

DC-18-09831  
CAUSE NO. \_\_\_\_\_

Angie Avina

**DISSOLUTION COMMITTEE FOR  
THE FORMER BOARD OF  
TRUSTEES OF DALLAS COUNTY  
SCHOOLS**

*Plaintiff,*

v.

**FORCE MULTIPLIER  
SOLUTIONS, INC.; ROBERT  
LEONARD; DR. RICK SORRELLS;  
LARRY DUNCAN, ELF  
MARKETING, LLC; ELF  
INVESTMENTS, LLC;  
WEDGEWOOD INVESTMENT  
GROUP, LLC; EQUIPMENT  
LEASING GROUP OF AMERICA,  
LLC; BRIAN TREBELS, LEE  
TREBELS (A/K/A RUDY  
TREBELS); CAMBRIDGE REALTY  
GROUP, LLC; ANROCK REALTY  
SERVICES, LLC; SLATER  
SWARTWOOD, SR.; SLATER  
SWARTWOOD, JR., DWAIN  
CARAWAY**

*Defendants.*

**IN THE DISTRICT COURT**

**DALLAS COUNTY, TEXAS**

I-162ND  
\_\_\_\_\_ JUDICIAL DISTRICT

**DISSOLUTION COMMITTEE FOR THE FORMER BOARD OF TRUSTEES OF  
DALLAS COUNTY SCHOOLS' ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW the Dissolution Committee for the Former Board of Trustees of Dallas County Schools ("DCS") and files its Original Petition complaining of Defendants Force Multiplier Solutions, Inc.; Robert Leonard; Dr. Rick Sorrells; Larry Duncan, Elf Marketing, LLC; Elf Investments, LLC; Wedgewood Investment Group, LLC; Equipment Leasing Group Of



America, LLC; Brian Trebels; Lee Trebels (A/K/A Rudy Trebels); Cambridge Realty Group, LLC; Anrock Reality Services, LLC; Slater Swartwood, Sr.; Slater Swartwood, Jr., and Dwaine Caraway; and for causes of action, DCS respectfully shows the Court as follows:

**I. NOTICE OF RELATED CASE UNDER LOCAL RULE 1.08**

Pursuant to Local Rule 1.08, Plaintiff notifies this Court that that the above-styled cause is subject to transfer pursuant to Rule 1.07. Specifically, the above-styled case is related to *BusPatrol America LLC v. Dallas County Schools et al.*, DC-18-06457, pending before the Honorable Judge Moyé of the 14th District Court of Dallas County, Texas.

Assignment of the matter to Judge Moyé's court will facilitate an orderly and efficient disposition of this litigation because another judge will not have to become familiar with the bus stop-arm program, the history between DCS and Force Multiplier Solutions, and the history of criminal prosecutions related to the instant case.

**II. SUMMARY OF CLAIMS**

Dallas County Schools was the first school district in Texas and served students in the Dallas–Fort Worth Metroplex for over 170 years. Through the machinations of its former superintendent, Dr. Rick Sorrells, Dallas County Schools became the victim of a massive conspiracy that defrauded it of tens of millions of dollars. This scheme involved scores of individuals, entities, and shell corporations that all had the purpose of bilking Dallas County Schools of more than \$125,000,000.00 in taxpayer money.

The conspirators, led by Force Multiplier Solutions and its owner, Robert Leonard, funneled bribes, illegal campaign contributions, and kickbacks to Dr. Rick Sorrells to secure lucrative school bus stop arm camera contracts from Dallas County Schools.



And when Dallas County Schools could no longer service the massive debt it owed to Force Multiplier Solutions, Dr. Sorrells and Robert Leonard orchestrated yet another scheme to rob Dallas County Schools by arranging an insider sale-and-leaseback of four of Dallas County Schools' bus service centers. Two conspirators, Dr. Rick Sorrells and Slater Swartwood Sr., have already pleaded guilty to federal charges.

Following the exposure of the conspiracy and fraud, Force Multiplier Solutions, through its owner Robert Leonard, hastily transferred substantially all of its assets to another entity. The Dissolution Committee, charged by the legislature with winding down Dallas County Schools, now brings these claims to recover funds stolen from and recoup monies to satisfy obligations owed by Dallas County Schools.

### **III. DISCOVERY**

1. Discovery in this lawsuit is intended to be conducted under Level Three, in accordance with TEX. R. CIV. P. 190.3.

2. Pursuant to Rule 47(c) of the Texas Rules of Civil Procedure, DCS avers that it seeks monetary relief of over more than \$1,000,000.00, including damages of any kind, penalties, costs, expenses, prejudgment interest, and attorneys' fees.

### **IV. THE PARTIES**

3. Plaintiff DCS is the statutorily-created Dissolution Committee for the legislatively-abolished Board of Dallas County Schools Trustees. The Dissolution Committee is the duly appointed statutory committee to administer the dissolution process for DCS ("Dissolution Committee"), whose authority includes, without limitation, the collection and liquidation of DCS assets and the payment of valid and enforceable DCS liabilities. Accordingly, the Dissolution Committee has standing to bring this Petition.



4. DCS was a school district per the Education Code of the State of Texas and a subdivision of the State of Texas, and its principal office was located at 5151 Samuell Blvd., Dallas, TX 75228.

5. Defendant Force Multiplier Solutions, Inc., is a Louisiana Corporation that can be served with process through its registered agent, Robert C. Leonard, at 5804 River Oaks Road, Harahan, LA 70123.

6. Defendant Robert C. Leonard is a Louisiana resident that can be served with process at 231 Friedrichs Ave., Metairie, LA, 70005 or anywhere else he may be found.

7. Defendant Dr. Rick Sorrells is a Texas resident that can be served with process at 8539 Forest Hills Blvd., Dallas, TX 75218 or anywhere else he may be found.

8. Defendant Larry Duncan is a Texas resident that can be served with process at 6526 Clearhaven, Circle, Dallas TX 75248-4018 or anywhere else he may be found.

9. Defendant Cambridge Realty Group, LLC ("Cambridge") is a Louisiana limited-liability company that can be served with process through its registered agent, Karen Cloke Rodriguez, at 4207 Tchoupitoulas Street, New Orleans, LA 70115.

10. Defendant ELF Marketing, LLC ("ELF Marketing") is a Texas limited-liability company that can be served with process through its registered agent Slater W. Swartwood, Jr., at 12605 Rush Creek Lane, Austin, TX, 78732.

11. Defendant ELF Investments, LLC ("ELF Investments") is a Louisiana limited liability company that can be served with process through its registered agent John W. Holmes, at 110 Veterans Blvd, Ste 525, Metairie, LA 70005.

12. Defendant Wedgewood Investment Group, LLC ("Wedgewood") is an Illinois limited-liability company that can be served with process through its registered agent, Lee A.



Trebels, at 211 Waukegan Road, Suite 100, Northfield, IL, 60093.

13. Defendant Equipment Leasing Group of America, LLC (“ELGA”) is an Illinois limited-liability company that can be served with process through its registered agent, Lee A. Trebels, at 211 Waukegan Road, Suite 100, Northfield, IL, 60093.

14. Defendant Brian Trebels is an Illinois resident that can be served with process at 343 Country Ln., Glenview, IL 60025.

15. Defendant Lee (a/k/a Rudy) Trebels is an Illinois resident that can be served with process at 343 Country Ln., Glenview, IL 60025.

16. Defendant Anrock Reality Services, LLC (“Anrock”) is a Louisiana limited-liability company that can be served with process through its registered agent, Slater Swartwood Sr., at 5804 River Oaks Road, Harahan, LA, 70123.

17. Defendant Slater Swartwood, Sr. is a Louisiana resident that can be served with process at 2018 General Pershing St., New Orleans, LA 70115 or anywhere else he may be found.

18. Defendant Slater Swartwood, Jr. is a Texas resident that can be served with process at 12604 Rush Creek Ln., Austin, TX 78732 or anywhere else he may be found.

19. Defendant Dwaine Caraway is a Texas resident that can be served with process at 1934 Argyle Ave., Dallas TX, 75203 or anywhere else he may be found.

## **V. JURISDICTION AND VENUE**

20. All damages sought by DCS in this lawsuit are within the jurisdictional limits of this Court.

21. For jurisdictional purposes, DCS is a Texas resident because it is a Texas governmental unit enumerated by the Education Code of the State of Texas with its central office located at 5151 Samuell Blvd., Dallas, TX 75228.



22. Jurisdiction is proper over the Defendants because the acts and omissions that form the basis of DCS's causes of action occurred in Dallas County, Texas.

23. Venue is proper in Dallas County, Texas. Specifically, venue is proper in Dallas County under the general venue rule because a substantial part of the events or omissions giving rise to these claims occurred in Dallas County.

