unconditionally guarantees to Landlord on a *pro rata* basis with all other Guarantors, (a) the payment in full by Tenant of all rents and other payments, tenders and securities payable under or pursuant to the Lease, including all damages owed to Landlord (all of the foregoing herein referred to as "Rent"), in the manner and at the time prescribed in the Lease which payment under this Guaranty shall be limited to an amount equal to \$200,000, together with all costs of collection and enforcement thereof.

2. If for any reason any obligation or undertaking of Tenant contained in the Lease (whether affirmative or negative in character) shall not be observed or performed by Tenant or if any Rent payable pursuant to the Lease shall not be paid promptly when due and payable, then upon demand by Landlord, Guarantor will promptly perform or cause to be performed each of such obligations and undertakings, and will forthwith pay such sums at the place and to the person entitled thereto pursuant to the Lease, regardless of any defense or setoff or counterclaim which Guarantor or Tenant may have or assert, except for those defenses, setoffs or counterclaims which are available to Tenant under the express terms of the Lease, and regardless of whether or not Landlord shall have instituted any suit, action or proceeding or exhausted its remedies or taken any steps to enforce any rights against Tenant or any other person to compel any such performance or to collect all or any part of such sums, either pursuant to the provisions of the Lease or at law or in equity (it being understood that this is a guaranty of payment and not

collection, and Guarantor's liability for the performance of the obligations and undertakings guaranteed shall be primary), and regardless of any other condition or contingency and Guarantor hereby agrees to execute all such further instruments as are reasonably requested by Landlord to further evidence or protect the rights of Landlord hereunder.

3. The obligations and undertakings of Guarantor under this Guaranty are continuing and irrevocable, and shall not be affected or impaired by reason of the happening from time to time of any of the following with respect to the Lease or this Guaranty or any assignment of the rights of Landlord hereunder, even if the same be done without notice to or the consent of Guarantor: (a) any assignment, subletting or mortgaging of all or any part of the interest of Tenant in the Lease or in the Leased Premises (as defined in the Lease, hereinafter called the "Leased Premises"); (b) the waiver by Landlord of the observance or performance by Tenant or by Guarantor of any of the obligations or undertakings contained in the Lease; (c) the extension of the time for payment by Tenant or Guarantor of any Rent owing or payable under any of such instruments, or the extension or the renewal of any thereof; (d) the modification or amendment as mutually agreed upon by Landlord and Tenant (whether material or otherwise) of any obligation or undertaking of Landlord or Tenant set forth in any of such instruments; (e) the taking or the omission of any of the actions referred to in any of such instruments; (f) any failure, omission, delay or lack on the part of Landlord or Tenant to enforce, assert or exercise any right, power or remedy conferred on Landlord in any of such instruments or any action on the part of Landlord granting indulgence or extension in any form; (g) the voluntary or involuntary liquidation. dissolution, sale or other disposition of all or substantially all the assets, marshaling of assets or liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting Tenant or any of its assets, or the disaffirmance of the Lease in any such proceeding; (h) the release, substitution or replacement (whether or not in accordance with terms of the Lease) of the Leased Premises or any portion thereof; (i) the receipt and acceptance by Landlord of notes, checks or other instruments for the payment of money made by Tenant and extensions and renewals thereof; or G) any other cause, whether similar or dissimilar to the foregoing.

4. This Guaranty may be enforced as to anyone or more breaches either separately or cumulatively, and shall be binding upon and inure to the benefit of the Guarantor and Landlord and their respective successors and assigns. The transfer or assignment of the Lease by Landlord shall operate as a transfer or assignment to the transferee or assignee of this Guaranty and all rights and privileges hereunder. All references herein to "Landlord" shall mean the above-named Landlord and any subsequent owner of Landlord's interest in the Lease. No transfer by Guarantor of Guarantor's obligations hereunder shall operate to release them from such obligations.

5. Guarantor waives notice or acceptance of this Guaranty; execution and delivery of the Lease; any assignment of Landlord's rights hereunder or under the Lease; release, discharge or modification of Tenant's obligations under the Lease; default in the payment of any sum payable by Tenant pursuant to the Lease; breach or non-performance of any other obligation or

undertaking of Tenant contained in the Lease; and all other notices to the maximum extent permitted by applicable law.

6. If Landlord or its assigns should commence any suit, action or other legal proceedings against Guarantor to enforce this Guaranty, the person or persons bringing such suit, action or proceeding shall be entitled to receive from Guarantor, and Guarantor agrees to pay to such person or persons, if such person or persons shall be successful in such suit, action or proceeding, the costs and expenses thereof (including attorney's fees and costs of suit).

