

## Section 1: 10-Q (10-Q)

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

### FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2019

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

COMMISSION FILE NUMBER 1-13792

**Systemax Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**11-3262067**

(I.R.S. Employer Identification No.)

**11 Harbor Park Drive**

**Port Washington, New York 11050**

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(516) 608-7000**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act) Yes  No

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock (\$.01 par value)	SYX	New York Stock Exchange

The number of shares outstanding of the registrant's Common Stock as of July 30, 2019 was 37,485,837.

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**Available Information**

We maintain an internet web site at [www.systemax.com](http://www.systemax.com). We file reports with the Securities and Exchange Commission (“SEC”) and make available free of charge on or through this website our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, including all amendments to those reports. These are available as soon as is reasonably practicable after they are filed with the SEC. All reports mentioned above are also available from the SEC’s website ([www.sec.gov](http://www.sec.gov)). The information on our website is not part of this or any other report we file with, or furnish to, the SEC.

Our Board of Directors has adopted the following corporate governance documents with respect to the Company (the “Corporate Governance Documents”):

- Corporate Ethics Policy for officers, directors and employees
- Charter for the Audit Committee of the Board of Directors
- Charter for the Compensation Committee of the Board of Directors
- Charter for the Nominating/Corporate Governance Committee of the Board of Directors
- Corporate Governance Guidelines and Principles

In accordance with the corporate governance rules of the New York Stock Exchange, each of the Corporate Governance Documents is available on our Company web site, [www.systemax.com](http://www.systemax.com).

**PART I - FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**Systemax Inc.**

Condensed Consolidated Balance Sheets (Unaudited)

(In millions)

	<b>June 30, 2019</b>	<b>December 31, 2018</b>
<b>ASSETS:</b>		
Current assets:		
Cash	\$ 90.8	\$ 295.4
Accounts receivable, net	96.2	84.1
Inventories	101.4	107.3
Prepaid expenses and other current assets	4.7	10.6
Total current assets	<u>293.1</u>	<u>497.4</u>
Property, plant and equipment, net	15.3	14.9
Operating lease right-of-use assets	63.4	0.0
Deferred income taxes	9.1	8.9
Goodwill and intangibles	7.3	7.7
Other assets	1.3	1.1
Total assets	<u>\$ 389.5</u>	<u>\$ 530.0</u>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY:</b>		
Current liabilities:		
Accounts payable	\$ 116.8	\$ 101.1
Dividend payable	0.0	243.5
Accrued expenses and other current liabilities	39.7	35.0
Operating lease liabilities	11.4	0.0
Total current liabilities	<u>167.9</u>	<u>379.6</u>
Deferred income tax liability	0.1	0.1
Other liabilities	2.6	12.6
Operating lease liabilities	62.8	0.0
Total liabilities	<u>233.4</u>	<u>392.3</u>
Commitments and contingencies		
Shareholders' equity:		
Preferred stock	0.0	0.0
Common stock	0.4	0.4
Additional paid-in capital	188.1	187.0
Treasury stock	(23.2)	(25.1)
Retained earnings	(12.3)	(27.6)
Accumulated other comprehensive income	3.1	3.0
Total shareholders' equity	<u>156.1</u>	<u>137.7</u>
Total liabilities and shareholders' equity	<u>\$ 389.5</u>	<u>\$ 530.0</u>

See Notes to Condensed Consolidated Financial Statements.

**Systemax Inc.**

Condensed Consolidated Statements of Operations (Unaudited)

(In millions, except per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Net sales	\$ 248.6	\$ 231.2	\$ 480.8	\$ 443.4
Cost of sales	162.6	151.2	314.5	290.9
Gross profit	86.0	80.0	166.3	152.5
Selling, distribution & administrative expenses	66.0	61.7	133.1	123.1
Operating income from continuing operations	20.0	18.3	33.2	29.4
Interest and other (income) expense, net	(0.1)	0.0	(0.1)	0.1
Income from continuing operations before income taxes	20.1	18.3	33.3	29.3
Provision for income taxes	5.2	4.9	8.4	7.2
Net income from continuing operations	14.9	13.4	24.9	22.1
Income (loss) from discontinued operations, net of tax	(0.3)	4.8	(0.6)	10.7
Net income	\$ 14.6	\$ 18.2	\$ 24.3	\$ 32.8
Net income per common share from continuing operations:				
Basic	\$ 0.40	\$ 0.36	\$ 0.66	\$ 0.59
Diluted	\$ 0.39	\$ 0.35	\$ 0.66	\$ 0.58
Net income (loss) per common share from discontinued operations:				
Basic	\$ (0.01)	\$ 0.13	\$ (0.02)	\$ 0.29
Diluted	\$ (0.01)	\$ 0.13	\$ (0.02)	\$ 0.28
Net income per common share:				
Basic	\$ 0.39	\$ 0.49	\$ 0.64	\$ 0.88
Diluted	\$ 0.38	\$ 0.48	\$ 0.64	\$ 0.87
Weighted average common and common equivalent shares:				
Basic	37.5	37.2	37.4	37.2
Diluted	37.9	37.9	37.9	37.9
Dividends declared	\$ 0.12	\$ 1.11	\$ 0.24	\$ 1.22

See Notes to Condensed Consolidated Financial Statements.

**Systemax Inc.**

Condensed Consolidated Statements of Comprehensive Income (Unaudited)

(In millions)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Net income	\$ 14.6	\$ 18.2	\$ 24.3	\$ 32.8
Other comprehensive income (loss):				
Foreign currency translation	0.1	(3.7)	0.1	(2.3)
Total comprehensive income	<u>\$ 14.7</u>	<u>\$ 14.5</u>	<u>\$ 24.4</u>	<u>\$ 30.5</u>

See Notes to Condensed Consolidated Financial Statements.

**Systemax Inc.**

Condensed Consolidated Statements of Cash Flows (Unaudited)

(In millions)

	Six Months Ended June 30,	
	2019	2018
Cash flows from operating activities:		
Income from continuing operations	\$ 24.9	\$ 22.1
Adjustments to reconcile income from continuing operations to net cash provided by (used in) operating activities:		
Depreciation and amortization	2.0	2.2
Provision for returns and doubtful accounts	0.3	0.0
Stock-based compensation	2.8	0.8
Provision for deferred taxes	(0.2)	0.2
Gain on disposition and abandonment	0.1	0.0
Changes in operating assets and liabilities:		
Accounts receivable	(12.8)	(10.4)
Inventories	6.0	(1.5)
Prepaid expenses and other assets	(1.2)	(2.2)
Income taxes payable	5.9	5.5
Accounts payable	15.4	3.2
Accrued expenses, other current and non current liabilities	6.9	(1.9)
Net cash provided by operating activities from continuing operations	50.1	18.0
Net cash provided by (used in) operating activities from discontinued operations	0.1	(1.7)
Net cash provided by operating activities	50.2	16.3
Cash flows from investing activities:		
Purchases of property, plant and equipment	(2.4)	(1.1)
Net cash used in investing activities from continuing operations	(2.4)	(1.1)
Net cash used in investing activities from discontinued operations	0.0	(0.3)
Net cash used in investing activities	(2.4)	(1.4)
Cash flows from financing activities:		
Dividends paid	(252.5)	(101.1)
Proceeds from issuance of common stock	0.6	0.9
Payment of payroll taxes on stock-based compensation through shares withheld	(0.8)	(1.3)
Proceeds from the issuance of common stock from employee stock purchase plan	0.4	0.0
Net cash used in financing activities	(252.3)	(101.5)
Effects of exchange rates on cash	(0.1)	(1.0)
Net decrease in cash	(204.6)	(87.6)
Cash – beginning of period	295.4	184.5
Cash – end of period	\$ 90.8	\$ 96.9
Supplemental disclosures of non-cash operating and investing activities:		
Right-of-use assets obtained in exchange for lease obligations:		
Operating leases	\$ 14.7	\$ 0.0

See Notes to Condensed Consolidated Financial Statements.

**Systemax Inc.**

Condensed Consolidated Statement of Shareholders' Equity (Unaudited)

(In millions)

	Common Stock		Additional Paid-in Capital	Treasury Stock	Retained Earnings	Accumulated Other Comprehensive Income	Total Equity
	Number of Shares Outstanding	Amount					
Balances, January 1, 2018	37,094	\$ 0.4	\$ 186.5	\$ (21.8)	\$ 44.8	\$ 1.9	\$ 211.8
Stock-based compensation expense			0.4				0.4
Issuance of restricted stock	38		(0.5)	0.5			0.0
Stock withheld for employee taxes	(31)		(0.5)	(0.4)			(0.9)
Proceeds from issuance of common stock	72		(0.1)	0.9			0.8
Dividends declared					(4.1)		(4.1)
Change in cumulative translation adjustment						1.4	1.4
Net income					14.6		14.6
Balances March 31, 2018	37,173	\$ 0.4	\$ 185.8	\$ (20.8)	\$ 55.3	\$ 3.3	\$ 224.0
Stock-based compensation expense			0.4				0.4
Issuance of restricted stock	19		(0.2)	0.2			0.0
Stock withheld for employee taxes	(10)		(0.3)	(0.1)			(0.4)
Proceeds from issuance of common stock	10			\$ 0.1			0.1
Dividends declared					(41.3)		(41.3)
Change in cumulative translation adjustment						(3.7)	(3.7)
Net income					18.2		18.2
Balances, June 30, 2018	37,192	\$ 0.4	\$ 185.7	\$ (20.6)	\$ 32.2	\$ (0.4)	\$ 197.3

	Common Stock		Additional Paid-in Capital	Treasury Stock	Retained Earnings	Accumulated Other Comprehensive Income	Total Equity
	Number of Shares Outstanding	Amount					
Balances, January 1, 2019	37,335	\$ 0.4	\$ 187.0	\$ (25.1)	\$ (27.6)	\$ 3.0	\$ 137.7
Stock-based compensation expense			1.5				1.5
Issuance of restricted stock	103		(1.8)	1.8			0.0
Stock withheld for employee taxes	(34)			(0.8)			(0.8)
Proceeds from issuance of common stock	3						0.0
Issuance of shares under employee stock purchase plan	21		0.4				0.4
Dividends declared					(4.5)		(4.5)
Change in cumulative translation adjustment						0.0	0.0
Net income					9.7		9.7
Balances, March 31, 2019	37,428	\$ 0.4	\$ 187.1	\$ (24.1)	\$ (22.4)	\$ 3.0	\$ 144.0
Stock-based compensation expense			1.3				1.3
Issuance of restricted stock	6						0.0
Stock withheld for employee taxes	(1)						0.0
Proceeds from issuance of common stock	53		(0.3)	0.9			0.6
Dividends declared					(4.5)		(4.5)
Change in cumulative translation adjustment						0.1	0.1
Net income					14.6		14.6
Balances, June 30, 2019	37,486	\$ 0.4	\$ 188.1	\$ (23.2)	\$ (12.3)	\$ 3.1	\$ 156.1

See Notes to Condensed Consolidated Financial Statements.

Systemax Inc.

Notes to Condensed Consolidated Financial Statements (Unaudited)

## 1. Basis of Presentation

The accompanying condensed consolidated financial statements of Systemax Inc., with its subsidiaries, (the "Company") are unaudited and have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America are not required in these interim financial statements and have been condensed or omitted. All significant intercompany accounts and transactions have been eliminated in consolidation.

As previously disclosed, in August 2018 the Company sold its France-based IT business. With the completion of the sale, Systemax operates and is internally managed in one reportable business segment, its Industrial Products Group ("IPG"), which includes its former Corporate and other segment. IPG focuses on industrial supplies and MRO (maintenance, repair and operations) markets the Company has served since 1949.

The sale of the France based IT business, which had been included in the Company's former European Technology Products segment, met the "strategic shift with major impact" criteria as defined under Accounting Standards Update ("ASU") 2014-08, *Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity*. Therefore, the prior year results of the France-based IT business are included in discontinued operations in the accompanying consolidated financial statements. For the three and six month periods ended June 30, 2019, there were no net sales or net income/loss of the France business included in discontinued operations. For the three and six month periods ended June 30, 2018, net sales of the France business included in discontinued operations totaled \$131.9 million and \$274.9 million, respectively, and net income of the France business included in discontinued operations totaled \$4.4 million and \$9.9 million, respectively.

As previously disclosed, in March 2017 the Company sold Systemax Europe SARL and its subsidiaries (the "SARL Businesses") which had been included in the Company's former European Technology Products segment. The sale of the SARL Businesses met the "strategic shift with major impact" criteria as described above. For the three and six month periods ended June 30, 2019, there were no net sales or net income/loss of the SARL Businesses included in discontinued operations. For the three and six month periods ended June 30, 2018, there were no net sales of the SARL Businesses included in discontinued operations. For the three and six month periods ended June 30, 2018, net income of the SARL Businesses included in discontinued operations totaled \$0.4 million and \$0.2 million, respectively.

Also included in discontinued operations is the Company's former North American Technology Group ("NATG") business, which was sold in December 2015 and is winding down its operations. The sale of the NATG business had a major impact on the Company and therefore certain components met the strategic shift criteria as defined under ASU 2014-08. Accordingly, these components and any related results of operations are reflected in discontinued operations. For the three and six month periods ended June 30, 2019 and 2018, there were no net sales of the NATG business included in discontinued operations. Net loss from the NATG business was \$0.3 million and \$0.6 million, respectively, for the three and six month periods ended June 30, 2019, and net income from the NATG business was zero for the three months ended June 30, 2018 and \$0.6 million for the six months ended June 30, 2018.

In the opinion of management, the accompanying condensed consolidated financial statements contain all normal and recurring adjustments necessary to present fairly the financial position of the Company as of June 30, 2019 and the results of operations for the three and six month periods ended June 30, 2019 and 2018, statements of comprehensive income (loss) for the three and six month periods ended June 30, 2019 and 2018, cash flows for the six month periods ended June 30, 2019 and 2018 and changes in shareholders' equity for the three and six month periods ended June 30, 2019 and 2018. The December 31, 2018 Condensed Consolidated Balance Sheet has been derived from the audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2018.

These condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements as of December 31, 2018 and for the year then ended included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2018. The results for the six month period ended June 30, 2019 are not necessarily indicative of the results for the entire year.

Systemax manages its business and reports using a 52-53 week fiscal year that ends at midnight on the Saturday closest to December 31. For clarity of presentation herein, fiscal years and quarters are referred to as if they ended on the traditional calendar month. The actual fiscal second quarter ended on June 29, 2019 and June 30, 2018. The second quarters of both 2019 and 2018 included 13 weeks and the first six months of both 2019 and 2018 included 26 weeks.

#### *Recent Accounting Pronouncements*

Public companies in the United States are subject to the accounting and reporting requirements of various authorities, including the Financial Accounting Standards Board ("FASB") and the Securities and Exchange Commission ("SEC"). These authorities issue numerous pronouncements, most of which are not applicable to the Company's current or reasonably foreseeable operating structure.

In June 2018, the FASB issued ASU 2018-07, *Improvements to Nonemployee Share-Based Payment Accounting*, which simplifies the accounting for share-based payments to nonemployees by aligning it with the accounting for share-based payments to employees, with certain exceptions. This ASU is effective for fiscal years beginning after December 15, 2018, including interim periods within that fiscal year, with early adoption permitted after adoption of ASU 2014-09. The Company adopted this standard beginning January 1, 2019 and its adoption did not materially impact the Company's consolidated financial position or results of operations.

In August 2018, the FASB issued ASU 2018-13, *Fair Value Measurements*, which eliminates, adds or modifies certain disclosure requirements for fair value measurements. Entities will no longer be required to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, but will be required to disclose the range and weighted average used to develop significant unobservable inputs for Level 3 fair value measurements. This ASU is effective for fiscal years beginning after December 15, 2019, including interim periods within that fiscal year, with early adoption permitted to adopt either the entire standard or only the provisions that eliminate or modify the requirements. The Company is evaluating the effect of adopting this pronouncement.

In August 2018, the FASB issued ASU 2018-15, *Intangibles - Goodwill and Other - Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*, which requires a customer in a cloud computing arrangement that is a service contract to follow the internal-use software guidance in Accounting Standards Codification 350-40 to determine which implementation costs to defer and recognize as an asset. This ASU is effective for fiscal years beginning after December 15, 2019, including interim periods within that fiscal year, with early adoption permitted, including adoption in any interim period. The Company is evaluating the effect of adopting this pronouncement.

In June 2016, the FASB ASU 2016-13, *Financial Instruments - Credit Losses: Measurement of Credit Losses on Financial Instruments* as modified by subsequently issued ASU 2018-19. This ASU requires estimating credit losses for certain financial instruments, including trade receivables, held at the reporting date based on historical experience, current conditions and reasonable forecasts. This ASU is effective for fiscal years beginning after December 15, 2019, including interim periods within that fiscal year. The Company is evaluating the effect of adopting this pronouncement.

## **2. Leases**

On January 1, 2019, the Company adopted ASU 2016-02, "*Leases*" (Topic 842). This ASU requires all companies to record their operating and finance leases that meet certain criteria under the standard as Right of Use ("ROU") assets with the corresponding lease obligations recorded as short term and long term liabilities. The Company adopted this standard utilizing the modified retrospective transition method that allows for a cumulative-effect adjustment in the period of adoption of the new leasing standard without restating prior periods. There was no cumulative-effect adjustment made to opening retained earnings upon adoption of this ASU. Additionally, the Company elected to adopt the available package of practical expedients under the transition guidance.

The Company has operating and finance leases for office and warehouse facilities, headquarters and call centers and certain computer, communications equipment and machinery and equipment which provide the right to use the underlying assets in exchange for agreed upon lease payments, determined by the payment schedule contained in each lease. The Company determines if an arrangement is an operating or finance lease at the inception of the lease. Leases with a term of one year or less are not considered to be ROU assets. All other leases are recorded on the balance sheet, with ROU assets representing the right to use the underlying asset for the lease term and lease liabilities representing the obligation to make lease payments

arising from the lease. The Company's lease portfolio consists primarily of operating leases which expire at various dates through 2032.

The ROU assets and corresponding lease liabilities are recorded based upon the net present value of the remaining lease payments, discounted using interest rates determined by utilizing such factors as the Company's current credit facility terms, the length of the remaining term of the lease, the Company's expected debt credit rating and comparable company term loan yields. Adoption of the new standard resulted in the Company recording ROU assets and lease liabilities of approximately \$54 million and \$64 million, respectively, at January 1, 2019. Certain leases may include options to extend the lease, however the Company is not including any impact of such options in the valuation of its ROU assets or liabilities as they are not currently probable of being extended. The Company's lease agreements do not contain residual value guarantees or restrictive covenants. The Company has sublease agreements for unused space we lease in the United States and Germany. For the three and six month periods ended June 30, 2019, the Company recorded \$0.4 million and \$1.0 million, respectively, of sublease income in continuing and discontinued operations.

In April 2019, the Company entered into a lease agreement for a portion of a distribution facility located in Texas for approximately 490,000 square feet and a lease term of 125 months. The total lease obligation is approximately \$19.8 million. The Company is separately charged for real estate taxes, insurance and common area maintenance. The Company recorded an ROU asset and related lease liability of approximately \$14.7 million during the second quarter of 2019.

The following table details the Company's ROU asset operating lease cost, included in continuing operations, for the three and six months ended June 30, 2019 (in millions):

	<u>Three Months Ended June 30,</u>	<u>Six Months Ended June 30,</u>
	<u>2019</u>	<u>2019</u>
Operating lease cost	\$ 3.0	\$ 5.7

The following tables detail the Company's ROU asset activity for continuing and discontinued operations as of June 30, 2019.

	<u>Six Months Ended June 30,</u>
	<u>2019</u>
<b>Weighted Average Remaining Lease Term</b>	
Operating leases	8.5 years
<b>Weighted Average Discount Rate</b>	
Operating leases	5.7%

Maturities of lease liabilities were as follows (in millions):

<u>Year Ending December 31</u>	<u>Operating Leases</u>
2019 (remaining six months)	\$ 5.4
2020	13.9
2021	10.9
2022	9.9
2023	9.8
Thereafter	45.0
Total lease payments	<u>94.9</u>
Less: interest	(20.7)
Total present value of lease liabilities	<u>\$ 74.2</u>

The Company currently leases its headquarters office facility from an entity owned by the Company's principal shareholders.

### **3. Revenue**

The Company's revenue generated by its operating subsidiaries is comprised of sales of MRO products as well as other industrial and business supplies that are sold by the IPG segment. IPG also has revenues from related activities, such as freight and, to a lesser extent, services.

The Company recognizes revenue when a sales arrangement with a customer exists through the Company's invoicing or a contract, the performance obligations have been identified, the transaction price is fixed or determinable and the Company has satisfied its performance obligations. The Company's standard terms, provided on its invoices as well as on its websites, are included in communications with the customer and have standard payment terms of 30 days. Certain customers may have extended payment terms that have been pre-approved by the Company's credit department, but generally none extend longer than 120 days.

The Company's performance obligation is primarily a single obligation to deliver products. The Company's performance obligations are satisfied when products are transferred to a customer in accordance with agreed upon shipping terms. Certain sales may include product and/or services that are distinct and accounted for as separate performance obligations. The Company's performance obligations for services are satisfied when the services are rendered. The Company's total service revenue is immaterial as it accounted for less than 1% of total revenue for the second quarter and six months ended June 30, 2019 and 2018, respectively.

The Company's revenue is shown as "Net sales" in the accompanying Condensed Consolidated Statements of Operations and is measured as the determined transaction price, net of any variable consideration consisting primarily of rights to return product. The Company has elected to treat shipping and handling revenues as activities to fulfill its performance obligation. Billings for freight and shipping and handling are recorded in net sales and costs of freight and shipping and handling are recorded in cost of sales in the accompanying Condensed Consolidated Statements of Operations.

The Company records a contract liability in cases where customers pay in advance of the Company satisfying its performance obligation. The Company did not have any material unsatisfied performance obligations or liabilities as of June 30, 2019 and December 31, 2018.

The Company offers customers rights to return product within a certain time, usually 30 days. The Company estimates its sales returns liability quarterly, based upon its historical returns rates, as a percentage of historical sales for the trailing twelve-month period. The total accrued sales returns liability was approximately \$2.1 million and \$1.8 million at June 30, 2019 and December 31, 2018, respectively, and was recorded as a refund liability in Accrued expenses and other current liabilities in the accompanying Condensed Consolidated Balance Sheets.

*Disaggregation of Revenues*

IPG serves customers in diverse geographies, which are subject to different economic and industry factors. The Company's presentation of revenue by geography most reasonably depicts how the nature, amount, timing and uncertainty of Company revenue and cash flows are affected by economic and industry factors. Revenue is attributed to countries based on the location of the selling subsidiary.

The following table presents the Company's revenue by geography for the three and six months ended June 30, 2019 and 2018 (in millions):

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2019</b>	<b>2018</b>	<b>2019</b>	<b>2018</b>
Net sales:				
MRO products and industrial supplies-United States	\$ 236.7	\$ 220.4	\$ 457.5	\$ 422.4
MRO products and industrial supplies-Canada	11.9	10.8	23.3	21.0
Consolidated	<u>\$ 248.6</u>	<u>\$ 231.2</u>	<u>\$ 480.8</u>	<u>\$ 443.4</u>

**4. Discontinued Operations and Special Charges (Gains)**

The Company's discontinued operations include the results of the France business sold in August 2018, the SARL Businesses sold in March 2017 and the NATG business sold in December 2015 (See Note 1).

In the second quarter ended June 30, 2019, the Company's NATG discontinued operations received approximately \$0.2 million in vendor settlements and for the six months ended June 30, 2019, the Company's received approximately \$0.2 million in vendor settlements and recorded approximately \$0.1 million of professional fees. The Company expects that total additional charges related to the NATG business after this quarter will approximately \$1.0 million and that these charges will be presented in discontinued operations.

In the second quarter ended June 30, 2018, the Company recorded, within discontinued operations, net recoveries of \$0.1 million related to the wind-down of the SARL Businesses. The Company received escrow funds of approximately \$0.2 million and recorded approximately \$0.1 million of accelerated depreciation on fixed assets. For the six months ended June 30, 2018, the Company recorded \$0.2 million recoveries of escrow funds, \$0.1 million of accelerated depreciation and \$0.1 million for legal and professional fees.

In the second quarter ended June 30, 2018, the Company's NATG discontinued operations received \$0.1 million in vendor settlements, recorded \$0.1 million in lease reserve adjustments related to their exited leased facilities and recorded approximately \$0.1 million of legal and professional fees. For the six months ended June 30, 2018, the Company received \$0.7 million in restitution receipts, received \$0.1 million in vendor settlements, recorded approximately \$0.2 million of legal and professional fees and recorded \$0.1 million in favorable lease reserve adjustments related to their leased facilities.

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Below is a summary of the impact on net sales, net income (loss) and net income (loss) per share from discontinued operations for the three and six months ended June 30, 2019 and 2018.

Pretax income (loss) of Discontinued operations to the Net Income (loss) of discontinued operations is as follows (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Net sales	\$ 0.0	\$ 131.9	\$ 0.0	\$ 274.9
Cost of sales	0.0	110.8	0.0	229.6
Gross profit	0.0	21.1	0.0	45.3
Selling, distribution & administrative expenses	0.4	13.7	0.8	29.3
Special charges (gains)	(0.2)	0.0	(0.1)	(0.7)
Operating (loss) income from discontinued operations	(0.2)	7.4	(0.7)	16.7
Interest and other (income) expenses, net	0.0	(0.1)	0.0	(0.3)
Income (loss) from discontinued operations before income taxes	(0.2)	7.5	(0.7)	17.0
Provision (benefit) for income taxes	0.1	2.7	(0.1)	6.3
Net income (loss) from discontinued operations	\$ (0.3)	\$ 4.8	\$ (0.6)	\$ 10.7
Net income (loss) per share – basic	\$ (0.01)	\$ 0.13	\$ (0.02)	\$ 0.29
Net income (loss) per share – diluted	\$ (0.01)	\$ 0.13	\$ (0.02)	\$ 0.28

The following table details liabilities related to the sold NATG segment's non-lease components that remain as of June 30, 2019 (in millions):

	NATG – Non-lease components
Balance January 1, 2019	\$ 2.8
Charged to expense	0.7
Paid or otherwise settled	(0.3)
Balance June 30, 2019	\$ 3.2

On January 1, 2019 the Company reclassified approximately \$3.4 million of the opening balance of the NATG exit cost liability to ROU assets and operating lease obligations.

## 5. Net Income per Common Share

Net income per common share - basic was calculated based upon the weighted average number of common shares outstanding during the respective periods presented using the two class method of computing earnings per share. The two class method was used as the Company has outstanding restricted stock with rights to dividend participation for unvested shares. Net income per common share - diluted was calculated based upon the weighted average number of common shares outstanding and included the equivalent shares for dilutive options outstanding during the respective periods, including unvested options. The dilutive effect of outstanding options and restricted stock issued by the Company is reflected in net income per share - diluted using the treasury stock method. Under the treasury stock method, options will only have a dilutive effect when the average market price of common stock during the period exceeds the exercise price of the options.

The weighted average number of stock options outstanding included in the computation of diluted earnings per share was 0.3 million and \$0.6 million shares for the three months ended June 30, 2019 and 2018, respectively, and 0.3 million shares and 0.6 million shares for the six months ended June 30, 2019 and 2018, respectively. The weighted average number of restricted stock awards included in the computation of diluted earnings per share was 0.1 million and 0.1 million shares for the three months ended June 30, 2019 and 2018, respectively, and 0.2 million shares and 0.2 million shares for the six months ended June 30, 2019 and 2018, respectively. The weighted average number of stock options outstanding excluded from the computation of diluted earnings per share due to their antidilutive effect was 0.2 million shares for the three and six months ended June 30, 2019 and none for the three and six months ended June 30, 2018.

## **6. Credit Facilities**

The Company maintains a \$75 million secured revolving credit facility with one financial institution, which has a five year term, maturing on October 28, 2021 and provides for borrowings in the United States. The credit agreement contains certain operating, financial and other covenants, including limits on annual levels of capital expenditures, availability tests related to payments of dividends and stock repurchases and fixed charge coverage tests related to acquisitions. The revolving credit agreement requires that a minimum level of availability be maintained. If such availability is not maintained, the Company will be required to maintain a fixed charge coverage ratio (as defined). The borrowings under the agreement are subject to borrowing base limitations of up to 85% of eligible accounts receivable and the inventory advance rate computed as the lesser of 60% or 85% of the net orderly liquidation value ("NOLV"). Borrowings are secured by substantially all of the Borrower's assets, as defined, including all accounts, accounts receivable, inventory and certain other assets, subject to limited exceptions, including the exclusion of certain foreign assets from the collateral. The interest rate under the amended and restated facility is computed at applicable market rates based on the London interbank offered rate ("LIBOR"), the Federal Reserve Bank of New York ("NYFRB") or the Prime Rate, plus an applicable margin. The applicable margin varies based on borrowing base availability. As of June 30, 2019, eligible collateral under the credit agreement was \$75.0 million, total availability was \$73.0 million, total outstanding letters of credit were \$1.3 million, total excess availability was \$71.7 million and there were no outstanding borrowings. The Company was in compliance with all of the covenants of the credit agreement in place as of June 30, 2019.

## **7. Fair Value Measurements**

Financial instruments consist primarily of investments in cash, trade accounts receivable, debt and accounts payable. The Company estimates the fair value of financial instruments based on interest rates available to the Company. At June 30, 2019 and 2018, the carrying amounts of cash, accounts receivable and accounts payable are considered to be representative of their respective fair values due to their short-term nature. Cash is classified as Level 1 within the fair value hierarchy. The Company's debt is considered to be representative of its fair value because of its variable interest rate.

The fair value with respect to goodwill and non-amortizing intangibles assets is measured in connection with the Company's annual impairment testing. The Company performs a qualitative assessment of goodwill and non-amortizing intangibles to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If the qualitative assessment shows that the fair value of the reporting unit exceeds its carrying amount, the Company is not required to complete the annual two step goodwill impairment test. If a quantitative analysis is required to be performed for goodwill, the fair value of the reporting unit to which the goodwill has been assigned is determined using a discounted cash flow model. A discounted cash flow model is also used to determine fair value of indefinite-lived intangibles using projected cash flows of the intangible. Unobservable inputs related to these discounted cash flow models include projected sales growth, gross margin percentages, new business opportunities, working capital requirements, capital expenditures and growth in selling, distribution and administrative expense. Any excess of a reporting unit's carrying amount over fair value would be charged to impairment expense.

Long-lived assets are assets used in the Company's operations and include definite-lived intangible assets, leasehold improvements, warehouse and similar property used to generate sales and cash flows. Long-lived assets are tested for impairment utilizing a recoverability test, whenever circumstances indicate that an impairment may have occurred. The recoverability test compares the carrying value of an asset group to the undiscounted cash flows directly attributable to the asset group over the life of the primary asset. If the undiscounted cash flows of an asset group is less than the carrying value of the asset group, the fair value of the asset group is then measured. If the fair value is also determined to be less than the carrying value of the asset group, the asset group is impaired.

## **8. Legal Proceedings**

The Company and its subsidiaries are from time to time involved in various lawsuits, claims, investigations and proceedings which may include commercial, employment, tax, customs and trade, customer, vendor, personal injury, creditors rights and health and safety law matters, which are handled and defended in the ordinary course of business. In addition, the Company is from time to time subjected to various assertions, claims, proceedings and requests for damages and/or indemnification concerning sales channel practices and intellectual property matters, including patent infringement suits involving technologies that are incorporated in a broad spectrum of products the Company sells or that are incorporated in the Company's e-commerce sales channels, as well as trademark/copyright infringement claims. The Company is also audited by (or has initiated voluntary disclosure agreements with) various U.S. Federal and state authorities, as well as Canadian authorities, concerning potential income tax, sales tax and/or "unclaimed property" liabilities. These matters are in various stages of investigation, negotiation and/or litigation. The Company is also being audited by an entity representing 28 states seeking recovery of "unclaimed property" and has received separate demands from 20 states requesting payments of their claimed amounts. The Company is complying with the unclaimed property audit, is providing requested information and is corresponding with the states regarding possible further discussions. The Company intends to vigorously defend these matters and believes it has strong defenses. In September 2017 the Company and certain subsidiaries comprising its former NATG "Tiger" consumer electronics business were sued in United States District Court, Northern District of California by a software publisher alleging that the NATG subsidiaries violated certain contractual sales channel restrictions resulting in claims of breach of contract and trademark/copyright infringement. Although Systemax Inc. has been dismissed from the case, the Company is continuing to assess the remaining claims against and the defenses available to the remaining subsidiary defendants and related possible insurance coverage; the Company cannot predict the outcome of this matter and believes the potential damages, if any, cannot be estimated at this time.

Although the Company does not expect, based on currently available information, that the outcome in any of these matters, individually or collectively, will have a material adverse effect on its financial position or results of operations, the ultimate outcome is inherently unpredictable. Therefore, judgments could be rendered or settlements entered, that could adversely affect the Company's operating results or cash flows in a particular period. The Company regularly assesses all of its litigation and threatened litigation as to the probability of ultimately incurring a liability and records its best estimate of the ultimate loss in situations where it assesses the likelihood of loss as probable and estimable. In this regard, the Company establishes accrual estimates for its various lawsuits, claims, investigations and proceedings when it is probable that an asset has been impaired or a liability incurred at the date of the financial statements and the loss can be reasonably estimated. At June 30, 2019 the Company has established accruals for certain of its various lawsuits, claims, investigations and proceedings based upon estimates of the most likely outcome in a range of loss or the minimum amounts in a range of loss if no amount within a range is a more likely estimate. The Company does not believe that at June 30, 2019 any reasonably possible losses in excess of the amounts accrued would be material to the financial statements.

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

### **Forward Looking Statements**

This report contains forward looking statements within the meaning of that term in the Private Securities Litigation Reform Act of 1995 (Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934). Additional written or oral forward looking statements may be made by the Company from time to time, in filings with the Securities and Exchange Commission or otherwise. Statements contained in this report that are not historical facts are forward looking statements made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, and are based on management's estimates, assumptions and projections and are not guarantees of future performance. Forward looking statements may include, but are not limited to, projections or estimates of revenue, income or loss, exit costs, cash flow needs and capital expenditures, fluctuations in general economic conditions, future operations, plans relating to new distribution facilities, plans for utilizing alternative sources of supply in response to government tariff and trade actions, and plans for new products or services, plans for acquisition or sale of businesses, including expansion or restructuring plans, such as our exit from and winding down of our sold North American Technology Group ("NATG") operations and European operations, financing needs, compliance with financial covenants in loan agreements, assessments of materiality, predictions of future events and the effects of pending and possible litigation and assumptions relating to the foregoing. In addition, when used in this discussion, the words "anticipates," "believes," "estimates," "expects," "intends," "plans" and variations thereof and similar expressions are intended to identify forward looking statements.

Other factors that may affect our future results of operations and financial condition include, but are not limited to, unanticipated developments in any one or more of the following areas, as well as other factors which may be detailed from time to time in our Securities and Exchange Commission filings: general economic conditions, such as customer inventory levels, interest rates, borrowing ability and economic conditions in the manufacturing industry generally, will continue to impact our business; the imposition of tariffs and other trade barriers, as well as retaliatory trade measures, have caused us to raise the prices on certain of our products and seek alternate sources of supply, which could negatively impact our sales or disrupt our operations in the future; increases in freight and shipping costs have from time to time impacted our margins to the extent the increases could not be passed along to customers in a timely manner and may impact our margins again in the future, and factors affecting the shipping and distribution of products imported to the United States by us or our domestic vendors, such as global availability of shipping containers and fuel costs; our reliance on common carrier delivery services for shipping inventoried merchandise to customers; our reliance on drop ship deliveries directly to customers by our product vendors for products we do not hold in inventory; delays in the timely availability of products from our suppliers could delay receipt of needed product and result in lost sales; our ability to maintain available capacity in our distribution operations for stocked inventory and to enable on time shipment and deliveries, such as by timely implementing additional temporary or permanent distribution resources, whether in the form of additional facilities we operate or by outsourcing certain functions to third party distribution and logistics partners; we compete with other companies for recruiting, training, integrating and retaining talented and experienced employees, particularly in markets where we and they have central distribution facilities; this aspect of competition is aggravated by the current tight labor market in the U.S.; risks involved with e-commerce, including possible loss of business and customer dissatisfaction if outages or other computer-related problems should preclude customer access to our products and services; our information systems and other technology platforms supporting our sales, procurement and other operations are critical to our operations and disruptions or delays have occurred and could occur in the future, and if not timely addressed could have a material adverse effect on us; a data security breach due to our e-commerce, data storage or other information systems being hacked by those seeking to steal Company, vendor, employee or customer information, or due to employee error, resulting in disruption to our operations, litigation and/or loss of reputation or business; managing various inventory risks, such as being unable to profitably resell excess or obsolete inventory and/or the loss of product return rights from our vendors; meeting credit card industry compliance standards in order to maintain our ability to accept credit cards; rising interest rates, increased borrowing costs or limited credit availability, including our own ability to maintain satisfactory credit agreements and to renew credit facilities, could impact both our and our customers' ability to fund purchases and conduct operations in the ordinary course; pending or threatened litigation and investigations, as well as anti-dumping and other government trade and customs proceedings, could adversely affect our business and results of operations; sales tax laws or government enforcement priorities may be changed which could result in e-commerce and direct mail retailers having to collect sales taxes in states where the current laws and/or prior interpretations do not require us to do so; and extreme weather conditions could disrupt our product supply chain and our ability to ship or receive products, which would adversely impact sales.

Forward-looking statements in this report are based on the Company's beliefs and expectations as of the date of this report and are subject to risks and uncertainties which may have a significant impact on the Company's business, operating results or financial condition. Investors are cautioned that these forward-looking statements are inherently uncertain. Should one or more of the risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results or outcomes may vary materially from those described herein. Statements in this report, particularly in "Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations" and the Notes to Condensed Consolidated Financial Statements, as well as information under the heading "Risk Factors" in our Annual Report on Form 10-K for fiscal year 2018, describe certain factors, among others, that could contribute to or cause such differences.

Readers are cautioned not to place undue reliance on any forward looking statements contained in this report, which speak only as of the date of this report. We undertake no obligation to publicly release the result of any revisions to these forward looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unexpected events.

## **Overview**

Systemax Inc., through its operating subsidiaries, is primarily a direct marketer of brand name and private label industrial and business equipment and supplies in North America going to market through a system of branded e-commerce websites and relationship marketers. As a result of the sale of its France-based IT value added reseller business, the Company operates and is internally managed in one reportable business segment, Industrial Products Group ("IPG"), which includes its former Corporate and other segment. IPG focuses on industrial supplies and MRO (maintenance, repair and operations) markets the Company has served since 1949.

On August 31, 2018, the Company closed on the sale of its France-based IT value added reseller business. The sale was denominated on a cash-free, debt-free basis and included normalized working capital adjustments. The France business had been included in

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the Company's former European Technology Products segment. Initially, the Company was providing limited transition services to the France business for a period of up to six months, following the closing, under a transition services agreement. This transition services agreement was extended in the first quarter of 2019 for an additional six month period.

On March 24, 2017 the Company sold Systemax Europe SARL and its subsidiaries (the "SARL Businesses"), which had been included in the Company's former European Technology Products segment.

The sale of the France business and SARL Businesses met the "strategic shift with major impact" criteria as defined under Accounting Standards Update ("ASU") 2014-08, *Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity*, which allows for dispositions with major impact to be presented in the financial statements as discontinued operations. Therefore, the prior year results of the France business and SARL Businesses are included in discontinued operations in the accompanying condensed consolidated financial statements. For the three months ended June 30, 2019 and 2018, net sales of the France business included in discontinued operations totaled \$0 and \$131.9 million, respectively, and for the six months ended June 30, 2019 and 2018, net sales totaled \$0 and \$274.9 million, respectively. For the three months ended June 30, 2019 and 2018, net income of the France business included in discontinued operations totaled \$0 and \$4.4 million, respectively, and for the six months ended June 30, 2019 and 2018, net income totaled \$0 and \$9.9 million. For the three and six months ended June 30, 2019, there was no activity related to the SARL Businesses in net sales or net income (loss) in discontinued operations and for the three and six month periods ended June 30, 2018, net income of the SARL Businesses included in discontinued operations totaled \$0.4 million and \$0.2 million, respectively.

On December 1, 2015, the Company sold its NATG operating businesses and began the wind-down of its remaining NATG operations. The sale of the NATG business had a major impact on the Company and therefore certain components met the strategic shift criteria as defined under ASU 2014-08. In the second quarter and six months ended June 30, 2019 and 2018, there were no net sales recorded for discontinued NATG operations within discontinued operations. In the second quarter and six months ended June 30, 2019, net loss totaled \$0.3 million and \$0.6 million, respectively, primarily related to operating expenses and legal and professional fees. For the three months ended June 30, 2018, there was no net income recorded for the discontinued NATG operations and for the six months ended June 30, 2018, net income of \$0.6 million was recorded primarily related to restitution payments and vendor settlements received offset by legal and professional fees and operating expenses.

In order to provide more meaningful information to investors, the Company is presenting its operating income and operating margin on a non-GAAP basis in the "Reconciliation of Consolidated GAAP Operating Income from Continuing Operations to Consolidated Non-GAAP Operating Income from Continuing Operations" table. This non-GAAP presentation reflects the Misco Germany operations as discontinued operations for all periods presented. Additional non-GAAP adjustments for executive separation and transition costs, intangible amortization and equity compensation are made to continuing operations. Management's Discussion and Analysis that follows will include our current and discontinued operations.

### **Continuing Operations**

The Company sells a wide array of industrial and general business hard goods and supplies and to a lesser extent products that would fall into the generally recognizable category of maintenance, repair and operational ("MRO") products, which are marketed in North America. Many of these products are manufactured by other companies. Some products are manufactured for us and sold under our brand as a white label product, and some are manufactured to our own design and marketed under the trademarks: *Global*<sup>TM</sup>, *GlobalIndustrial.com*<sup>TM</sup>, *Nexel*<sup>TM</sup>, *Paramount*<sup>TM</sup> and *Interion*<sup>TM</sup>.

See Note 3 to the condensed consolidated financial statements for additional financial information about our business' geographic operations.

### **Discontinued Operations**

As disclosed above, the operating results of discontinued operations in the accompanying financial statements are primarily from the France business sold in August 2018 and the NATG business sold in 2015.

### **Operating Conditions**

The North American industrial products market is highly fragmented and we compete against multiple distribution channels. Industrial products distribution is working capital intensive, requiring us to incur significant costs associated with the warehousing of many products, including the costs of maintaining inventory, leasing warehouse space, inventory management systems and employing personnel to perform the associated tasks. We supplement our on-hand product availability by maintaining relationships with major distributors and manufacturers, utilizing a combination of stock and drop-shipment fulfillment.

The primary component of our operating expenses historically has been employee-related costs, which includes items such as wages, commissions, bonuses, employee benefits and equity based compensation, as well as marketing expenses, primarily comprised of digital marketing spend, and occupancy related charges associated with our distribution and call center facilities. We continually assess our operations to ensure that they are efficient, aligned with market conditions and responsive to customer needs.

In the discussion of our results of operations, constant currency refers to the adjustment of the results of our foreign operations to exclude the effects of period to period fluctuations in currency exchange rates.

The discussion of our results of operations and financial condition that follows will provide information that will assist in understanding our financial statements, the factors that we believe may affect our future results and financial condition as well as information about how certain accounting principles and estimates affect the consolidated financial statements. This discussion should be read in conjunction with the condensed consolidated financial statements included herein and in conjunction with the audited financial statements as of December 31, 2018 and the other information provided in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018.

### **Critical Accounting Policies and Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements, and revenues and expenses during the period. Significant accounting policies employed by the Company, including the use of estimates, were presented in the Notes to Consolidated Financial Statements of the Company's 2018 Annual Report on Form 10-K.

Critical accounting policies are those that are most important to the presentation of our financial condition and results of operations, require management's most difficult, subjective and complex judgments, and involve uncertainties. The accounting policies that have been identified as critical to our business operations and understanding the results of operations pertain to revenue recognition; accounts receivable and allowance for doubtful accounts; inventory valuation; right of use assets; goodwill and intangible assets; long-lived assets; income taxes; and special charges. The application of each of these critical accounting policies and estimates was discussed in Item 7 of the Company's Annual Report on Form 10-K for the year ended December 31, 2018. There have been no significant changes in the application of critical accounting policies or estimates during 2019. Management believes that full consideration has been given to all relevant circumstances that we may be subject to, and the condensed consolidated financial statements of the Company accurately reflect management's best estimate of the consolidated results of operations, financial position and cash flows of the Company for the periods presented. Because of the uncertainty in these estimates, actual results could differ from estimates used in applying the critical accounting policies. We are not aware of any reasonably likely events or circumstances which would result in different amounts being reported that would materially affect the Company's financial condition or results of operations.

Public companies in the United States are subject to the accounting and reporting requirements of various authorities, including the Financial Accounting Standards Board ("FASB") and the Securities and Exchange Commission ("SEC"). These authorities issue numerous pronouncements, most of which are not applicable to the Company's current or reasonably foreseeable operating structure. See Note 1 of the condensed consolidated financial statements, *Recent Accounting Pronouncements*.

### **Highlights from Q2 2019 and Year to Date Q2 2019**

The discussion of our results of operations and financial conditions that follows will provide information that will assist in understanding our financial statements and information about how certain accounting principles and estimates affect the condensed consolidated financial statements included herein.

- Consolidated sales increased 7.5% to \$248.6 million for the second quarter ended June 30, 2019 compared to \$231.2 million in 2018 and increased 8.4% to \$480.8 million for the six months ended June 30, 2019 compared to \$443.4 million in 2018.
- On a constant currency basis, average daily sales increased 7.8% for the second quarter ended June 30, 2019 compared to 2018 and increased 8.7% for the six months ended June 30, 2019 compared to 2018.
- Consolidated operating income grew 9.3% to \$20.0 million for the second quarter ended June 30, 2019 compared to \$18.3 million in 2018 and grew 12.9% to \$33.2 million for the six months ended June 30, 2019 compared to \$29.4 million in 2018.
- Net income per diluted share from continuing operations grew 11.4% to \$0.39 for the second quarter ended June 30, 2019 compared to \$.35 in 2018 and grew 13.8% to \$0.66 for the six months ended June 30, 2019 compared to \$0.58 in 2018.

**GAAP Results of Operations**

**Three and Six Months Ended June 30, 2019 compared to the Three and Six Months Ended June 30, 2018**

Key Performance Indicators\* (in millions):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2019	2018	% Change	2019	2018	% Change
<i>Net sales of continuing operations:</i>						
Consolidated net sales	\$ 248.6	\$ 231.2	7.5 %	\$ 480.8	\$ 443.4	8.4 %
Consolidated gross profit	\$ 86.0	\$ 80.0	7.5 %	\$ 166.3	\$ 152.5	9.0 %
<i>Consolidated gross margin</i>	<i>34.6 %</i>	<i>34.6 %</i>	<i>0.0 %</i>	<i>34.6 %</i>	<i>34.4 %</i>	<i>0.2 %</i>
Consolidated SD&A costs	\$ 66.0	\$ 61.7	7.0 %	\$ 133.1	\$ 123.1	8.1 %
Consolidated SD&A costs as a % of net sales	26.5%	26.7%	(0.2)%	27.7%	27.8%	(0.1)%
Consolidated operating income	\$ 20.0	\$ 18.3	9.3 %	\$ 33.2	\$ 29.4	12.9 %
<i>Consolidated operating margin from continuing operations</i>	<i>8.0 %</i>	<i>7.9 %</i>	<i>0.1 %</i>	<i>6.9 %</i>	<i>6.6 %</i>	<i>0.3 %</i>
Effective income tax rate	25.9%	26.8%	(0.9)%	25.2%	24.6%	0.6 %
Net income from continuing operations	\$ 14.9	\$ 13.4	11.2 %	\$ 24.9	\$ 22.1	12.7 %
<i>Net margin from continuing operations</i>	<i>6.0 %</i>	<i>5.8 %</i>	<i>0.2 %</i>	<i>5.2 %</i>	<i>5.0 %</i>	<i>0.2 %</i>
Net income (loss) from discontinued operations	\$ (0.3)	\$ 4.8	(106.3)%	\$ (0.6)	\$ 10.7	(105.6)%

\*excludes discontinued operations (See Note 4 of Notes to Condensed Consolidated Financial Statements).

**SYSTEMAX INC.**

**Reconciliation of Consolidated GAAP Operating Income from Continuing Operations to Consolidated Non-GAAP Operating Income from Continuing Operations – Unaudited**  
(in millions)

	Three Months Ended June 30,		Change	Six Months Ended June 30,		Change
	2019	2018	2019 vs. 2018	2019	2018	2019 vs. 2018
<b>GAAP:</b>						
Net sales	\$ 248.6	\$ 231.2	7.5%	480.8	443.4	8.4%
Average daily sales*	3.9	3.6	7.8%	3.8	3.5	8.7%
Operating income	20.0	18.3	9.3%	33.2	29.4	12.9%
<b>Operating margin%</b>	8.0%	7.9%		6.9%	6.6%	
<b>Non-GAAP adjustments:</b>						
Executive separation & transition costs	0.4	0.0		1.0	0.0	
Stock based compensation	1.3	0.2		2.4	0.5	
Intangible amortization	0.1	0.2		0.1	0.5	
Reverse results of Germany included in GAAP continuing operations	0.1	0.0		0.1	0.0	
<b>Total Non-GAAP Adjustments:</b>	1.9	0.4		3.6	1.0	
<b>Non-GAAP operating income</b>	<b>\$ 21.9</b>	<b>\$ 18.7</b>	<b>17.1%</b>	<b>\$ 36.8</b>	<b>\$ 30.4</b>	<b>21.1%</b>
<b>Non-GAAP Operating Margin %</b>	<b>8.8%</b>	<b>8.1%</b>		<b>7.6%</b>	<b>6.9%</b>	

\* Average daily sales is calculated based upon the number of selling days in each period, converted to US Dollars on a constant currency basis. In Q2 2019 and 2018 there were 64 selling days in the U.S and for the first six months of 2019 and 2018 there were 128 selling days. In Canada there were 63 selling days in Q2 2019 and 64 selling days in Q2 2018 and for the first six months of 2019 and 2018 there were 126 selling days.

- 1 On August 31, 2018, the Company closed on the sale of the France operations. Results of this divested business have been classified as discontinued operations for all periods presented. On March 24, 2017, the Company closed on the sale of its European Technology Group businesses, other than its operations in France. Prior year results of these divested businesses have been classified as discontinued operations. On December 1, 2015 the Company closed on the sale of certain assets of its North American Technology Group ("NATG"). Pursuant to this transaction, the Company continues to wind down the remaining operations of NATG during 2019. Costs of the wind down in the second quarter and six months ended June 30, 2019 and 2018 are included within discontinued operations.
- 2 In order to provide more meaningful information to investors, the Company is presenting its operating income and operating margin on a non-GAAP basis in the "Reconciliation of Consolidated GAAP Operating Income from Continuing Operations to Consolidated Non-GAAP Operating Income from Continuing Operations" table. This non-GAAP presentation reflects the Misco Germany operations as discontinued operations for all periods presented. Additional non-GAAP adjustments for executive separation and transition costs, intangible amortization and equity compensation are made to continuing operations.
- 3 Systemax manages its business and reports using a 52-53 week fiscal year that ends at midnight on the Saturday closest to December 31. For clarity of presentation, fiscal years and quarters are described as if they ended on the last day of the respective calendar month. The actual fiscal quarter ended on June 29, 2019 and June 30, 2018. The second quarters of both 2019 and 2018 included 13 weeks and the first six months of 2019 and 2018 included 26 weeks.

Management's discussion and analysis that follows will include current operations and discontinued operations. The discussion is based upon the GAAP Results of Operations table.

#### *NET SALES*

The Company's net sales benefited during the quarter ended June 30, 2019 from continued strong demand across the business with solid performance across sales channels, specifically managed sales, where we continue to invest in sales productivity and training initiatives. Revenue performance was broad based across product categories, with growth continuing to be led by newer product lines where we are investing in subject matter expertise, sales training and an expanding product offering. Net sales also benefited from above market growth in our Canada business which delivered its tenth consecutive quarter of double digit growth. Canada sales were up approximately 16% in local currency on an average daily sales basis for the quarter and six months ended June 30, 2019 compared to the same period in 2018. U.S. revenue was up 7.5% in the quarter ended June 30, 2019 compared to the same period in 2018 and up 8.4% for the six months ended June 30, 2019. On a constant currency basis, average daily sales increased 7.8% for the second quarter of 2019 compared to the same period in 2018 and increased 8.7% for the six months ended June 30, 2019. In the U.S., there were 64 selling days in the second quarter of 2019 and 2018 and 128 selling days for the six months ended June 30, 2019 and 2018. In Canada there were 63 selling days in the second quarter of 2019 and 64 selling days in the second quarter of 2018 and 126 selling days for the six months ended June 30, 2019 and 2018.

#### *GROSS MARGIN*

Gross margin is dependent on variables such as product mix including sourcing and category, competition, pricing strategy, cooperative advertising funds classified as a reduction to cost of sales, free freight and freight discounting arrangements, inventory valuation and obsolescence and other variables, any or all of which may result in fluctuations in gross margin.

Gross margin was unchanged in the second quarter of 2019 compared to the second quarter of 2018 reflecting proactive management of our inventory, purchasing and sell prices as the Company addressed the 10% tariffs, enacted in September 2018, which were levied by the U.S. on products imported from China. Gross margin increased 20 basis points for the six months ended June 30, 2019 compared to 2018. The Company is managing the latest round of tariffs which increased to 25% in June 2019 in a similar fashion to how it managed the initial tariffs. The Company continues to believe that any impact will be gradual as it monitors sell prices in the market, continues to work with suppliers to mitigate costs, and actively reviews its supply chain.

#### *SELLING, DISTRIBUTION AND ADMINISTRATIVE EXPENSES ("SD&A")*

SD&A costs as a percentage of sales was 26.5% in the second quarter of 2019 compared to 26.7% for the same period in 2018. Included in the second quarter of 2019 was approximately \$0.4 million of executive separation and transition expense. Excluding these expenses, SD&A improved 30 basis points as a percentage of sales compared to the prior year. This improvement was primarily the result of improved efficiencies across our operations, including marketing spend. In the second quarter of 2019, the significant cost increases were increased salary and related costs of approximately \$3.0 million, of which \$0.4 million related to executive separation and transition costs previously mentioned and increased net internet advertising spend of approximately \$1.0 million and increased contract services costs of approximately \$0.2 million and approximately \$0.4 million of costs associated with our new distribution center offset by savings in telephony and consulting fees of approximately \$0.2 million. For the six months ended June 30, 2019 SD&A costs as a percentage of sales was 27.7% compared to 27.8% for the same period in 2018. Included in the first six months of 2019 was approximately \$1.0 million of executive separation and transition costs and \$0.6 million of equity compensation expense related to the repricing of stock options. Excluding these expenses, SD&A for the first six months of 2019 improved 40 basis points as a percentage of sales compared to the same period in 2018. The significant cost increases for the six months ended June 30, 2019 were increased salary and related costs of approximately \$6.8 million, of which \$1.6 million related to executive separation and transition costs previously mentioned, increased net internet advertising spend of approximately \$1.5 million, increased contract services costs of approximately \$0.7 million and approximately \$0.4 million of costs associated with our new distribution center.

#### *DISCONTINUED OPERATIONS AND SPECIAL CHARGES (GAINS)*

The Company's discontinued operations include the results of the France business sold in August 2018, the SARL Businesses sold in March 2017 and the NATG business sold in December 2015 (See Note 1).

Total special charges and gains included in discontinued operations totaled \$0.2 million gain for the second quarter of 2019, \$0.1 million gain for the six months ended June 30, 2019 and a \$0.7 million gain for the six months ended June 30, 2018.

*OPERATING MARGIN*

Operating margin for the three and six months ended June 30, 2019 increased by 10 basis points and 30 basis points, respectively, compared to the same period in 2018. The increase was driven by increased sales and freight margin, improved leverage within our fixed cost structure and good spend discipline in regards to marketing and general operating expenses.

*INTEREST AND OTHER (INCOME) EXPENSE, NET*

Interest and other (income) expense, net from continuing operations was \$0.1 million income in the second quarter and six months ended June 30, 2019 compared to \$0.0 and \$0.1 million expense in the second quarter and six months ended June 30, 2018.

*INCOME TAXES*

For the quarter ended June 30, 2019 the Company recorded income taxes in continuing operations of approximately \$5.2 million, for an effective tax rate of 25.9%. For the first six months of 2019 the Company reported income taxes in continuing operations of approximately \$8.4 million, for an effective tax rate of 25.2%. Tax expense is related to the Company's U.S. and India operations and certain U.S. states. The Company's tax expense for the first six months of 2019 was favorably impacted by tax benefits of approximately \$0.3 million related to stock-based compensation.

For Canadian tax purposes, the Company continues to carry a full valuation allowance against its deferred tax assets in Canada in 2019, including its net operating losses, and no tax expense has been recorded.

**Financial Condition, Liquidity and Capital Resources**

The following tables present selected liquidity data and historical cash flows (in millions):

*Selected liquidity data*

	<b>June 30, 2019</b>	<b>December 31, 2018</b>	<b>\$ Change</b>
Cash	\$ 90.8	\$ 295.4	\$ (204.6)
Accounts receivable, net	\$ 96.2	\$ 84.1	\$ 12.1
Inventories	\$ 101.4	\$ 107.3	\$ (5.9)
Prepaid expenses and other current assets	\$ 4.7	\$ 10.6	\$ (5.9)
Accounts payable	\$ 116.8	\$ 101.1	\$ 15.7
Dividend payable	\$ 0.0	\$ 243.5	\$ (243.5)
Accrued expenses and other current liabilities	\$ 39.7	\$ 35.0	\$ 4.7
Operating lease liabilities	\$ 11.4	\$ 0.0	\$ 11.4
Working capital	\$ 125.2	\$ 117.8	\$ 7.4

*Historical Cash Flows*

	<b>Six Months Ended June 30,</b>	
	<b>2019</b>	<b>2018</b>
Net cash provided by (used in) operating activities from continuing operations	\$ 50.1	\$ 18.0
Net cash provided by (used in) provided by operating activities from discontinued operations	\$ 0.1	\$ (1.7)
Net cash used in investing activities from continuing operations	\$ (2.4)	\$ (1.1)
Net cash used in investing activities from discontinued operations	\$ 0.0	\$ (0.3)
Net cash used in financing activities from continuing operations	\$ (252.3)	\$ (101.5)
Effects of exchange rates on cash	\$ (0.1)	\$ (1.0)
Net decrease in cash and cash equivalents	\$ (204.6)	\$ (87.6)

Our primary liquidity needs are to support working capital requirements in our business, including the start up costs for our new Texas distribution center anticipated to commence operations in the third quarter of 2019, funding recently declared and any future dividends, funding capital expenditures, continued investment in upgrading and expanding our technological capabilities and information technology infrastructure and funding acquisitions. We rely principally upon operating cash flow to meet these needs. We believe that cash flow available from these sources and our availability under our credit facility will be sufficient to fund our working capital and other cash requirements for at least the next twelve months. We believe our current capital structure and cash resources are adequate for our internal growth initiatives. To the extent our growth initiatives expand, including major acquisitions, we may seek to raise additional capital. We believe that, if needed, we can access public or private funding alternatives to raise additional capital.

Our working capital increased \$7.4 million primarily related to net income in the first six months of 2019, increased accounts receivable balances offset by decreasing balances in inventory, prepaid and other current assets compared to increased balances in accounts payable and dividends paid in 2019, accrued expenses and the recording of \$11.4 million of current operating lease liabilities. Accounts receivable days outstanding were 35.2 in 2019 compared to 34.0 in 2018. Inventory turns were 6.0 in 2019 and 6.3 in 2018 and accounts payable days outstanding were 64.6 in 2019 compared to 72.8 in 2018. We expect that future accounts receivable, inventory and accounts payable balances will fluctuate with net sales and the product mix of our net sales.

