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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**FORM 10-K**

(MARK ONE)

☒ Annual Report Pursuant to Section 13 or 15(d) of Securities Exchange Act of 1934

For the fiscal year ended December 31, 2022

☐ Transition report under Section 13 or 15(d) of the Securities Exchange Act of 1934

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

Commission file number 333-99393



**BROWNIE'S MARINE GROUP, INC.**

(Exact name of registrant as specified in its charter)

Florida  
(State or other jurisdiction  
of incorporation or organization)

90-0226181  
(I.R.S. Employer  
Identification No.)

3001 NW 25th Avenue, Suite 1, Pompano Beach, Florida  
(Address of principal executive offices)

33069  
(Zip Code)

Registrant's telephone number, including area code (954) 462-5570

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

Title of Each Class	Trading Symbol(s)	Name of each exchange on which registered
None	Not applicable	Not applicable

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

None  
(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined by Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☒ No ☐

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, a non-accelerated filer, a 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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. Yes ☐ No ☒

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter was approximately \$7,318,695.

There were 436,949,232 shares of common stock outstanding as of March 30, 2023.

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## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION

This Annual Report includes forward-looking statements that relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to differ materially from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. Words such as, but not limited to, “believe,” “expect,” “anticipate,” “estimate,” “intend,” “plan,” “targets,” “likely,” “aim,” “will,” “would,” “could,” and similar expressions or phrases identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and future events and financial trends that we believe may affect our financial condition, results of operation, business strategy and financial needs.

You should read thoroughly this Annual Report with the understanding that our actual future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements including those made in Part I. Item 1A. Risk Factors appearing elsewhere in this Report. Other sections of this Report include additional factors, which could adversely impact our business and financial performance. New risk factors emerge from time to time and it is not possible for our management to predict all risk factors, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. All forward-looking statements speak only as of the date on which they are made. We undertake no obligation to update such statements to reflect events that occur or circumstances that exist after the date on which they are made, except as required by applicable law.

## PART I

### Item 1. Business.

Unless specifically set forth to the contrary, when used in this report references to the “Company,” “we,” “our,” “us,” and similar terms refers to Brownie’s Marine Group, Inc., a Florida corporation, and its wholly owned subsidiaries, Trebor Industries, Inc., a Florida corporation (“Trebor”) doing business as Brownie’s Third Lung, Brownie’s High Pressure Compressor Services, Inc. a Florida corporation (“BHP”) doing business as LW Americas (“LWA”), BLU3, Inc., a Florida corporation (“BLU3”), Submersible Systems, Inc., a Florida corporation (“SSI”), doing business as Spare Air and Live Blue, Inc. (“LBI”), a Florida corporation.

### Overview

The Company, through its wholly owned subsidiaries, designs, tests, manufactures and distributes tankless dive systems, rescue air systems and yacht-based self-contained underwater breathing apparatus (“SCUBA”) air compressor and nitrox generation fill systems and acts as the exclusive distributor for North and South America for Lenhardt & Wagner GmbH (“L&W”) compressors in the high-pressure breathing air and industrial gas markets. The Company is also the exclusive United States and Caribbean distributor for Chrysalis Trading CC, a South African manufacturer of fitness and dive equipment, doing business as Bright Weights (“Bright Weights”), of a dive ballast system produced in South Africa.

On September 3, 2021, the Company, entered into an Agreement and Plan of Merger and Reorganization (the “Merger Agreement”) with Submersible Acquisition, Inc., a Florida corporation incorporated in 2017, and wholly owned subsidiary of the Company (“Acquisition Sub”), Submersible Systems, Inc., a Florida corporation (“Submersible” or “SSI”), and Summit Holdings V, LLC, a Florida limited liability company (“Summit”) and Tierra Vista Group, LLC, a Florida limited liability company (“Tierra Vista” and, together with Summit, the “Sellers”), the owners of all of the capital stock of Submersible, pursuant to which Acquisition Sub merged with and into Submersible (the “Merger”), and Submersible, the surviving corporation, became a wholly owned subsidiary of the Company.

Submersible is a manufacturer of high-pressure tanks and redundant air systems for the military and recreational diving industries, based in Huntington Beach, California and sells its products to governments, militaries, private companies and the dive industry throughout the world.

On February 13, 2022 the Company formed LBI, which is being developed as a full retail, guided tour and training model utilizing the technology developed by BLU3 to provide new users and interested divers a guided tour experience, training, and the ability to purchase all of their diving and watersports needs.

On May 2, 2022, the Company entered into an asset purchase agreement (the “Asset Purchase Agreement”) with Gold Coast Scuba, LLC, a Florida limited liability company (“Gold Coast Scuba”), Steven M. Gagas and William Frenier, the sole members of Gold Coast Scuba (together, the “LLC Members”) and LBI. Pursuant to the terms of the Asset Purchase Agreement, LBI acquired substantially all of Gold Coast Scuba’s assets and assumed certain non-material liabilities of the business associated with these assets. In addition, LBI assumed the lease for the premises for Gold Coast Scuba.

The Company has five subsidiaries focused on various sub-sectors of our industry as described below:

- Brownie’s Third Lung | *Surface Supplied Air (“SSA”)*
- BLU3, Inc. | *Ultra-Portable Tankless Dive Systems*
- LW Americas | *High Pressure Gas Systems*
- Submersible Systems, Inc. | *Redundant Air Tank Systems*
- Live Blue, Inc. | *Guided Tours*

Our wholly owned subsidiaries do business under their respective trade names on both a wholesale and retail basis from our headquarters and manufacturing facility in Pompano Beach, Florida, and a manufacturing facility in Huntington Beach, California.



### Surface Supplied Air Products

Our Third Lung systems have been the market leader in gasoline powered, high-performance and more recently in the battery powered SSA diving systems. Taking full advantage of our proprietary compressor system, a series of traditional “fixed speed” electric compressors were developed for the built-in-boat market in 2005. In 2010, we introduced our variable-speed battery powered hookah system which provides divers with gasoline-free all day shallow diving experiences. These systems provide performance and runtimes for up to 3 hours by utilizing a variable speed technology that controls battery consumption based on diver demand.

In 2022, we continued to expand our dealer network and our marketing efforts with both the consumer and our network of dealers. The Company continues to pursue distributors and dealers outside of the United States in order to diversify the seasonality as well as geography risks. Additionally, we continue to pursue more aggressively the boat builder market to offer our SSA systems as an option on newly built boats, expanding our market beyond the traditional consumer markets for our products.

Our SSA products include:

- **Tankless Dive Systems:** The Company produces a line of tankless dive products, commonly called hookah or recreational SSA systems. These systems allow one to four divers to enjoy the marine environment up to a depth of 45 feet without the bulk and weight of conventional SCUBA gear. We believe that the removal of barriers to entry into the sport of diving and the reduction of complicated and bulky SCUBA gear invites a broader range of the general public to participate more actively and enjoyably at their own pace and schedule. Our product is designed to reduce the effort required for its transport and use while exploring, cruising or traveling.

A line of land-based systems is available for light-duty commercial applications that demand portability and performance. In addition to the gasoline-powered units and the variable speed battery powered units, a series of AC electric powered systems is also available for light to commercial use. Powered by battery for portability or household current for unlimited dive duration, these units are used primarily by businesses that work in aquatic maintenance and marine environments.

• **BIAS (Boat Integrated Air Systems):** The Company developed several tankless products and complimentary accessories that it believes makes boat diving easier. The BIAS battery powered tankless kit allows boat builders, dealers and end users to seamlessly install a pre-packaged kit directly into the boat and our E-Reel, a level-winding battery powered hose reel system, provides compact storage of up to 150 feet of hose. Boaters can perform their own in-water maintenance and inspections, or just dive for enjoyment. In addition to supplying air to divers, BIAS may be used for supporting air horns, inflating boat fenders/water toys and activating pneumatically operated doors.



#### **Ultra-Portable Tankless Dive Systems**

Through our wholly owned subsidiary BLU3, we develop and market a next generation electric, surface supplied air shallow dive system that is completely portable to the user. The BLU3 line currently consists of two models, NEMO and NOMAD, targeting specific performance levels and price points.

NEMO dive systems are currently sold in various countries through Amazon, and also through dealers worldwide. NEMO, designed to be the world's smallest dive system is capable of taking a diver to 10 feet for 60 to 90 minutes on one charge of its lithium-ion battery. NEMO is portable and its batteries are FAA compliant for airline travel.

NOMAD dive system ("NOMAD") began shipping in the third quarter of 2021 and is currently sold to consumers via our website, Amazon and through our network of dealers worldwide. The NOMAD is highly portable and expands dive capability to up to 30 feet. NOMAD has been marketed through BLU3's internet presence and marketing campaigns as well as at industry and other trade shows across the country.

BLU3 continues to innovate in the SSA sector and currently expects to introduce a new product to its line-up in 2023.

We believe the BLU3 product lines are changing the way that people get into the water and explore the next atmosphere. The units are ultra-portable and can travel with the consumer to their adventures, wherever they may be.



#### **High Pressure Gas Systems**

Through our wholly-owned subsidiary LW Americas, we design, manufacture, sell and install SCUBA tank fill systems for on-board yacht use under the brand "Yacht-Pro™". Our systems provide complete diving solutions for yachts, including nitrox systems which allow yacht owners to fill tanks with oxygen enriched air on board. The Yacht-Pro™ compressor systems offer a completely marine-prepared, variable frequency drive ("VFD") driven, automated alternative to other compressors on the market. We also design complete dive lockers, mixed gas production and distribution systems, and the Nitrox Maker™. Nitrox is oxygen-enriched air, which reduces the effects of nitrogen on divers and is the industry standard for dive professionals. The Nitrox Maker™ continuously generates oxygen rich breathing gas directly from low-pressure air with no stored oxygen or other gases required onboard. Our light duty compressor, the new Yacht Pro Essential is specifically designed as a turn-key kit for the boat builders and is optimized to integrate to onboard power systems and withstand the marine environment with all components and hardware impervious to spray from the elements. The Yacht Pro™ series contains models for both medium-duty applications, such as recreational divers and small groups, and heavy-duty use as found on research vessels, commercial operations and live-aboard dive boats. All Yacht Pro™ models come with the variable speed frequency drive reducing the initial start-up power demand typically associated with high pressure compressor systems.



In August 2017, we entered into a five-year exclusive distribution agreement with L&W, which agreement automatically renews for successive five-year terms unless terminated as provided for in the agreement. Under the terms of the Exclusive Distribution Agreement, we were appointed the exclusive distributor of L&W's complete product line in North America and South America, including the Caribbean. We are conducting this business direct to end-users and establishing sales, distribution and service centers for high pressure air and industrial gas systems in the dive, fire, CNG, military, scientific, recreational and aerospace industries under the brand name "L&W Americas/LWA".

We are exclusively developing a sales, distribution and service capability to assist L&W with completing a worldwide network of L&W's agencies and service centers.

In addition to breathing air compressors and related peripheral equipment, L&W also offers compressors, storage and purification systems to meet the high-pressure requirements for natural gas filling stations, and high-pressure inert gases such as argon, helium and nitrogen for industrial applications including welding and laser cutting, and for general laboratory use.

We believe the product lines from L&W, will allow LW Americas to offer high quality, competitive products into the first responder and industrial market that utilize compressed air. Our goal will be to build a network of jobbers, dealers, installers and high-pressure compressor distributors by leveraging our know-how, brand awareness, complimentary products and creating sustainable distribution and core product original equipment manufacturer ("OEM") integration relationships.



#### **Redundant Air Tank Systems**

In September 2021, the Company acquired SSI to further expand its product offerings and manufacturing capabilities. SSI has been manufacturing redundant air systems for recreational divers, private companies and militaries throughout the world for more than 40 years. Their state-of-the-art manufacturing facility in Huntington Beach, California is equipped to add to the machining and product development capabilities of the Company.

The SSI acquisition gives the Company access to a world-wide base of in excess of 400 dealers and distributors, GSA contracting capability, as well as the direct source for the redundant air needs for our Brownie's Third Lung and BLU3 diving equipment and expands warehousing capabilities, reducing freight costs for both sets of customers.

SSI continues to innovate their technologies to meet changing military and commercial needs and is in development of the next generation of their Helicopter Emergency Egress Device ("HEED") product line, specifically designed for aircraft and military vehicle use. Additionally, SSI has found use for their products in the medical field and continues to develop customer relationships in that area to grow revenue and diversify its product and customer portfolio.



In February 2022, the Company incorporated LBI to begin its expansion into the retail, training and guided tour market. The Company's vision for LBI is to become a fully integrated retail experience where the Company's unique products can be showcased, training can be offered, and a tourist model created. LBI will provide experienced based activities for the consumer in the various watersport activities it sells. In addition, LBI aims to provide training in those activities with the goal to have the consumer purchase the equipment, particularly the unique technologies provided by BLU3, from its retail stores. LBI looks to provide the full Live Blue experience for those consumers ready to enjoy all things watersports.

In May 2022, LBI acquired the assets of Gold Coast Scuba, a dive retail and training facility based in Lauderdale-By-The-Sea, Florida. This retail location is the base in which the Live Blue brand will be developed.

#### *Diving and Snorkeling Industry*

The Sports, Fitness Industry Association ("SFIA") estimated there were 2.7 million participants in the U.S. scuba diving market in 2022. According to a report published by SFIA in early 2023. The study further stated that the participation rate by casual divers increased 22% in 2022.

In contrast, the SFIA study indicated that participation in snorkeling in 2022 was 7.7 million in the U.S.

The Company has entered the tourist market via a guided tour program within LBI that is currently intended to act as an incubator for a scalable franchise model. The Company believes that the guided tour model is an important building block in introducing its battery powered diving products to the consumer market. Additionally, this model will not only give consumers the opportunity to "try before you buy", but also provide experiential training for the consumer to increase enjoyment and safety of our diving products.

#### *Yachting Industry*

The global luxury yacht market is estimated to be \$8.91 billion in 2022 and expected to reach \$9.38 billion in 2023 according to Allied Market Research and is poised to grow at a compound annual growth rate ("CAGR") of 5.4% from 2022 to 2030 to reach \$13.6 billion, according to Research and Markets.com, a market research firm, in their industry report dated April, 2022. The Company's BIAS systems have been designed with this industry in mind. The Company markets directly to the yachting industry by leveraging its relationships with large yacht servicing companies, yacht builders and yacht brokerages.

The recreational sailing and boating market and yachting industries also continue to grow. Grandview Research estimates that the recreational boating market was valued at \$44.5 billion in 2022 and is expected to grow at a CAGR of 5.4% through 2030.

#### *High Pressure Compressor Line*

According to Allied Market Research report published in February 2018, the North American high pressure compressor market is \$880 million growing at an estimated CAGR of 3%.

The Company expects to continue to distribute L&W compressors through its YachtPro, and BIAS systems, while continuing to focus on the expansion of its distribution into non-marine related distribution channels that the Company believes should positively impact its market reach.

## Intellectual Property

### Trade Names

The Company either owns or has licensed from entities in which Robert Carmichael, our Chairman, has an ownership interest, the following registered and unregistered trade names, trademarks and service marks: Brownie's Third Lung™, browniedive.com, Brownie's, Brownie's Third Lung oval symbol, browniedive, YachtPro, NitroxMaker™, BLU3, diveBLU3.com, BLU3 Nemo, BLU3-Vent, Submersible Systems, Spare Air, HEED 3, Snorkelator, easy dive, spareair.com, HELO, RES, Gold Coast Scuba, fast float rescue harness, tankfill.com, browniestankfill, browniestankfill.com, browniespublicsafety.com, browniespublicsafety, Peleton Hose System, Twin-Trim, and Kayak Diving Hose Kit.

The Company owns the following patents:

Patent number	Description	Issued Date	Expiration Date	Owned by
10,758,246	Abdominal Aortic Tourniquet	9/1/2020	3/17/2034	Trebor Industries, Inc.
9,782,182	Abdominal Aortic Tourniquet	10/10/2021	10/26/2033	Trebor Industries, Inc.
9,351,737	Abdominal Aortic Tourniquet	5/31/2016	3/2/2034	Trebor Industries, Inc.
11,265,625	Automated Self-Contained Hooka system with unobtrusive aquatic data recording	3/1/2022	10/30/2039	BLU3, Inc.
11,077,924	System for adjusting pressure limits based on depth of diver(s)	8/3/2021	3/20/2039	Brownie's Marine Group, Inc.

Application number	Description	Filed Date	Owned by
17/683,502	Automated Self-Contained Hooka system with unobtrusive aquatic data recording	3/1/2022	BLU3, Inc.
17/389,648	System for adjusting pressure limits based on depth of diver(s)	7/30/2021	Brownie's Marine Group, Inc.

### License Agreements

On April 6, 2018, the Company entered into a patent license agreement (the "STS Agreement") with Setaisha Technical Solutions, LLC ("STS") pursuant to which the Company licensed certain intellectual property, including patent rights, non-patent rights and know-how from STS for use in our ultra-portable tankless dive system products. Under the STS Agreement, the Company paid an initial license fee in April 2018 through the issuance of 759,422 shares of common stock with a fair value of \$30,000. The STS Agreement further provides for royalties based on annual net revenues. On December 31, 2019, the Company entered into Addendum No. 1 to the STS Agreement ("Addendum No. 1") which amended the payments due upon the first commercial sale of Nemo. Upon entering into Addendum No. 1, \$8,250 was paid to STS in cash and \$8,250 was paid on January 10, 2020. On February 6, 2020, the Company issued 828,221 shares of common stock with a fair value of \$18,635 in satisfaction of \$13,500 for the first commercial sale of the Nemo dive system. On June 30, 2020, the Company entered into Addendum No. 2 to the STS Agreement concerning STS's assistance related to designing and commercializing certain diving products. Addendum No. 2 provides for a minimum yearly royalty of \$60,000, or \$15,000 per fiscal quarter, beginning in December 2019 and increasing by 2.15% per year. With the introduction of the NOMAD in the last quarter of 2021, the Company is obligated to pay an additional annual minimum royalty of \$60,000 per year for the years 2022, 2023 and 2024, which increased the quarterly minimum royalty by \$15,000 per quarter. On November 1, 2022 the Company issued to the designees of STS 1,155,881 shares of common stock with a fair value of \$30,000 in accordance with the STS Agreement.

## **Marketing**

### **Print Literature, Public Relations, and Advertising**

We have in-house graphic design capability to create and maintain product support literature, catalogs, mailings, web-based advertising, newsletters, editorials, advertorials, and press releases. We also, from time-to-time, target specific markets by selectively advertising in journals and magazines that we believe reach our potential customers. In addition, we strive to issue press releases, newsletters, and social media postings periodically to keep the public informed of our latest products and related endeavors.

### **Tradeshows**

In 2021, the Company was represented directly or indirectly at The Palm Beach Boat Show, The Annapolis Motor and Sailing Shows, The Fort Lauderdale Boat show, Diving Equipment and Manufacturing show. In 2022, the Company expanded its marketing reach via tradeshows by attending all shows attended in 2021, The Seattle Boat Show, The Dubai Boat Show, and the HAI Heli-Expo, along with various other trade and industry shows.

### **Websites**

We sell our products online through our and our subsidiaries websites and many of our products are marketed on some of our customers' websites. In addition to these websites, numerous other websites have quick links to the Company's website. Our products are available both domestically and internationally. Internet sales and inquiries are also supported by the Company.

## **Product Research and Development**

Research and development costs for the year ended December 31, 2022 and December 31, 2021 and were \$18,393 and \$75,439, respectively, none of which cost is borne directly by customers.

## **Government Regulation**

The SCUBA industry is self-regulating; therefore, the Company is not subject to government industry specific regulation. However, SSI, our tank manufacturing company is subject to Department of Transportation ("DOT") regulation and testing of each of their tanks. The Company strives to promote safe diving practices within the industry and believes it is at the forefront of self-regulation through responsible diving practices. The Company is subject to all regulations applicable to "for profit" companies as well as all trade and general commerce governmental regulation. All required federal and state permits, licenses, and bonds to operate its facility have been obtained.

## **Distribution/Customers**

The Company has historically been predominantly a wholesale distributor to retail dive stores, marine stores, boat dealers, builders, and the US and international militaries. Currently, the Company generates a significant amount of direct-to-consumer sales via its websites and its relationship with Amazon via BLU3, BTL and SSI. Retail sales customers include boat owners, recreational divers, commercial divers and pilots. The Company sells products to three entities owned by the brother of Robert Carmichael, the Company's Chairman, and two companies owned by Mr. Carmichael. Combined sales to these six entities for 2022 and 2021, represented 11.4% and 17.9%, respectively, of total net revenues.

The majority of L&W high pressure compressors and NitroxMaker™ systems have been sold to commercial dive stores, dive operators (resorts and liveaboard dive boats), yacht builders, yacht owners, and high-pressure compressor distributors.

Sales of YachtPro™ compressor systems have been split between retail sales directly to consumers and wholesale sales to OEM boat builders/resellers/brokers.

## Suppliers/Raw Materials

Principal raw materials for our business include machined parts such as rods, pistons, bearings, hoses, regulators, compressors, engines, high-pressure valves and fittings, sewn goods, and various plastic parts including pans, covers, intake staffs, and quick release connections which are typically purchased on a per order basis. Most materials are readily available from multiple vendors. Some materials require greater lead times than other materials. Accordingly, we strive to avoid out of stock situations through careful monitoring of these inventory lead times, and through avoiding single source vendors whenever possible. Principle suppliers include Lenhardt & Wagner GmbH, Xometry, Inc., Burgess Manufacturing Corp, Bix International, Inc., Carrol Stream Motor Company, Zhejiang Xiangyang Gear Electormechan, Co, Tian Li He Technology Co, Ltd, Xiamen Feipeng Industry Co. Ltd. and Catalina Cylinders, Inc.

## Competition

We consider the most significant competitive factors in our business to be innovation, lifestyle, fair prices, shopping convenience, variety of available products, knowledgeable and prompt customer service and rapid and accurate order fulfillment. We currently have one significant competitor within the BTL business model, Airline by JSink, Inc. There are a variety of competitors, including Aqua Lung America, Coltri America and Bauer Compressors, Inc. in our redundant air tank systems and high-pressure compressor systems sales. In 2022 competition has surfaced in the BLU3 business segment from companies such as AirBuddy, and a few other very low-cost Chinese manufactured competitors.

Overall, we are operating in a moderately competitive environment. The price structure for all the products we distribute compares favorably with the majority of our competitors based on quality and available features. We believe that our key competitive advantage is our ability to create new products and, in some cases, new markets.

## Employees

We currently have thirty-six full-time employees, and four part-time employees.

## Seasonality

Our product lines have historically been seasonal in nature in the United States. The peak season for the diving related products, BTL, BLU3, SSI and LBI is the second and third quarters of the year. The peak season for high pressure products is typically the fourth and first quarters of the year. The Company continues to address the seasonality of the business by expanding its reach beyond the traditional markets in the U.S. to other areas of the world that may somewhat offset the seasonality.

## Item 1A. Risk Factors.

*Investing in our common stock involves risks. In addition to the other information contained in this report, you should carefully consider the following risks before deciding to purchase our common stock. The occurrence of any of the following risks might cause you to lose all or a part of your investment. Some statements in this report, including statements in the following risk factors, constitute forward-looking statements. Please refer to "Cautionary Statement Regarding Forward-Looking Statements" for more information regarding forward-looking statements.*

### FINANCIAL RISKS

#### *We have a history of losses.*

We incurred net losses of \$1,892,891 and \$1,588,467, respectively, for the year ended December 31, 2022 and 2021. On December 31, 2022 we had an accumulated deficit of \$16,437,495. While our revenues increased 37.7% for the year ended December 31, 2022 from 2021, and our gross profit margin increased from 30.3% in 2021 to 32.6% in 2022, our gross profit is not sufficient to cover our operating expenses of \$4,644,596 and \$3,742,262 for the twelve months ending December 31, 2022 and 2021, respectively. Operating expenses include non-cash stock compensation expenses of \$962,474 and \$1,154,801 for the years ending December 31, 2022 and 2021, respectively. In the year ended December 31, 2022, our selling, general and administrative expenses, increased 19.8% from 2021. There are no assurances that we will be able to increase our revenues to a level which supports profitable operations and provide sufficient capital to pay our operating expenses and other obligations as they become due.

***Our auditors have raised substantial doubts as to our ability to continue as a going concern.***

Our independent registered public accounting firm has included an explanatory paragraph expressing substantial doubt relating to our ability to continue as a going concern in its report on our audited consolidated financial statements for the year ended December 31, 2022. We have recurring losses from operations and had a net loss of approximately \$1,732,000 and have used approximately \$678,400 in net cash in our operations in the year ended December 31, 2022 as well as an accumulated deficit of approximately \$16,437,000. These factors, among others, raise substantial doubt about our ability to continue as a going concern. Our consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our principal sources of liquidity are sales of equity and debt securities. We do not have any firm commitments to raise additional working capital. As we are a small company who stock is quoted on the OTC Markets, we expect to encounter difficulty in raising working capital upon terms and conditions satisfactory to us, if at all. If we are unable to obtain sufficient funding or generate sufficient revenues, our business and results of operations will be adversely affected, and we may be unable to continue as a going concern.

***We rely on revenues from related parties.***

We generate revenues from sales to related parties, which accounted for 11.4% of our net revenues in 2022 and 17.9% of our net revenues in 2021. The loss of revenues from these related parties would have a material adverse impact on our business, results of operations and financial condition in future periods.

***We depend on licenses with Robert Carmichael, our Chairman, who owns much of our intellectual property.***

The Company has licensed from entities in which Robert Carmichael, our Chairman, has an ownership interest, the following registered and unregistered trade names, trademarks and service marks: Brownie's Third Lung™, browniedive.com, Brownie's, Brownie's Third Lung oval symbol, browniedive, YachtPro. Failure to maintain such licenses with Mr. Carmichael would have a material adverse effect on the Company's financial condition.

***If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results. As a result, current and potential shareholders could lose confidence in our financial reporting, which would harm our business and the trading price of our stock.***

Our management has previously determined that we did not maintain effective internal controls over financial reporting. For a detailed description of these material weaknesses and our remediation efforts and plans, see Part II, Item 9A-Controls and Procedures of this Annual Report. If the result of our remediation of the identified material weaknesses is not successful, or if additional material weaknesses are identified in our internal control over financial reporting, our management will be unable to report favorably as to the effectiveness of our internal control over financial reporting and/or our disclosure controls and procedures, and we could be required to further implement expensive and time-consuming remedial measures and potentially lose investor confidence in the accuracy and completeness of our financial reports which could have an adverse effect on our stock price and potentially subject us to litigation.

***The U.S. Consumer Products Safety Commission ("CPSC") has issued a voluntary recall for one of our products.***

On December 22, 2022, the CPSC issued a voluntary recall notice for the Nomad tankless dive system, which is distributed by BLU3, Inc. As part of the recall procedure, the CPSC has approved the Company's proposed remedy for the recall and BLU3 will begin to receive units back from consumers to repair affected Nomad units. The Company has evaluated the costs of this recall and has deemed it necessary to set a reserve for those costs related to the recall of \$160,500. However, the Company is unable to currently calculate the full financial impact to the Company over the long term, and whether it may have a material adverse impact on the financial condition of the Company in future periods.

## **BUSINESS AND OPERATIONAL RISKS**

***We are dependent upon certain key members of management and qualified employees and consultants.***

Our success depends to a significant degree on the abilities and efforts of our senior management, and on our ability to attract, retain and motivate highly qualified marketing, technical, engineering and sales personnel and consultants. These people are in high demand and often have competing employment opportunities. The labor market for skilled employees is highly competitive and we may lose key employees or be forced to increase their compensation to retain these people. Employee turnover could significantly increase our recruitment, training and other related employee costs. The loss of key personnel, or the failure to attract qualified personnel, could result in delays in development or fulfillment of any current strategic and operational plans and have a material adverse effect on our business, financial condition or results of operations.

***Our failure to obtain and enforce intellectual property protection may have a material adverse effect on our business.***

Our success depends in part on our ability, and the ability of our patent and trademark licensors, and entities owned and controlled by Robert Carmichael to obtain and defend our intellectual property, including patent protection for our products and processes, preserve our trade secrets, defend and enforce our rights against infringement and operate without infringing the proprietary rights of third parties, both in the United States and in other countries. Despite our efforts to protect our intellectual proprietary rights, existing copyright, trademark and trade secret laws afford only limited protection.

Our industry is characterized by frequent intellectual property litigation based on allegations of infringement of intellectual property rights. Although we are not aware of any intellectual property claims against us, we may be a party to litigation in the future.

***Our intellectual property rights are valuable, and any inability to adequately protect, or uncertainty regarding validity, enforceability or scope of them could undermine our competitive position and reduce the value of our products and brand, and litigation to protect our intellectual property rights may be costly.***

We attempt to strengthen and differentiate our product portfolio by developing new and innovative products and product improvements. As a result, our patents, trademarks, trade secrets, copyrights and other intellectual property rights are important assets to us. Various events outside of our control pose a threat to our intellectual property rights as well as to our products and services. For example, effective intellectual property protection may not be available in countries in which our products are sold. Also, although we have registered our trademark in various jurisdictions, our efforts to protect our proprietary rights may not be sufficient or effective. Any significant impairment of our intellectual property rights could harm our business or our ability to compete. Litigation might be necessary to protect our intellectual property rights and any such litigation may be costly and may divert our management's attention from our core business. An adverse determination in any lawsuit involving our intellectual property is likely to jeopardize our business prospects and reputation. Although we are not aware of any of such litigation, we have no insurance coverage against litigation costs, and we would be forced to bear all litigation costs if we cannot recover them from other parties. All foregoing factors could harm our business, financial condition, and results of operations. Any unauthorized use of our intellectual property could harm our operating results.

***We may be exposed to infringement or misappropriation claims by third parties, which, if determined against us, could adversely affect our business and subject us to significant liability to third parties.***

Our success mainly depends on our ability to use and develop our technology and product designs without infringing upon the intellectual property rights of third parties. We may be subject to litigation involving claims of patent infringement or violations of other intellectual property rights of third parties. Holders of patents and other intellectual property rights potentially relevant to our product offerings may be unknown to us, which may make it difficult for us to acquire a license on commercially acceptable terms. There may also be technologies licensed to us and that we rely upon that are subject to infringement or other corresponding allegations or claims by third parties which may damage our ability to rely on such technologies. In addition, although we endeavor to ensure that companies that work with us possess appropriate intellectual property rights or licenses, we cannot fully avoid the risks of intellectual property rights infringement created by suppliers of components used in our products or by companies we work with in cooperative research and development activities. Our current or potential competitors may obtain patents that will prevent, limit or interfere with our ability to make, use or sell our products. The defense of intellectual property claims, including patent infringement suits, and related legal and administrative proceedings can be both costly and time consuming, and may significantly divert the efforts and resources of our technical personnel and management. These factors could effectively prevent us from pursuing some or all of our business operations and result in our customers or potential customers deferring, canceling or limiting their purchase or use of our products, which may have a material adverse effect on our business, financial condition and results of operations.

***We may not be able to enforce our intellectual property rights throughout the world.***

The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States. Many companies have encountered significant problems in protecting and defending intellectual property rights in certain foreign jurisdictions. This could make it difficult for us to stop the infringement or the misappropriation of our intellectual property rights. Many foreign countries have compulsory licensing laws under which a patent owner must grant licenses to third parties. In addition, many countries limit the enforceability of patents against third parties, including government agencies or government contractors. In these countries, patents may provide limited or no benefit. Patent protection must ultimately be sought on a country-by-country basis, which is an expensive and time-consuming process with uncertain outcomes. Accordingly, we may choose not to seek patent protection in certain countries, and we will not have the benefit of patent protection in such countries.

Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts from other aspects of our business. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate. In addition, changes in the law and legal decisions by courts in the United States and foreign countries may affect our ability to obtain adequate protection for our technology and the enforcement of intellectual property.

***We rely on third party vendors and manufacturers.***

We deal with suppliers on an order-by order basis and have no long-term purchase contracts or other contractual assurances of continued supply or pricing. In addition, we have no long-term contracts with our manufacturing sources and compete with other companies for production facility capacity. Historically, we have purchased enough inventories of products or their substitutes to satisfy demand. However, unanticipated failure of any manufacturer or supplier to meet our requirements or our inability to build or obtain substitutes could force us to curtail or cease operations. Certain of our product components are manufactured in China. Due to Covid, and the logistics challenges existing currently, we have experienced delays and may experience continued delays in our supply chain, including component products, which are manufactured in China. Our senior management will continue to monitor our situation on a daily basis; however, we expect that these factors and others we have yet to experience may materially adversely impact our company, its business and operations for the foreseeable future.

***We are dependent on consumer discretionary spending.***

The success of our business depends largely upon a number of factors related to consumer spending, including current and future economic conditions affecting disposable consumer income such as employment, business conditions, tax rates, and interest rates. In times of economic uncertainty, consumers tend to defer expenditures for discretionary items, which effects demand for our products. Any significant deterioration in overall economic conditions that diminishes consumer confidence or discretionary income can reduce our sales and adversely affect our financial results. The impact of weakening consumer credit markets; layoffs; corporate restructurings; higher fuel prices; declines in the value of investments and residential real estate; and increases in federal and state taxation can all negatively affect our results. There can be no assurance that in this type of environment consumer spending will not decline, thereby adversely affecting our growth, net sales and profitability or that our business will not be adversely affected by continuing or future downturns in the economy, boating industry, or dive industry. If declines in consumer spending on recreational marine accessories and dive gear are other than temporary, we could be forced to curtail or cease operations.