## **VI. FACTS**

24. DCS was founded as school district in 1846 and subsequently provided transportation and other ancillary school services to school districts in the surrounding Dallas–Fort Worth Metroplex.

25. Starting in 2010, through a complex scheme of bribery, money laundering, and insider transactions, certain Defendants collectively conspired to create an illegal enterprise in exchange for favorable treatment by Dr. Sorrells, the former Superintendent of DCS, regarding: (1) a program to install stop-arm cameras on DCS buses (the “Stop-Arm Bus Camera Program”) and (2) the subsequent sale and leaseback of four bus service centers to service the debt caused by the fraudulent Stop-Arm Camera Program (the “Sale Leaseback Transaction”).

26. Following the revelation of the dire financial situation caused by the conspiracy which led to the Stop-Arm Camera Program and Sale-Leaseback Transaction, Dallas County Schools was legislatively abolished, and the Dissolution Committee is now the duly-appointed statutory committee responsible for the dissolution of Dallas County Schools.

### **A. The Conspiracy**

27. From 2009 to 2017, former superintendent of DCS, Dr. Rick Sorrells, Robert Leonard, the CEO of Force Multiplier Solutions (“FMS”), Slater Swartwood, Sr., and a plethora of other individuals, shell companies, and related entities (the “Conspiracy”



Defendants”)<sup>1</sup> conspired to engage in a criminal enterprise of pay-to-play campaign contributions, bribes, and kickbacks in return for lucrative contracts from DCS that ultimately left DCS and its tax payers with over \$125,000,000 in debilitating debt obligations.

28. Dr. Sorrells and Slater Swartwood, Sr. have each entered into plea agreements with the Department of Justice admitting to the conspiracy. Dr. Sorrells pleaded guilty to Conspiracy to Commit Honest Services Wire Fraud under 18 U.S.C. § 1349. True and correct copies of the Information, Factual Resume, and Plea Agreement of Dr. Rick Sorrells in Case 3:18-cr-00169-N, filed in the District Court for the Northern District of Texas, Dallas Division are attached as **Exhibit A**.

29. Slater Swartwood, Sr. pleaded guilty to Conspiracy to Commit Money Laundering under 18 U.S.C § 371. True and correct copies of the Information, Factual Resume, and Plea Agreement of Slater Swartwood, Sr., Case 3:17-cr-00678, filed in the District Court for the Northern District of Texas, Dallas Division are attached as **Exhibit B**.

30. According to the Sorrells Factual Resume, Robert Leonard caused approximately \$2 million in bribe and kickback payments to be transferred to pass-through entities controlled by Slater Swartwood, Sr., including Elf Investments, Cambridge Realty Group, LLC and Anrock Realty Services, LLC after which Slater Swartwood, Sr., at Robert Leonard’s direction, would pay Dr. Sorrells or shell companies that he controlled.

31. According to the Sorrells Factual Resume, in 2010, DCS entered into a Professional Services Agreement with FMS or another entity controlled by Robert Leonard, in which DCS

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<sup>1</sup> The Conspiracy Defendants are: Force Multiplier Solutions, Inc.; Robert Leonard; Dr. Rick Sorrells; Larry Duncan, Elf Marketing, LLC; Wedgewood Investment Group, LLC; Equipment Leasing Group of America, LLC; Brian Trebels, Lee Trebels (A/K/A Rudy Trebels); Cambridge Realty Group, LLC; Anrock Reality Services, LLC; Slater Swartwood, Sr; Slater Swartwood, Jr.; the yet to be identified, unnamed law firm; and Dwaine Caraway.



agreed to purchase between 100 and 150 bus-camera systems, which comprised only a fraction of DCS's entire bus fleet. The Professional Services Agreement did not set forth any specific terms nor obligate DCS to buy the cameras from FMS or an entity controlled by Robert Leonard.

32. Beginning in 2010, Robert Leonard told Dr. Sorrells that he thought Dr. Sorrells was underpaid and instructed Sorrells to open a company, Allegro Research and Consulting ("Allegro"), in a family member's name to receive the first of the bribery payments. This first bribe corresponded with DCS's first purchase of cameras from FMS or another entity controlled by Robert Leonard. These payments were sent to a law firm, which then funneled the payments to Sorrells. Subsequent payments to Allegro were also funneled through the law firm and ultimately to Sorrells. See **Exhibit A**, Sorrells Factual Resume, at ¶9.