Net cash provided by continuing operations was \$50.1 million resulting from changes in our working capital accounts, which provided \$20.2 million in cash compared to \$7.3 million used in 2018, primarily the result of the changes in accounts payable balances and additional changes in inventory balances, accrued expenses and other current and non-current liabilities. Cash generated from net income adjusted by other non-cash items provided \$29.9 million compared to \$25.3 million provided by these items in 2018, primarily related to the net income from continuing operations and increased stock-based compensation expense in 2019. In the first quarter of 2019, the Company repriced approximately 0.6 million shares of outstanding stock options and recorded approximately \$0.6 million of related compensation expense. Net cash provided by operating activities from discontinued operations was \$0.1 million for the six months ended June 30, 2019 and \$1.7 million used for the six months ended June 30, 2018.

Net cash used in investing activities from continuing operations totaled \$2.4 million, primarily related to the Company's new distribution center in Texas and other warehouse projects including wire decking, in-rack sprinkler systems and warehouse lighting. Net cash used in investing activities in 2018 totaled \$1.1 million primarily for warehouse and information technology equipment and leasehold improvements. Net cash used in investing activities from discontinued operations was zero and \$0.3 million for the six months ended June 30, 2019 and 2018, respectively.

Net cash used in financing activities totaled \$252.3 million primarily related to the payment of the special dividend declared in December 2018 of \$243.5 million and the regular quarterly dividends of \$4.5 million each. Proceeds from the issuance of common stock from employee stock purchase plan was \$0.4 million and proceeds from stock option exercises was \$0.6 million, offset by payments of payroll taxes on stock based compensation through shares withheld of \$0.8 million. In 2018, cash used in financing activities totaled \$101.5 million and included approximately \$101.1 million for dividends paid, \$0.9 million in stock option exercises offset by payments of payroll taxes on stock based compensation through shares withheld of \$1.3 million.

The Company maintains a \$75.0 million secured revolving credit facility with one financial institution, which has a five year term, maturing on October 28, 2021 and provides for borrowings in the United States. The credit agreement contains certain operating, financial and other covenants, including limits on annual levels of capital expenditures, availability tests related to payments of dividends and stock repurchases and fixed charge coverage tests related to acquisitions. The revolving credit agreement requires that a minimum level of availability be maintained. If such availability is not maintained, the Company will be required to maintain a fixed charge coverage ratio (as defined). The borrowings under the agreement are subject to borrowing base limitations of up to 85% of eligible accounts receivable and the inventory advance rate computed as the lesser of 60% or 85% of the net orderly liquidation value ("NOLV"). Borrowings are secured by substantially all of the Borrower's assets, including all accounts receivable, inventory and certain other assets, subject to limited exceptions, including the exclusion of certain foreign assets from the collateral. The interest rate under the amended and restated facility is computed at applicable market rates based on the London interbank offered rate ("LIBOR"), the Federal Reserve Bank of New York ("NYFRB") or the Prime Rate, plus an applicable margin. The applicable margin varies based on borrowing base availability. As of June 30, 2019, eligible collateral under the credit agreement was \$75.0 million, total availability was \$73.0 million, total outstanding letters of credit were \$1.3 million, excess availability was \$71.7 million and there were no outstanding borrowings. The Company was in compliance with all of the covenants of credit agreement in place as of June 30, 2019.

We also have certain obligations with various parties that include commitments to make future payments. Our principal commitments at June 30, 2019 consisted of payments under operating leases for certain of our real property and equipment and payments under employment, product and other service agreements.

Levels of earnings and cash flows are dependent on factors such as consolidated gross margin and selling, distribution and administrative costs as a percentage of sales, product mix and relative levels of domestic and foreign sales. Unusual gains or expense items, such as special (gains) charges and settlements, may impact earnings and are separately disclosed. We expect that past performance may not be indicative of future performance due to the competitive nature of our business where the need to adjust prices to gain or hold market share is prevalent.

Macroeconomic conditions, such as business and consumer sentiment, may affect our revenues, cash flows or financial condition. However, we do not believe that there is a direct correlation between any specific macroeconomic indicator and our revenues, cash flows or financial condition. We are not currently interest rate sensitive, as we have minimal debt.

The expenses and capital expenditures described above will require significant levels of liquidity, which we believe can be adequately funded from our currently available cash resources. In 2019 we anticipate capital expenditures in the range of \$5.0 to \$7.0 million, of which we are contractually committed to incur approximately \$1.5 to \$2.0 million of these expenditures.

Over the past several years we have engaged in opportunistic acquisitions, choosing to pay the purchase price in cash, and may do so in the future as favorable situations arise. However, a deep and prolonged period of reduced business spending could adversely impact our cash resources and force us to either forego future acquisition opportunities or to pay the purchase price in shares of our common stock, which could have a dilutive effect on our earnings per share. We believe that cash flows from operations and our availability under credit facilities will be sufficient to fund our working capital and other cash requirements for the next twelve months.

We maintain our cash and cash equivalents in money market funds or their equivalent that have maturities of less than three months and in non-interest bearing accounts that partially offset banking fees. As of June 30, 2019, we had no investments with maturities of greater than three months. Accordingly, we do not believe that our investments have significant exposure to interest rate risk. At June 30, 2019 cash balances held in foreign subsidiaries totaled approximately \$4.2 million. These balances are held in local country banks. The Company intends to repatriate excess foreign cash balances when available and when it is tax efficient. The Company had in excess of \$158 million of liquidity (cash and undrawn line of credit) in the U.S. as of June 30, 2019, which is sufficient to fund its U.S. operations and capital needs, including dividend payments, for the foreseeable future.

#### **Off-balance Sheet Arrangements.**

The Company has not created, and is not party to, any special-purpose or off-balance sheet entities for the purpose of raising capital, incurring debt or operating the Company's business. The Company does not have any arrangements or relationships with entities that are not consolidated into the financial statements that are reasonably likely to materially affect the Company's liquidity or the availability of capital resources.

#### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

We are exposed to market risks, which include changes in U.S. and international interest rates as well as changes in currency exchange rates (principally Canadian dollars) as measured against the U.S. dollar and each other.

The translation of the financial statements of our operations outside of the United States is impacted by movements in foreign currency exchange rates. Changes in currency exchange rates as measured against the U.S. dollar may positively or negatively affect income statement, balance sheet and cash flows as expressed in U.S. dollars. We have limited involvement with derivative financial instruments and do not use them for trading purposes. We may enter into foreign currency options or forward exchange contracts aimed at limiting in part the impact of certain currency fluctuations, but as of June 30, 2019 we had no outstanding option or forward exchange contracts.

Our exposure to market risk for changes in interest rates relates primarily to our variable rate debt. Our variable rate debt consists of short-term borrowings under our credit facilities. As of June 30, 2019, there were no outstanding balances under our variable rate credit facility. A hypothetical change in average interest rates of one percentage point is not expected to have a material effect on our financial position, results of operations or cash flows.

#### **Item 4. Controls and Procedures**

##### Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, the Company carried out an evaluation of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of June 30, 2019. Based upon this evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that the Company's disclosure controls and procedures are effective.

The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. The Company's internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the Company's assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that the Company's receipts and expenditures are being made only in accordance with authorizations of the Company's management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the Company's financial statements.

Management, including the Company's Chief Executive Officer and Chief Financial Officer, does not expect that the Company's internal controls will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of internal controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. Also, any evaluation of the effectiveness of controls in future periods are subject to the risk that those internal controls may become inadequate because of changes in business conditions, or that the degree of compliance with the policies or procedures may deteriorate.

##### **Changes in Internal Control Over Financial Reporting**

There have been no changes in the Company's internal controls over financial reporting during the quarterly period ended June 30, 2019 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

## **PART II - OTHER INFORMATION**

### **Item 1. Legal Proceedings**

The Company and its subsidiaries are from time to time involved in various lawsuits, claims, investigations and proceedings which may include commercial, employment, tax, customs and trade, customer, vendor, personal injury, creditors rights and health and safety law matters, which are handled and defended in the ordinary course of business. In addition, the Company is from time to time subjected to various assertions, claims, proceedings and requests for damages and/or indemnification concerning sales channel practices and intellectual property matters, including patent infringement suits involving technologies that are incorporated in a broad spectrum of products the Company sells or that are incorporated in the Company's e-commerce sales channels as well as trademark/copyright infringement claims. The Company is also audited by (or has initiated voluntary disclosure agreements with) various U.S. Federal and state authorities, as well as Canadian authorities, concerning potential income tax, sales tax and/or "unclaimed property" liabilities. These matters are in various stages of investigation, negotiation and/or litigation. The Company is also being audited by an entity representing 28 states seeking recovery of "unclaimed property" and has received separate demands from 20 states requesting payments of their claimed amounts. The Company is complying with the unclaimed property audit, is providing requested information and is corresponding with the states regarding possible further discussions. The Company intends to vigorously defend these matters and believes it has strong defenses. In September 2017 the Company and certain subsidiaries comprising its former NATG "Tiger" consumer electronics business were sued in United States District Court, Northern District of California by a software publisher alleging that the NATG subsidiaries violated certain contractual sales channel restrictions resulting in claims of breach of contract and trademark/copyright infringement. Although Systemax Inc. has been dismissed from the case, the Company is continuing to assess the remaining claims against and the defenses available to the remaining subsidiary defendants and related possible insurance coverage; the Company cannot predict the outcome of this matter and believes the potential damages, if any, cannot be estimated at this time.

Although the Company does not expect, based on currently available information, that the outcome in any of these matters, individually or collectively, will have a material adverse effect on its financial position or results of operations, the ultimate outcome is inherently unpredictable. Therefore, judgments could be rendered or settlements entered, that could adversely affect the Company's operating results or cash flows in a particular period. The Company regularly assesses all of its litigation and threatened litigation as to the probability of ultimately incurring a liability and records its best estimate of the ultimate loss in situations where it assesses the likelihood of loss as probable and estimable. In this regard, the Company establishes accrual estimates for its various lawsuits, claims, investigations and proceedings when it is probable that an asset has been impaired or a liability incurred at the date of the financial statements and the loss can be reasonably estimated. At June 30, 2019 the Company has established accruals for certain of its various lawsuits, claims, investigations and proceedings based upon estimates of the most likely outcome in a range of loss or the minimum amounts in a range of loss if no amount within a range is a more likely estimate. The Company does not believe that at June 30, 2019 any reasonably possible losses in excess of the amounts accrued would be material to the financial statements.

**Item 6. Exhibits**

<a href="#">10.1</a>	Lease Agreement, dated April 18, 2019, by and between Global Industrial Distribution Inc. (tenant) and HLIT II CTC 3, L.P. (landlord) (DeSoto, TX facility) (exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K).
<a href="#">31.1</a>	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
<a href="#">31.2</a>	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
<a href="#">32.1</a>	Certification of the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
<a href="#">32.2</a>	Certification of the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document



**SIGNATURES**

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

SYSTEMAX INC.

Date: August 6, 2019

By: /s/ Thomas Clark

Thomas Clark

Vice President and Chief Financial Officer

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**Section 2: EX-10.1 (EXHIBIT 10.1)**

**Exhibit 10.1**

**LEASE AGREEMENT BETWEEN**

**HLIT II CTC 3, L.P.,**

**AS LANDLORD, AND**

**GLOBAL INDUSTRIAL DISTRIBUTION INC.,**

**AS TENANT**

**DATED APRIL 18, 2019**

**CROSSROADS TRADE CENTER  
DESOTO, TEXAS**



**LEASE AGREEMENT**

THIS LEASE AGREEMENT ("**Lease**") is dated this 18th day of April, 2019, between HLIT II CTC 3, L.P., a Texas limited partnership ("**Landlord**") and GLOBAL INDUSTRIAL DISTRIBUTION INC., a Delaware corporation ("**Tenant**"). The following capitalized and bold faced terms, which have been placed at the beginning of this Lease for convenience, shall have the meaning set forth below.

- Premises:** That portion of the Building, containing approximately 489,804 square feet, as determined by Landlord and as shown on Exhibit A situated on a portion of that certain real property legally described in Exhibit A-1 attached hereto (the "**Land**").
- Building:** The building located at 2119 North I-35 E, DeSoto, Texas 75115, containing approximately 948,380 square feet and commonly known as Building 3. Landlord and Tenant stipulate that the number of square feet in the Premises and in the Building set forth above is conclusive and shall be binding upon them.
- Project:** The Building, the Land and other buildings, improvements, driveways, parking facilities, loading dock areas, roadways, any rail tracks associated with the Building and similar improvements situated on the Land and easements associated with the foregoing or the operation thereof.
- Permitted Use** General industrial/warehouse use for the purpose of receiving, storing, shipping and selling products, materials and merchandise made and/or distributed by Tenant or its affiliates, together with an approximately 5,000 square foot "will call" area for customer pick up, and for such other lawful purposes as may be incidental thereto.
- Tenant's Proportionate Share :** 51.65%
- Lease Term:** Beginning on the Commencement Date and ending on the last day of the one hundred twenty-fifth (125th) full calendar month thereafter, unless sooner terminated or extended pursuant to the terms and provisions of this Lease.
- Commencement Date:** The earliest of (a) the date Tenant occupies any portion of the Premises and begins conducting business therein; provided that Tenant's Early Entry into the Premises pursuant to Section 9 of the construction Addendum shall not constitute conduct of business for purposes of this subpart (a); (b) the date on which Landlord achieves Substantial Completion (as defined in the Construction Addendum) of the Tenant Improvements, or (c) the date Landlord would have achieved Substantial Completion but for a Tenant Delay (as defined in the Construction Addendum); provided that the Commencement Date will not occur prior to July 15, 2019.
- Base Rent:** For each month of the Lease Term, the amounts for the periods set forth in the following table:

Lease Months	Annual Rate Per Sq. Ft.	Monthly Base Rent
1 – 5	\$0.00	\$0.00
6 – 17	\$3.61	\$147,349.37
18 – 29	\$3.70	\$151,022.90
30 – 41	\$3.79	\$154,696.43
42 – 53	\$3.89	\$158,778.13
54 – 65	\$3.98	\$162,451.66
66 – 77	\$4.08	\$166,533.36
78 – 89	\$4.19	\$171,023.23
90 – 101	\$4.29	\$175,104.93

102 – 113	\$4.40	\$179,594.80
114 – 125	\$4.51	\$184,084.67

As used herein, the term “**Lease Month**” means each calendar month during the Lease Term. If the Commencement Date does not occur on the first day of a calendar month, the period from the Commencement Date to the first day of the next calendar month (the “**Partial Month**”) shall be included in the first Lease Month for purposes of determining the duration of the Lease Term; provided that, for purposes of payment of Base Rent, the Partial Month shall not be included with the first (1<sup>st</sup>) Lease Month and Tenant shall pay Base Rent and Operating Expenses for the Partial Month at the rate payable for the sixth (6th) Lease Month, prorated appropriately.

**Initial Estimated Monthly Operating Expense Payments** (estimates only and subject to adjustment to actual costs and expenses according to the provisions of this Lease):

Expense	Annual Estimate Per Sq. Ft.	Monthly Estimate
Utilities:	To be paid separately in accordance with Section 7 below.	
Common Area Maintenance:	\$0.20	\$ 8,163.40
Insurance:	\$0.07	\$ 2,857.19
Taxes:	\$0.95	\$ 38,776.15
<b>Estimated Total:</b>	\$1.22	\$ 49,796.74

**Initial Monthly Base Rent and Operating Expense Payments:** \$197,146.11

**Security Deposit:** \$233,881.41

**Guarantor:** Global Industrial Holdings LLC, a Delaware limited liability company. Concurrent with Tenant’s execution and delivery of this Lease, Tenant shall cause Guarantor to execute and deliver a guaranty in favor of Landlord in the form attached hereto as Exhibit G (the “**Guaranty**”).

**Brokers:** Cushman & Wakefield of Texas, Inc., representing Tenant, and Jones Lang LaSalle, representing Landlord

**Tenant’s Notice Address:** Global Industrial Distribution Inc.  
11 Harbor Park Drive  
Port Washington, NY 11050  
Attention: General Counsel  
Telephone: 516-608-7606

**Landlord’s Notice Address:** HLIT II CTC 3, L.P.  
c/o Clarion Partners  
1717 McKinney Ave., Suite 1900  
Dallas, Texas 75202-1236  
Attention: Courtney Phelps

**Addenda:** Rules and Regulations; Exhibit A (Premises); Exhibit A-1 (Legal Description of Real Property); Exhibit B (Construction Addendum); Exhibit C (Space Plan); Exhibit D (Commencement Date Agreement); Exhibit E (Renewal Option); Exhibit F (Tenant’s Parking Spaces and Tenant’s Trailer Spaces); and Exhibit G (Guaranty)

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## LEASE

1. **Granting Clause.** In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants, and conditions hereof, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises, to have and to hold for the Lease Term, subject to the terms, covenants and conditions of this Lease.

2. **Acceptance of Premises.** Except as may otherwise be expressly provided in a Construction Addendum attached hereto as Exhibit B, Tenant shall accept the Premises on the Commencement Date in its “**AS-IS, WHERE-IS**” condition, subject to all applicable laws, ordinances, regulations, covenants and restrictions, and Landlord shall have no obligation to perform or pay for any repair or other work therein. Landlord has made no representation or warranty as to the suitability of the Premises for the conduct of Tenant’s business, and Tenant waives any implied warranty that the Premises are suitable for Tenant’s intended purposes. **TENANT ACKNOWLEDGES THAT (a) IT HAS INSPECTED AND ACCEPTS THE PREMISES IN AN “AS-IS, WHERE-IS” CONDITION (EXCEPT AS EXPRESSLY PROVIDED IN THE CONSTRUCTION ADDENDUM ATTACHED HERETO AS EXHIBIT B), (b) THE BUILDINGS AND IMPROVEMENTS COMPRISING THE PREMISES ARE SUITABLE FOR THE PURPOSE FOR WHICH THE PREMISES ARE LEASED AND LANDLORD HAS MADE NO WARRANTY, REPRESENTATION, COVENANT, OR AGREEMENT WITH RESPECT TO THE SUITABILITY, HABITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE PREMISES, (c) THE PREMISES ARE IN GOOD AND SATISFACTORY CONDITION, (d) NO REPRESENTATIONS AS TO THE REPAIR OF THE PREMISES, NOR PROMISES TO ALTER, REMODEL OR IMPROVE THE PREMISES HAVE BEEN MADE BY LANDLORD (EXCEPT AS EXPRESSLY PROVIDED IN THE CONSTRUCTION ADDENDUM ATTACHED HERETO AS EXHIBIT B), AND (e) THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, THAT EXTEND BEYOND THE DESCRIPTION OF THE PREMISES. TENANT HEREBY WAIVES ANY WARRANTY OF CONDITION OR HABITABILITY, SUITABILITY FOR OCCUPANCY, USE OR HABITATION, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, EXPRESS OR IMPLIED, RELATING TO THE PREMISES. Tenant has not relied on any representations or warranties not expressly set forth in this Lease.** Except as provided in Section 10 and Exhibit B, in no event shall Landlord have any obligation for any defects in the Premises or any limitation on its use. The taking of possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken except for items that are Landlord’s responsibility under Section 10 and Exhibit B.

3. **Use.**

(a) Subject to Tenant’s compliance with all zoning ordinances and Legal Requirements (as hereinafter defined), the Premises shall be used only for the Permitted Use and for such other lawful purposes as may be incidental thereto. Tenant shall not conduct or give notice of any auction, liquidation, or going out of business sale on the Premises. Tenant will use the Premises in a careful, safe and proper manner and will not commit waste, overload the floor or structure of the Premises or subject the Premises to use that would damage the Premises. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise, or vibrations to emanate from the Premises, or take any other action that would constitute a nuisance or would disturb, unreasonably interfere with, or endanger Landlord or any tenants of the Project. Outside storage, including storage of trucks and other vehicles, is prohibited without Landlord’s prior written consent, with the exception of the trailer parking as noted herein. As used in this Lease, “**including**” and “**include**” shall always mean “without limitation.”

(b) Tenant, at its sole expense, shall use and occupy the Premises in compliance with all laws, including the Americans With Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to Tenant’s use and occupancy of the Premises (collectively, “**Legal Requirements**”). The Premises shall not be used as a place of public accommodation under the Americans With Disabilities Act or similar state statutes or local ordinances or any regulations promulgated thereunder, all as may be amended from time to time. Tenant shall, at its expense, make any alterations or modifications, within or without the Premises, that are required by Legal Requirements related to Tenant’s specific use or occupation of the Premises. Tenant will not use or permit the Premises to be used for any purpose or in any manner that would void Tenant’s or Landlord’s insurance, increase the insurance risk, or cause the disallowance of any sprinkler credits. If any

increase in the cost of any insurance on the Premises or the Project is caused by Tenant's use or occupation of the Premises, or because Tenant vacates the Premises, then Tenant shall pay the amount of such increase to Landlord. Any entrance into or occupation of the Premises by Tenant prior to the Commencement Date shall be subject to all obligations of Tenant under this Lease, subject to Tenant's early access rights as set forth in Section 9 of Exhibit B. Tenant represents and warrants to Landlord that Tenant is currently in compliance with and shall at all times during the Lease Term (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Assets Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

(c) Tenant and its employees and invitees shall have the non-exclusive right to use, in common with others, any areas designated by Landlord from time to time as common areas for the use and enjoyment of all tenants and occupants of the Project, subject to such reasonable rules and regulations as Landlord may promulgate from time to time. Under no circumstances shall the right therein granted to use the common areas be deemed to include the right to store any property, temporarily or permanently, in the common areas. Landlord or such other person(s) as Landlord may appoint shall have the exclusive control and management of the common areas.

**4. Base Rent.** Tenant shall pay Base Rent in the amounts in the table of Base Rent set forth on the first page of this Lease. The Base Rent payable for the sixth (6th) Lease Month, the Security Deposit, and the first monthly installment of estimated Operating Expenses (as hereafter defined) shall be due and payable on the date hereof, and Tenant promises to pay to Landlord in advance, without demand, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month succeeding the sixth (6th) Lease Month in accordance with the table of Base Rent set forth on the first page of this Lease. Payments of Base Rent for any fractional calendar month shall be prorated. All payments required to be made by Tenant to Landlord hereunder shall be payable at such address as Landlord may specify from time to time by written notice delivered in accordance herewith. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any rent due hereunder except where expressly provided in this Lease. Tenant acknowledges that late payment by Tenant to Landlord of any rent due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to determine. Therefore, if Tenant is delinquent in any monthly installment of Base Rent, estimated Operating Expenses or other sums due and payable hereunder for more than seven (7) days, Tenant shall pay to Landlord on demand a late charge equal to five percent (5%) of such delinquent sum; provided, however, Tenant shall not incur such late charge with respect to the first late payment during any calendar year so long as Tenant pays the amount due within ten (10) days after receipt of written notice that such payment was not made when due. In addition, all payments required of Tenant hereunder which are more than 30 days past due shall bear interest from the date due until paid at the lesser of fifteen percent or the maximum lawful rate of interest. The parties agree that such late charge and interest represent a fair and reasonable estimate of the costs that Landlord will incur by reason of such late payment by Tenant. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as a penalty. Additionally, Tenant shall pay to Landlord all sales, use, transaction privilege, or other excise tax that may at any time be levied or imposed upon, or measured by, any amount payable by Tenant under this Lease.

**5. Security Deposit.** The Security Deposit shall be held by Landlord as security for the performance of Tenant's obligations under this Lease. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Upon each occurrence of an Event of Default (hereinafter defined), Landlord may use all or part of the Security Deposit to pay delinquent payments due under this Lease, and the cost of any damage, injury, expense or liability caused by such Event of Default, without prejudice to any other remedy provided herein or provided by law. Tenant shall pay Landlord on demand the amount that will restore the Security Deposit to its original amount. Any such restoration payment which is not paid within ten days after Landlord's written demand therefor shall bear interest from the date of such written demand until paid at the lesser of fifteen percent or the maximum lawful rate of interest. The parties agree that such interest represents a fair and reasonable estimate of the costs that Landlord will incur by reason of such late payment by Tenant. The provision for such interest shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as a penalty. Landlord's obligation

respecting the Security Deposit is that of a debtor, not a trustee; no interest shall accrue thereon. If Tenant shall perform all of its obligations under this Lease and return the Premises to Landlord at the end of the Lease Term in the condition required upon surrender pursuant to the terms of this Lease, Landlord shall return all of the Security Deposit remaining after deducting all damages, charges and other amounts permitted by law to Tenant within thirty (30) days after the end of the Lease Term. Landlord and Tenant agree that such deductions shall include all damages and losses that Landlord has suffered or that Landlord reasonably estimates that it will suffer as a result of any breach of this Lease by Tenant. If Landlord transfers its interest in the Premises Landlord shall assign the Security Deposit to the transferee and, upon such transfer and the delivery to Tenant of an acknowledgement of the transferee's responsibility for the Security Deposit as provided by law, Landlord thereafter shall have no further liability for the return of the Security Deposit.

#### **6. Operating Expense Payments.**

(a) During each month of the Lease Term (including during the initial four (4) Lease Months), on the same date that Base Rent is due, Tenant shall pay Landlord an amount equal to 1/12 of the annual cost, as estimated by Landlord from time to time, of Tenant's Proportionate Share (hereinafter defined) of Operating Expenses for the Project. Payments thereof for any fractional calendar month shall be prorated.

(b) The term "**Operating Expenses**" means all costs and expenses incurred by Landlord with respect to the ownership, maintenance, and operation of the Project including, but not limited to costs of: Common Area utilities; maintenance, repair and replacement of all portions of the Project, including paving and parking areas, roads, roofs (including roof membrane) (except that Landlord is responsible for replacement of the roof as provided in Section 10, Tenant being responsible only for Tenant's Proportionate Share of the cost of roof repairs), alleys, and driveways; mowing, snow removal, landscaping, and exterior painting; the cost of maintaining utility lines, fire sprinklers and fire protection systems, exterior lighting and mechanical and building systems serving the Building or Project; amounts paid to contractors and subcontractors for work or services performed in connection with any of the foregoing; charges or assessments of any association or any restrictive covenants to which the Project is subject; fees payable to tax consultants and attorneys for consultation and contesting taxes; environmental insurance or environmental management fees; the cost of any insurance deductibles for insurance maintained by Landlord with respect to the Project; property management fees payable to a property manager (not to exceed 3% of the gross revenue from the Project), including any affiliate of Landlord, or if there is no property manager, an administration fee not to exceed 3% of the gross revenue from the Project payable to Landlord; security services, if any; and additions or alterations made by Landlord to the Project or the Building in order to comply with Legal Requirements (other than those expressly required herein to be made by Tenant) or that are appropriate to the continued operation of the Project or the Building for the Permitted Use in the market area, provided that the cost of such additions or alterations that are required to be capitalized for federal income tax purposes shall be amortized on a straight line basis over a period equal to the useful life thereof for federal income tax purposes and included in Operating Expenses only to the extent of the amortized amount for the respective calendar year. In addition, Operating Expenses shall include (A) Taxes (hereinafter defined) for each calendar year during the Lease Term, and (A) the cost of insurance maintained by Landlord for the Project for each calendar year during the Lease Term.

(c) Notwithstanding the foregoing, Operating Expenses do not include (A) costs, expenses, depreciation or amortization for capital repairs and capital replacements required to be made by Landlord under Section 10 of this Lease; (A) debt service under mortgages or base ground rent under ground leases; (A) costs of restoration to the extent of net insurance proceeds actually received by Landlord with respect thereto; (A) leasing commissions or the costs of renovating space for tenants; (A) any costs or legal fees incurred in connection with any particular tenant; (6) interest and penalties on taxes not timely paid by Landlord; and (7) overhead or profit increments paid to any affiliates or subsidiaries of Landlord for goods or services on or to the Project, to the extent that the cost of such goods or services exceeds that which would ordinarily be charged by non-affiliated entities of similar skill, competence and experience. The cost of any repairs or replacements which are classified as capital improvements under generally accepted accounting principles shall be amortized over the useful life of the improvement and included in Operating Expenses only to the extent of the amortized amount for the respective calendar year.

(d) Following the end of each year of the Lease Term, Landlord shall deliver to Tenant a statement of actual Operating Expenses for the Project for such year. If Tenant's total payments of Operating Expenses for any year, as reflected on Landlord's statement, are less than Tenant's Proportionate Share of actual Operating Expenses for

such year, then Tenant shall pay the difference to Landlord within thirty (30) days after demand, and if more, then Landlord shall retain such excess and credit it against Tenant's next payments. For purposes of calculating Tenant's Proportionate Share of Operating Expenses, a year shall mean a calendar year except the first year, which shall begin on the Commencement Date, and the last year, which shall end on the expiration of this Lease.

(e) Tenant's Proportionate Share shall be the percentage set forth on the first page of this Lease as reasonably adjusted by Landlord in the future for changes in the physical size of the Premises or the Building. Landlord may equitably increase Tenant's Proportionate Share for any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Project or Building that includes the Premises or that varies with occupancy or use. The estimated Operating Expenses for the Premises set forth on the page ii of this Lease are only estimates, and Landlord makes no guaranty or warranty that such estimates will be accurate. The Project may be changed from time-to-time in the sole discretion of Landlord, including, but not by way of limitation, the layout, size, improvements and other characteristics of the Project.

(f) Notwithstanding the foregoing, for purposes of computing Tenant's Proportionate Share of Operating Expenses, commencing on January 1, 2021, the Controllable Operating Expenses (hereinafter defined) shall not increase by more than 8% per calendar year on a compounding and cumulative basis over the course of the remaining Lease Term. In other words, Controllable Operating Expenses for calendar year 2021 shall not exceed 108% of the Controllable Operating Expenses for calendar year 2020, and Controllable Operating Expenses for calendar year 2022 shall not exceed 108% of the limit on Controllable Operating Expenses for calendar year 2021, etc. By way of illustration, if Controllable Operating Expenses were \$1.00 per square foot for calendar year 2020, then Controllable Operating Expenses for calendar year 2021 shall not exceed \$1.08 per square foot, and Controllable Operating Expenses for calendar year 2022 shall not exceed \$1.1664 per square foot. "**Controllable Operating Expenses**" shall mean all Operating Expenses exclusive of (i) the cost of wages and salaries to the extent of increases in minimum wage required by federal or state law or to the extent of increases required by a collective bargaining agreement, (ii) the cost of utilities, (iii) the cost of insurance, (iv) taxes and assessments and governmental charges, (v) fees for management services (subject to the 3% cap set forth in Section 6(b) above), and (vi) costs incurred to comply with Legal Requirements. Notwithstanding anything to the contrary herein, if any portion of the Project is not fully operational during calendar year 2020, then for purposes of determining the cap on Controllable Operating Expenses, the Operating Expenses for calendar year 2020 shall be annualized to the amount of Operating Expenses that would have been incurred had the Project been fully operational under normal operating conditions for such year.

## 7. Utilities.

(a) Tenant shall timely pay for all water, gas, electricity, heat, light, power, telephone, sewer, sprinkler services, refuse and trash collection, and other utilities and services used on the Premises, all maintenance charges for utilities, and any storm sewer charges or other similar charges for utilities imposed by any governmental entity or utility provider, together with any taxes, penalties, surcharges or the like pertaining to Tenant's use of the Premises. As part of the Tenant Improvements, Landlord shall cause the gas and electrical service to the Premises to be separately metered. All separately metered utilities will be charged directly to Tenant by the provider. Tenant shall pay its share of all charges for jointly metered utilities based upon consumption, as reasonably determined by Landlord. Tenant agrees to limit use of water and sewer for normal restroom use and warehouse floor cleaning. No interruption or failure of utilities shall result in the termination of this Lease or the abatement of rent or result in any liability of Landlord. Tenant, at Tenant's sole cost and expense, shall contract directly with a janitorial service and shall pay for all janitorial services used on or for the Premises. Landlord shall have no obligations whatsoever in connection therewith.

(b) Notwithstanding anything to the contrary contained in this Lease, Tenant agrees that Landlord, at its election, may contact any utility company providing utility services to the Premises in order to obtain data on the energy being consumed by the occupant of the Premises. Furthermore, Tenant agrees to provide Landlord with Tenant's energy consumption data within thirty (30) days after Landlord's request for the same. Tenant acknowledges that pursuant to applicable Legal Requirements, Landlord may be required to disclose information concerning Tenant's energy usage at the Building to certain third parties, including, without limitation, prospective purchasers, lenders and tenants of the Project (the "**Tenant Energy Use Disclosure**"). Tenant hereby (A) consents to all such Tenant Energy Use Disclosures, and (B) acknowledges that Landlord shall not be required to notify Tenant of

any Tenant Energy Use Disclosure. Tenant agrees to take such further actions as are necessary in order to further the purpose of this paragraph, including, without limitation, providing to Landlord the names and contact information for all utility providers serving the Premises, copies of utility bills, written authorization from Tenant to any such utility company to release information to Landlord, and any other relevant information reasonably requested by Landlord or the applicable utility company.

**8. Taxes.** Landlord shall timely pay all taxes, assessments, special assessments, improvement districts, and governmental charges (collectively referred to as “**Taxes**”) that either (a) accrue against the Project during the Lease Term if such Taxes are payable in advance, or (a) are assessed against the Project during the Lease Term if such Taxes are payable in arrears. Taxes shall be included as part of the Operating Expenses charged to Tenant pursuant to Section 6 hereof during each year of the Lease Term, based upon Landlord’s reasonable estimate of the amount of Taxes, and shall be subject to reconciliation and adjustment pursuant to Section 6 once the actual amount of Taxes is known. Taxes shall include any increase in any of the foregoing based upon construction of improvements on the Project or changes in ownership (as defined in applicable laws), and notwithstanding anything to the contrary herein, Taxes shall include the Texas margin tax and/or any other business tax imposed under Texas Tax Code Chapter 171 and/or any successor statutory provision. Landlord may contest by appropriate legal proceedings the amount, validity, or application of any Taxes or liens thereof and any costs incurred in such contest may be included as part of Taxes. All capital levies or other taxes assessed or imposed upon the rents payable to Landlord under this Lease and any franchise tax, any excise, transaction, sales, business & occupation, or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the Project or any portion thereof shall be paid by Tenant to Landlord monthly in estimated installments or upon demand, at the option of Landlord, as additional rent; provided, however, in no event shall Tenant be liable for any net income taxes imposed on Landlord unless such net income taxes are in substitution for any Taxes payable hereunder. If any such tax or excise is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in the Premises, whether levied or assessed against Landlord or Tenant, and if any such taxes are levied or assessed against Landlord or Landlord’s property and Landlord pays them or the assessed value of Landlord’s property is increased thereby and Landlord pays the increased taxes, then Tenant shall pay to Landlord such taxes within ten (10) days after Landlord’s request therefor. For property tax purposes, **TENANT WAIVES ALL RIGHTS TO PROTEST OR APPEAL THE APPRAISED VALUE OF THE PREMISES, AS WELL AS THE PROJECT, AND ALL RIGHTS TO RECEIVE NOTICES OF REAPPRAISEMENT, AS SET FORTH IN SECTIONS 41.413 AND 42.015 OF THE TEXAS TAX CODE.**

**9. Insurance.**

(a) Landlord shall obtain and maintain the following: A) causes of loss – special form property insurance covering the full replacement cost of the Building (excluding foundations), less a commercially reasonable deductible if Landlord so chooses; and A) commercial general liability insurance, which shall be in such amount as Landlord so determines and shall be in addition to, and not in lieu of, any insurance required to be maintained by Tenant. Subject to the provisions of Section 9(d) below, Landlord shall not insure any furniture, equipment, trade fixtures, machinery, goods, or supplies which Tenant may keep or maintain in the Premises or any alteration, addition, or improvement which Tenant may make upon the Premises. In addition, Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, flood insurance and rent loss insurance. The premiums for all such insurance shall be included as part of the Operating Expenses charged to Tenant pursuant to Section 6 hereof. The Project or Building may be included in a blanket policy (in which case the cost of such insurance allocable to the Project or Building will be determined by Landlord based upon the insurer’s cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance that Landlord reasonably deems necessary as a result of Tenant’s use of the Premises. Tenant shall not be named as an additional insured on any policy of liability insurance maintained by Landlord.

(b) Effective as of the earlier of: A) the date Tenant enters or occupies the Premises; or A) the Commencement Date, and continuing during the Lease Term, Tenant, at its expense, shall obtain and maintain in full force the following insurance coverage (subject to increases in coverage amounts and additional types of coverage, as reasonably determined by Landlord from time to time):

(A) causes of loss – special form property insurance including theft, sprinkler leakage and boiler and machinery coverage, covering the full replacement cost of all property and improvements (including the Tenant Improvements and Tenant-Made Alterations) installed or placed in the Premises by Tenant or for Tenant’s benefit or which is required by the terms of this Lease to be maintained by Tenant, and containing ordinance or law coverage. Tenant shall use the proceeds from such insurance for the replacement of trade fixtures, furniture, inventory and other personal property and for the restoration of Tenant’s improvements, alterations, and additions to the Premises. Landlord shall be named as loss payee with respect to alterations, additions, or improvements of the Premises;

(B) worker’s compensation insurance in accordance with the laws of the state in which the Premises are located, with employer’s liability insurance in an amount not less than \$1,000,000;

(C) business income and extra expense insurance covering failure of Tenant’s equipment and covering all periods of interruption, with limits not less than one hundred percent (100%) of all charges payable by Tenant under this Lease for a period of twelve (12) months;

(D) business automobile liability insurance covering owned, hired and non-owned vehicles with limits of \$1,000,000 combined single limit per occurrence;

(E) commercial general liability insurance on the most current ISO Form CG 00 01 or equivalent which insures against claims for bodily injury, personal injury, advertising injury, and property damage occurring in or about the Premises. Such commercial general liability insurance shall afford, at a minimum, the following limits: each occurrence: \$1,000,000; general aggregate: \$2,000,000 per location; products/completed operations aggregate: \$1,000,000; personal and advertising injury liability: \$1,000,000; fire damage: \$100,000; fire legal liability: \$100,000; medical payments: \$5,000. Such commercial general liability insurance shall name Landlord, its trustees, officers, directors, members, agents, and employees, Landlord’s mortgagees, and Landlord’s representatives, as additional insureds. This coverage shall include blanket contractual liability, broad form property damage liability, premises-operations and products-completed operations and shall contain an exception to any pollution exclusion which insures damage or injury arising out of heat, smoke, or fumes from a hostile fire, a contractual liability endorsement, and provide primary coverage to Landlord (any policy issued to Landlord providing duplicate or similar coverage shall be deemed excess over Tenant’s policies). Such insurance shall be written on an occurrence and not a claims-made basis and contain a standard separation of insureds provision; and

(F) umbrella/excess liability insurance, on an occurrence basis, that applies in excess of the required commercial general liability, business automobile liability, and employer’s liability policies with a minimum limit of \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate. These limits shall be in addition to and not including those stated for the underlying commercial general liability, business automobile liability, and employer’s liability insurance required herein. Such umbrellas/excess liability policies shall contain an endorsement stating that any entity qualifying as an additional insured on the insurance stated in the Schedule of Underlying Insurance shall be an additional insured on the umbrella/excess liability policies, and that they apply immediately upon exhaustion of the insurance stated in the Schedule of Underlying Insurance as respects the coverage afforded to any additional insured. The umbrella/excess liability policies shall also provide that they apply before any other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured on which the additional insured is a named insured (which shall include any self-insurance), and that the insurer will not seek contribution from such insurance.

(c) All policies required to be carried by Tenant hereunder shall be issued by and binding upon an insurance company licensed to do business in the state in which the Premises is located with a rating of at least "A-: X" or better as set forth in the most current issue of Best's Insurance Reports, unless otherwise approved by Landlord in writing. Tenant shall not do or permit anything to be done that would invalidate the insurance policies required herein. Liability insurance maintained by Tenant shall be primary coverage without right of contribution by any similar insurance that may be maintained by Landlord. Certificates of insurance, acceptable to Landlord, evidencing the existence and amount of each insurance policy required hereunder (or, at Landlord's option, copies of the policies evidencing coverage ) shall be delivered to Landlord prior to delivery or possession of the Premises and within ten (10) days following each renewal date. Certificates of insurance shall include an endorsement for each policy showing that Landlord, its trustees, officers, directors, members, agents, and employees, Landlord's mortgagees, and Landlord's representatives are included as additional insureds on liability policies and that Landlord is named as loss payee on the property insurance as stated in Section 9(b)(1) above. Further, the certificates must include an endorsement for each policy whereby the insurer agrees not to cancel, non-renew, or materially alter the policy without at least fifteen (15) days' prior written notice to Landlord.

(d) In the event that Tenant fails to comply with the foregoing insurance requirements or to timely deliver to Landlord copies of such policies and certificates evidencing the coverage required herein, Landlord, in addition to any remedy available pursuant to this Lease or otherwise, may, but shall not be obligated to, obtain such insurance and Tenant shall pay to Landlord on demand all costs thereof, plus an administrative fee of fifteen percent (15%) of such costs.

(e) The limits of insurance required by this Lease, or as carried by Tenant, shall not limit the liability of the party responsible therefore or relieve such party of any obligation thereunder. The amount of any deductibles selected by Tenant shall be subject to Landlord's approval and payment of such deductibles shall be the sole responsibility of Tenant.

(f) Should Tenant engage the services of any contractor to perform work in the Premises, Tenant shall ensure that such contractor carries commercial general liability (including completed operations coverage for a period of three (3) years following completion of the work), business automobile liability, umbrella/excess liability, worker's compensation and employers liability coverages in substantially the same amounts as are required of Tenant under this Lease. Such contractor shall name Landlord, its trustees, officers, directors, members, agents and employees, Landlord's mortgagees and Landlord's representatives as additional insureds on the liability policies required hereunder.

All policies required to be carried by any such contractor shall be issued by and binding upon an insurance company licensed to do business in the state in which the Premises is located with a rating of at least "A-: X" or better as set forth in the most current issue of Best's Insurance Reports, unless otherwise approved by Landlord. Certificates of insurance, acceptable to Landlord, evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord prior to the commencement of any work in the Premises. Further, the certificates must include an endorsement for each policy whereby the insurer agrees not to cancel, non-renew, or materially alter the policy without at least thirty (30) days' prior written notice to Landlord. The above requirements shall apply equally to any subcontractor engaged by contractor.

(g) The property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, their officers, directors, employees, managers, agents, invitees and contractors, in connection with any loss or damage thereby insured against. The failure of a party to insure its property shall not void this waiver. Notwithstanding anything to the contrary contained herein, Tenant hereby waives and releases any claims against Landlord, and its officers, directors, employees, managers, agents, invitees and contractors for any loss or damage to Tenant's property which is insured against or required to be insured against by Tenant hereunder (whether by self-insurance or otherwise), **REGARDLESS OF WHETHER THE NEGLIGENCE OR FAULT OF LANDLORD CAUSED SUCH LOSS**. Landlord hereby waives and releases any claims against Tenant, and its officers, directors, employees, managers, agents, invitees and contractors (collectively, "**Tenant-Related Parties**") for any loss or damage to Landlord's property which is insured against by Landlord or required to be insured against hereunder, **REGARDLESS OF WHETHER THE NEGLIGENCE OR FAULT OF TENANT CAUSED SUCH LOSS**; however, deductible amounts paid under

Landlord's insurance shall be included in Operating Expenses. The foregoing waivers and releases shall not apply to losses or damages in excess of actual or required policy limits, whichever is greater. Landlord and its officers, directors, employees, managers, agents, invitees and contractors shall not be liable for, and Tenant hereby waives all claims against such parties for, business interruption and losses occasioned thereby sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises or the Project from any cause whatsoever, **REGARDLESS OF WHETHER THE NEGLIGENCE OR FAULT OF LANDLORD CAUSED SUCH LOSS**. The waivers set forth in this Section 9(g) shall be in addition to, and not in substitution for, any other waivers, indemnities, or exclusions of liabilities set forth in this Lease.

**10. Landlord's Repairs.** This Lease is intended to be a net lease; accordingly, Landlord's maintenance and repair obligations are limited to the replacement and repair of the Building's roof structure and membrane and maintenance of the foundation piers and structural members of the exterior walls, reasonable wear and tear and uninsured losses and damages caused by Tenant or a Tenant-Related Party excluded. The term "walls" as used in this Section 10 shall not include windows, window frames, glass or plate glass, doors or overhead doors, door frames, special store fronts, dock bumpers, dock plates or levelers, or office entries, all of which shall be maintained by Tenant. Tenant shall promptly give Landlord written notice of any repair required by Landlord pursuant to this Section 10, after which Landlord shall have a reasonable opportunity to repair such item. Landlord shall also maintain in good repair and condition the parking areas and other common areas of the Building, including, but not limited to driveways, alleys, landscape and grounds surrounding the Premises, the cost of such maintenance, repair and replacement to be paid in accordance with Section 6 hereof.

**11. Tenant's Repairs.**

(a) Subject to Landlord's obligation in Section 10, Tenant, at its sole expense, shall repair, replace and maintain in good condition all portions of the Premises and all areas, improvements and systems exclusively serving the Premises including dock, dock equipment and loading areas, dock doors, plumbing, water, and sewer lines up to points of common connection, entries, doors, ceilings, windows, interior walls, and the interior side of demising walls, and heating, ventilation and air conditioning systems, and other building and mechanical systems serving the Premises. Such repair and replacements include capital expenditures and repairs whose benefit may extend beyond the Lease Term, subject to the terms of Section 11(d) below. Maintenance and repair of the heating, ventilation and air conditioning systems and other mechanical and building systems serving the Premises shall be at Tenant's expense pursuant to maintenance service contracts entered into by Tenant or, at Landlord's written election, by Landlord (but at Tenant's expense not to exceed the cost Tenant would reasonably be able to achieve under a separate agreement with a contractor of similar competence and experience). The scope of services and contractors under such maintenance contracts shall be subject to Landlord's prior written approval. Landlord shall assign to Tenant on a non-exclusive basis all warranties available with respect to those portions of the Premises Tenant is obligated to maintain hereunder.

(b) In the event that any repair or maintenance obligation required to be performed by Tenant hereunder may affect the structural integrity of the Building (e.g., roof, foundation, structural members of the exterior walls), prior to commencing any such repair, Tenant shall provide Landlord with written notice of the necessary repair or maintenance and a brief summary of the structural component or components of the Building that may be affected by such repair or maintenance. Within ten (10) business days after Landlord's receipt of Tenant's written notice, Landlord shall have the right, but not the obligation, to elect to cause such repair or maintenance to be performed by Landlord, or a contractor selected and engaged by Landlord, but at Tenant's sole cost and expense. The foregoing sentence is not intended to obligate Tenant to pay for repairs or maintenance to those structural items which are Landlord's responsibility pursuant to Section 10 above, but shall only require Tenant to pay for the repair and maintenance to such structural components to the extent such repair or maintenance is necessitated due to the performance of Tenant's repair and maintenance obligations pursuant to this Section 11.

(c) Within the fifteen (15) day period prior to the expiration or termination of this Lease, Tenant shall deliver to Landlord a certificate from an engineer reasonably acceptable to Landlord certifying that the hot water equipment and the HVAC system are then in good repair and working order. If Tenant fails to perform any repair or replacement for which it is responsible, Landlord may perform such work and be reimbursed by Tenant within ten (10) days after demand therefor. Subject to Sections 9 and 15, Tenant shall bear the full cost of any repair or replacement

to any part of the Building or Project that results from damage caused by Tenant or a Tenant-Related Party and any repair that benefits only the Premises.

(d) Provided that Tenant maintains the required maintenance service contract for the heating, ventilation and air conditioning systems as required above, and except for any replacements necessitated by any action or inaction of Tenant or its agents, contractors, employees, invitees, licensees, or visitors, Landlord and Tenant agree that if a heating, ventilation and air conditioning unit serving the office portion of the Premises requires replacement during the Lease Term, as reasonably determined by Landlord, Landlord shall perform such replacement; provided, however, Tenant shall reimburse Landlord within thirty (30) days after Landlord's invoice therefor for Tenant's Portion (as hereinafter defined) of such replacement costs (the "**Replacement Cost**"). "**Tenant's Portion**" shall be calculated by multiplying the Replacement Cost by a fraction, the numerator of which shall be the number of months left in the Lease Term at the time such unit is replaced, and the denominator of which shall be the number of months constituting the useful life of the new unit as determined on a commercially reasonable basis (i.e. if Landlord replaces an existing heating, ventilation and air conditioning unit with a unit having a useful life of 120 months, and there are 18 months left in the Lease Term, Tenant shall reimburse Landlord for 15% of the cost of the new unit). If Tenant fails to maintain the required maintenance service contract for the heating, ventilation and air conditioning systems in effect at any time during the Lease Term, Landlord's obligation to pay for any repair or replacement of any heating, ventilation and air conditioning unit shall terminate and be of no force or effect. If the Lease Term is subsequently extended after the initial calculation of Tenant's Portion, a separate calculation of Tenant's Portion shall be made with respect to the Replacement Cost payable by Tenant during such extended term, and Tenant shall pay such amount upon the commencement of the extended term.

## **12. Tenant-Made Alterations and Trade Fixtures.**

(a) Any alterations, additions, or improvements made by or on behalf of Tenant to the Premises ("**Tenant-Made Alterations**") shall be subject to Landlord's prior written consent. However, Landlord's consent shall not be required for any proposed Tenant-Made Alterations that satisfy all of the following criteria (a "**Cosmetic Alteration**"): (1) is not visible from the exterior of the Premises or Building; (2) will not affect the systems or structure of the Building; (3) does not require a building permit; and (4) will not cost more than \$50,000.00 in the aggregate. Except for the requirement of obtaining Landlord's prior written consent and the requirement of delivering plans to the Landlord, Cosmetic Alterations shall otherwise be subject to all the other provisions of this Section 12. Tenant shall cause, at its expense, all Tenant-Made Alterations to comply with insurance requirements and with Legal Requirements and shall construct at its expense any alteration or modification required by Legal Requirements as a result of any Tenant-Made Alterations.

(b) All Tenant-Made Alterations shall be constructed in a good and workmanlike manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Tenant-Made Alterations shall be submitted to Landlord for its approval. Landlord may monitor construction of the Tenant-Made Alterations. Tenant shall reimburse Landlord for its costs in reviewing plans and specifications and in monitoring construction, such monitoring costs not to exceed five percent (5%) of the total cost of such Tenant-Made Alterations. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with applicable laws, codes, rules and regulations.

(c) Tenant shall provide Landlord with the identities and mailing addresses of all contractors, subcontractors and materialmen performing work or supplying materials, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall furnish security or make other arrangements satisfactory to Landlord to assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker's compensation and other coverage in amounts and from an insurance company satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Upon completion of any Tenant-Made Alterations, Tenant shall deliver to Landlord sworn statements setting forth the names of all contractors and subcontractors who did work on the Tenant-Made Alterations and full and final lien waivers from all such contractors and subcontractors.

(d) Upon surrender of the Premises, all Tenant-Made Alterations and any leasehold improvements constructed by Landlord or Tenant shall remain on the Premises as Landlord's property, except to the extent Landlord requires removal at Tenant's expense of any such items or Landlord and Tenant have otherwise agreed in writing in connection with Landlord's consent to any Tenant-Made Alterations. Prior to the expiration or termination of this Lease, Tenant, at its sole expense, shall repair any and all damage caused by such removal and restore the Premises to their condition existing upon the later of the Commencement Date or Substantial Completion (as defined in the Construction Addendum), normal wear and tear excepted.

(e) Tenant, at its own cost and expense and without Landlord's prior approval, may erect such racking, shelves, bins, machinery and trade fixtures (collectively "**Trade Fixtures**") in the ordinary course of its business provided that such items do not alter the basic character of the Premises, do not overload or damage the Premises, and may be removed without injury to the Premises, and the construction, erection, and installation thereof complies with all Legal Requirements and with Landlord's requirements set forth above. Prior to the expiration or termination of this Lease, Tenant, at its sole expense, shall remove its Trade Fixtures and shall repair any and all damage caused by such removal. Notwithstanding the foregoing, Landlord acknowledges and agrees that Tenant's racking will be anchored to the concrete slab of the Building and that, upon Tenant vacating the Premises, these anchors will be cut flush with the slab and neither removed nor filled, and such condition shall be considered normal wear and tear.

(f) Subject to compliance with the terms and conditions of this Section 12, including obtaining Landlord's approval of the plans therefor, Landlord agrees that Tenant may install (i) security cameras and related equipment and (ii) a satellite receiver for cable television to the Premises, each located on the outside of the Premises in areas approved by Landlord.

### 13. Signs.

(a) All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises shall be subject to Landlord's prior written approval and shall conform in all respects to Landlord's requirements. Tenant shall not make any changes to the exterior of the Premises, install any exterior lights, decorations, balloons, flags, pennants, banners, or painting, or erect or install any fascia or monument signs, windows or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises, without Landlord's prior written consent. Landlord shall not be required to notify Tenant of whether it consents to any sign until it (b) has received detailed, to-scale drawings thereof specifying design, material composition, color scheme, and method of installation, and (c) has had a reasonable opportunity to review them. Upon surrender or vacation of the Premises, Tenant shall have removed all signs and repair, paint, and/or replace the building fascia surface to which its signs are attached. If Tenant constructs a Landlord-approved monument sign on the Building grounds, Landlord may elect to have Tenant leave the monument sign, in which case Tenant shall remove Tenant's sign panel from the monument sign and restore any damage caused thereby, or have Tenant remove the entire monument sign and restore the Building grounds to their prior condition. Tenant shall obtain all applicable governmental permits and approvals for sign and exterior treatments.

(a) So long as (i) Tenant is in occupancy of the Premises; and (ii) Tenant has not assigned the Lease or sublet any part of the Premises, Tenant shall have the right, at Tenant's expense, to install a corporate identification sign on the exterior of the Building above the entry to the Premises (the "**Building Sign**"); provided that (i) Tenant obtains all necessary approvals from any governmental authorities having jurisdiction over Tenant, the Project, or the Building Sign, (ii) the Building Sign conforms to all applicable laws, rules and regulations of any governmental authorities having jurisdiction over the Building Sign or the Project and all restrictive covenants applicable to the Project, (iii) the Building Sign conforms to the signage specifications for the Project, and (iv) Tenant obtains Landlord's written consent, which consent shall not be unreasonably withheld, to any proposed signage and lettering prior to its fabrication and installation. To obtain Landlord's consent, Tenant shall submit design drawings to Landlord showing the type and sizes of all lettering; the colors, finishes and types of materials used. Tenant shall pay all costs associated with the Building Sign, including without limitation, installation expenses, maintenance and repair costs, utilities and insurance. Tenant agrees that, subject to inclusion in Operating Expenses, Landlord shall have the right to temporarily remove and replace the Building Sign in connection with and during the course of any repairs, changes, alterations,

modifications, renovations or additions to the Project. Tenant shall maintain the Building Sign in good condition. Upon expiration or earlier termination of the Lease, Tenant shall, at its sole cost and expense, remove the Building Sign, and repair all damage caused by such removal. If during the Term (y) Tenant vacates the Premises for a period of 90 or more consecutive days; or (z) Tenant assigns the Lease or subleases the entire Premises, then Tenant's rights granted herein with respect to the Building Sign will terminate and Landlord may remove the Building Sign at Tenant's sole cost and expense.

**14. Parking.** Tenant shall be entitled to the exclusive use of (a) the two hundred nineteen (219) vehicular parking spaces identified as "Tenant's Parking Spaces" on Exhibit F attached hereto and (b) the fifty-one (51) trailer parking spaces identified as "Tenant's Trailer Spaces" on Exhibit F attached hereto. Within the "Tenant Parking Spaces" Tenant shall have the right to dedicate certain parking spaces with signage for management, employee of the month etc., provided that Tenant obtains Landlord's prior approval of such signage, which approval shall not be unreasonably withheld. Landlord reserves the right to initiate steps to control the parking utilization through gates, access cards, hang-tags or other means as appropriate. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties, provided that if any other tenants of the Project are interfering with Tenant's parking rights hereunder, Landlord shall use commercially reasonable efforts to cause such interference to stop. All motor vehicles (including all contents thereof) shall be parked in the Project's parking areas at the sole risk of Tenant, it being expressly agreed and understood Landlord has no duty to insure any of said motor vehicles (including the contents thereof), and Landlord is not responsible for the protection and security of such vehicles. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY PROPERTY DAMAGE OR LOSS WHICH MIGHT OCCUR ON THE PARKING AREAS OR AS A RESULT OF OR IN CONNECTION WITH THE PARKING OF MOTOR VEHICLES IN ANY OF THE PARKING SPACES.

**15. Restoration.**

(a) If at any time during the Lease Term the Premises are damaged by a fire or other casualty, Landlord shall notify Tenant within forty-five (45) days after such damage as to the amount of time Landlord reasonably estimates it will take to restore the Premises. If the restoration time is estimated to exceed 180 days from the date Landlord receives all permits, approvals, and licenses required to begin reconstruction, either Landlord or Tenant may elect to terminate this Lease upon notice to the other party given no later than thirty (30) days after Landlord's notice. If neither party elects to terminate this Lease or if Landlord estimates that restoration will take 180 days or less, then, subject to receipt of sufficient insurance proceeds, Landlord shall promptly restore the Premises excluding the improvements installed by Tenant or by Landlord and paid by Tenant, subject to delays arising from the collection of insurance proceeds or from Force Majeure events. Tenant at Tenant's expense shall promptly perform, subject to delays arising from (i) the collection of insurance proceeds, (ii) Force Majeure events, or (iii) delays in Landlord's restoration obligations, all repairs or restoration not required to be done by Landlord and shall promptly re-enter the Premises and commence doing business in accordance with this Lease. Notwithstanding the foregoing, either party may terminate this Lease upon thirty (30) days written notice to the other if the Premises are damaged during the last year of the Lease Term and Landlord reasonably estimates that it will take more than thirty (30) days to repair such damage.

(b) If the Premises are destroyed or substantially damaged by any peril not covered by the insurance maintained by Landlord or any Landlord's mortgagee requires that insurance proceeds be applied to the indebtedness secured by its mortgage (defined hereinafter), Landlord may terminate this Lease by delivering written notice of termination to Tenant within thirty (30) days after such destruction or damage or such requirement is made known by any such Landlord's mortgagee, as applicable, whereupon all rights and obligations hereunder shall cease and terminate, except for any liabilities of Tenant which accrued prior to Lease termination.

(c) If such damage or destruction is caused by the act(s) or omission(s) of Tenant or a Tenant-Related Party, Tenant shall pay to Landlord with respect to any damage to the Premises and/or Project the amount of the commercially reasonable deductible under Landlord's insurance policy within ten (10) days after presentment of Landlord's invoice. Base Rent shall be abated for the period of repair and restoration in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises; provided, however, that Tenant shall not be entitled to any abatement of Base Rent in the event such damage or destruction resulted from the gross negligence or willful misconduct of Tenant or a Tenant-Related Party. Such abatement, if any, shall be the sole

remedy of Tenant, and except as provided herein, Tenant waives any right to terminate the Lease by reason of damage or casualty loss.

**16. Condemnation.** If any part of the Premises or the Project should be taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a “**Taking**” or “**Taken**”), and (a) the Taking would prevent or materially interfere with Tenant’s use of the Premises, (a) in Landlord’s judgment would materially interfere with or impair its ownership or operation of the Project or (a) as a result of such Taking, Landlord’s mortgagee accelerates the payment of any indebtedness securing all or a portion of the Project, then upon written notice by Landlord this Lease shall terminate and Base Rent shall be apportioned as of said date. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, the Base Rent payable hereunder during the unexpired Lease Term shall be reduced to such extent as may be fair and reasonable under the circumstances, and Landlord shall restore the Premises to its condition prior to the Taking; provided, however, Landlord’s obligation to so restore the Premises shall be limited to the award Landlord receives in respect of such Taking that is not required to be applied to the indebtedness secured by a mortgage. In the event of any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant’s interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord’s award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant’s Trade Fixtures, if a separate award for such items is made to Tenant. This Section 16 shall be Tenant’s sole and exclusive remedy in the event of any taking and Tenant hereby waives any rights and the benefits of any statute granting Tenant specific rights in the event of a Taking which are inconsistent with the provisions of this Section 16.