7. Until all the covenants and conditions in the Lease on Tenant's part to be performed and observed are fully performed and observed, Guarantor:

a. shall have no right of subrogation against Tenant by reason of any payments or acts of performance by the Guarantor in compliance with the obligations of the Guarantor hereunder;

b. waives any right to enforce any right or remedy whatsoever, whether now existing or hereafter arising, which Guarantor now or hereafter shall have against Tenant, and until payment in full with interest of all of the obligations of Tenant under the Lease (and including interest accruing on any such obligations after any petition under the Federal Bankruptcy Code, which post-petition interest Guarantor agrees shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in proceedings under the Federal Bankruptcy Code generally), Guarantor agrees not to accept any payment or satisfaction of any kind of any indebtedness of Tenant to Guarantor. If Guarantor should receive any such payment, satisfaction or security for any indebtedness of Tenant to Guarantor, Guarantor agrees forthwith to deliver the same to Landlord in the form received, endorsed or assigned, as may be appropriate for application on account of, or as security for the obligations of, Tenant to Landlord, and until so delivered, agrees to hold the same in trust for Landlord.

8. Guarantor agrees that Landlord shall have the right and authority to investigate Guarantor's credit and financial standing and to obtain any and all documents or other information in connection therewith without further consent by or authorization from Guarantor, and all third parties shall be entitled to rely upon the foregoing conclusively in providing any such documentation or information to Landlord. Guarantor has not made investments in, advances to or guaranties of, and is not otherwise responsible for the obligations of, any corporation, partnership, joint venture, person or other entity except as reflected in the financial statements presented to Landlord, or as heretofore disclosed to Landlord in writing concurrently with or subsequent to the delivery to Landlord of the latest financial statements submitted.

9. This Guaranty shall apply to the Lease, any extension or renewal thereof and to any holdover following the expiration of the initial term of the Lease or any extension or renewal thereof.

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10. If Guarantor defaults in the performance or observance of any agreement, covenant, term or condition contained herein, or makes a general assignment for the benefit of creditors, or petitions or applies to any tribunal for the appointment of a trustee or receiver of the whole or any substantial part of the business, estate or assets of Guarantor or commence any proceedings relating to Guarantor under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or if any such petition or application is filed or any such proceedings are commenced against Guarantor and Guarantor by any act indicates approval thereof, consent thereto or acquiesce therein, or an order is entered appointing any such trustee or receiver, or adjudicating Guarantor bankrupt or insolvent, or approving a petition in any such proceedings, and such order remains in effect for more than 60 days, then same shall be considered an event of default hereunder, and Event of Default (as defined in the Lease upon the occurrence of an Event of Default thereunder.

11. If any provision of this Guaranty, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Guaranty, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall be valid and shall be enforceable to the fullest extent permitted by law.

12. By signing this Guaranty, Guarantor waives each and every right to which they may be entitled by virtue of any suretyship law, as the same may be amended from time to time.

13. The value of the consideration received and to be received by Guarantor is reasonably worth at least as much as the liability and obligation of Guarantor incurred or arising under this Guaranty and all related papers and arrangements. Guarantor has determined that such liability and obligation may reasonably be expected to substantially benefit Guarantor directly or indirectly. Guarantor has had full and complete access to the underlying papers relating to the Lease and all other papers executed by Tenant in connection with the Lease. Guarantor is fully informed of all circumstances which bear upon the risks of executing this Guaranty and which a diligent inquiry would reveal. Guarantor agrees that Landlord shall have no obligation to advise or notify Guarantor or to provide Guarantor with any data or information.

14. This Guaranty is performable in Brazoria County, Texas, and shall be governed by and construed and enforced in accordance with the laws of the State of Texas. Guarantor agrees Landlord may bring suit against Guarantor in Brazoria County, Texas, to enforce this Guaranty.

15. If this Guaranty is executed by more than one party as "Guarantor," all references herein to "Guarantor" shall refer to each and all of the undersigned parties signing this Guaranty as Guarantor; and the liability of said parties for the payment of Rent and the performance of the covenants, duties and obligations of Guarantor hereunder shall be joint and several.

IN WITNESS WHEREOF, Guarantor has caused this instrument to be executed and delivered as a sealed instrument as of the date first above written.

**GUARANTOR:** 

Lovkesh Kevin \$areen

Address of Guarantor:

8907 Dakota Court Missouri City, TX 77459

Social Security Number of Guarantor:

124-58-1877 SS#

The foregoing instrument was acknowledged before me on this  $\underline{Q^{\dagger h}}$  day of  $\underline{February}$ , 2009, by the undersigned Notary Public.

NOTARY PUBLIG # Printed Name: INNE My Commission Expires: