UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2022

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

For the transition period from ____ to _____
Commission file number: 1-16525

CVD EQUIPMENT CORPORATION

(Name of Registrant in Its Charter)

New York — **11-2621692**

State or Other Jurisdiction of Incorporation or Organization) — ***(I.R.S. Employer Identification No.)***

355 South Technology Drive
Central Islip, New York 11722

(Address of principal executive offices)

(631) 981-7081
(Registrant's Telephone Number, Including Area Code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	CVV	NASDAQ Capital Market

Indicate by check 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 (Section 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 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 ☐ Accelerated filer ☐
Non-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. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☑

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: 6,760,938 shares of Common Stock, $0.01 par value at November 14, 2022.

CVD EQUIPMENT CORPORATION AND SUBSIDIARIES

Index

Part I - Financial Information	
Item 1 – Condensed Consolidated Financial Statements (Unaudited)	
Condensed Consolidated Balance Sheets at September 30, 2022 and December 31, 2021	3
Condensed Consolidated Statements of Operations for the three and nine months ended September 30, 2022 and 2021	4
Condensed Consolidated Statements of Changes in Stockholders' Equity for the three and nine months ended September 30, 2022 and 2021	5
Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2022 and 2021	6
Notes to Condensed Consolidated Financial Statements	7
Item 2 – Management's Discussion and Analysis of Financial Condition and Results of Operations	22
Item 3 – Quantitative and Qualitative Disclosures About Market Risk	33
Item 4 – Controls and Procedures	33
Part II - Other Information	
Item 1 – Legal Proceedings	35
Item 1A-Risk Factors	35
Item 2 – Unregistered Sales of Equity Securities and Use of Proceeds	35
Item 3 – Defaults Upon Senior Securities	35
Item 4 – Mine Safety Disclosures	35
Item 5 – Other Information	35
Item 6 – Exhibits	35
Signatures	37

PART 1 – FINANCIAL INFORMATION
Item 1 – Financial Statements
CVD EQUIPMENT CORPORATION AND SUBSIDIARIES
Condensed Consolidated Balance Sheets

	(Unaudited) September 30, 2022	December 31, 2021
ASSETS		
Current assets		
Cash and cash equivalents	$ 11,875,921	$ 16,651,371
Accounts receivable, net	2,850,861	1,446,354
Contract assets	3,152,469	2,538,373
Inventories, net	2,133,767	1,225,015
Taxes receivable	-	715,599
Other current assets	560,019	493,788
Total current assets	20,573,037	23,070,500
Property, plant and equipment, net	12,813,611	12,261,321
Intangible assets, net	205,510	182,838
Other assets	9,570	9,570
Total assets	$ 33,601,728	$ 35,524,229
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	$ 1,523,893	$ 1,161,381
Accrued expenses	2,445,791	1,758,939
Current maturities of long-term debt	76,379	1,765,508
Contract liabilities	1,477,894	1,650,426
Total current liabilities	5,523,957	6,336,254
Long-term debt, net of current portion	355,621	-
Total liabilities	5,879,578	6,336,254
Stockholders' equity:		
Common stock - $0.01 par value – 20,000,000 shares authorized; issued and outstanding 6,760,938 at September 30, 2022 and 6,723,438 at December 31, 2021	67,609	67,234
Additional paid-in capital	27,584,158	27,277,154
Retained earnings	70,383	1,843,587
Total stockholders' equity	27,722,150	29,187,975
Total liabilities and stockholders' equity	$ 33,601,728	$ 35,524,229

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

CVD EQUIPMENT CORPORATION AND SUBSIDIARIES
Condensed Consolidated Statements of Operations
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenue	$ 8,118,627	$ 4,329,459	$ 18,579,447	$ 11,729,727
Cost of revenue	5,698,766	3,466,159	13,952,413	9,424,994
Gross profit	2,419,861	863,300	4,627,034	2,304,733
Operating expenses:				
Research and development	518,007	445,807	1,397,408	1,187,516
Selling	289,800	237,934	894,740	602,836
General and administrative	1,489,779	1,101,883	3,936,734	4,138,416
Total operating expenses	2,297,586	1,785,624	6,228,882	5,928,768
Operating income (loss)	122,275	(922,324)	(1,601,848)	(3,624,035)
Other income (expense):				
Interest income	43,050	1,776	73,979	3,402
Interest expense	(159)	(35,973)	(5,502)	(250,194)
Gain on sale of building	-	6,894,109	-	6,894,109
Gain on debt extinguishment	-	-	-	2,443,418
Foreign exchange loss	(107,000)	-	(250,000)	-
Other income	5,437	63,143	11,057	499,970
Total other income, net	(58,672)	6,923,055	(170,466)	9,590,705
Income (loss) before income taxes	63,603	6,000,731	(1,772,314)	5,966,670
Income tax expense	65	27,327	890	28,391
Net income (loss)	$ 63,538	$ 5,973,404	$ (1,773,204)	$ 5,938,279
Income (loss) per common share - basic	$ 0.01	$ 0.89	$ (0.26)	$ 0.89
Income (loss) per common share - diluted	$ 0.01	$ 0.89	$ (0.26)	$ 0.89
Weighted average common shares outstanding:				
Basic	6,736,764	6,685,599	6,730,263	6,683,407
Diluted	6,740,692	6,707,883	6,730,263	6,691,813

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

CVD EQUIPMENT CORPORATION AND SUBSIDIARIES
Condensed Consolidated Statements of Changes in Stockholders' Equity
(Unaudited)

Three months ended September 30, 2022 and 2021

	Common stock				
	Shares	Par Value	Additional paid-in Capital	Retained Earnings/ (Accumulated Deficit)	Total
Balance at July 1, 2022	6,728,938	$ 67,289	$ 27,465,930	$ 6,845	$ 27,540,064
Net income	-	-	-	63,538	63,538
Stock-based compensation	32,000	320	118,228	-	118,548
Balance at September 30, 2022	6,760,938	$ 67,609	$ 27,584,158	$ 70,383	$ 27,722,150
Balance at July 1, 2021	6,684,281	$ 66,842	$ 27,074,079	$ (2,938,023)	$ 24,202,898
Net income	-	-	-	5,973,404	5,973,404
Stock-based compensation	3,157	32	105,459	-	105,491
Balance at September 30, 2021	6,687,438	$ 66,874	$ 27,179,538	$ 3,035,381	$ 30,281,793

Nine months ended September 30, 2022 and 2021

	Common stock				
	Shares	Par Value	Additional paid-in Capital	Retained Earnings / (Accumulated Deficit)	Total
Balance at January 1, 2022	6,723,438	$ 67,234	$ 27,277,154	$ 1,843,587	$ 29,187,975
Net loss	-	-	-	(1,773,204)	(1,773,204)
Stock-based compensation	37,500	375	307,004	-	307,379
Balance at September 30, 2022	6,760,938	$ 67,609	$ 27,584,158	$ 70,383	$ 27,722,150
Balance at January 1, 2021	6,678,698	$ 66,786	$ 26,961,684	$ (2,902,898)	$ 24,125,572
Net income	-	-	-	5,938,279	5,938,279
Stock-based compensation	8,740	88	217,854	-	217,942
Balance at September 30, 2021	6,687,438	$ 66,874	$ 27,179,538	$ 3,035,381	$ 30,281,793

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

CVD EQUIPMENT CORPORATION AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows
(Unaudited)

	Nine Months Ended September 30, 2022	2021
Cash flows from operating activities:		
Net (loss) income	$ (1,773,204)	$ 5,938,279
Adjustments to reconcile net (loss) income to net cash used in operating activities:		
Gain on sale of building	-	(6,894,109)
Gain on debt extinguishment	-	(2,443,418)
Stock-based compensation	307,379	217,942
Depreciation and amortization	537,903	585,082
Changes in assets and liabilities:		
Accounts receivable	(1,404,506)	(844,185)
Contract assets	(614,096)	(1,133,887)
Inventories	(908,753)	(341,905)
Tax receivable	715,599	-
Other current assets	(66,230)	491,764
Accounts payable	362,512	36,226
Accrued expenses	686,851	95,281
Contract liabilities	(172,532)	717,688
Total adjustments	(555,873)	(9,513,521)
Net cash used in operating activities	(2,329,077)	(3,575,242)
Cash flows from investing activities:		
Net proceeds from sale of building	-	23,075,477
Net proceeds from sale of assets	10,000	-
Capitalized patents costs	(52,911)	-
Capital expenditures	(637,954)	(212,920)
Net cash (used in) provided by investing activities	(680,865)	22,862,557
Cash flows from financing activities:		
Repayments of long-term debt	(1,765,508)	(9,540,246)
Net cash used in financing activities	(1,765,508)	(9,540,246)
Net (decrease) increase in cash and cash equivalents	(4,775,450)	9,747,069
Cash and cash equivalents at beginning of period	16,651,371	7,699,335
Cash and cash equivalents at end of period	$ 11,875,921	$ 17,446,404
Supplemental disclosure of cash flow information:		
Income taxes paid	$ 890	$ 28,391
Interest paid	$ 8.157	$ 250,194
Non-cash investing and financing activities:		
Loan obtained for new equipment	$ 432,000	$ -

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

NOTE 1:

BASIS OF PRESENTATION

The accompanying unaudited condensed consolidated financial statements for CVD Equipment Corporation and Subsidiaries (collectively "the Company") have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and with the instructions to Form 10-Q and Article 8 of Regulation S-X. They do not include all of the information and footnotes required by accounting principles generally accepted in the United States of America for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary in order to make the interim financials not misleading have been included and all such adjustments are of a normal recurring nature. The operating results for the three and nine months ended September 30, 2022 are not necessarily indicative of the results that can be expected for the year ending December 31, 2022.

The condensed consolidated balance sheet as of December 31, 2021 has been derived from the audited consolidated financial statements at such date, as filed on Form 10-K with the SEC on March 31, 2022, but does not contain all of the information and footnotes required by accounting principles generally accepted in the United States of America for complete financial statements. These unaudited condensed consolidated financial statements should be read in conjunction with that report.

All material intercompany balances and transactions have been eliminated in consolidation. In addition, certain reclassifications have been made to the prior period condensed consolidated financial statements to conform to the current period presentation. These reclassifications had no effect on net income (loss).

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Revenue Recognition

In accordance with FASB ASC 606 - Revenue from Contracts with Customers ("ASC 606"), the Company records revenue in an amount that reflects the consideration to which the Company expects to be entitled in exchange for goods or services promised to its customers. Under ASC 606, the Company follows a five-step model to: (1) identify the contract with the customer; (2) identify the performance obligations in the contract; (3) determine the transaction price for the contract; (4) allocate the transaction price to the performance obligations; and (5) recognize revenue using one of the following two methods:

Over time

The Company designs, manufactures and sells specialized chemical vapor deposition equipment through contractual agreements. These system sales require the Company to deliver functioning equipment that is generally completed within three to eighteen months from commencement of order acceptance. The Company recognizes revenue from system sales over time by using an input method based on costs incurred as it depicts the Company's progress toward satisfaction of the performance obligation. Under this method, revenue arising from fixed price contracts is recognized as work is performed based on the ratio of costs incurred to date to the total estimated costs at completion of the performance obligations. Incurred costs include all direct material and labor costs and those indirect costs related to contract performance, such as supplies, tools, repairs and depreciation costs. Contract material costs are included in incurred costs when the project materials have been purchased or moved to work in process, and installed, as required by the project's engineering design. Cost-based input methods of revenue recognition require the Company to make estimates of costs to complete the projects. In making such estimates, significant judgment is required to evaluate assumptions related to the costs to complete the projects, including materials, labor and other system costs. If the estimated total costs on any contract are greater than the net contract revenues, the Company recognizes the entire estimated loss in the period the loss becomes known and can be reasonably estimated.

"Contract assets," include unbilled amounts typically resulting from system sales under contracts and represents revenue recognized that exceeds the amount billed to the customer.

"Contract liabilities," include advance payments and billings in excess of revenue recognized. The Company typically receives down payments upon receipt of order and progress payments as the system is manufactured.

Contract assets and contract liabilities are classified as current as these contracts in progress are expected to be substantially completed within the next twelve months.

Point in time

For non-system sales of products and services, revenue is recognized at the point in time when control of the promised products or services is transferred to the Company's customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those products or services (the transaction price). A performance obligation is a promise in a contract to transfer a distinct product or service to a customer and is the unit of account under ASC 606, "Revenue from Contracts with Customers".

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Recent Accounting Standards

In June 2016, the FASB issued Accounting Standard Update ("ASU") 2016-13, Financial Instruments – Credit Losses (Topic 326), which require that financial assets measured at amortized cost be presented at the net amount expected to be collected. The allowance for credit losses is a valuation account that is deducted from the amortized cost basis of the financial asset to present the net carrying value at the amount expected to be collected. The income statement reflects the measurement of credit losses for newly recognized financial assets, as well as the increase or decreases of expected credit losses that have taken place during the period. The measurement of expected credit losses is based upon historical experience, current conditions, and reasonable and supportable forecasts that affect the collectability of the reported amount. On November 15, 2019, the FASB delayed the effective date for smaller reporting companies. The amendments in this update are now effective for fiscal years beginning after December 15, 2022 and interim periods within those annual periods. Management is currently evaluating the effect of this update on the Company's consolidated financial statements and currently believes it should not have a material impact.

The Company believes there is no additional new accounting guidance adopted, but not yet effective that is relevant to the readers of its financial statements. However, there are numerous new proposals under development which, if and when enacted, may have a significant impact on our financial reporting.

NOTE 3: CONCENTRATION OF CREDIT RISK

Cash and cash equivalents

The Company had cash and cash equivalents of $11.9 million and $16.7 million at September 30, 2022 and December 31, 2021, respectively. The Company invests excess cash in U.S. treasury bills, certificates of deposit or deposit accounts, all with maturities of less than three months. Cash equivalents were $7.1 million and $7.0 million at September 30, 2022 and December 31, 2021, respectively.

The Company places most of its temporary cash investments with financial institutions, which from time to time may exceed the Federal Deposit Insurance Corporation limit. The amount at risk at September 30, 2022 and December 31, 2021 was $3.7 million and $8.6 million, respectively.

NOTE 3: CONCENTRATION OF CREDIT RISK (continued)

Sales concentration

Revenue from a single customer in any one period can exceed 10% of our total revenues. During the three months ended September 30, 2022, one customer exceeded 10% of revenues, representing 44.6% of revenues, and during the nine months ended September 30, 2022, one customer exceeded 10%, representing 28.6% of revenues. During the three months ended September 30, 2021, two customers exceeded 10% of revenues, representing 15.6% and 11.8% of revenues, and during the nine months ended September 30, 2021, two customers exceeded 10%, representing 12.0% and 11.7% of revenues.

Accounts receivable

The Company sells products and services to various companies across several industries in the ordinary course of business. The Company performs ongoing credit evaluations to assess the probability of accounts receivable collection based on a number of factors, including past transaction experience, evaluation of their credit history and review of the invoicing terms of the contract to determine the financial strength of its customers. For certain contracts, the Company receives advanced payments for a portion of the contract price. The Company also maintains allowances for anticipated losses. At September 30, 2022, one customer exceeded 10% of the accounts receivable balance representing in the aggregate 34.4%, and at December 31, 2021 two customers exceeded 10% of the accounts receivable balance, representing in the aggregate 50.0% of the accounts receivable balance.

NOTE 4: REVENUE RECOGNITION

The following table represents a disaggregation of revenue for the three and nine months ended September 30, 2022 and 2021 (in thousands):

	Three months ended September 30, 2022		
	Over time	Point in time	Total
Aerospace	$ -	$ 154	$ 154
Energy, storage and transmission	3,791	25	3,816
Industrial	1,653	1,153	2,806
Research	827	516	1,343
Total	$ 6,271	$ 1,848	$ 8,119

NOTE 4: REVENUE RECOGNITION (continued)

	Three months ended September 30, 2021		
	Over time	Point in time	Total
Aerospace	$ -	$ 574	$ 574
Energy, storage and transmission	-	-	-
Industrial	1,551	1,205	2,756
Research	612	388	1,000
Total	$ 2,163	$ 2,167	$ 4,330

	Nine months ended September 30, 2022		
	Over time	Point in time	Total
Aerospace	$ -	$ 1,375	$ 1,375
Energy, storage and transmission	6,714	49	6,763
Industrial	4,099	3,197	7,296
Research	1,832	1,313	3,145
Total	$ 12,645	$ 5,934	$ 18,579

	Nine months ended September 30, 2021		
	Over time	Point in time	Total
Aerospace	$ 386	$ 1,677	$ 2,063
Energy, storage and transmission	-	-	-
Industrial	4,147	3,173	7,320
Research	1,164	1,183	2,347
Total	$ 5,697	$ 6,033	$ 11,730

The Company has unrecognized contract revenue of approximately $9.8 million at September 30, 2022, which it expects to substantially recognize as revenue within the next twelve months.

Judgment is required to evaluate assumptions including the amount of net contract revenues and the total estimated costs to determine our progress towards contract completion and to calculate the corresponding amount of revenue to recognize.

NOTE 4: REVENUE RECOGNITION (continued)

Changes in estimates for sales of systems may occur for a variety of reasons, including but not limited to (i) build accelerations or delays, (ii) product cost forecast changes, (iii) cost related change orders or add-ons, or (iv) changes in other information used to estimate costs. Changes in estimates may have a material effect on the Company's consolidated statements of operations.

Contract assets and liabilities

During the nine months ended September 30, 2022 and 2021, the increase in contract assets of approximately $.6 million and $1.1 million, respectively, was the result of work performed in excess of billings which are based upon contract milestones.

Contract assets and contract liabilities on input method type contracts in progress are summarized as follows:

		2022
Costs incurred on contracts in progress	$	11,921,048
Estimated earnings		8,530,639
		20,451,687
Billings to date		(18,548,776)
		1,902,911
Deferred revenue related to non-system contracts		(228,336)
	$	1,674,575
Included in accompanying condensed consolidated balance sheets under the following captions:		
Contract assets	$	3,152,469
Contract liabilities	$	(1,477,894)

NOTE 5: INVENTORIES, NET

Inventories consist of:

		September 30, 2022		December 31, 2021
Raw materials	$	1,804,675	$	1,030,955
Work-in-process		329,092		194,060
Inventories	$	2,133,767	$	1,225,015

NOTE 6: ACCOUNTS RECEIVABLE, NET

Accounts receivable are presented net of an allowance for doubtful accounts of approximately $36,000 and $59,000 as of September 30, 2022 and December 31, 2021, respectively. The allowance is based on prior experience and management's evaluation of the collectability of accounts receivable. Management believes the allowance is adequate. However, future estimates may change based on changes in future economic conditions.

NOTE 7: LONG-TERM DEBT

In September 2022, the Company entered into a loan agreement to fund the acquisition of machinery. The loan amount is $432,000, is payable in 60 equal monthly installments of $8,352 and secured by equipment. The interest rate is 6%.

The Company had a loan agreement with HSBC Bank USA ("HSBC") which was secured by a mortgage against its Central Islip, New York facility. The loan was payable in 120 consecutive equal monthly installments of $25,000 in principal plus interest and a final balloon payment upon maturity on March 1, 2022. The balance as of December 31, 2021 was approximately $1.8 million. According to the terms of the agreement, the loan was satisfied on March 1, 2022.

NOTE 8: GAIN ON DEBT EXTINGUISMENT

On April 21, 2020, the Company entered into a loan agreement (the "Loan Agreement") with HSBC pursuant to which the Company was granted a loan in the principal amount of $2.4 million, pursuant to the Paycheck Protection Program (the "PPP") under Division A, Title I of the CARES Act, which was enacted by the United States Congress on March 27, 2020.

The PPP loan, the obligation of which was represented by a note issued by the Company, was to mature on April 21, 2022 and bore interest at a rate of 1% per annum. The note could be prepaid by the Company at any time prior to maturity with no prepayment penalties. Under the terms of the PPP, all or a portion of the loan could be forgiven, based upon payments made in the first twenty-four weeks following receipt of the proceeds, related to payroll costs, continue group health care benefits, utilities and mortgage interest on other debt obligations incurred before February 15, 2020. The Company filed an application for forgiveness in April 2021 and the Company received a notification from its lender that on June 10, 2021 the U.S. Small Business Administration approved the Company's PPP Loan forgiveness application and remitted payment to the lender for the entire principal amount of the PPP Loan and accrued interest. As a result, the Company recognized a gain on debt extinguishment in the amount of $2.4 million during the nine months ended September 30, 2021.

NOTE 9: STOCK-BASED COMPENSATION EXPENSE

The Company recorded $118,548 and $307,379 during the three and nine months ended September 30, 2022, respectively, and recorded $105,491 and $217,942 during the three and nine months ended September 30, 2021, respectively, for the cost of employee and director services received in exchange for equity instruments based on the grant-date fair value of those instruments. The following table summarizes the compensation expense recorded for the three and nine months ended September 30, 2022 and 2021 related to stock-based compensation.

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Cost of revenue	$ 9,221	$ 7,715	$ 26,100	$ 7,715
Research and development	16,367	3,972	42,684	3,972
Selling and shipping	7,508	4,371	18,305	4,371
General and administrative	85,452	89,433	220,290	201,884
Total	$ 118,548	$ 105,491	$ 307,379	$ 217,942

A summary of the stock option activity related to the 2007 Share Incentive Plan, the 2016 Equity Incentive Plan and the 2022 Equity Incentive Plan for the period from January 1, 2022 through September 30, 2022 are as follows:

2007 Share Incentive Plan

	Beginning Balance Outstanding	Granted During Period	Exercised During Period	Canceled During Period	Ending Balance Outstanding	Exercisable
Number of shares	220,000	-	-	(75,000)	145,000	145,000
Weighted average exercise price per share	$ 12.56	-	-	$ 15.00	$ 11.29	$ 11.29

2016 Equity Incentive Plan

	Beginning Balance Outstanding	Granted During Period	Exercised During Period	Canceled During Period	Ending Balance Outstanding	Exercisable
Number of shares	398,500	102,500	-	(44,000)	457,000	145,500
Weighted average exercise price per share	$ 4.43	$ 4.97	-	$ 4.25	$ 4.56	$ 4.94

2022 Equity Incentive Plan

	Beginning Balance Outstanding	Granted During Period	Exercised During Period	Canceled During Period	Ending Balance Outstanding	Exercisable
Number of shares	-	76,000	-	-	76,000	-
Weighted average exercise price per share	-	$ 5.13	-	-	$ 5.13	-

In August 2022, the shareholders of the Company approved the 2022 Equity Incentive Plan that provides for the issuance of stock options and restricted stock for up to 515,000 shares. As of September 30, 2022, there were 47,698 shares available for grant under the 2016 Equity Incentive Plan and 439,000 shares available for grant under the 2022 Equity Incentive Plan.

For the nine months ended September 30, 2022, the Company granted 178,500 stock options, vesting 25% per year over four years, with a ten-year life. The Company determined the weighted average fair value of stock options granted during the nine months ended September 30, 2022 was $3.17 and is based upon weighted average assumptions below.

Stock Price	$ 5.04
Exercise Price	$ 5.04
Dividend yield	0%
Expected volatility	68%
Risk-Free interest rate	2.96%
Expected life (in years)	6.00

The Company has a total of 678,000 outstanding stock options, of which 290,500 were exercisable, under the three plans at September 30, 2022.

NOTE 9: STOCK-BASED COMPENSATION EXPENSE (continued)

The following table summarizes information about the outstanding and exercisable options at September 30, 2022 by ranges of exercise prices:

	Options Outstanding				Options Exercisable			
Exercise Price Range	Number Outstanding	Weighted Average Remaining Contractual	Weighted Average Exercise Price	Intrinsic Value	Number Exercisable	Weighted Average Exercise Price	Intrinsic Value
$4.00 - 7.00	513,000	8.8	$ 4.51	$ 249,645	125,500	$ 4.94	$ 67,905
$7.01 - 10.00	20,000	5.6	$ 8.07	$ 0	20,000	$ 8.07	$ 0
$10.01 - 12.00	120,000	4.5	$ 10.52	$ 0	120,000	$ 10.52	$ 0
$12.01 - 15.00	25,000	.1	$ 15.00	$ 0	25,000	$ 15.00	$ 0

For the nine months ended September 30, 2022, no options were exercised. As of September 30, 2022, there was $1.0 million of unrecognized compensation costs related to stock options expected to be recognized over a weighted average period of 3.3 years.

Restricted Stock Awards

Pursuant to the Director Compensation plan approved on October 11, 2021, each director is entitled to Director Compensation for an Annual Equity Retainer in the amount of $40,000, to be automatically granted on the date of the Company's annual meeting of shareholders. The directors may elect to receive payment in restricted stock, stock options or a combination thereof.

During the three and nine months ended September 30, 2022, the Company's directors received 32,000 shares of restricted stock with an estimated fair value of $160,000 of which 16,000 shares vested upon the date of grant on August 17, 2022 and the remaining 16,000 shares will vest on December 31, 2022. At September 30, 2022, there was $40,000 of unrecognized stock compensation expense associated with the restricted stock awards.

Restricted Stock Units

The following table summarizes activity related to outstanding restricted stock units for the nine months ended September 30, 2022:

	Shares of Restricted Stock Units	Weighted Average Grant Date Fair Value
Unvested outstanding at December 31, 2021	5,500	$ 4.82
Granted	-	$ -
Vested	(5,500)	$ 4.82
Forfeited or cancelled	-	$ -
Unvested outstanding at September 30, 2022	-	$ -

NOTE 9: STOCK-BASED COMPENSATION EXPENSE (continued)

The total fair value of vested restricted stock units was $3,458 for the nine months ended September 30, 2022. As of September 30, 2022, there was no unrecognized compensation costs related to restricted stock units.

NOTE 10: EARNINGS PER SHARE

Basic earnings per share is computed by dividing net earnings available to common shareholders (the numerator) by the weighted average number of common shares outstanding (the denominator) for the period presented. The computation of diluted earnings per share is similar to basic earnings per share, except that the denominator is increased to include the number of additional common shares that would have been outstanding if the potentially dilutive common shares had been issued.

A reconciliation of basic to diluted shares used in the earnings per share calculation is as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Basic weighted average common shares outstanding	6,736,764	6,685,599	6,730,263	6,683,407
Dilutive effect of options and unvested restricted shares	3,928	22,284	-	8,406
Diluted weighted average shares outstanding	6,740,692	6,707,883	6,730,263	6,691,813

The following table represents weighted average stock options that were excluded from the computation of diluted earnings per share for the three and nine months ended September 30, 2022 and 2021, because the effect of their inclusion would be anti-dilutive.

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Stock options	652,109	716,216	615, 999	730,094
Restricted stock	-	-	2,637	-
	652,109	716,216	618,636	730,094

NOTE 10: EARNINGS PER SHARE (continued)

The dilutive potential common shares on options is calculated in accordance with the treasury stock method, which assumes that proceeds from the exercise of all options are used to repurchase common stock at market value and the amount of stock-based compensation cost attributed to future services and not yet recognized. The number of shares remaining after the proceeds and unrecognized compensation cost are exhausted represents the potential dilutive effect of the securities.

NOTE 11: INCOME TAXES

As of September 30, 2022 and December 31, 2021, the Company has provided a full valuation allowance against its net deferred tax assets. This was based on management's assessment, including the last four years of operating losses, that it is more likely than not that the net deferred tax assets may not be realized in the future. Management continues to evaluate for potential utilization of the Company's net deferred tax asset, which has been fully reserved for, on a quarterly basis, reviewing our economic models, including projections of future operating results.

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act") was enacted by the United States Congress. As a result of the enactment of the CARES Act, net operating losses ("NOL's") generated in during the years 2018 through 2020 could be carried back for five years and resulted in the Company recognizing approximately $1.5 million of a tax benefit, of which $.7 million was a receivable at December 31, 2021. This tax receivable was collected in March 2022.

NOTE 12: SEGMENT REPORTING

The Company operates through three segments: CVD Equipment ("CVD"), Stainless Design Concepts ("SDC") and CVD Materials ("Materials"). The CVD segment manufactures and sells chemical vapor deposition equipment. SDC is the Company's ultra-high purity manufacturing division for gas control systems. The Materials segment provides material coatings for aerospace, medical, electronic and other applications. The Company evaluates performance based on several factors, of which the primary financial measure is income (loss) before taxes.

The Company's corporate administration activities are reported in the "Eliminations and Unallocated" column. These activities primarily include expenses related to certain corporate officers and support staff, expenses related to the Company's Board of Directors, stock option expense for shares granted to corporate administration employees, certain consulting expenses, investor and shareholder relations activities, and all of the Company's legal, auditing and professional fees, and interest expense.

NOTE 12: SEGMENT REPORTING (continued)

Elimination entries included in the "Eliminations and Unallocated" column represent intersegment revenues and cost of revenues that are eliminated in consolidation. Intersegment sales for the three months ended September 30, 2022 and 2021 by the SDC segment to the CVD Equipment segment were 72,409 and $6,882, respectively. Intersegment sales for the nine months ended September 30, 2022 and 2021 by the SDC segment to the CVD Equipment segment were $497,306 and $121,920, respectively.

Three months ended September 30,
(In thousands)

2022	CVD	SDC	Materials	Eliminations and Unallocated	Consolidated
Assets	$ 22,415	$ 8,800	$ 2,345	$ 42	$ 33,602
Revenue	5,718	1,663	809	(71)	8,119
Operating (loss) income	(32)	448	365	(659)	122
Pretax (loss) income	(27)	448	258	(615)	64
2021					
Assets	$ 27,248	$ 7,053	$ 1,655	$ 2	$ 35,958
Revenue	2,074	1,326	937	(7)	4,330
Operating (loss) income	(911)	275	441	(727)	(922)
Pretax (loss) income	(920)	275	7,373(1)	(727)	6,001

Nine months ended September 30,
(In thousands)

2022	CVD	SDC	Materials	Eliminations and Unallocated	Consolidated
Revenue	12,324	4,669	2,083	(497)	18,579
Operating (loss) income	(1,391)	1,117	642	(1,970)	(1,602)
Pretax (loss) income	(1,380)	1,117	392	(1,903)	(1,772)
2021					
Revenue	5,884	3,314	2,654	(122)	11,730
Operating (loss) income	(2,664)	637	828	(2,425)	(3,624)
Pretax (loss) income	(259(2))	637	8,014(1)	(2,425)	5,967

(1) Materials segment includes a gain on the sale of building in the amount of $6,894,109 for the nine months ended September 30, 2021.

(2) CVD segment includes a gain on the forgiveness of the PPP loan for the nine months ended September 30, 2021.

NOTE 13: SALE-LEASEBACK TRANSACTION

On September 22, 2022, the Company entered into an Agreement of Purchase and Sale (the "Purchase Agreement") with 355 S Technology Drive Owner LLC (the "Potential Purchaser"), to sell and leaseback its facility in Central Islip, New York that houses it corporate headquarters and the administrative offices and manufacturing operations of its CVD Equipment and MesoScribe subsidiaries. The lease agreement was to have an initial term of ten years and two renewal terms of five year each. The terms of the agreement provided for a purchase price of $28.5 million and annual fixed rent of $1.5 million in the first year of the initial term and increasing by 3% each year. The Potential Purchaser had thirty (30) business days from date of the Purchase Agreement to complete its due diligence (until November 3, 2022), during which time the Potential Purchaser retained the right to cancel the Purchase Agreement. On November 3, 2022 and November 4, 2022, the Company and the Potential Purchaser entered into two extension agreements whereas the due diligence period was ultimately extended to November 11, 2022. On November 11, 2022, the Potential Purchaser notified the Company that it was terminating the Purchase Agreement in its entirety and the transactions contemplated thereby, prior to the expiration of the due diligence period. Each party will bear its own costs and expenses in connection with the forgoing, and neither party will pay a termination fee with respect to the termination of the Purchase Agreement.

NOTE 14: SALE OF 555 BUILDING

On March 29, 2021, the Company entered into an agreement with Steel K, LLC for the sale of its facility located at 555 S. Technology Drive in Central Islip, New York (the "555 Building"), and on July 26, 2021, the Company closed on the sale. The sale price was $24.4 million, subject to adjustment for apportionments, adjustments and credits. A portion of the sale proceeds was used to satisfy the existing mortgage debt on the 555 Building, including interest and fees, in the amount of $9.4 million, as well as various costs related to the closing of the transaction. The Company recognized a gain on the sale of the building in the amount of $6.9 million and received approximately $14.0 million in net proceeds.

Management had determined the 555 Building was not needed for business operations, and the remaining elements of the CVD Materials business located in the 555 Building were consolidated into the 355 Building.

NOTE 15: RISKS AND UNCERTAINTIES

The Company currently operates in a challenging economic environment as the global economy continues to confront the impacts from the pandemic, geopolitical conflicts, inflationary pressures and adverse supply chain disruptions. The specific impacts on the Company have included:

Significant geopolitical developments across Europe and Asia (including the war in Ukraine) have and may continue to restrict the Company's ability to procure raw materials and components such as nickel and integrated circuits, as well as impact the Company's ability to sell its products into China, Russia and other Eastern European and Asian regions.

Supply chain disruptions have led to much longer lead times to acquire raw materials for production and has led to inflationary pressures in both materials and labor. These supply chain disruptions have impacted the Company's ability to recognize revenue more timely as it delays the Company's manufacturing processes.

The pandemic's impact on long distance air travel resulted in a reduction in orders for the Company's aerospace equipment products that adversely affected the Company's revenues since the start of the pandemic.

While management has initiated actions to mitigate the potential negative impacts to its revenue and profitability, the Company is unable to predict the impact that the above uncertainties may have on its future results of operations and cash flows.

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

Except for historical information contained herein, this "Management's Discussion and Analysis of Financial Condition and Results of Operations" contains forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995, as amended. These statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance, or achievements of the Company to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements. These forward-looking statements were based on various factors and were derived utilizing numerous important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements. Important assumptions and other factors that could cause actual results to differ materially from those in the forward-looking statements, include but are not limited to: competition in the Company's existing and potential future product lines of business; the Company's ability to attract and retain key personnel and employees; the Company's ability to obtain financing on acceptable terms if and when needed; uncertainty as to the Company's future profitability, uncertainty as to the future profitability of acquired businesses or product lines, uncertainty as to any future expansion of the Company, uncertainty as to the Company's ability to adequately obtain raw materials and components from foreign markets in light of geopolitical developments and the effect of the novel coronavirus (COVID-19) on our business and operations (including with respect to supply chain disruptions), and those of our customers, suppliers and other third parties . Other factors and assumptions not identified above were also involved in the derivation of these forward-looking statements and the failure of such assumptions to be realized as well as other factors may also cause actual results to differ materially from those projected. The Company assumes no obligation to update these forward-looking statements to reflect actual results, changes in assumptions or changes in other factors affecting such forward-looking statements. Past results are no guaranty of future performance. You should not place undue reliance on any forward-looking statements, which speak only as of the dates they are made. When used with this Report, the words "believes", "anticipates", "expects", "estimates", "plans", "intends", "will" and similar expressions are intended to identify forward-looking statements.

Known Trends and Uncertainties

We are confronting a very difficult operating environment as the global economy continues to experience the challenges from the pandemic, geopolitical conflicts, surging inflationary pressures and adverse supply chain disruptions. The specific impacts on our Company have included:

- Significant geopolitical developments across Europe and Asia (including the war in Ukraine) have and may continue to restrict our ability to procure raw materials and components such as nickel and integrated circuits, as well as impact our ability to sell its products into China, Russia and other Eastern European and Asian regions.
- Supply chain disruptions have led to much longer lead times to acquire raw materials for production and has led to inflationary pressures in both materials and labor. These supply chain disruptions have impacted our ability to recognize revenue more timely as it delays our manufacturing processes.

- The pandemic's impact on long distance air travel resulted in a reduction in orders for the Company's aerospace equipment products that adversely affected our revenues since the start of the pandemic.

We continue to be unable to predict the extent of the impact the pandemic and geopolitical uncertainties will have on our financial position and operating results for the remainder of 2022 and in future periods due to numerous uncertainties, supply chain disruptions, rapidly rising costs and the impact on the aerospace sector, but the impact could be material during any future period affected either directly or indirectly by the pandemic and the geopolitical uncertainties. The longer-term impacts from these matters are highly uncertain and cannot be predicted.

Critical Accounting Policies and Significant Judgments and Estimates

This discussion and analysis of the Company's financial condition and results of operations is based on the Company's condensed consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States of America, or U.S. GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reported periods. In accordance with U.S. GAAP, the Company bases its estimates on historical experience and on various other assumptions the Company believes are reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

For information on the Company's significant accounting policies and estimates refer to Note 2 to the Company's consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2021 and to Note 2 "Summary of Significant Accounting Policies" in the unaudited condensed consolidated financial statements.

Executive Level Summary

CVD has continued to serve the advanced materials markets with chemical vapor and thermal process equipment for over 40 years. We develop, design, manufacture and service a broad range of chemical vapor deposition, gas control and other state-of-the-art process equipment and solutions used in advanced materials and coatings. Our products are used in production environments as well as research and development centers, both academic and corporate. Major target markets for our business include advanced nanomaterials, batteries and silicon carbide for high power electronics; aerospace (such as gas turbine engines and structural components); medical devices (such as implants); advanced semiconductor devices and silicon for solar cells; and carbon nanotubes and nanowires. Our Application Laboratory supports the development of new material systems and processes. Our CVD Materials group (consisting of our MesoScribe and Tantaline subsidiaries) provides material coating services, process development support and process startup assistance. MesoScribe continues to support the aerospace and defense markets with robust direct write instrumentation. Tantaline which underwent a restructuring and consolidation in 2021 provides chemical-resistant coating services to many industrial applications.

We use our capabilities in process development, engineering and vertical manufacturing to transform new applications into mainstream manufacturing solutions. We have built a significant library of design expertise, know-how and innovative solutions to assist our customers in developing these intricate processes and to accelerate their production and commercialization. This library of equipment design solutions, along with our manufacturing and systems integration facilities, allows us to provide application-specific design, process and manufacturing solutions to our customers.

To expand our presence into various growth markets, we are developing a line of proprietary standard use products to complement our specialized legacy systems. Historically, we manufactured products for research and development on an application-specific basis to meet an individual customer's specific research and production requirements. Our proprietary systems leverage the technological expertise that we have developed through designing these specialized systems into a broader standardized product line. The standard product line is easily configured from a wide range of available options to meet diverse product and budgetary requirements. Manufacturing these standardized systems in higher volumes provides us the flexibility to reduce both the cost and delivery time of our systems. These systems, which we market and sell under the EasyTube® and CVD product lines, are sold to corporations, universities, research laboratories, in the United States and throughout the world.

Sales of our proprietary standard systems, specialized systems and process solutions have been driven by our installed customer base, which includes Fortune 500 companies. The performance and success of our products has historically driven repeat orders from existing customers as well as generated business from new customers. Furthermore, with our proprietary solutions and expanded focus on "*accelerating the commercialization of tomorrow's technologies*"TM we have been developing a new customer base in addition to growing with our existing customers. We have generally gained new customers through our industry reputation, as well as limited print advertising and trade show attendance (which has been negatively impacted by COVID-19 in 2020, 2021 and into 2022).

Our core competencies in equipment and software design, manufacturing and process development are used to engineer our finished products and to accelerate the commercialization path of our customer base. Our proprietary real-time software allows for rapid configuration, and provides our customers with enabling tools to understand, optimize and repeatedly control their processes. These factors significantly reduce cost, improve quality, and reduce the time it takes between customers' orders and the shipment of our products. Our Application Laboratory allows customers the option to bring their process tools in our Application Laboratory and to work collaboratively with our scientists and engineers to optimize process performance.

In 2021 and into 2022 our focus has been on our growth markets, the development of standard product solutions and being able to provide solutions from gas/liquid storage through process and process by-product treatment. This has allowed us to provide increased value to our customers. Our return to profitability is dependent upon, among other things, the receipt of new equipment orders, our ability to mitigate the impact of supply chain disruptions and inflationary pressures, as well as managing planned capital expenditures and operating expenses.

2022 Developments

In 2021, we launched our strategy to transition the focus of the Company to standardized products serving global growth application markets. Our growth opportunities in 2022 are consistent with our strategic plan to address and serve growth production markets.

In the first nine months of 2022, total orders were $24.0 million as compared to $15.9 million in the first nine months of 2021, an increase of $8.1 million or 51.2%. The first nine months of 2022 orders included 14 system orders for PVT-150 systems that grow silicon carbide ("SiC") material which is subsequently processed into wafers to support high power electronics applications. All PVT-150 systems are planned to be shipped to our customer in 2022. For the first, second and third quarters of 2022, new customer orders were $4.1 million, $12.6 million, and $7.3 million, respectively. For the first, second and third quarters of 2022 revenue was $4.7 million, $5.8 million, and $8.1 million, respectively.

During the quarter ended September 30, 2021, we started to experience increased costs on certain components as well as delays in supply chain delivery, which also impacts revenue as well as manufacturing lead times and efficiencies. We are also seeing the effects of the macroeconomic inflationary cost environment that has resulted in increased costs for labor and materials. We have been placing orders with more lead time to help mitigate the manufacturing delays, as well as assessing other suppliers or components to attempt to mitigate the potential cost impacts. In addition, we are utilizing our in-house flexible manufacturing to attempt to further mitigate both potential schedule delivery delays and material cost increases. In late 2021, we initiated price increases on new quotations in line with inflationary pressures which we believe could mitigate our cost increases and benefit margins during 2022 and 2023.

Statement of Operations

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Revenue	$ 8,118,627	$ 4,329,459	$ 18,579,447	$ 11,729,727
Cost of revenue	5,698,766	3,466,159	13,952,413	9,424,994
Gross profit	2,419,861	863,300	4,627,034	2,304,733
Gross profit percentage	29.8%	19.9%	24.9%	19.6%
Operating expenses:				
Research and development	518,007	445,807	1,397,408	1,187,516
Selling	289,800	237,934	894,740	602,836
General and administrative	1.489,779	1,101,883	3,936,734	4,138,417
Total operating expenses	2,297,586	1,785,624	6,228,882	5,928,769
Operating income (loss)	122,275	(922,324)	(1,601,848)	(3,624,035)
Other income (expense):				
Interest income	43,050	1,776	73,979	3,402
Interest expense	(159)	(35,973)	(5,502)	(250,194)
Gain on sale of building	-	6.894,109	-	6,894,109
Gain on debt extinguishment	-	-	-	2,443,418
Foreign exchange loss	(107,000)	-	(250,000)	-
Other income	5,437	63,143	11,057	499,970
Total other income, net	(58,672)	6,923,055	(170,466)	9,590,705
Income (loss) before income taxes	63,603	6,000,731	(1,772,314)	5.966,670
Income tax expense	65	27,327	890	28,391
Net income (loss)	$ 63,538	$ 5,973,404	$ (1,773,204)	$ 5,938,279

Three Months Ended September 30, 2022 versus September 30, 2021

Revenue

Our revenue for the three months ended September 30, 2022 was $8.1 million compared to $4.3 million for the three months ended September 30, 2021, an increase of $3.8 million or 88.4%. The increase in revenue for the three months ended September 30, 2022 versus the prior year period was primarily attributable to increased revenue of $3.6 million from the CVD Equipment segment related to equipment sales and spare parts, $.3 million from our SDC segment, offset, in part by, decreased revenue of $.1 million from the CVD Materials segment. The large increase in revenue in the quarter was principally the result of the recognition of revenue associated with our PVT-150 systems. Our order backlog at September 30, 2022 was $15.7 million as compared to $10.4 million at December 31, 2021. Historically, our revenues and orders have fluctuated based on changes in order rate as well as other factors in our manufacturing process that impacts the timing of revenue recognition. Accordingly, orders received from customers and revenue recognized may fluctuate from quarter to quarter.

The revenue contributed by the CVD Equipment segment for the three months ended September 30, 2022 was $5.7 million, which totaled 70.4% of our overall revenue, and was $3.6 million or 275.6% higher than the segment's $2.1 million contribution made in the three months ended September 30, 2021, which totaled 47.9% of our overall revenue. The increase in revenues resulted from an increase in orders in 2022 over 2021 due to increased demand for the Company's products including for its PVT-150 systems.

Revenue for our SDC segment was $1.6 million for the three months ended September 30, 2022 as compared to $1.3 million for the three months ended September 30, 2021, an increase of $.3 million or 23.1% as compared to 2021 as a result of increased orders and demand for the Company's products during 2022.

Revenues for our CVD Materials segment were $.8 million for the three months ended September 30, 2022, as compared to $.9 million in the three months ended September 30, 2021. The decrease of $.1 million was the result of reduced revenue in the amount of $.2 million related to our Tantaline products, offset, in part by, increased MesoScribe revenue of $.1 million.

Gross Profit

Gross profit for the three months ended September 30, 2022 was $2.4 million, with a gross profit margin of 29.8%, as compared to a gross profit of $.9 million and a gross profit margin of 19.9% for the three months ended September 30, 2021. The increase in gross profit of $1.5 million was primarily the result of leveraging fixed costs on higher sales levels and product mix, which offset certain component cost increases and higher compensation costs.

Research and Development

For the three months ended September 30, 2022, research and development expenses were $518,007, or 6.4% of revenue as compared to $445,807, or 10.3% for the three months ended September 30, 2021. The increase in 2022 was the result of increased personnel and employee-related costs.

General engineering support and expenses related to the development of more standard products and value-added development of existing products are reflected as part of research and development expense. General engineering support and expenses are charged to costs of goods sold when work is performed directly on a customer order.

Selling

Selling expenses were $289,800 or 3.6% of the revenue for the three months ended September 30, 2022 as compared to $237,934 or 5.5% of the revenue for the three months ended September 30, 2021. The increase in 2022 was primarily the result of increased personnel and employee-related costs during the three months ended September 30, 2022, to support increased marketing efforts, as compared to September 30, 2021.

General and Administrative

General and administrative expenses for the three months ended September 30, 2022 were $1.5 million or 18.4% of revenue as compared to $1.1 million or 25.4% of revenue for the three months ended September 30, 2021, an increase of $.4 million or 35.2%. The increase in expenses was principally due to increases in personnel and employee-related costs to support the growth of our business of approximately $186,000, and a severance charge of $134,000.

Operating Income (Loss)

As a result of increased sales of $3.8 million and the increased gross profit of $1.9 million, offset by increased operating expenses of $.6 million, our operating income was $122,275 for the three months ended September 30, 2022 compared with an operating loss of $.9 million for the three months ended September 30, 2021.

Other Income (Expense)

Other income (expense), net was an expense of $.1 million for the three months ended September 30, 2022 and income of $6.9 million for the three months ended September 30, 2021. Other income for the three months ended September 30, 2021 included a gain on the sale of our 555 building of $6.9 million. Interest income increased in 2022 as the result of higher interest rates and investable balances from the sale of our 555 Building. Other expense for the three months ended September 30, 2022 was principally a foreign exchange loss of $107,000 on an intercompany loan.

Income Taxes

Income tax expense for the three months ended September 30, 2022 and 2021, was $65 and $27,327, respectively, related to minimum state taxes. We continue to evaluate for potential utilization of our deferred tax asset, which has been fully reserved for, on a quarterly basis, by reviewing our economic models, including projections of future operating results.

Net Income (Loss)

As a result of the foregoing factors, we reported a net income of $63,603 or $0.01 for both basic and diluted per share, for the three months ended September 30, 2022, as compared to net income of $6.0 million (which includes a $6.9 million gain on sale of building), or $0.89 for both basic and diluted share for the three months ended September 30, 2021.

Nine Months Ended September 30, 2022 versus September 30, 2021

Revenue

Our revenue for the nine months ended September 30, 2022 was $18.6 million compared to $11.7 million for the nine months ended September 30, 2021, an increase of $6.9 million or 58.4%. The increase in revenue for the nine months ended September 30, 2022 versus the prior year period was primarily attributable to increased revenue of $6.4 million from the CVD Equipment segment related to equipment sales and spare parts, a $1.0 million increase in revenue from our SDC segment, offset, in part by, decreased revenue of $.6 million from the CVD Materials segment. The large increase in revenue in the period was principally the result of the recognition of revenue associated with our PVT-150 systems. Our order backlog at September 30, 2022 was approximately $15.7 million as compared to December 31, 2021 of $10.4 million. Historically, our revenues and orders have fluctuated based on changes in order rate as well as other factors in our manufacturing process that impacts the timing of revenue recognition. Accordingly, orders received from customers and revenue recognized may fluctuate from quarter to quarter

The revenue contributed by the CVD Equipment segment for the nine months ended September 30, 2022 was $12.3 million, which totaled 66.3% of our overall revenue, and was 109.4% or $6.4 million higher than the segment's $5.9 million contribution made in the nine months ended September 30, 2021, which totaled 50.2% of our overall revenue. The increase in revenues resulted from an increase in orders in 2022 over 2021 due to increased demand for the Company's products including for its PVT-150 systems.

Revenue for our SDC segment was $4.2 million for the nine months ended September 30, 2022 (22.4% of our overall revenue) as compared to $3.2 million for the nine months ended September 30, 2021, an increase of $1.0 million or 30.7% resulting from increased orders and demand for the SDC's products during 2022.

Revenues for our CVD Materials segment were $2.1 million for the nine months ended September 30, 2022 (11.2% of our overall revenue), as compared to $2.7 million in the nine months ended September 30, 2021. The decrease of $.6 million was the result of reduced revenue in the amount of $.8 million related to our Tantaline products which was impact by supply chain issues that impacted its ability to obtain components to coat for its customers, offset, in part by, increased MesoScribe revenue of $.2 million.

Gross Profit

Gross profit for the nine months ended September 30, 2022 was $4.6 million, with a gross profit margin of 24.9%, as compared to a gross profit of $2.3 million and a gross profit margin of 19.6% for the nine months ended September 30, 2021. The increase in gross profit of $2.4 million was primarily the result of leveraging fixed costs on higher sales levels and higher margin product mix, which more than offset certain component cost increases and higher compensation costs.

Research and Development

For the nine months ended September 30, 2022, research and development expenses were $1.4 million, or 7.5% of revenue as compared to $1.2 million, or 10.1% for the nine months ended September 30, 2021. The increase in 2022 was the result of increased personnel and employee-related costs.

General engineering support and expenses related to the development of more standard products and value-added development of existing products are reflected as part of research and development expense. General engineering support and expenses are charged to costs of goods sold when work is performed directly on a customer order.

Selling

Selling expenses were $.9 million or 4.8% of revenue for the nine months ended September 30, 2022 as compared to $.6 million or 5.1% of revenue for the nine months ended September 30, 2021. The increase in 2022 was primarily the result of increased personnel and employee-related costs during the nine months ended September 30, 2022, to support increased marketing efforts, as compared to September 30, 2021.

General and Administrative

General and administrative expenses for the nine months ended September 30, 2022 were $3.9 million or 21.2% of revenue as compared to $4.1 million or 35.2% of revenue for the nine months ended September 30, 2021, a decrease of $.2 million or 4.8%. The decrease in expenses was principally due to lower professional fees of approximately $160,000 and decreased operating costs of associated with the 555 building that was sold in July 2021 of approximately $.5 million. Offsetting these decreases were increases in personnel and employee-related costs to support the growth of our business of approximately $277,000 and a severance charge of $134,000.

Operating Loss

As a result of increased sales of $6.9 million and the increased gross profit margins of $2.4 million, and offset by increased operating expenses of $.6 million, our operating loss was $1.9 million in the nine months ended September 30, 2022, as compared with an operating loss of $3.6 million in the nine months ended September 30, 2021.

Other Income (Expense)

Other income (expense), net was an expense of $.2 million for the nine months ended September 30, 2022 an income of $9.6 million for the nine months ended September 30, 2021. The gain on debt extinguishment for the nine months ended September 30, 2021 was the result of the forgiveness of the Company's PPP loan in the amount of $2.4 million. The gain on the sale of the building of $6.9 million was the result of the sale of our 555 Building. There were no such gains during the nine months ended September 30, 2022. Other income from subleasing a portion of our 555 Building (which was sold on July 26, 2021) was $500,000 for the nine months ended September 30, 2021 as compared to none in the nine months ended September 30, 2022. Other expense for the nine months ended September 30, 2022 was principally a foreign exchange loss of $250,000 on an intercompany loan.

As a result of our increased cash position from the sale of the 555 Building in July 2021 and higher interest rates, interest income increased to $43,050 for the nine months ended September 30, 2022 as compared to $3,402 in 2021. In addition, interest expense decreased principally due to the satisfactions of the mortgage loans on our 555 Building on July 26, 2021 and on our 355 Building on March 1, 2022.

Income Taxes

Income tax expense for the nine months ended September 30, 2022 and 2021, was $890 and $28,391, respectively, related to minimum state taxes. We continue to evaluate for potential utilization of our deferred tax asset, which has been fully reserved for, on a quarterly basis, by reviewing our economic models, including projections of future operating results.

Net Income (Loss)

As a result of the foregoing factors, we reported a net loss of $1.8 million or $0.26 for both basic and diluted per share, for the nine months ended September 30, 2022, as compared to a net income of $5.9 million (which includes a $2.4 million gain on debt extinguishment and a $6.9 million gain on the sale of building), or $0.89 for both basic and diluted per share for the nine months ended September 30, 2021.

Liquidity and Capital Resources

As of September 30, 2022, we had aggregate working capital of $15.0 million compared to aggregate working capital of $16.7 million at December 31, 2021. Our cash and cash equivalents at September 30, 2022 and December 31, 2021 were $11.9 million and $16.7 million, respectively.

Net cash used in operating activities was $2.3 million. This is primarily the result of our net loss, adjusted for non-cash expenses of $.8 million, and increases in accounts receivable and contract assets due to our increase in revenue, as well as increased inventory to support increased orders and to mitigate the impact of delays in our supply chain.

Capital expenditures were $.6 million in the nine months ended September 30, 2022 related to purchases of manufacturing equipment to allow for more efficient manufacturing and improved control of our supply chain. We also entered into a loan agreement to acquire equipment in the amount of $.4 million.

We had a loan agreement with HSBC USA, N.A. (the "HSBC") which was secured by a mortgage on our Central Islip headquarters at 355 South Technology Drive. According to the terms of the agreement the loan was satisfied on March 1, 2022 resulting in total debt repayments of $1.8 million during the nine months ended September 30, 2022.

Sale-Leaseback of 355 South Technology Drive, Central Islip, New York

On September 22, 2022, the Company entered into an Agreement of Purchase and Sale (the "Purchase Agreement") with 355 S Technology Drive Owner LLC (the "Potential Purchaser"), to sell and leaseback its facility in Central Islip, New York that houses it corporate headquarters and the administrative offices and manufacturing operations of its CVD Equipment and MesoScribe subsidiaries. The lease agreement was to have an initial term of ten years and two renewal terms of five year each. The terms of the agreement provided for a purchase price of $28.5 million and annual fixed rent of $1.5 million in the first year of the initial term and increasing by 3% each year. The Potential Purchaser had thirty (30) business days from date of the Purchase Agreement to complete its due diligence (until November 3, 2022), during which time the Potential Purchaser retained the right to cancel the Purchase Agreement. On November 3, 2022 and November 4, 2022, the Company and the Potential Purchaser entered into two extension agreements whereas the due diligence period was ultimately extended to November 11, 2022. On November 11, 2022, the Potential Purchaser notified the Company that it was terminating the Purchase Agreement in its entirety and the transactions contemplated thereby, prior to the expiration of the due diligence period. Each party will bear its own costs and expenses in connection with the forgoing, and neither party will pay a termination fee with respect to the termination of the Purchase Agreement.

Geopolitical Uncertainties and COVID-19

We are confronting a very difficult operating environment as the global economy continues to confront the challenges from the pandemic, geopolitical conflicts, surging inflationary pressures and adverse supply chain disruptions.

Significant geopolitical developments across Europe and Asia (including the war in Ukraine) have and may continue to restrict our ability to procure raw materials and components such as nickel and integrated circuits, as well as impact our ability to sell our products into China, Russia and other Eastern European and Asian regions. Supply chain disruptions resulting from both the pandemic and geopolitical matters have led to much longer lead times to acquire materials for production and has led to surging inflationary pressures. Since 2020, our aerospace sector has been faced with significant reductions to its business due to reduced long distance air travel which has negatively affected new order bookings and has materially and adversely affected the Company's revenues to date.

We continue to be unable to predict the extent of the impact the pandemic and geopolitical uncertainties will have on our financial position and operating results for the remainder of 2022 and beyond due to numerous uncertainties, supply chain disruptions, rising costs and the impact on the aerospace sector, but the impact could be material during any future period affected either directly or indirectly by this pandemic. The longer-term impacts from the pandemic and geopolitical uncertainties are highly uncertain and cannot be predicted.

Our return to profitability is dependent upon, among other things, the receipt of new equipment orders, our ability to mitigate the impact of supply chain disruptions and inflationary pressures, as well as managing planned capital expenditures and operating expenses.

Based upon all of these factors, we believe that our cash and cash equivalent positions and our projected cash flow from operations will be sufficient to meet our working capital and capital expenditure requirements for the next twelve to eighteen months of the filing of this Form 10-Q. Should the current environment continue longer or worsen, we will continue to assess our operations and take actions anticipated to maintain our operating cash to support the working capital needs.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

We maintain a system of disclosure controls and procedures (as defined in Rule 13a-15(e) and 13d-15(e) under the Exchange Act of 1934, as amended, (the "Exchange Act")). As required by Rule 13a-15(b) under the Exchange Act, our management, under the direction of our Chief Executive Officer and Chief Financial Officer, reviewed and performed an evaluation of the effectiveness of design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report on Form 10-Q (the "Report").

Based on that review and evaluation, our Chief Executive Officer and Chief Financial Officer, along with others in our management, have determined that as of the end of the period covered by this Report on Form 10-Q the disclosure controls and procedures were effective to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive and financial officers, as appropriate to allow timely decisions regarding disclosures.

Changes in Internal Controls

There were no changes in our internal controls over financial reporting as defined in Rule 13a-15(f) or Rule 15d-15(f) under the Exchange Act that occurred during the most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, the internal controls over financial reporting.

Limitations on the Effectiveness of Controls

We believe that a control system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the control systems are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected.

CVD EQUIPMENT CORPORATION

PART II

OTHER INFORMATION

Item 1. **Legal Proceedings.**

None.

Item 1A. **Risk Factors.**

There have been no other material changes to the risk factors disclosed in our Annual Report on Form 10-K as filed with the Securities and Exchange Commission on March 31, 2022.

Item 2. **Unregistered Sales of Equity Securities and Use of Proceeds.**

None.

Item 3. **Defaults Upon Senior Securities.**

None.

Item 4. **Mine Safety Disclosures.**

Not applicable.

Item 5. **Other Information.**

None.

Item 6. **Exhibits**

10.1	Agreement of Purchase and Sale dated September 21, 2022*
10.2	Form of Lease Agreement*
10.3	Second Amendment dated November 3, 2022 to Agreement of Purchase and Sale dated September 21, 2022*
10.4	Third Amendment dated November 4, 2022 to Agreement of Purchase and Sale dated September 21, 2022*

31.1*	Certification of Emmanuel Lakios, Chief Executive Officer, dated August 15, 2022
31.2*	Certification of Richard Catalano, Chief Financial Officer, dated November 14, 2022
32.1*	Certification of Emmanuel Lakios, Chief Executive Officer, dated November 14, 2022, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2*	Certification of Richard Catalano, Chief Financial Officer, dated November 14, 2022, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.1**	Inline XBRL Instance.
101.SCH**	Inline XBRL Taxonomy Extension Schema.
101.CAL**	Inline XBRL Taxonomy Extension Calculation.
101.DEF**	Inline XBRL Taxonomy Extension Definition.
101.LAB**	Inline XBRL Taxonomy Extension Labels.
101.PRE**	Inline XBRL Taxonomy Extension Presentation.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

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* Filed herewith.

** Pursuant to Rule 406T of Regulation S-T, these interactive data files are deemed not to be filed or part of a registration statement of prospectus for purposes of Section 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise are not subject to liability under these sections.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, this 14th day of November 2022.

CVD EQUIPMENT CORPORATION

By: /s/ Emmanuel Lakios
Emmanuel Lakios
President and Chief Executive Officer
(Principal Executive Officer)

By: /s/ Richard Catalano
Richard Catalano
Vice President and
Chief Financial Officer
(Principal Financial and
Accounting Officer)

Exhibit 10.1

Execution Copy

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("Agreement"), made as of September 21, 2022 (the "Effective Date"), by and between **FAE Holdings 411519R, LLC**, a New York limited liability company, having an office at 355 South Technology Drive, Central Islip, NY 11722 ("Seller"), and **355 S Technology Drive Owner LLC**, a Delaware limited liability company, having an office at c/o BEB Capital LLC, 26 Harbor Park Dr., Port Washington NY 11050 ("Purchaser").