**17. Assignment and Subletting.**

(a) Without Landlord’s prior written consent, Tenant shall not assign this Lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises (each being a “**Transfer**”) and any attempt to do any of the foregoing shall be void and of no effect. For purposes of this Section 17, a transfer of the ownership interests controlling Tenant shall be deemed a Transfer of this Lease unless such ownership interests are publicly traded. Notwithstanding the above, Tenant may assign or sublet the Premises, or any part thereof, to any entity controlling, controlled by, or under common control with the original Tenant named herein (a “**Tenant Affiliate**”) having a Tangible Net Worth not less than the Tangible Net Worth of Tenant as of the date hereof, without the prior written consent of Landlord; provided, however, Tenant shall provide at least ten (10) days written notice prior to assigning this Lease to, or entering into any sublease with, any Tenant Affiliate and shall include all documentation establishing the Tenant Affiliate’s Tangible Net Worth in such notice. “**Tangible Net Worth**” means the excess of total assets over total liabilities, in each case as determined in accordance with generally accepted accounting principles consistently applied (“**GAAP**”), excluding, however, from the determination of total assets all assets which would be classified as intangible assets under GAAP including goodwill, licenses, patents, trademarks, trade names, copyrights, and franchises. Any subsequent Transfer by a Tenant Affiliate shall be subject to the terms of this Section 17. Tenant shall reimburse Landlord for Landlord’s reasonable out-of-pocket expenses in connection with any Transfer, other than to a Tenant Affiliate; provided that such reimbursement shall not exceed \$1,500 for any one request so long as Tenant does not request any changes to this Lease or to Landlord’s standard form of consent. Upon Landlord’s receipt of Tenant’s written notice of a desire to assign this Lease or sublet the entire Premises (other than to a Tenant Affiliate), Landlord may, by giving written notice to Tenant within thirty (30) days after receipt of Tenant’s notice, terminate this Lease with respect to the space described in Tenant’s notice, as of the date specified in Tenant’s notice for the commencement of the proposed assignment or sublease. Tenant acknowledges and agrees that Landlord may withhold its consent to any proposed assignment or subletting for any reasonable basis including, but not limited to: A) Tenant is in default of this Lease; A) an assignee is unwilling to assume in writing all of Tenant’s obligations hereunder; A) the assignee or subtenant has a financial condition which is reasonably unsatisfactory to Landlord or Landlord’s mortgagee; A) the Premises will be used for different purposes than those set forth in Section 3(a) or for a use requiring or generating any Hazardous Substance, or A) the proposed assignee or subtenant or an affiliate thereof is an existing tenant in the Project or is or has been in discussions with Landlord regarding space within the Project.

(b) Notwithstanding any Transfer, Tenant and any guarantor or surety of Tenant's obligations under this Lease shall at all times remain fully responsible and liable for the payment of the rent and for compliance with all of Tenant's other obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such Transfer). In the event that the rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus the rent payable under the remaining portion of the Premises, and any bonus or other consideration therefor or incident thereto) exceeds the rental payable under this Lease after deducting reasonable out-of-pocket third party transaction expenses including commissions, legal fees and costs of improvements (which rental shall be calculated on a per square foot basis if less than the entire Premises is subleased), then Tenant shall be bound and obligated to pay Landlord as additional rent hereunder fifty percent (50%) of all such excess rental and other excess consideration, together with all sales, use, transaction privilege, or other excise tax that may at any time be levied or imposed upon said excess rental and other excess consideration, within ten (10) days following receipt thereof by Tenant.

(c) If this Lease is assigned or if the Premises is subleased (whether in whole or in part) or in the event of the mortgage, pledge, or hypothecation of Tenant's leasehold interest or grant of any concession or license within the Premises or if the Premises be occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder Landlord may collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and, except to the extent set forth in the preceding subsection, apply the amount collected to the next rent payable hereunder; and all such rentals collected by Tenant shall be held in trust for Landlord and immediately forwarded to Landlord. No such transaction or collection of rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder. Any approved assignment or sublease shall be expressly subject to the terms and conditions of this Lease. Landlord's consent to any Transfer shall not waive Landlord's rights as to any subsequent Transfers. Notwithstanding anything to the contrary contained in this Lease, if Tenant or any proposed transferee claims that Landlord has unreasonably withheld or delayed its consent under this Section 17 or otherwise has breached or acted unreasonably under this Section 17, their sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives all other remedies, including any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed transferee.

**18. Indemnification.** To the fullest extent permitted by law, and subject to the provisions of Section 9(g) hereof, Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Landlord) and hold harmless Landlord, and Landlord's agents, employees and contractors, from and against any and all claims, demands, losses, liabilities, causes of action, suits, judgments, damages, costs and expenses (including attorneys' fees through all levels of proceedings) arising from any occurrence on the Premises, the use and occupancy of the Premises, or from any activity, work, or thing done, permitted or suffered by Tenant or any Tenant-Related Party in or about the Premises or due to any other act or omission of Tenant or a Tenant-Related Party (other than any loss arising from the sole or gross negligence of Landlord or its agents), **EVEN THOUGH CAUSED OR ALLEGED TO BE CAUSED BY THE JOINT, COMPARATIVE, OR CONCURRENT NEGLIGENCE OR FAULT OF LANDLORD OR ITS AGENTS, AND EVEN THOUGH ANY SUCH CLAIM, CAUSE OF ACTION, OR SUIT IS BASED UPON OR ALLEGED TO BE BASED UPON THE STRICT LIABILITY OF LANDLORD OR ITS AGENTS. THIS INDEMNITY PROVISION IS INTENDED TO INDEMNIFY LANDLORD AND ITS AGENTS AGAINST THE CONSEQUENCES OF THEIR OWN NEGLIGENCE OR FAULT AS PROVIDED ABOVE WHEN LANDLORD OR ITS AGENTS ARE JOINTLY, COMPARATIVELY, OR CONCURRENTLY NEGLIGENT WITH TENANT.** This indemnity provision shall survive termination or expiration of this Lease. The furnishing of insurance required hereunder shall not be deemed to limit Tenant's obligations under this Section 18.

**19. Inspection and Access.** Landlord and its agents, representatives, and contractors may enter the Premises at any reasonable time with at least 48 hours advance written notice to Tenant (or at anytime and without notice in the event of an emergency) to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Such notice shall include the date, time and purpose of the intended entry. Landlord and Landlord's representatives may enter the Premises during business hours (with at least 48 hours advance written notice to Tenant) for the purpose of showing the Premises to prospective purchasers, lenders or, during the last year of the Lease Term, to prospective tenants. Landlord may erect a suitable sign on the Premises stating the Premises are available to let or that the Project is available for sale. Landlord may grant easements, make

public dedications, designate common areas and create restrictions on or about the Premises, provided that no such easement, dedication, designation or restriction materially interferes with Tenant's use or occupancy of the Premises. At Landlord's request, Tenant shall execute such instruments as may be necessary for such easements, dedications or restrictions.

**20. Quiet Enjoyment.** If Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of this Lease, any ground lease, mortgage or deed of trust now or hereafter encumbering the Premises and all matters of record, at all times during the Lease Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord, but not otherwise.

**21. Surrender.** No act by Landlord shall be an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by Landlord. Upon termination of the Lease Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, broom clean, ordinary wear and tear and casualty loss and condemnation covered by Sections 15 and 16 excepted. Tenant shall give written notice to Landlord at least thirty (30) days prior to vacating the Premises and shall meet with Landlord for a joint inspection of the Premises at the time of vacating. In the event of Tenant's failure to give such notice or to participate in such joint inspection, Landlord's inspection shall be deemed conclusive for purposes of determining Tenant's responsibility for repairs and restoration. No such performance by Landlord shall create any liability on the part of Landlord whatsoever. Any Trade Fixtures, Tenant-Made Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property. All obligations of Tenant hereunder not fully performed as of the termination of the Lease Term shall survive the termination of the Lease Term, including indemnity obligations, payment obligations with respect to Operating Expenses and all obligations concerning the condition and repair of the Premises. If Tenant fails to perform any obligation prior to the expiration or earlier termination of this Lease, Landlord may, but shall not be obligated to, perform such obligation and Tenant shall pay Landlord all costs associated therewith, plus an administrative fee of 10% of such costs, promptly upon Landlord's delivery to Tenant of an invoice therefor, and any time required by Landlord to complete such obligations shall be considered a period of holding over and the terms of Section 22 shall apply. Notwithstanding any provision or inference to the contrary herein contained, in the event that Tenant fails to deliver to Landlord (and surrender possession of) all of the Premises upon the expiration or earlier termination of this Lease (or the applicable portion of the Premises if this Lease expires or terminates as to only a portion of the Premises) on the date of expiration or earlier termination, then Landlord may, without judicial process and without notice of any kind, immediately enter upon and take absolute possession of the Premises or applicable portion thereof, expel or remove Tenant and any other person or entity who may be occupying the Premises or applicable portion thereof, change the locks to the Premises or applicable portion thereof (in which event, Tenant shall have no right to any key for the new locks), and take any other actions as are necessary for Landlord to take absolute possession of the Premises or applicable portion thereof. The foregoing rights are without prejudice and in addition to, and shall not in any way limit Landlord's rights under, Section 22 below.

**22. Holding Over.** If Tenant fails to vacate the Premises after the termination of the Lease Term, Tenant shall be, at Landlord's sole election, a tenant at will or at sufferance, and Tenant shall pay, in addition to any other rent or other sums then due Landlord, a daily base rental equal to 125% of the Base Rent in effect on the expiration or termination date for the first two holdover months and 150% thereafter, even if Landlord consents to such holdover (which consent shall be effective only if in writing). Tenant shall also be liable for all Operating Expenses incurred during such holdover period. In addition, Tenant shall be liable for all damages (including attorneys' fees and expenses through all levels of proceedings) of whatever type (including consequential damages) incurred by Landlord as a result of such holding over. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Section 22 shall not be construed as consent for Tenant to retain possession of the Premises.

**23. Events of Default.** Each of the following events shall be an event of default ("**Event of Default**") by Tenant under this Lease:

(a) Tenant shall fail to pay any installment of Base Rent or any other payment required herein when due, and such failure shall continue for a period of seven (7) days from the date such payment was due; provided that the first such failure during any calendar year shall not be an Event of Default if Tenant pays the amount due within ten (10) days after Tenant's receipt of written notice that such payment was not made when due.

(b) Tenant or any guarantor or surety of Tenant's obligations hereunder shall A) make a general assignment for the benefit of creditors; A) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "**Proceeding for Relief**"); A) become the subject of any Proceeding for Relief which is not dismissed within sixty (60) days of its filing or entry; or A) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).

(c) Any insurance required to be maintained by Tenant pursuant to this Lease shall be cancelled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease.

(d) For a period of ninety (90) days or greater, Tenant shall fail to occupy or shall abandon or vacate the Premises or shall fail to continuously operate its business at the Premises for the Permitted Use set forth herein without providing notice to Landlord, whether or not Tenant is in monetary or other default under this Lease.

(e) Tenant shall attempt or there shall occur any assignment, subleasing or other transfer of Tenant's interest in or with respect to this Lease except as otherwise permitted in this Lease.

(f) Tenant shall fail to discharge or bond over any lien placed upon the Premises in violation of this Lease within thirty (30) days after receiving written notice of any such lien or encumbrance being filed against the Premises.

(g) Tenant shall fail to execute any instrument of subordination or attornment or any estoppel certificate within the time periods set forth in Sections 27 and 29 respectively following Landlord's request for the same.

(h) Tenant shall breach any of the requirements of Section 30 and such failure shall continue for a period of five (5) days or more after notice from Landlord to Tenant.

(i) Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Section 23, and except as otherwise expressly provided herein, such default shall continue for more than thirty (30) days after Landlord shall have given Tenant written notice of such default.

(j) The failure of Tenant or a Tenant-Related Party to observe or comply with any of the rules and regulations of the Project as the same may be amended from time to time, and such failure shall continue for five (5) days or more after written notice from Landlord to Tenant; provided, however, that if Tenant or a Tenant-Related Party shall breach the same rule or regulation more than two (2) times in any twelve (12) month period, then the third (3rd) such violation shall be deemed an Event of Default (without any notice).

#### **24. Landlord's Remedies.**

(a) Upon each occurrence of an Event of Default and so long as such Event of Default shall be continuing, Landlord may at any time thereafter at its election: (A) terminate this Lease, (A) terminate Tenant's right of possession, (but Tenant shall remain liable as hereinafter provided), (A) perform Tenant's obligations and Tenant shall pay to Landlord, as additional rent, Landlord's costs incurred to perform the same, plus an administrative fee equal to 15% of such costs, and/or (A) pursue any other remedies available to Landlord at law or in equity. Upon the termination of this Lease or termination of Tenant's right of possession, it shall be lawful for Landlord, without formal demand or notice of any kind, to re-enter the Premises by summary dispossession proceedings or any other action or

proceeding authorized by law and to remove Tenant and all persons and property therefrom. If Landlord re-enters the Premises, Landlord shall have the right to keep in place and use, or remove and store, at Tenant's sole cost and expense and without any liability therefor, all of the furniture, fixtures and equipment at the Premises. Tenant shall not be entitled to recover possession of the Premises, terminate this Lease, or recover any actual, incidental, consequential, punitive, statutory or other damages or award of attorneys' fees, by reason of Landlord's alteration or change of any lock or other security device and the resulting exclusion from the Premises of the Tenant or Tenant's agents, servants, employees, customers, licensees, invitees or any other persons from the Premises. Tenant acknowledges that the provisions of this subparagraph of this Lease supersede the Texas Property Code and Tenant further warrants and represents that it hereby knowingly waives any rights it may have thereunder.

(b) If Landlord terminates this Lease, Landlord may recover from Tenant the sum of: all Base Rent and all other amounts accrued hereunder to the date of such termination; the cost of reletting the whole or any part of the Premises, including brokerage fees and/or leasing commissions incurred by Landlord, and costs of removing and storing Tenant's or any other occupant's property, repairing, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant or tenants, and all reasonable expenses incurred by Landlord in pursuing its remedies, including reasonable attorneys' fees and court costs through all levels of proceedings; and an amount in cash equal to (A) the then present value of the Base Rent and other amounts payable by Tenant under this Lease as would otherwise have been required to be paid by Tenant to Landlord during the period following the termination of this Lease measured from the date of such termination to the expiration date stated in this Lease minus (A) the then present fair rental value of the Premises for such period. Such present values shall be calculated at a discount rate equal to the 90-day U.S. Treasury bill rate at the date of such termination.

(c) If Landlord terminates Tenant's right of possession (but not this Lease), then without releasing Tenant from any liability hereunder and without demand or notice of any kind to Tenant Landlord shall use reasonable efforts to relet the Premises on such terms as Landlord in its sole discretion may determine (including a term different from the Lease Term, rental concessions, and alterations to, and improvement of, the Premises); however, Landlord shall not be obligated to relet the Premises before leasing other portions of the Building and Landlord shall not be obligated to accept any prospective tenant proposed by Tenant unless such proposed tenant meets all of Landlord's leasing criteria. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or to collect rent due for such reletting. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Base Rent due hereunder. For the purpose of such reletting Landlord is authorized to make any repairs, changes, alterations, or additions in or to the Premises as Landlord deems reasonably necessary or desirable. If the Premises are not relet, then Tenant shall pay to Landlord as damages a sum equal to the amount of the rental reserved in this Lease for such period or periods, plus the cost of recovering possession of the Premises (including attorneys' fees and costs of suit through all levels of proceedings), the unpaid Base Rent and other amounts accrued hereunder at the time of repossession, and the costs incurred in any attempt by Landlord to relet the Premises. If the Premises are relet and a sufficient sum shall not be realized from such reletting [after first deducting therefrom, for retention by Landlord, the unpaid Base Rent and other amounts accrued hereunder at the time of reletting, the cost of recovering possession (including attorneys' fees and costs of suit through all levels of proceedings), all of the costs and expense of repairs, changes, alterations, and additions, the expense of such reletting (including brokerage fees and leasing commissions) and the cost of collection of the rent accruing therefrom] to satisfy the rent provided for in this Lease to be paid, then Tenant shall immediately satisfy and pay any such deficiency. Any such payments due Landlord shall be made upon demand therefor from time to time and Tenant agrees that Landlord may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect in writing to terminate this Lease for such previous breach.

(d) Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether by agreement or by operation of law. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same. Pursuit of any of the forgoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law. Tenant and Landlord further agree that

forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity shall not be a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter as provided for in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. The terms "enter," "re-enter," "entry" or "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Any reletting of the Premises shall be on such terms and conditions as Landlord in its sole discretion may determine (including a term different than the remaining Lease Term, rental concessions, alterations and repair of the Premises, lease of less than the entire Premises to any tenant and leasing any or all other portions of the Project before reletting the Premises). Landlord shall not be liable, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting.

(e) Both Landlord and Tenant shall each use commercially reasonable efforts to mitigate any damages resulting from a default of the other party under this Lease. Landlord and Tenant stipulate and agree that Landlord's obligation to mitigate damages after a default by Tenant under this Lease shall be satisfied in full if Landlord undertakes to lease the Premises to another tenant in accordance with the following criteria:

(1) Beginning no sooner than thirty (30) days after Tenant physically vacates the Premises and continuing until the Premises have been relet, Landlord (B) places a "For Lease" sign on the Premises, Building and/or at the Project, (C) markets the Premises to commercial real estate brokers, (D) includes the Premises in Landlord's inventory of available space, which is made available to commercial real estate brokers, (E) includes the Premises in Landlord's regularly published advertising, if any, of available space, and (F) shows the Premises to prospective tenants, if requested;

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

(3) Unless a court of competent jurisdiction holds in a final judgment that Landlord (L) had a duty to mitigate damages under this Lease and (M) failed to comply with the requirements of this Section 24(e) and such failure caused an avoidable and quantifiable increase in Landlord's damages, Tenant shall remain liable for Base Rent, additional rent and all costs which Landlord is entitled hereunder, as well as any and all actual, incidental, and consequential damages, court costs, interest, and attorneys' fees through all levels of proceedings arising from an Event of Default; and

(4) TO THE FULLEST EXTENT PERMITTED BY LAW, THE EXPRESS OBLIGATIONS SET FORTH IN THIS SECTION 24 (e) ARE OBJECTIVELY REASONABLE AND SATISFY ANY OBLIGATION LANDLORD MAY HAVE TO MITIGATE ITS DAMAGES.

**25. Tenant's Remedies/Limitation of Liability.** Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within thirty (30) days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of thirty (30) days, then after such period of time as is reasonably necessary). All obligations of Landlord hereunder shall be construed as covenants, not conditions; and Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. Tenant hereby waives the benefit of any laws granting it the right to perform Landlord's obligations or the right to terminate this Lease or withhold rent on account of any Landlord default. Additionally, **TENANT HEREBY WAIVES ITS STATUTORY LIEN UNDER SECTION 91.004 OF THE TEXAS**

**PROPERTY CODE.** All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term “Landlord” as used in this Lease shall mean only the owner, for the time being of the Premises, and in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Lease Term upon each new owner for the duration of such owner’s ownership. The liability of Landlord (and its partners, shareholders or members) to Tenant (or any person or entity claiming by, through or under Tenant) for any default by Landlord under the terms of this Lease or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Building or Project shall be limited to Tenant’s actual direct, but not consequential, damages therefor and shall be recoverable only from the interest of Landlord in the Building, and Landlord (and its partners, shareholders or members) shall not be personally liable for any deficiency.

**26. Waiver of Jury Trial.** TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

**27. Subordination.**

(a) This Lease and Tenant’s interest and rights hereunder are and shall be subject and subordinate at all times to the lien of any deed of trust or mortgage or any ground lease, now existing or hereafter created on or against the Project or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant. Tenant agrees, at the election of the holder of any such mortgage, to attorn to any such holder. The provisions of this Section 27 shall be self-operative and no further instrument shall be required to effect such subordination or attornment; however, Tenant agrees to execute, acknowledge and deliver such instruments, confirming such subordination and such instruments of attornment as shall be requested by any such holder within ten (10) days of such request. Tenant’s obligation to furnish each such instrument requested hereunder in the time period provided is a material inducement for Landlord’s execution of this Lease and any failure of Tenant to timely deliver each instrument shall be deemed an Event of Default. Tenant hereby appoints Landlord attorney in fact for Tenant irrevocably (such power of attorney being coupled with an interest) to execute, acknowledge and deliver any such instrument and instruments for and in the name of the Tenant if Tenant fails to execute and deliver such instrument within ten (10) days after Landlord’s written request thereof, and to cause any such instrument to be recorded.

(b) Notwithstanding the foregoing, any such holder may at any time subordinate its mortgage to this Lease, without Tenant’s consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution, delivery or recording and in that event such holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such mortgage and had been assigned to such holder. The term “mortgage” whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the “holder” of a mortgage shall be deemed to include the beneficiary under a deed of trust.