***Government regulations may impact us.***

The SCUBA industry is self-regulating, therefore, from an industry perspective the Company is not subject to government industry specific regulation. However, our tank manufacturing operation is required to comply with DOT, as well as being approved to sell in various countries outside of the United States. The Company strives to be a leader in promoting safe diving practices within the industry and is at the forefront of self-regulation through responsible diving practices. The Company is subject to all regulations applicable to “for profit” companies as well as all trade and general commerce governmental regulation. All required federal and state permits, licenses, and bonds to operate its facility have been obtained. There can be no assurance that our operations will not be subject to more restrictive regulations in the future, which could force us to curtail or cease operations.



***Our failure to adequately protect personal information that is collected on our website and our third-party payment platforms could have a material adverse effect on our business.***

A wide variety of local, state, national, and international laws, directives and regulations apply to the collection, use, retention, protection, disclosure, transfer, and other processing of personal data (including with respect to the European Union's General Data Protection Regulation and U.S. state laws such as the California Consumer Privacy Act). These data protection and privacy-related laws and regulations continue to evolve and may result in ever-increasing regulatory and public scrutiny and escalating levels of enforcement and sanctions and increased costs of compliance. Our failure to comply with applicable laws and regulations, or to protect such data, could result in enforcement actions against us, including fines, imprisonment of company officials and public censure, claims for damages by end-customers and other affected individuals, damage to our reputation and loss of goodwill (both in relation to existing end-customers and prospective end-customers), any of which could have a material adverse effect on our operations, financial performance, and business. Changing definitions of personal data and personal information, within the European Union, the United States, and elsewhere may limit or inhibit our ability to operate or expand our business, including limiting strategic partnerships that may involve the sharing of data. The evolving data protection regulatory environment may require significant management attention and financial resources to analyze and modify our information technology infrastructure to meet these changing requirements all of which could reduce our operating margins and impact our operating results and financial condition.

***Bad weather could have an adverse effect on operating results.***

Our business is significantly impacted by weather patterns. Unseasonably cool weather, extraordinary amounts of rainfall, or unseasonably rough surf, may decrease boat use and diving, thereby decreasing sales. Accordingly, our results of operations for any prior period may not be indicative of results of any future period.

***The manufacture and distribution of recreational diving equipment could result in product liability claims.***

We, like any other retailer, distributor and manufacturer of products that are designed for recreational sporting purposes, face an inherent risk of exposure to product liability claims in the event that the use of our products results in injury. Such claims may include, among other things, that our products are designed and/or manufactured improperly or fail to include adequate instructions as to proper use and/or side effects, if any. We do not obtain indemnification from parties supplying raw materials, manufacturing our products or marketing our products. In the event that we do not have adequate insurance or contractual indemnification, product liabilities relating to defective products could have a material adverse effect on our operations and financial conditions, which could force us to curtail or cease our business operations.

***The worldwide impact from the COVID-19 pandemic may negatively impact our business.***

While we have been relatively successful in navigating such impact to date, we have previously been affected by temporary manufacturing closures, and employment and compensation adjustments. There are also ongoing related risks to our business depending on the progression of the pandemic, and recent trends in certain regions have indicated potential returns to limited or closed government functions, business activities and person-to-person interactions. Global trade conditions and consumer trends may further adversely impact us and our industries. For example, pandemic-related issues have exacerbated port congestion and intermittent supplier shutdowns and delays, resulting in additional expenses to expedite delivery of critical parts. Similarly, increased demand for personal electronics has created a shortfall of microchip supply, and it is yet unknown how we may be impacted. We cannot predict the duration or direction of current global trends from this pandemic, the sustained impact of which is largely unknown, is rapidly evolving and has varied across geographic regions. Ultimately, we continue to monitor macroeconomic conditions to remain flexible and to optimize and evolve our business as appropriate, and we will have to accurately project demand and infrastructure requirements globally and deploy our production, workforce and other resources accordingly.

## SHAREHOLDER RISKS

***The issuance of shares of our common stock upon exercise of our outstanding options, warrants, convertible debt and Series A Convertible Preferred Stock may cause immediate and substantial dilution to our existing shareholders.***

We presently have vested and unvested options, warrants, convertible debt and Series A Convertible Preferred Stock that if exercised would result in the issuance of an additional 266,722,242 shares of our common stock. The issuance of shares upon exercise of options will result in dilution to the interests of other shareholders.

***Our common stock may be affected by limited trading volume and may fluctuate significantly.***

Our common stock is quoted on the OTCQB tier of the OTC Markets. There is a limited public market for our common stock and there can be no assurance that an active trading market for our common stock will develop. As a result, this could adversely affect our shareholders' ability to sell our common stock in short time periods, or possibly at all. Thinly traded common stock can be more volatile than common stock traded in an active public market. Our common stock has experienced, and is likely to experience in the future, significant price and volume fluctuations, which could adversely affect the market price of our common stock without regard to our operating performance. In addition, we believe that factors such as quarterly fluctuations in our financial results and changes in the overall economy or the condition of the financial markets could cause the price of our common stock to fluctuate substantially.

***Our company is a voluntary filer with the SEC and in the event that we cease reporting under the Exchange Act, investors would have limited information available to them about the company.***

While we voluntarily file reports with the SEC under Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we do not have a class of securities registered under Section 12(g) of the Exchange Act. To the extent that our duty to file Exchange Act reports has automatically suspended under Section 15(d) of the Exchange Act, as a voluntary filer, we may elect to cease reporting under the Exchange Act at such time which would limit the information available to investors and shareholders about the company.

***Our common stock is deemed to be "penny stock," which may make it more difficult for investors to sell their shares due to suitability requirements.***

Our common stock is deemed to be "penny stock" as that term is defined under the Exchange Act. Penny stocks generally are equity securities with a price of less than \$5.00 (other than securities registered on certain national securities exchanges). Our common stock is covered by an SEC rule that imposes additional sales practice requirements on broker-dealers who sell such securities to persons other than established customers and accredited investors, which are generally institutions with assets in excess of \$5,000,000, or individuals with net worth in excess of \$1,000,000 or annual income exceeding \$200,000 or \$300,000 jointly with their spouse.

Broker/dealers dealing in penny stocks are required to provide potential investors with a document disclosing the risks of penny stocks. Moreover, broker/dealers are required to determine whether an investment in a penny stock is a suitable investment for a prospective investor. These requirements may reduce the potential market for our common stock by reducing the number of potential investors. This may make it more difficult for investors in our common stock to sell shares to third parties or to otherwise dispose of them. This could cause our stock price to decline.

***Our officers and directors are able to control the Company.***

Our officers and directors and their affiliates own or have the right to vote a majority of the common stock of our company. As a result, they have significant influence over the management and affairs of the Company and control over matters requiring stockholder approval, including the election of directors and significant corporate transactions, such as a merger or other sale of our company or our assets. Their interests may differ from the interests of other shareholders and thus result in corporate decisions that are disadvantageous to other shareholders. This concentration of ownership and influence in management and board decision-making could also harm the price of our capital stock by, among other things, discouraging a potential acquirer from seeking to acquire shares of our capital stock (whether by making a tender offer or otherwise) or otherwise attempting to obtain control of our company.

**Item 1B. Unresolved Staff Comments**

Not applicable to smaller reporting companies.

**Item 2. Properties.**

*Pompano Beach, FL*

Our Pompano Beach, Florida facilities are comprised of two adjoining properties totaling approximately 16,566 square feet of leased space the bulk of which is factory and warehouse space. The initial 37-month lease covering approximately 8,541 square feet commenced on September 1, 2014. The lease provided for payment of a \$5,367 security deposit, base rent of approximately \$4,000 per month over the term of the lease plus sales tax, and payment of 10.76% of annual operating expenses for common areas maintenance, subject to periodic adjustment. On December 1, 2016, we entered into an amendment to the initial lease agreement, commencing on October 1, 2017, which extended the term of the lease for an additional 84 months, expiring September 30, 2024. The base rent was increased to \$4,626 per month with a 3% annual escalation throughout the amended term.

On November 11, 2018, the Company entered a new 69-month lease agreement for an additional 8,025 square feet adjoining its existing facility in Pompano Beach, Florida. The new lease provided for a \$6,527 security deposit, an initial base rent of approximately \$4,848 per month escalating at 3% per year during the term of the lease plus Florida state sales tax and payment of 10.11% of the building's annual operating expenses for common area maintenance, subject to adjustment as provided in the lease.

*Huntington Beach, California*

Our Huntington Beach, California facility is comprised of a leased 13,000 square foot free standing building of which the bulk of the square footage is warehouse and manufacturing space. The initial lease, signed in January, 2013 was for five years with a base rent of \$7,410.

On January 4, 2018, the Company entered into a sixty-one month term lease renewal for its facility in Huntington Beach, California, commencing on February 1, 2018. Base rent is approximately \$9,300 per month for the first 12 months with a 2.5% annual escalation throughout the term. The Company paid a security deposit of \$8,450 with the initial lease that the landlord continues to hold.

On September 14, 2022, SSI entered into a sixty-month lease renewal for its facility in Huntington Beach, California commencing on February 1, 2022. Base rent is approximately \$17,550 per month for the first 24 months with an annual escalation clause of 3.0% thereafter. Obligations under the lease are guaranteed by the Company. The Company paid an additional security deposit of \$10,727 upon entering into the lease.

On September 30, 2022, SSI entered into a sublease of its facility in Huntington Beach, California with Camburg Engineering, Inc. ("Tenant") commencing October 1, 2022. The term of the sublease is through December 31, 2023 with a base monthly rent of \$2,247 for the first twelve months with an 3% annual escalation thereafter. The Tenant also pays a monthly common area maintenance of \$112. The Tenant provided a security deposit of \$2,426 upon entering into the sublease.

*Lauderdale-By-The-Sea, Florida*

On May 2, 2022, LBI, entered into a lease assignment agreement with Gold Coast Scuba, LLC and Vicnsons Realty Group, LLC whereby LBI is the assignee to the remainder of the lease for approximately 1,600 square feet of retail space located at 259 Commercial Blvd., Suites 2 and 3 in Lauderdale-By-The Sea, Florida. The lease is in its third year of a three-year term and has a \$2,816 per month base rent. The lease provides an option to renew for an additional term of two years with an increase of base rent by 3.5%

We believe that the facilities are suitable for their intended purpose, are being efficiently utilized and provide adequate capacity to meet demand for the foreseeable future.

**Item 3. Legal Proceedings.**

There are no pending legal proceedings to which we are a party or in which any director, officer or affiliate of ours, any owner of record or beneficially of more than 5% of any class of our voting securities, or security holder is a party adverse to us or has a material interest adverse to us.

**Item 4. Mine Safety Disclosure.**

Not applicable.

## PART II

### Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

The Company's common stock is quoted on the OTCQB tier of the OTC Markets under the symbol "BWMG". On March 28, 2023, the closing sale price of our common stock was \$0.02395 per share.

#### Holders of Common Stock

As of March 28, 2023, the Company had approximately 448 shareholders of record.

#### Dividends

We have not paid any dividends on our common stock and do not anticipate paying any cash dividends in the foreseeable future. We intend to retain any earnings, if any, to finance the growth of the business. We cannot assure you that we will ever pay cash dividends. Whether we pay any cash dividends in the future will depend on our financial condition, results of operations and other factors that the board of directors will consider.

#### Securities Authorized for Issuance under Equity Compensation Plans

The following table provides information regarding our equity compensation plans as of December 31, 2022:

Equity Compensation Plan Information			
Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted average exercise price of outstanding options, warrants and rights (\$)	Number of securities remaining available for future issuance under equity compensation plans
Plans approved by our shareholders (1)	3,467,647	.0400	21,532,353
Plans not approved by shareholders (2)	234,971,520	.0361	-

(1) Represents stock options granted to employees under the Equity Compensation Plan as described in Item 10 of this Annual Report. 25,000,000 shares are reserved for issuance under the Plan.

(2) Represents (i) five-year options granted to each of Robert Carmichael, Mikkel Pitzner and Blake Carmichael to purchase an aggregate of 35,295,237 shares of common stock at \$0.018 per share, (ii) a three-year option to purchase 2,000,000 shares of common stock at \$0.0229 per share to Jeffrey Guzy, a former director, (iii) a three-year option to purchase 2,000,000 shares of common stock at \$0.0229 per share to Biz Launch Advisors, LLC, a formal financial consultant, (iv) a three-year option to purchase an aggregate of 125,000,000 shares of common stock at \$0.045 per share and a to Robert Carmichael, (v) a five-year option to purchase 5,434,783 shares of common stock at \$0.0184 per share, a four-year option to purchase an aggregate of 30,000,000 shares of common stock at \$0.0184 per share and a five year option to purchase 2,403,846 shares of common stock at \$0.0401 per share, and a five-year option to purchase 3,968,254 at \$0.0252 per share to Christopher Constable (vi) a five-year option to purchase an aggregate of 21,759,400 shares of common stock at \$0.0399 per share to Blake Carmichael, (vii) a five-year option to purchase 7,110,000 shares of common stock at \$0.0531 per share to Christeen Buban, President of SSI.

## **Recent Sales of Unregistered Securities**

Except as set forth below, there were no sales of equity securities during the period covered by this Report that were not registered under the Securities Act and were not previously reported in a Quarterly Report on Form 10-Q or a Current Report on Form 8-K filed by the Company.

On November 1, 2022, the Company issued 1,155,881 shares of common stock as required by the STS agreement for relating milestones reached for sales of the Nemo and Nomad dive systems.

On December 13, 2022, the Company issued 5,714,285 units to Charles F. Hyatt, with each unit consisting of one share of common stock and a two-year common stock purchase warrant to purchase one share of common stock at an exercise price of \$0.0175 per share in consideration of \$100,000.

On December 31, 2022, the Company issued 198,204 shares of common stock to the holders of convertible notes for payment of interest for the three months ending December 31, 2022.

The above issuances did not involve any underwriters, underwriting discounts or commissions, or any public offering and we believe are exempt from the registration requirements of the Securities Act of 1933 by virtue of Section 4(2) thereof and/or Regulation D promulgated thereunder.

## **Item 6. Reserved**

## **Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.**

You should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and related notes appearing in this Annual Report. Some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. As a result of many factors, our actual results could differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis. Forward-looking statements represent our management's beliefs and assumptions only as of the date of this Annual Report. Actual future results may be materially different from what we expect. We undertake no obligation to update such statements to reflect events that occur or circumstances that exist after the date on which they are made, except as required by federal securities and any other applicable law.

The management's discussion and analysis of our financial condition and results of operations are based upon our audited financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP").

## **Recent Developments**

On December 22, 2022, the CPSC issued a recall notice for the Nomad tankless dive system, which is distributed by BLU3, Inc. As part of the recall procedure, the CPSC has approved the Company's proposed remedy for the recall and BLU3 will begin to receive units back from consumers to repair affected Nomad units. Additionally, BLU3 will re-start its manufacturing process for the Nomad tankless dive system utilizing the material and design changes approved during the recall process, and immediately re-establish the product in all of its sales channels. The Company has set an allowance for expenses related to this recall of \$160,500.

## Impact of COVID-19 Pandemic

The Company has previously been affected by temporary manufacturing closures, and employment and compensation adjustments. The market continues to suffer from the impacts of the pandemic via supply chain shortages and freight delays. The continued freight delays have and will likely continue to result in additional expenses to expedite delivery of critical parts. Additionally, increased demand for personal electronics has created a shortfall of microchip supply which are used in our battery powered products, and it is yet unknown how we may be impacted.

We continue to monitor macroeconomic conditions to remain flexible and to optimize and evolve our business as appropriate, and we will have to accurately project demand and infrastructure requirements globally and deploy our production, workforce and other resources accordingly.

## Results of Operations

### Years Ended December 31, 2022 and 2021

Overall, our net revenues increased 37.7% in 2022 from 2021, which included an increase of 48.6% in net revenue from sales to third parties and a decrease of 12.0% in sales to related parties. Our cost of revenues in 2022 was 67.4% of our total net revenues as compared to 69.7% in 2021. Included in our cost of revenues are royalty expenses we pay to Robert Carmichael which decreased 18.4% in 2022 from 2021. We reported a gross profit margin of 32.6% in 2022 as compared to 30.3% in 2021.

#### *Net Revenues*

The following tables provide net revenues, costs of revenues, and gross profit margins for our segments for 2022 and 2021.

	Year Ended December 31,		% change
	2022	2021	
Legacy SSA Products	\$ 2,601,622	\$ 2,897,210	(10.2)%
High Pressure Gas Systems	1,118,081	616,039	81.5%
Ultra-Portable Tankless Dive Systems	3,052,192	2,241,359	36.2%
Redundant Air Tank Systems	1,592,601	472,771	236.9%
Guided Tour Retail	212,876	-	100.0%
Total revenue	<u>\$ 8,577,372</u>	<u>\$ 6,227,379</u>	37.7%

#### *Cost of revenues as a percentage of net revenues*

	Year Ended December 31,	
	2022	2021
Legacy SSA Products	74.6%	74.6%
High Pressure Gas Systems	61.8%	62.7%
Ultra-Portable Tankless Dive Systems	61.2%	64.1%
Redundant Air Tank Systems	69.7%	74.5%
Guided Tour Retail	82.2%	-

### Gross profit margins

	Year Ended December 31,	
	2022	2021
Legacy SSA Products	25.4%	25.4%
High Pressure Gas Systems	38.3%	37.3%
Ultra-Portable Tankless Dive Systems	38.8%	35.9%
Redundant Air Tank Systems	30.3%	25.4%
Guided Tour Retail	17.8%	-

### SSA Products segment

The decrease in net revenues of 10.2% from this segment for the year ended December 31, 2022 as compared to the year ended December 31, 2021 can be attributed to decrease in revenue to the dealer base in 2022. Related party dealer revenue decreased by 13.9% for the year ended December 31, 2022 which is demand that shifted from BTL to BLU3 according to the customer. Other parts of the dealer base chose to remain conservative on their inventory balances through the end of the third quarter of 2022 and all of fourth quarter of 2022 due to economic uncertainties. BTL also saw a decrease in affiliate sales as these customers were not as active in the marketplace in 2022 as they were in prior years. These decreases were offset by an increase of 4.0% in direct-to-consumer sales from our website and factory store, as compared to 2021. Other Customers increased 201.4% for 2022, from the year ended December 31, 2021, as sales through Amazon are included in Other Customers, and BTL experienced increased activity from Amazon with the Bright Weights line of products now available on that website.

Our aggregate costs of revenues as a percentage of net revenues in this segment remained stable at 74.6% for year ended December 31, 2022 and the year ended December 31, 2021. The Company was able to offset cost increases from 2021 to 2022 for the components in their finished goods with price increases at all levels. Additionally, the change is the customer mix also allowed the Company to retain more margin at a time of rising costs.

Revenue channels for this segment are set forth below. Direct to Consumer represents items sold via our website, trade shows and walk-ins to our factory store. Dealer revenue represents sales to customers that have dealer agreements that typically operate with the lowers margin. Affiliates are resellers of our products that do not have formal dealer agreements. Other represents all other sales, inclusive of Amazon sales, which do not fit in any of the categories.

	Net Revenue		% Change	Cost of Sales as a % of Net Revenue		Margin as a % of Net Revenue	
	2022	2021		2022	2021	2022	2021
Direct to Consumer (website included)	\$ 931,505	\$ 895,348	4.0%	71.9%	62.5%	28.1%	37.5%
Dealers	1,538,460	1,888,233	(18.5)%	77.3%	79.9%	22.7%	20.1%
Affiliates	63,467	97,222	(34.7)%	35.1%	61.6%	64.9%	38.4%
Other	68,190	16,407	315.6%	89.0%	201.4%	11.0%	(101.4)%
Total	\$2,601,622	\$2,897,210	(10.2)%	74.6%	74.6%	25.4%	25.4%

### High Pressure Gas Systems segment

Sales of high-pressure breathing air compressors had an 81.5% increase for the year ended December 31, 2022 as compared to the year ended December 31, 2021. All sectors showed improvement over the previous year. As a percentage of revenue, the direct-to-consumer sector, which included yacht owners and direct to dive stores, had the most significant increase year over year of 154.3%. The demand from dive stores in the Caribbean increased as the region has recovered from COVID and began to re-invest into new equipment for their facilities. The reseller sector improved 90.2% year over year from 2021 to 2022. This can be directly attributed to the addition of a new distribution customer in Mexico. The OEM sector also showed an increase of 23.3% for the year ended December 31, 2022, as compared to the year ended December 31, 2021, as the LWA continued to supply boat and yacht builders with their equipment.

Our costs of revenues as a percentage of net revenues in this segment improved from 62.7% to 61.7% for the years ended December 31, 2022 and 2021. This can be attributed to the change in sales mix with increasing direct to consumer sales which tend to carry higher margins.

	Net Revenue			Cost of Goods Sold as a % of Net Revenue		Gross Margin as a % of Revenue	
	2022	2021	% change	2022	2021	2022	2021
Resellers	\$ 660,178	\$ 347,034	90.2%	67.3%	63.6%	32.7%	36.4%
Direct to Consumers	245,097	96,380	154.3%	53.1%	68.9%	46.9%	31.1%
Original Equipment Manufacturers	212,806	172,625	23.3%	54.4%	57.3%	45.6%	42.7%
Total	\$ 1,118,081	\$ 616,039	81.5%	61.7%	62.7%	38.3%	37.3%

#### *Ultra-Portable Tankless Dive Systems*

Net revenues in this segment increased 36.2% for the year ended December 31, 2022 as compared to the year ended December 31, 2021. In early November 2022, BLU3 recognized a flaw in the Nomad dive system that could result in a loss of air for the diver and filed with the CPSC for a voluntary recall and stopped selling the Nomad dive system until a fix could be created. The recall application with the fix was approved by the CPSC in January 2023. Notwithstanding the foregoing recall, BLU3's sales increased in the year ended December 31, 2022 from the year ended December 31, 2021. The increase in revenue can be attributed to the introduction of the Nomad dive system and the strong sales in all categories in 2022, as compared to 2021.

The largest contribution to the revenue increases for the year ended December 31, 2022 as compared to the prior year, is the growth in direct to consumer revenues from the Company's website and trade shows, accounting for 31.7% growth and sales via the Amazon channel accounting for 95.3% growth.

Our aggregate cost of revenue from this segment as a percentage of net revenues for the year ended December 31, 2022 decreased to 61.2% as compared to 64.1% for the year ended December 31, 2021. The decrease can be attributed to efficiencies in both the product cost and labor cost in building the NOMAD.

	Net Revenue			Cost of Sales as a % of Net Revenue		Margin as a % of Net Revenue	
	2022	2021	% change	2022	2021	2022	2021
Direct to Consumer	1,244,030	944,493	31.7%	78.6%	54.3%	21.4%	45.7%
Dealers	799,369	780,388	2.4%	40.4%	64.5%	59.6%	35.5%
Amazon	1,008,794	516,478	95.3%	56.1%	81.4%	43.9%	18.6%
Total	\$ 3,052,193	\$ 2,241,359	36.2%	61.2%	64.1%	38.8%	35.9%

#### *Redundant Air Tank Systems*

Net revenue in the Redundant Air Tank Systems System segment was \$1,592,602 for the year ended December 31, 2022. Revenues for the twelve months ended December 31, 2021 includes only four months of activity as SSI was acquired in September, 2021. Dealers continue to be SSI's largest customer sector accounting for 66% of total revenues. Except for profit margin for repairs, dealer margins continue to be the lowest margin sector as SSI sees this sector as the volume driver and sets prices to help enable dealers to generate profits. SSI has a worldwide customer base that includes (1) commercial accounts with aircraft requiring redundant air systems for their pilots and passengers, such as helicopters flying to oil rigs located in bodies of water (2) government accounts that are typically domestic and international military customers with egress systems (3) dealer accounts that are resellers including, international distributors to the military, commercial account or dive shops, and domestic and international dive shops that carry a spare air product (4) direct to consumer sales which are online sales and sales via trade shows direct to consumer and (5) Company provided repairs and warranty repairs to all sectors.



	Net Revenue			Cost of Sales as a % of Net Revenue		Margin as a % of Net Revenue	
	2022	2021	% change	2022	2021	2022	2021
Commercial	\$ 215,506	88,876	142.5%	45.8%	55.5%	54.2%	44.5%
Dealers	1,051,046	287,877	265.1%	73.2%	89.0%	26.8%	11.0%
Government	130,832	42,875	205.1%	43.1%	25.6%	56.9%	74.4%
Repairs	29,493	-	N/A	271.2%	0.0%	-171.2%	-
Direct to Consumers (Website)	165,725	53,143	211.8%	63.5%	68.2%	36.5%	31.8%
Total	<u>\$ 1,592,602</u>	<u>472,771</u>	<u>236.9%</u>	<u>69.7%</u>	<u>74.6%</u>	<u>30.3%</u>	<u>23.2%</u>

#### ***Guided Tours and Retail***

The guided tour and retail segment is a new segment as of May 2022 and is derived from retail revenues of LBI. Revenue in this segment currently primarily includes retail sales, and tours and lessons. Retail sales represent the sales of product at the retail facility, while tours and lessons represent revenue derived from diving excursions and lessons.

Margins for this segment are suppressed for the year ended December 31, 2022 as cost of goods sold include the amount overpaid for the inventory at acquisition, as well as a portion of the costs of closing the transaction.

	Net Revenue			Cost of Sales as a % of Net Revenue		Margin as a % of Net Revenue	
	2022	2021	% change	2022	2021	2022	2021
Retail Sales	\$ 130,295	-	N/A	70.8%	-	29.2%	-
Tours and Lessons	82,581	-	N/A	100.3%	-	-0.3%	-
Total	<u>\$ 212,876</u>	<u>-</u>	<u>N/A</u>	<u>82.2%</u>	<u>-</u>	<u>17.8%</u>	<u>-</u>

#### **Operating Expenses**

Operating expenses, consisting of selling, general and administrative (“SG&A”) expenses and research and development costs, are reported on a consolidated basis for our operating segments. Aggregate operating expenses increased 24.1% for the year ended December 31, 2022 as compared to the year ended December 31, 2021.

#### ***Selling, General & Administrative Expenses (SG&A Expenses)***

SG&A increased by 26.2% for the years ended December 31, 2022 as compared to the year ended December 31, 2021. SG&A during those years are as follows:

Expense Item	2022	2021	% Change
Payroll	\$ 1,946,985	\$ 1,144,020	70.2%
Non-Cash Stock based compensation – options	998,474	1,150,801	(13.2)%
Professional Fees	340,221	469,206	(27.5)%
Advertising	499,441	343,232	45.5%
All Others	841,081	559,564	50.3%
Total SG&A	<u>\$ 4,626,202</u>	<u>\$ 3,666,823</u>	<u>26.2%</u>

Payroll increases for the year ended December 31, 2022 can be attributed to an increase in the BLU3 payroll which contributed 29.4% of the increase. BLU3 added customer service and engineering staff as well as increased pay for key employees in 2022. The addition of a full year of SSI payroll comprised approximately 21.4% of the payroll increase. The balance of the increase can be attributed to the hiring of a social media/marketing manager, and several other operating and administrative personnel to support the growth in each of our divisions.

Non-Cash Stock compensation expenses decreased 13.2% for the year ended December 31, 2022 as compared to the year ended December 31, 2021. The decrease can be attributed to fewer options being issued during the year as well as certain vesting criteria not being met in 2022 that were met in 2021.

Professional fees, representing legal, accounting and other professional fees, which we paid in a combination of cash, common stock, or stock options, decreased 27.5% for the year ended December 31, 2022 as compared to the year ended December 31, 2021. While accounting fees increased, 75.8% in 2022, the lack of acquisition in 2022 resulted in a reduction of legal fees of 43.2%. Additionally, other professional fees saw a decrease as two contract employees became salaried employees in 2022.

Advertising expense increased 45.5% for the year ended December 31, 2022 as compared to the year ended December 31, 2021. 74.8% of the increase can be directly attributed to an increase of direct, internet and Amazon marketing by BLU3. The addition of SSI attributed 19.9% of the increase in advertising expense for the year ended December 31, 2022. These increases are offset by decreases in Trebor advertising expenses associated with the agreement with the Company's provider of marketing and advertising, which was entered into in the third quarter of 2020, and was not renewed as of July 31, 2021.

Other expenses increased 50.3% for the year ended December 31, 2022 as compared the year ended December 31, 2021. The primary driver to the increase in other expenses is the addition of a reserve for expenses related to the 2022 recall of the Nomad dive system. This reserve accounted for 57.0% of the overall increase in other expenses.

#### *Research & Development Expenses (R&D Expenses)*

R&D expenses for the year ended December 31, 2022 decreased 75.6% as compared to the year ended December 31, 2021. The decrease can be primarily attributed to the completion of the R&D for BLU3's NOMAD in late 2021.

#### **Other Income**

For the year ended December 31, 2022 other income and expenses totaled approximately \$42,500 in interest expense as compared to approximately \$264,200 in other income for the year ended December 31, 2021. Interest expense for the year ended December 31, 2022 was approximately \$42,500 as compared to approximately \$21,500 for the year ended December 31, 2021. This increase can be attributed to the increase in convertible debt related to the SSI acquisition, as well as the financing of tools and dyes for both the SSI and BLU3 operations. Other income for the year ended December 31, 2021 included a gain on the forgiveness of Trebor and SSI PPP loans totaling approximately \$275,800 and the forgiveness of a loan payable of \$10,000.

#### **Liquidity and Capital Resources**

We had cash of \$484,427 on December 31, 2022. The following table summarizes total current assets, total current liabilities and working capital at December 31, 2022 as compared to December 31, 2021.

	December 31, 2022	December 31, 2021	% of Change
Total Current Assets	\$ 3,265,714	\$ 2,966,432	10.1%
Total Current Liabilities	\$ 1,792,151	\$ 1,396,197	28.4%
Working Capital	\$ 1,473,563	\$ 1,570,235	(6.2)%

The increase in our current assets on December 31, 2022 from December 31, 2021 primarily reflects increases in inventory of approximately \$527,000. The increase in inventory is offset by decreases in cash of approximately \$158,700, accounts receivable of approximately \$33,300 and prepaid assets of approximately \$35,300 for the year ended December 31, 2022. The increase in inventory was due to inventory in BLU3 that was procured to continue to produce the Nomad dive system through the end of 2022, and to ensure enough inventory through the holidays, as well as the addition of the inventory in connection with the Gold Coast Scuba asset acquisition by LBI.

The increase in our total current liabilities for the year ended December 31, 2022 as compared to the year ended December 31, 2021 reflects an increase in accounts payable and accrued liabilities of approximately \$85,100, an increase in customer deposits of approximately \$23,600, an increase of approximately \$185,000 in other liabilities, primarily attributed to the reserve for Nomad recall expenses of \$160,500, and an increase of approximately \$36,800 in operating lease liabilities with the signing of the SSI lease renewal, and an increase in related party demand note, net, related to funds lent to LBI.

#### Summary Cash Flows

	Years Ended December 31,	
	2022	2021
Net cash used in operating activities	\$ (678,356)	\$ (769,467)
Net cash provided by (used in) investing activities	\$ (62,164)	\$ 517,701
Net cash provided by financing activities	\$ 581,805	\$ 549,722

Net cash used in operating activities for 2022 was primarily the result of a net loss of \$1,892,891, an additional cash used to fund inventory of \$443,421, as well as the change in long term lease liability of \$242,690 for the year ended December 31, 2022 as compared to December 31, 2021. The cash used related to net loss was offset by \$998,474 in non-cash stock related compensation expenses and \$47,501 non-cash expenses for shares issued for professional fees during the year ended December 31, 2022.

Net cash used in investing activities for the year ended December 31, 2022 of \$67,466 reflects primarily the cash used to acquire the assets of Gold Coast Scuba of \$30,000 as well as the cash used to purchase fixed assets, net of debt totaling approximately \$21,125, and fixed asset purchases of \$16,341. This compares to cash provided by the purchase of SSI of \$541,378 and cash used for the purchase of fixed assets of \$23,677 for the year ended December 31, 2021.

Net cash provided by financing activities for the year ended December 31, 2022 reflects \$305,000 in proceeds related to the sale of the Company's common stock and units comprised of stock and warrants and \$265,000 in proceeds from the exercise of warrants. The increase in net cash was offset by repayments of notes payable and other debt of \$54,976. This is compared to cash provided from the sale of common stock and units of \$640,000 and the repayment of debt and notes payable totaling \$90,278 for the year ended December 31, 2021.