33. The Sorrells Factual Resume goes on to say that:

Sorrells understood almost immediately that the "consulting" he was doing for [Robert Leonard] was merely a front, and that [Robert Leonard] was paying him to secure favorable official action for FMS including the purchase of additional cameras. Despite doing only approximately 20 to 30 hours of internet research for Person A, Person A paid Sorrells, via the law firm, \$50,000. Beyond this, Sorrells did no work--consulting or otherwise-for [Robert Leonard] or [FMS] for the remainder of the conspiracy.

**Exhibit A**, Sorrells Factual Resume, at ¶10.

34. To disguise the true purpose of the bribes, Robert Leonard created a fake Craigslist advertisement and told Dr. Sorrells to respond to it, after which a lawyer would be his contact. Per Robert Leonard's advice, Dr. Sorrells communicated with Leonard about Allegro using a family member's email address in an attempt to separate himself from the bribe and kickback payments.

**Exhibit A**, Sorrells Factual Resume, at ¶11.

35. To conceal even more bribes, Robert Leonard asked Dr. Sorrells to open a second shell company, Photon IT Product Development ("Photon"). Dr. Sorrells did not have experience



in information technology and did not work for Robert Leonard through Photon. Nevertheless, Robert Leonard provided Dr. Sorrells with a template by which Dr. Sorrells could create a fake consulting agreement for Photon. Dr. Sorrells submitted fake invoices for “consulting” work to disguise the bribery and kickback payments on fewer than five occasions. Robert Leonard asked Dr. Sorrells to stop submitting invoices, but payments to Photon continued. Dr. Sorrells signed Photon documents with the fake name “D. Brumbe.” **Exhibit A**, Sorrells Factual Resume, at ¶11.

36. After creating Photon, Dr. Sorrells, on Robert Leonard’s advice, created Sreig International (“Sreig”), a fake real estate referral company. Dr. Sorrells did not purchase real estate or make referrals using Sreig. Rather, Sreig was merely another conduit for Dr. Sorrells to receive disguised bribes and kickback payments from Robert Leonard in exchange for stop arm camera purchases. Robert Leonard manufactured fake real estate referrals for Sreig to provide in exchange for payment. **Exhibit A**, Sorrells Factual Resume, at ¶13.

37. To further conceal the bribes and kickback payments, Robert Leonard “created and funded a bank account for a nonexistent company and then used the entity to pay some of Dr. Sorrells’ credit card debt.” See **Exhibit A**, Sorrells Information, at ¶23.

38. Dr. Sorrells and Robert Leonard also enlisted Slater Swartwood, Sr. to assist in disguising the bribes and kickback payments. From 2011 to 2016, Robert Leonard provided Slater Swartwood Sr. with approximately \$2,000,000.00 to funnel to Dr. Sorrells through Slater Swartwood Sr.’s companies, including Elf Investments, Cambridge Realty Group, and Anrock Realty Services, LLC. **Exhibit B**, Swartwood Sr. Factual Resume, at ¶7.

39. Swartwood Sr. admitted that “at all relevant times, [he] knew the unlawful purpose of the agreement [to commit the Conspiracy] and joined in it willfully, that is, with the intent to



further the unlawful purpose [of the Conspiracy to defraud DCS].” Exhibit B, Swartwood, Sr., Factual Resume at ¶3.

40. To further disguise and conceal the source and purpose of the bribe and kickback payments, the conspirators, including Swartwood, Sr., Robert Leonard, and Dr. Sorrells, at various points during the money laundering conspiracy, created sham loan, consulting, or real estate agreements in an attempt to make the payments and obligations that created the debilitating debt related to the Stop Arm Camera Program and the Sale Leaseback Transaction appear legitimate. See **Exhibit B**, Swartwood, Sr., Information at ¶10.

41. On or about April 15, 2016, Swartwood Sr., at Robert Leonard’s direction, caused approximately \$200,000 to be transferred from the bank of Anrock to a bank account ending in 7802, a shell company controlled by Dr. Sorrells. According to the Sorrells Factual Resume, the conspiracy to defraud DCS began in and around 2010, when Dr. Rick Sorrells, DCS’s former superintendent, met Robert Leonard, owner of Force Multiplier Solutions (“FMS”), which is a company that sold school bus stop arm cameras. See **Exhibit A**, Sorrells Factual Resume, at ¶9.

42. According to the Sorrells Information, Slater Swartwood, Sr. and Robert Leonard (identified as Person A in the Sorrells Information),

discussed tying all past payments from [Robert Leonard] to the ‘note,’ conspired to have Sorrells begin making payments on the “loan,” after which [Robert Leonard] would “recycle” the money back to Sorrells and created a document with a narrative to ensure that the [coconspirators] had their stories straight.

See **Exhibit A**, Sorrells Information, at ¶4.

43. This is further corroborated by Slater Swartwood Sr.’s Factual Resume, which states that:

To further conceal the illegal bribe and kickback payments, the coconspirators created numerous versions of a fake loan. All parties understood that the loans in their various iterations were fake and that [Dr. Sorrells] would never be required to



pay [Robert Leonard] back and lacked even the financial capability to do so. In fact, when the media began scrutinizing the relationship between [FMS] and [DCS], the coconspirators discussed having Dr. Sorrells begin to make payments on the loan to make it appear legitimate, after which Robert Leonard would "recycle" the money back to Dr. Sorrells. The coconspirators also spent a significant amount of time discussing how to get their stories straight, so they could explain the paper trail left by the multi-year bribery scheme they had engaged in.

**Exhibit B**, Slater Swartwood Sr.'s Factual Resume at ¶9.

44. Dr. Sorrells admitted that he received over \$3 million from Robert Leonard and that he spent the money on credit card debt, trips, personal expenses, a New Orleans apartment, and cars and jewelry. In return for these bribes and kickbacks, occurring from 2010 to 2017, Dr. Sorrells purchased millions of dollars' worth of cameras from FMS on behalf of DCS and entered into agreements, including an asset purchase/licensing agreement. **Exhibit A**, Sorrells Factual Resume, at ¶16.

45. Dr. Sorrells also admitted he knew that Robert Leonard was trying to influence his conduct as superintendent of DCS. According to the Sorrells Factual Resume:

Robert Leonard was fully aware that Sorrells, as the superintendent of DCS, had great latitude over DCS's business and had the authority to enter into contracts and to purchase camera equipment. Robert Leonard understood Sorrells authority before he made the first bribe payment. Robert Leonard would often tell Sorrells that "we are pressing forward" with the camera program and then ask him whether he needed any money. Robert Leonard often reminded Sorrells of the payments he was providing in conjunction with DCS 's decisions regarding FMS. If Sorrells put up any resistance to the purchase of additional cameras, Robert Leonard would tell Sorrells things like "Now I need your help and you aren't around" and "After all I have done for you, you've got to do this for me." Even though Company A performed poorly, Sorrells, on behalf of DCS, continued to do business with them because Sorrells was getting paid. And there were decisions that Sorrells would not have made but for the payments that he was receiving from Robert Leonard.

**Exhibit A**, Sorrells Factual Resume, at ¶17.



46. Additionally, investigative reporting revealed that Dr. Sorrells and Robert Leonard used apartments in Louisiana connected to Robert Leonard on a number of occasions for social gatherings.<sup>2</sup>

47. Dr. Sorrells, Robert Leonard, and Slater Swartwood, Sr., conspired with other individuals and entities to defraud DCS. For example, Dr. Sorrells entered DCS into contracts with Slater Swartwood Jr. (who, upon information and belief, also served as Vice President of FMS) and Elf Marketing, both of which have ties to Slater Swartwood, Sr. and Robert Leonard, for “consulting services” that cost DCS \$198,000.00. Neither Elf Marketing nor Slater Swartwood, Jr. provided itemized, detailed invoices for the “services” they allegedly provided to DCS. Additionally, Slater Swartwood, Jr.’s so-called invoices to DCS were numerically sequential, indicating that DCS was Slater’s only client and that the consulting services he allegedly provided to DCS were fraudulent.

48. Furthermore, Larry Duncan, former Chairman of the Board of Trustees for DCS, received over \$210,000.00 in campaign contributions from employees of FMS, Robert Leonard, Slater Swartwood, Sr. and their family members. *See Exhibit C.*

49. Larry Duncan neglected to list some of these campaign contributions on his Campaign Finance Reports. Given FMS’s and Robert Leonard’s history of bribes and kickbacks to Dr. Sorrells upon information and belief, Larry Duncan also received money in return for favorable contracts to FMS. Table 1, below, shows political contributions that Larry Duncan actually received, demonstrating his connections with FMS and Slater Swartwood, Sr.