(c) Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written notice by certified mail, return receipt requested, specifying the default in reasonable detail to any mortgage holder whose address has been given to Tenant, and affording such mortgage holder a reasonable opportunity to perform Landlord’s obligations hereunder. Notwithstanding any such attornment or subordination of a mortgage to this Lease, the holder of any mortgage shall not be liable for any acts of any previous landlord, shall not be obligated to install any tenant improvements, and shall not be bound by any amendment to which it did not consent in writing nor any payment of rent made more than one month in advance.

**28. Mechanic’s Liens.** Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord or Tenant in, the Premises or the Project or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials

furnished in connection with any work performed on the Premises and that it will save and hold Landlord harmless from all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the interest of Landlord in the Premises or under this Lease. Tenant shall give Landlord immediate written notice of the placing of any lien or encumbrance against the Premises and cause such lien or encumbrance to be discharged (by payment or bond) within thirty (30) days after Tenant receives written notice of the filing or recording thereof; provided, however, Tenant may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and Tenant causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Landlord within such thirty (30) day period.

**29. Estoppel Certificates.** Tenant agrees, from time to time, within ten (10) days after request of Landlord, to execute and deliver to Landlord, or Landlord's designee, any estoppel certificate requested by Landlord, stating that this Lease is in full force and effect, the date to which rent has been paid, that Landlord is not in default hereunder (or specifying in detail the nature of Landlord's default), the termination date of this Lease and such other matters pertaining to this Lease as may be requested by Landlord. Tenant's obligation to furnish each estoppel certificate in a timely fashion is a material inducement for Landlord's execution of this Lease and any failure of Tenant to timely deliver each estoppel certificate shall be deemed an Event of Default. No cure or grace period provided in this Lease shall apply to Tenant's obligation to timely deliver an estoppel certificate. Tenant hereby irrevocably appoints Landlord as its attorney in fact to execute on its behalf and in its name any such estoppel certificate if Tenant fails to execute and deliver the estoppel certificate within ten (10) days after Landlord's written request thereof.

**30. Environmental Compliance.**

(a) The term "**Environmental Requirements**" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, permits, authorizations, orders, policies or other similar requirements of any governmental authority, agency or court regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Clean Water Act; the Toxic Substances Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Pollution Prevention Act; the Oil Pollution Act; the Emergency Planning & Community Right-to-Know Act and all state and local counterparts thereto, and any common or civil law obligations including nuisance or trespass, and any other requirements of Sections 4 and 31 of this Lease. The term "**Hazardous Substance**" means and includes any substance or material or element, compound or mixture thereof that is or could be regulated under any Environmental Requirement or that may pose a threat to human health and/or the environment, including any substance or material, any solid waste, hazardous waste, hazardous substance, chemical substance, asbestos, petroleum (including crude oil or any fraction thereof, natural gas, synthetic gas, polychlorinated biphenyls ("**PCBs**")), and/or radioactive material. For purposes of Environmental Requirements, to the extent authorized by law, Tenant is and shall be deemed to be the responsible party, including the "owner" and "operator" of Tenant's "facility" and the "owner" of all Hazardous Substances brought on the Premises by Tenant or a Tenant-Related Party, and the wastes, by-products, or residues generated, resulting, or produced therefrom.

(b) Except for Hazardous Substances contained in sealed products sold by Tenant, and Hazardous Substances in *de minimis* quantities for ordinary cleaning and office purposes, Tenant shall not permit or cause any party to bring any Hazardous Substance upon the Premises or the Project or transport, store, use, generate, manufacture, dispose, or release any Hazardous Material on or from the Premises or the Project without Landlord's prior written consent. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and all requirements of this Lease. Tenant shall complete and certify to disclosure statements as requested by Landlord from time to time relating to Tenant's transportation, storage, use, generation, manufacture, disposal or release of Hazardous Substances on the Premises, and Tenant shall promptly deliver to Landlord a copy of any notice of violation relating to the Premises or Project of any Environmental Requirement.

(c) Tenant, at its sole cost and expense, shall remove all Hazardous Substances stored, disposed of or otherwise released by Tenant or a Tenant-Related Party onto or from the Premises, in a manner and to a level satisfactory to Landlord in its sole discretion, but in no event to a level and in a manner less than that which complies with all Environmental Requirements and does not limit any future uses of the Premises or require the recording of any deed restriction or notice regarding the Premises, unless specifically authorized in advance by the Landlord in writing. Tenant shall perform such work at any time during the period of the Lease upon written request by Landlord

or, in the absence of a specific request by Landlord, before Tenant's right to possession of the Premises terminates or expires. If Tenant fails to perform such work within the time period specified by Landlord or before Tenant's right to possession terminates or expires (whichever is earlier), Landlord may at its sole discretion, and without waiving any other remedy available under this Lease or at law or equity (including an action to compel Tenant to perform such work), perform such work at Tenant's cost. Tenant shall pay all costs incurred by Landlord in performing such work, plus an administrative fee of 15% of such costs, within ten (10) days after Landlord's request therefor. Such work performed by Landlord is on behalf of Tenant and Tenant remains the owner, generator, operator, transporter, and/or arranger of the Hazardous Substances for purposes of Environmental Requirements. Tenant agrees not to enter into any agreement with any person, including any governmental authority, regarding the removal of Hazardous Substances that have been disposed of or otherwise released onto or from the Premises without the prior written approval of the Landlord.

(d) Tenant shall indemnify, defend, and hold harmless Landlord, its agents and employees from and against any and all losses (including diminution in value of the Premises or the Project and loss of rental income from the Project), claims, demands, actions, suits, damages (including punitive damages), expenses (including remediation, removal, repair, corrective action, or cleanup expenses), and costs (including reasonable attorneys' fees through all levels of proceedings, consultant fees and/or expert fees and including removal or management of any asbestos brought into the Premises or disturbed in breach of the requirements of this Section 30, regardless of whether such removal or management is required by law) which are brought or recoverable against, or suffered or incurred by Landlord as a result of any release of Hazardous Substances or any breach of the requirements under this Section 30 by Tenant or a Tenant-Related Party regardless of whether Tenant had knowledge of such noncompliance and **REGARDLESS OF WHETHER SUCH NONCOMPLIANCE IS ALLEGED TO BE CAUSED BY THE JOINT, COMPARATIVE, OR CONCURRENT NEGLIGENCE OF LANDLORD, ITS AGENTS OR EMPLOYEES**. The obligations of Tenant under this Section 30 shall survive any termination of this Lease.

(e) Landlord shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Requirements, its obligations under this Section 30, or the environmental condition of the Premises. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for all of Landlord's costs of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant. Tenant shall promptly notify Landlord of any communication or report that Tenant makes to any governmental authority regarding any possible violation of Environmental Requirements or release or threat of release of any Hazardous Substance onto or from the Premises. Tenant shall, within five (5) days of receipt thereof, provide Landlord with a copy of any documents or correspondence received from any governmental agency or other party relating to a possible violation of Environmental Requirements or claim or liability associated with the release or threat of release of any Hazardous Substance onto or from the Premises.

(f) In addition to all other rights and remedies available to Landlord under this Lease or otherwise, Landlord may, in the event of a breach of the requirements of this Section 30 that is not cured within thirty (30) days following notice of such breach by Landlord, require Tenant to provide financial assurance (such as insurance, escrow of funds or third party guarantee) in an amount and form satisfactory to Landlord. The requirements of this Section 30 are in addition to and not in lieu of any other provision in the Lease.

**31. Rules and Regulations.** Tenant shall, at all times during the Lease Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises and the Project. The current rules and regulations are attached hereto. In the event of any conflict between said rules and regulations and other provisions of this Lease, the other terms and provisions of this Lease shall control. Landlord shall not have any liability or obligation for the breach of any rules or regulations by other tenants in the Project.

32. **Security Service.** Tenant acknowledges and agrees that, while Landlord may (but shall not be obligated to) patrol the Project, Landlord is not providing any security services with respect to the Premises and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises.

33. **Force Majeure.** Landlord shall not be held responsible for delays in the performance of its obligations hereunder when caused by strikes, lockouts, labor disputes, acts of God, acts of terrorism, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Landlord (“**Force Majeure**”).

34. **Entire Agreement.** This Lease constitutes the complete and entire agreement of Landlord and Tenant with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Lease. This Lease may not be amended except by an instrument in writing signed by both parties hereto.

35. **Severability.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

36. **Brokers.** Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than the Brokers set forth on page ii of this Lease, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction. Landlord will pay the Brokers a commission in connection with this Lease pursuant to separate written agreements between Landlord and the Brokers.

37. **Landlord's Lien/Security Interest.** Intentionally omitted.

38. **Relocation.** Intentionally omitted.

39. **Miscellaneous.**

(a) Any payments or charges due from Tenant to Landlord hereunder shall be considered rent for all purposes of this Lease.

(b) If and when included within the term “Tenant,” as used in this Lease, there is more than one person, firm or corporation, each shall be jointly and severally liable for the obligations of Tenant.

(c) All notices required or permitted to be given under this Lease shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable national overnight courier service, with proof of delivery and postage prepaid, or by hand delivery and sent to the Notice Address for each party noted on the first page of this Lease. Either party may by notice given aforesaid change its address for all subsequent notices. Except where otherwise expressly provided to the contrary, notice shall be deemed given upon first attempted delivery.

(d) Except as otherwise expressly provided in this Lease or as otherwise required by law, Landlord retains the absolute right to withhold any consent or approval.

(e) At Landlord's request from time to time Tenant shall furnish Landlord with true and complete copies of its most recent annual and quarterly financial statements prepared by Tenant and certified by the Tenant's Chief Financial Officer. Landlord shall hold such financial statements and information in confidence, and shall not disclose the same except: (A) to Landlord's lenders or potential lenders, (A) to potential purchasers of all or a portion of the Project, (A) to attorneys, accountants, consultants or other advisors, (A) otherwise as reasonably necessary for the operation of the Project or administration of Landlord's business or (A) if disclosure is required by any law and/or any judicial or administrative order or ruling.

(f) Neither this Lease nor a memorandum of lease shall be filed by or on behalf of Tenant in any public record; provided however, that Tenant may file a copy of this Lease and disclose the economic terms in any filing to the Securities and Exchange Commission or other applicable governmental agencies. Landlord may prepare and file, and upon request by Landlord, Tenant will execute a memorandum of lease.

(g) Each party acknowledges that it has had the opportunity to consult counsel with respect to this Lease, and therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto.

(h) The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties and, at Landlord's option, Landlord's receipt of the Guaranty executed by Guarantor.

(i) Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(j) Except as otherwise provided in this Lease, any amount not paid by Tenant within five (5) days after its due date in accordance with the terms of this Lease shall bear interest from such due date until paid in full at the lesser of the highest rate permitted by applicable law or fifteen percent (15%) per year. It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(k) Construction and interpretation of this Lease shall be governed by the laws of the state in which the Project is located, excluding any principles of conflicts of laws.

(l) Time is of the essence as to the performance of Tenant's obligations under this Lease.

(m) All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. In the event of any conflict between such exhibits or addenda (other than the rules and regulations) and the terms of this Lease, such exhibits or addenda shall control. In the event of a conflict between the rules and regulations attached hereto and the terms of this Lease, the terms of this Lease shall control.

(n) If either party should prevail in any litigation instituted by or against the other related to this Lease, the prevailing party, as determined by the court, shall receive from the non-prevailing party all costs and reasonable attorneys' fees through all levels of proceedings (payable at standard hourly rates) incurred in such litigation, including costs on appeal, as determined by the court.

(o) There shall be no merger of the leasehold estate hereby created with the fee estate in the Premises or any part thereof if the same person acquires or holds, directly or indirectly, this Lease or any interest in this Lease and the fee estate in the leasehold Premises or any interest in such fee estate.

(p) To the extent Tenant or its agents or employees discover any water leakage, water damage or mold in or about the Premises or Project, Tenant shall promptly notify Landlord thereof in writing.

(q) Whenever Tenant requests Landlord to take any action not required of it hereunder or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for Landlord's reasonable, out-of-pocket costs payable to third parties and incurred by Landlord in reviewing the proposed action or consent, including reasonable attorneys', engineers' or architects' fees, within 30 days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

(r) Tenant and its telecommunications companies, including local exchange telecommunications companies and alternative access vendor services companies, shall have no right of access to and within the Building, for the installation and operation of telecommunications systems, including voice, video, data, Internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems ("**Telecommunications Services**"), for part or all of Tenant's telecommunications within the Building and from the Building to any other location without Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. All providers of Telecommunications Services shall be required to comply with the rules and regulations of the Building, applicable Legal Requirements and Landlord's policies and practices for the Building. Tenant acknowledges that Landlord shall not be required to provide or arrange for any Telecommunications Services and that Landlord shall have no liability to a Tenant-Related Party in connection with the installation, operation or maintenance of Telecommunications Services or any equipment or facilities relating thereto. Tenant, at its cost and for its own account, shall be solely responsible for obtaining all Telecommunications Services.

(s) Tenant (if a corporation, partnership or other business entity) hereby represents and warrants to Landlord that Tenant is and will remain during the Term a duly formed and existing entity qualified to do business in the state in which the Premises are located, that Tenant has full right and authority to execute and deliver this Lease, that each person signing on behalf of Tenant is authorized to do so, and that Tenant's organizational identification number assigned by the Delaware Department of State is 5421261. Landlord hereby represents and warrants to Tenant that Landlord is a duly formed and existing entity qualified to do business in the state in which the Premises are located, that Landlord has full right and authority to execute and deliver this Lease, and that each person signing on behalf of Landlord is authorized to do so.

(t) In any legal proceeding that is brought by Landlord to enforce this Lease or any guaranty of this Lease (if any), or that arises out of a dispute in connection with this Lease or any guaranty of this Lease (if any), Landlord shall have the right to file suit in, or, if such suit has been filed or proceeding has been instituted by any person or entity other than Landlord, to transfer such suit or proceeding to any court of competent jurisdiction in the State and County in which the Project is located. Tenant and any guarantor of this Lease (if any), hereby irrevocably accept and consent to jurisdiction of any such court, and each irrevocably, knowingly, and voluntarily waives its right to object to jurisdiction of any such court, and irrevocably agrees to be bound by any final, non-appealable judgment rendered by any such court in connection herewith. Tenant and any guarantor of this Lease (if any) hereby agree that venue shall be proper in the state in which the Project is located, and each irrevocably waives its right to challenge the propriety of appropriateness, or to assert the inconvenience, of venue in such state and County.

(u) Landlord reserves to itself the right, from time to time, to grant such easements, rights and dedications that Landlord deems necessary or desirable, and to cause the recordation of parcel maps, easement agreements and covenants, conditions and restrictions, so long as such easements, rights, dedications, maps and covenants, conditions and restrictions do not unreasonably interfere with the permitted use of the Premises by Tenant. Tenant shall sign any of the aforementioned documents upon request of Landlord and failure to do so shall constitute a material breach of this Lease.

(v) Landlord and Tenant agree that all administrative fees and late charges prescribed in this Lease are reasonable estimates of the costs that Landlord will incur by reason of Tenant's failure to comply with the provisions of this Lease, and the imposition of such fees and charges shall be in addition to all of Landlord's other rights and remedies hereunder or at law, and shall not be construed as a penalty. Further, Landlord and Tenant agree that each provision of this Lease for determining charges and amounts payable by Tenant is commercially reasonable and, as to each such charge or amount, constitutes a statement of the amount of the charge or a method by which the charge is to be computed for purposes of Section 93.012 of the Texas Property Code, as it may be amended or succeeded.

(w) Landlord shall have the right to transfer and assign, in whole or in part, any of its rights under this Lease, and in the Building or Project; and to the extent that such assignee assumes Landlord's obligations hereunder, Landlord shall by virtue of such assignment be released from such obligation.

(x) Landlord and Tenant acknowledge and agree that this lease, including all exhibits and addenda a part hereof, is not a construction contract or an agreement collateral to or affecting a construction contract.

(y) Landlord may, in Landlord's sole and absolute discretion, elect to pursue or maintain sustainability certifications for the Project (or portions thereof), or otherwise implement sustainability initiatives or practices with for the Project (as such sustainability initiatives and practices are to be determined by Landlord, from time to time). In the event that Landlord elects to pursue or maintain any such certifications, initiatives, or practices, Tenant shall promptly and reasonably cooperate with the Landlord's efforts in connection therewith and provide Landlord with any documentation and information it may need in connection with the same (which cooperation may include, but shall not be limited to, Tenant complying with certain standards pertaining to the purchase of materials used in connection with any Tenant-Made Alterations or improvements undertaken by or on behalf of the Tenant in the Project, the sharing of documentation pertaining to any Tenant-Made Alterations or improvements undertaken by or on behalf of Tenant in the Project, and the sharing of Tenant's billing information pertaining to trash removal and recycling related to Tenant's operations in the Project). Landlord shall have the right to conduct periodic surveys and to gather feedback from Tenant with respect to sustainability efforts and related matters, and Tenant shall complete any such surveys (and otherwise respond to written requests for information from Landlord) to the best knowledge of Tenant.

**40. Waiver of Consumer Rights. TENANT HEREBY WAIVES ALL ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ. OF THE TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF TENANT'S OWN SELECTION, TENANT VOLUNTARILY CONSENTS TO THIS WAIVER.**

**41. City Incentives.**

Tenant expects the City of DeSoto, Texas (the "City") to provide certain tax incentives in connection with Tenant's occupancy of the Premises (the actual incentives received, the "City Incentives"). Landlord and Tenant anticipate that the City Incentives will be provided through either a reduction in Taxes payable with respect to the Project or as a rebate paid to Landlord. Landlord agrees to provide to Tenant the full benefit of the City Incentives actually received by Landlord by either reducing the amount of Taxes payable by Tenant under this Lease by the amount of the City Incentives received (if Landlord receives the City Incentives through a reduction in Taxes) or by paying to Tenant any City Incentives actually received by Landlord in the form of a rebate (after deducting any amounts then due and payable by Tenant under this Lease). Nothing contained herein shall be construed as a guaranty by Landlord of Tenant's right or ability to receive the City Incentives and the City's failure to provide any City Incentives shall not affect Landlord's and Tenant's respective rights and obligations under this Lease; provided that Landlord shall be required to provide Tenant the full benefit of any City Incentives actually received by Landlord as stated herein.

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IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

**LANDLORD:**

**HLIT II CTC 3, L.P.**, a  
Texas limited partnership

By: HLIT II GP, LLC, a  
Texas limited liability company,  
Its general partner

By: /s/ Larry Blair  
Name: Larry Blair  
Title: SVP

**TENANT:**

**GLOBAL INDUSTRIAL DISTRIBUTION INC.**, a Delaware corporation

By: /s/ Thomas Clark  
Name: Thomas Clark  
Title: CFO  
Execution Date: 4/23/19

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## **Section 3: EX-31.1 (EXHIBIT 31.1)**

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**CERTIFICATION UNDER SECTION 302 OF THE  
SARBANES-OXLEY ACT OF 2002**

**Exhibit 31.1**

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

I, Barry Litwin, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Systemax Inc.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and

15d-15(f)) for the registrant and have:

- a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 6, 2019

/s/ Barry Litwin

Barry Litwin, Chief Executive Officer

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## **Section 4: EX-31.2 (EXHIBIT 31.2)**

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### **CERTIFICATION UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

**Exhibit 31.2**

### **CERTIFICATION OF CHIEF FINANCIAL OFFICER**

I, Thomas Clark, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Systemax Inc.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

- b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 6, 2019

/s/Thomas Clark

Thomas Clark, Chief Financial Officer

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## **Section 5: EX-32.1 (EXHIBIT 32.1)**

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**Exhibit 32.1**

### **CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

#### **CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

The undersigned, the Chief Executive Officer of Systemax Inc., hereby certifies that Systemax Inc.'s Form 10-Q for the period ended June 30, 2019 fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), and that the information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Systemax Inc.

Dated: August 6, 2019

/s/ Barry Litwin

Barry Litwin, Chief Executive Officer

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## **Section 6: EX-32.2 (EXHIBIT 32.2)**

**CERTIFICATION PURSUANT TO SECTION 906 OF THE  
SARBANES-OXLEY ACT OF 2002**

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

The undersigned, the Chief Financial Officer of Systemax Inc., hereby certifies that Systemax Inc.'s Form 10-Q for the period ended June 30, 2019 fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), and that the information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Systemax Inc.

Dated: August 6, 2019

/s/ Thomas Clark

Thomas Clark, Chief Financial Officer

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