#### Going Concern

Our audited consolidated financial statements included in this Annual Report were prepared assuming we will continue as a going concern, and, accordingly, do not include adjustments relating to the recoverability and realization of assets and classification of liabilities that might be necessary should we be unable to continue in operation. The report of our independent registered public accounting firm on our audited consolidated financial statements for the year ended December 31, 2022 includes an explanatory paragraph stating the Company has net losses and an accumulated deficit which raises substantial doubt about its ability to continue as a going concern. If the Company is unable to raise additional funds when needed, or does not have sufficient cash flows from sales, it may be required to scale back, delay or cease operations, liquidate assets and possibly seek bankruptcy protection. We have a history of losses, and an accumulated deficit of \$16,437,495 as of December 31, 2022. Despite a working capital surplus of \$1,473,563 at December 31, 2022, the continued losses and cash used in operations raise substantial doubt as to the Company's ability to continue as a going concern. The Company's ability to continue as a going concern is dependent upon the Company's ability to continue to increase revenues, control expenses, raise capital, and to continue to sustain adequate working capital to finance its operations. The failure to achieve the necessary levels of profitability and cash flows would be detrimental to the Company. We are continuing to engage in discussions with potential sources for additional capital, however, our ability to raise capital is somewhat limited based upon our revenue levels, net losses and limited market for our common stock. If we fail to raise additional funds when needed, or if we do not have sufficient cash flows from operations, we may be required to scale back or cease certain of our operations.

## **Critical Accounting Estimates**

The Company's management discussion and analysis of its financial condition and results of operations are based upon the Company's consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. The preparation of these financial statements requires the Company to make estimates and judgments that affect the reported amounts of its assets, liabilities, sales and expenses, and related footnote disclosures. On an on-going basis, the Company evaluates its estimates for product returns, bad debts, inventories, income taxes, warranty obligations, litigation and other subjective matters impacting the financial statements. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

The Company believes the following critical accounting policies affect its more significant judgments and estimates used in the preparation of its consolidated financial statements.

### ***Allowance for Doubtful Accounts***

Allowances for doubtful accounts are estimated based on estimates of losses related to customer accounts receivable balances. Estimates are developed by using standard quantitative measures based on historical losses, adjusting for current economic conditions and, in some cases, evaluating specific customer accounts for risk of loss. The establishment of reserves requires the use of judgment and assumptions regarding the potential for losses on receivable balances. Though the Company considers these balances adequate and proper, changes in economic conditions in specific markets in which the Company operates and any specific customer collection issues the Company identifies could have a favorable or unfavorable effect on required allowance balances.

### ***Inventories***

The Company values inventory at the lower of cost (determined using the first-in first-out method) or net realizable value. Management's judgment is required to determine the allowance for obsolete or excess inventory. Inventory on hand may exceed future demand either because the product is outdated or because the amount on hand is more than will be used to meet future needs. Inventory allowances are estimated by the individual operating companies using standard quantitative measures based on criteria established by the Company. Though the Company considers these reserve balances to be adequate, changes in economic conditions, customer inventory levels or competitive conditions could have a favorable or unfavorable effect on required allowance balances.

### ***Deferred Taxes***

The Company records a valuation allowance to reduce its deferred tax assets to the amount that is more likely than not to be realized. While the Company has considered future taxable income and ongoing prudent and feasible tax planning strategies in assessing the need for the valuation allowance, in the event the Company were to determine that it would not be able to realize all or part of its net deferred tax assets in the future, an adjustment to the deferred tax assets would be charged to income in the period such determination was made. Likewise, should the Company determine that it would be able to realize its deferred tax assets in the future in excess of its net recorded amount, an adjustment to the deferred tax assets would increase income in the period such determination was made.

### ***Warranties***

The Company accrues a warranty reserve for estimated costs to provide warranty services. Warranty reserves are estimated using standard quantitative measures based on criteria established by the Company. Estimates of costs to service its warranty obligations are based on historical experience, expectation of future conditions and known product issues. To the extent the Company experiences increased warranty claim activity or increased costs associated with servicing those claims, revisions to the estimated warranty reserve would be required. The Company engages in product quality programs and processes, including monitoring and evaluating the quality of its suppliers, to help minimize warranty obligations.

**Off balance Sheet Arrangements**

We currently have no off-balance sheet arrangements.

**Item 7A. Quantitative and Qualitative Disclosures about Market Risk.**

Not required for smaller reporting companies.

**Item 8. Financial Statements and Supplementary Data.**

Our consolidated financial statements appear beginning at page F-1.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

None.

**Item 9A. Controls and Procedures.****Evaluation of Disclosure Controls and Procedures**

We maintain “disclosure controls and procedures” as such term is defined in Rule 13a-15(e) under Exchange Act. In designing and evaluating our disclosure controls and procedures, our management recognized that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of disclosure controls and procedures are met. The design of any disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Based on their evaluations as of the end of the period covered by this report, our Principal Executive Officer and Principal Financial Officer concluded that our disclosure controls and procedures were not effective such that the information relating to our company, required to be disclosed in our Securities and Exchange Commission reports (i) is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and (ii) is accumulated and communicated to our management, including our Chief Executive Officer, to allow timely decisions regarding required disclosure as a result of continuing material weaknesses in our internal control over financial reporting described below. A material weakness is a deficiency, or combination of deficiencies, which results in more than a remote likelihood that a material misstatement of annual or interim financial statements will not be prevented or detected.

Our management, including our Principal Executive Officer and Principal Financial Officer, have evaluated the effectiveness of the design and operations of our disclosure controls and procedures (defined in Exchange Act Rules 13a-15(c) and 15d-15(e)) as of December 31, 2022 and based upon the such evaluation, have concluded that the disclosure controls and procedures as of December 31, 2022 were not effective due to the material weaknesses identified below.

To address these material weaknesses, management performed additional procedures to ensure the financial statements included herein fairly present, in all material respects, our financial position, results of operations and cash flows for the periods presented.

**Management’s Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting for the Company. Our internal control system was designed to, in general, provide reasonable assurance to the Company’s management and board regarding the preparation and fair presentation of published financial statements, but because of the inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2022. The framework used by management in making that assessment was the criteria set forth in the documents entitled "2013 Internal Controls – Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on that assessment, management concluded that, during the period covered by this report, such internal controls and procedures were not effective as of December 31, 2022 and that material weaknesses in internal controls over financial reporting described below existed.

A material weakness is a deficiency, or a combination of deficiencies, within the meaning of Public Company Accounting Oversight Board ("PCOAB") Audit Standard No. 5, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. Management has identified the following material weaknesses:

- There are an insufficient number and lack of qualified accounting department and administrative personnel and support;
- There are insufficient written policies and procedures to ensure the correct application of accounting and financial reporting with respect to GAAP and SEC disclosure requirements;
- Insufficient segregation of duties, oversight of work performed and lack of controls in our finance and accounting functions due to limited personnel;
- The Company's systems that impact financial information and disclosures have ineffective information technology controls;
- Inadequate controls surrounding revenue recognition, to ensure that all material transactions and developments impacting the financial statements are reflected and properly recorded; and
- Evaluation of disclosure controls and procedures was not sufficiently comprehensive due to limited personnel.

**Internal Control Remediation Efforts.**

Subject to sufficient resources, management expects to remediate the material weaknesses identified above as follows:

- Management has leveraged and will continue to leverage experienced consultants to assist with ongoing GAAP and SEC compliance requirements. We intend to expand our finance department through the hiring of a certified public accountant to strengthen the segregation of duties, internal controls and enhance our current staff.
- Segregation of duties will be analyzed and adjusted Company-wide, where possible. The Company is in the process of hiring additional personnel in the accounting department as part of the internal controls implementation and documentation of those controls and procedures.
- The Company plans on evaluating various accounting systems to enhance our system controls.

We will continue to monitor and evaluate the effectiveness of our internal control over financial reporting on an ongoing basis and are committed to taking further action and implementing additional enhancements or improvements, as necessary and as funds allow. We do not, however, expect that the material weaknesses in our disclosure controls will be remediated until such time as we have added to our accounting and administrative staff allowing improved internal control over financial reporting.

### Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during our fourth quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

### Item 9B. Other Information.

None.

### Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

## PART III

### Item 10. Directors, Executive Officers, and Corporate Governance.

The following are the names, ages and positions of our current executive officers and directors.

Name	Age	Position
Robert M. Carmichael	61	Chairman, President, and Chief Financial Officer and Director
Christopher H. Constable	56	Chief Executive Officer and Director
Charles F. Hyatt	54	Director

### Key Employee

Blake Carmichael	28	Chief Executive Officer and President of BLU3
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Our directors are elected for a term of one year and serve until such director's successor is duly elected and qualified. Each executive officer serves at the pleasure of the Board.

**Robert M. Carmichael.** Since April 2004, Mr. Carmichael has served as our Chairman and President, and from April 2004 until November 2020 served as our Chief Executive Officer. Mr. Carmichael has served as our Chief Financial Officer since 2017 and a director since 2005. Mr. Carmichael was selected to serve as a director for his general business management experience with specific experience in the diving industry.

**Christopher H. Constable.** Mr. Constable has served as our Chief Executive Officer and a director since November 2020. Mr. Constable sat on the board of directors of Bon Natural Life, Ltd. (NASDAQ: BON), and served as the Chairman of the audit committee until March, 2022. Prior to joining our company, from August 2020 through the November 2020, Mr. Constable provided business and financial consulting services. From 2003 through February 2020 Mr. Constable served as Chief Financial Officer of John Keeler & Co., Inc., d/b/a Blue Star Foods, a privately held international seafood company which in 2018 merged into Blue Star Foods Corp., a Miami, Florida-based sustainable seafood company (NASDAQ: BSFC). Mr. Constable served as Chief Financial Officer and a director of Blue Star Foods Corp until February 2020. Prior thereto, from 1999 to 2003, Mr. Constable was a consultant at Gateway Capital Corp., a business consulting firm, where he analyzed the financial and reporting capabilities of prospective lending customers with revenues from \$10 to \$100 million. Additionally, Mr. Constable was involved with loan workouts of facilities that required either liquidation or restructuring to ensure collectability for the financial institutions. From 1990 to 1999, Mr. Constable was a commercial banker at Mercantile Bankshares in Baltimore, Maryland, Finova Capital Corporation and Capital Bank, both in south Florida. Mr. Constable received his B.S. in Finance with an Accounting Minor from the Merrick School of Business at the University of Baltimore in 1989. Mr. Constable was selected to serve as a director for his experience with public companies and over 30 years background in finance and accounting.

**Charles F. Hyatt.** Mr. Hyatt has served as a director since March 2019. Mr. Hyatt is involved in the automotive industry and present owner of several franchise car dealerships in Myrtle Beach, South Carolina, including Myrtle Beach Hyundai (since 1999). In the past his ownerships also included Hyatt Buick & GMC (from 2001 to 2022), Myrtle Beach Suzuki (from 2004 until 2012), Sun Coast Mazda and Mitsubishi (from 2001 until 2009), Stone Mountain Chevrolet (from 2001 until 2009). From 1994 to 1997, Mr. Hyatt served as Wholesale Purchase Director with Lamar Ferrel Chevrolet, and from 1991 to 1994 as General Manager of Bob Harris Ford. From 1988 to 1990, Mr. Hyatt was the Demonstration Director of Auto Dialysis, and from 1986 to 1998, the General Manager/Operational Partner of Ken Hyatt Dodge, Chrysler and Plymouth. Since 2013, Mr. Hyatt has owned and operates the Gilligan Island Funland Golf amusement park. Mr. Hyatt sits on the American Cross Heroes committee and is the winner of the Jefferson Award (2017) for his community involvement. Mr. Hyatt was selected to serve on the board of directors for his general business management experience.

#### Key Employee

**Blake Carmichael.** Since December 2017, Mr. Carmichael has served as Chief Executive Officer of BLU3. He joined our company in May 2017 as an electrical engineer with a primary focus to develop new battery powered hookah diving products. Mr. Carmichael graduated from Florida Atlantic University in May 2017 with a Bachelor of Science in Electrical Engineering. During college, he worked in 2014 and 2015 as a participant in the University of Central Florida / Lockheed Martin College Work Experience Program as a systems engineer with a focus on testing for infrared imaging systems used in military aircraft. In the summer of 2016, he participated in the Naval Surface Warfare Center's Naval Research Enterprise Intern Program with a focus on integrating underwater vehicles for survey and recovery at the South Florida Ocean Measurement Facility.

There are no family relationships between any of the executive officers and directors.

#### Committees of the Board of Directors

We have not established an Audit Committee, Compensation Committee or a Nominating Committee. The entire Board participates in the nomination and audit oversight processes and considers executive and director compensation. Given the size of the Company, the entire Board is involved in such decision-making processes. Thus, there is a potential conflict of interest in that our directors and officers have the authority to determine issues concerning management compensation, nominations, and audit issues that may affect management decisions. We are not aware of any other conflicts of interest with any of our executive officers or directors.

We are not a "listed company" under SEC rules and therefore are not required to have an audit committee comprised of independent directors.

Christopher Constable is an "financial expert" within the meaning of the rules and regulations of the SEC.

#### Compensation of Directors

The following table provides information concerning the compensation paid to our Company's non-employee director for services rendered as a director during the year ended December 31, 2022.

Name	Fees earned or paid in cash (\$)	Stock awards (\$)	Option awards (\$)	Non-equity incentive plan compensation (\$)	Nonqualified deferred compensation earnings (\$)	All other compensation (\$)	Total (\$)
Charles Hyatt	18,000	-	-	-	-	-	18,000

#### Delinquent Section 16(a) Reports

Not applicable.



## Code of Ethics

The Company has not as yet adopted a code of ethics applicable to our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions as required by the Sarbanes-Oxley Act of 2002 due to our small size and limited resources and because management's attention has been focused on matters pertaining to business operations.

## Shareholder Communications

Although we do not have a formal policy regarding communications with our Board, shareholders may communicate with the Board by writing to us at Brownie's Marine Group, Inc., 3001 NW 25th Avenue, Suite 1, Pompano Beach, Florida 33069, Attention: Mr. Christopher H. Constable. Shareholders who would like their submission directed to a member of the Board may so specify, and the communication will be forwarded, as appropriate.

## Item 11. Executive Compensation

The following table provides certain information regarding compensation awarded to, earned by or paid to our Chief Executive Officer and the other executive officer with compensation exceeding \$100,000 during the year ended December 31, 2022 (each a "Named Executive Officer").

**Summary Compensation Table**

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards \$(1)	Option Awards \$(1)	No equity incentive plan compensation (\$)	Non- qualified deferred compensation earnings (\$)	All other compensation (\$)	Total (\$)
Robert Carmichael	2021	120,000	-	-	-	-	-	105,474(2)	225,474
Chairmen, President and CFO	2022	120,000	-	-	-	-	-	84,994(3)	204,994
Christopher Constable,	2021	199,474	-	-	98,976(4)	-	-	2,661(5)	301,111
CEO	2022	199,255	-	-	95,969(6)	-	-	5,756(5)	300,980

- (1) Represents the aggregate grant date fair value of the shares of our common stock, computed in accordance with ASC Topic 718. The assumptions made in the valuations of the stock awards are included in Note 13 of the notes to our consolidated financial statements.
- (2) Represents (i) \$18,000 in director compensation (ii) \$12,313 in health insurance premiums paid on behalf of Mr. Carmichael, and (iii) an aggregate of \$75,161 in royalties paid to an entity controlled by Mr. Carmichael under the terms of a license agreement with the Company.
- (3) Represents (i) \$18,000 in director compensation (ii) \$5,686 in health insurance premiums paid on behalf of Mr. Carmichael, and (iii) an aggregate of \$61,308 in royalties paid to an entity controlled by Mr. Carmichael under the terms of a license agreement with the Company.
- (4) Represents a five-year option to purchase 2,403,846 shares of common stock.
- (5) Represents health insurance premiums paid by the Company on behalf of Mr. Constable.
- (6) Represents a five-year option to purchase 3,968,254 shares of common stock.

## Equity Plan

On May 26, 2021, the Company adopted the Company's Equity Compensation Plan (the "Plan"). The Plan provides for the award of stock options (incentive and non-qualified), stock awards and stock appreciation rights to officers, directors, employees and consultants who provide services to the Company. The terms of awards under the Plan are made by the Administrator of the Plan appointed by the Company's Board of Directors, or in the absence of an Administrator, by the Board. The Company has reserved 25,000,000 for issuance under the Plan. The term of the Plan is ten years.

### Outstanding Equity Awards at December 31, 2022

The table below reflects all equity awards made to each Named Executive Officer that were outstanding on December 31, 2022.

Name	Number of Securities Underlying Unexercised Options (#)	Number of Securities Underlying Unexercised Options (#)	Equity Incentive Plan Awards:		Option Exercise Price (\$)	Option Expiration Date
			Number of Securities Underlying Unexercised Options (#)	Number of Securities Underlying Unexercised Options (#)		
Robert Carmichael	20,761,904(1)	-	-	-	0.018	7/29/2024
	25,000,000(2)	100,000,000	-	-	0.045	4/30/2023
Christopher Constable	5,434,783(3)	-	-	-	0.0184	11/5/2025
	5,000,000(4)	25,000,000	-	-	0.0184	11/5/2024
	2,403,846(5)	-	-	-	0.0401	11/5/2026
	3,968,254(6)	-	-	-	0.0252	11/5/2027

(1) Options fully vested in January 2020

(2) Options vest based upon certain corporate milestones as discussed in Note 13 of the financial statements included in this Annual Report.

(3) Options fully vested in November 2020

(4) Options vest based upon certain corporate milestones as discussed in Note 13 of the financial statements included in this Annual Report.

(5) Options fully vested in November 2021

(6) Options fully vested in November 2022

### ***Christopher Constable Employment Agreement***

On November 5, 2020, we entered into a three-year employment agreement (the “Constable Employment Agreement”), which agreement will automatically renew for one-year successive terms unless either party notifies the other of its desire to terminate the agreement at least 60 days prior to the then current term. Pursuant to the Agreement, Mr. Constable will serve as our Chief Executive Officer and a director. In consideration for his services, Mr. Constable is entitled to an annual base salary of \$200,000, payable in accordance with the customary payroll practices of the Company, and upon execution of the Constable Employment Agreement and on each anniversary thereof, a non-qualified immediately exercisable five-year stock option to purchase that number of shares equal to \$100,000 of the value of the Company’s common stock at an exercise price equal to the market price of the common stock on the date of issuance. Pursuant to the Agreement, on November 5, 2020, we issued Mr. Constable an option to purchase 5,434,783 shares of common stock at an exercise price of \$0.0184 per share pursuant to an option award agreement and upon the first anniversary we issued Mr. Constable an option to purchase 2,403,846 shares of common stock at an exercise price of \$0.0401.

In addition, Mr. Constable is entitled to receive four-year stock options to purchase shares of common stock at an exercise price equal to \$0.0184 per share in the amounts listed below based upon the following performance milestones during the term of the Constable Employment Agreement: (i) 2,000,000 shares - if the Company’s total net revenues, as reported in its statement of operations in its financial statements in its filings with the SEC, including as a result of a stock or asset acquisition of a third party (“Net Revenues”) are in excess of \$5,000,000, in the aggregate, for four consecutive fiscal quarters; (ii) 3,000,000 shares - if the Net Revenues are in excess of \$7,500,000, in the aggregate, for four consecutive fiscal quarters; (iii) 5,000,000 shares - if the Net Revenues are in excess of \$10,000,000, in the aggregate, for four consecutive fiscal quarters; and (iv) 20,000,000 shares - if the Company’s common stock is listed on the on NASDAQ or New York Stock Exchange. Mr. Constable is also entitled to participate in all benefit programs the Company offers to its executives, reimbursement for business expenses and three weeks of annual paid vacation.

The agreement may be terminated for “cause” (as defined in the Agreement), upon his death or disability, or by the Company without cause. Furthermore, Mr. Constable may terminate the Agreement for “good reason” (as defined in the agreement). If the Company terminates the agreement for cause, or if it terminates upon Mr. Constable’s death or disability, or if he voluntarily terminates the Agreement, neither Mr. Constable nor his estate (as the case may be) is entitled to any severance or other benefits following the date of termination. If the Company terminates the Agreement without cause or Mr. Constable terminates the Agreement for good reason, the Company is obligated to continue to pay Mr. Constable’s base salary for a period of six months. The Agreement also contains customary confidentiality, non-disclosure and indemnification provisions.

### **Blake Carmichael Employment Agreement**

On August 1, 2021, we entered into a three-year employment agreement with Blake Carmichael (the “Blake Carmichael Employment Agreement”) pursuant to which Mr. Carmichael will continue to serve as Chief Executive Officer of BLU3. In consideration for his services, Blake Carmichael will receive (i) an annual base salary of \$120,000, payable in accordance with the customary payroll practices of the Company, and (ii) a cash bonus equal to 5% of the net income of BLU3 payable quarterly, beginning with the first full calendar quarter after the execution of the agreement, and (iii) a non-qualified five-year stock option to purchase 3,759,400 shares of common stock at an exercise price \$0.0399, 33.3% of which stock subject to the option vested immediately upon grant, 33.3% vests on the second anniversary and 33.3% vests on the third anniversary of the agreement. In addition, Blake Carmichael was granted a five-year stock option to purchase up to 18,000,000 shares of common stock at an exercise price of \$0.0399 per share which vests upon the achievement of certain annual financial metrics as set forth in the Agreement.

### **Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

Our voting securities consist of our common stock and preferred stock, par value \$0.001 per share, designated Series A Convertible Preferred Stock (the “Series A Stock”). Each share of Series A Stock is convertible into one share of our common stock at any time at the option of the holder at a conversion price of \$18.23 per share. Holders of our common stock are entitled to one vote for each share held, and holders of our Series A Stock are entitled to 250 votes for each share held. Our common stock and Series A Stock vote together as on any matters submitted to our shareholders for a vote.

### Security Ownership of Certain Beneficial Owners and Management

The following table sets forth, as of March 30, 2023, the number of shares of common stock and Series A Stock beneficially owned by (i) each person, entity or group (as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934) known to the Company to be the beneficial owner of more than 5% of the outstanding common stock; (ii) each of the Company's directors (iii) each Named Executive Officer and (iv) all officers and directors as a group. Information relating to beneficial ownership of common stock by our principal stockholders and management is based upon information furnished by each person using "beneficial ownership" concepts under the rules of the SEC. Under these rules, a person is deemed to be a beneficial owner of a security if that person directly or indirectly has or shares voting power, which includes the power to vote or direct the voting of the security, or investment power, which includes the power to dispose or direct the disposition of the security. The person is also deemed to be a beneficial owner of any security of which that person has a right to acquire beneficial ownership within 60 days. Under the SEC rules, more than one person may be deemed to be a beneficial owner of the same securities, and a person may be deemed to be a beneficial owner of securities as to which he or she may not have any pecuniary interest. Except as noted below, each person has sole voting and investment power with respect to the shares beneficially owned and each stockholder's address is c/o Brownie's Marine Group, Inc., 3001 NW 25th Avenue, Suite 1, Pompano Beach, Florida 33069. The percentages below are calculated based on 436,949,252 issued and outstanding shares of common stock and 425,000 shares of Series A Stock outstanding as of March 30, 2023.

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent of Class
<b><u>Named Executive Officers and Directors</u></b>		
Robert M. Carmichael	110,006,047 <sup>(1)</sup>	21.7%
Christopher H. Constable	16,806,833 <sup>(2)</sup>	3.7%
Charles F. Hyatt	164,285,713 <sup>(3)</sup>	36.2%
All directors and executive officers as a group (three persons)	228,781,648 <sup>(1)(2)(3)</sup>	53.7%
<b><u>5% or Greater Shareholder</u></b>		
Joseph Perez		
135 Weston Road, Suite 328, Weston, Florida 33326	50,000,000	11.4%
Summit Holdings V, LLC		
3427 Bannerman Road, Suite D208		
Tallahassee, Florida 32312	27,032,388	6.4%
<b><u>Series A Convertible Preferred Stock</u></b>		
Robert M. Carmichael	425,000	100%
All directors and executive officers as a group (one person)	425,000	100%

- (1) Includes: (i) 14,587,190 shares held by 940A Associates, Inc., a corporation over which Mr. Carmichael is the sole owner and has voting and dispositive power; (ii) an aggregate of 23,320 shares issuable upon conversion of 425,000 shares of Series A Stock (iii) options to purchase an aggregate of 20,761,904 shares of common stock at an exercise price of \$0.018 per share and (iv) options to purchase an aggregate of 50,000,000 shares of common stock at an exercise price of \$0.045. Does not include the voting power over 106,250,000 shares of common stock by virtue of Mr. Carmichael's beneficial ownership of 425,000 shares of Series A Stock.
- (2) Includes (i) options to purchase an aggregate of 10,434,783 shares of common stock at an exercise price of \$0.0184 per share, (ii) options to purchase 2,403,846 shares of common stock at an exercise price of \$0.0401 per share and (iii) options to purchase 3,968,254 shares of common stock at an exercise price of \$0.0252 per share.
- (3) Includes warrants to purchase an aggregate of 17,142,858 shares of common at an exercise price of \$0.0175 per share.

### **Item 13. Certain Relationships and Related Transactions, and Director Independence.**

We sell products to Brownie's Southport Divers, Inc., Brownie's Palm Beach Divers, and Brownie's Yacht Toys, companies owned by the brother of Robert Carmichael. Combined net revenues from these entities for the years December 31, 2022 and 2021, totaled \$977,145 and \$1,116,085, respectively. Accounts receivable from Brownie's SouthPort Diver's, Inc., Brownie's Palm Beach Divers, and Brownie's Yacht Toys at December 31, 2022, were \$16,875, \$6,773 and \$15,532, respectively. Accounts receivable from Brownie's SouthPort Diver's, Inc., Brownie's Palm Beach Divers, and Brownie's Yacht Toys at December 31, 2021, were \$50,818, \$7,195 and \$17,779, respectively.

We also sell products to Brownie's Global Logistics, LLC ("BGL") and 940 Associates, Inc. ("940 A"), entities wholly-owned by Robert Carmichael. Combined net revenues from these three entities for the years ended December 31, 2022 and 2021 were \$4,646 and \$245, respectively. In addition, from time to time Mr. Carmichael purchases products from us for his personal use. Accounts receivable from BGL, 940 A and Mr. Carmichael totaled \$2,408 at December 31, 2022 and \$897 at December 31, 2021.

We owed BGL \$2,980 and \$32,267 at December 31, 2022 and 2021, respectively, which represents purchase of inventory including batteries for Sea Lion (battery operated unit) and Honda engines for our regular gasoline powered units. As of December 31, 2022, the Company also had an amount due of \$5,000 to Mr. Carmichael for an advance to BLU3, Inc.

We are a party to an exclusive license agreement, dated February 22, 2005, with 940 A to license the trademark "Brownies Third Lung", "Tankfill", "Brownies Public Safety" and various other related trademarks as listed in the agreement. The agreement provides for a royalty to be paid equal to the greater of 2.5% on all sales of Trebor or \$15,000 per quarter. Total royalty fees paid to 940 A in the years ended December 31, 2022 and 2021 totaled \$61,308 and \$75,161, respectively. The Company had accrued royalties of \$2,845 and \$7,735 for the years ended December 31, 2022 and 2021, respectively.

On September 30, 2022, the Company issued a convertible demand 8% promissory note in the principal amount of \$66,793 to Robert Carmichael for funds to meet the working capital needs of LBI. Interest on the note is payable in shares of common stock of the Company at a conversion price equal to the 90 day value weighted average price ("VWAP") of the Company's stock prior to the quarterly interest payment date. The note holder may demand payment or convert the outstanding principal at a conversion rate of \$0.021 per share at any time. The conversion rate was calculated at a 35% discount to the 90 day VWAP of the Company's stock as of the date of the note.

On March 25, 2021, the Company issued 27,500,000 shares of common stock to Charles Hyatt, a director, in a private offering for proceeds of \$275,000.

On August 1, 2021, we entered into the Blake Carmichael Employment Agreement with Blake Carmichael, Chief Executive Officer of BLU3, and son of Robert Carmichael, the Company's Chairman, President and a director.

On September 1, 2021, the Company issued 10,000,000 units, each unit ("Unit") consists of one share of common stock and a two-year warrant to purchase one share of common stock at an exercise price of \$0.025 per share to Charles Hyatt a director, in a private offering for proceeds of \$250,000.

On September 1, 2021, the Company issued 600,000 Units to Grace Hyatt, the adult child of Charles Hyatt, in a private offering for proceeds of \$15,000.

On February 2, 2022, the Company issued Charles Hyatt, a director, 10,000,000 shares upon the exercise of a warrant at \$0.025 per share in consideration of \$250,000.

On February 2, 2022, the Company issued Grace Hyatt, the adult child of Charles Hyatt, a director, 600,000 shares upon the exercise of a warrant at \$0.025 per share in consideration of \$15,000.

On March 14, 2022, the Company issued 10,000,000 shares of common stock to Charles Hyatt, a director, upon exercise of a warrant at an exercise price of \$0.04 per share for proceeds of \$250,000.

On March 14, 2022, the Company issued 600,000 shares of common stock to Grace Hyatt, the adult daughter of Charles Hyatt, a director, upon exercise of a warrant at an exercise price of \$0.04 per share for proceeds of \$15,000.

On December 13, 2022, the Company issued 5,714,286 shares of common stock and a two-year warrant to purchase 5,714,286 shares of common stock at an exercise price of \$0.0175 per share to Charles Hyatt a director, in a private offering for proceeds of \$100,000.

Blake Carmichael, the Chief Executive Officer of BLU3 is the son of Robert Carmichael, the Company's Chairman, President and a director.

### **Director Independence**

The Company has one independent director, Charles Hyatt, who is considered "independent" as defined under Rule 5605 of the Nasdaq Marketplace Rules.

**Item 14. Principal Accounting Fees and Services.**

The following table shows the fees that were billed for the audit and other services provided by Liggett & Webb, PA for 2022 (until October 10, 2022) and 2021. As of October 10, 2022, Liggett & Webb, P.A. resigned as the independent registered public accounting firm engaged to audit the financial statements of the Company. Also on such date, the Company's Board of Directors engaged Assurance Dimensions, Inc. to serve as its independent registered public accounting firm to review its Quarterly Report on Form 10-Q for the quarter ended September 30, 2022 and year ended December 31, 2022 year end audit.

	2022	2021
Audit Fees	\$ 90,040	\$ 72,900
Audit-Related Fees	-	-
Tax Fees	2,700	2,200
Other	-	37,500
Total	<u>\$ 92,740</u>	<u>\$ 112,600</u>

**Audit Fees**

Audit fees consist of fees for professional services rendered for the audit of the Company's consolidated financial statements included in the Company's Annual Report on Form 10-K and the review of financial statements included in the Company's Quarterly Reports on Form 10-Q.

The other fees in 2021 of \$37,500 consist of expenses associated with the audit of the Company's acquisition in September, 2021. Additionally, we incurred tax related fees of \$2,700 and \$2,200 for the years ended December 31, 2022 and 2021, respectively.

**Administration of the Engagement; Pre-Approval of Audit and Permissible Non-Audit Services**

We have not yet established an audit committee. Until then, there are no formal pre-approval policies and procedures. The audit and tax fees paid to the auditors with respect to 2022 and 2021 were pre-approved by the entire board of directors.

The percentage of hours expended on Assurance Dimensions respective engagement to audit our financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees was 0%.