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<sup>2</sup> See “Ex-DCS Superintendent Rick Sorrells’ French Quarter Vacation Pad Raises Questions About Relationship with Vendor”, located at <https://www.nbcdfw.com/investigations/Ex-DCS-Superintendent-Rick-Sorrells-French-Quarter-Vacation-Pad-Raises-Questions-About-Relationship-with-Vendor-451020163.html>



## Summary of Political Contributions Larry Duncan Received

Source: Campaign Finance Reports - All (received from DCS)

| Year Received | Amount           | Contributions from FMS <sup>1</sup> | Contributions from Swartwood <sup>2</sup> | Total Contributions from FMS and Swartwood |
|---------------|------------------|-------------------------------------|---|--|
| 2016          | \$90,000         | 100%                                | 0%  | 100%                                       |
| 2015          | \$58,713         | 60%                                 | 17%                                       | 77%  |
| 2014          | \$40,000         | 38%                                 | 38%                                       | 76%  |
| 2013          | \$15,000         | 50%                                 | 17%                                       | 67%  |
| 2012          | \$35,000         | 71%                                 | 29%                                       | 100%                                       |
| 2011          | \$0              | 0%                                  | 0%  | 0%   |
| 2010          | \$0              | 0%                                  | 0%  | 0%   |
| 2009          | \$2,215          | 0%                                  | 0%  | 0%   |
| Total         | <u>\$240,928</u> |                                     |   |  |

Table 1: Summary of Political Contributions to Larry Duncan by Swartwood Sr. and FMS

Table 2, below, shows the timeline of campaign contributions to Larry Duncan in relation to the Stop Arm Camera Program and Sale Leaseback Transactions.

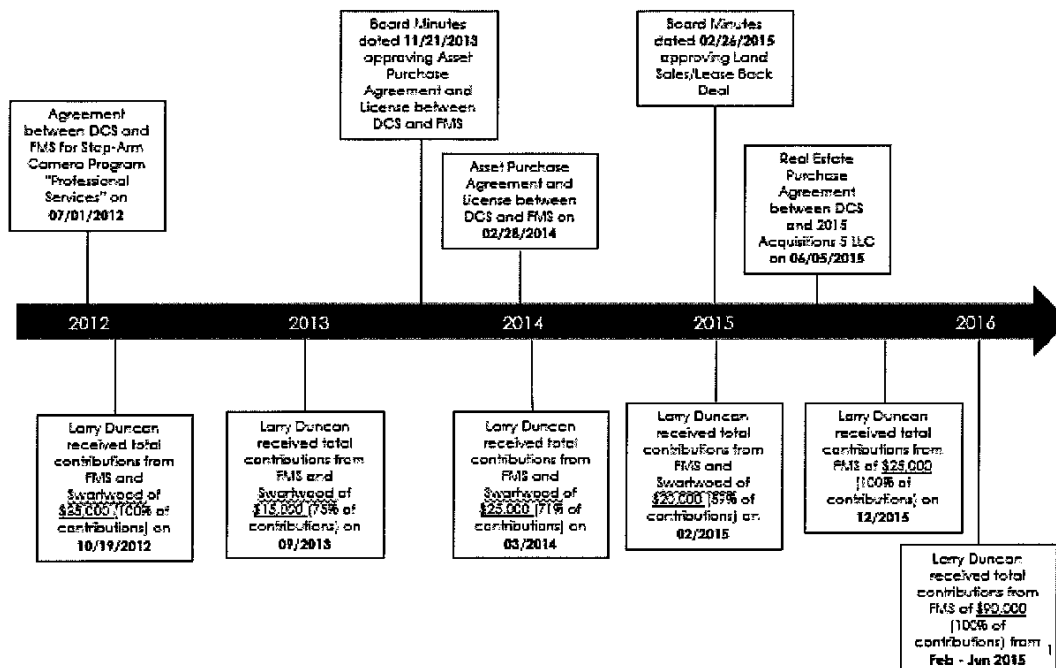


Table 2: Timeline of Political Contributions to Larry Duncan by Swartwood Sr. and FMS



50. In addition to taking campaign contributions in connection with the Stop Arm Camera Program conspiracy, Larry Duncan also approved a lucrative severance package for Dr. Sorrells despite the blatant nature of the bribes and fraud that Dr. Sorrells committed.