WHEREAS, Seller is the owner of certain real property located at 355 S. Technology Drive, Central Islip, NY 11722 (a/k/a District 0500; Section 206.00; Block 03.00; Lot 001.003), more fully described on Exhibit A attached hereto (the "Land"), and (ii) the buildings and other improvements (individually and collectively the "Improvements") located on the Land; and

WHEREAS, Purchaser desires to purchase the Property from Seller, and Seller desires to sell the Property to Purchaser, in accordance with the terms, covenants and conditions of this Agreement.

W I T N E S S E T H:

NOW THEREFORE, in consideration of the promises made and exchanged herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby covenant and agree as follows:

1. Agreement to Sell and Purchase.

1.1. Seller agrees to sell and convey and Purchaser agrees to purchase and acquire the Property subject to and in accordance with this Agreement.

1.2 For purposes of this Agreement, the term "Property" shall include the Land, the Improvements and the following:

(i) all right, title and interest of Seller in and to any land lying in the bed of any publicly-dedicated street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof;

(ii) all strips and gores, if any, abutting or adjoining the Land;

(iii) all easements, rights of way, licenses, privileges, hereditaments and appurtenances, if any, as part of or inuring to the benefit of the Land; and

(iv) all fixtures, other than trade fixtures of Seller, or any tenant or occupant of the Land and Improvements.

1.3 This sale includes all right, title and interest of Seller, if any, in and to (i) all licenses, permits, certificates of occupancy and other approvals issued by any state, federal or local authority relating to the use, maintenance or operation of the Property to the extent that they may be transferred or assigned; (ii) all warranties or guaranties, if any, applicable to the Property, to the extent such warranties or guaranties are assignable; (iii) all air rights and development rights; (iv) the plans, specifications, surveys, architectural renderings, engineering plans and reports, as-built drawings, floor plans and other similar plans or diagrams; and (v) any award to be made for damage to the Land by reason of the change of grade of any land lying in the bed of any publicly-dedicated street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof. Seller shall execute and deliver to Purchaser at the Closing (as hereinafter defined), or thereafter, on demand all proper instruments for the transfer without warranty or recourse to Seller, all of Seller's right, title and interest, if any to the foregoing.

2. Purchase Price and Payment.

2.1. The purchase price (the "Purchase Price") payable to Seller for the Property is Twenty Eight Million Five Hundred Thousand ($28,500,000.00) Dollars. The Net Purchase Price (as hereinafter defined) shall be paid to Seller at the Closing by wire transfer in Current Funds (as hereinafter defined) to the Escrow Agent. As used herein, the term "Net Purchase Price" shall mean the Purchase Price less the Downpayment (as hereinafter defined) and subject to such adjustments and credits as are provided in this Agreement.

2.2. The Purchase Price is payable as follows:

2.2.1. Purchaser shall pay the sum of One Million Four Hundred Twenty Five Thousand ($1,425,000.00) Dollars (the "Downpayment"), not later than two (2) business day after the date hereof, by wire transfer of immediately available federal funds ("Current Funds"), to National Land Tenure Company LLC, Attn: Jessica Bellacicco, email jbellacicco@nltco.com, as escrow agent ("Escrow Agent")

2.2.2. The balance of the Purchase Price in the amount of Twenty Seven Million Seventy Five Thousand ($27,075,000.00) Dollars, subject to the prorations, credits and payments specified in this Agreement, shall be paid at the Closing (as hereinafter defined), by Current Funds to Seller or Seller's order.

2.3. The Downpayment shall be held in escrow by Escrow Agent and disbursed in accordance with the terms and conditions of this Agreement. If Purchaser fails to deposit the Downpayment with the Escrow Agent as herein provided, Seller may, at its option, terminate this Agreement upon written notice to Purchaser, in which event neither Seller nor Purchaser shall have any further rights, duties or obligations hereunder except for provisions of this Agreement which expressly survive the termination of this Agreement. Purchaser may direct the Escrow Agent to deposit the Downpayment in an interest bearing money market escrow account and any interest earned on the Downpayment shall be deemed to be part of the Downpayment, shall be paid together with the principal portion of the Downpayment. If title closes in accordance with this Agreement, the interest shall be paid to Seller and shall be credited toward the Purchase Price at Closing. The Downpayment shall be held subject to the terms of Article 24 of this Agreement.

2.4. Purchaser expressly agrees and acknowledges that Purchaser's obligations hereunder are not in any way conditioned upon or subject to Purchaser obtaining financing of any type or nature whatsoever, whether by way of debt, equity investment, or otherwise ("Financing") to consummate the transaction contemplated hereby. While this Agreement is not contingent upon Purchaser obtaining Financing, Seller shall, at no cost, expense or liability to Seller, reasonably cooperate with Purchaser's lender providing Financing at Closing, provided, (i) such Financing shall not modify or alter this Agreement, (ii) Seller shall not be required to incur any expense or make any repairs or alterations in connection with such Financing, (iii) Seller shall not be required to obtain or provide additional agreements or other documents in connection with such Financing, (iv) such Financing shall not delay the Closing, and (v) Purchaser's failure to obtain such Financing shall not relieve Purchaser from any obligations under this Agreement.

2.5. Purchaser and Seller agree that the entire Purchase Price shall be allocated to the Property. The value of any personal property that is included in the transaction contemplated by this Agreement is *de minimis*, and no part of the Purchase Price is allocable thereto. The parties shall execute all forms required to be filed for tax purposes with any taxing authority in a manner consistent with such allocation.

3. Exceptions to Title; Title Matters.

3.1. Seller shall transfer and Purchaser shall accept fee simple title to the Property in accordance with the terms of this Agreement, subject to the following matters (collectively, the "Permitted Exceptions"):

3.1.1. Subject to proration under Article 6, all liens for unpaid real estate taxes, PILOT payments, water charges and sewer rents not in arrears as of the Closing Date.

3.1.2. All present and future zoning, building, environmental and other laws, ordinances, codes, rules, restrictions and regulations of all governmental authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any (collectively, "Laws and Regulations").

3.1.3. To the extent Purchaser has not objected to the following prior to expiration of the expiration of the Diligence Period, all recorded covenants, restrictions, reservations and easements, and all agreements for the erection and/or maintenance of water, gas, steam, electric, telephone, sewer or other utility pipelines, poles, wires, conduits or other like facilities, and appurtenances thereto, over, across and under the Property that are either (a) presently existing or (b) granted to a public utility with Purchaser's consent, not to be unreasonably withheld.

3.1.4. The state of facts shown in the survey prepared by Sidney B. Bowne & Son dated August 8, 2000, last updated January 7, 2013, and any additional facts that would be disclosed by a survey of the Property, provided such additional facts do not have a material adverse effect on the current use of the Property.

3.1.5. Intentionally omitted.

3.1.6. Possible encroachments and/or projections of stoop areas, roof cornices, window trims, vent pipes, cellar doors, steps, columns and column bases, flue pipes, signs, piers, lintels, window sills, fire escapes, satellite dishes, protective netting, sidewalk sheds, ledges, fences, coping walls (including retaining walls and yard walls), walkways, landscaping, parking areas, curbing, sprinklers, driveways, fences, light poles, signs, air conditioners and the like, if any, on, under or above any street or highway, the Property or any adjoining property, provided that the Title Company omits any "out of possession" exception relating thereto.

3.1.7. Variations between tax lot lines and lines of record title.

3.1.8. Any financing statements, chattel mortgages, encumbrances or mechanics' or other liens entered into by, or arising from, any financing statements filed on a day more than five (5) years prior to the Closing and any financing statements, chattel mortgages, encumbrances or mechanics' or other liens filed against property no longer contained in the Property, provided that the Title Company shall remove them as exceptions from the Title Policy or shall affirmatively insure over them at no cost to Purchaser and that no prohibition of present use or maintenance of the Property will result therefrom.

3.1.9. The lease to be entered into at Closing between Purchaser and CVD Equipment Corp. in the form annexed hereto as Exhibit B (the "Lease").

3.1.10. Intentionally Omitted.

3.1.11. Covenants and Restrictions as recorded in Liber 12127 Page 437 in the Suffolk County Clerk's Office.

3.1.12. Telephone Easement recorded as Liber 12150 Page 895 in the Suffolk County Clerk's Office.

3.1.13. Drainage Easement recorded in Liber 12112 Page 365 and Liber 12334 Page 456 in the Suffolk County Clerk's Office.

3.2. Purchaser agrees to order a title commitment for the Property (the "Title Report") from National Land Tenure Company LLC (the "Title Company"), as agent for First American Title Insurance Company, and Purchaser shall furnish to Seller's attorney a copy of the Title Report and all supplements thereto. If Purchaser shall fail to notify Seller's attorney on or before the expiration of the Diligence Period (or within the timeframe set forth in Section 3.5 with respect to New Encumbrances, as defined below), of the existence of any defect, lien or encumbrance (each a "Title Defect" and collectively, the "Title Defects") other than a Permitted Exception, Purchaser shall be deemed to have waived its right to object to such Title Defects. Such notice shall include a description of the Title Defects objected to by Purchaser. For purposes of this Agreement, delivery of the Title Report to Seller's attorney shall be deemed to satisfy the notice requirement above.

3.3. If any update to the Title Report or any update to Purchaser's survey discloses any additional title encumbrance that is not a Permitted Exception, that was not previously disclosed on the Title Report and was not created by or through Purchaser (a "New Encumbrance"), Purchaser shall have the right, within the earlier of Closing or ten (10) business days after receipt of such updated Title Report or survey, to review and notify Seller in writing of Purchaser's approval or disapproval of the New Encumbrance. If Purchaser disapproves of the New Encumbrance, Seller shall notify Purchaser within the earlier of (i) five business days or (ii) two (2) business days prior to the then-scheduled Closing Date as to whether it is willing to attempt to cure the New Encumbrance. If Seller does not elect to attempt to cure such New Encumbrance, or, if having elected to attempt to cure such New Encumbrance, Seller fails to cure such New Encumbrance on or before the Closing Date (as the same may be extended pursuant to Section 3.5 below), Purchaser may either (a) terminate this Agreement by written notice to Seller, in which event this Agreement shall terminate, Escrow Agent shall promptly return the Downpayment to Purchaser, and thereupon the parties shall have no further obligations under this Agreement other than those provisions that expressly survive termination, or (b) upon notice to Seller, accept such title as Seller can convey without reduction of the Purchase Price or any credit or allowance on account thereof, or any claim against Seller therefor.

3.4. Notwithstanding any provision to the contrary contained in this Agreement, with respect to any matter which the Title Company may raise as an exception to title in the Title Report, if Chicago Title Insurance Company, Fidelity National Title Insurance Company or Commonwealth Land Title Insurance Company (each, a "National Title Insurer") would be willing to omit the same as an exception from the Title Policy (defined below), without additional charge to Purchaser, then Seller shall have the right to require Purchaser to obtain its Title Policy from the National Title Insurer that is willing to so insure, and all references in this Agreement to "Title Company" shall thereafter be deemed to refer to such National Title Insurer.

3.5. (a) If, at the Closing, Seller fails or is unable to convey to Purchaser title to the Property subject to and in accordance with the provisions of this Agreement, Seller shall be entitled, upon written notice delivered by email to Purchaser's attorney, to reasonable adjournments of the Closing Date to enable Seller to convey such title, provided such adjournments shall not exceed 60 days in the aggregate. No action taken by Seller shall be an admission that Seller is unable to convey title to the Property in accordance with this Agreement. If Seller does not so elect to adjourn the Closing, or if Seller has adjourned the Closing Date for an additional period and following all of Seller's adjournments, Seller is unable to convey title subject to and in accordance with the provisions of this Agreement, Purchaser may terminate this Agreement by written notice delivered on or promptly after the date scheduled for the Closing, as last adjourned by Seller, in which event the Escrow Agent shall repay to Purchaser the Downpayment and reimburse Purchaser for reasonable title search fees (without insurance) and reasonable survey costs, subject to Section 24 hereof, and this Agreement shall thereupon be deemed terminated and of no further effect, and neither party hereto shall have any obligations of any nature to the other hereunder or by reason hereof, except those provisions that expressly survive termination. Except as otherwise expressly provided in this Agreement, Seller shall not be required to take or bring any action or proceeding or any other steps to remove any New Encumbrance on, Title Defect in, or objection to title or to fulfill any condition precedent to Purchaser's obligations under this Agreement or to expend any moneys therefor, nor shall Purchaser have any right of action against Seller therefor, at law or in equity.

(b) Notwithstanding the foregoing provisions of this Article 3, Seller shall satisfy and discharge (or cause the Title Company to insure over) all Voluntary Liens (as hereinafter defined) on or prior to the Closing Date. The term "Voluntary Liens" shall mean (i) liens and other encumbrances which Seller has knowingly and intentionally placed on the Property, or any part thereof, or with respect to which Seller has taken an affirmative action that directly results in the placement of same against the Property, or any part thereof; (ii) any and all mechanics' liens and/or materials relating to work performed or alleged to have been performed at the Property; (iii) any encumbrance of title created by Seller following the Effective Date; (iv) unpaid real estate tax liens and PILOT payments for all tax years prior to the tax year in which the Closing Date occurs; (v) mortgages or other liens made or assumed by Seller that encumber all or any portion of the Property; and (vi) all liens and other encumbrances created or assumed by Seller that can be removed by the payment of a liquidated sum of money, which sum (with respect to this clause (vi) only) shall not exceed $100,000 in the aggregate for all such liens.

3.6. If at the Closing there are any liens or encumbrances on the Property which are not Permitted Exceptions and which Seller is obligated by this Agreement or elects to pay and discharge (including any liens for transfer, inheritance, estate, franchise or other similar taxes, judgments or any encumbrances or other Title Defects or New Encumbrances which would be grounds for Purchaser to terminate this Agreement), Seller may use any cash portion of the Purchase Price for the Property to satisfy the same. Any such judgments, liens, taxes, other encumbrances, encroachments or any other defects may be, and shall be deemed satisfied upon Seller providing such items as will cause the Title Company (or a National Title Insurer, as applicable) to remove such matter as an exception from the Title Policy, including, without limitation, depositing with the Title Company funds sufficient to satisfy such judgments, liens, taxes or other encumbrances in full and the cost of recording the satisfaction instrument(s), together with any other documents or instruments the Title Company may require.

3.7. Notwithstanding anything in this Article 3 to the contrary, Purchaser may at any time Close title to the Property irrespective of the condition of the Seller's title to the Property as it exists on the Closing Date without reduction of the Purchase Price or any credit or allowance on account thereof or any claim against Seller. The acceptance of the Deed by Purchaser shall be deemed to be full performance of, and discharge of, every agreement and obligation on Seller's part to be performed under this Agreement, except for such matters which are expressly stated in this Agreement to survive the Closing, to the limit of such survival.

3.8. The amount of any unpaid taxes, assessments, PILOT payments, water charges and sewer rents affecting the Property on the Closing Date which the Seller is obligated to pay and discharge, with interest and penalties if any, may at the option of Seller be paid by the Seller, or by Purchaser out of the balance of the Purchase Price, if official bills therefor with interest and penalties thereon figured to said date are furnished to or obtained by the Title Company at the Closing for payment thereof and the Title Company is willing to insure against collection or enforcement of same out of the Property.

3.9. Seller will comply with all notes or notices or violations of law or municipal ordinances, orders or requirements noted in or issued by any federal, State, County or other local governmental agency or department having jurisdiction as to lands, housing, buildings, fire, health and labor conditions (collectively the "Violations") affecting the Property on the Effective Date. The Property shall be transferred free of the Violations at Closing. Seller shall pay all fines and penalties assessed or imposed for such Violations and Seller shall pay any fines and penalties assessed or imposed for any Violations on the Closing Date. Purchaser shall have the right to approve (such approval not to be unreasonably withheld or delayed) any permits with respect to the Property that will remain open after Closing. All permits so approved by Purchaser shall not be deemed Violations. This Section 3.9 shall survive Closing.

4. Closing.

4.1. Subject to the Purchaser's right to accelerate under Section 4.3 below, the closing of title in accordance with this Agreement (the "Closing", the actual date of the Closing being herein referred to as the "Closing Date") shall take place on the date which is sixty (60) days after the expiration of the Diligence Period. Purchaser shall have the one-time right to extend the Closing Date for a period of up to thirty (30) days, by delivering written notice to Seller of such extension not later than five (5) days prior to the scheduled Closing Date, which adjourned date for Closing shall be **TIME OF THE ESSENCE** with respect to Purchaser's obligations under this Agreement.

4.2. The Closing shall occur at the offices of Title Company or at such other location as may be mutually agreed upon by Seller and Purchaser. The parties intend that the Closing will not be attended in person by representatives of the parties. Rather, the Closing shall occur by (a) delivery of the Closing Documents by the Seller and Purchaser to the Title Company in escrow on or before the scheduled date of Closing, and (b) Purchaser's deposit of funds in the amount of the Net Purchase Price, plus or minus applicable prorations, with the Title Company.

4.3. Notwithstanding anything to the contrary herein, Purchaser shall have the right to accelerate the Closing Date to such earlier date as Purchaser may select by providing Seller with written notice specifying the date on which Purchaser seeks to close, on condition that (i) such date shall be not less than five (5) business days after the date of such notice and (ii) such date shall be reasonably acceptable to Seller (the "Accelerated Closing Date"). If the Accelerated Closing Date is before the expiration of the Diligence Period, then the Diligence Period shall be deemed to have expired as of the Accelerated Closing Date.

5. Diligence Period; As Is.

5.1. During the period (the "Diligence Period") commencing on the Effective Date and ending 5:00 PM on November 3, 2022 [30 business days following the Effective Date], Purchaser shall determine, in its sole and absolute discretion, whether the Property is acceptable to Purchaser. Purchaser may terminate this Agreement at any time prior to the expiration of the Diligence Period, for any reason or for no reason at all, by giving written notice to Seller (which notice may be delivered electronically to Seller's attorney at: bweinstock@rmfpc.com with a copy to Seller at: elakios@cvdequipment.com). In addition, Purchaser shall be deemed to have terminated this Agreement as of the expiration of the Diligence Period unless Purchaser affirmatively elects in writing not to terminate this Agreement. If, and only if, Purchaser makes such affirmative election not to terminate this Agreement prior to the expiration of the Diligence Period, Purchaser shall have waived its right to terminate this Agreement under this Section 5.1. In the event Purchaser elects to terminate (or is deemed to have terminated) this Agreement pursuant to this Section 5.1, (i) the Escrow Agent shall immediately return the Downpayment to Purchaser, and (ii) neither party shall have any further rights or obligations under this Agreement except for those provisions that expressly survive termination of this Agreement. All dates and time periods in this paragraph of Section 5.1 shall be **TIME OF THE ESSENCE.**

5.1.1. During the term of this Agreement, Purchaser shall have the right, subject to the terms of this Agreement, to enter upon the Property and make such investigations, studies and tests, including, without limitation, surveys, engineering and environmental studies, as Purchaser deems necessary or advisable, including a Phase I Environmental Assessment and, if recommended by the Phase I Environmental Assessment, a Phase II Environmental Assessment (collectively, the "Purchaser Investigations"). As part of the Purchaser Investigations, Purchaser may physically inspect the Property, but if such inspections involve testing, sampling or other invasive actions, Purchaser shall provide Seller with a detailed work plan identifying the complete scope of such Purchaser's Investigations and Seller may deny, condition or restrict such Purchaser's Investigations, in its reasonable discretion. If Purchaser terminates this Agreement during the Diligence Period due to Seller's denial, conditioning or restricting testing, sampling or other invasive actions, Seller shall reimburse Purchaser for Purchaser's Pursuit Costs (hereinafter defined).

5.1.2. Any access to the Property required by Purchaser in connection with the inspection of the Property contemplated hereunder (i) must be upon written notice to Seller (which notice may be delivered electronically to Seller's attorney at: bweinstock@rmfpc.com with a copy to Seller at: elakios@cvdequipment.com) and during reasonable business hours, and (ii) Seller shall have the right to have a representative of Seller present at all times when Purchaser or its representatives are present at the Property, Purchaser acknowledges that the Property is a restricted and secure facility, and as such, access to the Property is subject to the protocols and reasonable discretion of CVD Equipment Corporation. Prior to Purchaser or any Purchaser consultant entering onto the Property, Purchaser and its consultants shall furnish to Seller such identifying information and documents that CVD Equipment Corporation may require, and a commercial general liability insurance policy with a coverage limit not less than $1,000,000.00 per occurrence, $2,000,000.00 in the aggregate naming Seller and its designees as additional insureds. Promptly after the performance of such Purchaser Investigations, Purchaser shall restore the Property as near as reasonably practicable to its condition prior to the Purchaser Investigations, and Purchaser shall repair all damage caused to the Property arising or resulting from such inspection, except that Purchaser and Purchaser's consultants and agents shall have no liability for any environmental or pre-existing conditions discovered by Purchaser and Purchaser's consultants and agents except to the extent Purchaser or Purchaser's consultants and agents cause a release or exacerbate such conditions (but only to the extent of the exacerbation caused by Purchaser or Purchaser's consultants).

5.1.3. Purchaser shall indemnify, defend and hold Seller harmless from and against all actual loss, liability, cost and expense (including, without limitation, reasonable out-of-pocket attorney's fees and disbursements) arising out of or in connection with the acts of Purchaser, its representatives, partners, shareholders, agents, employees, licensees, invitees, contractors and consultants in connection with any Purchaser Investigations conducted at the Property, except that Purchaser and Purchaser's consultants and agents shall have no liability for any environmental or pre-existing conditions discovered by Purchaser and Purchaser's consultants and agents except to the extent Purchaser or Purchaser's consultants and agents cause a release or exacerbate such condition. This indemnity shall survive Closing and termination of this Agreement.

5.1.4. Upon any termination of this Agreement prior to Closing, upon Seller's written request, Purchaser shall promptly provide Seller with complete copies of all tests, reports, laboratory results and other information obtained by Purchaser from its consultants, engineers and others in Purchaser's Investigation of the Property. Seller acknowledges and agrees that (a) all such reports and studies shall be for general informational purposes only, (b) Seller shall not have any right to rely on any such reports and studies, (c) all such reports shall be delivered without any warranty or representation as to accuracy or completeness whatsoever, and (d) neither Purchaser, any affiliate of Purchaser nor the person or entity which prepared any such reports or studies shall have any liability to Seller for any inaccuracy in or omission from any such report. If Closing occurs, Seller shall have no right to request any tests, reports, laboratory results or other diligence information from Purchaser.

5.2. If any Purchaser Investigation determines that there has been a release of Hazardous Materials (hereinafter defined) on the Property that requires remediation ("Remediation") in accordance with applicable Environmental Laws (hereinafter defined) Purchaser shall cause the Remediation to be performed following the Closing and Seller shall reimburse Purchaser for up to the first One Hundred Thousand ($100,000.00) Dollars of the costs of the Remediation (the "Remediation Costs"), and Purchaser shall pay the next Fifty Thousand ($50,000.00) Dollars of the Remediation Costs. If the Remediation Costs are reasonably expected to exceed One Hundred Fifty Thousand ($150,000.00) Dollars, then Purchaser may terminate this Agreement by giving Seller a notice making reference to this Section 5.2 (an "Environmental Termination Notice"). This provision shall survive the Closing.

5.3. Purchaser shall use all information concerning the presence of Hazardous Materials affecting the Property ("Confidential Information") only for purposes of evaluating the Property in connection with its purchase thereof in accordance with the terms of this Agreement. Purchaser further agrees that prior to the Closing, Purchaser's use of the Confidential Information shall be governed by the provisions of Article 25 below.

5.4. Except as otherwise provided in this Agreement, Purchaser acknowledges and agrees that it is purchasing the Property in "**AS IS, WHERE IS**" **AND** "**WITH ALL FAULTS, LIABILITIES, AND DEFECTS, LATENT OR OTHERWISE, KNOWN OR UNKNOWN**" condition, based on its condition as of the Effective Date, reasonable wear and tear (loss by casualty or condemnation excepted), with no right of set-off or reduction in the Purchase Price, and that, except for the Seller's representations expressly set forth in this Agreement, such sale shall be without representation or warranty of any kind, express or implied, all of which are renounced by Seller and waived by Purchaser. Purchaser specifically acknowledges that, except for the Seller's representations expressly set forth in this Agreement, Purchaser is not relying on any representations or warranties of any kind whatsoever, express or implied, from Seller, any other party, broker or other agent representing or purporting to represent Seller as to any matters concerning the Property including: (i) the income from or value of the Property; (ii) any income to be derived from the Property; (iii) the suitability of the Property for any and all activities and uses which Purchaser may conduct thereon, including the possibilities for further development of the Property or construction thereon; (iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property or any Improvements thereon; (v) the manner, quality, state of repair or lack of repair of the Property (including the roof, foundation, HVAC systems or any other component of the Property or any improvements thereon); (vi) the nature, quality or condition of the Property, including with respect to water conditions, soil, geological or geotechnical condition (including soil expansiveness, corrosivity, or stability, or seismic, hydrological, geological and topographical conditions and configurations, including, without limitation, any opinions or conclusions of any soils engineer(s) retained to perform geotechnical and/or soils studies or to oversee any soils engineering aspects of developing the Property); (vii) the compliance of or by Seller, the Property, or its operation with any Laws and Regulations; (viii) the manner or quality of the construction or materials incorporated into the Property; (ix) compliance with Environmental Laws or land use laws, rules, regulations, orders, codes or requirements, including the Americans with Disabilities Act of 1990; (x) the presence or absence of radon gas, methane gas, asbestos any other Hazardous Materials at, on, under, or adjacent to the Property; (xi) the conformity of any improvements to any plans or specifications, including any plans and specifications that may have been or may be provided to Purchaser; (xii) the conformity of the Property to past, current or future applicable zoning or building requirements; (xiii) deficiency of any undershoring; (xiv) deficiency of any drainage; (xv) the fact that all or a portion of the Property may be located on or near an earthquake fault line or in or near an earthquake or seismic hazard zone; (xvi) the existence of vested land use, zoning or building entitlements affecting the Property; (xvii) water rights or the availability of or access to water; (xviii) the presence or suitability of any utilities or availability thereof; (xix) the current or future real estate tax liabilities, assessments or valuations of the Property, (xx) the potential qualification of the Property for any and all benefits conferred by Federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated, (xxi) the present and future condition and operating state of any and all machinery or equipment on the Property and the present or future structural and physical condition of the Improvements or their suitability for rehabilitation or renovation, (xxii) the ownership or state of title of any personal property on the Property, (xxiii) the completeness or accuracy of any information provided to Purchaser by the Seller or the Seller Related Parties (hereinafter defined); (xxiv) any matters relating to the Lease; or (xxv) any knowledge that the Seller may have relating to the Property that it has, or has not, shared with Purchaser. Purchaser further acknowledges and agrees that, except as required under this Agreement, Seller is not under any duty to make any affirmative disclosures or inquiry regarding any matter which may or may not be known to Seller, and Purchaser, for itself and for its successors and assigns, hereby expressly waives and releases Seller from any such duty that otherwise might exist. Except as provided in this Agreement, Purchaser is and will be relying strictly and solely upon its own inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers and Purchaser is fully satisfied that the Purchase Price is fair and adequate consideration for the Property.

5.5. Except as provided in this Agreement, Seller disclaims all warranties of any kind or nature whatsoever (including warranties of habitability and fitness for particular purposes), whether expressed or implied, with respect to the presence of Hazardous Materials on, above or beneath the Land (or any parcel in proximity thereto) or in any water on or under the Property. The Closing shall be deemed to constitute an express waiver of Purchaser's right to cause Seller to be joined in any action brought under any Environmental Laws. The term "Hazardous Materials" means (a) those substances included within the definitions of any one or more of the terms "hazardous materials", "hazardous wastes", "hazardous substances", "industrial wastes", and "toxic pollutants", as such terms are defined under the Environmental Laws, or any of them, (b) petroleum and petroleum products, including, without limitation, crude oil and any fractions thereof; (c) natural gas, synthetic gas and any mixtures thereof, (d) asbestos and or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophylite and/or actinolite, whether friable or non-friable, (e) polychlorinated biphenyl ("PCBs") or PCB-containing materials or fluids, (f) radon, (g) any other hazardous or radioactive substance, material, pollutant, contaminant or waste, and (h) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation. The term "Environmental Laws" means all federal, state and local laws, statutes, ordinances and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees and binding judgments relating to the regulation and protection of human health, safety, the environment and natural resources (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S. §§ 6901 et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. §§ 2601 et seq.), the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.), the Occupational Safety and Health Act, as amended (29 U.S.C. §§ 651 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300f et seq.), any state or local counterpart or equivalent of any of the foregoing, and any federal, state or local transfer of ownership notification or approval statutes. Purchaser acknowledges and agrees that the waivers, releases, and other provisions contained in Article 5 are a material factor in Seller's acceptance of the Purchase Price and that Seller is unwilling to sell the Property to Purchaser unless Seller is released as expressly set forth above. Purchaser has fully reviewed the disclaimers, releases and waivers set forth in this Agreement and understands and accepts the significance and effect thereof.

5.6. Except for the specific representations and warranties of Seller under the Agreement, and in the Seller's Closing Documents, Purchaser is responsible for verifying through Purchaser's own due diligence the accuracy and completeness of Property Documents (hereinafter defined) that are provided by Seller to Purchaser and any reliance by Purchaser on such Property Documents shall be at Purchaser's own risk. Purchaser hereby acknowledges that all Property Documents prepared and provided by third parties heretofore or hereafter delivered by Seller or Seller's agents to Purchaser or Purchaser's agents is solely for the convenience of Purchaser and Seller does not and shall not warrant, guarantee, affirm or assure accuracy, completeness or validity of any of the information contained or referenced therein.

5.7. Except as provided in this Agreement, Purchaser releases Seller or any party related to or affiliated with Seller (each, a "Seller Related Party") and their respective successors and assigns from and against any and all claims which Purchaser or any party related to or affiliated with Purchaser (each, a "Purchaser Related Party") has or may have arising from or related to any matter or thing related to or in connection with the Property, except claims caused by the gross negligence of willful misconduct of any Seller Related Parties occurring from and after the Effective Date. If any Remediation is required after the Closing Date, it shall be performed at the sole cost and expense of Purchaser and Purchaser shall not seek reimbursement or compensation from Seller on account thereof in excess of the amounts set forth in this Agreements, except as set forth in Section 5.2. This release shall be given full force and effect according to each of its express terms and provisions, including those relating to unknown and unsuspected claims, damages and causes of action. The provisions of this Section 5.6 shall survive the termination of this Agreement.

5.8. This Article 5 shall survive Closing and termination of this Agreement and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

6. Apportionments.

6.1. There shall be no prorations or apportionments between Seller and Purchaser at Closing.

7. Representations and Warranties of the Parties. Certain Covenants.

7.1. Seller represents to Purchaser that the following are true and correct on the date hereof and on the Closing Date:

7.1.1. Seller has the requisite power and authority to enter into and to perform the terms of this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action of Seller. This Agreement constitutes, and each document and instrument contemplated hereby to be executed and delivered by Seller, when executed and delivered, shall constitute the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its respective terms (subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally). The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not conflict with Seller's organizational documents.

7.1.2. Seller is a Delaware limited liability company duly formed and validly existing under the laws of the Commonwealth of Delaware and is duly authorized to conduct business in the State of New York. Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code 1986, as amended, or any regulations promulgated thereunder (collectively, the "Code").

7.1.3. Neither the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated hereby is prohibited by, or requires Seller to obtain any consent, authorization, approval or registration under any law, statute, rule, regulation, judgment, order, writ, injunction or decree which is binding upon Seller.

7.1.4. Seller is not a Blocked Person (as hereinafter defined), it being understood that Seller makes no representation with respect to any person or entity that owns an indirect equity interest in Seller by virtue of owning publicly traded securities. For purposes of this Agreement, a "Blocked Person" is any person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the U.S. Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

7.1.5. Seller is not the subject of, nor has Seller received any written notice of, any voluntary or involuntary bankruptcy or similar insolvency proceeding, any attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings now pending or, to Seller's knowledge, threatened against the Seller.

7.1.6. There is no service contract, property management agreement or other similar agreement with respect to services provided at Property that will be binding on Purchaser after Closing.

7.1.7. Except for the Lease, there is no lease, license or occupancy agreement for the Property that will remain in effect after the Closing. No person or entity other than Seller and its affiliates is in possession of any portion of the Property.

7.1.8. To Seller's knowledge, Seller has not received notice from any governmental authority with jurisdiction over the Property that the Property is in violation of any applicable law, regulation, rule or order, including, without limitation, Environmental Laws that has not been complied with or if any notice is still outstanding, Seller is in the process of complying with such notice. Attached hereto as Exhibit F is a true and complete list of all such notices with respect to which any compliance remains outstanding as of the Effective Date.

7.1.9. To Seller's knowledge, Seller or its affiliates are in possession of all material licenses, permits and approvals necessary to operate the Property as it is currently operated.

7.1.10. Seller has not granted any option rights or rights of first refusal with respect to the occupancy or acquisition of the Property and, to Seller's knowledge, no such right or option exists.

7.1.11. To the Seller's knowledge, there is no pending litigation affecting the Property or Seller which would adversely affect Seller's ability to perform its obligations under this Agreement or to convey title to the Property as provided herein.

7.1.12. Seller has not received written notice of any pending assessments for municipal improvements chargeable against the Property.

7.1.13. Seller has no pending proceedings or appeals to correct or reduce the assessed valuation of the Property for the current and prior tax years.

7.1.14. Seller has not received any written notice of any pending eminent domain proceedings which would affect all or any portion of the Property.

The representations and warranties of Seller set forth in this Agreement (collectively, the "Surviving Representations") shall survive the Closing for six (6) months (the "Survival Period"). Each Surviving Representation shall automatically be null and void and of no further force and effect after the Survival Period unless, prior to the end of the Survival Period, Purchaser shall have asserted in writing a specific claim with respect to the particular Surviving Representation and commenced a legal proceeding within 90 days thereafter against Seller alleging that Seller is in breach of such Surviving Representation and that Purchaser has suffered damages as a result thereof (a "Proceeding"). If Purchaser timely commences a Proceeding, then Purchaser shall be entitled to receive an amount equal to its damages as a result of Seller's breach of the Surviving Representation, but in no event shall the liability of Seller under this Section 7.1 exceed the Ceiling. As used herein, "Ceiling" means with respect to all representations in this Section 7.1, $400,000. The provisions of this Section 7.1 shall constitute the sole and exclusive remedy after closing for breaches of Seller's representations.

7.2. When used in this Agreement or in any certificate or other document delivered pursuant hereto, the phrase "to the best of Seller's knowledge," "to Seller's knowledge," or derivations thereof shall be construed to mean the current, actual knowledge (as opposed to constructive or imputed knowledge) of Emanuel Lakios, without any obligation to make investigation or inquiry regarding the Property, and without obligation to make any investigation of the files, documents or studies in the possession of other persons, and shall not include any knowledge which may be imputed to Seller or of any other person. Purchaser acknowledges that the individuals named above are named solely for the purpose of defining and narrowing the scope of Seller's knowledge and not for the purpose of imposing any liability on or creating any duties running from such individuals to Purchaser. Purchaser covenants that it will bring no action of any kind against such individuals, related to or arising out of these representations and warranties.

7.3. No claim for damages for a misrepresentation or breach of warranty of Seller, irrespective of whether contained in this Agreement or in any certificate or other writing made by Seller, shall be actionable or payable, and Seller shall have no liability to Purchaser for any misrepresentation or breach of warranty of Seller, if Purchaser does not Close title to the Property. Furthermore, if Purchaser Closes title to the Property no claim for damages for a misrepresentation or breach of warranty of Seller, irrespective of whether contained in this Agreement or in any certificate or other writing made by Seller, shall be actionable or payable, and Seller shall have no liability to Purchaser for (a) any condition, state of facts or other matter (i) which Dan Domb had actual knowledge prior to Closing, or (ii) which is set forth in information or documents relating to the Property actually delivered or made available in its complete form to Purchaser or Purchaser's Agents no less than two business days prior to expiration of the Diligence Period via email or in hard copy form (the "Property Documents") irrespective of whether Purchaser or Purchaser's Agents reviewed such information or documents, or (b) any misrepresentation or breach of warranty of Seller unless an action shall have been commenced by Purchaser against Seller within the timeframe set forth in Section 7.1. Purchaser further agrees that every otherwise applicable period of limitation to commence any action or proceeding for a misrepresentation or breach of warranty of Seller set forth in this Agreement shall be deemed to have expired within the time periods set forth in Section 7.1, which time periods shall not be subject to extension, enlargement or waiver by any means. If, prior to the Closing Date, Purchaser discovers that Seller has breached any representations and warranties of Seller and the breach has or would have a material adverse effect (as defined in Section 9.2.3), which is not cured in accordance with Section 9.2.3(b), Purchaser shall have the right to terminate this Agreement by written notice to Seller. If Purchaser duly terminates this Agreement, the Downpayment shall be promptly returned to Purchaser and neither party shall have any further rights or obligations pursuant to this Agreement, except that Purchaser may recover from Seller, as its sole recoverable damages (but without limiting its right to receive a refund of the Downpayment), the cost of the title report and new survey and Purchaser's documented out of pocket legal fees and inspection costs up to an aggregate of $150,000 (collectively, the "Pursuit Costs"). For the avoidance of doubt, the Seller shall only be required to pay (i) Purchaser's Pursuit Costs, or (ii) up to the sum of $150,000 to cause Seller's representations and warranties to no longer have a material adverse effect, but not both.

7.4. Purchaser represents to Seller that, subject to the terms and conditions of this Agreement, the following are true and correct on the date hereof:

7.4.1 Purchaser has the requisite power and authority to enter into and to perform the terms of this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action of Purchaser. This Agreement constitutes, and each document and instrument contemplated hereby to be executed and delivered by Purchaser, when executed and delivered, shall constitute the legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its respective terms (subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally). The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not conflict with Purchaser's by-laws or certificate of incorporation.

7.4.2. Purchaser is not subject to any law, order, decree, restriction, or agreement which prohibits or would be violated by this Agreement or the consummation of the transactions contemplated hereby.

7.4.3. Neither the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated hereby is prohibited by, or requires Purchaser to obtain any consent, authorization, approval or registration under any law, statute, rule, regulation, judgment, order, writ, injunction or decree which is binding upon Purchaser.

7.4.4. There are no judgments, orders, or decrees of any kind against Purchaser unpaid or unsatisfied of record, nor any actions, suits or other legal or administrative proceedings pending or, to Purchaser's actual knowledge, threatened against Purchaser, which would have any material adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement.

7.4.5. Purchaser is not a Blocked Person, it being understood that Purchaser makes no representation with respect to any person or entity that owns an indirect equity interest in Purchaser by virtue of owning publicly traded securities.

7.5 Seller covenants that between the date of this Agreement and the Closing:

(i) Seller shall, at Seller's sole cost and expense, maintain, or cause to be maintained, the Property in accordance with Seller's past practices of operating, repair and condition, normal wear, tear and casualty excepted.

(ii) Seller shall, at Seller's sole cost and expense, maintain the current insurance coverages on the Property or equal coverages in replacement thereof.

(iii) Seller shall not initiate, request, permit, or consent to any change in the zoning classification of the Property or any related change under applicable zoning ordinance or regulation.

(iv) Seller shall promptly provide Purchaser with a copy of any notice, citation, complaint or other directive from any person, entity or governmental or quasi-governmental authority whereby Seller's compliance with laws applicable to the Property is called into question, and promptly notify Purchaser of any new information or other developments which could make any representation hereunder materially inaccurate.

(v) Seller shall not enter any service contracts other agreements relating to the Property, unless after Closing Seller shall continue to be solely liable for performance and payment under such new service contracts or agreements.

(vi) Except for the Lease, Seller shall not enter into any lease, license, occupancy agreement or any other agreement providing for occupancy or possession of any portion of the Property.

(vii) Unless this Agreement has been terminated, or Purchaser is in material default of its obligations under this Agreement, Seller shall not market the Property for sale, substantively negotiate for or enter into any agreement with a third-party for the purchase and sale of the Property. For avoidance of doubt, Seller's unsolicited receipt of an offer to purchase the Property, and any response from Seller that does not address the substance of such offer, shall not be prohibited under this subsection (vii).

8. Closing Deliveries.

8.1. At or prior to the Closing, Seller shall deliver to Escrow Agent the following documents (collectively, herein referred to as the "Seller's Closing Documents"):

8.1.1. A statutory form of Bargain and Sale Deed sufficient to convey fee title to the Property subject to and in accordance with the provisions of this Agreement, in the form attached hereto as Exhibit C and made a part hereof (the "Deed").

8.1.2. A Bill of Sale and Assignment of Intangible Personal Property in the form attached hereto as Exhibit D and made a part hereof (the "Bill of Sale and Assignment").

8.1.3. A certificate, executed and acknowledged by Seller, in accordance with Section 1445 of the Code.

8.1.4. Evidence of the authorization of the Seller to enter into and consummate the transactions described in this Agreement (including, e.g., copies of authorizing resolutions and/or consents as required based upon Seller's organizational documents) along with evidence of authority of the person(s) executing this Agreement and the documents executed and delivered for and on behalf of the Seller to so execute and deliver the same.

8.1.5. A Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate, Form TP-584 (the "State Transfer Tax Return"), executed by Seller.

8.1.6. A State of New York Real Property Transfer Report Form RP-5217, executed by Seller ("Equalization Form").

8.1.7. The Lease in the form attached hereto and incorporated herein as Exhibit B.

8.1.8. An owner's certificate from Seller in the form attached hereto and incorporated herein as Exhibit E.

8.1.9. A Good Standing Certificate as issued by the Secretary of the Commonwealth of Delaware.

8.1.10. Any other documents, instruments or agreements reasonably necessary to effectuate the transactions contemplated hereunder, in accordance with the express terms, covenants and conditions hereof.

8.2. At or prior to the Closing, Purchaser shall pay the balance of the Purchase Price pursuant to Section 2.2 hereof and Purchaser shall execute, acknowledge and deliver or cause to be delivered the following documents (collectively, the "Purchaser's Closing Documents" and together with Seller's Closing Documents, the "Closing Documents"):

8.2.1. A counterpart of the Bill of Sale and Assignment.

8.2.2. A counterpart of the State Transfer Tax Return, executed by Purchaser.

8.2.3. A counterpart of the Equalization Form, executed by Purchaser.

8.2.4. A counterpart of the Lease.

8.3. Seller and Purchaser, at the Closing, shall prepare, execute and deliver to each other, subject to all the terms and provisions of this Agreement, (a) the Closing Statement setting forth, inter alia, the closing adjustments and material monetary terms of the transaction contemplated hereby and (b) such other instruments and documents as may be reasonably required to effectuate the consummation of the transactions described in this Agreement.

9. Conditions to the Closing Obligations.

9.1. Notwithstanding anything to the contrary contained in this Agreement, the obligation of Seller to convey the Property to Purchaser in accordance with this Agreement is expressly conditioned upon the fulfillment by and as of the Closing Date of each of the conditions listed below, provided that Seller, at its election, evidenced by notice delivered to Purchaser at or prior to the Closing, may waive any of such conditions:

9.1.1. Purchaser shall have delivered to Escrow Agent the Net Purchase Price and other funds required hereunder and shall have executed, acknowledged and delivered to Escrow Agent all of the Purchaser's Closing Documents, and such other documents and other items required pursuant to Section 8.2, at or prior to Closing.

9.1.2. Purchaser shall have performed in all material respects all other covenants, undertakings and obligations to comply with all conditions required by this Agreement to be performed or complied with by Purchaser at or prior to Closing.

9.1.3. All representations and warranties made by Purchaser in this Agreement shall be true and correct in all material respects as of the Closing Date.

9.2. Notwithstanding anything to the contrary contained in this Agreement, the obligation of Purchaser to acquire the Property and pay the Purchase Price in accordance with this Agreement is expressly conditioned upon the fulfillment by and as of the Closing Date of each of the conditions listed below, provided that Purchaser, at its election, evidenced by notice delivered to Seller at or prior to the Closing, may waive all or any of such conditions:

9.2.1. Seller shall have executed and delivered to Escrow Agent all of the Seller's Closing Documents, and such other documents and other items required pursuant to Section 8.1, at or prior to Closing.

9.2.2. Seller shall have performed in all material respects all other covenants, undertakings and obligations to comply with all conditions required by this Agreement to be performed or complied with by Seller at or prior to Closing.

9.2.3. All representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the Closing Date, except to the extent the facts and circumstances underlying such representations and warranties may have changed as of the Closing. Notwithstanding the foregoing, if on the Closing Date any such representations and warranties are not true and correct in all material respects for any reason that is not due to a breach by Seller of its obligations under this Agreement and the breach(es) would have, in the aggregate, a material adverse effect, Purchaser shall have the option (a) terminate this Agreement, in which event Escrow Agent will return the Downpayment, Seller shall reimburse Purchaser its Pursuit Costs as it sole and exclusive remedy, and the parties shall have no further obligations under this Agreement except those provisions that expressly survive termination, or (b) to require Seller to pay or credit to Purchaser an amount on account of such breach(es) as will cause the same to no longer have a "material adverse effect", (which credit shall not exceed $150,000), as its sole and exclusive remedy, and the parties shall otherwise proceed to Closing as set forth in this Agreement. If the amount of the material adverse effect exceeds $150,000, Purchaser shall have the right to terminate this Agreement, in which event Escrow Agent will return the Downpayment, Seller shall reimburse Purchaser its Pursuit Costs as its sole and exclusive remedy, and the parties shall have no further obligations under this Agreement except those provisions that expressly survive termination. As used herein, a "material adverse effect" shall be deemed to have occurred if by reason of such misrepresentation the fair market value of the Property is decreased by more than $50,000.

9.2.4. The Title Company shall be irrevocably committed to insure title to the Property pursuant to a standard coverage ALTA 2006 Owner's Policy of Title Insurance as applicable in New York in the amount of the Purchase Price at regular rates and without additional premium (which shall not be deemed to include the cost of any endorsements to title requested by Purchaser), subject only to the Permitted Exceptions, and as otherwise provided in this Agreement (the "Title Policy").

10. Tax Deferred Exchange.

10.1. If one or more parties to this Agreement desires to exchange other property of like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and its accompanying regulations, for the fee simple title in, or proceeds of, the Property, then the parties each agree to assist one another in the consummation of such transactions, and the parties reserve the right to assign their respective rights (but not obligations) to a qualified intermediary, as provided for in IRC Regulation 1.103(a)-I(g)(4) on or before the Closing Date, through written assignment and as otherwise may be necessary to accomplish the Section 1031 Exchange under the Internal Revenue Code, provided that the assisting parties shall incur no additional expense or liability, and the same is not a condition to and does not delay Closing.

11. Default; Limitation on Liability of Parties.

11.1. If Purchaser shall default in the performance of Purchaser's material obligations under this Agreement and the Closing does not occur as a result thereof (a "Purchaser Default"), Seller's sole and exclusive remedy shall be, and Seller shall be entitled, to retain the Downpayment as and for full and complete liquidated and agreed damages for Purchaser's Default, and Purchaser shall be released from any further liability to Seller hereunder, except for those obligations that expressly survive termination. **SELLER AND PURCHASER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER UPON A PURCHASER DEFAULT AND THAT THE DOWNPAYMENT REPRESENTS A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER UPON A PURCHASER DEFAULT. SUCH LIQUIDATED AND AGREED DAMAGES ARE NOT INTENDED AS A FORFEITURE OR A PENALTY WITHIN THE MEANING OF APPLICABLE LAW**.

11.2. Subject to the provisions of Section 7.3 hereof, if Seller shall default in the performance of Seller's material obligations under this Agreement and the Closing does not occur as a result thereof, Purchaser's sole and exclusive remedy shall be, and Purchaser shall be entitled, to either (a) reimbursement of the Downpayment by Escrow Agent and payment of the Pursuit Costs by Seller, upon which Seller shall be released from any further liability to Purchaser hereunder, except for those obligations that expressly survive termination, or (b) seek specific performance of Seller's obligations hereunder, provided that any such action for specific performance must be commenced within sixty (60) days after such default. Purchaser further agrees that every otherwise applicable period of limitation to commence any action or proceeding for specific performance shall be deemed to have expired within the time periods set forth in this Section 11.2, which time periods shall not be subject to extension, enlargement or waiver by any means. If specific performance of Seller’s obligations is unavailable solely due to Seller’s transfer of the Property to a third party, Purchaser shall have the right to seek damages.

12. Fire or Other Casualty; Condemnation.

12.1. From the Effective Date until the Closing Date, Seller agrees to (a) maintain its present property insurance policy including fire and extended coverage and (b) give Purchaser reasonably prompt notice of any fire or other casualty occurring at the Property of which Seller obtains knowledge, or of any actual or threatened condemnation of all or any part of the Property of which Seller obtains actual knowledge.

12.2. If prior to the Closing there shall occur (a) damage to the Property caused by fire or other casualty which would cost an amount equal to $1,000,000.00 or more to repair, as reasonably determined by an engineer selected by Seller which is satisfactory to Purchaser in the exercise of its reasonable judgment, or (b) a taking by condemnation of any portion of the Property, then, and in either such event, Purchaser may elect to terminate this Agreement by notice given to Seller within ten (10) days after Purchaser has received the notice referred to in Section 12.1 hereof, or at the Closing, whichever is earlier, in which event Seller shall promptly instruct Escrow Agent, to return the Downpayment and upon Purchaser's receipt of such Downpayment, this Agreement shall thereupon be null and void and neither party hereto shall thereupon have any further obligation to the other, except the provisions of this Agreement that expressly survive termination. If Purchaser does not elect to terminate this Agreement, then the Closing shall take place as herein provided, without abatement of the Purchase Price, and Seller shall assign to Purchaser at the Closing, by written instrument in form reasonably satisfactory to Purchaser, all of Seller's interest in and to any "net insurance proceeds" or "net condemnation awards" which may be payable to Seller on account of any such fire, casualty or condemnation (excluding business interruption insurance proceeds and insurance proceeds or condemnation awards paid on account of furniture, furnishings, equipment and other property that is not a part of the Property) and Seller shall pay all deductibles and self-insured retention amounts relating thereto. If the net insurance proceeds or net condemnation awards paid to Seller are in excess of the Purchase Price, then the amount to be paid to Purchaser under the preceding sentence shall be reduced to an amount equal to the Purchase Price, as it may be adjusted under the terms of this Agreement. The terms "net insurance proceeds" and "net condemnation awards" means the gross amount of insurance proceeds and condemnation awards paid to Seller less Seller's "Protective Costs". The term "Protective Costs" means costs actually and reasonably incurred or expended by or for the account of Seller for compliance with laws, protective restoration or emergency repairs but only to the extent that Seller has not been separately reimbursed for such costs by the insurance carrier or condemning authority.

12.3. If, prior to the Closing, there shall occur damage to the Property caused by fire or other casualty which would cost less than $1,000,000.00 to repair, as reasonably determined by an engineer selected by Seller which is reasonably satisfactory to Purchaser in the exercise of its reasonable discretion then, neither party shall have the right to terminate its obligations under this Agreement by reason thereof, but Seller shall assign to Purchaser at the Closing, by written instrument in form and substance reasonably satisfactory to Purchaser, all of Seller's interest in any insurance proceeds or condemnation awards which may be payable to Seller on account of any such fire, casualty or condemnation, or shall deliver to Purchaser any such proceeds or awards actually theretofore paid, and Seller shall pay all deductibles and self-insured retention amounts relating thereto. The proceeds of rent interruption insurance, if any, shall on the Closing Date be appropriately apportioned between Purchaser and Seller.

12.4. Nothing contained in this Article 12 shall be construed to impose upon Seller to repair any damage or destruction caused by fire or other casualty or condemnation. Seller shall have the right to repair or restore any portion of the Property following a casualty on condition that the cost of such repairs does not exceed $570,000 (as determined by Seller in its good faith discretion). Seller shall obtain Purchaser's prior written approval (not to be unreasonably withheld, conditioned or delayed) for any repairs or restoration that exceed the amount in the previous sentence.

12.5. If Purchaser does not elect to terminate this Agreement in accordance with Section 12.2(a) or (b) above, Seller shall have the exclusive right to negotiate, compromise or contest the obtaining of any insurance proceeds and/or any condemnation awards for the Property.

13. Brokerage.

(a) Seller represents and warrants to Purchaser that Seller has not dealt with or engaged any broker, consultant, finder or person with respect to the transaction contemplated hereby. Seller shall indemnify, defend and hold Purchaser harmless from and against all claims, losses, liabilities and expenses (including, without limitation, reasonable attorneys' fees and disbursements) caused by or arising out of (i) a breach of any of the representations and warranties set forth in the previous sentence; and (ii) any claim for any commission or other compensation of any person or entity claiming to have dealt with, on behalf of, through or under Seller.

(b) Purchaser represents and warrants to Seller that Purchaser has not dealt with or engaged any broker, consultant, finder or person that brought the Property to the attention of Purchaser or otherwise communicated with Purchaser with respect to the transaction contemplated hereby. Purchaser shall indemnify, defend and hold Seller harmless from and against all claims, losses, liabilities and expenses (including, without limitation, reasonable attorneys' fees and disbursements) caused by or arising out of (i) a breach of any of the aforesaid representations and warranties; and (ii) any claim for any commission or other compensation of any person or entity claiming to have dealt with, on behalf of, through or under Purchaser. The provisions of this Article 13 shall survive the Closing or other termination of this Agreement.

14. Closings Costs; Fees and Disbursements of Counsel, etc.

At the Closing, Seller shall pay the New York State Real Estate Transfer Tax imposed pursuant to Article 31 and Section 1402 of the New York Tax Law (the "State Transfer Tax"), upon or payable in connection with the transfer of the Property. Except as otherwise expressly provided to the contrary in this Agreement, Purchaser shall pay all title charges and survey costs, including the premium on Purchaser's Title Policy. Each of the parties hereto shall bear and pay the fees and disbursements of its own counsel, accountants and other advisors in connection with the negotiation and preparation of this Agreement and the Closing. The parties shall share the cost equally of the Title Company in connection with any escrow closing. The provisions of this Article 14 shall survive the Closing.

15. Notices.

Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals or other communications (for the purposes of this Article 15, collectively referred to as "Notices") required or permitted to be given hereunder or which are given with respect to this Agreement, in order to constitute effective notice to the other party, shall be in writing and shall be deemed to have been given when (a) personally delivered with signed delivery receipt obtained, (b) when transmitted by email, if followed by delivery of, pursuant to one of the other means set forth in this Article 15 before the end of the first business day thereafter, printed confirmation of the successful transmission to the appropriate email address listed below as obtained by the sender from the sender's email account, (c) upon receipt, when sent by prepaid reputable overnight courier or (d) three (3) days after the date so mailed if sent postage prepaid by registered or certified mail, return receipt requested, in each case addressed as follows:

If to Seller, to:

FAE Holdings 411519R, LLC
355 South Technology Drive
Central Islip, NY 11722
Attention: Emanuel Lakios, CEO
Telephone No: (631) 981-7081
Email Address: elakios@cvdequipment.com

with a copy to:

Ruskin Moscou Faltischek, P.C.
East Tower, 15th Floor
1425 RXR Plaza
Uniondale, New York 11556-1425
Attention: Benjamin Weinstock, Esq.
Telephone No: (516) 663-6555
Email Address: bweinstock@rmfpc.com

If to Purchaser, to:

355 S Technology Drive Owner LLC
c/o BEB Capital LLC
26 Harbor Park Dr.
Port Washington, NY 11050
Attn: Keyvan Ghaytanchi
Email Address: kghaytanchi@bebcapital.com

with a copy to:

c/o Rockpoint Group, L.L.C.
Woodlawn Hall at Old Parkland
3953 Maple Avenue, Suite 300
Dallas, Texas 75219
Attention: Ron J. Hoyl
Email: ron@rockpoint.com

and to:

c/o Rockpoint Group, L.L.C.
500 Boylston Street, 21st Floor
Boston, MA 02116
Attention: Bennett Varney
Email: bvarney@rockpoint.com
Attention: Dan Domb
Email: dan@rockpoint.com
Attention: Joseph Goldman
Email: jg@rockpoint.com

and to: Vinson & Elkins L.L.P.
1114 Avenue of the Americas, 32nd Floor
New York, New York 10036
Attn: Wallace L. Schwartz, Esq.
Email: wschwartz@velaw.com

If to Escrow Agent, to: National Land Tenure Company LLC
950 Franklin Avenue, Second Floor
Garden City, New York 11530
Attn: Jessica Bellacicco
Email: jbellacicco@nltco.com

Personal delivery to a party or to any officer, partner, member, agent or employee of such party at the foregoing addresses shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Notices may be sent by the attorneys for the respective parties and each such notice so served shall have the same force and effect as if sent by such party. Notices shall be valid only if served in the manner provided in this Article 15.

16. Survival; Governing Law; Waiver of Trial by Jury.

16.1 Except as otherwise expressly set forth in this Agreement, the provisions of this Agreement shall not survive the Closing.

16.2 This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with, the laws of the State of New York applicable to transactions made and to be performed in the State of New York, without giving effect to any part of such law that would result in the selection or application of the law of any other jurisdiction. The parties hereby irrevocably submit to the *in personam* jurisdiction of the Supreme Court of the State of New York in Suffolk County and the United States District Court for the Eastern District of New York, and any appellate courts related thereto, with respect to any action or proceeding between the parties.

16.3 SELLER AND PURCHASER HEREBY EXPRESSLY WAIVE TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, OR CONNECTED WITH, OR RELATING TO, THIS AGREEMENT OR THE RELATIONSHIP CREATED HEREBY. WITH RESPECT TO ANY MATTER FOR WHICH A JURY TRIAL CANNOT BE WAIVED, THE PARTIES AGREE NOT TO ASSERT ANY SUCH CLAIM AS A COUNTERCLAIM IN, NOR MOVE TO CONSOLIDATE SUCH CLAIM WITH, ANY ACTION OR PROCEEDING IN WHICH A JURY TRIAL IS WAIVED.

17. Counterparts; Captions.

This Agreement may be executed in counterparts, each of which shall be deemed an original. Signatures on copies of this Agreement transmitted electronically shall be deemed originals for all purposes. Facsimile and electronic signatures of the parties, and signatures transmitted in .pdf format, shall be deemed to be original signatures of the parties. The captions are for convenience of reference only and shall not affect the construction to be given any of the provisions hereof.

18. Entire Agreement; No Third Party Beneficiaries.

This Agreement (including all exhibits annexed hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings, if any, with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person or entity other than the parties hereto. The provisions of this Article 18 shall survive the Closing.

19. Waivers; Extensions.

No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

20. No Recording.

Except in the case of a specific performance action, the parties hereto agree that neither this Agreement nor any memorandum or notice hereof shall be recorded. Any recordation or attempted recordation by Purchaser shall be void and shall constitute a material default by Purchaser.

21. Assignment.

Purchaser shall neither assign its rights nor delegate its obligations hereunder directly or indirectly, without obtaining Seller's prior written consent, which consent may be granted or withheld in Seller's sole discretion. Notwithstanding the foregoing, Purchaser shall have the right to assign all of its rights and delegate all of its obligations hereunder to any partnership, joint venture or limited liability company that is an affiliate of Purchaser or which is controlled by one or more principals or affiliates of Purchaser (which control may include day-to-day management functions), or any subsidiary of the foregoing, provided the original Purchaser shall remain fully liable hereunder. In connection with any assignment permitted or consented to hereunder, such assignee shall assume in writing all of the Purchaser's obligations under this Agreement in form and substance reasonably satisfactory to Seller, provided that Purchaser originally named herein shall not be relieved from its obligations under this Agreement. Any other purported or attempted assignment or delegation without obtaining Seller's prior written consent or not otherwise permitted hereunder shall be void and of no effect. No consent given by Seller to any transfer or assignment of Purchaser's rights or obligations hereunder shall be construed as a consent to any other transfer or assignment of Purchaser's rights or obligations hereunder. No consent given by Seller to any transfer or assignment of Purchaser's rights or obligations hereunder shall be construed as a consent to any other transfer or assignment of Purchaser's rights or obligations hereunder. Purchaser shall not resell the Property or any part thereof through a "double escrow" or other similar procedure without Seller's prior written consent, which consent may be granted or withheld in Seller's sole discretion. No transfer or assignment in violation of the provisions hereof shall be valid or enforceable.

22. Pronouns; Joint and Several Liability.

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the parties may require. If Purchaser consists of two or more parties, the liability of such parties shall be joint and several.

23. Successors and Assigns:

This Agreement shall bind and inure to the benefit of Seller, Purchaser and their respective permitted successors and assigns.

24. Escrow.

24.1. Escrow Agent shall hold and disburse the Downpayment in accordance with the following provisions:

24.1.1. The Downpayment shall be held in an interest bearing account as follows:

Citibank
502 Old Country Road
Garden City, New York 11530
ABA No. 021000089

If funds are to be deposited in an interest bearing account (accruing interest at the current federal funds rate) Purchaser shall submit a form W-9 with its Federal Tax ID.

24.1.2. If the Closing occurs, then Escrow Agent shall deliver the Downpayment to Seller.

24.1.3. Purchaser acknowledges that the Federal Deposit Insurance Corporation (FDIC) coverages applies only to a maximum amount of $250,000.00 for each individual depositor. Purchaser understands that Escrow Agent assumes no responsibility for, nor will Purchaser hold same liable for, any loss occurring which arises from the fact that the amount of the above account may cause the aggregate amount of any individual depositor's account to exceed $250,000.00 and that the excess amount is not insured by the Federal Deposit Insurance Corporation.

24.2. All instructions to Escrow Agent shall be given in writing (the "Instructions"). If the Instructions have been signed by both Purchaser and Seller, then Escrow Agent shall carry out said Instructions immediately. If the Instructions have been signed by only Purchaser or Seller, then Escrow Agent shall immediately send a copy of said Instructions to the other party by email and by overnight delivery. If the other party has not filed written objections to the proposed action set forth in said Instructions within five (5) business days after its receipt of said Instructions, then Escrow Agent shall act in accordance with said Instructions. If Escrow Agent receives an objection to its acting in accordance with said Instructions within the said five (5) day period, then it shall not proceed until (i) said objections are withdrawn, (ii) it receives instructions signed by both parties, or (iii) until directed by a Court of competent jurisdiction.

24.3. Any notice to Escrow Agent shall be sufficient only if received by Escrow Agent within the applicable time period set forth herein. All mailings and notices from Escrow Agent to Seller and/or Purchaser, or from Seller and/or Purchaser to Escrow Agent, provided for in this Article 24 shall be addressed to the party to receive such notice at its notice address set forth in Section 15 above (with copies to be similarly sent to the additional persons therein indicated).

24.4. In the event joint written Instructions are not received by Escrow Agent with respect to the disposition of all or any part of the Downpayment within thirty (30) days after receipt by it of conflicting or unilateral Instruction, or, in any event, thirty (30) days following the date fixed in the Agreement for the Closing of title or other disposition of all or any part of the Downpayment, Escrow Agent may, if it so elects, commence an action in the nature of an interpleader of declaratory judgment suit in a Court of competent jurisdiction, to determine the title to, or disposition of, the Downpayment. Purchaser and Seller shall be jointly and severally liable to Escrow Agent for its reasonable attorneys' fees, costs and expenses incurred in connection with the commencement and prosecution of such a suit and any appeal therefrom.

24.5. Escrow Agent shall not be liable for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection with its duties as Escrow Agent. Escrow Agent is authorized to rely upon any document reasonably believed by it to be signed by the parties hereto. Purchaser agrees to indemnify and hold harmless Escrow Agent from and against any loss, cost or damage incurred by it (including, without limitation, reasonable attorneys' fees, costs and expenses) in connection with this Agreement, or arising from its duties as Escrow Agent.

24.6. Purchaser and Seller hereby severally agree to indemnify and hold harmless Escrow Agent from any misrepresentation made to the Escrow Agent by such indemnifying party.

24.7. Escrow Agent may at any time resign hereunder by giving notice of its resignation to the parties at least fifteen (15) days prior to the date specified for such resignation to take effect and, upon the effective date of such resignation, the Downpayment shall be delivered by Escrow Agent to First American Title Insurance Company ("FATICO") as the successor Escrow Agent, and upon FATICO's written acceptance of its duties as successor Escrow Agent, all duties and obligations of Escrow Agent named herein accruing from and after such transfer shall cease and terminate.

25. Confidentiality.

25.1. Seller and Purchaser covenant and agree not to communicate the terms or any aspect of this Agreement and the transactions contemplated hereby to any person or entity and to hold, in the strictest confidence, the content of any and all information in respect of the Property which is supplied by Seller to Purchaser or by Purchaser to Seller, without the express written consent of the other party; provided, however, that either party may, without consent, disclose the terms hereof and the transactions contemplated hereby (a) to its respective advisors, consultants, attorneys, accountants, partners, investors, prospective partners, prospective investors, insurance agents, prospective tenants, lenders or prospective lenders (the "Transaction Parties") without the express written consent of the other party, so long as any such Transaction Parties to whom disclosure is made shall also agree to keep all such information confidential in accordance with the terms hereof and (b) if disclosure is required by law or by regulatory or judicial process or pursuant to any regulations promulgated by the New York Stock Exchange or other public exchange for the sale and purchase of securities, provided that in such event Seller or Purchaser, as applicable, shall notify the other party in writing of such required disclosure, shall exercise all commercially reasonable efforts to preserve the confidentiality of the confidential documents or information, as the case may be, including, without limitation, reasonably cooperating with the other party to obtain an appropriate order or other reliable assurance that confidential treatment will be accorded such confidential documents or information, as the case may be, by such tribunal and shall disclose only that portion of the confidential documents or information which it is legally required to disclose. If this Agreement is terminated, such confidentiality shall be maintained and Seller, Purchaser and the Transaction Parties will destroy or deliver to Seller or Purchaser, as applicable, upon request, all documents and other materials, and all copies thereof, obtained thereby in connection with this Agreement that are subject to such confidence, with any such destruction confirmed by Seller or Purchaser, as applicable, in writing. Notwithstanding the foregoing, (i) each party may retain such confidential information to comply with applicable law or regulation, internal compliance policies, or professional standards, and (ii) the retaining party shall be permitted to retain copies of, or any computer records or files containing, confidential information that has been created by such party's electronic mail and automatic electronic archiving and back-up procedures, to the extent created and retained in a manner consistent with such party's standard archiving and back-up procedures, but not for any other use or purpose The foregoing confidentiality obligations shall not apply to the extent that any such information is a matter of public record or is provided in other sources readily available to the real estate industry other than as a result of disclosure by Seller or Purchaser, as applicable, or the Transaction Parties. Seller and Purchaser each hereby indemnifies the other against any and all claims, losses, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and disbursements) arising in connection with the indemnifying party's obligations under this Article 25. The provisions of this Article 25 shall survive the Closing or the earlier termination of this Agreement for a period of one year.

26. Further Assurances.

The parties each agree to do such other and further acts and things, and to execute and deliver such instruments and documents (not creating any obligations additional to those otherwise imposed by this Agreement) as either may reasonably request from time to time, whether at or after the Closing, in furtherance of the purposes of this Agreement. The provisions of this Article 26 shall survive the Closing.

27. Miscellaneous.

27.1. Where this Agreement by its terms requires the payment of money or the performance of a condition or an act, or the giving of notice, on a day that is not a business day (as defined below), such payment may be made or condition or act performed, or notice given, on the next business day, with the same force and effect as if made or performed in accordance with the terms of this Agreement. Unless otherwise expressly provided in this Agreement, any reference herein to time periods of fewer than seven (7) days will in the computation thereof exclude days that are not business days. Wherever used in this Agreement, the term "business day" means Monday through Friday, excluding holidays when New York State chartered, or federally chartered banks in New York, are permitted or required by law to close.

27.2. Purchaser agrees that notwithstanding any other provision of this Agreement, Purchaser shall look solely to the estate and property of Seller in the Property for the satisfaction of any of Purchaser's remedies in the event of any default or breach by Seller with respect to any of the terms, covenants and conditions of this Agreement, and no other property or assets of Seller or any agent, member, manager, shareholder, director, officer, trustee, employee, partner, principal or beneficiary thereof, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Purchaser's remedies, if any.

27.3. Whenever the terms "include" or "including" are used in this Agreement, such terms shall be interpreted and shall read as "include without limitation" or "including without limitation" unless the context expressly requires an interpretation and reading limited to a specific reference or example.

27.4. Seller and Purchaser acknowledge and agree that this Agreement has been reviewed and negotiated by both parties and their respective counsel, and that, in any dispute over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no presumption whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof. If any words or phrases in this Agreement (or in any prior draft thereof) shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included herein and no implication or inference shall be drawn from the fact that such words or phrases were so stricken out or otherwise eliminated.

27.5. Neither the preparation and transmittal of this Agreement, nor any negotiation or modification of this Agreement with a prospective Purchaser, shall constitute an offer to sell and shall not be binding upon or enforceable against Seller unless and until the Agreement has been duly executed by Seller and a fully executed original counterpart has been delivered to Purchaser or Purchaser's attorney.

27.6. All riders, exhibits or schedules and other documents annexed to this Agreement or referenced in this Agreement are incorporated in this Agreement and made a part thereof as though set forth at length in this Agreement. If the provisions of any exhibit or schedule to this Agreement are inconsistent with the provisions of this Agreement, the provisions of such exhibit or schedule shall prevail.

27.7. If any provision of this Agreement is invalid or unenforceable as against any person or under certain circumstances, the remainder of this Agreement, and the applicability of such provision to other persons or circumstances, shall not be affected thereby. Each provision of this Agreement, except as otherwise herein or therein provided, shall be valid and enforced to the fullest extent permitted by law.

27.8. Any failure by either party to insist upon the strict performance by the other of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and each party, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the other party of any and all of the provisions of this Agreement to be performed by such party.

28. IDA

28.1. The parties acknowledge and agree that Seller heretofore entered into a transaction (the "IDA Transaction") with the Town of Islip Industrial Development Agency (the "IDA") pursuant to which Seller receives certain real estate tax exemptions for the benefit of CVD Equipment Corp. pursuant to a Payment in Lieu of Taxes ("PILOT") program. The parties further acknowledge and agree that Purchaser and Seller shall apply to the IDA for the continuation of Seller's IDA benefits and PILOT, as contained in the lease-leaseback or similar documents evidencing the IDA Transaction (the "IDA Documents"), which continuation is hereinafter referred to as the "IDA Approval".

28.2. The parties agree that the IDA Approval shall be a condition precedent to Seller's obligation to Close title to the Property in accordance with this Agreement. If Seller fails to obtain the IDA Approval, Seller may terminate this Agreement by Notice to Purchaser whereupon this Agreement shall terminate and shall be of no further force or effect, except for those provisions that expressly survive the termination of this Agreement, and the Escrow Agent shall return the Downpayment to Purchaser in accordance with Article 24 hereof.

28.3. Seller shall submit an application (on the IDA's current application form) and such other submissions as may be required by the IDA for the IDA Approval. Purchaser agrees to cooperate with Seller's efforts to obtain the IDA Approval, and in connection

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therewith, Purchaser shall join in Seller's application or submit a separate application and make such other submissions as may be required by the IDA for the IDA Approval.

28.4. The parties shall make diligent and commercially reasonable efforts to obtain the IDA Approval from the IDA as soon as reasonably possible after the Effective Date, including, without limitation, the attendance by the parties at such meetings and/or phone interviews as may be required by the IDA. Seller represents that it and CVD Equipment are in compliance with all representations, covenants and obligations contained in the IDA Documents, and that neither party has received any notice of a default or event of default under the IDA Documents.

28.5. If Seller obtains the IDA Approval, Purchaser shall cooperate with Seller in closing the IDA Approval transaction and execute any documents, instruments and/or agreements reasonably required by the IDA in connection with the assignment by Seller of its interest in the IDA Documents, and assumption by Purchaser thereof. All fees and expenses of obtaining and documenting the IDA Approval, including that of the IDA's outside counsel, shall be payable by Seller.

28.6. If Seller does not obtain an IDA Approval, Seller may elect to Close title without the IDA Approval, in which case Seller shall cause the existing IDA documents to be terminated as of Closing and shall pay any recapture and/or processing charges assessed by the IDA.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SELLER:

FAE Holdings 411519R, LLC

By: /s/ Emmanuel Lakios
Name: Emanuel Lakios
Title: President

PURCHASER:

355 S Technology Drive Owner LLC

By: /s/ Ron J. Hoyl
Name: Ron J. Hoyl
Title: Vice President

Exhibit 10.2

LEASE AGREEMENT

between

355 S Technology Drive Owner LLC
(Landlord)

and

CVD Equipment Corporation
(Tenant)

Dated as of _____, 2022

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "***Lease***") is made and entered into as of _____ 2022, by and between 355 S Technology Drive Owner LLC, a Delaware limited liability company, having an office at 26 Harbor Park Dr., Port Washington, NY 11050 ("***Landlord***"), and CVD Equipment Corporation, a New York corporation having an office at 355 S. Technology Dr. Central Islip, NY 11722 ("***Tenant***").

ARTICLE I

Definitions

Section 1.1 Definitions. As used in this Lease the following words and phrases shall have the meanings indicated.

"***Additional Rent***" means all amounts payable by Tenant under this Lease, except Annual Fixed Rent. Unless otherwise expressly provided in this Lease, Tenant shall pay Landlord any Additional Rent within thirty (30) days after receipt of Landlord's invoice.

"***Affiliate***", with respect to any Person, means any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"***Alterations***" any changes, alterations, installations, improvements, additions or physical changes to the Leased Premises.

"***Annual Fixed Rent***" means the amount payable by Tenant for each Lease Year (or partial Lease Year) pursuant to Section 4.1(a).

"***Building***" means the buildings and other improvements on the Land.

"***Building Systems***" means fixtures, installations and movable equipment that are part of a system in or servicing the Building that provides, gas, sanitary, storm water, plumbing, heating, cooling, ventilation, power, lighting, vertical transportation, plumbing, security, life-safety and core wiring installed for communications, internet and similar services.

"***Business Day***" means any day except Saturday, Sunday, or a day on which national banks in the State of New York are authorized or permitted by law to be closed for the conduct of commercial banking business.

"***Condemnation Restoration***" has the meaning provided in Section 12.2(b).

"***Construction Work***" means any construction work performed under this Lease in connection with the ownership, use, maintenance or operation of the Leased Premises, including repairs, Alterations, Restoration and demolition.

"***Default***" means any event which, with the giving of Notice or the lapse of time, or both, would constitute an Event of Default.

"***Default Interest Rate***" means a fluctuating rate per annum equal to the sum of the Prime Rate, as the Prime Rate may change from time to time, and six percent (6%) per annum with respect to the applicable payment.

"***Environmental Laws***" means all present and future federal, state and local (i) laws, (ii) statutes, (iii) ordinances, (iv) regulations, (v) codes, (vi) rules, (vii) directives, (viii) orders, (ix) decrees, (x) permits, licenses, approvals, authorizations, covenants, deed restrictions, treaties and conventions applicable to the Leased Premises, and (xi) rules of common law now or hereafter in effect, and in each case as amended, and any judicial or administrative judgment, opinion or interpretation thereof, relating to the regulation or protection of human health, safety, natural resources or the environment (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation), including laws and regulations (and all other items recited above) applicable to the Leased Premises relating to the use, treatment, storage, management, handling, manufacture, generation, processing, recycling, distribution, transport, Release or threatened Release of or exposure to any Hazardous Material. Environmental Laws include but are not limited to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; the Resource Conservation and Recovery Act; the Toxic Substances Control Act; the Clean Air Act; the Clean Water Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Oil Pollution Act of 1990; the Hazardous Materials Transportation Act; the Emergency Planning and Community Right-to-Know Act; the National Environmental Policy Act; and the Safe Drinking Water Act; the Navigation Law of the State of New York, and the Environmental Conservation Law of the State of New York, each as amended and their state and local counterparts or equivalents.

"***Event of Default***" means any of the events set forth in Section 15.1 as an Event of Default.

"***Expiration of the Term***" means the earlier of (i) the Fixed Expiration Date, or (ii) the date earlier than the Fixed Expiration Date on which this Lease is terminated pursuant to its terms.

"***Fee Mortgage***" means any Mortgage: (a) that encumbers all or part of the Fee Estate; and (b) a copy of which (recorded or unrecorded) is promptly after execution delivered to Tenant.

"***Fee Mortgagee***" means the holder of a Fee Mortgage.

"***Fixed Expiration Date***" means [insert date that is last day of the month in which the 10th anniversary of the Lease Commencement Date occurs].

"***Governmental Authority***" means any federal, state, county, municipal, foreign, international, regional or other governmental or regulatory authority, agency, department, board, body, instrumentality, commission, arbiter acting pursuant to any express provision of federal or state law authorizing such arbitration or dispute resolution, court or any political subdivision of any of the foregoing now or hereafter created.

"***Hazardous Substance***" means, collectively, (a) any petroleum or petroleum product, explosive, radioactive material, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls and lead; and (b) any substance, material, product, derivative, compound, mixture, mineral, chemical or wastes, in each case whether naturally occurring, human-made or the by-product of any process, (i) that is now or hereafter becomes defined or included within the definition of a "hazardous substance," "hazardous waste," "hazardous material," "toxic chemical," "toxic substance," "hazardous chemical," "extremely hazardous substance," "pollutant," "contaminant," or any other words of similar meaning under any Environmental Laws, (ii) exposure to which or the presence, use, generation, treatment, Release, transport or storage of which is now or hereafter prohibited, limited, restricted or regulated under any Environmental Laws, or (iii) that could support the assertion of any Environmental Claim.

"***Improvements***" means (i) the Existing Building, (ii) all Buildings, structures and other appurtenances of every kind and description constructed in the future, on the Land (including subsurface structures and foundations), and (iii) all additions, Alterations, Restorations, repairs and replacements of any of the foregoing; provided, however, that Improvements shall not include any trade fixtures, movable or removable equipment, or personalty belonging to or leased from third parties by Tenant or any Subtenant, unless such trade fixtures, movable or removable equipment are Building Systems.

"***Insurance Premiums***" means the premiums payable by Tenant for the policies of insurance required to be obtained and maintained by Tenant pursuant to Article VI.

"***Insurance Requirements***" means the usual and customary provisions and requirements of all policies of property damage insurance and liability insurance from time to time maintained by Tenant pursuant to Article VI; and all rules and regulations promulgated by any Board of Fire Insurance Underwriters or fire insurance rating organization which are applicable from time to time to the Improvements.

"***Land***" means the parcels of real property described in Exhibit A, exclusive of the Improvements, including all easements, appurtenances and other rights pertaining to the parcel constituting the Land.

"***Land Records***" means the land records of Suffolk County.

"***Landlord***" means the landlord named in the first paragraph of this Lease and any subsequent owner, from time to time, of fee simple title in and to the Leased Premises.

"***Lease***" means this Lease Agreement, as modified, amended or restated from time to time, and all Exhibits thereto.

"***Lease Commencement Date***" means the Effective Date.

"***Lease Year***" means, for the first Lease Year, the period commencing on the Lease Commencement Date and ending on December 31 of the year in which the Lease Commencement Date occurs. Each subsequent Lease Year shall be a calendar year that begins on January 1, and ends on December 31 of such year, except that the final Lease Year shall begin on January 1 and end on the Fixed Expiration Date.

"***Leased Premises***" shall have the meaning provided in Section 2.1.

"***Legal Requirements***" means all laws, statutes, ordinances, orders, rules, regulations and requirements, of all Governmental Authorities, whether now or hereafter in force, ordinary and extraordinary, foreseen as well as unforeseen, applicable to the manner of use, maintenance, repair or condition of the Leased Premises, or any part thereof, as amended from time to time, all applicable Environmental Laws, and all other covenants, conditions and restrictions of record affecting the use and occupancy of the Leased Premises.

"***Lien***" means any security interest, Mortgage, pledge, lien, claim on property, charge or encumbrance (including any conditional sale or other title retention agreement), and the filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction (other than precautionary filings under Section 9-408 of the Uniform Commercial Code), including liens in favor or persons supplying, or claiming to have supplied, labor or materials to the Leased Premises.

"***Mortgage***" means any mortgage, deed of trust or other security instrument of record creating an interest in or affecting title to the fee simple title in and to the Leased Premises, or any part thereof, and any and all renewals, modifications, consolidations or extensions of any such instrument.

"***Person***" means a natural person, an estate, a trust, a partnership, a limited liability company, a corporation, any other form of business or legal association or entity and a Governmental Authority.

"***Prime Rate***" means the prime rate of interest charged by U.S. money center commercial banks as published in *The Wall Street Journal*. If *The Wall Street Journal* ceases to publish the prime rate of interest charged by U.S. money center commercial banks, Landlord shall have the right to substitute the prime rate of interest published by Citibank, N.A. or any successor thereto, or Wells Fargo Bank N.A. or any successor thereto, and if both Citibank N.A. and Wells Fargo Bank N.A., and their respective successors cease to publish a prime rate, then the prime rate shall be the average prime rate of interest published by the two (2) largest commercial banks in the United States.

"***Property Loss***" means the Improvements are damaged or destroyed in whole or in part, or the Improvements are rendered unusable in whole or in part by fire or other casualty, irrespective of whether ordinary or extraordinary, foreseen or unforeseen, natural or human-made.

"***Real Estate Taxes***" means all *ad-valorem* taxes, assessments and other charges, if any, general, special or otherwise, personal property taxes, use and occupancy taxes, privilege taxes, payment-in-lieu-of-taxes agreements, business and occupation taxes, gross sales tax, license and permit fees, water and sewer charges, charges for public utilities, excises, governmental levies, and obligations for any and all other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, including, but not limited to, assessments for sidewalks, streets, sewers, water, or any other public improvements, and any other improvements or benefits which, during the Term hereof, are made, assessed, levied, or imposed upon, or become due and payable in connection with, or a lien upon the Leased Premises or which Landlord shall be obligated to pay because of or in connection with the occupancy, ownership, development, marketing and/or operation of the Leased Premises, or any part thereof, any Improvements, upon this Lease, upon the leasehold estate created hereby, or upon the income of Tenant whether or not now customary or within the contemplation of Landlord and Tenant, and regardless of whether the same will be extraordinary or ordinary, general or special, unforeseen or foreseen, including all assessments for schools, public betterments, and general or local improvements (including special assessments for business improvements or imposed by any special taxing district), levied or assessed upon or with respect to the ownership of and/or all other taxable interests in the Leased Premises imposed by any public or quasi-public authority having jurisdiction. Real Estate Taxes shall not include any federal, municipal or state estate, inheritance, income, succession, transfer or gift taxes of Landlord or any corporate franchise tax or corporate license fees imposed on Landlord or any of its Affiliates. A tax bill or true copy thereof, together with any explanatory or detailed statement of the area or property covered thereby, submitted by Landlord to Tenant shall be conclusive evidence of the amount of taxes assessed or levied, as well as of the items taxed. If any Real Estate Taxes may be paid in annual installments without penalty or charge, only the amount paid or payable in any real estate tax fiscal year shall be included as Real Estate Taxes for that real estate tax fiscal year. If at any time during the Term, the present method of taxation or assessment is changed such that there is substituted for the whole or any part of the Real Estate Taxes now or hereafter levied, assessed and/or imposed any levy or other tax or assessment upon Landlord, the Leased Premises, or the Rent or other income received by Landlord, then the term "Real Estate Taxes" also will mean and include such levy or other tax or assessment. Notwithstanding any provision hereof to the contrary, Tenant shall be solely responsible for all income, profits, earnings, inheritance, devolution, franchise, occupancy, use, corporate, gross or other receipts, excise, capital levy, or estate taxes, or any other taxes with similar effect, which by statute or operation of law are attributable to or chargeable to Tenant or on any other Person having any interest in the Leased Premises by, through or under Tenant.

"***Release***" means the release, deposit, disposal or leakage of any Hazardous Substance at, into, upon or under any land, water or air, or otherwise into the environment, including by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouring, escaping, emptying, placement and the like.

"***Rent***" means the Annual Fixed Rent and the Additional Rent.

"***Replacement Value***" means the replacement value of the Improvements.

"***Restoration***" means the repair and rebuilding of the Improvements following a Property Loss or condemnation.

"***Restore***" (whether or not capitalized) has the meaning provided in Section 11.2.

"***Structural Alteration***" means an Alteration that involves structural changes to the foundation, roof, core and shell, and/or supporting columns of the Improvements.

"***Sublease***" means any lease, sublease or occupancy agreement of all or any part of Leased Premises other than this Lease.

"***Subtenant***" means a tenant or other occupant of the Leased Premises pursuant to a Sublease.

"***Taking***" or "***Taken***" means a taking by any Governmental Authority of all or any part of the Leased Premises (whether permanently or temporarily), or any interest therein or right appurtenant or accruing thereto, by condemnation or eminent domain or by action or proceedings, or agreement among Landlord, Tenant and those authorized to exercise this right in lieu thereof, for any public or quasi-public purpose.

"***Tenant***" means Tenant named in the first paragraph of this Lease and any successor or assignee.

"***Term***" means the period of time from the Lease Commencement Date through the Expiration of the Term.

"***Unavoidable Delay***" means delays caused by strikes, acts of God, lockouts, labor difficulties, riots, explosions, sabotage, accidents, pandemics, epidemics, terrorist attacks, shortages or inability to obtain labor or materials, Legal Requirements, governmental restrictions, enemy action, civil commotion, Property Loss, a Taking or other causes, whether similar or dissimilar, beyond the reasonable control of Tenant. In no event shall an Unavoidable Delay include Tenant's financial hardship, or excuse Tenant's obligation to pay any Rent or other amounts coming due hereunder.

ARTICLE II

Leased Premises

Section 2.1 Lease Grant. Landlord hereby agrees to lease to Tenant, and Tenant hereby agrees to lease from Landlord, the Land and Improvements, together with all right, title and interest, if any, of Landlord in and to any land lying in the bed of any street, avenue or alley adjoining the Land to the center line thereof, subject to the matters affecting the Leased Premises on the Effective Date, including the matters set forth in Exhibit A-1 attached hereto (the "***Permitted Exceptions***"). The Land, together with (a) the easements, appurtenances and estate, (b) the rights, if any, in and to adjoining streets, avenues and alleys, and (c) the Improvements, constitute and are referred to in this Lease as the "***Leased Premises***."

Section 2.2 "***As Is***". Tenant has examined and investigated to Tenant's satisfaction the physical condition of the Leased Premises prior to the execution of this Lease. Tenant is executing this Lease based upon its own investigations. Tenant accepts the Leased Premises "as is" and "where is," on the Effective Date and as shall exist on the Lease Commencement Date. Except as provided in this Lease, neither Landlord nor anyone acting for or on behalf of Landlord has made any representation, warranty, statement or promise to Tenant concerning the Leased Premises, the quality, value, physical aspects or condition thereof, any dimensions or specifications of the Leased Premises for any particular use, the current or projected income or expenses of the Leased Premises, the presence of Hazardous Substances, or any other matter with respect to the Leased Premises. Upon entering into this Lease, Tenant has not relied upon any statement, representation or warranty of Landlord or anyone acting for or on behalf of Landlord other than as expressly contained in this Lease and Tenant does hereby waive and Landlord does hereby disclaim all representations or warranties of any kind or type with respect to the Leased Premises, whether expressed or implied, except for such representations or warranties as are specifically set forth in this Lease. Tenant hereby unconditionally waives, releases, acquits, and forever discharges Landlord and Landlord's heirs, successors, assigns, employees, attorneys, consultants, and any other person acting on behalf of Landlord, (all of the foregoing are collectively referred to as the "Landlord Parties") from all loss, liability, cost and expenses, including without limitation, attorney's fees and amounts paid in settlement, arising out of or in connection with any and all claims, cross-claims, counterclaims, actions, causes of action, demands, rights, damages, costs, expenses, or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Tenant now has or may have or which may arise in the future on account of or in any way arising out of or in connection with any chemical, contaminant, substance, material, waste, petroleum product, mold mycotoxin, fungi or other environmental conditions or Hazardous Substances on, in, under, from, or affecting or otherwise resulting from operations or activities on the Leased Premises, or any Environmental Law accruing at any time. This Section 2.2 shall survive the termination of this Lease. Tenant acknowledges and agrees that the waivers, releases, and other provisions contained in this Section 2.2 are a material factor in Landlord's agreement to lease the Leased Premises to Tenant and to enter into this Lease, and that Landlord is unwilling to lease the Leased Premises to Tenant and enter into this Lease unless Landlord is released as expressly set forth above. Tenant has fully reviewed the disclaimers and waivers set forth in this Lease and understands and accepts the significance and effect thereof.

ARTICLE III

Term

Section 3.1 Grant of Term. Tenant shall have and hold the Leased Premises unto itself and its successors and assigns for the Term.

Section 3.2 Extension Option. Tenant shall have the right to two (2) successive extensions of the Term of the Lease for periods of five (5) years each in accordance with Exhibit C.

ARTICLE IV

Rent

Section 4.1 Annual Fixed Rent.

(a) ***Amount***. The Annual Fixed Rent shall be as set forth in Exhibit B annexed hereto and made a part hereof.

(b) ***Manner of Payment***. Tenant shall pay the Annual Fixed Rent in equal monthly installments in advance beginning on the Lease Commencement Date and thereafter on the first day of each month (or part of a month) during the Term. If the Lease Commencement Date is not the first day of a month, Annual Fixed Rent for the month in which the Lease Commencement Date occurs shall be pro-rated on the basis of the number of days in the month on and after the Lease Commencement Date. If the last day of the Term is not the last day of a month, Annual Fixed Rent for the month in which the last day of the Term occurs shall be pro-rated on the basis of the number of days in the last month during which this Lease is in effect.

(c) ***Form and Place of Payment***. The Annual Fixed Rent shall be paid promptly when due, in lawful money of the United States, without notice or demand and without deduction, diminution, abatement, counterclaim or setoff of any amount or for any reason whatsoever, except as otherwise provided in this Lease, transmitted electronically for direct deposit to one or more accounts designated by Landlord from time-to-time. The receipt of funds by electronic transfer shall not prevent Landlord from rejecting the same, or a waiver of any right of Landlord to reject and promptly thereafter refund the electronically transmitted funds payment to Tenant. At Tenant's option, Tenant shall remit payment of Rent by a check drawn on a bank which is a member of the New York Clearing House Association and maintains an office in New York City for the settlement of payments and clearing checks. Checks shall be delivered to Landlord's Notice Address (as set forth in Section 20.2) or at such other address or to such other Person(s) (including a successor to Landlord's interest in the Leased Premises) as Landlord may from time to time designate by Notice pursuant to Section 20.2.

(d) ***Rent Bills and Statements.*** Landlord may from time-to-time, but shall not be obligated (except as expressly provided in this Lease) to, send statements, reminder notices, Rent bills or other communications to Tenant (all of the foregoing are individually and collectively referred to as a "***Statement***") regarding the payment of Annual Fixed Rent and/or Additional Rent. Tenant expressly agrees that, notwithstanding the manner of service or the title of any Statement, the same shall not be a condition for the payment of the Rent, shall be given as a courtesy to the Tenant, and the giving of same by Landlord, or the Landlord's failure to provide same to Tenant, shall not limit or impair any rights of Landlord or obligations of Tenant concerning the Rent. In addition, if after the date hereof, Landlord receives any invoice, bill or other demand for payment of any expense incurred during, or attributable to, any period prior to the date hereof, Landlord may forward such invoice, bill or demand for payment to Tenant, and Tenant shall pay directly, or reimburse to Landlord (as applicable) such amount, within the earlier of (1) ten (10) days after receipt of Landlord's notice of the same and (2) the date on which such payment becomes delinquent.

Section 4.2 Additional Rent. Tenant shall pay without abatement, deduction or set-off, as Additional Rent, all Real Estate Taxes, Insurance Premiums, costs, fees, interest, charges, expenses and other payments which Tenant in any of the provisions of this Lease agrees to pay or which Tenant agrees are to be at the cost or expense of Tenant. Upon default in payment by Tenant of any Additional Rent, Landlord shall have all the rights and remedies as are provided for upon default of the Annual Fixed Rent.

Section 4.3 Late Charges. Notwithstanding any other provision of this Lease, Tenant hereby acknowledges that late payment to Landlord of Rent, or other amounts due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If more than once during any period of twelve (12) consecutive months, any payment of Annual Fixed Rent or Additional Rent is not received by Landlord by the tenth (10th) day following the day when due, then in addition to any other right or remedy available to Landlord, Tenant shall pay to Landlord a late charge of five percent (5%) of the amount of such overdue Rent upon Landlord's written demand. Landlord and Tenant hereby agree that such late charges represent a fair and reasonable estimate of the costs that Landlord will incur by reason of Tenant's late payment and will not be construed as a penalty. Any Rent payment which is not received by Landlord within five (5) business days after the date such Rent was due shall, in addition to any other right or remedy available to Landlord, accrue interest at the Default Interest Rate from the day after such Rent payment was due and payable until paid. Landlord's acceptance of such late charges and interest at the Default Interest Rate will not constitute a waiver of Tenant's default with respect to such overdue amount or estop Landlord from exercising any of the other rights and remedies available at law or in equity, or granted under this Lease, and Tenant expressly agrees that all such rights and remedies, including late charges and interest, are cumulative.

Section 4.4 All Sums Rent. All sums payable by Tenant under this Lease, whether or not stated to be Annual Fixed Rent, or Additional Rent, will be paid to Landlord in legal tender of the United States, at the address for Notices to Landlord. Such sums will be considered "Rent" for all purposes hereunder however described or denominated.

ARTICLE V

Real Estate Taxes

Section 5.1 Tenant's Obligation to Pay. Tenant shall pay, or cause to be paid, all Real Estate Taxes accruing during the Term. Landlord shall promptly forward to Tenant all notices, bills or other statements received by Landlord concerning Real Estate Taxes. Tenant shall have the right to notify the taxing authorities to send all tax bill and statements directly to Tenant or Tenant's designee and Landlord shall cooperate with Tenant's request and execute all documents that may be required to effectuate such direct billing. Tenant shall pay all such Real Estate Taxes directly to the taxing authority or any other Person entitled to receive such payment as the same become due and payable and before any fine or penalty is added thereto for the nonpayment thereof, but Tenant may pay Real Estate Taxes (including any interest accrued on the unpaid balance of such Real Estate Taxes) in installments if so payable by law, whether or not interest accrues on the unpaid balance, but such Real Estate Taxes accruing during the Term shall remain the obligation of Tenant even though the installments may be payable after the Expiration of the Term. If Real Estate Taxes have not been paid before the third (3rd) Business Days prior to the end of the period when Real Estate Taxes may be paid without interest or penalty, then Landlord shall have the right, but not the obligation, to pay such Real Estate Taxes, and all sums paid by Landlord shall be paid by Tenant to Landlord within ten (10) days following demand therefor, together with Default Rate Interest, as Additional Rent.

Section 5.2 Right to Contest Real Estate Taxes. Landlord shall have the sole right in its own name to contest the validity or amount, in whole or in part, of any Real Estate Taxes, or seek a reduction in the assessed valuation of the Land and the Improvements by appropriate proceedings timely instituted (individually and collectively a "***Tax Cert***"). Each party shall cooperate with the other in all reasonable ways in connection with any Tax Cert. Notwithstanding the foregoing, the event Landlord fails to institute a Tax Cert proceeding for any year, and such failure is not based on the advice of Landlord's Tax Cert counsel, then provided that Tenant is not then in default hereunder and such a Tax Cert proceeding would not subject Landlord or any of its employees, agents, officers or contractors to threat of criminal or civil sanctions or penalties, then Tenant shall have the right, after no less than ten (10) days' prior written notice (unless Landlord has commenced such a proceeding within such ten (10) day period) to pursue a Tax Cert proceeding with respect to such period for which Landlord has failed to pursue a Tax Cert proceeding. If Tenant pursues such a Tax Cert proceeding, Tenant shall keep Landlord reasonably apprised (with reasonable frequency and in reasonable detail) as to the status of any such proceeding, and Tenant shall not settle any such proceeding without Landlord's prior consent (not to be unreasonably withheld).

Section 5.3 Joinder Not Required. Neither Tenant nor Landlord shall be required to join in any action or proceeding referred to in Section 5.2 unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant or Landlord, as the case may be, in the name of, but without cost or expense to, the other party.

ARTICLE VI

Insurance

Section 6.1 Insurance Requirements.

(a) ***Property Loss Insurance.*** Landlord shall insure for property losses to the Building, and Tenant shall insure for property losses to improvements and betterments that are the responsibility of the Tenant against loss or damage by fire and all other hazards covered by the usual "Special Form" formerly "all risk" insurance policy ("***Property Loss Insurance***"). All Property Loss Insurance procured by Tenant shall include Landlord, Tenant and any Fee Mortgagees as Loss Payees, as applicable. All Property Loss Insurance will be in the amount not less than one hundred percent (100%) of the full replacement cost of the Improvements. Tenant shall reimburse Landlord for Landlord's property insurance premiums with respect to such insurance, which premiums shall not exceed commercially reasonable amounts for comparable properties to the Building. Reimbursement shall be made by Tenant to Landlord as additional rent within thirty (30) days after Landlord's delivery to Tenant of a copy of a receipt showing payment in full of the Premiums currently due and payable.

(b) ***Liability Insurance***. Tenant shall carry or cause to be carried, Commercial General Liability Insurance in an amount not less than Ten Million Dollars ($10,000,000.00) combined single limit annual aggregate for bodily injury, death and property damage including Landlord as an additional insured. Tenant may satisfy its obligations under this subsection by maintaining primary insurance and one (1) or more policies of excess liability insurance. The General Liability Insurance shall also provide the following coverages: (i) personal injury protection; and (ii) contractual indemnity coverage.

(c) ***Automobile Liability Insurance***. Tenant shall carry or cause to be carried, Automobile Liability Insurance covering the ownership, maintenance, and operations of any automobile or automotive equipment, whether such auto is owned, hired or non-owned. Tenant shall maintain insurance with a combined single limit for bodily injury and property damage of One Million Dollars ($1,000,000) each accident. Such insurance shall insure Tenant and its Tenants against any and all claims for bodily injury, including death resulting there from, and damage to the property of others caused by accident and arising from Tenant's operations under the Agreement and whether such operations are performed by Tenant, Tenant's Tenants, or by any one directly or indirectly employed by any of them.

(d) ***Workers' Compensation Insurance***. Workers' Compensation Insurance as required by the State of New York and in amounts as required by applicable statute.

(e) ***Pollution Liability Insurance***. If Tenant is handling known or suspected toxic or hazardous substances, Tenant shall carry Pollution Liability Insurance with a minimum limit of Five Million Dollars ($5,000,000) per occurrence and aggregate.

(f) ***Blanket and/or Master Policies***. The insurance required to be provided pursuant to this Lease may be effected by so-called "blanket", "wrap-up" and/or "master" policies issued to Tenant (or in the case of Property Insurance, Landlord), any Subtenant or their respective Affiliates covering the Leased Premises and other properties owned or leased by Tenant, Subtenant or their respective Affiliates, provided that the limits under such blanket or master policies of insurance applicable to the Leased Premises are not reduced by any losses at the other properties covered thereby and such policies otherwise comply with the provisions of this Lease.

(g) ***Insurance During Construction***. Upon commencement of any construction of any Improvements or Restoration and until completion of work, Tenant shall provide, or cause to be provided, via insurance and/or self-insurance, and will keep in full force and effect until completion of work, or cause to be kept in full force and effect until completion of work, at no cost or expense to Landlord, Commercial general liability insurance, naming Tenant as the insured and Landlord as additional insured, such insurance to insure against liability for bodily injury and death and for property damage in an amount as may from time to time be reasonably required by Landlord, but in an amount not less than Twenty Million and 00/100 Dollars ($20,000,000.00) combined single limit, such insurance to include operations/premises liability, completed operations, broad form contractual liability (designating the indemnity provisions of the Construction Agreements if such coverage is provided by a contractor), and if the contractor is undertaking foundation, excavation or demolition work, such operations shall be covered , XCU Exclusions shall not apply, and will include the Leased Premises and all common areas and sidewalks adjoining or appurtenant to the Leased Premises, will contain blanket contractual coverage and will also provide the following coverages: (i) completed operations; (ii) personal injury protection; (iii) fire legal liability, if not otherwise covered under the comprehensive form of public liability insurance; (iv) employees as additional insured coverage; and (v) contractual indemnity coverage. The foregoing commercial general liability insurance limits may be satisfied with umbrella insurance provided such umbrella insurance policy provides the required level of insurance coverage for the Leases Premises independent of all other claims and locations under the umbrella policy.

(h) ***Waiver of Subrogation***. All insurance policies procured by Landlord or Tenant shall applicable to the Land and the Leased Premises shall contain a clause pursuant to which the insurance companies waive subrogation or consent to a waiver of right of recovery, and having obtained such clauses or endorsements of waiver of subrogation or consent to a waiver of right of recovery, will not make any claim against or seek to recover from the other for any loss or damage to its property or the property of others resulting from fire or other hazards covered by such insurance.

Section 6.2 Treatment of Proceeds.

(a) ***Proceeds of Insurance in General***. The proceeds of any insurance required to be maintained by this Article VI (other than proceeds of the liability insurance and Workers' Compensation otherwise referred to herein) shall be payable in accordance with Article XI of this Lease.

(b) ***Cooperation in Collection of Proceeds***. Landlord and Tenant shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of loss, and Tenant and Landlord shall execute and deliver such proofs of loss and other instruments as may be required of Tenant or Landlord, respectively, for the purpose of obtaining the recovery of any such insurance proceeds.

Section 6.3 General Requirements Applicable to Policies.

(a) ***Insurance Companies***. Except in instances of Tenant's self-insurance permitted under the Lease, all of the insurance required by this Article VI (other than Workers' Compensation Insurance) shall be with companies doing business in the State of New York that have a rating in the latest edition of "Bests Key Rating Guide" of A-, VII or better or another comparable rating reasonably acceptable to Landlord.

(b) ***Required Forms***. Except in instances of Tenant's self-insurance permitted under the Lease, all references to forms and coverages in Section 6.1 shall be those used by the ISO or equivalent forms approved by the Insurance Department of the State of New York, provided, however, that excess coverages may be written on forms reasonably acceptable to Landlord containing provisions other than those contained in ISO forms but otherwise conforming in substance to the requirements of this Article VI.

(c) ***Required Certificates***. Certificates of insurance evidencing the issuance of all insurance policies required by this Article VI, describing the coverage shall be delivered to Landlord upon issuance of such insurance or, in the case of new or renewal policies replacing any policies expiring during the Term, not later than (x) ten (10) Business Days before the expiration dates of any expiring policy if no notice of cancellation or non-renewal with respect to such expiring policy has been sent by the insurance company issuing such policy, or (y) thirty (30) days before the expiration date of any expiring policy if a notice of cancellation or non-renewal with respect to such expiring policy has been sent by the insurance company issuing such policy. The certificates of insurance or other documents or instruments shall be issued by the insurance company or an authorized agent thereof and signed by an officer having the authority to issue the certificate or other documents or instruments.

(d) ***Other Requirements.*** (i) Each insurance policy (other than Workers' Compensation Insurance) will include as named insured parties Landlord and any Fee Mortgagee, as their interests may appear; (ii) Tenant shall send to Landlord certificates of insurance showing evidence of compliance with the coverages required herein; (iii) Each insurance policy shall provide that no act or omission or negligence of Tenant, or anyone acting for Tenant, or any Subtenant or occupant of the Leased Premises which might otherwise result in a forfeiture of such insurance or any part thereof, will in any way affect the validity or enforceability of such insurance insofar as Landlord or any Fee Mortgagee is concerned;

(e) ***Landlord's Right to Procure Insurance***. If Tenant fails to maintain any such insurance required hereunder, then Landlord may, at Landlord's election, after giving Tenant written Notice and ten (10) days to obtain such insurance, procure the same, adding the premium cost thereof to the Rent payment next due hereunder, together with interest thereon at the Default Interest Rate, it being hereby expressly covenanted and agreed that payment by Landlord of any such premium will not be deemed to waive or release the obligation of Tenant to make payment thereof. Landlord may, but is not obligated to, obtain its own, separate insurance coverage at Landlord's sole cost and expense, which coverage will in no manner reduce the insurance coverage otherwise required hereunder.

ARTICLE VII

Alterations and New Construction

Section 7.1 Alterations. Tenant shall have the right, at any time and from time to time during the Term, to make Alterations in, to or of the Improvements, subject, however, in all cases, to the following:

(a) No Structural Alterations regardless of estimated cost, and no non-Structural Alterations (or series of non-Structural Alterations within any twelve (12) month period) involving an estimated cost of more than Three Hundred Fifty Thousand Dollars ($350,000.00) shall be undertaken without Landlord's prior written consent.

(b) No Alteration shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required from time to time, all licenses, permits and authorizations, if any, required by all applicable Governmental Authorities. Landlord shall join in the application for such licenses, permits or authorizations as requested by Tenant.

(c) All Alterations shall be made in a good and workmanlike manner and in compliance with all applicable Legal Requirements and Insurance Requirements.

(d) Tenant shall pay the entire cost of the Alterations so that the Leased Premises shall at all times be free from all Liens (subject to Tenant's rights to discharge same pursuant to the express provision of this Lease), other than Liens encumbering Tenant's fixtures.

Section 7.2 Permits and Easements. Landlord agrees, within ten (10) Business Days after receipt of a written request therefor from Tenant, to execute, acknowledge and deliver (or to join with Tenant in the execution, acknowledgement and delivery of), at Tenant's sole cost and expense, any and all (i) applications for licenses, permits, approvals or other authorizations of any kind or character required by any Governmental Authority in connection with Construction Work (collectively "***Permit Applications***"), (ii) any documents or instruments required by Tenant, and approved by Landlord, in order to acquire development rights from owners of other properties for the benefit of the Leased Premises, (iii) grants or deeds of easements and/or rights-of-way for public utilities or similar public facilities which, in Tenant's view may be useful and/or necessary in the proper economic and orderly development of the Land or of the Improvements to be erected thereon, and which are approved by Landlord, and (iv) grants or deeds of dedication where such dedication is required by any Governmental Authority in connection with the construction of Improvements, provided the same shall not require an expenditure by Landlord and Tenant shall indemnify Landlord against any liability related thereto and pay any such expenditure, and the same shall be subject to Landlord's approval. Landlord will, at no expense to Landlord, cooperate fully with Tenant in assisting Tenant to obtain approvals from Governmental Authorities, provided the same will not require an expenditure by Landlord or provided Tenant indemnifies Landlord against any liability related thereto and pays any such expenditure, and provided the same will not significantly diminish the size of the Leased Premises or reduce the value of Landlord's interest in the Leased Premises, and provided Landlord has consented to the same. To this end, within ten (10) Business Days after written request from time to time from Tenant, Landlord will, without requiring any additional consideration therefor, execute and return to Tenant, or otherwise join in any such documents as are required for obtaining approvals from Governmental Authorities to which Landlord has consented. If Landlord fails to sign and return the Permit Applications within the ten (10) Business Day period referenced above, Tenant shall send Landlord a Notice containing a legend in capital letters and bold type on the first page thereof which states, "**IF YOU SHALL FAIL TO RESPOND TO TENANT'S REQUEST TO SIGN PERMIT APPLICATIONS FOR THE CONSTRUCTION WORK REFERENCED HEREIN WITHIN TEN (10) BUSINESS DAYS, YOU SHALL BE DEEMED TO HAVE CONSENTED TO TENANT'S EXECUTION OF SUCH PERMIT APPLICATIONS ON LANDLORD'S BEHALF.**" If Landlord shall fail to execute and deliver such Permit Applications within the ten (10) Business Day period set forth in Tenant's Notice, Tenant may sign such Permit Applications on behalf of Landlord, and Landlord hereby appoints Tenant its attorney-in-fact, which power shall be coupled with an interest, for such purpose. Whenever Landlord's consent or approval shall be required or requested pursuant to this Article VII, such consent or approval shall not be unreasonably withheld, conditioned or delayed unless the proposed Alterations are Structural Alterations, Alterations that affect any Building Systems or Alterations that affect the certificate of occupancy for the Building (in which event, Landlord's consent may be granted or withheld in its sole discretion except to the extent any such Alteration is required by applicable law). The indemnification in this Section 7.2 shall survive the Expiration of the Term.

Section 7.3 Going Dark. Tenant is not required to continuously operate its business in the Leased Premises and may discontinue use of the Leased Premises for its business operations and "go dark." If Tenant ceases business operations in all or any part of the Leased Premises the Rent shall not be abated and Tenant shall continue to be bound by all of the terms and conditions of this Lease, and shall keep the Leased Premises in a secure and safe manner and in accordance with all of Tenant's obligations under Article VIII hereof.

ARTICLE VIII

Repairs, Maintenance and Operation of the Leased Premises

Section 8.1 Maintenance, Repair and Waste. Tenant shall not cause, commit, suffer or permit, and shall use all reasonable precautions to prevent, physical waste to the Leased Premises. Tenant shall keep and maintain the Leased Premises in good repair, order and condition, and shall make all repairs or replacements, interior or exterior, structural or nonstructural, foreseen or unforeseen to keep the Leased Premises in good and safe order and condition. Landlord shall not have any obligations with respect to the maintenance, repair and/or replacement of the Leased Premises or any portion thereof. Notwithstanding the foregoing, to the extent any insurance proceeds paid as a result of a casualty at the Leased Premises become available to and are under the sole control of Tenant, Tenant shall apply such proceeds first to the repair or replacement of the Leased Premises and any amount not so applied shall remain the property of Tenant except as expressly set forth in Article XI.

Section 8.2 Operation of Leased Premises. Tenant shall, from and after the Effective Date, pay all expenses related to the operation, management, development, use, occupancy, maintenance and repair of the Leased Premises, including the costs of utilities, Real Estate Taxes and Insurance Premiums, which arise or become due or payable during or after (but attributable to a period falling within) the Term. Landlord shall not be required to furnish any services or facilities to Tenant or the Leased Premises. Notwithstanding anything to the contrary contained herein or otherwise provided by applicable law, Landlord has no obligation or responsibility to perform or participate in any way in the maintenance or repair of the Leased Premises or any Improvements located thereon, or pay sum for the use, maintenance, operation, repair or replacement of all or any part of the Leased Premises. All such maintenance, operation, repair or replacement of all or any part of the Leased Premises will be performed by Tenant, at Tenant's sole cost expense.

Section 8.3 Utilities. Tenant is solely responsible for all costs of installing, connecting, maintaining, modifying and replacing utility lines and services to the Leased Premises. Tenant shall pay, from and after the Lease Commencement Date, all charges for gas, electricity, water, sewage, telephone and other utilities used upon or in connection with the Leased Premises during the Term directly to the utility company.

ARTICLE IX

Use of Leased Premises; Compliance with Orders

Section 9.1 Permitted Uses. The Leased Premises may be used for any lawful purpose by Tenant and any of its Affiliates, other than the uses enumerated below, without the consent or approval of Landlord:

(a) occupancy by any foreign governmental agency, consulate or embassy which is or could be immune from *in personam* or subject matter jurisdiction in the courts of the State of New York, unless all such immunity if waived for the benefit of Landlord and Tenant and each present and future Fee Mortgagee; or

(b) offices of any organization that advocates (i) the overthrow or boycott of the United States, or (ii) any militant or supremacist ideology.

(c) Each lease, sublease, license and occupancy agreement (however denominated) of all or any part of the Leased Premises entered into after the Effective Date shall contain a prohibition against the foregoing uses. (the "***Restrictive Covenant Provision***"). If a tenant or occupant of the Leased Premises violates the Restrictive Covenant Provision of its lease or other occupancy agreement (a "***Rogue Tenant***"), provided that Tenant, following Notice from Landlord advising Tenant of a violation of the Restrictive Covenant Provision promptly commences an action or proceeding (or arbitration, if required by such lease or license agreement) against such Rogue Tenant, and thereafter uses diligent, good faith efforts to enforce its rights under the Rogue Tenant's lease or other occupancy agreement seeking to obtain Judicial Relief (hereinafter defined), then Tenant shall not be in default under this Lease. If, despite Tenant's diligent, good faith efforts a transfer of a Rogue Tenant's lease or other occupancy agreement, or such Rogue Tenant's right to occupy its premises in violation of the Restrictive Covenant Provision is upheld, Tenant shall not be in default under this Lease. Tenant's obligation to seek Judicial Relief for a violation of a Rogue Tenant's Restrictive Covenant Provision shall apply even if the violation is the result of the Rogue Tenant's bankruptcy. As used in this Section 9.1(c), "***Judicial Relief***" shall mean a temporary restraining order, preliminary injunction, permanent injunction, other court order or judgment, or order resulting from an arbitration proceeding, enjoining or stopping the violation of the Restrictive Covenant Provision. Landlord shall have standing to join, at Tenant's cost and expense, with Tenant in any application, action or proceeding for Judicial Relief without prejudice to Tenant, and shall have the right to file briefs and other filings in any such proceeding for Judicial Relief.

Section 9.2 Compliance with Legal Requirements. Tenant shall, throughout the Term, promptly comply with all Legal Requirements, ordinary and extraordinary, foreseen or unforeseen, now or hereafter applicable to the Leased Premises as to the manner of use or the maintenance, repair or condition of the Leased Premises.

Section 9.3 Right to Contest. Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant or, with Landlord's consent in the name of Landlord, or both, without cost or expense to Landlord, the validity or application of any Legal Requirements, subject to the following:

(a) if by the terms of any such Legal Requirements, compliance therewith pending the prosecution of any such proceeding may legally be delayed without incurring any Lien, charge, liability or penalty of any kind against the Leased Premises or the Leasehold Estate and without subjecting Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding;

(b) if any Lien, charge or liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid, but only if (i) Tenant gives Landlord Notice of its intention to contest and Tenant prosecutes the contest with diligence and continuity and in good faith, (ii) such delay would not subject any Landlord Indemnified Persons to criminal liability, and (iii) Tenant indemnifies Landlord against loss or damage by reason of such contest or delay; and

(c) Tenant, at its expense, shall comply with any final order after the expiration of all applicable appeal periods.

(d) Tenant shall prosecute such contest diligently and expeditiously. Landlord agrees to render Tenant all reasonable assistance, at Tenant's sole cost and expense, in contesting the validity of any such complaint or action, including joining in the execution of any document, and signing any protests or pleadings which Tenant may file, which are reasonably acceptable to Landlord. Tenant shall indemnify all Landlord Indemnified Persons and hold each of them harmless from and against any and all liabilities, costs and expenses (including reasonable attorney's fees and disbursements) incurred in connection with Tenant's failure to comply with any of the aforementioned items

(e) Landlord shall, at Tenant's sole cost and expense, including reasonable counsel fees, execute and deliver any appropriate documents or instruments which may be necessary or proper to permit Tenant so to contest the validity or application of any such Legal Requirements.

ARTICLE X

Work Performed on Leased Premises or Improvements

Section 10.1 Licenses and Permits. Tenant shall not do or permit others to do any Construction Work unless Tenant shall have first procured and paid for all permits and authorizations, if any, required by all applicable Governmental Authorities. All Construction Work shall be done in a good and workmanlike manner and in compliance with all applicable Legal Requirements and Insurance Requirements and in accordance with the terms and conditions of this Lease (including Article VII hereof)

Section 10.2 Completion of Construction Work. Following receipt from any Governmental Authority, Tenant shall, if requested by Landlord, furnish to Landlord true copies of a certificate of occupancy or its equivalent, which shall then be required by any Governmental Authority.

Section 10.3 Mechanics' Liens. If any Lien shall be filed against the interest of Landlord or Tenant in the Leased Premises or asserted against any Rent by reason of any work, labor, services or materials supplied or claimed to have been supplied on or to the Leased Premises after the Lease Commencement Date, Tenant shall within thirty (30) days after notice of the filing thereof, cause the same to be discharged or bonded of record. Nothing contained in this Lease shall be construed as constituting the express or implied consent or permission of Landlord for the performance of any labor or services for, or the furnishing of any materials to, Tenant that would give rise to any such mechanic's lien against Landlord's interest in the Leased Premises, and Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit. If Tenant shall fail to take such action within such thirty (30) day period, Landlord may, in addition to any other right or remedy, discharge the same by deposit or by bonding proceedings, or may pay any judgment resulting therefrom and, in the event of such deposit or bonding proceedings or the payment of such judgments, Tenant shall reimburse Landlord as Additional Rent for any costs and expenses (including reasonable attorney's fees and/or expenses) incurred by Landlord in connection therewith, together with interest at the Default Interest Rate, upon demand. Tenant agrees to provide Landlord with Notice of any mechanic's lien promptly upon following the filing thereof.

ARTICLE XI

Damage, Destruction and Restoration

Section 11.1 Notice to Landlord. Tenant shall give Landlord Notice promptly upon obtaining actual knowledge thereof, if all or any portion of the Improvements is damaged or destroyed in whole or in part by Property Loss, other than *de minimis* damage.

Section 11.2 Property Loss Restoration.

(a) If due to Property Loss all or substantially all of the Improvements are damaged, destroyed or rendered unusable for the continued operation of Tenant's business and the same cannot be restored within six (6) months following such Property Loss, as reasonably estimated by an independent contractor selected by Tenant and reasonably acceptable to Landlord, Tenant shall deliver Notice thereof to Landlord (the "Landlord Notice") within sixty (60) days following such Property Loss, and thereafter either Party may terminate this Lease by Notice to the other given no later than sixty (60) days following delivery of such Landlord Notice. If Tenant does not terminate this Lease, then Tenant shall, at Landlord's sole cost and expense, promptly, diligently and in good faith Restore the Improvements to a condition and value no less than the condition and value of the Improvements immediately prior to such Property Loss. All insurance proceeds applicable to or arising from such Property Loss shall be paid to Tenant and held by Landlord in trust to be applied to such Restoration of the Improvements.

(b) If less than all or substantially all of the Improvements are damaged or destroyed by Property Loss and the Premises are not rendered unusable for the continued operation of Tenant's business, or if Tenant is otherwise entitled to terminate this Lease pursuant to Section 11.2(a) as a result of such Property Loss, this Lease shall continue in full force and effect and shall not terminate. Tenant shall, at Landlord's sole cost and expense, promptly, diligently and in good faith Restore the Improvements to a condition and value no less than the condition and value of the Improvements immediately prior to such Property Loss. All property insurance proceeds applicable to or arising from such Property Loss, excluding business interruption proceeds and insurance proceeds payable on account of damage or destruction to Tenant's personal property, fixtures, equipment and leasehold improvements, shall be paid to Tenant and held by Landlord in trust to be applied to such Restoration of the Improvements. If the Property Loss occurs within the last three (3) years of the initial and cannot be repaired within six (6) months, either party may terminate this Lease by Notice to the other; provided, however, if one or more Extension Terms have not yet occurred and Tenant is otherwise entitled to exercise such Extension Term, Tenant may elect to exercise the next available Extension Term within thirty (30) days of such casualty, and in such event, the length of the then-remaining Term shall be calculated based on the as-extended Term.

(c) From and after a Property Loss, there shall be no abatement of Rent. It is the responsibility of Tenant to maintain business interruption or other insurance to provide for the continued payment of Rent hereunder for a period of one (1) year.

(d) Any insurance proceeds for a Restoration shall be held by Landlord in trust and disbursed to Tenant in monthly installments as the Restoration progresses, subject to such reasonable evidence and documentation as Landlord may require in connection with such disbursements.

ARTICLE XII

Condemnation

Section 12.1 Substantial Taking.

(a) ***Termination of Lease for Substantial Taking***. If all or Substantially All of the Leased Premises is Taken this Lease shall terminate on the Date of Taking (defined below) and the Annual Fixed Rent and Additional Rent payable by Tenant hereunder shall be apportioned and paid to the Date of Taking. The preceding sentence shall not apply to a Taking of the Landlord's Fee Estate in the Land if, after such Taking, Tenant's rights under this Lease are not affected.

(b) ***Disbursement of Award***. If all or Substantially All of the Leased Premises is Taken as provided in Section 12.1(a), the entire award paid in connection with such Taking (net of reimbursement to Landlord and Tenant of the reasonable legal, engineering and appraisal costs of obtaining such award, which costs shall be reimbursed to Landlord and Tenant out of the award (the "***Taking Costs***")) shall be paid to Landlord. Tenant hereby expressly assigns to Landlord all of its right, title and interest in and to every such award or payment. Tenant shall be entitled to claim and receive any award or payment from the condemning authority expressly granted for the taking of Tenant's personal property, trade fixtures, and the interruption of Tenant's business and moving expenses, but only if such award or payment shall be made in addition to Landlord's award and if Tenant's claim does not adversely affect or result in any reduction of Landlord's award or interfere with the prosecution of a claim for the taking by Landlord.

(c) Landlord shall recognize any full or partial assignment by Tenant to a lender of any portion of the award payable to Tenant pursuant to Section 12.1(b).

(d) ***Definitions***.

(i) "***Substantially All of the Leased Premises***" means such portion of the Leased Premises as, when so Taken, would leave a balance of the Leased Premises that, due either to the area so Taken or the location of the part so Taken in relation to the part not so Taken, would not, under economic conditions, zoning laws and building regulations then existing, and after performance by Tenant of all covenants, agreements, terms and provisions contained herein or by law required to be observed by Tenant, readily accommodate a new or reconstructed Building or Buildings of a type and size generally similar to the Improvements existing at the Date of Taking. Pending resolution of any dispute over whether "Substantially All of the Leased Premises" has been Taken, (x) Tenant shall have no obligation to perform any Condemnation Restoration with respect to such Taking, and (y) the Annual Fixed Rent shall be reduced as provided in Section 12.2.

(ii) "***Date of Taking***" means the earlier of (x) the date on which title to the whole or Substantially All of the Leased Premises, or any part thereof, has vested in any lawful power or authority pursuant to the provisions of applicable law, and (y) the date on which actual possession of the whole or Substantially All of the Leased Premises, or a part thereof, as the case may be, is acquired by any Governmental Authority pursuant to the provisions of the applicable federal or New York law.

Section 12.2 Less Than a Substantial Taking.

(a) ***Taking of Less Than Substantially All of the Leased Premises***. If less than Substantially All of the Leased Premises is Taken, this Lease shall continue for the remainder of the Term without abatement of Rent or diminution of any of Tenant's obligations hereunder except as provided in Section 12.2(d). Notwithstanding anything to the contrary contained in this Lease, if the estimated cost of the Construction Work in connection with any Condemnation Restoration to be performed shall exceed twenty five percent (25%) of the Replacement Value, Tenant, at its option, with the consent, in writing, of all Recognized Mortgagees, may terminate this Lease upon thirty (30) days' Notice to Landlord. In such event (a) the Term shall end on the date set forth in such Notice as if such date were the Fixed Expiration Date, and (b) Tenant shall have no obligation to perform such Condemnation Restoration, but Tenant shall make the site safe and free from conditions hazardous to life and property, including, if Landlord in its reasonable judgment determines necessary, the erection of a fence around as much of the Land as Landlord may direct. In the event of the termination of this Lease pursuant to this Section 12.2(a), except as otherwise provided in this Lease, all proceeds of condemnation other than the amount reasonably necessary to make the site safe (which shall be paid to Tenant), shall be paid to Landlord.

(b) ***Restoration of the Leased Premises***. If less than Substantially All of the Leased Premises is Taken and this Lease is not terminated pursuant to Section 12.2(a), Tenant shall, to the extent of the award received by Tenant, Restore the remaining portion of the Improvements not so Taken (the "***Condemnation Restoration***").

(c) ***Payment of Award***. If less than all or Substantially All of the Leased Premises is Taken as provided in Section 12.2(a) and this Lease is not terminated pursuant to Section 12.2(a), the entire award paid in connection with such Taking shall first be used for Restoration by Tenant and the balance of such award shall be paid to Landlord.

(d) ***Reduction of Annual Fixed Rent***. Effective upon the Date of Taking, the Annual Fixed Rent shall be reduced by an amount equal to the product derived by multiplying the Annual Fixed Rent then payable by a fraction, the numerator of which is the amount of rentable square feet of the Improvements Taken and the denominator of which is the amount of rentable square feet in the Improvements immediately before the Date of Taking.

Section 12.3 Temporary Taking.

(a) ***Notice of Temporary Taking***. If the temporary use of the whole or any portion of the Leased Premises is Taken (a "***Temporary Taking***"), Tenant shall give Landlord Notice within five (5) days thereof. Except as set forth below, the Term shall not be reduced or affected in any way by reason of such Temporary Taking and Tenant shall continue to pay the Annual Fixed Rent to Landlord and the Additional Rent without reduction or abatement.

(b) ***Temporary Taking Not Extending Beyond the Fixed Expiration Date***. If the Temporary Taking is for a period not extending beyond the Term, and if the award by reason of the Temporary Taking is paid less frequently than in monthly installments, it shall be paid to Tenant. In addition, if such award is paid in monthly installments (or more frequently than monthly) such award shall be paid to Tenant.

(c) ***Temporary Taking Extending Beyond the Fixed Expiration Date***. If there is a Temporary Taking extending beyond the Fixed Expiration Date, Tenant shall have the right to terminate this Lease and the award shall be paid in accordance with the provisions of Section 12.1(b) as if there was a Taking of all or Substantially All of the Leased Premises. If this Lease is not so terminated, the entire award shall be paid to Tenant except for the portion thereof allocable to the period after the Fixed Expiration Date, which portion shall be paid to Landlord.

Section 12.4 Governmental Action Not Resulting in a Taking. In case of any governmental action not resulting in the Taking of any portion of the Leased Premises but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Leased Premises abuts, then this Lease shall continue in full force and effect without reduction or abatement of Rent and the award shall be paid to Tenant.

Section 12.5 Collection of Awards. Landlord and Tenant each agree to execute any and all documents that may be required in order to facilitate the collection of any and all such awards or compensation. Tenant and the Recognized Mortgagees, in cooperation with Landlord, shall have the right to participate in any such condemnation proceedings and to be represented by counsel for the purpose of protecting their respective interests hereunder.

Section 12.6 Approval of Settlements. Landlord and Tenant shall jointly settle or compromise any taking, each acting reasonably and in good faith.

Section 12.7 Delegation of Tenant's Rights. Tenant shall have the right to delegate any of its rights under this Article XII, including the right to receive any portion of a condemnation award, to a Recognized Mortgagee, provided however that any payment made to Tenant and required by the terms of this Lease to be used for the Restoration of the Leased Premises shall, notwithstanding any such delegation, be used only for such purpose.

ARTICLE XIII

Assignments and Subleases of Tenant's Interest

Section 13.1 Tenant's Right to Assign Leasehold Estate.

(a) Except as otherwise set forth in this Article XIII, Tenant shall not have the right, without the prior consent of Landlord, to sell, assign, transfer or otherwise dispose (collectively and individually an "***Assignment***" or "***Assign***" or "***Assigned***") of the Leasehold Estate or such interests. In the event of an Assignment pursuant to this Section 13.1, the assignor shall remain liable for all liabilities and obligations of the assignor under this Lease. As a condition to Tenant's right to assign the Lease, assignee will assume in a written, recordable instrument reasonably satisfactory to Landlord, all obligations of Tenant under this Lease arising from and after the effective date of such Assignment. Any Assignment hereof will at all times be subject to this Lease and the right, title and interest of Landlord in and to the Leased Premises, and the assignee will agree, in writing, from and after the date of Assignment, to assume and be bound by the terms of this Lease. Landlord will not be entitled to any compensation in connection with any Assignment of this Lease, except for reimbursement of Landlord's reasonable attorneys' fees and expenses incurred in connection with any such assignment that requires Landlord's consent. Landlord's consent to any proposed Assignment or subletting shall not be unreasonably withheld, conditioned or delayed, subject to Landlord's Consideration Factors. For purposes hereof, "***Landlord's Consideration Factors***" means, with respect to a proposed Assignment or subletting, (i) tenant mix (if there are multiple tenants in the Building other than Tenant and the proposed subtenant or assignee), (ii) any restrictions contained in leases or other agreements affecting the Building, (iii) whether the financial condition of the proposed assignee or subtenant is reasonably adequate to support the obligations of such assignee under the assignment or such subtenant under the sublease, as the case may be, (iv) the effect that the proposed assignee's or subtenant's occupancy or use of the Premises would have upon the operation and maintenance of the Building and Landlord's investment therein, and (v) the reputation of the proposed assignee or subtenant.

(b) No Assignment shall be deemed effective or binding upon Landlord unless and until a counterpart original of such Assignment that is fully executed by Tenant and the assignee (the "***Transferee***") is received by Landlord and Landlord has approved of the same. Such Assignment shall provide that the Transferee thereunder unconditionally assumes all of the terms and conditions to be performed by Tenant hereunder arising from and after the date of the Assignment, and the Transferee shall covenant to perform such covenants and obligations in the place and stead of Tenant as though the Transferee were the original Tenant named herein. Tenant and Transferee shall, jointly and severally, indemnify and hold Landlord harmless from and against any loss, cost, expense (including reasonable attorneys' fees and disbursements), incurred by Landlord as a result of any claim for brokerage commission arising out of or in connection with such Assignment, which obligation shall survive the Expiration of the Term.

(c) No proposed Transferee or its principals shall be entitled, directly or indirectly, to diplomatic or sovereign immunity, and each Transferee shall be subject to *in personam* jurisdiction in the courts of the State of New York by service of process as permitted by law or as otherwise set forth in this Lease, as the case may be.

(d) The proposed Transferee and its principals shall be in compliance with the regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism), or other governmental action relating thereto.

(e) Notwithstanding anything to the contrary contained herein, Tenant shall have the right, without Landlord's consent, to enter into an Assignment or sublease of the entire Premises to a Person acquiring substantially all of Tenant's assets, or in connection with a merger or consolidation of Tenant into or with another Person, provided that (i) the aggregate tangible net worth of Tenant (or a transferee) and/or any guarantor is equal to or greater than the greater of (x) the tangible net worth of Tenant and any guarantor immediately prior to such transaction and (y) the tangible net worth of Tenant and any guarantor on the Effective Date, and (ii) Tenant shall reimburse Landlord within thirty (30) days after demand therefor, as Additional Rent, for any costs including, without limitation, reasonable legal costs, incurred by Landlord in connection with such transaction. Furthermore, any assignee of Tenant's interest in this Lease shall assume, for Landlord's benefit, the performance of all of the terms, conditions and covenants of this Lease to be performed by Tenant hereunder from and after the effective date of assignment, and, any subtenant of the Premises shall acknowledge, for Landlord's benefit, that its sublease of the Premises is subject to the terms covenant and conditions of this Lease.

Section 13.2 Subletting. Tenant shall have the right, subject to Landlord's prior consent, to enter into one (1) or more Sublease(s) of all or any part of the Leased Premises, provided that any such Sublease(s) shall be subject and subordinate to this Lease and to the rights of Landlord hereunder.

ARTICLE XIV

Indemnification

Section 14.1 Tenant to Indemnify Landlord. Subject to Section 14.2 below, to the fullest extent permitted by law (but subject to any waiver of subrogation or endorsement), Tenant agrees to indemnify and hold Landlord, its officers, directors, stockholders, beneficiaries, partners, representatives, agents, members and employees (collectively, "***Landlord's Indemnified Persons***"), harmless from and against any and all losses, damages, claims, suits, actions, judgments and costs (including reasonable attorneys' fees and expenses) arising from or in connection with any accident, injury, death or damage to person or property occurring in, at or upon the Leased Premises (or outside the Leased Premises if arising from or in connection with Tenant's installations in, or use of, areas outside the Leased Premises), in each case except to the extent covered by the waiver of subrogation provision or endorsement in Landlord's insurance policies. As a condition to Tenant's indemnification obligations hereunder, Landlord shall provide to Tenant prompt Notice of any claim for which indemnification is sought. Tenant shall have the right to settle any such claim on any terms acceptable to Tenant, provided that such settlement does not impose any obligation on Landlord or adversely affect any rights or interests of Landlord or its business. The indemnification contained in this Section 14.1 shall include reasonable attorneys' fees and disbursements incurred by Landlord arising due to a breach of Tenant's duty to defend.

Section 14.2 Landlord to Indemnify Tenant. Subject to Section 14.1 above, to the fullest extent permitted by law (but subject to any waiver of subrogation or endorsement), Landlord agrees to indemnify and hold Tenant, its officers, directors, stockholders, beneficiaries, partners, representatives, agents, members and employees (collectively, "***Tenant's Indemnified Persons***"), harmless from and against any and all losses, damages, claims, suits, actions, judgments and costs (including reasonable attorneys' fees and expenses) arising out of any injury to or death of persons or damage to property in, on or about the Leased Premises to the extent caused by the negligent or willful acts or omissions (where with regard to any such omission, there was a duty to act) of Landlord or anyone for whom Landlord may be vicariously liable, except to the extent covered by the waiver of subrogation provision or endorsement in Tenant's insurance policies. As a condition to Landlord's indemnification obligations hereunder, Tenant shall provide to Landlord prompt Notice of any claim for which indemnification is sought. Landlord shall have the right to settle any such claim on any terms acceptable to Landlord, provided that such settlement does not impose any obligation on Tenant or adversely affect any rights or interests of Tenant or its business. The indemnification contained in this Section 14.2 shall include reasonable attorneys' fees and disbursements incurred by Tenant arising due to a breach of Landlord's duty to defend.

Section 14.3 Survival. The provisions of this Article XIV shall survive the Expiration of the Term.

ARTICLE XV

Events of Default; Remedies

Section 15.1 Events of Default. The happening of any one (1) or more of the following events shall be an "***Event of Default***":

(a) ***Monetary Default***. Tenant fails to make payment of the Rent required to be paid by Tenant under this Lease within five (5) days of when the same shall become due. If Tenant fails to make payment of the Rent required to be paid by Tenant under this Lease within five (5) days of when the same shall become due and payable Landlord shall, but only for the first event of nonpayment in any consecutive twelve (12) month period, give Tenant a Notice of nonpayment of Rent (a "***Nonpayment Notice***") and Tenant shall not be in default of this Lease if the Rent is paid within ten (10) days after the giving of the Nonpayment Notice; or

(b) ***Non-Monetary Default***. If Tenant fails to observe or perform any one (1) or more of the terms, covenants or conditions contained in this Lease (other than those referred to in Section 15.1(a), (c) or (d)), and if such failure is not remedied by Tenant (i) within thirty (30) days after Landlord gives Tenant Notice specifying such failure and such failure shall continue beyond any applicable Notice and cure periods, or (ii) in the case of any such failure that requires work to be performed, acts to be done or conditions to be satisfied which cannot, by their nature, reasonably be performed, done or satisfied within such thirty (30) day period, and such failure is not remedied by Tenant within such additional period as may be reasonably required to cure such failure (not to exceed one hundred twenty (120) days in the aggregate, subject to Unavoidable Delay), but only if Tenant commences to cure such failure within the initial thirty (30) day period following Landlord's Notice and (subject to Unavoidable Delay) diligently prosecutes the curing of such failure to completion with due diligence and in good faith.

(c) ***Voluntary Bankruptcy***. If Tenant shall (A) make a general assignment for the benefit of creditors, (B) admit in writing its inability to pay its debts as they become due, (C) file a voluntary petition in bankruptcy, (D) become insolvent, (E) file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment of debt, liquidation or dissolution or similar relief under any present or future statute, law or regulation of any jurisdiction, (F) petition or apply for any receiver, custodian or any trustee for any substantial part of its property, or (G) take any formal action for the purpose of effecting any of the foregoing or looking to its liquidation or winding up.

(d) ***Involuntary Bankruptcy***. If an order for relief is entered under any bankruptcy or similar law or any other decree or order is entered by a court of competent jurisdiction (A) adjudicating Tenant bankrupt or insolvent, (B) approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Tenant, (C) appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Tenant or of any substantial part of its property, or (D) ordering the winding up or liquidation of the affairs of Tenant, and any such decree or order continues unstayed and in effect for a period of 90 days.

Section 15.2 Landlord's Right to Relet. Landlord shall have no obligate to mitigate damages in connection with any Event of Default hereunder. Notwithstanding the foregoing, following an Event of Default, Landlord may elect (in its sole discretion) to relet the Leased Premises, or any part thereof, in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term), and on such conditions as Landlord may reasonably determine and may collect and receive the rents therefor. The commencement and prosecution of any action by Landlord in forcible entry and detainer, ejectment or otherwise, or any execution of any judgment or decree obtained in any action to recover possession of the Leased Premises, shall not be construed as an election to terminate this Lease whether or not such entry or re-entry be had or taken under summary proceedings or otherwise and shall not be deemed to have absolved or discharged Tenant from any of its obligations or liabilities for the remainder of the Term of this Lease. Tenant shall, notwithstanding any such entry or re-entry, expiration and/or dispossess proceeding continue to be liable for the payment of the Rent and performance of the covenants, conditions and agreements by Tenant to be performed as set forth in this Lease. Tenant shall pay all monthly deficits in Rent after any such re-entry in monthly installments within ten (10) days after demand therefor by Landlord. If, in the event of any such ejectment or removal, Landlord leases the Leased Premises as Landlord shall have the right but not the duty to do, to another (whether for a term greater or less than or equal to the unexpired portion of the Term of this Lease, whether the space so leased includes more or less leasable area than the Leased Premises and whether the character of the Leased Premises is changed) upon such terms and conditions and for such market rate rental as Landlord may determine in its sole discretion, the rentals so received by Landlord from such reletting shall be applied: first, to the payment of any costs of such reletting; second to the payment of Rent and other amounts due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment for future Rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly; Tenant shall have no right to any excess. Tenant shall also pay to Landlord any cost and expense, including, but not limited to, brokerage commissions and reasonable attorney's fees, incurred by Landlord in such reletting not covered by the rental received from such reletting. Nothing contained herein shall be construed as obligating Landlord to relet the whole or any part of the Leased Premises or to otherwise mitigate damages. At any time following termination of this Lease, in lieu of the payments to be made to Landlord hereunder, Landlord shall, at its option, be entitled to recover from Tenant an amount equal to the Rent reserved hereunder for the remainder of the Term had the Lease not been terminated less the fair rental value of the Premises. In the computation of such damages, all such Rent payable hereunder after the date of termination shall be discounted from the date installments of Rent would be due hereunder if this Lease had not been terminated to the date of payment at the rate of four percent (4%) per annum. The parties acknowledge that it is impossible to determine more precisely the damages that might be suffered by Landlord as a result of such termination, and that the foregoing damages are a reasonable estimate of Landlord's probable loss in the event of such violation, and that such damages are intended not as a penalty, but as liquidated damages. Acceptance by Landlord of such liquidated damages shall not be deemed permission for Tenant to continue any breach, and, notwithstanding the foregoing, shall not preclude Landlord from seeking (i) all other remedies available to Landlord at equity, including, without limitation, specific performance and/or injunctive relief and (ii) Landlord's remedies expressly set forth herein (other than those relating to the payment of Rent). Such liquidated damages shall be paid by Tenant to Landlord within thirty (30) days after delivery to Tenant of an invoice therefor, as Additional Charges.

Section 15.3 Landlord May Perform Tenant's Obligations. If Tenant shall at any time fail to keep or perform any of its obligations under this Lease in respect of (a) payment of Real Estate Taxes, or (b) providing any insurance required to be maintained by Tenant hereunder, Landlord may, but shall not be obligated to, upon the continuance of such failure on Tenant's part beyond the expiration of any applicable Notice or cure period and without waiving or releasing Tenant from any obligation, make any such payment or perform any such obligation and all sums so paid by Landlord and all necessary incidental costs and expenses incurred by Landlord in making such payments or performing such obligation, together with interest thereon at the Default Interest Rate from the date of payment, shall be deemed Additional Rent and shall be paid to Landlord on demand, or at Landlord's option may be added to any installment of Annual Fixed Rent thereafter falling due, and if not so paid by Tenant, Landlord shall have the same rights and remedies as in the case of a default by Tenant in the payment of Annual Fixed Rent.

Section 15.4 Remedies Cumulative. All rights and remedies of Landlord set forth in this Lease are cumulative and in addition to all other rights and remedies available to Landlord at law or in equity (including, without limitation, specific performance of Tenant's obligations hereunder and injunctive relief). Landlord shall have the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical meanings. The exercise by Landlord of any such right or remedy will not prevent the concurrent or subsequent exercise of any other right or remedy. No delay or failure by Landlord to exercise or enforce any of Landlord's rights or remedies or Tenant's obligations will constitute a waiver of any such rights, remedies or obligations. Landlord will not be deemed to have waived any default by Tenant unless such waiver expressly is set forth in a written instrument signed by Landlord. If Landlord waives in writing any default by Tenant, such waiver will not be construed as a waiver of any covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver.

ARTICLE XVI

Surrender of Possession

Section 16.1 Tenant's Duty to Surrender Possession. Tenant shall, on or before the last day of the Term, peaceably and quietly leave, surrender and yield up to Landlord the Leased Premises, free of Subtenants other than Subleases that Landlord has agreed (in its sole discretion) to permit to remain in place, broom clean and, subject to the provisions of Article XI and Article XII.

Section 16.2 Removal of Tenant's Property. All furniture and furnishings, fixtures and equipment (other than Building Systems) placed or used in the operation of the Leased Premises, and removable without material injury to the freehold shall, throughout the Term, be the property of Tenant. Tenant and any Subtenant may remove its trade fixtures and other items set forth in the preceding sentence prior to the Expiration of the Term or surrender of the Leased Premises to Landlord (the "***Removal Date***"), as applicable, provided that Tenant repairs any damage to the Leased Premises caused by such removal (excluding, however, repairing holes in the floor and/or walls resulting from the removal of fasteners holding equipment, racking and/or trade fixtures).

Section 16.3 Reversion to Landlord. On or before the Expiration of the Term, Tenant shall peaceably surrender and yield up to Landlord the Leased Premises, all Improvements and, to the extent not removed or taken by Tenant, all fixtures and personal property. Tenant shall have the express right to remove any fixtures and personal property permitted under Section 16.2, subject to the terms thereof. The Leased Premises including, without limitation, all Building Systems, will not be left in an unsafe or an unusable condition subject to the provisions of Article XI and Article XII. Any Tenant's personal property which shall remain in the Leased Premises after the Expiration of the Term shall be deemed to have been abandoned and, after the Removal Date, either may be detained by Landlord as its property or may be disposed of in such manner as Landlord may see fit; provided however, that, notwithstanding the foregoing, Tenant may at any time prior to the Removal Date remove from the Leased Premises any Tenant's personal property at Tenant's own expense. If such Tenant's personal property or any part thereof shall be sold by Landlord, the proceeds of such sale shall be received and retained by Landlord and applied against the expense of the sale, cost of moving and storage, any arrears of Rent, and damages to which Landlord may be entitled hereunder or pursuant to law. Any excess proceeds shall be the property of Landlord. Any expense incurred by Landlord in removing or disposing of such Tenant's personal property and not otherwise offset by proceeds of sale or otherwise, shall be reimbursed to Landlord by Tenant within ten (10) days after demand therefor.

Section 16.4 Holdover. If Tenant remains in possession of all or any part of the Leased Premises after the Expiration of the Term with Landlord's prior written consent: (a) Tenant's occupancy of the Leased Premises will be deemed a month-to-month tenancy (not a renewal or extension of the Term); (b) unless otherwise hereafter agreed in writing by Landlord and Tenant, (i) the Annual Fixed Rent during the first sixty (60) days of the holdover period will be one hundred fifty percent (150%) of the Annual Fixed Rent in effect immediately prior to the Expiration of the Term; and (ii) the Annual Fixed Rent during any holdover period thereafter will be two hundred percent (200%) of the greater of (x) the Annual Fixed Rent in effect immediately prior to the Expiration of the Term (y) and the Fair Market Value of the Leased Premises (as determined in accordance with Exhibit C); and (c) Tenant's use and occupancy of the Leased Premises will otherwise be subject to all applicable terms and conditions of the Lease as if the Term had not expired or the Lease had not been terminated, as the case may be. Nothing in this Section 16.4 will be deemed or construed as a consent by Landlord to any holding over by Tenant. Tenant acknowledges that the economic harm that would be suffered by Landlord as a result of Tenant's holding over in possession following the Expiration of the Term would be difficult, if not impossible, to actually assess. Therefore, the parties agree that the sums set forth in this Section 16.4 are fair and reasonable under the circumstances and the Parties voluntarily, knowingly and intentionally admit, concede and stipulate as to difficulty or impossibility of precisely measuring the same and that the aforesaid sums constitute a reasonable approximation of the amount of the same, and are not a penalty. Notwithstanding the foregoing, following the expiration of the Term, if Tenant shall fail to vacate the Premises following receipt of Notice from Landlord demanding that Tenant vacate the Premises and relinquish possession thereto to Landlord, and such failure continues for more than one hundred twenty (120) days, Tenant shall thereafter be obligated to pay to Landlord any and all consequential damages Landlord may incur (or may have incurred in such one hundred twenty (120) day period) as a result of Tenant's failure to so vacate and surrender possession of the Premises. The provisions of this Section 16.4 shall be deemed to be an "agreement expressly providing otherwise" within the meaning of Section 232-c of the Real Property Law of the State of New York. With respect to any holdover following the stated Expiration Date (but not any earlier termination) Tenant expressly waives, for itself and for any Person claiming through or under Tenant, any rights which Tenant or any such Person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force, in connection with any holdover summary proceedings which Landlord may institute to enforce the provisions of this Lease following the original date stated for the expiration of the Term of the Lease.

Section 16.5 Survival. The provisions of this Article XVI shall survive the Expiration of the Term.

ARTICLE XVII

Limitation on Liability

Section 17.1 Transfer of Landlord's Interest. If the Landlord's interest in the Leased Premises shall be sold or otherwise transferred or leased, then provided all of Landlord's obligations under this Lease accruing from and after such sale or transfer shall have been assumed in writing by any such transferee, Landlord shall be relieved of all obligations and liabilities thereafter arising hereunder, and the purchaser or transferee shall be deemed to have assumed all such obligations and liabilities of Landlord accruing from and after such sale or transfer. A copy of the deed conveying the interest in the Leased Premises shall be satisfactory evidence of a successor Landlord's interest.

Section 17.2 Limitation on Landlord's Liability. Notwithstanding any provision of this Lease to the contrary, Tenant agrees to look solely to the then estate and interest of Landlord in the Leased Premises, any rental, sale or refinancing proceeds in the Land and/or Building or leasehold estate of Landlord therein, insurance proceeds and condemnation awards and profits for recovery of any judgment against Landlord, it being understood that Landlord and its representatives, agents, members, partners, shareholders, directors, employees, fiduciaries or officers shall never be personally liable for any such judgment or for the payment of any monetary obligation and Tenant shall not have the right to seek or obtain a personal judgment against Landlord or its representatives, agents, members, partners, shareholders, directors, employees, fiduciaries or officers for any monetary obligation or damages. It is expressly understood and agreed that Landlord's liability under the terms, covenants, warranties and obligations of this Lease will in no event exceed the loss of its estate in the Leased Premises

Section 17.3 Consequential Damages. Except as specifically and expressly provided in this Lease, neither party shall be liable for consequential or punitive damages.

ARTICLE XVIII

Waiver of Jury Trial

Section 18.1 Waiver of Jury Trial. Landlord and Tenant hereby waive any right to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Lease. This waiver is knowingly, intentionally, and voluntarily made by Landlord and Tenant, and each acknowledges that neither the other nor any Person acting on behalf of the other has made any representations of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect. Landlord and Tenant each further acknowledges that it has been represented (or has had the opportunity to be represented) in the signing of this Lease and in the making of this waiver by independent legal counsel, selected of its own free will, and that it has had the opportunity to discuss this waiver with counsel.

ARTICLE XIX

Interaction of Multiple Estates

Section 19.1 No Merger. Without the written consent of Landlord, Tenant, and all Fee Mortgagees, the Fee Estate and the Leasehold Estate shall at all times remain distinct and separate estates. They shall not merge, notwithstanding any acquisition by any means of both the Fee Estate and the Leasehold Estate by Landlord, Tenant, any Fee Mortgagee, or a third party.

Section 19.2 No Landlord's Lien. Landlord has no lien or security interest in any personal property of Tenant or any Subtenant located in, on, or at the Leased Premises. Such personal property shall not secure payment of any Rent. If, at any time, any statute or principle of law would grant Landlord any such lien or security interest, then Landlord waives the benefit of any such statute or principle and such lien. Landlord shall, at no cost to Landlord, execute such documentation, in recordable form, as Tenant or any Subtenant shall reasonably require, or as any lender or equipment lessor shall require, to confirm the foregoing waiver.

ARTICLE XX

Notices

Section 20.1 Manner of Giving Notice. Each notice, request, demand, consent, approval or other communication (referred to collectively as "***Notices***" and referred to singly as a "***Notice***") which Landlord or Tenant is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if

(a) personally delivered with proof of delivery thereof (any Notice so delivered shall be deemed to have been received at the time so delivered),

(b) sent by Federal Express (or other similar overnight courier) designating early morning delivery (any Notice so delivered shall be deemed to have been received when such Notice is delivered or refused), or

(c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent shall be deemed to have been received when such Notice is delivered or refused).

Section 20.2 Addresses for Notices. All Notices shall be addressed to the parties at the following addresses:

if to Landlord:

355 S Technology Drive Owner LLC
c/o BEB Capital LLC
26 Harbor Park Dr.
Port Washington, NY 11050
Attn: Keyvan Ghaytanchi
Email Address: kghaytanchi@bebcapital.com

with a copy to:

c/o Rockpoint Group, L.L.C.,
Woodlawn Hall at Old Parkland
3953 Maple Avenue, Suite 300
Dallas, Texas 75219
Attention: Ron J. Hoyl
Email: rhoyl@rockpoint.com

and to:

c/o Rockpoint Group, L.L.C.,
500 Boylston Street, 21st Floor
Boston, MA 02116
Attention: Joseph Goldman
Email: jg@rockpoint.com

and to:

Vinson & Elkins L.L.P.
1114 Avenue of the Americas, 32nd Floor
New York, New York 10036
Attn: Wallace L. Schwartz, Esq.
Email: wschwartz@velaw.com

if to Tenant:

CVD Equipment Corporation
355 S. Technology Drive
Central Islip, NY 11722
Attn: Emanuel Lakios, President

with a copy to:

Ruskin Moscou Faltischek, P.C.
1425 RXR Plaza
East Tower, 15th Floor
Uniondale, New York 11556
Attn: Benjamin Weinstock, Esq.

and

Ruskin Moscou Faltischek, P.C.
1425 RXR Plaza
East Tower, 15th Floor
Uniondale, New York 11556
Attn: Adam Silvers, Esq.

Either party may, by Notice given pursuant to this Article XX, change the Person or Persons and/or address or addresses, or designate an additional Person or Persons or an additional address or addresses, for its Notices, but Notice of a change of address shall only be effective upon receipt. Landlord and Tenant each agrees that it will not refuse or reject delivery of any Notice given hereunder, that it will acknowledge, in writing, receipt of the same upon request by the other party and that any Notice rejected or refused by it shall be deemed for all purposes of this Agreement to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

Section 20.3 Notice Given by Counsel. All Notices that are required or permitted to be given by either party to the other under this Agreement may be given by such party or its legal counsel, who are hereby authorized to do so on the party's behalf.

ARTICLE XXI

Quiet Enjoyment

Section 21.1 Covenant of Quiet Enjoyment. Landlord covenants that if and so long as Tenant complies with all of its obligations hereunder and is not in default thereof beyond any applicable grace period, Tenant shall quietly hold, occupy and enjoy the Leased Premises during the Term without hindrance, ejection or molestation by Landlord or any Person claiming by through or under Landlord subject, however, to the exceptions, reservations and conditions of this Lease. This Section 21.1 shall survive Expiration of the Term.

ARTICLE XXII

Estoppel Certificates

Section 22.1 Obligation to Deliver. Landlord and Tenant (the "***Certifying Party***") each agrees, at any time and from time to time during the Term, upon not less than twenty (20) days prior written Notice from the other party (the "***Requesting Party***"), to execute, acknowledge and deliver to the Requesting Party a statement certifying to substantially the following provisions (recognizing that any of such statement may be modified by the Certifying Party to reflect the then state of facts): (i) a statement that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (ii) a statement of the dates to which the Annual Fixed Rent and any Additional Rent have been paid by Tenant, (iii) a statement whether or not, to the best knowledge of the Certifying Party, the Requesting Party is in Default in performing any of its material obligations under this Lease, and if so, describing in reasonable detail each such Default of which the Certifying Party may have knowledge, (iv) a statement of the address to which Notices to the Certifying Party should be sent, and (v) such other statement or statements as the Requesting Party, any prospective purchaser of the Leased Premises or the Leasehold Estate, any lender or prospective lender, any Fee Mortgagee or prospective Fee Mortgagee, and/or any prospective assignee of the Leasehold Estate or prospective subtenant of Tenant may reasonably request. Any such statement delivered pursuant hereto, may be relied upon by the recipient to which it is directed

ARTICLE XXIII

Non-Merger of Estates

Section 23.1 No Merger of Estates. The interests of Landlord and Tenant in the Leased Premises shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that the Leasehold Estate, or any interest therein, may be held directly or indirectly by or for the account of any Person who shall own the fee simple title in and to the Leased Premises, or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Leased Premises shall join in the execution of a written instrument effecting such merger of estates.

ARTICLE XXIV

Fee Mortgages

Section 24.1 Landlord's Rights. Landlord may execute and deliver a Fee Mortgage encumbering the Fee Estate at any time and from time-to-time during the Term.

Section 24.2 Fee Mortgage Foreclosure. Upon a Foreclosure Event under a Fee Mortgage, this Lease, any New Lease and any Sublease shall continue in full force and effect and Tenant's, any New Tenant's and any Subtenant's interest in this Lease, a New Lease or a Sublease, as applicable, or the premises leased or subleased hereunder or thereunder, as applicable, shall not be disturbed or affected. Tenant shall attorn to the successor holder of the Fee Estate as successor Landlord (the "***Successor Landlord***"), provided that such Successor Landlord has assumed in writing all obligations of Landlord under this Lease accruing from and after the date that such holder of the Fee Estate has become the Successor Landlord, and subject to the terms of any subordination, non-disturbance and attornment executed between such Successor Landlord and Tenant. Notwithstanding the foregoing, Successor Landlord shall not be (i) liable for any act, omission or default of any prior landlord (including, without limitation, Landlord), except to the extent that any such non-monetary default of an obligation of Landlord under this Lease continues after the date that Successor Landlord succeeds to Landlord's interest in the Leased Premises and Successor Landlord has been given Notice and a reasonable opportunity to cure same; (ii) liable for the return of any security deposit, if any, paid to any prior landlord (including, without limitation, Landlord), except to the extent any such security deposit is delivered to such Successor Landlord; (iii) subject to any offset, claims or defense that Tenant might have against any prior landlord (including, without limitation, Landlord), except to the extent that Tenant has specific designated rights of offset, claim or defense under this Lease; (iv) bound by any Rent which Tenant may have paid to any landlord (including, without limitation, Landlord) more than thirty (30) days in advance; (v) bound by any covenant to perform or complete any construction in connection with the Building or the Leased Premises or to pay any sums to Tenant in connection therewith except as set forth in this Lease; (vi) required to perform any work to the Leased Premises, except for Landlord's repair and maintenance obligations, or to pay for, or reimburse Tenant for, any other construction to be performed by Tenant except as set forth in this Lease; (vii) bound by any waiver or forbearance under, or any amendment, modification, abridgment, cancellation or surrender of, this Lease made without the consent of such Mortgagee; and (viii) bound by any amendment to or modification of this Lease which reduces the Annual Fixed Rent, Additional Rent or other charges payable under this Lease (except to the extent equitably reflecting a reduction in the space covered by this Lease), or changes the term hereof, or otherwise materially affects the rights of Landlord under this Lease, made without the prior consent of such Mortgagee, not to be unreasonably withheld. Such attornment shall in no way diminish or impair Tenant's rights and remedies against Landlord (all of which Tenant may continue to assert against Landlord), or require Tenant to waive any default by Landlord. Upon request by a Successor Landlord, Tenant shall execute and deliver an instrument or instruments, reasonably requested by such Successor Landlord, confirming the attornment provided for herein, but no such instrument shall be necessary to make such attornment effective.

ARTICLE XXV

Hazardous Substances

Section 25.1 Hazardous Substances. Tenant shall not cause or permit to occur on, under or at the Leased Premises during the Term: (a) any violation of any Environmental Laws; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Leased Premises of any Hazardous Substance, unless both: (i) reasonably necessary and customary to conduct any legal business in the Leased Premises in accordance with customary standards in such business, or to operate and maintain the Leased Premises for uses this Lease permits and (ii) in full compliance with all Environmental Laws.

Section 25.2 Clean-Up. Tenant shall, at its sole cost and expense, be responsible for removing and remediating all Hazardous Substances affecting the Leased Premises resulting from Tenant's breach of Section 25.1. In connection with any remediation by Tenant under this Section 25.2, Tenant shall: (a) comply with Environmental Laws; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Governmental Authority under Environmental Laws; (c) if any Governmental Authority requires any clean-up plan because of a Release of a Hazardous Substance, prepare and submit the required plans; and (d) promptly and diligently carry out all such clean-up plans.

Section 25.3 Tenant Environmental Indemnity. Tenant agrees to defend, indemnify, and hold Landlord, its agents, contractors, employees, shareholders, partners, directors, trustees and representatives harmless from any and all liability, claims, demands, causes of action, costs, damages, personal injury and property damages, losses and expenses to the extent arising from the existence of any Hazardous Substances in or about the Leased Premises occurring during the Term and any Release of any Hazardous Substances in, from or about the Leased Premises occurring during the Term, except to the extent due to the gross negligence or willful act or omission (where with regard to any such omission, there was a duty to act) of Landlord. Tenant shall have no indemnification obligations with respect to any Hazardous Substances existing in or about the Leased Premises prior to the Effective Date. Notwithstanding the foregoing, in the event of the existence of any Hazardous Substances in or about the Leased Premises occurring during the Term, or any Release of any Hazardous Substances in, from or about the Leased Premises occurring during the Term, to the extent that Tenant is able to prove was caused by an unauthorized third-party (not affiliated with Tenant or its agents, contractors, employees, shareholders, partners, directors, trustees or representatives), Tenant shall only be required to indemnify Landlord for the first One Hundred Thousand Dollars ($100,000) of liability incurred in connection therewith, and for any costs or liability in connection therewith in excess of Fifteen Million Dollars ($15,000,000).

Section 25.4 Prior Release. To Tenant's knowledge; (i) neither Tenant nor any Tenant Affiliate has received written notice from any third party or Governmental Authority prior to the Effective Date alleging that all or any part of the Leased Premises is in violation of any Environmental Laws that has not been fully remediated in accordance with Environmental Laws, and (ii) neither Tenant nor any Tenant Affiliate has caused a Release of Hazardous Materials on the Leased Premises prior to the Effective Date in violation of Environmental Laws that has not been fully remediated in accordance with Environmental Laws (clauses (i) and (ii) of this Section 25.4 are individually and collectively "***Known Releases***"). Except for any Known Releases, Landlord hereby unconditionally waives, releases, acquits, and forever discharges Tenant and Tenant's officers, directors, shareholders, successors, assigns, employees, attorneys, consultants, and any other person acting on behalf of Tenant, (all of the foregoing are collectively referred to as the "***Tenant Parties***") from all loss, liability, cost and expenses, including without limitation, attorneys' fees and amounts paid in settlement, arising out of or in connection with any and all claims, cross-claims, counterclaims, actions, causes of action, demands, rights, damages, costs, expenses, or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Landlord now has or may have or which may arise in the future on account of or in any way arising out of or in connection with any chemical, contaminant, substance, material, waste, petroleum product, mold mycotoxin, fungi or other environmental conditions on, in, under, from, or affecting or otherwise resulting from operations or activities on the Leased Premises existing prior to the date hereof, or any environmental laws, rules, regulations, ordinances, codes or requirements of any environmental governmental regulatory authority (including, without limitation, any rights of Tenant under the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Navigation Law of the State of New York, and the Environmental Conservation Law of the State of New York, as amended from time to time, or similar laws) with respect thereto. This Section 25.4 shall survive termination of this Lease and not to be merged therein. Landlord acknowledges and agrees that the waivers, releases, and other provisions contained in this Section 25.4 are a material factor in Tenant's entry into this Lease and that Tenant is unwilling to Lease the Leased Premises from Landlord unless Tenant is released as expressly set forth above. Landlord has fully reviewed the disclaimers and waivers set forth in this Lease and understands and accept the significance and effect thereof. When used in this Lease, the phrase "to Seller's knowledge," means the actual knowledge (as opposed to constructive or imputed knowledge) of Emanuel Lakios, or any subsequent senior officer of Tenant fulfilling similar functions.

Section 25.5 Survival. This Article XXV shall survive the Expiration of the Term.

ARTICLE XXVI

No Broker

Section 26.1 No Broker. Landlord and Tenant each represent and warrant that it has not dealt with any broker or finder in connection with this Lease or the transaction contemplated hereby. Tenant shall indemnify and hold Landlord harmless from and against any and all claims for any brokerage commission or fee with respect to this lease transaction by any broker with whom Tenant has dealt or is alleged to have dealt. Landlord shall indemnify and hold Tenant harmless from and against any and all claims for any brokerage commission or fee with respect to the lease transaction by any broker with whom Landlord has dealt or is alleged to have dealt. The provisions of this Section 26.1 shall survive the Expiration of the Term.

ARTICLE XXVII

Miscellaneous Provisions

Section 27.1 Invalid Provisions. If any term or provision of this Lease, or the application thereof to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law. This Lease represents the result of negotiations between Landlord and Tenant, each of which has been (or has had opportunity to be) represented by counsel of its own selection, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Consequently, Landlord and Tenant agree that the language in all parts of the Lease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against Landlord or Tenant.

Section 27.2 Recording. Landlord and Tenant, upon the request of the other, shall execute, acknowledge and deliver a memorandum of this Lease (setting forth or reaffirming the Lease Commencement Date and the Fixed Expiration Date, the Right of First Offer, the Purchase Option and any other provision of this Lease as either party may request), and of each modification of this Lease, in proper form for recordation. Either party, at its sole cost and expense, may record this Lease and any memorandum of this Lease. The cost of recording this Lease or the any memorandum of this Lease shall be borne entirely by the party who records the Lease or the memorandum. If the Lease is terminated by a Judgment of Possession, or a Warrant of Eviction, or similar process, Landlord may file or record such Judgment of Possession, or Warrant of Eviction, or similar process, and such filing or recording shall constitute a termination of every Memorandum of Lease theretofore recorded.

Section 27.3 Governing Law; Venue. This Lease and the rights and obligations of the parties hereto shall be interpreted, construed, and enforced in accordance with the laws of the State of New York applicable to agreement made in and to be performed in the State of New York, without giving effect to any part of such law that would result in the selection or application of the law of any other jurisdiction. Landlord and Tenant, any subtenant, and any guarantor of Tenant's obligations under this Lease, hereby expressly consent to the jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Eastern District of New York with respect to any action or proceeding between Landlord and Tenant or such party with respect to this Lease or any rights or obligations of either party pursuant to or in connection with this Lease, and each of such subtenant, guarantor, Landlord and Tenant agree that venue shall lie in Suffolk County.

Section 27.4 Successors and Assigns. Subject to the terms of this Lease, this Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord and Tenant and their respective permitted successors and assigns.

Section 27.5 Entire Agreement. This Lease, including the Exhibits, constitutes the entire agreement between the parties hereto with respect to the subject matter of this Lease and supersedes all prior agreements and understandings between the parties related to the Leased Premises, including all lease proposals, letters of intent and similar documents.

Section 27.6 General Interpretive Principles. For purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Section 27.6 have the meanings assigned to them in this Section 27.6 and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other genders; (ii) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles ("***GAAP***"); (iii) references herein to "Articles," "Sections," "subsections," "paragraphs" and other subdivisions without reference to a document are to designated Articles, Sections, subsections, paragraphs and other subdivisions of this Lease; (iv) a reference to a subsection without further reference to a Section is a reference to such subsection as contained in the same Section in which the reference appears, and this rule shall also apply to paragraphs and other subdivisions; (v) a reference to an Exhibit without a further reference to the document to which the Exhibit is attached is a reference to an Exhibit to this Lease; (vi) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular provision; (vii) a reference to a specified number of days means calendar days; and (viii) the word "including" means "including, but not limited to."

Section 27.7 OFAC. Landlord represents and warrants to Tenant that (a) Landlord and each person or entity directly or indirectly owning an interest in Landlord is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control of the Department of the Treasury ("***OFAC***") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "***List***"), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (b) none of the funds or other assets of Landlord constitute property of, or are beneficially owned, directly or indirectly, by, any Embargoed Person, (c) no Embargoed Person has any interest of any nature whatsoever in Landlord (whether directly or indirectly), (d) none of the funds of Landlord have been derived from any unlawful activity with the result that the investment in Landlord is prohibited by Legal Requirements or that this Lease is in violation of any Legal Requirement, and (e) Landlord has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term "***Embargoed Person***" means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. §1 *et seq.*, and any Executive Orders or regulations promulgated thereunder with the result that the investment in Landlord is prohibited by Legal Requirements or Landlord is in violation of any Legal Requirements.

Tenant represents and warrants to Landlord that (a) Tenant and each person or entity directly or indirectly owning an interest in Tenant is (i) not currently identified on the List, and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (b) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by, any Embargoed Person, (c) no Embargoed Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (d) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by Legal Requirements or that this Lease is in violation of any Legal Requirement, and (e) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

Section 27.8 Consents and Approvals. Wherever in this Lease either party's consent or approval is required, such consent shall not be unreasonably withheld, delayed or conditioned unless otherwise expressly provided. Notwithstanding anything to the contrary contained herein, either party may seek by arbitration before The American Arbitration Association ("***AAA***"), on an expedited basis, such injunctive relief or specific performance in connection with a claim by either party that the other party has unreasonably withheld, delayed or conditioned its consent. If either party demands arbitration under this Section 27.8, Landlord and Tenant shall jointly select an independent arbitrator (the "***Arbitrator***"). If Landlord and Tenant shall be unable to jointly agree on the designation of the Arbitrator within three (3) days after they are requested to do so by either party, then the parties agree to allow AAA, or any successor organization to designate the Arbitrator in accordance with the rules, regulations and/or procedures for expedited proceedings then pertaining of AAA or of any successor organization. The Arbitrator shall conduct such hearings and investigations as he may deem appropriate and shall, within seven (7) days after the date of designation of the Arbitrator issue a determination as to whether the refusal to consent was unreasonable or determining such other dispute expressly made subject to arbitration hereunder. The determination of the Arbitrator shall be conclusive and binding upon Landlord and Tenant and shall be set forth, along and with the Arbitrator's rationale for such choice, in a written report delivered to Landlord and Tenant. The prevailing party shall recover its reasonable counsel fees and expenses, if any, in connection with any arbitration under this Article XXVII. The Arbitrator appointed pursuant to this Article XXVII shall be an independent real estate professional with at least ten (10) years' experience in leasing and management of properties which are similar in character to the Leased Premises. The Arbitrator shall not have the power to add to, modify or change any of the provisions of this Lease but shall have the power to direct either party to consent to such request or determine that the refusal to consent or condition imposed upon the granting of consent is reasonable. If Tenant claims or asserts that Landlord has violated or failed to perform a covenant of Landlord not to unreasonably withhold or delay Landlord's consent or approval, or in any case where Landlord's reasonableness in exercising its judgment is in issue, Tenant's sole remedy shall be an action for specific performance, declaratory judgment or injunction and in no event shall Tenant be entitled to any money damages for a breach of such covenant and in no event shall Tenant claim or assert any claims in any money damages in any action or by way of set off, defense or counterclaim and Tenant hereby specifically waives the right to any money damages or other remedies.

Section 27.9 No Presumption Against Draftsmen. Landlord and Tenant acknowledge and agree that this Lease has been freely negotiated by the parties, and that, in any dispute over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conditions, there shall be no presumption whatsoever against any party by virtue of that party having drafted this Lease or any portion thereof. If any words or phrases in this Lease (or in any prior draft thereof) shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Lease shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included herein and no implication or inference shall be drawn from the fact that such words or phrases were so stricken out or otherwise eliminated.

Section 27.10 Severability. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 27.11 No Partnership. Nothing contained in this Lease shall be deemed or construed as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computing Rent nor any other provision contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties other than that of landlord and tenant.

Section 27.12 Counterparts. This Lease may be executed in multiple counterparts and by facsimile signature, each of which shall be an original, and all of which shall constitute one and the same instrument.

Section 27.13 Not a Consumer Contract. Tenant acknowledges that this Lease is not entered into for personal, family or household purposes, and therefore General Obligations Law Section 5-327 (and any other law whose effect is limited to transactions entered into for personal, family or household purposes) has no application to this Lease.

Section 27.14 Non Waiver. This Lease may not be altered, amended, changed, waived or modified in any respect or particular unless the same shall be in writing signed by Landlord and Tenant. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

Section 27.15 Further Assurances. Each party hereto agrees to take such acts and to execute, deliver and file or cause to be executed, acknowledged, delivered, recorded or filed such further documents and instruments as may be necessary or as may be reasonably requested, whether before or after the date hereof, in order to fully effectuate the transactions contemplated by this Lease.

Section 27.16 No Offer. The submission of this Lease for examination does not constitute a reservation of or option for the Leased Premises, or a binding offer to lease, and this Lease shall become effective as a Lease only upon execution and delivery thereof by both Landlord and Tenant. Landlord and Tenant hereby waive and each is estopped from asserting any rights with respect to the Leased Premises or against the other party hereto which may arise from any alleged oral agreement, oral lease, any acts or expenditures (including the return of this Lease to Landlord executed by Tenant and the payment of any sums on account hereof) or series of same taken or made by Landlord or Tenant in reliance on the anticipated execution hereof by Landlord or Tenant; or any letter or other written communication from Landlord or Tenant, or their respective attorneys sent prior to the execution and delivery hereof by Landlord, Tenant and Guarantor as aforesaid; it being expressly understood and agreed that Landlord and Tenant shall under no circumstances have any such rights until said execution and delivery hereof by both parties. This Lease shall become binding on the parties hereto on the last day that this Lease shall be executed by the parties and a fully executed counterpart of this Lease is delivered to each party or its respective attorney.

ARTICLE XXVIII

Representations By Landlord

Section 28.1 Landlord represents and warrants to Tenant that the following facts and conditions exist and are true in all respects as of the Effective Date:

(a) Landlord has full right, title, authority, and capacity to execute and perform this Lease, the memorandum of lease, and any other agreements and documents to which Landlord and Tenant are parties and referred to or required by this Lease (collectively, the "***Lease-Related Documents***"); the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Landlord; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Landlord's organizational documents), contract, or other restriction to which Landlord is a party or is bound.

(b) Landlord has not received any actual notice of any pending condemnation affecting any portion of the Leased Premises.

(c) Landlord is not a "foreign person" within the meaning of United States Internal Revenue Code §1445(f)(3).

ARTICLE XXIX

Representations By Tenant

Section 29.1 Tenant represents and warrants to Landlord that the following facts and conditions exist and are true in all respects as of the Effective Date:

(a) Tenant has full right, title, authority, and capacity to execute and perform the Lease-Related Documents; the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Tenant; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Landlord's organizational documents), contract, or other restriction to which Tenant is a party or is bound.

(b) Tenant is not a "foreign person" within the meaning of United States Internal Revenue Code §1445(f)(3).

ARTICLE XXX

Intentionally Omitted

ARTICLE XXXI

Landlord's Waiver

Section 31.1 Landlord acknowledges that Tenant, and Tenant's affiliates, may have entered into, or may at any time during the Term enter into, one or more loans and/or financing arrangements with one or more lenders or other secured parties (each a "Secured Party", collectively, the "Secured Parties"), which may be secured by, among other things, all of the Tenant's present and after acquired assets (collectively, the "Collateral"), including, without limitation, the Tenant's inventory, equipment, machinery, and other personal property located, and to be located, upon the Leased Premises (collectively, the "Collateral").

Section 31.2 The Landlord hereby waives and releases in favor of the Secured Parties: (a) any and all rights of distraint, levy, and execution which the Landlord may now or hereafter have against the Collateral; (b) any and all statutory liens, security interests, or other liens which the Landlord may now or hereafter have in the Collateral; and (c) any and all other interests or claims of every nature whatsoever which the Landlord may now or hereafter have in or against the Collateral for any rent, storage charges, or other sums due, or to become due, to the Landlord by the Tenant. The Landlord agrees not to exercise any of the Landlord's rights, remedies, powers, privileges, or discretions with respect to the Collateral, or the Landlord's liens or security interests in the Collateral, unless and until the Landlord receives written notice from an officer of the Secured Parties that the Tenant's obligations to the Secured Parties have been paid in full. The foregoing waiver is made for the benefit of the Secured Parties and does not affect the obligations of the Tenant to the Landlord. The Landlord agrees that if any of the Collateral may be or may become affixed to the Leased Premises, such Collateral shall remain personal property notwithstanding the manner in which the same is affixed to the Leased Premises.

Section 31.3 In the event of the exercise by a Secured Party of its rights with respect to the Collateral upon default of the Tenant on any of their obligations to the Secured Parties (including but not limited to a default under the Lease), the Secured Party shall have a reasonable time after the Secure Party declares the default in which to repossess and/or dispose of the Collateral from the Leased Premises. The Landlord will, upon reasonable prior written notice from the Secured Party (a) cooperate with the Secured Party in gaining access to the Leased Premises for the purpose of repossessing said Collateral and (b) if requested by the Secured Party, permit the Secured Party, or its agents or nominees, to dispose of the Collateral on the Leased Premises in a manner reasonably designed to minimize any interference with any of the Landlord's other tenants at the Leased Premises.

Section 31.4 To the extent not paid or prepaid by the Tenant, Landlord shall have the right to require the Secured Party to pay the Landlord a sum for its use and occupancy of the Leased Premises on a per diem basis in an amount equal to the monthly base rent required to be paid by the Tenant under the Lease from the date on which the Secured Party shall have taken possession of the Collateral on the Leased Premises until the date on which the Secured Party vacates the Leased Premises, it being understood, however, that the Secured Party shall not, thereby, have assumed any of the obligations of the Tenant to the Landlord, including, without limitation, any obligation to pay any past due rent owing by the Tenant.

Section 31.5 The provisions of this Article XXXI are self-executing. Nevertheless, Landlord shall, upon request from Tenant, execute an agreement in confirmation of the foregoing, in form and substance reasonably acceptable to the Secured Parties.

[Signature page follows on next page]

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

LANDLORD:

355 S Technology Drive Owner LLC

By:_____
Name:
Title:

TENANT:

CVD Equipment Corporation

By:_____
Name: Emanuel Lakios
Title: President & CEO

Exhibit 10.3

SECOND AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

This **SECOND AMENDMENT TO AGREEMENT OF PURCHASE AND SALE** (this "**Amendment**") is entered into as of November 4, 2022, between **FAE HOLDINGS 411519R, LLC**, a New York limited liability company ("**Seller**"), and **355 TECHNOLOGY DRIVE OWNER LLC**, a Delaware limited liability company ("**Purchaser**").

BACKGROUND:

A. Seller and Purchaser entered into an Agreement of Purchase and Sale dated September 21, 2022, as amended by the First Amendment to Agreement of Purchase and Sale dated October 14, 2022 (collectively, the "**Agreement**"), for the purchase and sale of certain property located at 355 South Technology Avenue, Central Islip, New York, as more particularly described in the Agreement. All capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Agreement.

B. Seller and Purchaser desire to amend the Agreement on the terms set forth below.

AGREEMENTS:

1. **Due Diligence**. Notwithstanding anything in the Agreement to the contrary, Section 5.1 of the Agreement is hereby further modified to extend the expiration of the Diligence Period to 5:00 pm Eastern Time on November 4, 2022.

2. **Ratification; Governing Law**. Seller and Purchaser hereby ratify the terms of the Agreement and acknowledge that, except as herein modified, the Agreement is in full force and effect. If any inconsistency exists or arises between the terms of the Agreement and the terms of this Amendment, the terms of this Amendment shall control. This Amendment shall be governed by the laws of the state in which the Property is located.

3. **Counterparts; Delivery**. This Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one document. To facilitate execution of this Amendment, the parties hereto may execute and exchange, by telephone facsimile or electronic mail PDF, counterparts of the signature pages. Signature pages may be detached from the counterparts and attached to a single copy of this Amendment to physically form one document.

[Signatures Follow]

Executed as of the date first written above.

PURCHASER:

355 TECHNOLOGY DRIVE OWNER LLC, a Delaware limited liability company

By: /s/ Ron J. Hoyl
Name: Ron J. Hoyl
Title: Vice President

SELLER:

FAE HOLDINGS 411519R, LLC, a New York limited liability company

By: /s/ Emmanuel Lakios
Name: Emmanuel Lakios
Title: President & CEO

Signature Page –
Second Amendment to Agreement of Purchase and Sale
Purchase and Sale

Exhibit 10.4

THIRD AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

This **THIRD AMENDMENT TO AGREEMENT OF PURCHASE AND SALE** (this "**Amendment**") is entered into as of November 4, 2022, between **FAE HOLDINGS 411519R, LLC**, a New York limited liability company ("**Seller**"), and **355 TECHNOLOGY DRIVE OWNER LLC**, a Delaware limited liability company ("**Purchaser**").

BACKGROUND:

A. Seller and Purchaser entered into an Agreement of Purchase and Sale dated September 21, 2022, as amended by the First Amendment to Agreement of Purchase and Sale dated October 14, 2022; as further amended by the Second Amendment to Agreement of Purchase and Sale dated November 3, 2022 (collectively, the " **Agreement**"), for the purchase and sale of certain property located at 355 South Technology Avenue, Central Islip, New York, as more particularly described in the Agreement. All capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Agreement.

B. Seller and Purchaser desire to amend the Agreement on the terms set forth below.

AGREEMENTS:

1. **Due Diligence**. Notwithstanding anything in the Agreement to the contrary, Section 5.1 of the Agreement is hereby further modified to extend the expiration of the Diligence Period to 5:00 pm Eastern Time on November 11, 2022.

2. **Closing**. Notwithstanding anything in the Agreement to the contrary, the extension of the Diligence Period shall not extend the Closing Date as set forth in the initial Agreement.

3. **Ratification; Governing Law**. Seller and Purchaser hereby ratify the terms of the Agreement and acknowledge that, except as herein modified, the Agreement is in full force and effect. If any inconsistency exists or arises between the terms of the Agreement and the terms of this Amendment, the terms of this Amendment shall control. This Amendment shall be governed by the laws of the state in which the Property is located.

4. **Counterparts; Delivery**. This Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one document. To facilitate execution of this Amendment, the parties hereto may execute and exchange, by telephone facsimile or electronic mail PDF, counterparts of the signature pages. Signature pages may be detached from the counterparts and attached to a single copy of this Amendment to physically form one document.

[Signatures Follow]

Executed as of the date first written above.

PURCHASER:

355 TECHNOLOGY DRIVE OWNER LLC, a Delaware limited liability company

By: /s/ Ron J. Hoyl
Name: Ron J. Hoyl
Title: Vice President

SELLER:

FAE HOLDINGS 411519R, LLC, a New York limited liability company

By: /s/ Emmanuel Lakios
Name: Emmanuel Lakios
Title: President & CEO

Signature Page –
Third Amendment to Agreement of Purchase and Sale
(355 S. Technology Drive)

Exhibit 31.1

Certifications of Principal Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Emmanuel Lakios, certify that:

1. I have reviewed this quarterly report on Form 10-Q of CVD Equipment Corporation;

2. Based upon 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 upon my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    b. Designed such internal controls over financial reporting, or caused such internal controls over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrants' board of directors (or persons performing the equivalent functions):

    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 14, 2022

/s/ Emmanuel Lakios
President and Chief Executive Officer

Exhibit 31.2

Certifications of Principal Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Richard Catalano, certify that:

1. I have reviewed this quarterly report on Form 10-Q of CVD Equipment Corporation;

2. Based upon 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 upon my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    b. Designed such internal controls over financial reporting, or caused such internal controls over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrants' 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 controls over financial reporting.

Dated: November 14, 2022

/s/ Richard Catalano
Richard Catalano
Vice President and
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

Certification of Principal Executive Officer
Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

I, Emmanuel Lakios, President and Chief Executive Officer of CVD Equipment Corporation, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge, the quarterly report on Form 10-Q for the period ending September 30, 2022 of CVD Equipment Corporation (the "Form 10-Q") fully complies with the requirements of Section 13 (a) or 15 (d) of the Securities Exchange Act of 1934 and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of CVD Equipment Corporation.

Dated: November 14, 2022

/s/ Emmanuel Lakios
Emmanuel Lakios
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

Certification of Principal Financial Officer
Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

I, Richard Catalano, Chief Financial Officer of CVD Equipment Corporation, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge, the quarterly report on Form 10-Q for the period ending September 30, 2022 of CVD Equipment Corporation (the "Form 10-Q") fully complies with the requirements of Section 13 (a) or 15 (d) of the Securities Exchange Act of 1934 and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of CVD Equipment Corporation.

Dated: November 14, 2022

/s/ Richard Catalano
Richard Catalano
Vice President and
Chief Financial Officer
(Principal Financial Officer)