PART IV

Item 15. Exhibits, Financial Statements Schedules

No.	EXHIBIT DESCRIPTION	Incorporated by Reference		
		Form	Date Filed	Exhibit Number
2.2	<a href="#">Merger Agreement, dated June 18, 2002 by and among United Companies Corporation, Merger Co., Inc. and Avid Sportswear &amp; Golf Corp.</a>	S-4	6/24/02	2.02
2.3	<a href="#">Articles of Merger of Avid Sportswear &amp; Golf Corp. with and into Merger Co., Inc.</a>	S-4	6/24/02	2.03
2.4	<a href="#">Agreement and Plan of Merger and Reorganization, dated September 3, 2021, among the Company, Submersible Acquisition, Inc., Submersible Systems, Inc. and the Shareholders of Submersible Systems, Inc.</a>	8-K	9/9/21	10.1
2.4	<a href="#">Plan of Conversion</a>	8-K	10/28/15	2.1
3.1	<a href="#">Articles of Conversion (Nevada)</a>	8-K	10/28/15	3.1
3.2	<a href="#">Certificate of Conversion (Florida)</a>	8-K	10/28/15	3.2
3.3	<a href="#">Articles of Incorporation (Florida)</a>	8-K	10/28/15	3.3
3.5	<a href="#">Articles of Amendment</a>	8-K	12/16/15	3.5
3.6	<a href="#">Bylaws</a>	8-K	10/28/15	3.4
4.1	<a href="#">2021 Equity Compensation Plan</a>	10-Q	8/16/21	4.1
4.2	<a href="#">Form of 2017 Secured Convertible Promissory Note</a>	10-K	4/17/18	4.2
4.3	<a href="#">10% Unsecured Convertible Debenture dated May 3, 2011</a>	8-K	11/20/18	4.3
4.5	<a href="#">Form of Stock Option Grant to Robert Carmichael dated July 29, 2019 +</a>	8-K	8/1/19	4.5
4.6	<a href="#">Form of Stock Option Grant to Jeffrey Guzy dated January 9, 2020</a>	8-K	1/10/20	4.1
4.7	<a href="#">\$66,793 Convertible Demand Note, dated September 30, 2022</a>	8-K	10/12/22	4.1
10.1	<a href="#">Share Exchange Agreement, dated March 23, 2004 by and among the Company, Trebor Industries, Inc. and Robert M. Carmichael</a>	8-K	4/9/04	16.1
10.2	<a href="#">Commercial Multi-Tenant Lease, dated September 14, 2022 between Submersible Systems, Inc. and Slater Palms LLC</a>	8-K	10/12/22	10.1/22
10.3	<a href="#">Exclusive License Agreement, effective January 1, 2005, between 940 Associates, Inc. and Trebor Industries Inc.</a>	10-QSB	8/15/05	10.20
10.4	<a href="#">Lease Agreement, dated September 1, 2014, between Liberty Property Limited Partnership and Trebor Industries, Inc.</a>	10-K	4/17/18	10.11
10.5	<a href="#">Lease Amendment, dated December 1, 2016, between Liberty Property Limited Partnership and Trebor Industries, Inc.</a>	10-K	4/22/22	10.5
10.6	<a href="#">Exclusive Distribution Agreement, dated August 7, 2017, between and Lenhardt &amp; Wagner GmbH</a>	10-K	6/7/19	10.15
10.7	<a href="#">Lease Agreement, dated November 11, 2018, between Liberty Property Limited Partnership and the Company</a>	10-K	6/7/19	10.16
10.9	<a href="#">Non-Qualified Stock Option Agreement, dated April 14, 2020, between the Company and Robert Carmichael +</a>	8-K	4/17/20	10.1
10.10	<a href="#">Form of Restricted Stock Award Agreement</a>	8-K	4/30/20	10.1
10.11	<a href="#">Promissory Note, dated May 12, 2020, in the principal amount of \$159,600 issued to South Atlantic Bank</a>	8-K	5/13/20	10.1
10.12	<a href="#">Patent License Agreement, dated April 6, 2018 between Setaysha Technical Solutions, Inc. and the Company</a>	10-K	6/29/20	10.17
10.13	<a href="#">Addendum No. 1 to Patent License Agreement dated December 31, 2019, between Setaysha Technical Solutions, Inc. and the Company</a>	10-K	6/29/20	10.18
10.18	<a href="#">Employment Agreement Dated August 1, 2021, between the Company and Blake Carmichael</a>	10-Q	11/22/21	10.22
10.19	<a href="#">Director Agreement, dated April 1, 2019, between the Company and Charles Hvatt</a>	8-K	4/4/19	10.1
10.20	<a href="#">Employment Agreement dated September 3, 2021, between the Company and Christeen Buban</a>	8-K	11/22/21	10.23
10.21	<a href="#">Form of letter agreement for incentive compensation +</a>	8-K	6/1/20	10.1

10.22	<a href="#">Addendum No. 2 to Patent License Agreement, dated June 30, 2020, between Setaysha Technical Solutions, Inc. and the Company</a>	10-Q	8/26/20	10.1
10.23	<a href="#">Employment Agreement, dated November 5, 2020, between Christopher Constable and the Company. +</a>	8-K	11/12/20	10.2
10.24	<a href="#">Non-Qualified Stock Option Agreement Non-Plan, dated November 5, 2020, between the Company and Christopher Constable</a>	8-K	11/12/20	10.1
10.27	<a href="#">First Amendment to Lease Agreement, dated December 1, 2016 between Trebor Industries, Inc. and Liberty Property Limited Partnership</a>	10-K	4/22/22	10.27
10.28	<a href="#">8% Convertible Promissory Note, dated September 3, 2021</a>	8-K	9/9/21	4.1
10.29	<a href="#">Confidentiality, Non-Competition And Non-Solicitation Agreement, dated September 3, 2021, between the Company and Richard S. Kearney</a>	8-K	9/9/21	10.2
10.30	<a href="#">Investment Banking Engagement Agreement, dated August 6, 2021, between the Company and Newbridge Securities Corporation</a>	10-Q	11/22/21	10.21
10.31	<a href="#">Asset Purchase Agreement, dated May 2, 2022, among the Company, Gold Coast Scuba, LLC, LLC Members and Live Blue, Inc.</a>	8-K	5/3/22	10.67
10.32	<a href="#">Form of Subscription Agreement</a>	8-K	9/12/22	10.1
10.33	<a href="#">Form of Common Stock Purchase Warrant</a>	8-K	9/12/22	10.2
10.34	<a href="#">Lease Agreement, dated September 14, 2022, between Slater Palms, LLC and the Company</a>	*		
10.35	<a href="#">Sublease Agreement, dated September 20, 2022, between Camburg Engineering, Inc. and the Company</a>	*		
21	<a href="#">Subsidiaries</a>	*		
31.1	<a href="#">Certification Pursuant to Rule 13a-14(a)/15d-14(a)</a>	*		
31.2	<a href="#">Certification Pursuant to Rule 13a-14(a)/15d-14(a)</a>	*		
32.1	<a href="#">Certification Pursuant to Section 1350</a>	*		
101.INS	Inline XBRL Instance Document			
101.SCH	Inline XBRL Taxonomy Extension Schema Document			
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document			
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document			
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document			
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document			
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)			

\* Filed herewith

+ Management Contract

#### Item 16. Form 10-K Summary

None.



## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

Date: March 30, 2023

**BROWNIE'S MARINE GROUP, INC.**

By: /s/ Christopher H. Constable

Christopher H. Constable  
Chief Executive Officer,  
(Principal Executive Officer)

By: /s/ Robert M. Carmichael

Robert M. Carmichael  
Chief Financial Officer,  
(Principal Financial and Accounting Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

/s/ Robert M. Carmichael

Robert M. Carmichael  
Chairman of the Board, President and Chief Financial Officer (Principal Executive Officer)

Date: March 30, 2023

/s/ Christopher H. Constable

Christopher H. Constable  
Chief Executive Officer and Director  
(Principal Executive Officer)

Date: March 30, 2023

/s/ Charles F. Hyatt

Charles F. Hyatt  
Director

Date: March 30, 2023

Financial Statements and Supplementary Data  
Brownie's Marine Group, Inc.  
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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors of  
Brownie's Marine Group, Inc. and Subsidiaries

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Brownie's Marine Group, Inc. and Subsidiaries (the Company) as of December 31, 2022, and the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for the year then ended, and the related consolidated notes (collectively referred to as the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022, and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

### Explanatory Paragraph – Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company had a net loss of approximately \$1,893,000 and cash used in operating activities of approximately \$678,000 for the year ended December 31, 2022 as well as an accumulated deficit of approximately \$16,437,000 as of December 31, 2022. These factors raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

#### *Assessment of Impairment*

The Company is required to test the carrying amount of goodwill at least annually, or more frequently upon the occurrence of certain events. The Company is also required to assess the recoverability of its long-lived assets, including its amortizable intangible assets, whenever certain events occur or circumstances change that may be indicators of impairment. We identified this area as a critical audit matter because the annual goodwill impairment test and the evaluation of recovery of long-lived assets requires significant judgment regarding the evaluation of qualitative factors. Additionally, these assessments also require appropriate determination of reporting units and asset groups, including the allocation of acquired tangible and intangible assets to such groupings. The evaluation of a certain asset group also required comparison of future non-discounted cash flows to the carrying value of the asset group, which required estimates of future cash flows associated with that asset group, including growth rates, profitability rates and estimates of other sources and uses of cash such as changes in working capital and capital expenditures. The Company engaged a third-party valuation specialist to assist with its assessment.

Our audit procedures to address the risk of material misstatement relating to goodwill and intangible assets included, among others, evaluating the appropriateness of asset groupings at the reporting unit level and asset group level. We also evaluated management's assessment of qualitative factors associated with the reporting unit containing goodwill and associated with all relevant asset groups. Our procedures also included evaluating management's forecast of non-discounted cash flows associated with a certain asset group where a qualitative factor required such further analysis. We also assessed the competence, independence, qualifications, experience, and capabilities of the third-party valuation specialist, and evaluated the appropriateness and reasonableness of the methodology and assumptions used by comparing them to external and historical data; testing the calculation and forecast model for mathematical accuracy; validating the appropriateness and reliability of inputs and amounts used; and evaluating the adequacy of the financial statement disclosures relating to goodwill, intangible assets and other long-lived assets, including disclosure of key assumptions and judgments. As a result of our testing we did not take exception to management's conclusion that no impairment should be recognized related to goodwill or long-lived assets for the year ended December 31, 2022.



We have served as the Company's auditor since 2023  
Margate, Florida  
March 30, 2023

PCAOB No.: 5036

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors of:  
Brownie's Marine Group, Inc.

### Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheet of Brownie's Marine Group, Inc. and Subsidiaries (the "Company") as of December 31, 2021, the related consolidated statements of operations, changes in stockholders' equity and cash flows for the year ended December 31, 2021, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021, and the results of its operations and its cash flows for the year ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

### Explanatory Paragraph – Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has experienced net losses and has an accumulated deficit. These factors raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal controls over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also include evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

#### *Valuation of Stock Options*

As described in Note 13 to the consolidated financial statements, the Company measures fair value of stock options at fair value using level three inputs. To determine fair value of stock options, the Company determines the appropriate valuation methodology and assumptions, including unobservable inputs. Stock options are measured at fair value using a Black-Scholes valuation model that uses significant assumptions, including the Company's stock price, volatility, risk-free interest rate, probability of vesting and probability of exercise occurrence through expiration date.

Auditing management's estimate for the fair value of stock options was highly judgmental as it involved our assessment of the significant assumptions used by the Company because the fair value calculations were sensitive to changes in assumptions described above, and certain inputs used in the determination of fair values were based on unobservable data, including, but not limited to, the volatility, probability of vesting and probability of exercise.

To test the fair value of stock options, we performed audit procedures that included, among others, evaluating the methodologies used in the valuation model and the significant assumptions used by the Company.

#### *Merger with Submersible Systems, Inc.*

As described in Note 11 to the consolidated financial statements, on September 3, 2021, the Company completed its merger with Submersible Systems, Inc. The Company recognizes separately from goodwill the assets acquired and the liabilities assumed at their acquisition date fair values under ASC 805, Business Combinations. Goodwill as of the acquisition date is measured as the excess of consideration transferred and the net of the acquisition date fair values of the assets acquired and the liabilities assumed. The Company uses its best estimates and assumptions to accurately value assets acquired and liabilities assumed at the acquisition date. The Company's estimates are inherently uncertain and actual results may differ from expectations. The Company may record measurement period adjustments during the measurement period (one year from the acquisition date) that result from obtaining additional information about the facts and circumstances that existed as of the acquisition date. If this additional information had been known, it would have affected the accounting for the business combination as of the acquisition date.

Auditing management's estimate for the fair value of the consideration paid, identifiable assets acquired, and liabilities assumed including an amount for goodwill was highly judgmental as it involved our assessment of the significant assumptions used by the Company regarding certain future expected cash flows and the valuation methodologies used by the valuation specialist engaged by the Company in determining the fair values of these assets.

To test the fair value of consideration paid, identifiable assets acquired, and liabilities assumed including an amount for goodwill, we performed audit procedures that included, among others, evaluating the methodologies used in the valuation model and the significant assumptions used by the Company and the valuation specialist.

*/s/ Liggett & Webb, P. A.*

We have served as the Company's auditor since 2018

Boynton Beach, Florida  
April 22, 2022

PCAOB No.: 287

**BROWNIE'S MARINE GROUP, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**

	December 31, 2022	December 31, 2021
<b>ASSETS</b>		
Current Assets		
Cash	\$ 484,427	\$ 643,143
Accounts receivable - net	111,844	123,270
Accounts receivable - related parties	55,428	77,301
Inventory, net	2,421,885	1,895,260
Prepaid expenses and other current assets	192,130	227,458
Total current assets	3,265,714	2,966,432
Property, equipment and leasehold improvements, net	339,546	270,065
Operating lease assets	1,133,092	454,475
Intangible assets, net	646,422	718,905
Goodwill	249,986	249,986
Other assets	30,724	14,098
<b>Total assets</b>	<b>\$ 5,665,484</b>	<b>\$ 4,673,961</b>
<b>Liabilities and stockholders' equity</b>		
Current liabilities		
Accounts payable and accrued liabilities	\$ 829,456	\$ 744,383
Accounts payable - related parties	37,538	37,267
Customer deposits and unearned revenue	167,534	143,938
Other liabilities	372,943	187,924
Operating lease liabilities	269,046	232,283
Related party convertible demand note, net	49,147	-
Current maturities loans payable	66,486	50,402
Total current liabilities	1,792,151	1,396,197
Loans payable, net of current portion	143,960	87,956
Convertible notes, net of current portion	342,943	339,254
Operating lease liabilities	864,057	222,899
Total liabilities	3,143,111	2,046,306
Commitments and contingent liabilities (see note 15)		
Stockholders' equity		
Preferred stock; \$0.001 par value; 10,000,000 shares authorized; 425,000 issued and outstanding as of December 31, 2022 and December 31, 2021, respectively.	425	425
Common stock; \$0.0001 par value; 1,000,000,000 shares authorized; 425,520,662 shares issued and outstanding at December 31, 2022 and 393,850,475 shares issued and outstanding at December 31, 2021.	42,553	39,386
Common stock payable 138,941 shares and 138,941 shares, respectively as of December 31, 2022 and December 31, 2021.	14	14
Additional paid-in capital	18,916,876	17,132,434
Accumulated deficit	(16,437,495)	(14,544,604)
<b>Total stockholders' equity</b>	<b>\$ 2,522,373</b>	<b>\$ 2,627,655</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 5,665,484</b>	<b>\$ 4,673,961</b>

The accompanying notes are an integral part of these consolidated financial statements.

**BROWNIE'S MARINE GROUP, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**FOR THE YEARS ENDED DECEMBER 31**

	<b>2022</b>	<b>2021</b>
Revenues	8,577,372	6,227,379
Cost of revenues	5,783,173	4,337,820
Gross profit	2,794,199	1,889,559
Operating expenses		
Selling, general and administrative	4,626,203	3,666,823
Research and development costs	18,393	75,439
Total operating expenses	4,644,596	3,742,262
Loss from operations	(1,850,397)	(1,852,703)
Other (income) expense, net		
Gain on settlement of debt	-	10,000
Gain on the forgiveness of PPP loan	-	275,760
Interest expense	(42,494)	(21,524)
Total other (income) expense - net	(42,494)	264,236
Loss income before provision for income taxes	(1,892,891)	(1,588,467)
Provision for income taxes	-	-
Net loss	\$ (1,892,891)	\$ (1,588,467)
Basic loss per common share	\$ (0.00)	\$ (0.00)
Diluted loss per common share	\$ (0.00)	\$ (0.00)
Basic weighted average common shares outstanding	410,509,853	349,597,953
Diluted weighted average common shares outstanding	410,509,853	349,593,953

The accompanying notes are an integral part of these consolidated financial statements.

**BROWNIE'S MARINE GROUP, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**FOR THE YEARS ENDED DECEMBER 31, 2022 AND 2021**

	Preferred Stock		Common Stock		Common Stock Payable		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares Outstanding	Par	Shares Outstanding	Par	Shares	Amount			
<b>Balance, December 31, 2020</b>	425,000	\$ 425	306,185,206	\$30,620	138,941	\$ 14	\$13,508,882	\$ (12,956,137)	\$ 583,804
Units issued for cash	-	-	14,600,000	1,460	-	-	363,540	-	365,000
Shares issued for cash	-	-	27,500,000	2,750	-	-	272,250	-	275,000
Shares issued for acquisition	-	-	27,305,442	2,731	-	-	1,447,188	-	1,449,919
Debt Discount on sellers note	-	-	-	-	-	-	12,480	-	12,480
Shares issued for services	-	-	4,903,761	490	-	-	201,462	-	201,952
Stock option expense	-	-	-	-	-	-	1,154,801	-	1,154,801
Debentures and accrued interest	-	-	12,592,083	1,259	-	-	135,217	-	136,476
Shares issued for exclusivity	-	-	763,983	76	-	-	36,614	-	36,690
Net Loss	-	-	-	-	-	-	-	(1,588,467)	(1,588,467)
<b>Balance, December 31, 2021</b>	<u>425,000</u>	<u>\$ 425</u>	<u>393,850,475</u>	<u>\$39,386</u>	<u>138,941</u>	<u>\$ 14</u>	<u>\$17,132,434</u>	<u>\$ (14,544,604)</u>	<u>\$ 2,627,655</u>
Shares issued for the purchase of units	-	-	14,255,951	1,426	-	-	303,574	-	305,000
Shares issued for exercise of warrants	-	-	10,600,000	1,060	-	-	263,940	-	265,000
Shares issued for Asset Purchase	-	-	3,084,831	308	-	-	119,692	-	120,000
Shares issued for Royalty Agreement	-	-	1,155,881	116	-	-	29,884	-	30,000
Shares issued for accrued interest in convertible notes	-	-	784,253	78	-	-	38,306	-	38,384
Shares issued for employee bonus	-	-	280,000	28	-	-	11,032	-	11,060
Shares issued for services	-	-	1,509,271	151	-	-	47,350	-	47,501
Beneficial conversion feature	-	-	-	-	-	-	19,250	-	19,250
Stock option expense	-	-	-	-	-	-	951,414	-	951,414
Net loss	-	-	-	-	-	-	-	(1,892,891)	\$ (1,892,891)
<b>Balance, December 31, 2022</b>	<u>425,000</u>	<u>\$ 425</u>	<u>425,520,662</u>	<u>\$42,553</u>	<u>138,941</u>	<u>\$ 14</u>	<u>\$18,916,876</u>	<u>\$ (16,437,495)</u>	<u>2,522,373</u>

The accompanying notes are an integral part of these consolidated financial statements.



**BROWNIE'S MARINE GROUP, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF CASH FLOWS**  
**FOR THE YEARS ENDED DECEMBER 31**

	2022	2021
Cash flows provided by operating activities:		
Net loss	\$ (1,892,891)	\$ (1,588,467)
Adjustments to reconcile net loss to cash used in operating activities:		
Depreciation and amortization	149,120	56,472
Amortization of debt discount	5,305	1,734
Amortization of right-of-use asset	241,995	152,688
Common stock issued for services	47,501	201,952
Shares issued for royalty	30,000	-
Allowance (recovery) for bad debt	-	32,079
Allowance for slow moving inventory	26,207	54,301
Allowance for Nomad recall	160,500	-
Shares issued for exclusivity	-	36,690
Stock Based Compensation - options	951,414	1,154,801
Shares issued for employee bonus	11,060	-
Shares issued for accrued interest in convertible notes	38,385	-
Gain on settlement of debt	-	(10,000)
Gain on forgiveness of PPP loan	-	(275,760)
Changes in operating assets and liabilities		
Change in accounts receivable, net	11,426	(32,443)
Change in accounts receivable - related parties	21,873	(9,657)
Change in inventory	(443,421)	(649,414)
Change in prepaid expenses and other current assets	99,017	(109,612)
Change in other assets	(16,626)	21,555
Change in accounts payable and accrued liabilities	85,073	216,703
Change in customer deposits and unearned revenue	23,596	118,210
Change in long term lease liability	(242,690)	(151,981)
Change in other liabilities	14,519	75,775
Change in accounts payable - related parties	272	(65,093)
Net cash used in operating activities	(678,356)	(769,467)
Cash flows used in investing activities:		
Cash used in asset acquisition	(30,000)	-
Cash acquired in business acquisition	-	541,378
Cash used in purchase of fixed assets, net of debt	(21,124)	-
Purchase of fixed assets	(11,040)	(23,677)
Net cash provided by (used in) investing activities	(62,164)	517,701
Cash flows from financing activities:		
Proceeds from issuance of common stock	-	275,000
Proceeds from issuance of units	305,000	365,000
Proceeds from exercise of warrants	265,000	-
Proceeds of convertible note	66,793	-
Repayment of notes payable	(54,988)	(90,278)
Net cash provided by financing activities	581,805	549,722
Net (decrease) Increase in cash	(158,716)	297,956
Cash, beginning balance	643,143	345,187
Cash, end of period	\$ 484,427	\$ 643,143
<b>Supplemental disclosures of cash flow information:</b>		
Cash Paid for Interest	\$ 42,496	9,141
Cash Paid for Income Taxes	\$ -	-
<b>Supplemental disclosure of non-cash financing activities:</b>		
Operating lease obtained for operating lease liability	\$ 920,615	\$ 160,182
Shares issued for asset acquisition	\$ 120,000	\$ 1,449,919
Convertible notes issued for acquisition	\$ -	\$ 350,000
Beneficial conversion feature on notes issued for acquisition	\$ 19,250	\$ 12,480
Shares issued for payment of convertible note interest	\$ 38,384	\$ -
Fixed asset purchase through the issuance of debt	\$ 84,500	\$ 76,448
Prepayment for equipment through financing	\$ 63,689	\$ -
Shares issued for the conversion of convertible notes and accrued interest	\$ -	\$ 136,476

The accompanying notes are an integral part of these consolidated financial statements.

BROWNIE'S MARINE GROUP, INC. AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Description of business and summary of significant accounting policies

Description of business – Brownie's Marine Group, Inc., a Florida corporation (the "Company," or "BWMG"), (1) designs, tests, manufactures and distributes recreational hookah diving, scuba and water safety products through its wholly owned subsidiary Trebor Industries, Inc., a Florida corporation organized in 1981 ("Trebor" or "BTL"), (2) manufactures and sells high pressure air and industrial compressor packages, yacht based scuba air compressor and nitrox generation systems through its wholly owned subsidiary Brownie's High Pressure Compressor Services, Inc., a Florida corporation organized in 2017 ("BHP"), doing business as LW Americas ("LWA") and (3) develops and markets portable battery powered surface supplied air dive systems through its wholly owned subsidiary BLU3, Inc., a Florida corporation ("BLU3"). On September 3, 2021, the Company, entered into an Agreement and Plan of Merger and Reorganization (the "Merger Agreement") with Submersible Acquisition, Inc., a Florida corporation and wholly owned subsidiary of the Company ("Acquisition Sub"), Submersible Systems, Inc., a Florida corporation ("Submersible" or "SSI"), and Summit Holdings V, LLC, a Florida limited liability company ("Summit") and Tierra Vista Group, LLC, a Florida limited liability company ("Tierra Vista" and, together with Summit, the "Sellers"), the owners of all of the capital stock of Submersible organized in 2017, pursuant to which Acquisition Sub merged with and into Submersible (the "Merger"), and Submersible, the surviving corporation, became a wholly owned subsidiary of the Company.

Submersible is a manufacturer of high-pressure tanks and redundant air systems for the military and recreational diving industries, based in Huntington Beach, California and sells its products to governments, militaries, private companies and the dive industry throughout the world.

On February 13, 2022 the Company filed with the Florida Department of State, articles of incorporation for a new wholly owned subsidiary, Live Blue, Inc. ("LBI"). LBI utilizes technology developed by BLU3 to provide new users and interested divers a guided tour experience. On May 2, 2022, the Company entered into an asset purchase agreement (the "Asset Purchase Agreement") with Gold Coast Scuba, LLC, a Florida limited liability company ("Gold Coast Scuba"), Steven M. Gagas and William Frenier, the sole members of Gold Coast Scuba (together, the "LLC Members") and LBI. Pursuant to the terms of the Asset Purchase Agreement, LBI acquired substantially all of Gold Coast Scuba's assets and assumed certain non-material liabilities of the business associated with these assets. In addition, LBI assumed the lease for the premises for Gold Coast Scuba as part of this asset acquisition.

Basis of Presentation – The consolidated financial statements of the Company have been prepared in accordance with the accounting principles generally accepted in the United States of America ("GAAP").

Definition of fiscal year – The Company's fiscal year end is December 31.

Principles of Consolidation -The consolidated financial statements include the accounts of BWMG and its wholly owned subsidiaries, Trebor, BHP, BLU3, SSI and LBI. All significant intercompany transactions and balances have been eliminated in consolidation.

Use of 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 and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Going Concern – The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern, which contemplates realization of assets and the satisfaction of liabilities in the normal course of business for the twelve-month period following the date of issuance of these financial statements. We incurred net losses for the years ended December 31, 2022 and 2021 of \$1,892,891 and \$1,588,467, respectively. The Company had an accumulated deficit as of December 31, 2022 of \$16,437,495.

The Company believes that existing operational cash flow may not be sufficient to fund presently anticipated operations, this raises substantial doubt about our ability to continue as a going concern for the twelve months after the date that the financial statements were issued. Therefore, the Company will seek to continue to raise additional funds as needed and is currently exploring alternative sources of financing including commercial banks and other lending institutions. The Company has issued common stock and has historically issued convertible notes to finance working capital needs and may continue to seek to raise additional capital through sale of common stock or other securities or obtaining short term loans. The Company has no firm commitment for any additional capital and there are no assurances it will be successful in obtaining additional funds.

If the Company fails to raise additional funds when needed, or does not have sufficient cash flows from sales, it may be required to scale back or cease operations, liquidate assets and possibly seek bankruptcy protection. The accompanying consolidated financial statements do not include any adjustments that may result from the outcome of these uncertainties.

Cash and equivalents – Only highly liquid investments with original maturities of 90 days or less are classified as cash and equivalents.

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of cash deposits. Accounts at each institution are insured by the Federal Deposit Insurance Corporation ("FDIC") up to \$250,000 per EIN. At December 31, 2022 and 2021, the Company had approximately \$0 and \$205,500, respectively, in excess of the FDIC insured limit.

Accounts receivable – Accounts receivable consist of amounts due from the sale of all of our products to wholesale and retail customers. The allowance for doubtful accounts are estimates that are developed by using standard quantitative measures based on historical losses, adjusting for current economic conditions and, in some cases, evaluating specific customer accounts for risk of loss. The establishment of allowances requires the use of judgment and assumptions regarding the potential for losses on receivable balances. Though the Company considers these balances adequate and proper, changes in economic conditions in specific markets in which the Company operates and any specific customer collection issues the Company identifies could have a favorable or unfavorable effect on required reserve balances. The allowances for doubtful accounts totaled \$28,558 and \$46,555 at December 31, 2022 and 2021, respectively.

Inventory – The Company values inventory at the lower of cost (determined using the first-in first-out method) or net realizable value. Management's judgment is required to determine the allowances for obsolete or excess inventory. Inventory on hand may exceed future demand either because the product is outdated or because the amount on hand is more than will be used to meet future needs. Inventory allowances are estimated by the individual operating companies using standard quantitative measures based on criteria established by the Company. Though the Company considers these allowance balances to be adequate, changes in economic conditions, customer inventory levels or competitive conditions could have a favorable or unfavorable effect on required allowance balances.

Property and equipment and leasehold improvements – Property and equipment and leasehold improvement is stated at cost less accumulated depreciation or amortization. Depreciation and amortization is provided principally on the straight-line method over the estimated useful lives of the assets or term of the lease, which are primarily 3 to 5 years. The cost of repairs and maintenance is charged to expense as incurred. Expenditures for property betterments and renewals are capitalized. Upon sale or other disposition of a depreciable asset, cost and accumulated depreciation are removed from the accounts and any gain or loss is reflected in other income (expense).

The Company periodically evaluates whether events and circumstances have occurred that may warrant revision of the estimated useful lives of fixed assets or whether the remaining balance of fixed assets should be evaluated for possible impairment. The Company uses an estimate of the related undiscounted cash flows over the remaining life of the fixed assets in measuring their recoverability.

#### Goodwill

The Company records goodwill when the consideration paid for an acquisition exceeds the fair value of net tangible and intangible assets acquired, including related tax effects. Goodwill is not amortized; instead, goodwill is tested for impairment on an annual basis, or more frequently if the Company believes indicators of impairment exist. The Company first assesses qualitative factors such as macro-economic conditions, industry and market conditions, cost factors as well as other relevant events, to determine whether it is more-likely-than-not that the fair value of a reporting unit is less than its carrying value. If the Company determines that the fair value is less than the carrying value, the Company will recognize an impairment charge based on the excess of a reporting unit's carrying value over its fair value. As of December 31, 2022 and 2021, there was no such impairment.

#### Intangible assets

Intangible assets are comprised of customer relationships, trademarks and non-compete agreements acquired in a business combination. The Company amortizes intangible assets with a definitive life over their respective useful lives. Assets with indefinite lives are tested for impairment on an annual basis, or more frequently if the Company believes indicators of impairment exist.

Unlike goodwill and indefinite-lived intangible assets, the accounting rules do not provide for an annual impairment test in determining whether fixed assets (e.g., property, plant, and equipment) and finite-lived intangible assets (e.g., customer lists) are impaired. Instead, they require that a triggering event occur before testing an asset for impairment. Once a triggering event has occurred, the impairment test employed is based on whether the intent is to hold the asset for continued use or to hold the asset for sale. If the intent is to hold the asset for continued use, the impairment test involves a comparison of undiscounted cash flows against the carrying value of the asset as an initial test. If the carrying value of such asset exceeds the undiscounted cash flow, the asset would be deemed to be impaired. Impairment would then be measured as the difference between the fair value of the fixed or amortizing intangible asset and the carrying value to determine the amount of the impairment. As of December 31, 2022 and 2021, there was no such impairment.

#### Revenue Recognition

The Company recognizes revenue in accordance with ASC Topic 606 *Revenue from Contracts with Customers*. The Company recognizes revenue when performance obligations under the terms of a contract with the customer are satisfied. The Company typically satisfies its performance obligations in contracts with customers upon shipment of the goods. Generally, payment is due upon receipt of the invoice and the contracts do not have significant financing components. Product sales occur once control or title is transferred based on the commercial terms. Revenue is measured as the amount of consideration the Company expects to receive in exchange for transferring goods. Product sales are recorded net of variable consideration, such as provisions for returns, discounts and promotional allowances. Such provisions are calculated based on the actual allowances given. Management believes that adequate provision has been made for cash discounts, returns, spoilage and promotional allowances based on the Company's historical experience.

A breakdown of the total revenue between related party and non-related party revenue is as follows:

	2022	2021
Revenues	\$ 7,595,581	\$ 5,111,049
Revenues - related parties	981,791	1,116,330
Total Revenues	<u>\$ 8,577,372</u>	<u>\$ 6,227,379</u>

See further disaggregate revenue disclosures by segment and product type in Note 16.

#### Cost of Sales

Cost of sales consists of the cost of the components of finished goods, the costs of raw materials utilized in the manufacture of products, in-bound and out-bound freight charges, direct manufacturing labor as well as certain internal transfer costs, warehouse expenses incurred prior to the manufacture of the Company's finished products, inventory allowance for excess and obsolete products, and royalties paid on licensing agreements. Components account for the largest portion of the cost of sales. Components include plastic molded parts, gas powered engines, aluminum pressure bottles, electronic parts, batteries and packaging materials.

The breakdown of cost of sales to include cost of sales for related party and non-related party as well as the related party and non-related party royalty expense is as follows:

	2022	2021
Cost of revenues	\$ 5,055,947	\$ 3,569,894
Cost of revenues - related parties	462,297	534,910
Royalty expense - related parties	61,308	75,161
Royalty expense	203,620	157,855
Total cost of revenues	<u>\$ 5,783,173</u>	<u>\$ 4,337,820</u>

Operating Expenses

Operating expenses include selling expenses such as warehousing expenses after manufacture, as well as expenses for advertising, and other marketing expenses. Operating expenses also include such costs as payroll costs, travel costs, professional service fees (including legal fees), depreciation and other general and administrative costs.

#### Lease Accounting

We account for leases in accordance with ASC 842.

The lease standard requires all leases to be reported on the balance sheet as right-of-use assets and lease obligations. We elected the practical expedients permitted under the transition guidance of the new standard that retained the lease classification and initial direct costs for any leases that existed prior to adoption of the standard. We did not reassess whether any contracts entered into prior to adoption are leases or contain leases.

We categorize leases with contractual terms longer than twelve months as either operating or finance leases. Finance leases are generally those leases that would allow us to substantially utilize or pay for the entire asset over its estimated life. Assets acquired under finance leases are recorded in property and equipment, net. All other leases are categorized as operating leases. We did not have any finance leases as of December 31, 2022 and 2021. Our leases generally have terms that range from three years for equipment and three to six years for property. We elected the accounting policy to include both the lease and non-lease components of our agreements as a single component and account for them as a lease.

Lease liabilities are recognized at the present value of the fixed lease payments using a discount rate based on similarly secured borrowings available to us. Lease assets are recognized based on the initial present value of the fixed lease payments, reduced by landlord incentives, plus any direct costs from executing the leases. Leasehold improvements are capitalized at cost and amortized over the lesser of their expected useful life or the lease term.

When we have the option to extend the lease term, terminate the lease before the contractual expiration date, or purchase the leased asset, and it is reasonably certain that we will exercise the option, we consider these options in determining the classification and measurement of the lease. Costs associated with operating lease assets are recognized on a straight-line basis within operating expenses over the term of the lease.