51. The conspiracy to defraud DCS did not stop with the Stop Arm Camera Program. Upon information and belief, once DCS was unable to meet its debt obligations resulting from the Stop Arm Camera Program, Dr. Sorrells and Conspiracy Defendants sought to bilk DCS out of even more money through the sale-and-leaseback of four bus service centers to 2015 Acquisitions 5, LLC, and/or Wedgewood Investment Group.

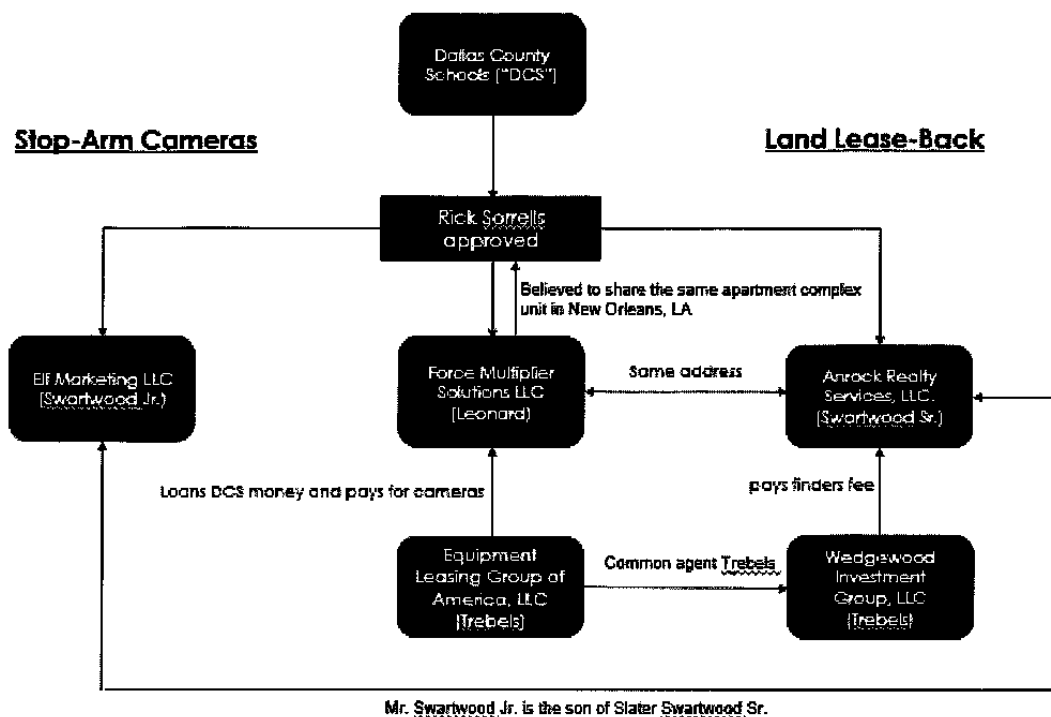
52. On or around March 3, 2015, Wedgewood was awarded the RFP as the “investment company that DCS [would] be working with.” See **Exhibit D**, Award Letter. However, the Purchase Agreement and Leases were signed between DCS and 2015 Acquisitions 5 on June 5, 2015. The Purchase Agreement names Anrock Realty Services, LLC (“Anrock”) (Slater Swartwood, Sr.) as the broker in Section 9.01(c). See **Exhibit E**, Real Estate Purchase Agreement, at p. 11. Then on April 6, 2017, DCS was notified ownership had changed to School Bus Corp.

53. Wedgewood Investment Group’s registered agent is Lee Trebels (also known as Rudy Trebels). Lee Trebels is also the registered agent for Equipment Leasing Group of America, LLC (“ELGA”), who had financing contracts with DCS for the Stop Arm Camera Program. ELGA received fees and interest to arrange for the loans to finance the Stop Arm Camera Program from DCS. ELGA’s Chief Executive Officer is Brian Trebels, the son of Lee Trebels, who has ties to Slater Swartwood, Sr. Wedgewood and ELGA also share a common address.

54. Unsurprisingly, Wedgewood Investment Group, who served as DCS’s investment company in the Sale Leaseback Transaction, but who was not the ultimate investor/purchaser, hired Anrock as its broker and instructed DCS to pay Anrock a finder’s fee. Anrock was owned



by Slater Swartwood, Sr. and has provided brokerage services to Robert Leonard and his representatives for over forty years. The following chart depicts the relationship between the Sale-Leaseback Parties and the Stop Arm Camera Program:



55. Due to the Conspiracy Defendants' rampant bribery, fraud, and pay-to-play campaign contributions, DCS has suffered damages from both the Stop Arm Camera Program and the Sale Leaseback Transaction of more than \$125,900,000.00 as described below.