Supplemental balance sheet information related to leases was as follows:

<b>Operating Leases</b>	<b>Classification</b>	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Right-of-use assets	Operating lease assets	\$ 1,133,092	\$ 454,475
Current lease liabilities	Current operating lease liabilities	\$ 269,046	\$ 232,283
Non-current lease liabilities	Long-term operating lease liabilities	864,057	222,899
Total lease liabilities		\$ 1,133,103	\$ 455,182

Lease term and discount rate were as follows:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Weighted average remaining lease term (years)	4.47	2.34
Weighted average discount rate	6.82%	6.11%

The components of lease costs were as follows:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Operating lease cost	\$ 246,571	\$ 171,292
Variable lease cost	-	2,125
Total lease costs	\$ 246,571	\$ 173,417

Supplemental disclosures of cash flow information related to leases were as follows:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Cash paid for operating lease liabilities	\$ 340,471	\$ 171,272
Operating right of use assets obtained in exchange for operating lease liabilities	\$ 920,615	\$ 160,182

Maturities of lease liabilities were as follows as of December 31, 2022:

	<b>Trebor Industries Office Lease</b>	<b>BMG Office Lease</b>	<b>Submersible Systems Lease</b>	<b>Live Blue, Inc.</b>	<b>Total lease payments</b>
2023	64,842	65,484	203,315	8,447	342,088
2024	49,716	50,586	210,600	-	310,902
2025	-	-	216,397	-	216,397
2026	-	-	222,886	-	222,886
Thereafter	-	-	258,342	-	258,342
Total	114,558	116,070	1,111,540	8,447	1,350,615
Less: Imputed interest	(6,019)	(6,098)	(204,842)	(553)	(217,512)
Present value of lease liabilities	<u>\$ 108,539</u>	<u>\$ 109,972</u>	<u>906,698</u>	<u>\$ 7,894</u>	<u>\$ 1,133,103</u>

Detailed information on leases can be found in Note 15.

Product development costs – Product development expenditures are charged to expenses as incurred.

Advertising and marketing costs – The Company expenses the costs of producing advertisements and marketing material at the time production occurs, and expenses the costs of communicating advertisements and participating in trade shows in the period in which they occur. Advertising and trade show expense incurred for the years ended December 31, 2022 and 2021, totaled \$499,441 and \$343,232, respectively.

Research and development costs – The Company accounts for research and development costs in accordance with the Accounting Standards Codification subtopic 730-10, *Research and Development* (“ASC 730-10”). Under ASC 730-10, all research and development costs must be charged to expense as incurred. Accordingly, internal research and development costs are expensed as incurred. Third-party research and developments costs are expensed when the contracted work has been performed or as milestone results have been achieved. Company-sponsored research and development costs related to both present and future products are expensed in the period incurred. During the years ended December 31, 2022 and 2021, the Company incurred research and development costs of \$18,393 and \$75,439, respectively.

Customer deposits and unearned revenue and returns policy – The Company typically takes a minimum 50% deposit against large tankfill systems prior to ordering and/or building the systems. It will also take deposits for large rescue tank orders for both domestic and international customers. The remaining balance due is payable upon delivery, shipment, or installation of the system. Additionally, returns of all other merchandise are subject to a 15% restocking fee as stated on each sales invoice. Customer deposits totaled \$167,534 and \$143,938 at December 31, 2022 and 2021, respectively.

Warranty policy – Under the provisions of the Financial Accounting Standards Board (“FASB”) ASC 460, *Guarantor’s Guarantees*, the Company accrues a liability for estimated warranty policy costs based on standard quantitative measures based on criteria established by the Company. Estimates of costs to service its warranty obligations are based on historical experience, expectation of future conditions and known product issues. To the extent the Company experiences increased warranty claim activity or increased costs associated with servicing those claims, revisions to the estimated warranty reserve would be required. The Company engages in product quality programs and processes, including monitoring and evaluating the quality of its suppliers, to help minimize warranty obligations. The Company provides its customers with an industry standard one year warranty on systems sold and recognizes a warranty reserve based on gross sales multiplied by the historical warranty expense return rate. The warranty reserve charged to cost of net revenues and is included in accrued expenses and is deemed sufficient to absorb any material or labor costs that might be incurred on sales recorded during the period. The Company recorded a reserve for warranty work of \$27,651 and \$13,680 at December 31, 2022 and 2021, respectively.

Income taxes – The Company accounts for its income taxes under the assets and liabilities method, which requires recognition of deferred tax assets and liabilities for future tax consequences of events that have been included in the financial statements. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial statements and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

The Company records net deferred tax assets to the extent the Company believes these assets will more likely than not be realized. In making such determination, the Company considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax planning strategies and recent financial operations. A valuation allowance is established against deferred tax assets that do not meet the criteria for recognition. In the event the Company were to determine that it would be able to realize deferred income tax assets in the future in excess of their net recorded amount, it would make an adjustment to the valuation allowance which would reduce the provision for income taxes.

The Company follows the accounting guidance which provides that a tax benefit from an uncertain tax position may be recognized when it is more likely than not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, based on the technical merits. Income tax positions must meet a more-likely-than-not recognition threshold at the effective date to be recognized initially and in subsequent periods. Also included is guidance on measurement, derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition.

Stock-based compensation – The Company accounts for all compensation related to stock, options or warrants using a fair value based method whereby compensation cost is measured at the grant date based on the value of the award and is recognized over the service period, which is usually the vesting period. The Company uses the Black-Scholes valuation model to calculate the fair value of options and warrants issued to both employees and non-employees. Stock issued for compensation is valued on the effective date of the agreement in accordance with generally accepted accounting principles, which includes determination of the fair value of the share-based transaction. The fair value is determined through use of the quoted stock price.

During the years ended December 31, 2022 and 2021, the Company recognized share based compensation with a fair value of \$962,474 and \$1,154,801, respectively.

Usage of Authorized but Unissued Shares of Common Stock - The Company has issued options, warrants and convertible promissory notes which are convertible into shares of common stock in certain situations the total of which exceeds the current authorization. The Company has adopted a policy for the sequence of usage of remaining authorized but unissued shares of common stock (the “Sequencing Policy”) which outlines the order in which the conversion of these equity-linked instruments may be settled in shares. Under the Company’s Sequencing Policy, the most recently issued equity-linked securities, including stock options, warrants, and convertible promissory notes, are settled in shares first.

Fair value of financial instruments – Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. An entity is required to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. There are three levels of inputs that may be used to measure fair value:

Level 1 - Quoted prices in active markets that are accessible at the measurement date for identical assets or liabilities.

Level 2 - Quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets.

Level 3 - Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. Level 3 assets and liabilities include financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation.

Inputs are used in applying the various valuation techniques and broadly refer to the assumptions that market participants use to make valuation decisions, including assumptions about risk. An investment’s level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. However, the determination of what constitutes “observable” requires significant judgment by the Company. Management considers observable data to be market data which is readily available, regularly distributed or updated, reliable and verifiable, not proprietary, provided by multiple, independent sources that are actively involved in the relevant market. The categorization of an investment within the hierarchy is based upon the pricing transparency of the investment and does not necessarily correspond to the Company’s perceived risk of that investment.

At December 31, 2022, and 2021, the carrying amount of cash, accounts receivable, accounts receivable – related parties, accounts payable and accrued liabilities, accounts payable-related parties, customer deposits and unearned revenue, other liabilities, lease liabilities, loans payable and convertible debentures, approximate fair value because of the short maturity of these instruments.

Loss per common share – Basic loss per share excludes any dilutive effects of options, warrants and convertible securities. Basic loss per share is computed using the weighted-average number of outstanding common shares during the applicable period. Diluted loss per share is computed using the weighted average number of common and dilutive common stock equivalent shares outstanding during the period. Common stock equivalent shares are excluded from the computation if their effect is antidilutive. At December 31, 2022 and December 31, 2021, 266,722,242 and 254,577,924, respectively, potentially dilutive shares were not recognized as their inclusion would be anti-dilutive. These shares reflect shares potentially issuable under convertible note agreements, outstanding warrants, outstanding stock options and the conversion of preferred stock.

#### New accounting pronouncements

##### *ASU 2016-13 Current Expected Credit Loss (ASC326)*

In December 2021, the FASB issued an update to ASU No. 2016-13 the Current Expected Credit Losses (CECL) standard (ASC 326), which is designed to provide greater transparency and understanding of credit risk by incorporating estimated, forward-looking data when measuring lifetime Estimated Credit Losses (ECL) and requires enhanced financial statement disclosures. This guidance is effective January 1, 2023. The Company is evaluating the changes from this standard to determine the impact on its consolidated financial statements and related disclosures.

##### *ASU 2020-06 Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40) - Accounting for Convertible Instruments and Contracts on an Entity's Own Equity.*

In August 2020, the FASB issued ASU 2020-06, Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40) - Accounting for Convertible Instruments and Contracts on an Entity's Own Equity. The ASU simplifies accounting for convertible instruments by removing major separation models required under current GAAP. Consequently, more convertible debt instruments will be reported as a single liability instrument with no separate accounting for embedded conversion features. The ASU removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, which will permit more equity contracts to qualify for the exceptions. The ASU also simplifies the diluted net income per share calculation in certain areas. The new guidance is effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years, and early adoption is permitted. The Company is currently evaluating the impact of the adoption of the standard on the consolidated financial statements.

Other accounting standards that have been issued or proposed by the FASB or other standards-setting bodies that do not require adoption until a future date are not expected to have a material impact on our financial statements upon adoption or are not applicable.



Note 2. Inventory

Inventory consists of the following as of:

	December 31,	
	2022	2021
In-Transit Inventory	-	130,000
Raw materials	1,207,957	1,144,190
Work In Process	80,727	99,858
Finished goods	1,077,308	-
Rental Equipment	55,893	521,212
Total Inventory, net	<u>\$ 2,421,885</u>	<u>\$ 1,895,260</u>

As of December 31, 2022 and 2021, the Company recorded allowances for obsolete or slow moving inventory of approximately \$166,432 and \$308,133, respectively.

Note 3. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following:

	December 31,	
	2022	2021
Prepaid inventory	\$ 42,660	\$ 166,951
Prepaid expenses and other current assets	149,470	60,507
Total prepaid expenses and other current assets	<u>\$ 192,130</u>	<u>\$ 227,458</u>

Note 4. Property and Equipment, Net

Property and equipment consist of the following as of:

	December 31,	
	2022	2021
Tooling and equipment	\$ 586,597	\$ 427,044
Computer equipment and software	40,621	54,056
Vehicles	79,557	79,557
Leasehold improvements	65,748	68,560
Total property and equipment	777,523	629,217
Less: accumulated depreciation and amortization	(432,977)	(359,152)
Total property and equipment, net	<u>\$ 339,546</u>	<u>\$ 270,065</u>

Depreciation and amortization expense totaled \$149,120 and \$56,472 for the years ended December 31, 2022 and 2021, respectively. Included in the depreciation and amortization expense for the year ending December 31, 2022 and 2021 is \$80,597 and \$24,095 for amortization of intangible assets, respectively.

Note 5. Other Assets

Other assets at December 31, 2022 of \$30,724 consisted of refundable deposits. Other assets at December 31, 2021 of \$14,098 consisted of refundable deposits.

Note 6. Customer Credit and Vendor Concentrations

The Company sells to three entities owned by the brother of Robert M. Carmichael and three companies owned by Robert M. Carmichael as further discussed in note 7 - Related Parties Transactions. Combined sales to these six entities for the years ended December 31, 2022 and 2021, represented 11.4% and 17.9%, respectively, of total net revenues.

Brownie's Southport Divers, Inc. represented concentration in outstanding accounts receivable of 10.1% of total outstanding accounts receivable as of December 31, 2022 and 25.3% as of December 31, 2021. Brownie's Global Logistics, LLC represented concentration in outstanding accounts receivable of less than 10% of total outstanding accounts receivable as of December 31, 2022 and 2021.

Additionally, the Company has a non-related party customer, Amazon, that represented 12.0% of total outstanding accounts receivable as of December 31, 2022.

Revenue from Amazon accounted for 12.0% of revenue for the twelve months ended December 31, 2022, but did not exceed 10% of total revenue for the year ended December 31, 2021.

The Company has two vendors that for the year ended December 31, 2022 supplied more than 10% each of the Company's overall purchases. Tian Li He Technology supplied 11.9% of overall purchases and L&W supplied 11.7% of overall purchases for the year ended December 31, 2022. There were no vendor concentrations beyond 10% of total purchases for the year ended December 31, 2021.

#### Note 7. Related Party Transactions

We sell products to Brownie's Southport Divers, Inc., Brownie's Palm Beach Divers, and Brownie's Yacht Toys, companies owned by the brother of Robert Carmichael. Combined net revenues from these entities for the years December 31, 2022 and 2021, totaled \$977,145 and \$1,116,085, respectively. Accounts receivable from Brownie's SouthPort Diver's, Inc., Brownie's Palm Beach Divers, and Brownie's Yacht Toys at December 31, 2022, were \$16,875, \$6,773 and \$15,532, respectively. Accounts receivable from Brownie's SouthPort Diver's, Inc., Brownie's Palm Beach Divers, and Brownie's Yacht Toys at December 31, 2021, were \$50,818, \$7,195 and \$17,779, respectively.

We also sell products to Brownie's Global Logistics, LLC ("BGL") and 940 Associates, Inc. ("940 A"), entities wholly-owned by Robert Carmichael. Combined net revenues from these three entities for the years ended December 31, 2022 and 2021 were \$4,646 and \$245, respectively. In addition, from time to time Mr. Carmichael purchases products from us for his personal use. Accounts receivable from BGL, 940 A and Mr. Carmichael totaled \$2,408 at December 31, 2022 and \$897 at December 31, 2021.

We owed BGL \$2,980 and \$32,267 at December 31, 2022 and 2021, respectively, which represents purchase of inventory including batteries for Sea Lion (battery operated unit) and Honda engines for our regular gasoline powered units. As of December 31, 2022, the Company also had an amount due of \$5,000 to Mr. Carmichael for an advance to BLU3, Inc.

We are a party to an exclusive license agreement, dated February 22, 2005, with 940 A to license the trademark "Brownies Third Lung", "Tankfill", "Brownies Public Safety" and various other related trademarks as listed in the agreement. The agreement provides for a royalty to be paid equal to the greater of 2.5% on all sales of Trebor or \$15,000 per quarter. Total royalty fees paid to 940 A in the years ended December 31, 2022 and 2021 totaled \$61,308 and \$75,161, respectively. The Company had accrued royalties of \$2,845 and \$7,735 for the years ended December 31, 2022 and 2021, respectively.

On September 30, 2022, the Company issued a convertible demand 8% promissory note in the principal amount of \$66,793 to Robert Carmichael for funds to meet the working capital needs of LBI. There is no amortization schedule for the note, and interest is payable in shares of common stock of the Company at a conversion price equal to the 90 day value weighted average price ("VWAP") of the Company's stock prior to the quarterly interest payment date. The note holder may demand payment or convert the outstanding principal at a conversion rate of \$.021 per share at any time. The conversion rate was calculated at a 35% discount to the 90 day VWAP of the Company's stock as of the date of the note. The Company recorded \$19,250 for the beneficial conversion feature. As this conversion rate is a fixed rate, the embedded conversion feature is not a derivative liability.

Effective July 29, 2019 the Company agreed to pay the members of the Company's Board of Directors, including Mr. Carmichael, a management director, an annual fee of \$18,000 for serving on the Company's Board of Directors for the year ending December 31, 2019. As of December 31, 2021, the Company had accrued \$112,500 in Board of Directors' fees. On August 21, 2020 the Company's Board of Directors approved the continuation of the 2019 Board compensation policy for the year ending December 31, 2022. As of December 31, 2022, the Company accrued an additional \$36,000 in Board of Directors' fees for a total of \$148,500 in accrued fees.

On April 14, 2020 the Company entered into a Non-Qualified Stock Option Agreement with Mr. Carmichael. Under the terms of the option agreement, as additional compensation the Company granted Mr. Carmichael an option to purchase up to an aggregate of 125,000,000 shares of the Company's common stock at an exercise price of \$.045 per share. During the years ended December 31, 2022 and December 31, 2021 the Company expensed \$655,516 and \$874,021 in relation to this option agreement, respectively. As of December 31, 2022, there were 50,000,000 shares vested from this option.

Also, on November 5, 2020 the Company entered into a Non-Qualified Option Agreement with Mr. Constable. Under the terms of this option agreement, as additional compensations, the Company granted an option (the "Bonus Option") to purchase up to an aggregate of 30,000,000 shares of the Company's common stock at an exercise price of \$.0184 per share. During the years ended December 31, 2022 and December 31, 2021, the Company expensed \$63,267 and \$82,734, respectively. As of December 31, 2022, there were 5,000,000 shares vested from this option.

On March 25, 2021, the Company issued 27,500,000 shares of common stock to Charles. Hyatt, a member of our Board of Directors in consideration of \$275,000.

On August 1, 2021 as part of the Blake Carmichael Agreement (see Note 15) the Company entered into a Non-Qualified Stock Option agreement with Blake Carmichael. Under the terms of the Blake Carmichael agreement, Blake Carmichael is entitled to (i) a five-year option to purchase 3,759,400 shares of the Company's common stock at an exercise price of \$0.0399 (the "BC Compensation Options"), 33.3% of the shares subject to the Option vest upon the execution of the agreement, 33% at the first anniversary date and 33% upon the second anniversary date and (ii)(i) a 5-year option to purchase up to 18,000,000 shares to vest annually on a contract year basis, based upon the achievement of certain financial metrics tied to revenue and EBITDA, which for the years ended December 31, 2022 and December 31, 2021 the Company expensed \$49,692 and \$21,810, respectively.

On September 1, 2021, the Company issued Charles Hyatt, a member of the Company's Board of Directors, 10,000,000 units, with each unit consisting of one share of common stock and a two-year warrant to purchase one share of common stock at an exercise price of \$0.025 per share in consideration of \$250,000.

On September 1, 2021, the Company issued Grace Hyatt, the adult child of Charles Hyatt, 600,000 units of the securities of the Company, with each unit consisting of one share of common stock and a two-year warrant to purchase one share of common stock at an exercisable at \$0.025 per share in consideration of \$15,000.

On November 5, 2021 the Company entered into a Non-Qualified Stock Option agreement with Christopher Constable as part of his employment agreement as the Company's Chief Executive Officer. Under the terms of the option agreement, the Company granted Mr. Constable a five-year option to purchase 2,403,846 shares of the Company's common stock at an exercise price of \$.0416, the "Compensation Options". The Compensation Options were immediately vested. The fair value of the options on the date of the grant was \$98,976 using the Black-Scholes option pricing model with the following assumptions: (i) risk free interest rate of .53%, (ii) expected life of 2.5 years, (iii) dividend yield of 0%, and (iv) expected volatility of 324.5%. Stock option expense recognized during the year ended December 31, 2021 for this option was \$98,976.

On February 2, 2022, the Company issued Charles Hyatt, a director, 10,000,000 shares upon the exercise of a warrant at \$0.025 per share in consideration of \$250,000.

On February 2, 2022, the Company issued Grace Hyatt, the adult child of Charles Hyatt, a director, 600,000 shares upon the exercise of a warrant at \$0.025 per share in consideration of \$15,000

On November 5, 2022 the Company entered into a Non-Qualified Stock Option agreement with Christopher Constable as part of his employment agreement as the Company's Chief Executive Officer. Under the terms of the option agreement, the Company granted Mr. Constable a five-year option to purchase 3,968,254 shares of the Company's common stock at an exercise price of \$.0252 the "Compensation Options". The Compensation Options were immediately vested. The fair value of the options on the date of the grant was \$95,969 using the Black-Scholes option pricing model with the following assumptions: (i) risk free interest rate of .464%, (ii) expected life of 2.5 years, (iii) dividend yield of 0% and (iv) expected volatility of 256%. Stock option expense recognized during the year ended December 31, 2022 for this option was \$95,969.

On December 13, 2022, the Company issued 5,714,285 units, each unit consists of one share of common stock and a two-year warrant to purchase one share of common stock at an exercise price of \$0.0175 per share to Charles Hyatt a director, in a private offering for proceeds of \$100,000.

Note 8. Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consists of the following as of:

	December 31, 2022	December 31, 2021
Accounts payable trade and other	\$ 504,393	\$ 516,957
Accrued payroll and fringe benefits	262,113	165,969
Accrued warranty expense	27,651	13,680
Accrued payroll taxes and withholding	-	9,106
Accrued Sales Tax	35,299	29,339
Accrued interest	-	9,332
	<u>\$ 829,456</u>	<u>\$ 744,383</u>

Balances due certain vendors are in arrears to varying degrees. The Company is handling all delinquent accounts on a case-by-case basis.

Note 9. Other Liabilities

Other liabilities consist of the following as of:

	December 31, 2022	December 31, 2021
Accrued expenses	\$ 63,943	\$ 66,424
Accrued recall reserve fee	160,500	
Accrued Board of Directors fees	148,500	121,500
	<u>\$ 372,943</u>	<u>\$ 187,924</u>

Further information regarding the recall reserve fee can be found in note 15.

Note 10. Convertible Promissory Notes and Loans Payable

Convertible Promissory Notes

Convertible Promissory Notes consist of the following at December 31, 2022:

Origination Date	Maturity Date	Interest Rate	Origination Principal Balance	Original Discount Balance	Period End Principal Balance	Period End Discount Balance	Period End Balance, Net	Accrued Interest Balance	Reg.
9/03/21	9/03/24	8%	\$ 346,500	\$ (12,355)	\$ 346,500	\$ (6,994)	\$ 339,509	-	(4)
9/03/21	9/03/24	8%	\$ 3,500	\$ (125)	3,500	(66)	3,434	-	(5)
9/30/22	Demand	8%	\$ 66,793	\$ (19,250)	68,397	(19,250)	49,147	-	(6)
					<u>\$ 418,397</u>	<u>\$ (26,310)</u>	<u>\$ 392,090</u>	<u>\$ -</u>	

Convertible debentures consist of the following at December 31, 2021:

Origination Date	Maturity Date	Interest Rate	Origination Principal Balance	Original Discount Balance	Period End Principal Balance	Period End Discount Balance	Period End Balance, Net	Accrued Interest Balance	Reg.
8/31/11	8/31/13	5%	10,000	(4,286)	\$ -	\$ -	\$ -	\$ -	(1)
12/01/17	12/31/21	6%	50,000	(12,500)	-	-	-	-	(2)
12/05/17	12/31/21	6%	50,000	(12,500)	-	-	-	-	(3)
9/03/21	9/03/24	8%	346,500	(12,355)	346,500	(10,639)	335,861	9,240	(4)
9/03/21	9/03/24	8%	3,500	(125)	3,500	(107)	3,393	92	(5)
					<u>\$ 350,000</u>	<u>\$ (10,746)</u>	<u>\$ 339,254</u>	<u>\$ 9,332</u>	

(1) The Company borrowed \$10,000 in exchange for a convertible note (the "Hoboken Convertible Note"). The holder at its option may convert all or part of the note plus accrued interest into common stock at a price of 30% discount as determined from the average four highest closing bid prices over the preceding five trading days. The Company valued the beneficial conversion feature of the convertible debenture at \$4,286, which was accreted to interest expense over the period of the note. On February 22, 2021, this note and accrued interest of \$4,777 were converted by the holder into 422,209 shares of common stock in accordance with the terms of the note.

(2) On December 1, 2017, the Company issued a \$50,000 principal amount 6% secured convertible promissory note, initially due December 1, 2018, subject to extension. The note is secured with such assets of the Company equal to the principal and accrued interest, is guaranteed by the Company's wholly-owned subsidiaries, Trebor and BHP and the personal guarantee of Mr. Carmichael.

The conversion price under the note initially ranged from \$0.02 per share if converted in the first year to \$0.125 per share if converted in year five. The lender may convert at any time until the note plus accrued interest is paid in full. Various other fees and penalties apply if payments or conversions are not done timely by the Company. The lender will be limited to maximum conversion of 9.99% of the outstanding common stock of the Company at any one time. In 2019, the maturity date of the note was extended for one additional year to December 31, 2019 with a reduction in the conversion price to \$0.01 per share. The Company recorded a loss on extinguishment of debt of \$32,000 upon the modification of conversion price. On June 10, 2021, this note and accrued interest of \$10,554 were converted by the holder into 6,055,358 shares of common stock in accordance with the terms of the note.

(3) On December 5, 2017, the Company issued a \$50,000 principal amount 6% secured convertible promissory note, initially due December 4, 2018, subject to extension. The note is secured with such assets of the Company equal to the principal and accrued interest, is guaranteed by the Company's wholly owned subsidiaries, Trebor and BHP and the personal guarantee of Mr. Carmichael.

The conversion price under the note initially ranged from \$0.02 per share if converted in the first year to \$0.125 per share if converted in year five. The lender may convert at any time until the note plus accrued interest is paid in full. Various other fees and penalties apply if payments or conversions are not done timely by the Company. The lender will be limited to maximum conversion of 9.99% of the outstanding common stock of the Company at any one time. In 2019, the note was extended for one additional year to December 31, 2019 with a reduction in the conversion price to \$0.01 per share. The Company recorded a loss on extinguishment of debt of \$99,000 upon the modification of conversion price. The maturity date was further extended to December 31, 2021. On August 18, 2021, this note and accrued interest of \$11,145 were converted by the holder into 6,114,516 shares of common stock in accordance with the terms of the note.

(4) On September 3, 2021, the Company issued a \$346,500 note payable to Summit Holding V, LLC as part of the acquisition of SSI. The note carries 8% unsecured convertible promissory note, due September 3, 2024. Payments on the note are to be equivalent to 50% of the adjusted net profit of Submersible Systems, Inc., payable calendar quarterly commencing on December 31, 2021. Interest is payable in company stock at the conversion price of \$0.051272 and shall be paid quarterly. The note holder may convert any outstanding principal and unpaid interest at a conversion rate of \$0.051272 at any time up to the maturity date of the note. The Company recorded \$12,355 for the beneficial conversion feature.

	Payment Amortization
2023	\$ -
2024	346,500
Total Note Payments	\$ 346,500
Current portion of note payable	-
Non-Current Portion of Notes Payable	\$ 346,500

- (5) On September 3, 2021, the Company issued a three-year 8% unsecured convertible promissory note for \$3,500 to Tierra Vista Partners, LLC as part of the acquisition of SSI. Payments on the note are to be equivalent to 50% of the adjusted net profit of SSI, payable calendar quarterly commencing on December 31, 2021. Interest is payable quarterly in common stock of the Company at the conversion price of \$0.051272 per share. The note holder may convert any outstanding principal and unpaid interest at a conversion rate of \$0.051272 at any time up to the maturity date of the note. The Company recorded \$125 for the beneficial conversion feature.

	Payment	Amortization
2023	\$	-
2024		3,500
Total Note Payments	\$	3,500
Current portion of note payable		-
Non-Current Portion of Notes Payable	\$	3,500

- (6) On September 30, 2022, the Company issued a convertible demand 8% promissory note in the principal amount of \$66,793 to Robert Carmichael for funds to meet the working capital needs of LBI. There is no amortization schedule for the note, and interest is payable in shares of common stock of the Company at a conversion price equal to the 90 day VWAP of the Company's stock prior to the quarterly interest payment date. This note is classified as a current liability as the note holder may demand payment or convert the outstanding principal at a conversion rate of \$0.021 per share at any time. The Company recorded \$19,250 for the beneficial conversion feature.

#### Loans Payable

	Marlin Capital BLU3 (1)	Mercedes BMG (2)	Navitas 1 BLU3 (3)	PPP Loan BMG (4)	PPP loan SSI (5)	NFS SSI (6)	Navitas 2 BLU3 (7)	Total
2023	\$ -	\$ 11,168	\$ 14,270	\$ -	\$ -	\$ 22,197	\$ 18,851	\$ 66,486
2024	-	11,168	16,629	-	-	26,279	21,228	75,304
2025	-	8,687	18,024	-	-	12,328	23,611	62,649
2026	-	-	6,007	-	-	-	-	6,007
Total Loan Payments	\$ -	\$ 31,023	\$ 54,930	\$ -	\$ -	\$ 60,804	\$ 63,689	\$ 210,446
Current Portion of Loan Payable	\$ -	\$ (11,168)	\$ (14,270)	\$ -	\$ -	\$ (22,197)	\$ (18,851)	\$ (66,486)
Non-Current Portion of Loan Payable	\$ -	\$ 19,855	\$ 40,660	\$ -	\$ -	\$ 38,607	\$ 44,838	\$ 143,960

- (1) On September 30, 2019, BLU3 financed the purchase of certain plastic molding equipment through Marlin Capital Solutions ("Marlin Capital"). The loan amount at inception was \$96,725. The Company entered into an Equipment Finance Agreement with Marlin Capital pursuant to which it agreed to make 36 equal monthly installments of \$3,143.80. The Equipment Finance Agreement contains customary events of default. The loan balance was \$0 as of December 31, 2022 and \$25,079 as of December 31, 2021.
- (2) On August 21, 2020, the Company executed an installment sales contract with Mercedes Benz Coconut Creek for the purchase of a 2019 Mercedes Benz Sprinter delivery van. The installment agreement is for \$55,841 with a zero interest rate payable over 60 months with a monthly payment of \$931 and is personally guaranteed by Mr. Carmichael. The loan balance as of December 31, 2022 was \$31,023 and \$43,122 as of December 31, 2021.
- (3) On May 19, 2021, subsidiary BLU3, executed an equipment finance agreement to finance the purchase of certain plastic molding equipment through Navitas Credit Corp. ("Navitas"). The amount financed is \$75,764 payable over 60 equal monthly installments of \$1,611 (the "Navitas 1"). The equipment finance agreement contains customary events of default. The loan balance as of December 31, 2022 was \$54,930 and \$70,157 as of December 31, 2021.

- (4) On May 12, 2020, we received an unsecured loan from South Atlantic Bank in the principal amount of \$159,600 (the “SBA Loan”), under the Paycheck Protection Program (“PPP”), which was established under the recently enacted Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) administered by the U.S. Small Business Administration. The intent and purpose of the PPP is to support companies, during the COVID-19 pandemic, by providing funds for certain specified business expenses, with a focus on payroll. As a qualifying business as defined by the SBA, we used the proceeds from this loan to primarily help maintain our payroll and cover our rent and utilities as we navigated our business through the lockdowns associated with the COVID-19 pandemic until our return to normal operations earlier in 2020.

The term of the note is two years, though it may be payable sooner in connection with an event of default under the note. The SBA Loan carries a fixed interest rate of one percent per year, and a monthly payment of \$8,983, with the first payment due seven months from the date of initial cash receipt. Under the CARES Act and the PPP, certain amounts of loans made under the PPP may be forgiven if the recipients use the loan proceeds for eligible purposes, including payroll costs and certain rent or utility costs, and meet other requirements regarding, among other things, the maintenance of employment and compensation levels. We used the SBA Loan for qualifying expenses and have applied for forgiveness of the SBA Loan in accordance with the terms of the CARES Act. On April 28, 2021, the Company was notified by South Atlantic Bank that the SBA Loan was forgiven in full under the terms of the CARES Act. The company recorded the forgiveness as a gain on the forgiveness of the PPP loan of \$159,600 on our consolidated income statement.

The note balance as of December 31, 2022 and December 31, 2021 was \$0.

- (5) On May 12, 2020, SSI received an unsecured loan from City National Bank in the principal amount of \$116,160 (the “Submersible SBA Loan”), under the CARES Act.

The term of the note is two years, but may become due and payable upon an event of default under the note. The Submersible SBA Loan carries a fixed interest rate of 1% per year, and a monthly payment of \$6,925, with the first payment due seven months from the date of initial cash receipt. As part of the forgiveness application and directly related to the acquisition of SSI by the Company, SSI was required to place \$121,953 in an escrow account until forgiveness is determined and City National Bank has been paid in full by the SBA. On October 15, 2021, the Company was notified by City National Bank that the Submersible SBA Loan was forgiven in full under the terms of the CARES Act. The restricted cash in escrow was released in full by the bank as a result of this forgiveness on November 8, 2021.

The note balance as of December 31, 2022 and December 31, 2021 was \$0.

- (6) On June 29, 2022, SSI executed an equipment financing agreement with NFS Leasing (“NFS Leasing”) to secure replacement production molds. The total purchase price of the molds was \$84,500 of which \$63,375 was financed by NFS Leasing on August 15, 2022. The financing agreement has a 33 month term beginning in August 2022 with a monthly payment of \$2,571. The financing agreement contains customary events of default, is guaranteed by the Company and NFS Leasing has a lien on all of the assets of SSI. The loan balance as of December 31, 2022 and December 31, 2021 was \$60,804 and \$0, respectively.
- (7) On December 12, 2022, BLU3 executed an equipment finance agreement to finance the purchase of certain plastic molding equipment through Navitas Credit Corp. (“Navitas”). The amount financed is \$63,689 payable over 36 equal monthly installments of \$2,083 (“Navitas 2”). The equipment finance agreement contains customary events of default. The loan balance as of December 31, 2022 was \$63,689 and \$0 as of December 31, 2021.

Note 11. Business Combinations

Merger with Submersible Systems, Inc.

On September 3, 2021, the Company completed its merger with Submersible Systems, Inc. Under the terms of the Merger Agreement, the Company paid \$1.79 million in consideration consisting of the issuance of 27,305,442 shares of its common stock (valued at \$1.4 million), the issuance of \$350,000 in 8% unsecured convertible promissory notes in exchange for all of the equity of Submersible. The 27,305,442 shares of the Company's common stock issued for the \$1.45 million in consideration are subject to leak out agreements whereby the shareholders are unable to sell or transfer shares based upon the following:

Holding Period from Closing Date	Percentage of shares eligible to be sold or transferred
6 months	Up to 12.5%
9 months	Up to 25.0%
24 months	Up to 75.0%
36 months	Up to 100.0%

The Leak-Out provision may be waived by the Company, upon written request by the holder of the common stock, if the Company is trading on either the NYSE American or Nasdaq, and has a rolling 30-day average trading volume of 50,000 shares per day; *provided, however*, that (i) only up to 5% of the previous days total volume can be sold in one day by a holder; and (ii) the holder can only sell through executing trades "On the Offer."

The transaction costs associated with the Merger were \$65,000 in legal fees paid \$40,000 in cash, and 1,190,476 shares of the Company's common stock with a fair value of \$55,952.

Fair Value of Consideration Transferred and Recording of Assets Acquired

The following table summarizes the acquisition date fair value of the consideration paid, identifiable assets acquired, and liabilities assumed including an amount for goodwill:

Common stock, 27,305,442 shares at fair market value	\$	1,449,919
8% Unsecured, Convertible promissory note payable to seller		350,000
Total purchase price	\$	<u>1,799,919</u>
Tangible assets acquired	\$	1,101,604
Liabilities assumed		(294,671)
Net tangible assets acquired		<u>806,933</u>
<b>Identified Intangible Assets</b>		
Customer Relationships	\$	600,000
Trademarks		121,000
Non-compete agreements		22,000
Total Intangible Assets		<u>743,000</u>
Goodwill	\$	<u>249,986</u>
Total purchase price	\$	<u>1,799,919</u>



In determining the number of shares of the common stock issued, the Company considered the value of the stock as defined the Merger Agreement to be the calculated based on the volume weighted average price (“VWAP”) of a share of the Company’s common stock on the OTC Markets for (i) 180 days prior to the date of the parties’ execution and delivery of the binding term sheet for the Merger or (ii) 180 days prior to the closing date of the Merger, whichever results in a lower VWAP. Based on this calculation, the Company utilized calculation (i) resulting in a conversion price of \$.051271831. This conversion price resulted in the issuance of 27,305,442 shares of common stock with a fair value of \$1,449,919 on the closing date.

Inventory was assessed at the time of closing as to its fair value, and it was determined that a step-up analysis was necessary in order to evaluate the fair value of the inventory at the time of closing. The step up represents the net profit that would be attained when the inventory is sold. The key assumptions used in this analysis is a gross margin of 38.3% and selling costs of 5.0%. The analysis resulted in a necessary step up of \$31,000 at the time of closing.

Goodwill represents the future economic benefit arising from other assets acquired that could not be individually identified and separately recognized. The goodwill arising from the acquisition is attributable to the value of the potential expanded market opportunity with new customers. The goodwill is not expected to be deductible for tax purposes.

#### *Pro Forma Information*

The following unaudited pro forma information assumes all business combinations occurred on January 1, 2021. For all of the business acquisitions depreciation and amortization have been included in the calculation of the below pro forma information based upon the actual acquisition costs.

	Year ended December 31, 2021 (unaudited)
Revenue	\$ 7,259,384
Net Loss	\$ (1,560,900)
Basic and Diluted Loss per Share	\$ (0.00)
Basic and Diluted Weighted Average Common Shares Outstanding	368,144,534

The information included in the pro forma amounts is derived from historical information obtained from the sellers of the businesses. The pro forma amounts above for basic and diluted weighted average common shares outstanding have been adjusted to include the stock issued in connection with the acquisition of SSI.

#### Gold Coast Scuba, LLC Asset Acquisition

On May 2, 2022, the Company entered into an asset purchase agreement (the “Asset Purchase Agreement”) with Gold Coast Scuba, LLC, a Florida limited liability company (“Gold Coast Scuba”), Steven M. Gagas and William Frenier, the sole members of Gold Coast Scuba (together, the “LLC Members”) and Live Blue, Inc. Pursuant to the terms of the Asset Purchase Agreement, Live Blue acquired substantially all of Gold Coast Scuba’s assets and assumed certain non-material liabilities of the business associated with these assets. In addition, LBI assumed the lease for the premises for Gold Coast Scuba as part of this asset acquisition.

In consideration for the assets purchased, the Company paid \$150,000 to the LLC Members. The purchase price was paid by (a) the issuance to the LLC Members of an aggregate of 3,084,831 shares of the Company’s common stock (the “Consideration Shares”) with a fair market value of \$120,000; and (b) a cash payment of \$30,000.

The Consideration Shares are subject to leak out agreements whereby the shareholders are unable to sell or transfer shares based upon the following:

Holding Period from Closing Date	Percentage of shares eligible to be sold or transferred
6 months	Up to 25.0%
9 months	Up to 50.0%
12 months	Up to 100.0%

The leak-out restriction may be waived by the Company upon written request by a LLC Member, if the Company’s common stock is trading on the NYSE American or Nasdaq, and has a rolling 30-day average trading volume of 50,000 shares per day; *provided, however*, that (i) only up to 5% of the previous days total volume can be sold in one day and (ii) only through executing trades “On the Offer.”

The transaction costs associated with the acquisition were \$10,000 in legal fees paid in cash.

While the agreement was structured as an asset purchase agreement, we also assumed the operations of Gulf Coast Scuba resulting in the recognition of a business combination. During 2022 we recognized revenue of \$212,876 and net loss of (\$75,579) associated with this business. The business combination was not material for purposes of disclosing pro forma financial information. In connection with this transaction, we recognized the following assets and liabilities:

	Fair Value
Rental Inventory	\$ 48,602
Fixed Assets	50,579
Retail Inventory	60,819
Right of use asset	29,916
Lease liability	(29,916)
Net Assets Acquired	\$ 160,000

Note 12. Goodwill and Intangible Assets, Net

The following table sets forth the changes in the carrying amount of the Company's Goodwill for the years ended December 31, 2022 and 2021:

	2022	2021
Balance, January 1	\$ 249,986	\$ -
Acquisitions of Submersible Systems, Inc.	-	249,986
Balance, December 31	\$ 249,986	\$ 249,986

The following table sets forth the components of the Company's intangible assets at December 31, 2022:

	Amortization Period (Years)	Cost	Accumulated Amortization	Net Book Value
Intangible Assets Subject to amortization				
Trademarks	15	\$ 121,000	\$ (10,712)	\$ 112,299
Customer Relationships	10	600,000	(80,000)	520,000
Non-Compete Agreements	5	22,000	(5,867)	16,133
Total		\$ 743,000	\$ (96,622)	\$ 646,422

The aggregate amortization remaining on the intangible assets as of December 31, 2022 is as follows:

	Intangible Amortization
2023	\$ 72,467
2024	72,467
2025	72,467
2026	71,367
Thereafter	357,654
Total	\$ 646,422

Note 13. Stockholders' Equity

Common Stock

On February 22, 2021, the Company issued 422,209 shares of common stock related to the conversion of a convertible note and accrued interest of \$14,777.

On March 1, 2021, the Company issued a consultant 3,000,000 shares of its common stock related to investor relation services at a fair value of \$120,000.

On March 25, 2021, the Company issued 27,500,000 shares of common stock to Charles F. Hyatt, a member of our Board of Directors, in consideration of \$275,000.

On February 28, 2021, the Company issued 116,279 shares of common stock to a consultant with a fair value of \$5,000 for professional business services.

On June 10, 2021, the Company issued 6,055,358 shares of common stock related to the conversion of a convertible note and accrued interest of \$60,554.

On August 18, 2021, the Company issued 6,114,516 shares of common stock related to the conversion of a convertible note and accrued interest of \$61,145.

On September 1, 2021, the Company issued Charles Hyatt, a member of our Board of Directors, 10,000,000 units of the Company, with the unit consisting of one share of common stock and a two- year warrant to purchase one share of common stock at an exercise price of \$0.025 per share in consideration of \$250,000. The Company did not pay any fees or commissions in connection with the sale of the unit.

On September 1, 2021, the Company issued Grace Hyatt, the adult child Charles Hyatt, 600,000 units of the Company, with each unit consisting of one share of common stock and a two- year warrant to purchase one share of common stock at an exercise price of \$0.025 per share in consideration of \$15,000. The Company did not pay any fees or commissions in connection with the sale of the unit.

In September, 2021, the Company issued 4,000,000 units of the Company to three accredited investors, with each unit consisting of one share of common stock and a two-year warrant to purchase one share of common stock at an exercise price of \$0.025 per share in consideration of \$100,000. The Company did not pay any fees or commissions in connection with the sale of the unit.

On September 3, 2021, the Company issued 273,054 shares of common stock to Tierra Vesta Group as part of the purchase agreement of Submersible Systems, Inc. with a fair value of \$14,499.

On September 3, 2021, the Company issued 27,032,388 shares of common stock to Summit Holdings V, LLC. as part of the purchase agreement of Submersible Systems, Inc. with a fair value of \$1,435,420.

On September 22, 2021, the Company issued a law firm 1,190,476 shares of common stock with a fair value of \$55,952 as partial consideration for its legal services related to acquisition of SSI.

In November and December, 2021 the Company issued 597,006 shares of its common stock with a fair value of \$21,000 to a consultant for services related to the dive retail industry.

On December 31, 2021 the Company issued 763,983 shares of its common stock with a fair market value of \$36,690 to a vendor related to exclusive distribution of its product line in the US and Caribbean.

On January 17, 2022, the Company issued a law firm 1,000,000 shares of common stock with a fair value of \$27,500 as part of the agreed upon compensation for a representation agreement.

On January 31, 2022, the Company issued a consultant 121,212 shares of common stock with a fair value of \$4,000 for consulting services related to the dive industry.

On February 2, 2022, the Company issued Charles Hyatt, a director, 10,000,000 shares from the exercise of a warrant at \$0.025 per share in consideration of \$250,000.

On February 2, 2022, the Company issued Grace Hyatt, the adult child of Charles Hyatt, a director, 600,000 shares from the exercise of a warrant at \$0.025 per share in consideration of \$15,000.

On February 28, 2022, the Company issued a consultant, 85,106 shares of common stock with a fair value of \$4,000 for consulting services related to the dive industry.

On May 3, 2022, the Company issued 3,084,831 shares of common stock pursuant to the asset purchase agreement with Gold Coast Scuba, LLC with a fair value of \$120,000.

On May 31, 2022, the Company issued a consultant, 302,953 shares of common stock with a fair value of \$12,000 for consulting services related to the dive industry.

On June 17, 2022, the Company issued 280,000 shares of common stock to an employee as a retirement gift. The fair value of this stock was \$11,060.

On June 30, 2022, the Company issued 449,522 shares of common stock to the holders of convertible notes for payment of interest through June 30, 2022. The fair value of these shares was \$23,048.

On September 7, 2022, the Company issued to two accredited investors, 8,541,666 units of the Company, with each unit consisting of one share of common stock and a two-year common stock purchase warrant to purchase one share of common stock at an exercise price of \$0.024 per share in consideration of \$205,000. The Company did not pay any fees or commissions in connection with the sale of the units.

On September 30, 2022, the Company issued 136,527 shares of common stock to the holders of convertible notes for payment of interest for the three months ending September 30, 2022. The fair value of these shares was \$7,000.

On November 1, 2022, the Company issued an aggregate of 1,155,881 shares to the designated shareholders in accordance with the amended STS Agreement. The fair value of these shares was \$30,000.

On December 13, 2022, the Company issued 5,714,286 units, each unit consists of one share of common stock and a two-year warrant to purchase one share of common stock at an exercise price of \$0.0175 per share to Charles Hyatt a director, in a private offering for proceeds of \$100,000.

On December 31, 2022, the Company issued 198,204 shares of common stock to the holders of convertible notes for payment of interest for the three months ending December 31, 2022. The fair value of these shares was \$8,336.

#### Preferred Stock

During the second quarter of 2010, the holder of the majority of the Company's outstanding shares of common stock approved an amendment to the Company's Articles of Incorporation authorizing the issuance of 10,000,000 shares of blank check preferred stock. The blank check preferred stock as authorized has such voting powers, designations, preferences, limitations, restrictions and relative rights as may be determined by our Board of Directors of the Company from time to time in accordance with the provisions of the Florida Business Corporation Act. In April 2011 the Board of Directors designated 425,000 shares of the blank check preferred stock as Series A Convertible Preferred Stock. Each share of Series A Convertible Preferred Stock is convertible into a share of the Company's common stock at any time at the option of the holder at a conversion price of \$18.23 per share. Holders of shares of Series A Convertible Preferred Stock are entitled to 250 votes for each share held. The Company's common stock and Series A Convertible Preferred Stock vote together as on any matters submitted to our shareholders for a vote. As and December 31, 2022 and 2021, the 425,000 shares of Series A Convertible Preferred Stock are owned by Robert Carmichael.

#### Equity Compensation Plan

On May 26, 2021 the Company adopted an Equity Compensation Plan (the "Plan"). Under the Plan, stock options may be granted to employees, directors, and consultants in the form of incentive stock options or non-statutory stock options, stock purchase rights, time vested and/performance invested restricted stock, and stock appreciation rights and unrestricted shares. The maximum number of shares that may be issued under the Plan is 25,000,000 shares. The term of the Plan is ten years.

The Company also issued options outside of the plan that were not approved by the security holders. These options may be granted to employees, directors, and consultants in the form of incentive stock options or non-qualified stock options.

Equity Compensation Plan Information as of December 31, 2022:

	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted – average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuances under equity compensation plans (excluding securities reflected in column (a) (c)
Equity Compensation Plans Approved by Security Holders	3,467,647	\$ .0400	21,532,353
Equity Incentive Options issued outside of the Equity Compensation Plan	234,971,520	.0359	—
<b>Total</b>	<b>238,439,167</b>	<b>\$ .0360</b>	<b>21,532,353</b>

Options

The Company has issued options to purchase approximately 238,439,167 shares at an average price of \$0.036 with a fair value of approximately \$99,000. For the years ended December 31, 2022 and 2021, the Company issued options to purchase 5,710,901 and 33,473,246 shares, respectively. Upon exercise, shares of new common stock are issued by the Company.

For the years ended December 31, 2022 and 2021, the Company recognized an expense of approximately \$951,400 and \$1,154,800, respectively, of non-cash compensation expense (included in General and Administrative expense in the accompanying Consolidated Statement of Operations) determined by application of a Black-Scholes option pricing model with the following inputs: exercise price, dividend yields, risk-free interest rate, and expected annual volatility. As of December 31, 2022, the Company had approximately \$3,774,300 of unrecognized pre-tax non-cash compensation expense related to options to purchase shares, which the Company expects to recognize, based on a weighted-average period of 1.5 years. The Company uses straight-line amortization of compensation expense over the requisite service period for time-based options. For performance-based options the Company evaluates the likelihood of a vesting qualification being met, and will establish the expense based on that evaluation. The maximum contractual term of the Company's stock options is 5 years. The Company recognizes forfeitures as they occur. There are options to purchase approximately 11,558,800 shares that have vested as of December 31, 2022.

The Company uses the Black-Scholes option-pricing model to estimate the fair value of its stock option awards and warrant issuances. The calculation of the fair value of the awards using the Black-Scholes option-pricing model is affected by the Company's stock price on the date of grant as well as assumptions regarding the following:

	<b>Year ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Expected volatility	215.2% - 266.8%	249.4 - 346.4%
Expected term	2.0 - 2.50 Years	2 - 2.50 Years
Risk-free interest rate	0.3% - 1.4%	0.25% - .53%
Forfeiture Rate	0.17%	0.03%

The expected volatility was determined with reference to the historical volatility of the Company's stock. The Company uses historical data to estimate option exercise and employee termination within the valuation model. The expected term of options granted represents the period of time that options granted are expected to be outstanding. The risk-free interest rate for periods within the contractual life of the option is based on the U.S. Treasury rate in effect at the time of grant.

A summary of the status of the Company's outstanding stock options as of December 31, 2022 and 2021 and changes during the periods ending on that date is as follows

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life in Years	Aggregate Intrinsic Value
Outstanding at December 31, 2020	199,730,020	\$ 0.0323	2.84	
Granted	33,473,246	0.0430		
Forfeited	(75,000)	0.0360		
Exercised	-	-		
Cancelled	-	-		
Outstanding – December 31, 2021	233,128,266	\$ 0.0362	2.23	
Exercisable – December 31, 2021	76,068,249	\$ 0.0284	2.30	\$ 795,201
Granted	5,710,901	0.0281		
Forfeited	(400,000)	0.0354		
Exercised	-	-		
Cancelled	-	-		
Outstanding – December 31, 2022	238,439,167	\$ 0.0360	1.43	
Exercisable – December 31, 2022	111,558,754	\$ 0.0321	1.33	\$ 68,994

The following table summarizes information about employee stock options outstanding at December 31, 2022

Range of Exercise Price	Number outstanding at December 31, 2022	Weighted average remaining life	Weighted average exercise price	Number exercisable at December 31, 2022	Weighted average exercise price	Weighted average remaining life
\$0.018 - \$0.0225	70,730,020	2.21	\$ 0.0182	45,730,020	\$ 0.0181	1.87
\$0.0229 - \$0.0325	9,093,254	2.54	\$ 0.0251	9,018,254	\$ 0.0250	0.99
\$0.0360 - \$0.0425	25,530,893	3.57	\$ 0.0398	6,047,980	\$ 0.0396	3.53
\$0.0440 - \$0.0531	133,085,000	0.52	\$ 0.0455	50,762,500	\$ 0.0451	0.36
Outstanding options	238,439,167	1.43	0.0360	111,558,754	0.0321	1.33

As of December 31, 2022, the Company had approximately \$3,774,300 of unrecognized pre-tax non-cash compensation expense related to options to purchase shares, which the Company expects to recognize, based on a weighted-average period of 1.5 years.

#### Warrants

On September 1, 2021, the Company issued Charles Hyatt 10,000,000 units, each unit consisted of one share of common stock and a two-year warrant to purchase one share of common stock at an exercise price of \$0.025 per share in consideration of \$250,000.

On September 1, 2021, the Company issued Grace Hyatt, the adult child of Charles Hyatt, 600,000 units, each unit consisted of one share of common stock and a two-year warrant to purchase one share of common stock at an exercise price of \$0.025 per share in consideration of \$15,000.

On September, 2021, the Company issued 4,000,000 units to three accredited investors, each unit consisting of one share of common stock and a two-year warrant to purchase one share of common stock at \$0.025 per share in consideration of \$100,000.

On February 2, 2022, the Company issued Charles Hyatt 10,000,000 shares of common stock upon the exercise of a warrant at \$0.025 per share in consideration of \$250,000.

On February 2, 2022, the Company issued Grace Hyatt, the adult child of Charles Hyatt, 600,000 shares of common stock upon the exercise of a warrant at \$0.025 per share in consideration of \$15,000.

On September 7, 2022, the Company issued an aggregate of 8,541,666 units to two accredited investors. Each unit consisted of one share of common stock and a two-year common stock purchase warrant to purchase one share of common stock at an exercise price of \$0.024 per share in consideration of \$205,000.

On December 13, 2022, the Company issued to Charles Hyatt, 5,714,285 units. Each unit consisted of one share of common stock and a two-year common stock purchase warrant to purchase one share of common stock at an exercise price of \$0.0175 per share in consideration of \$100,000.

A summary of the Company's warrants as of December 31, 2022 and 2021, and changes during the years ended December 31, 2022 and 2021 is presented below:

	<b>Number of Warrants</b>	<b>Weighted Average Exercise Price</b>	<b>Weighted Average Remaining Contractual Life in Years</b>	<b>Aggregate Intrinsic Value</b>
Outstanding at December 31, 2020	-	\$ -	-	
Granted	14,600,000	0.0250		
Forfeited	-	-		
Exercised	-	-		
Cancelled	-	-		
Outstanding – December 31, 2021	14,600,000	\$ 0.0250	1.67	
Exercisable – December 31, 2021	14,600,000	\$ 0.0250	1.67	\$ 153,300
Granted	14,255,951	0.0214		
Forfeited	-	-		
Exercised	(10,600,000)	0.0250		
Cancelled	-	-		
Outstanding – December 31, 2022	18,255,951	\$ 0.0245	1.55	
Exercisable – December 31, 2022	18,255,951	\$ 0.0245	1.55	\$ 12,000

#### Note 14. Income Taxes

The Company records a valuation allowance to reduce its deferred tax assets to the amount that is more likely than not to be realized. While the Company has considered future taxable income and ongoing prudent and feasible tax planning strategies in assessing the need for the valuation allowance, in the event the Company were to determine that it would not be able to realize all or part of its net deferred tax assets in the future, an adjustment to the deferred tax assets would be charged to income in the period such determination was made. Likewise, should the Company determine that it would be able to realize its deferred tax assets in the future in excess of its net recorded amount, an adjustment to the deferred tax assets would increase income in the period such determination was made.

The components of the provision for income tax expense are as follows for the years ended:

	December 31,	
	2022	2021
Current taxes		
Federal	\$ —	\$ —
State	—	—
Current taxes	—	—
Change in deferred taxes	680,108	40,100
Change in valuation allowance	(680,108)	(40,100)
Provision for income tax expense	\$ —	\$ —

The following is a summary of the significant components of the Company's deferred tax assets and liabilities at December 31, 2022 and 2021:

	December 31,	
	2022	2021
Deferred tax assets:		
Equity based compensation	\$ 395,600	\$ 154,400
Allowance for doubtful accounts	7,200	11,700
Reserves for slow moving inventory	42,200	46,500
Depreciation	13,800	6,000
Reserve for recall	(33,700)	-
Net operating loss carryforward	1,759,300	1,285,500
Total deferred tax assets	2,218,100	1,504,200
Deferred tax liabilities		
Reserve for recall	(33,700)	-
Total deferred tax liability	(33,700)	-
Total deferred tax	2,184,400	1,504,200
Valuation allowance	(2,184,400)	(1,504,200)
Deferred tax assets, net of valuation allowance	\$ -	\$ -

The effective tax rate used for calculation of the deferred taxes as of December 31, 2022 was 25.35%. The Company has established a 100% valuation allowance against deferred tax assets of approximately \$2,184,400, due to the uncertainty regarding realization reserve against the deferred tax assets. The change in valuation allowance was an increase of \$680,108. The Company has approximately \$3,346,650 of net loss carryforward that expire through 2037 and \$2,125,933 that carryforward indefinitely but is limited to 80% of taxable income in any one year.

The effective tax rate used for calculation of the deferred taxes as of December 31, 2021 was 25.35%. The Company has established a 100% valuation allowance against deferred tax assets of \$1,504,200 due to the uncertainty regarding realization reserve against the deferred tax assets. The change in valuation allowance was an increase of \$40,100.

The significant differences between the statutory tax rate and the effective tax rates for the Company for the years ended are as follows:

	December 31,	
	2022	2021
Statutory tax rate	(21.00)%	(21.00)%
State tax, net of Federal benefits	(4.30)%	(4.35)%
Permanent differences	0.07%	5.20%
Temporary differences	10.90%	22.76%
Change in valuation allowance	14.35%	(2.61)%
Effective tax rate	—%	—%

The Company's income tax returns for 2019 through 2022 remain subject to examination by the Internal Revenue Services and state tax authorities.



## Note 15. Commitments and Contingencies

### *Leases*

On August 14, 2014, the Company entered into a thirty-seven month lease for its facilities in Pompano Beach, Florida, commencing on September 1, 2014. Terms included payment of a \$5,367 security deposit; base rent of approximately \$4,000 per month over the term of the lease plus sales tax; and payment of 10.76% of annual operating expenses (common areas maintenance), which was approximately \$2,000 per month subject to periodic adjustment. On December 1, 2016, the Company entered into an amendment to the initial lease agreement, commencing on October 1, 2017, extending the term of the lease for an additional eighty-four months, expiring September 30, 2024. The base rent was increased to \$4,626 per month with a 3% annual escalation throughout the amended term.

On January 4, 2018, the Company entered into a sixty-one month lease renewal for its facility in Huntington Beach, California commencing on February 1, 2018. Terms included base rent of approximately \$9,300 per month for the first 12 months with an annual escalation clause of 2.5% thereafter. The Company paid a security deposit of \$8,450 upon entering into the lease.

On November 11, 2018, the Company entered a sixty-nine month lease commencing on January 1, 2019 for approximately 8,025 square feet adjoining its existing facility in Pompano Beach, Florida. Terms of the new lease include a \$6,527 security deposit; initial base rent of approximately \$4,848 per month escalating at 3% per year during the term of the lease plus Florida state sales tax and 10.11% of the buildings annual operating expenses (common area maintenance) which is approximately \$1,679 per month, subject to adjustment as provided in the lease.

On May 2, 2022, LBI entered into a lease assignment agreement with Gold Coast Scuba, LLC and Vicnsos Realty Group, LLC whereby LBI is the assignee to the remainder of the lease for the property located at 259 Commercial Blvd., Suites 2 and 3 in Lauderdale-By-The Sea, Florida. The lease is in its third year of a three-year term and has a \$2,816 per month base rent. The lease provides an option to renew for an additional term of two years with an increase of base rent by 3.5%.

On September 14, 2022, SSI entered into a sixty-month lease renewal for its facility in Huntington Beach, California effective February 1, 2022. Terms included base rent of approximately \$17,550 per month for the first 24 months with an annual escalation clause of 3.0% thereafter. Obligations under the lease are guaranteed by the Company. The Company paid an additional security deposit of \$10,727 upon entering into the lease.

On September 30, 2022, SSI entered into a sublease of its facility in Huntington Beach, California with Camburg Engineering, Inc. ("Tenant") commencing October 1, 2022. The term of the sublease is through December 31, 2023 with a base monthly rent of \$2,247 for the first twelve months with an 3% annual escalation thereafter. The Tenant also pays a monthly common area maintenance of \$112. The Tenant provided a security deposit of \$2,426 upon entering into the sublease.

### *Royalty Agreement*

On June 30, 2020, the Company entered into Amendment No. 2 to its Patent License Agreement with Setaysha Technical Solutions, LLC ("STS"). The amendment set certain limits and expectations of the assistance from STS related to designing and commercializing certain diving products and revised the royalty payments due to STS as consideration for uncompensated services. The Company is obligated to pay STS a minimum yearly royalty of \$60,000, or \$15,000 per fiscal quarter, beginning in December 2019 and increasing by 2.15% per year. The minimum royalty was temporarily increased to \$60,000 for fiscal years 2022, 2023 and 2024, with a fourth quarter true up against earned royalties. In addition, if the Company terminates the Agreement with STS prior to December 31, 2023, the Company is obligated to pay STS \$180,000, less cumulative royalties paid in excess of \$200,174 for the years 2019 through 2024. In accordance with the amendment, the Company will pay additional minimum royalties of \$60,000 per year or \$15,000 per quarter for the years 2022 through 2024. On November 1, 2022 the Company issued to the designees of STS 1,155,881 shares of common stock with a fair value of \$30,000 in accordance with the Patent License Agreement. Royalty recorded under this Agreement was \$203,621 and \$157,855 for twelve months ended December 31, 2022 and December 31, 2021, respectively. As included in other liabilities, accrued royalties under this agreement were \$18,870 and 59,493 at December 31, 2022 and 2021, respectively.

### *Consulting and Employment Agreements*

On June 9, 2020, the Company entered into a one-year advertising and marketing agreement with Figment Design for \$8,840 per month which agreement terminated on July 31, 2021.

On November 5, 2020, the Company entered into a three-year employment agreement with Christopher Constable (the "Constable Employment Agreement") pursuant to which Mr. Constable serves as Chief Executive Officer of the Company. Previously, Mr. Constable had provided advisory services to the Company through an agreement with Brandywine LLC. In consideration for his services, Mr. Constable shall receive (i) an annual base salary of \$200,000, payable in accordance with the customary payroll practices of the Company, and (ii) upon execution of the Employment Agreement and on each anniversary of the date of the Agreement during the term, a non-qualified immediately exercisable five-year option to purchase that number of shares equal to 100,000 of the value of the Company's common stock at an exercise price equal to the market price of the Company's common stock on the date of issuance. Accordingly, on November 5, 2020, Mr. Constable was issued an option to purchase 5,434,783 shares of the common stock at an exercise price of \$0.0184 per share and on November 5, 2021, Mr. Constable was issued an option to purchase 2,403,846 shares of the Company's common stock at an exercise price of \$0.0401 per share.

In addition, Mr. Constable shall be entitled to receive four-year stock options to purchase shares of common stock at an exercise price equal to \$0.0184 per share in the following amounts based upon the following performance milestones during the term of the Constable Employment Agreement: (i) 2,000,000 shares – if the Company’s total net revenues, as reported in its statement of operations in its financial statements in its filings with the SEC, including as a result of a stock or asset acquisition of a third party (“Net Revenues”) are in excess of \$5,000,000, in the aggregate, for four consecutive fiscal quarters; (ii) 3,000,000 shares – if the Company’s Net Revenues are in excess of \$7,500,000, in the aggregate, for four consecutive fiscal quarters; (iii) 5,000,000 shares – if the Company’s Net Revenues are in excess of \$10,000,000, in the aggregate, for four consecutive fiscal quarters; and (iv) 20,000,000 shares – if the Company’s common stock is listed on the NASDAQ or New York Stock Exchange.

On March 1, 2021, the Company entered into an investor relations consulting agreement with BGM Equity Partners, LLC. The term of the agreement is twelve months. As compensation, the Company issued 3,000,000 shares of its common stock valued at \$120,000 to BGM Equity Partners. The agreement expired on March 1, 2022.

On August 1, 2021, the Company and Blake Carmichael entered into a three-year employment agreement (the “Blake Carmichael Employment Agreement”) pursuant to which Mr. Carmichael shall serve as Chief Executive Officer of BLU3. In consideration for his services, Blake Carmichael shall receive (i) an annual base salary of \$120,000, payable in accordance with the customary payroll practices of the Company, and (ii) a cash bonus equal to 5% of the net income of BLU3 payable quarterly, beginning with the first full calendar quarter after the execution of the agreement. (iii) upon execution of the Employment Agreement, a non-qualified five-year stock option to purchase 3,759,400 shares at \$0.0399, 33.3% of which shares vest immediately, 33.3% vest on the second anniversary, and 33.3% vest on the third anniversary of the agreement.

In addition, Blake Carmichael shall be entitled to receive a five-year stock option to purchase up to 18,000,000 shares of common stock at an exercise price of \$0.0399 per share that will vest upon annual financial metrics based upon a revenue measurement, expediency measurement and an EBITDA measurement.

On August 6, 2021, the Company entered into a six-month, non-exclusive mergers and acquisitions services agreement with Newbridge Securities Corporation which provides for a 7% commission for the first \$2,000,000 paid in aggregate purchase price consideration and 6% on an aggregate purchase price in excess of \$2,000,000 for any merger or acquisition target sourced by Newbridge, to be paid in common stock of the Company. Such agreement expired by its terms.

On September 3, 2021, SSI and Christeen Buban entered into a three-year employment agreement (the “Buban Employment Agreement”) pursuant to which Ms. Buban shall serve as the President of SSI. In consideration for her services, Mrs. Buban shall receive (i) an annual base salary of \$110,000, payable in accordance with the customary payroll practices of the Company, (ii) a car allowance and cell phone allowance of \$10,800 per year, (iii) a five-year option issued under the Plan to purchase 300,000 shares of common stock of the Company at \$0.0531 per share, which option vests quarterly over the eight calendar quarters.

In addition, Mrs. Buban shall be entitled to receive a five-year stock option to purchase up to 7,110,000 shares of common stock of the Company at an exercise price of \$0.0531 per share, which vests upon the attainment of certain defined annual financial metrics, as set forth in the Buban Employment Agreement.

On May 2, 2022, the Company entered into a two-year employment agreement with Steven Gagas (the “Gagas Employment Agreement”) pursuant to which Mr. Gagas shall serve as the General Manager of the dive shop currently operating within LBI. In consideration for his services Mr. Gagas shall receive an annual salary of \$50,000.

On January 17, 2022, the Company entered into an agreement with The Crone Law Group, PC (“CLG”) for the provision of legal services. In consideration therefor, the Company will pay CLG a monthly flat fee of \$3,000 for the SEC reporting work, and its normal hourly rate for any other legal work and issued 1,000,000 shares of common stock with a fair market value of \$27,500 to CLG.

On December 22, 2022, the U.S. Consumer Products Safety Commission (the “CPSC”) issued a voluntary recall notice for the Nomad tankless dive system, which is distributed by BLU3, Inc. As part of the recall procedure, the CPSC has approved the Company’s proposed remedy for the recall and BLU3 will begin to receive units back from consumers to repair affected Nomad units. The Company has evaluated the costs of this recall and has deemed it necessary to set an allowance of \$160,500 for such costs.

#### Legal

The Company was a defendant in an action, Basil Vann, as Personal Representative of the Estate of Jeffrey William Morris v. Brownie’s Marine Group, Inc., filed on May 6, 2019 in the Circuit Court of the 17th Judicial Circuit, Broward County, Florida. The complaint, related to consulting services provided to the Company by the deceased between 2005 and 2017, alleged breach of contract and quantum meruit and sought \$15,870.97 in unpaid consulting fees together with interest. In April 2020, the Company filed a Motion to Dismiss, and at a hearing held in May 2021, the Court struck certain allegations contained in the complaint, the parties agreed that the quantum meruit allegation is deemed to be an alternative to the breach of contract allegation but permitted certain other allegations to stand. The parties entered mediation pursuant to the Court’s order. This action was settled for \$10,000 on July 12, 2021. The Company paid monthly installments of \$1,000. The settlement was fully paid during the second quarter of 2022.

#### Note 16. Segments

The Company has five operating segments as described below:

1. SSA Products, which sells recreational multi-diver surface supplied air diving systems.
2. High Pressure Gas Systems, which sells high pressure air and industrial gas compressor packages.
3. Ultra- Portable Tankless Dive Systems, which sells next generation electric surface supply air diving systems and electric shallow dive system that are battery operated and completely portable to the user.
4. Redundant Air Tank Systems, which manufactures and distributes a line of high-pressure tanks and redundant air systems for the military and recreational diving industries.
5. Guided Tour and Retail, which provides guided tours using the BLU3 technology, and also operates as a retail store for the diving community.

	Year ended December 31											
	Legacy SSA Products		High Pressure Gas Systems		Ultra-Portable Tankless Dive Systems		Redundant Air Tank Systems		Guided Tour Retail		Total Company	
	2022	2021	2022	2021	2022	2021	2022	2021	2022	2021	2022	2021
Net Revenues	\$ 2,601,622	\$ 2,897,210	\$ 1,118,081	\$ 616,039	\$ 3,052,193	\$ 2,241,359	\$ 1,592,602	\$ 472,771	\$ 212,876	\$ -	\$ 8,577,373	\$ 6,227,379
Cost of Revenue	(1,941,570)	(2,161,396)	(690,415)	(386,517)	(1,866,850)	(1,437,512)	(1,109,340)	(352,395)	(174,999)	-	(5,783,173)	(4,337,820)
Gross Profit	660,052	735,814	427,666	229,522	1,185,343	803,847	483,262	120,016	37,877	-	2,794,200	1,889,199
Depreciation/Amortization	17,487	17,447	-	-	17,913	14,479	105,677	24,546	13,348	-	154,425	56,472
Income (loss) from operations	<u>\$(1,161,446)</u>	<u>\$(1,778,463)</u>	<u>\$ 84,342</u>	<u>\$ 17,980</u>	<u>\$(193,777)</u>	<u>\$ 32,995</u>	<u>\$(340,435)</u>	<u>\$(125,215)</u>	<u>\$(78,581)</u>	<u>\$ -</u>	<u>\$(1,850,397)</u>	<u>\$(1,852,703)</u>
Total Assets	\$ 1,354,034	\$ 1,346,096	\$ 415,354	\$ 346,499	\$ 984,946	\$ 903,718	\$ 2,672,134	\$ 2,077,648	\$ 239,016	\$ -	\$ 5,665,484	\$ 4,673,961

#### Note 17. Subsequent Events

On January 18, 2023 and February 18, 2023, the Company issued to Charles Hyatt, an aggregate of 11,428,570 units, with each unit consisting of one share of common stock and a two-year common stock purchase warrant to purchase one share of common stock at an exercise price of \$0.0175 per share in consideration of \$200,000.

## Exhibit 10.34



## STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - GROSS

## 1. Basic Provisions ("Basic Provisions").

1.1 **Parties.** This Lease ("Lease"), dated for reference purposes only **September 14, 2022**, is made by and between **Slater Palms LLC** ("Lessor") and **Submersible Systems, Inc., a Florida corporation** ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, unit/suite, city, state, zip):

**7413 Slater Avenue, Huntington Beach, CA 92647** ("Premises"). The Premises are located in the County of **Orange**, and are generally described as (describe briefly the nature of the Premises and the "Project"): **a freestanding industrial building of approximately 13,000 square feet which is part of a larger multi-tenant business park**. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) **Parking:** **Twenty-six (26)** unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** **Five (5)** years and **zero (0)** months ("Original Term") commencing **February 1, 2023** ("Commencement Date") and ending **January 31, 2028** ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing **N/A** ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** **\$17,550.00** per month ("Base Rent"), payable on the **first (1st)** day of each month commencing **February 1, 2023**. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph **50**.

1.6 **Lessee's Share of Common Area Operating Expenses:**      percent (      %) ("Lessee's Share"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 **Base Rent and Other Monies Paid Upon Execution:**

- (a) **Base Rent:**      for the period     .
- (b) **Common Area Operating Expenses:** The current estimate for the period      is     .
- (c) **Security Deposit:** **See Paragraph 53** ("Security Deposit"). (See also Paragraph 5)
- (d) **Other:**      for     .
- (e) **Total Due Upon Execution of this Lease:** **\$10,727.00**.

1.8 **Agreed Use:** **General office, warehousing and manufacturing of underwater breathing systems.** (See also Paragraph 6)

1.9 **Insuring Party.** Lessor is the "Insuring Party". (See also Paragraph 8)

1.10 **Real Estate Brokers.** (See also Paragraph 15 and 25)

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm

**Lee & Associates@-Newport Beach** License No. **01197433** is the broker of (check one):

☒ the Lessor; or ☐ both the Lessee and Lessor (dual agent).

Lessor's Agent

**Brad Schneider/Nick Krakower** License No. **01887613/02100512** is (check one):

☒ the Lessor's Agent (salesperson or broker associate); or  
☐ both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm

\_\_\_\_ License No. \_\_\_\_\_ Is the broker of (check one):

☐ the Lessee; or  
☐ both the Lessee and Lessor (dual agent).

Lessee's Agent

\_\_\_\_ License No. \_\_\_\_\_ is (check one):

☐ the Lessee's Agent (salesperson or broker associate); or  
☐ both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers.** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement ~~(or if there is no such agreement, the sum of or % of the total Base Rent)~~ for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by      ("Guarantor"). (See also Paragraph 37)

1.12 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- ☒ an Addendum consisting of Paragraphs **50 through 53**;
- ☐ a site plan depicting the Premises; a site plan depicting the Project;
- ☐ a current set of the Rules and Regulations for the Project;
- ☐ a current set of the Rules and Regulations adopted by the owners' association;
- ☐ a Work Letter;
- ☒ other (specify): **Arbitration Agreement (54) and Guaranty of Lease** .

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## 2. Premises.

**2.1 Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

**2.2 Condition.** Lessor shall deliver that portion of the Premises contained within the Building ("Unit") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

**2.3 Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

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**2.4 Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises; (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use; (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises; (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor; (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein; and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

**2.5 Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

**2.6 Vehicle Parking.** Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles**." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

**2.7 Common Areas - Definition.** The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roofs, roadways, walkways, driveways and landscaped areas.

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**2.8 Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

**2.9 Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

**2.10 Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
- (d) To add additional buildings and improvements to the Common Areas;
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
- (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

### 3. Term.

**3.1 Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

**3.2 Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

**3.3 Delay In Possession.** Lessor agrees to use commercially reasonable efforts to deliver exclusive possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

**3.4 Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

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#### 4. Rent.

4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent (“**Rent**”).

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee’s Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) The following costs relating to the ownership and operation of the Project are defined as “**Common Area Operating Expenses**”:

(i) Costs relating to the operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (e)), of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management, security services, owners’ association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas and Common Area equipment.

(v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10).

(vi) Any “Insurance Cost Increase” (as defined in Paragraph 8).

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors’, accountants’ and attorneys’ fees and costs related to the operation, maintenance, repair and replacement of the Project.

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(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month. Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include the cost of replacing equipment or capital components such as the roof, foundations, exterior walls or Common Area capital improvements, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

**4.3 Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

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**5. Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

**6. Use.**

**6.1 Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

**6.2 Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises; (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank; (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

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(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

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**6.3 Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

**6.4 Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1(e)) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

## **7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

### **7.1 Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

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(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

**7.2 Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises.

### 7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

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(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

#### 7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

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## 8. Insurance; Indemnity.

### 8.1 Payment of Premium Increases.

(a) As used herein, the term “**Insurance Cost Increase**” is defined as any increase in the actual cost of the insurance applicable to the Building and/or the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. The “**Base Premium**” shall be the annual premium applicable to the 12 month period immediately preceding the Start Date. If, however, the Project was not insured for the entirety of such 12 month period, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Start Date, assuming the most nominal use possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

### 8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization’s “Additional Insured-Managers or Lessors of Premises” Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an “**insured contract**” for the performance of Lessee’s indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

### 8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee’s personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days (“Rental Value insurance”). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee’s acts, omissions, use or occupancy of the Premises.

(d) **Lessee’s Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

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#### 8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

**8.5 Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

**8.6 Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

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**8.7 Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

**8.8 Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places; (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project; or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

**8.9 Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

## **9. Damage or Destruction.**

### **9.1 Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

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**9.2 Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

**9.3 Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

**9.4 Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

**9.5 Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

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## 9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

## 10. Real Property Taxes.

### 10.1 Definitions.

(a) **"Real Property Taxes."** As used herein, the term **"Real Property Taxes"** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. The term **"Real Property Taxes"** shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project; (ii) a change in the improvements thereon; and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

(b) **"Base Real Property Taxes."** As used herein, the term **"Base Real Property Taxes"** shall be the amount of Real Property Taxes, which are assessed against the Project, during the entire calendar year in which the Lease is executed.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other tenants or by Lessor for the exclusive enjoyment of such other Tenants. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

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## 11. Utilities and Services.

11.1 Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

11.2 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

## 12. Assignment and Subletting.

### 12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "**Net Worth of Lessee**" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.



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(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a non-curable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a non-curable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or pay phone shall not constitute a subletting.

## 12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall : (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

**12.3 Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

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### 13. Default; Breach; Remedies.

13.1 **Default; Breach.** A “**Default**” is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A “**Breach**” is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; the vacating of the Premises prior to the expiration or termination of this Lease without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism; or failure to deliver to Lessor exclusive possession of the entire Premises in accordance herewith prior to the expiration or termination of this Lease.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR’S RIGHTS, INCLUDING LESSOR’S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee’s Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a “debtor” as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee’s assets located at the Premises or of Lessee’s interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee’s assets located at the Premises or of Lessee’s interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee’s obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor’s liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor’s becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor’s refusal to honor the guaranty, or (v) a Guarantor’s breach of its guaranty obligation on an anticipatory basis, and Lessee’s failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

**13.2 Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee’s behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee’s right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee’s failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys’ fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee’s Breach of this Lease shall not waive Lessor’s right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee’s right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor’s interests, shall not constitute a termination of the Lessee’s right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee’s right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee’s occupancy of the Premises.

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**13.3 Inducement Recapture.** Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

**13.4 Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

**13.5 Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

**13.6 Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

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**14. Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively “**Condemnation**”), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of the parking spaces is taken by Condemnation, Lessee may, at Lessee’s option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee’s relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

**15. Brokerage Fees.**

**15.1 Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed. The provisions of this paragraph are intended to supersede the provisions of any earlier agreement to the contrary.

**15.2 Assumption of Obligations.** Any buyer or transferee of Lessor’s interest in this Lease shall be deemed to have assumed Lessor’s obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee’s Broker when due, Lessee’s Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee’s Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor’s Broker for the limited purpose of collecting any brokerage fee owed.

**15.3 Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder’s fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys’ fees reasonably incurred with respect thereto.

**16. Estoppel Certificates.**

(a) Each Party (as “**Responding Party**”) shall within 10 days after written notice from the other Party (the “**Requesting Party**”) execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current “**Estoppel Certificate**” form published BY AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party’s performance, and (iii) if Lessor is the Requesting Party, not more than one month’s rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party’s Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee’s failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee’s Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

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(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

**17. Definition of Lessor.** The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

**18. Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

**19. Days.** Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

**20. Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

**21. Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

**22. No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

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## 23. Notices.

**23.1 Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

**23.2 Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

**23.3 Options.** Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

## 24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

## 25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.



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(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

**26. No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. At or prior to the expiration or termination of this Lease Lessee shall deliver exclusive possession of the Premises to Lessor. For purposes of this provision and Paragraph 13.1(a), exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. In the event that Lessee does not deliver exclusive possession to Lessor as specified above, then Lessor's damages during any holdover period shall be computed at the amount of the Rent (as defined in Paragraph 4.1) due during the last full month before the expiration or termination of this Lease (disregarding any temporary abatement of Rent that may have been in effect), but with Base Rent being 150% of the Base Rent payable during such last full month. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

**27. Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**28. Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

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**29. Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

**30. Subordination; Attornment; Non-Disturbance.**

**30.1 Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

**30.2 Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

**30.3 Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

**30.4 Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

**31. Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

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**32. Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

**33. Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

**34. Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

**35. Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

**36. Consents.** All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

**37. Guarantor.**

**37.1 Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published BY AIR CRE.

**37.2 Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

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**38. Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

**39. Options.** If Lessee is granted any option, as defined below, then the following provisions shall apply.

**39.1 Definition. "Option"** shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

**39.2 Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

**39.3 Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

**39.4 Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

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**40. Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

**41. Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary; (ii) to cause the recordation of parcel maps and restrictions; and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

**42. Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

**43. Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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**44. Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

**45. Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

**46. Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

**47. Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

**48. Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☒ is ☐ is not attached to this Lease.

**49. Accessibility; Americans with Disabilities Act.**

(a) The Premises:

☒ have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

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In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.


Executed at: Kapalua, Hawaii  
On: September 30, 2022 | 12:56 PM PDT


Executed at: Huntington Beach  
On: September 30, 2022 | 12:20 PM PDT

By LESSOR:

Slater Palms LLC

Submersible Systems, Inc., a Florida corporation

By:   
Name Printed: Stephen J. Rimel  
Title: Managing Member  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

By:   
Name Printed: Christeen Buban  
Title: President  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Federal ID No.: \_\_\_\_\_

Federal ID No.: \_\_\_\_\_

**BROKER**

**BROKER**

Lee & Associates®-Newport Beach

Attn: Brad Schneider/Nick Krakower  
Title: SVP/Principal / Senior Associate  
Address: 100 Bayview Circle, Suite 600  
Newport Beach, CA 92660  
Phone: (949) 724-4708/(949) 724-4720  
Fax: (949) 623-6308/(949) 6320  
Email: bschneider@lee-associates.com  
nkrakower@lee-associates.com  
Federal ID No.: \_\_\_\_\_  
Broker DRE License #: 01197433  
Agent DRE License #: 01887613/02100512

Attn: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Federal ID No. \_\_\_\_\_  
Broker DRE License #: \_\_\_\_\_  
Agent DRE License #: \_\_\_\_\_

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ADDENDUM TO LEASE

**Date:** September 14, 2022  
**By and Between**  
**Lessor:** Slater Palms LLC  
**Lessee:** Submersible Systems, Inc., a Florida corporation  
**Property Address:** 7413 Slater Avenue, Huntington Beach, CA 92647  
 (street address, city, state, zip)

Paragraph: 50-53

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Lease, this Addendum shall control.

50. Rent Schedule:

February 1, 2023 - January 31, 2024	\$	17,550.00
February 1, 2024 - January 31, 2025	\$	17,550.00
February 1, 2025 - January 31, 2026	\$	18,077.00
February 1, 2026 - January 31, 2027	\$	18,619.00
February 1, 2027 - January 31, 2028	\$	19,177.00

51. Lessor Improvements:

Lessor, at Lessor's sole cost & expense, shall install a new roll up door.

52. Operating Expenses:

The above mentioned Rent is inclusive of a \$0.05/SF Common Area Operating Expense (CAM). Lessee shall not be obligated to pay any additional CAM charge during the term of the lease.

53. Security Deposit:

The current Security Deposit on file is \$8,450.00. The total Security Deposit required is \$19,177.00. Therefore, the Lessee shall pay to Lessor a Security Deposit equivalent to \$10,727.00 upon execution of this lease.

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 Submersible Systems-7413 Slater Avenue-Gross Lease

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**ARBITRATION AGREEMENT  
STANDARD LEASE ADDENDUM**

**Dated: September 14, 2022**

**By and Between**

**Lessor: Slater Palms LLC**

**Lessee: Submersible Systems, Inc., a Florida corporation**

**Property Address: 7413 Slater Avenue, Huntington Beach, CA 92647**  
(street address, city, state, zip)

Paragraph: **54**

**A. ARBITRATION OF DISPUTES:**

Except as provided in Paragraph B below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

**B. DISPUTES EXCLUDED FROM ARBITRATION:**

The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1. Disputes for which a different resolution determination is specifically set forth in this Lease, 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, 3. Claims relating to (a) Lessor's exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law 4. Any claim or dispute that is within the jurisdiction of the Small Claims Court and 5. All claims arising under Paragraph 39 of this Lease.

**C. APPOINTMENT OF AN ARBITRATOR:**

All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration before: ☒ a retired judge of the applicable court of jurisdiction (e.g., the Superior Court of the State of California) affiliated with Judicial Arbitration & Mediation Services, Inc. ("JAMS"), ☐ the American Arbitration Association ("AAA") under its commercial arbitration rules, ☐ \_\_\_\_\_, or as may be otherwise mutually agreed by Lessor and Lessee (the "Arbitrator"). In the event that the parties elect to use an arbitrator other than one affiliated with JAMS or AAA then such arbitrator shall be obligated to comply with the Code of Ethics for Arbitrators in Commercial Disputes (see: [http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG\\_003867](http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_003867)). Such arbitration shall be initiated by the Parties, or either of them, within ten (10) days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. If the Parties have agreed to use JAMS they may agree on a retired judge from the JAMS panel. If they are unable to agree within ten days, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization's rules. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate Court for the appointment of a qualified retired judge to act as the Arbitrator.

**D. ARBITRATION PROCEDURE:**

1. **PRE-HEARING ACTIONS.** The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1282.6).

2. **THE DECISION.** The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1286.2). The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion.

Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared in bad faith.

Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however, elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter, the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with Interest thereon as defined in Paragraph 13.5. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 42 or 43)

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#### GUARANTY OF LEASE

WHEREAS, Slater Palms, LLC, hereinafter "Lessor", and Submersible Systems, Inc., a Florida corporation, hereinafter "Lessee", are about to execute a document entitled "Lease" dated September 14, 2022 concerning the premises commonly known as (street address, city, state, zip) 7413 Slater Avenue, Huntington Beach, CA 92647 wherein Lessor will lease the premises to Lessee, and

WHEREAS, Brownie's Marine Group, Inc., hereinafter "Guarantors" have a financial interest in Lessee, and

WHEREAS, Lessor would not execute the Lease if Guarantors did not execute and deliver to Lessor this Guaranty of Lease.

NOW THEREFORE, in consideration of the execution of said Lease by Lessor and as a material inducement to Lessor to execute said Lease, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rents and all other sums payable by Lessee under said Lease and the faithful and prompt performance by Lessee of each and every one of the terms, conditions and covenants of said Lease to be kept and performed by Lessee.

It is specifically agreed by Lessor and Guarantors that: (i) the terms of the foregoing Lease may be modified by agreement between Lessor and Lessee, or by a course of conduct, and (ii) said Lease may be assigned by Lessor or any assignee of Lessor without the consent of or notice to Guarantors and that this Guaranty shall guarantee the performance of said Lease as so modified.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Lessor to enforce any of the rights or remedies of the Lessor under said Lease.

No notice of default by Lessee under the Lease need be given by Lessor to Guarantors, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which Lessor may proceed immediately against Lessee and/or against Guarantors following any breach or default by Lessee or for the enforcement of any rights which Lessor may have as against Lessee under the terms of the Lease or at law or in equity.

Lessor shall have the right to proceed against Guarantors following any breach or default by Lessee under the Lease without first proceeding against Lessee and without previous notice to or demand upon either Lessee or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations relating to this Guaranty or the Lease, (d) any right to require the Lessor to proceed against the Lessee or any other Guarantor or any other person or entity liable to Lessor, (e) any right to require Lessor to apply to any default any security deposit or other security it may hold under the Lease, (f) any right to require Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantors, (g) any right of subrogation that Guarantors may have against Lessee.

Guarantors do hereby subordinate all existing or future indebtedness of Lessee to Guarantors to the obligations owed to Lessor under the Lease and this Guaranty.

If a Guarantor is married, such Guarantor expressly agrees that recourse may be had against his or her separate property for all of the obligations hereunder.

The obligations of Lessee under the Lease to execute and deliver estoppel statements and financial statements, as therein provided, shall be deemed to also require the Guarantors to provide estoppel statements and financial statements to Lessor. The failure of the Guarantors to provide the same to Lessor shall constitute a default under the Lease.

The term "Lessor" refers to and means the Lessor named in the Lease and also Lessor's successors and assigns. So long as Lessor's interest in the Lease, the leased premises or the rents, issues and profits therefrom, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Lessor's interest shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment and their successors and assigns.

The term "Lessee" refers to and means the Lessee named in the Lease and also Lessee's successors and assigns.

Any recovery by Lessor from any other guarantor or insurer shall first be credited to the portion of Lessee's indebtedness to Lessor which exceeds the maximum liability of Guarantors under this Guaranty.

No provision of this Guaranty or right of the Lessor can be waived, nor can the Guarantors be released from their obligations except in writing signed by the Lessor.

Any litigation concerning this Guaranty shall be initiated in a state court of competent jurisdiction in the county in which the leased premises are located and the Guarantors consent to the jurisdiction of such court. This Guaranty shall be governed by the laws of the State in which the leased premises are located and for the purposes of any rules regarding conflicts of law the parties shall be treated as if they were all residents or domiciles of such State.

In the event any action be brought by said Lessor against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee. The attorney's fee award shall not be computed in accordance with any court fee schedule, but shall be such as to full reimburse all attorneys' fees reasonably incurred.

If any Guarantor is a corporation, partnership, or limited liability company, each individual executing this Guaranty on said entity's behalf represents and warrants that he or she is duly authorized to execute this Guaranty on behalf of such entity. Signatures to this Guaranty accomplished by means of electronic signature or similar technology shall be legal and binding.

**If this Form has been filled in, it has been prepared for submission to your attorney for his approval. No representation or recommendation is made BY AIR CRE, the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Form or the transaction relating thereto.**

SIGNATURE PAGE TO FOLLOW

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GUARANTORS

Executed At: Pompano Beach, FL

**Brownie's Marine Group, Inc.**


On: September 30, 2022 | 12:35 PM PDT

By:   
Name Printed: Christopher Constable  
Title: Chief Executive Officer  
Address: \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

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Schneider/Submersible Systems-7413 Slater-Guaranty of Lease

  
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## Exhibit 10.35

## SUBLEASE FOR MULTIPLE TENANTS

To be used if there will be one or more sublessees sharing the space with each other and/or the lessee, whether or not the space (Premises) is a single tenant building or is located in a multi-tenant building.

If the entire space (Premises) will be subleased by a single sublessee, whether or not the space (Premises) is a single tenant building or is located in a multi-tenant building, use the Sublease for a Single Sublessee.

## 1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Sublease ("Sublease"), dated for reference purposes only September 20, 2022, is made by and between **Submersible Systems, Inc., a Florida corporation** ("Sublessor") and **Camburg Engineering, Inc.** ("Sublessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain portion of the Project (as defined below), commonly known as (street address, unit/suite, city, state) 7413 Slater Avenue, Huntington Beach, CA 92647 ("Premises"). The Premises are located in the County of **Orange** and consist of approximately 2,247 square feet. In addition to Sublessee's rights to use and occupy the Premises as hereinafter specified, Sublessee shall have nonexclusive rights to the Common Areas (as defined below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, or the utility raceways of the building containing the Premises ("Building") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project."

1.2(b) **Parking:** Zero (0) unreserved and zero (0) reserved vehicle parking spaces.

1.3 **Term:** Five (5) years and four (4) months commencing October 1, 2022 ("Commencement Date") and ending January 31, 2028 ("Expiration Date").

1.4 **Early Possession:** If the Premises are available Sublessee may have non-exclusive possession of the Premises commencing N/A ("Early Possession Date").

1.5 **Base Rent:** \$2,247.00 per month ("Base Rent"), payable on the first (1st) day of each month commencing October 1, 2022.

If this box is checked, there are provisions in this Sublease for the Base Rent to be adjusted.

1.6 **Sublessee's Share of Operating Expenses:** --- percent ( --- %) ("Sublessee's Share"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

## 1.7 Base Rent and Other Monies Paid Upon Execution:

- (a) **Base Rent:** \$2,247.00 for the period October 1, 2022 - October 31, 2022.  
 (b) **Security Deposit:** \$5,058.00 ("Security Deposit").  
 (c) **Other:** \$112.00 for Monthly CAM fee.  
 (d) **Total Due Upon Execution of this Lease:** \$7,417.00.

1.8 **Agreed Use:** The Premises shall be used and occupied only for Warehouse storage only of auto parts and for no other purposes.

## 1.9 Real Estate Brokers.

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)");

Sublessor's Brokerage Firm

License No. \_\_\_\_\_ is the broker of (check one):

\_\_\_\_\_ the Sublessor; or \_\_\_\_\_ both the Sublessee and Sublessor (dual agent).

Sublessor's Agent

License No. \_\_\_\_\_ is (check one):

\_\_\_\_\_ the Sublessor's Agent (salesperson or broker associate); or \_\_\_\_\_ both the Sublessee's Agent and the Sublessor's Agent (dual agent).

Sublessee's Brokerage Firm

License No. \_\_\_\_\_ is the broker of (check one):

\_\_\_\_\_ the Sublessee; or \_\_\_\_\_ both the Sublessee and Sublessor (dual agent).

Sublessee's Agent

License No. \_\_\_\_\_ is (check one):

\_\_\_\_\_ the Sublessee's Agent (salesperson or broker associate); or \_\_\_\_\_ both the Sublessee's Agent and the Sublessor's Agent (dual agent).

(b) **Payment to Brokers:** Upon execution and delivery of this Sublease by both Parties, Sublessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of \_\_\_\_\_ or \_\_\_\_\_ % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.10 **Guarantor:** The obligations of the Sublessee under this Sublease shall be guaranteed by N/A ("Guarantor").


1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Sublease:

an Addendum consisting of Paragraphs 14 through 15 ;

a plot plan depicting the Premises and/or Project;

a current set of the Rules and Regulations;

a Work Letter;

 a copy of the Master Lease and any and all amendments to such lease (collectively the “**Master Lease**”); other(specify).

---

## 2. Premises.

**2.1 Letting.** Sublessor hereby subleases to Sublessee, and Sublessee hereby subleases from Sublessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Sublease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Sublessee is advised to verify the actual size prior to executing this Sublease.**

**2.2 Condition.** Sublessor shall deliver the Premises to Sublessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs (“**Start Date**”), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems (“**HVAC**”), and any items which the Sublessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Sublessee, shall be in good operating condition on said date. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Sublessor shall, as Sublessor’s sole obligation with respect to such matter, except as otherwise provided in this Sublease, promptly after receipt of written notice from Sublessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Sublessor’s expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements. If Sublessee does not give Sublessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Sublessee at Sublessee’s sole cost and expense.

**2.3 Compliance.** Sublessor warrants that any improvements, alterations or utility installations made or installed by or on behalf of Sublessor to or on the Premises comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances (“**Applicable Requirements**”) in effect on the date that they were made or installed. Sublessor makes no warranty as to the use to which Sublessee will put the Premises or to modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Sublessee’s use. **NOTE: Sublessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Sublessee’s intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Sublessor shall, except as otherwise provided, promptly after receipt of written notice from Sublessee setting forth with specificity the nature and extent of such non-compliance, rectify the same.

**2.4 Acknowledgements.** Sublessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Sublessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Sublessee’s intended use, (c) Sublessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Sublessor, (e) the square footage of the Premises was not material to Sublessee’s decision to sublease the Premises and pay the Rent stated herein, and (f) neither Sublessor, Sublessor’s agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Sublease. In addition, Sublessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Sublessee’s ability to honor the Sublease or suitability to occupy the Premises, and (ii) it is Sublessor’s sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

**2.5 Americans with Disabilities Act.** In the event that as a result of Sublessee’s use, or intended use, of the Premises the Americans with Disabilities Act or any similar law requires modifications or the construction or installation of improvements in or to the Premises, Building, Project and/or Common Areas, the Parties agree that such modifications, construction or improvements shall be made at: Sublessor’s expense Sublessee’s expense.

**2.6 Vehicle Parking.** Sublessee shall be entitled to use the number of Unreserved Parking Spaces and Reserved Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time for parking. Sublessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pickup trucks, herein called “**Permitted Size Vehicles**.” Sublessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Sublessor.

(a) Sublessee shall not permit or allow any vehicles that belong to or are controlled by Sublessee or Sublessee’s employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Sublessor for such activities.

(b) Sublessee shall not service or store any vehicles in the Common Areas.

(c) If Sublessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Sublessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Sublessee, which cost shall be immediately payable upon demand by Sublessor.

**2.7 Common Areas - Definition.** The term “**Common Areas**” is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Sublessor from time to time for the general nonexclusive use of Sublessor, Sublessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roofs, roadways, walkways, driveways and landscaped areas.

**2.8 Common Areas - Sublessee’s Rights.** Sublessor grants to Sublessee, for the benefit of Sublessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Sublease, the nonexclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Sublessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Sublessor or Sublessor’s designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Sublessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Sublessee, which cost shall be immediately payable upon demand by Sublessor.

**2.9 Common Areas - Rules and Regulations.** Sublessor or such other person(s) as Sublessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations (“**Rules and Regulations**”) for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Sublessee agrees to abide by and conform to all such Rules and Regulations, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Sublessor shall not be responsible to Sublessee for the noncompliance with said Rules and Regulations by other tenants of the Project.

**2.10 Common Areas - Changes.** Sublessor shall have the right, in Sublessor’s sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To add additional buildings and improvements to the Common Areas;

(d) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(e) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Sublessor may, in the exercise of sound business judgment, deem to be appropriate.

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### 3. Possession.

3.1 **Early Possession.** Any provision herein granting Sublessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Sublessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Sublease (including but not limited to the obligations to pay Sublessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall, however, be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.2 **Delay in Commencement.** Sublessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises by the Commencement Date. If, despite said efforts, Sublessor is unable to deliver possession as agreed, the rights and obligations of Sublessor and Sublessee shall be as set forth in Paragraph 3.3 of the Master Lease (as modified by Paragraph 6.3 of this Sublease).

3.3 **Sublessee Compliance.** Sublessor shall not be required to tender possession of the Premises to Sublessee until Sublessee complies with its obligation to provide evidence of insurance. Pending delivery of such evidence, Sublessee shall be required to perform all of its obligations under this Sublease from and after the Start Date, including the payment of Rent, notwithstanding Sublessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Sublessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Sublessor may elect to withhold possession until such conditions are satisfied.

### 4. Rent and Other Charges.

4.1 **Rent Defined.** All monetary obligations of Sublessee to Sublessor under the terms of this Sublease (except for the Security Deposit) are deemed to be rent ("Rent"). Rent shall be payable in lawful money of the United States to Sublessor at the address stated herein or to such other persons or at such other places as Sublessor may designate in writing.

4.2 **Common Area Operating Expenses.** Sublessee shall pay to Sublessor during the term hereof, in addition to the Base Rent, Sublessee's Share of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Sublease, in accordance with the following provisions:

(a) "Common Area Operating Expenses" are defined, for purposes of this Sublease, as those costs incurred by Sublessor relating to the operation of the Project, which are included in the following list:

(i) Costs related to the operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management, security services, and the costs of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas.

(v) Real Property Taxes.

(vi) Insurance premiums.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(b) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Sublessor to either have said improvements or facilities or to provide those services unless Sublessor already provides the services, or Sublessor has agreed elsewhere in this Sublease to provide the same or some of them.

(c) Sublessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Sublessor's estimate of the Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Sublessor shall deliver to Sublessee a reasonably detailed statement showing Sublessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Sublessee's payments under this Paragraph 4.2(c) during the preceding year exceed Sublessee's Share as indicated on such statement, Sublessor shall credit the amount of such overpayment against Sublessee's Share of Common Area Operating Expenses next becoming due. If Sublessee's payments under this Paragraph 4.2(c) during the preceding year were less than Sublessee's Share as indicated on such statement, Sublessee shall pay to Sublessor the amount of the deficiency within 10 days after delivery by Sublessor to Sublessee of the statement.

4.3 **Utilities.** Sublessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Sublessor's sole judgment, Sublessor determines that Sublessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Sublessee is generating such a large volume of trash as to require an increase in the size of the dumpster and/or an increase in the number of times per month that the dumpster is emptied, then Sublessor may increase Sublessee's Base Rent by an amount equal to such increased costs.

5. **Security Deposit.** The rights and obligations of Sublessor and Sublessee as to said Security Deposit shall be as set forth in Paragraph 5 of the Master Lease (as modified by Paragraph 7.3 of this Sublease).

### 6. Master Lease.

6.1 Sublessor is the lessee of the Premises by virtue of the "Master Lease", wherein Slater Palms LLC is the lessor, hereinafter the "Master Lessor".

6.2 This Sublease is and shall be at all times subject and subordinate to the Master Lease.

6.3 The terms, conditions and respective obligations of Sublessor and Sublessee to each other under this Sublease shall be the terms and conditions of the Master Lease except for those provisions of the Master Lease which are directly contradicted by this Sublease in which event the terms of this Sublease document shall control over the Master Lease. Therefore, for the purposes of this Sublease, wherever in the Master Lease the word "Lessor" is used it shall be deemed to mean the Sublessor herein and wherever in the Master Lease the word "Lessee" is used it shall be deemed to mean the Sublessee herein.

6.4 During the term of this Sublease and for all periods subsequent for obligations which have arisen prior to the termination of this Sublease, Sublessee does hereby expressly assume and agree to perform and comply with, for the benefit of Sublessor and Master Lessor, each and every obligation of Sublessor under the Master Lease except for the following paragraphs which are excluded therefrom: \_\_\_\_.

6.5 The obligations that Sublessee has assumed under paragraph 6.4 hereof are hereinafter referred to as the “**Sublessee’s Assumed Obligations**”. The obligations that sublessee has not assumed under paragraph 6.4 hereof are hereinafter referred to as the “**Sublessor’s Remaining Obligations**”.

6.6 Sublessee shall hold Sublessor free and harmless from all liability, judgments, costs, damages, claims or demands, including reasonable attorneys fees, arising out of Sublessee’s failure to comply with or perform Sublessee’s Assumed Obligations.

6.7 Sublessor agrees to maintain the Master Lease during the entire term of this Sublease, subject, however, to any earlier termination of the Master Lease without the fault of the Sublessor, and to comply with or perform Sublessor’s Remaining Obligations and to hold Sublessee free and harmless from all liability, judgments, costs, damages, claims or demands arising out of Sublessor’s failure to comply with or perform Sublessor’s Remaining Obligations.

6.8 Sublessor represents to Sublessee that the Master Lease is in full force and effect and that no default exists on the part of any Party to the Master Lease.

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## **7. Assignment of Sublease and Default.**

7.1 Sublessor hereby assigns and transfers to Master Lessor the Sublessor's interest in this Sublease, subject however to the provisions of Paragraph 8.2 hereof.

7.2 Master Lessor, by executing this document, agrees that until a Default shall occur in the performance of Sublessor's Obligations under the Master Lease, that Sublessor may receive, collect and enjoy the Rent accruing under this Sublease. However, if Sublessor shall Default in the performance of its obligations to Master Lessor then Master Lessor may, at its option, receive and collect, directly from Sublessee, all Rent owing and to be owed under this Sublease. Master Lessor shall not, by reason of this assignment of the Sublease nor by reason of the collection of the Rent from the Sublessee, be deemed liable to Sublessee for any failure of the Sublessor to perform and comply with Sublessor's Remaining Obligations.

7.3 Sublessor hereby irrevocably authorizes and directs Sublessee upon receipt of any written notice from the Master Lessor stating that a Default exists in the performance of Sublessor's obligations under the Master Lease, to pay to Master Lessor the Rent due and to become due under the Sublease. Sublessor agrees that Sublessee shall have the right to rely upon any such statement and request from Master Lessor, and that Sublessee shall pay such Rent to Master Lessor without any obligation or right to inquire as to whether such Default exists and notwithstanding any notice from or claim from Sublessor to the contrary and Sublessor shall have no right or claim against Sublessee for any such Rent so paid by Sublessee.

7.4 No changes or modifications shall be made to this Sublease without the consent of Master Lessor.

## **8. Consent of Master Lessor.**

8.1 In the event that the Master Lease requires that Sublessor obtain the consent of Master Lessor to any subletting by Sublessor then, this Sublease shall not be effective unless, within 10 days of the date hereof, Master Lessor signs this Sublease thereby giving its consent to this Subletting.

8.2 In the event that the obligations of the Sublessor under the Master Lease have been guaranteed by third parties, then neither this Sublease, nor the Master Lessor's consent, shall be effective unless, within 10 days of the date hereof, said guarantors sign this Sublease thereby giving their consent to this Sublease.

8.3 In the event that Master Lessor does give such consent then:

(a) Such consent shall not release Sublessor of its obligations or alter the primary liability of Sublessor to pay the Rent and perform and comply with all of the obligations of Sublessor to be performed under the Master Lease.

(b) The acceptance of Rent by Master Lessor from Sublessee or any one else liable under the Master Lease shall not be deemed a waiver by Master Lessor of any provisions of the Master Lease.

(c) The consent to this Sublease shall not constitute a consent to any subsequent subletting or assignment.

(d) In the event of any Default of Sublessor under the Master Lease, Master Lessor may proceed directly against Sublessor, any guarantors or any one else liable under the Master Lease or this Sublease without first exhausting Master Lessor's remedies against any other person or entity liable thereon to Master Lessor.

(e) Master Lessor may consent to subsequent sublettings and assignments of the Master Lease or this Sublease or any amendments or modifications thereto without notifying Sublessor or any one else liable under the Master Lease and without obtaining their consent and such action shall not relieve such persons from liability.

(f) In the event that Sublessor shall Default in its obligations under the Master Lease, then Master Lessor, at its option and without being obligated to do so, may require Sublessee to attorn to Master Lessor in which event Master Lessor shall undertake the obligations of Sublessor under this Sublease from the time of the exercise of said option to termination of this Sublease but Master Lessor shall not be liable for any prepaid Rent nor any Security Deposit paid by Sublessee, nor shall Master Lessor be liable for any other Defaults of the Sublessor under the Sublease.

8.4 The signatures of the Master Lessor and any Guarantors of Sublessor at the end of this document shall constitute their consent to the terms of this Sublease.

8.5 Master Lessor acknowledges that, to the best of Master Lessor's knowledge, no Default presently exists under the Master Lease of obligations to be performed by Sublessor and that the Master Lease is in full force and effect.

8.6 In the event that Sublessor Defaults under its obligations to be performed under the Master Lease by Sublessor, Master Lessor agrees to deliver to Sublessee a copy of any such notice of default. Sublessee shall have the right to cure any Default of Sublessor described in any notice of default if Sublessee does so within the same number of days set forth in the notice of default given to Sublessor. If such Default is cured by Sublessee then Sublessee shall have the right of reimbursement and offset from and against Sublessor.

## **9. Additional Brokers Commissions.**

9.1 Sublessor agrees that if Sublessee exercises any option or right of first refusal as granted by Sublessor herein, or any option or right substantially similar thereto, either to extend the term of this Sublease, to renew this Sublease, to purchase the Premises, or to lease or purchase adjacent property which Sublessor may own or in which Sublessor has an interest, then Sublessor shall pay to Broker a fee in accordance with the schedule of Broker in effect at the time of the execution of this Sublease. Notwithstanding the foregoing, Sublessor's obligation under this Paragraph is limited to a transaction in which Sublessor is acting as a Sublessor, lessor or seller.

9.2 If a separate brokerage fee agreement is attached then Master Lessor agrees that if Sublessee shall exercise any option or right of first refusal granted to Sublessee by Master Lessor in connection with this Sublease, or any option or right substantially similar thereto, either to extend or renew the Master Lease, to purchase the Premises or any part thereof, or to lease or purchase adjacent property which Master Lessor may own or in which Master Lessor has an interest, or if Broker is the procuring cause of any other lease or sale entered into between Sublessee and Master Lessor pertaining to the Premises, any part thereof, or any adjacent property which Master Lessor owns or in which it has an interest, then as to any of said transactions, Master Lessor shall pay to Broker a fee, in cash, in accordance with the schedule attached to such brokerage fee agreement.

9.3 Any fee due from Sublessor or Master Lessor hereunder shall be due and payable upon the exercise of any option to extend or renew, upon the execution of any new lease, or, in the event of a purchase, at the close of escrow.

9.4 Any transferee of Sublessor's interest in this Sublease, or of Master Lessor's interest in the Master Lease, by accepting an assignment thereof, shall be deemed to have assumed the respective obligations of Sublessor or Master Lessor under this Paragraph 9. Broker shall be deemed to be a third-party beneficiary of this paragraph 9.

**10. Representations and Indemnities of Broker Relationships.** The Parties each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Sublease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Sublessee and Sublessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.



**11. Attorney's fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Sublessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

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**12. No Prior or Other Agreements; Broker Disclaimer.** This Sublease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Sublessor and Sublessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Sublease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys' fees), of any Broker with respect to negotiation, execution, delivery or performance by either Sublessor or Sublessee under this Sublease or any amendment or modification hereto shall be limited to an amount up to the fee received by such Broker pursuant to this Sublease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker. Signatures to this Sublease accomplished by means of electronic signature or similar technology shall be legal and binding.

**13. Accessibility; Americans with Disabilities Act.**

(a) The Premises:

have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) or other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

**ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY REAL ESTATE BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS SUBLEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:**

**1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS SUBLEASE.**

**2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PROPERTY, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR SUBLESSEE'S INTENDED USE.**

**WARNING: IF THE SUBJECT PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE SUBLEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.**

Executed At: _____	Executed At: _____
On: _____	On: _____

<b>By Sublessor:</b>	<b>By Sublessee:</b>
<b><u>Submersible Systems, Inc., a Florida corporation</u></b>	<b><u>Camburg Engineering, Inc.</u></b>

By: _____	By: _____
Name Printed: _____	Name Printed: _____
Title: _____	Title: _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____
Email: _____	Email: _____

By: _____	By: _____
Name Printed: _____	Name Printed: _____
Title: _____	Title: _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____
Email: _____	Email: _____

Address _____	Address _____
Federal ID No.: _____	Federal ID No.: _____

---

**BROKER**

Attn: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Address \_\_\_\_\_  
  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Federal ID No.: \_\_\_\_\_

Broker DRE License #: \_\_\_\_\_  
Agent DRE License #: \_\_\_\_\_

Consent to the above Sublease is hereby given.

Executed At: \_\_\_\_\_  
Executed On: \_\_\_\_\_

**By Master Lessor:  
Slater Palms LLC**

By: \_\_\_\_\_  
Name Printed: **Stephen J. Rimel**  
Title: **Managing Member**  
Phone: \_\_\_\_\_  
  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address \_\_\_\_\_  
Federal ID No.: \_\_\_\_\_

**BROKER**

Attn: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Address \_\_\_\_\_  
  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Federal ID No.: \_\_\_\_\_

Broker DRE License #: \_\_\_\_\_  
Agent DRE License #: \_\_\_\_\_

Executed At: \_\_\_\_\_  
Executed On: \_\_\_\_\_

**By Guarantor:**

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address \_\_\_\_\_

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Schneider/Camburg Engineering-7413 Slater Ave-Sublease

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**ADDENDUM TO SUBLEASE**

**Date:** September 20, 2022

**By and Between**

**Sublessor:** Submersible Systems, Inc., a Florida corporation

**Sublessee:** Camburg Engineering, Inc.

**Property Address:** 7413 Slater Avenue, Huntington Beach, CA 92647

(street address, city, state, zip)

Paragraph: **14-15**

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Sublease, this Addendum shall control.

14. Rent Schedule:

October 1, 2022 - September 30, 2023	\$2,314.00/month
October 1, 2023 - September 30, 2024	\$2,384.00/month
October 1, 2024 - September 30, 2025	\$2,455.00/month
October 1, 2025 - September 30, 2026	\$2,529.00/month
October 1, 2026 - September 30, 2027	\$2,455.00/month
October 1, 2027 - January 31, 2028	\$2,605.00/month

15. Common Area Maintenance (CAM) Fee:

Sublessee shall pay to Sublessor a monthly CAM fee in the amount of \$0.05/SF.

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Schneider/Camburg Engineering-7413 Slater Ave-Sublease

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STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - GROSS

1. Basic Provisions ("Basic Provisions").

1.1 **Parties.** This Lease ("Lease"), dated for reference purposes only September 14, 2022, is made by and between Slater Palms LLC ("Lessor") and Submersible Systems, Inc., a Florida corporation ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, unit/suite, city, state, zip):

7413 Slater Avenue, Huntington Beach, CA 92647 ("Premises"). The Premises are located in the County of Orange, and are generally described as (describe briefly the nature of the Premises and the "Project"): a freestanding industrial building of approximately 13,000 square feet which is part of a larger multi-tenant business park. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) **Parking:** Twenty-six (26) unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** Five (5) years and zero (0) months ("Original Term") commencing February 1, 2023 ("Commencement Date") and ending January 31, 2028 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing N/A ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$17,550.00 per month ("Base Rent"), payable on the first (1st) day of each month commencing February 1, 2023. (See also Paragraph 4)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50.

1.6 **Lessee's Share of Common Area Operating Expenses:** --- percent ( ----- %) ("Lessee's Share"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** --- for the period ---.

(b) **Common Area Operating Expenses:** The current estimate for the period --- is ---.

(c) **Security Deposit:** See Paragraph 53 ("Security Deposit"). (See also Paragraph 5)

(d) **Other:** --- for ---.

(e) **Total Due Upon Execution of this Lease:** \$10,727.00.

1.8 **Agreed Use:** General office, warehousing and manufacturing of underwater breathing systems. (See also Paragraph 6)

1.9 **Insuring Party.** Lessor is the "Insuring Party". (See also Paragraph 8)

1.10 **Real Estate Brokers.** (See also Paragraph 15 and 25)

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm

Lee & Associates@-Newport Beach License No. 01197433 is the broker of (check one): the Lessor; or both the Lessee and Lessor (dual agent).

Lessor's Agent

Brad Schneider/Nick Krakower License No. 01887613/02100512 is (check one): the Lessor's Agent (salesperson or broker associate); or both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm

\_\_\_\_\_  
License No. \_\_\_\_\_ Is the broker of (check one): the Lessee; or both the Lessee and Lessor (dual agent).

Lessee's Agent

\_\_\_\_\_  
License No. \_\_\_\_\_ is (check one): the Lessee's Agent (salesperson or broker associate); or both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers.** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of \_\_\_\_\_ or \_\_\_\_\_ % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by \_\_\_\_\_ ("Guarantor"). (See also Paragraph 37)

1.12 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

an Addendum consisting of Paragraphs 50 through 53 ;

a site plan depicting the Premises; a site plan depicting the Project;

a current set of the Rules and Regulations for the Project;

a current set of the Rules and Regulations adopted by the owners' association; a Work Letter;

✓ other (specify): Arbitration Agreement (54) and Guaranty of Lease .

## 2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

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**2.2 Condition.** Lessor shall deliver that portion of the Premises contained within the Building (“Unit”) to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs (“Start Date”), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems (“HVAC”), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor’s sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor’s expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee’s sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

**2.3 Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances (“Applicable Requirements”) that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee’s use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee’s intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor’s expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee’s sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building (“Capital Expenditure”), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months’ Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee’s termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months’ Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor’s termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor’s share of such costs have been fully paid. If Lessee is unable to finance Lessor’s share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

**2.4 Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises; (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee’s intended use; (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises; (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor; (e) the square footage of the Premises was not material to Lessee’s decision to lease the Premises and pay the Rent stated herein; and (f) neither Lessor, Lessor’s agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee’s ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor’s sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

**2.5 Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

**2.6 Vehicle Parking.** Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called “Permitted Size Vehicles.” Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee’s employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

**2.7 Common Areas - Definition.** The term “Common Areas” is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roofs, roadways, walkways, driveways and landscaped areas.

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**2.8 Common Areas Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

**2.9 Common Areas Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non compliance with said Rules and Regulations by other tenants of the Project.

**2.10 Common Areas Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

### **3. Term.**

**3.1 Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

**3.2 Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

**3.3 Delay In Possession.** Lessor agrees to use commercially reasonable efforts to deliver exclusive possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

**3.4 Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

### **4. Rent.**

**4.1. Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

**4.2 Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) The following costs relating to the ownership and operation of the Project are defined as "**Common Area Operating Expenses**":

(i) Costs relating to the operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (e)), of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.



(iii) The cost of trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas and Common Area equipment.

(v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10).

(vi) Any "Insurance Cost Increase" (as defined in Paragraph 8).

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

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(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month. Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include the cost of replacing equipment or capital components such as the roof, foundations, exterior walls or Common Area capital improvements, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

**4.3 Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

**5. Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. **THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.**

## **6. Use.**

**6.1 Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

## **6.2 Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises; (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank; (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

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(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

**6.3 Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

**6.4 Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1(e)) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

## **7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

### **7.1 Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

**7.2 Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises.

### **7.3 Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

### **7.4 Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

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## **8. Insurance; Indemnity.**

### **8.1 Payment of Premium Increases.**

(a) As used herein, the term “**Insurance Cost Increase**” is defined as any increase in the actual cost of the insurance applicable to the Building and/or the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. The “**Base Premium**” shall be the annual premium applicable to the 12 month period immediately preceding the Start Date. If, however, the Project was not insured for the entirety of such 12 month period, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Start Date, assuming the most nominal use possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

### **8.2 Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization’s “Additional Insured Managers or Lessors of Premises” Endorsement. The policy shall not contain any intra insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an “**insured contract**” for the performance of Lessee’s indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

### **8.3 Property Insurance Building, Improvements and Rental Value.**

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee’s personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days (“**Rental Value insurance**”). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee’s acts, omissions, use or occupancy of the Premises.

(d) **Lessee’s Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

### **8.4 Lessee’s Property; Business Interruption Insurance; Worker’s Compensation Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee’s personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker’s Compensation Insurance.** Lessee shall obtain and maintain Worker’s Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a ‘Waiver of Subrogation’ endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee’s property, business operations or obligations under this Lease.

**8.5 Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a “General Policyholders Rating” of at least A, VII, as set forth in the most current issue of “Best’s Insurance Guide”, or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or “insurance binders” evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

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**8.7 Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

**8.8 Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places; (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project; or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

**8.9 Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

## **9. Damage or Destruction.**

### **9.1 Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

**9.2 Partial Damage Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

**9.3 Partial Damage Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

**9.4 Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

**9.5 Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this

Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

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## 9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

**9.7 Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

## 10. Real Property Taxes.

### 10.1 Definitions.

(a) **"Real Property Taxes."** As used herein, the term **"Real Property Taxes"** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. The term **"Real Property Taxes"** shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project; (ii) a change in the improvements thereon; and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

(b) **"Base Real Property Taxes."** As used herein, the term **"Base Real Property Taxes"** shall be the amount of Real Property Taxes, which are assessed against the Project, during the entire calendar year in which the Lease is executed.

**10.2 Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

**10.3 Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other tenants or by Lessor for the exclusive enjoyment of such other Tenants. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

**10.4 Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

**10.5 Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

## 11. Utilities and Services.

**11.1** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

**11.2** Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

## 12. Assignment and Subletting.

### 12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, **"assign or assignment"**) or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. **"Net Worth of Lessee"** shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a non curable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a non curable Breach, Lessor may either: (i) terminate this Lease,

or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

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(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or pay phone shall not constitute a subletting.

#### 12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall : (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

**12.3 Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

#### 13. Default; Breach; Remedies.

**13.1 Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; the vacating of the Premises prior to the expiration or termination of this Lease without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism; or failure to deliver to Lessor exclusive possession of the entire Premises in accordance herewith prior to the expiration or termination of this Lease.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "**debtor**" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

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(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

**13.2 Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

**13.3 Inducement Recapture.** Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

**13.4 Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

**13.5 Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

#### **13.6 Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

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**14. Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively “**Condemnation**”), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of the parking spaces is taken by Condemnation, Lessee may, at Lessee’s option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee’s relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

#### **15. Brokerage Fees.**

**15.1 Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed. The provisions of this paragraph are intended to supersede the provisions of any earlier agreement to the contrary.

**15.2 Assumption of Obligations.** Any buyer or transferee of Lessor’s interest in this Lease shall be deemed to have assumed Lessor’s obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee’s Broker when due, Lessee’s Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee’s Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor’s Broker for the limited purpose of collecting any brokerage fee owed.

**15.3 Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder’s fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys’ fees reasonably incurred with respect thereto.

#### **16. Estoppel Certificates.**

(a) Each Party (as “**Responding Party**”) shall within 10 days after written notice from the other Party (the “**Requesting Party**”) execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current “**Estoppel Certificate**” form published BY AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party’s performance, and (iii) if Lessor is the Requesting Party, not more than one month’s rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party’s Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee’s failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee’s Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee’s financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

**17. Definition of Lessor.** The term “**Lessor**” as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee’s interest in the prior lease. In the event of a transfer of Lessor’s title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

**18. Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

**19. Days.** Unless otherwise specifically indicated to the contrary, the word “**days**” as used in this Lease shall mean and refer to calendar days.

**20. Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor’s partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

**21. Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

**22. No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

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## 23. Notices.

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

23.3 **Options.** Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

## 24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

## 25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: **To the Lessor:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. **To the Lessee and the Lessor:** (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. **To the Lessee:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. **To the Lessee and the Lessor:** (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. At or prior to the expiration or termination of this Lease Lessee shall deliver exclusive possession of the Premises to Lessor. For purposes of this provision and Paragraph 13.1(a), exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. In the event that Lessee does not deliver exclusive possession to Lessor as specified above, then Lessor's damages during any holdover period shall be computed at the amount of the Rent (as defined in Paragraph 4.1) due during the last full month before the expiration or termination of this Lease (disregarding any temporary abatement of Rent that may have been in effect), but with Base Rent being 150% of the Base Rent payable during such last full month. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**28. Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

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**29. Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

**30. Subordination; Attornment; Non-Disturbance.**

**30.1 Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

**30.2 Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

**30.3 Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

**30.4 Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

**31. Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

**32. Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

**33. Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

**34. Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

**35. Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

**36. Consents.** All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

**37. Guarantor.**

**37.1 Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published BY AIR CRE.

**37.2 Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

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**38. Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

**39. Options.** If Lessee is granted any option, as defined below, then the following provisions shall apply.

**39.1 Definition. "Option"** shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

**39.2 Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

**39.3 Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

**39.4 Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

**40. Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

**41. Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary; (ii) to cause the recordation of parcel maps and restrictions; and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

**42. Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

**43. Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**44. Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

**45. Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

**46. Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

**47. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

**48. Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease is not attached to this Lease.

**49. Accessibility; Americans with Disabilities Act.**

(a) The Premises:

have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner

of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards. In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

---

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

**LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.**

**ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:**

**1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.**

**2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.**

**WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.**

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

---

Executed at: \_\_\_\_\_  
On: \_\_\_\_\_

By LESSOR:

Slater Palms LLC

By: \_\_\_\_\_  
Name Printed: Stephen J. Rimel  
Title: Managing Member  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Address: \_\_\_\_\_

Federal ID No.: \_\_\_\_\_

**BROKER**

Lee & Associates®-Newport Beach

Attn: Brad Schneider/Nick Krakower  
Title: SVP/Principal / Senior Associate

Address: 100 Bayview Circle, Suite 600  
Newport Beach, CA 92660

Phone: (949) 724-4708/(949) 724-4720  
Fax: (949) 623-6308/(949) 6320  
Email: bschneider@lee-associates.com/nkrakower@lee-associates.com

Federal ID No.: \_\_\_\_\_  
Broker DRE License #: 01197433  
Agent DRE License #: 01887613/02100512

Executed at: \_\_\_\_\_  
On: \_\_\_\_\_

By LESSEE:

Submersible Systems, Inc., a Florida corporation

By: \_\_\_\_\_  
Name Printed: Christeen Buban  
Title: President  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Address: \_\_\_\_\_

Federal ID No.: \_\_\_\_\_

**BROKER**

Attn: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Federal ID No.: \_\_\_\_\_  
Broker DRE License #: \_\_\_\_\_  
Agent DRE License #: \_\_\_\_\_

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Schneider/Submersible Systems-7413 Slater Avenue-Gross Lease

**ADDENDUM TO LEASE**

**Date:** September 14, 2022

**By and Between**

**Lessor:** Slater Palms LLC

**Lessee:** Submersible Systems, Inc., a Florida corporation

**Property Address:** 7413 Slater Avenue, Huntington Beach, CA 92647

(street address, city, state, zip)

Paragraph: **50-53**

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Lease, this Addendum shall control.

**50. Rent Schedule:**

February 1, 2023 - January 31, 2024	\$	17,550.00
February 1, 2024 - January 31, 2025	\$	17,550.00
February 1, 2025 - January 31, 2026	\$	18,077.00
February 1, 2026 - January 31, 2027	\$	18,619.00
February 1, 2027 - January 31, 2028	\$	19,177.00

**51. Lessor Improvements:**

Lessor, at Lessor's sole cost & expense, shall install a new roll up door.

**52. Operating Expenses:**

The above mentioned Rent is inclusive of a \$0.05/SF Common Area Operating Expense (CAM). Lessee shall not be obligated to pay any additional CAM charge during the term of the lease.

**53. Security Deposit:**

The current Security Deposit on file is \$8,450.00. The total Security Deposit required is \$19,177.00. Therefore, the Lessee shall pay to Lessor a Security Deposit equivalent to \$10,727.00 upon execution of this lease.

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Submersible Systems-7413 Slater Avenue-Gross Lease

**ARBITRATION AGREEMENT  
STANDARD LEASE ADDENDUM**

**Dated:** September 14, 2022

**By and Between**

**Lessor:** Slater Palms LLC

**Lessee:** Submersible Systems, Inc., a Florida corporation

**Property Address:** 7413 Slater Avenue, Huntington Beach, CA 92647

(street address, city, state, zip)

Paragraph: 54

**A. ARBITRATION OF DISPUTES:**

Except as provided in Paragraph B below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

**B. DISPUTES EXCLUDED FROM ARBITRATION:**

The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1. Disputes for which a different resolution determination is specifically set forth in this Lease, 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, 3. Claims relating to (a) Lessor's exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law 4. Any claim or dispute that is within the jurisdiction of the Small Claims Court and 5. All claims arising under Paragraph 39 of this Lease.

**C. APPOINTMENT OF AN ARBITRATOR:**

All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration before: a retired judge of the applicable court of jurisdiction (e.g., the Superior Court of the State of California) affiliated with Judicial Arbitration & Mediation Services, Inc. ("JAMS"), the American Arbitration Association ("AAA") under its commercial arbitration rules, or as may be otherwise mutually agreed by Lessor and Lessee (the "Arbitrator"). In the event that the parties elect to use an arbitrator other than one affiliated with JAMS or AAA then such arbitrator shall be obligated to comply with the Code of Ethics for Arbitrators in Commercial Disputes (see: [http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG\\_003867](http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_003867)). Such arbitration shall be initiated by the Parties, or either of them, within ten (10) days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. If the Parties have agreed to use JAMS they may agree on a retired judge from the JAMS panel. If they are unable to agree within ten days, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization's rules. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate Court for the appointment of a qualified retired judge to act as the Arbitrator.

**D. ARBITRATION PROCEDURE:**

1. **PREHEARING ACTIONS.** The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1282.6).

2. **THE DECISION.** The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1286.2). The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion.

Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared in bad faith.

Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however, elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter, the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with Interest thereon as defined in Paragraph 13.5. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 42 or 43)

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## GUARANTY OF LEASE

WHEREAS, Slater Palms, LLC, hereinafter "Lessor", and Submersible Systems, Inc., a Florida corporation, hereinafter "Lessee", are about to execute a document entitled "Lease" dated September 14, 2022 concerning the premises commonly known as (street address, city, state, zip) 7413 Slater Avenue, Huntington Beach, CA 92647 wherein Lessor will lease the premises to Lessee, and

WHEREAS, Brownie's Marine Group, Inc. hereinafter "Guarantors" have a financial interest in Lessee, and

WHEREAS, Lessor would not execute the Lease if Guarantors did not execute and deliver to Lessor this Guaranty of Lease.

NOW THEREFORE, in consideration of the execution of said Lease by Lessor and as a material inducement to Lessor to execute said Lease, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rents and all other sums payable by Lessee under said Lease and the faithful and prompt performance by Lessee of each and every one of the terms, conditions and covenants of said Lease to be kept and performed by Lessee.

It is specifically agreed by Lessor and Guarantors that: (i) the terms of the foregoing Lease may be modified by agreement between Lessor and Lessee, or by a course of conduct, and (ii) said Lease may be assigned by Lessor or any assignee of Lessor without the consent of or notice to Guarantors and that this Guaranty shall guarantee the performance of said Lease as so modified.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Lessor to enforce any of the rights or remedies of the Lessor under said Lease.

No notice of default by Lessee under the Lease need be given by Lessor to Guarantors, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which Lessor may proceed immediately against Lessee and/or against Guarantors following any breach or default by Lessee or for the enforcement of any rights which Lessor may have as against Lessee under the terms of the Lease or at law or in equity.

Lessor shall have the right to proceed against Guarantors following any breach or default by Lessee under the Lease without first proceeding against Lessee and without previous notice to or demand upon either Lessee or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations relating to this Guaranty or the Lease, (d) any right to require the Lessor to proceed against the Lessee or any other Guarantor or any other person or entity liable to Lessor, (e) any right to require Lessor to apply to any default any security deposit or other security it may hold under the Lease, (f) any right to require Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantors, (g) any right of subrogation that Guarantors may have against Lessee.

Guarantors do hereby subordinate all existing or future indebtedness of Lessee to Guarantors to the obligations owed to Lessor under the Lease and this Guaranty.

If a Guarantor is married, such Guarantor expressly agrees that recourse may be had against his or her separate property for all of the obligations hereunder.

The obligations of Lessee under the Lease to execute and deliver estoppel statements and financial statements, as therein provided, shall be deemed to also require the Guarantors to provide estoppel statements and financial statements to Lessor. The failure of the Guarantors to provide the same to Lessor shall constitute a default under the Lease.

The term "Lessor" refers to and means the Lessor named in the Lease and also Lessor's successors and assigns. So long as Lessor's interest in the Lease, the leased premises or the rents, issues and profits therefrom, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Lessor's interest shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment and their successors and assigns.

The term "Lessee" refers to and means the Lessee named in the Lease and also Lessee's successors and assigns.

Any recovery by Lessor from any other guarantor or insurer shall first be credited to the portion of Lessee's indebtedness to Lessor which exceeds the maximum liability of Guarantors under this Guaranty.

No provision of this Guaranty or right of the Lessor can be waived, nor can the Guarantors be released from their obligations except in writing signed by the Lessor.

Any litigation concerning this Guaranty shall be initiated in a state court of competent jurisdiction in the county in which the leased premises are located and the Guarantors consent to the jurisdiction of such court. This Guaranty shall be governed by the laws of the State in which the leased premises are located and for the purposes of any rules regarding conflicts of law the parties shall be treated as if they were all residents or domiciles of such State.

In the event any action be brought by said Lessor against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee. The attorney's fee award shall not be computed in accordance with any court fee schedule, but shall be such as to full reimburse all attorneys' fees reasonably incurred.

If any Guarantor is a corporation, partnership, or limited liability company, each individual executing this Guaranty on said entity's behalf represents and warrants that he or she is duly authorized to execute this Guaranty on behalf of such entity. Signatures to this Guaranty accomplished by means of electronic signature or similar technology shall be legal and binding.

**If this Form has been filled in, it has been prepared for submission to your attorney for his approval. No representation or recommendation is made BY AIR CRE, the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Form or the transaction relating thereto.**

SIGNATURE PAGE TO FOLLOW

---

GUARANTORS

**Brownie's Marine Group, Inc.**

Executed At:

On:

By:

Name Printed:

**Christopher Constable**

Title:

**Chief Executive Officer**

Address:

By:

Name Printed:

Title:

Address:

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Schneider/Submersible Systems-7413 Slater-Guaranty of Lease

**Exhibit 21**

## Subsidiaries

Trebor Industries, Inc., a Florida corporation

Brownie's High Pressure Compressor Services, Inc., a Florida corporation

bLU3, Inc., a Florida corporation

Submersible Systems, Inc., a Florida corporation

Live Blue, Inc., a Florida corporation

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## EXHIBIT 31.1

## OFFICER'S CERTIFICATE PURSUANT TO RULE 13A-14(A)/15D-14(A)

I, Christopher H. Constable, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2022, of Brownie's Marine Group, 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. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15 (e)) and internal controls over financial reporting (as defined in Exchange Act Rules 3a-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. I have disclosed, based on my 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.

Date: March 30, 2023

*/s/ Christopher H. Constable*

Name: Christopher H. Constable

Title: Chief Executive Officer (Principal Executive Officer)

## EXHIBIT 31.2

## OFFICER'S CERTIFICATE PURSUANT TO RULE 13A-14(A)/15D-14(A)

I, Robert M. Carmichael, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2022, of Brownie's Marine Group, 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. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15 (e)) and internal controls over financial reporting (as defined in Exchange Act Rules 3a-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. I have disclosed, based on my 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.

Date: March 30, 2023

*/s/ Robert M. Carmichael*

Name: Robert M. Carmichael

Title: Chairman of the Board, President, Chief Financial Officer (Principal Financial and Accounting officer)

**EXHIBIT 32.1**

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Brownie's Marine Group, Inc. (the "Company") for the year ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, in the capacities and on the dates indicated below, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operation of the Company.

Date: March 30, 2023

*/s/ Christopher H. Constable*

Name: Christopher H. Constable

Title: Chief Executive Officer (Principal Executive Officer)

*/s/ Robert M. Carmichael*

Name: Robert M. Carmichael

Title: Chief Financial Officer (Principal Financial and Accounting Officer)