## B. The Stop Arm Camera Program.

56. In December of 2008, DCS sought to increase students' safety by installing stop-arm cameras on its entire fleet of buses to detect drivers who run stop signs. After a request for proposals process, DCS selected FMS (d/b/a Ongo Live) as the vendor for the Stop Arm Camera Program. DCS and FMS signed a Professional Services Agreement in June of 2010.

57. FMS was established in 2009 and developed bundled solution productions with the



purported purpose of addressing safety and logistical issues for the transportation industry. FMS marketed and sold these products under the trademark “BusGuard.” Upon information and belief, at all times relevant to this complaint, Robert Leonard was owner of FMS and served as its Director and Executive Vice President.

58. In exchange for bribes and kickbacks, Dr. Sorrells entered DCS into a Professional Services agreement with FMS in July of 2010, in which FMS was responsible for monitoring, processing, issuing, and collecting stop-arm citations on behalf of DCS in exchange for a set monthly fee of \$340,000.00 as well as 50% of the monies received for paid violations. DCS was to receive the remaining 50% of the money collected from violations.

59. In February of 2014, DCS entered into an Asset Purchase Agreement (the “FMS APA”) with FMS to purchase the exclusive license to market and sell stop-arm school-bus cameras to other school districts in the state of Texas. A true and correct copy of the FMS APA is attached hereto as **Exhibit F**. DCS was originally obligated to pay \$25,000,000.00 under the APA. Additionally, in connection with the FMS APA, DCS entered into a Promissory Note with FMS in the amount of \$18,333,302.00.

60. In February 2014, DCS and FMS also entered into a technology license agreement (“FMS Technology License Agreement”) by which FMS (as Licensor) granted to DCS (as Licensee) a fully paid up, perpetual, and exclusive right to license the Stop-Arm Bus Camera Program technology throughout Texas. A true and correct copy of the FMS Technology License Agreement is attached hereto as **Exhibit G**.

61. The FMS Technology License Agreement specifically states that “[n]one of the LICENSORS may assign this Agreement or the rights and obligations thereunder to any third party without the express written approval of LICENSEE, which shall not be unreasonably withheld.”



62. On August 1, 2014, DCS and FMS entered into an Amended and Restated Promissory Note in the amount of \$12,090,000.00 to fund the repayment of certain municipal bonds issued to fund the purchase of stop-arm cameras from FMS.

63. On June 25, 2015, DCS entered into a Master Government Obligation Contract with Equipment Leasing Group of America, LLC (“ELGA”). The Master Government Obligation Contract was signed by Dr. Rick Sorrells on behalf of DCS and Brian Trebels on behalf of ELGA. Upon information and belief, for all relevant time periods, Brian Trebels was the Co-Founder and CEO of ELGA.

64. In accordance with the Master Government Obligation Contract, ELGA provided financing for the Stop Arm Camera Program in return for DCS’s quarterly obligation to pay nearly \$200,000.00 from October 2015 through July 2020. The Schedules to the Master Government Obligation Contract were frequently amended because DCS was pressured by Robert Leonard to purchase more and more cameras. Upon information and belief, ELGA and Brian Trebels were aware that Leonard was pressuring DCS to purchase cameras that

65. Upon information and belief, Dr. Sorrells was presented with more favorable lending options at a lower cost to DCS but chose ELGA regardless, and he advanced ELGA approximately \$300,000.00. Upon information and belief, DCS entered into twelve separate promissory notes payable to ELGA at a total cost of \$20,800,000.00 to DCS for the purpose of financing additional purchases of camera kits, digital video equipment, and software. ELGA received fees for the lending arrangement and paid interest to the lending banks, along with the entities.

66. On January 1, 2017, DCS entered into a Service Agreement with FMS in which FMS agreed to assume “all managerial responsibility for the operation of the assembly,



development, and distribution of technology” of the Stop-Arm Program (the “FMS Services Agreement”). A true and correct copy of the FMS Services Agreement is attached hereto as **Exhibit H**. The FMS Services Agreement was signed by Dr. Sorrells on behalf of DCS and Robert Leonard on behalf of FMS. A summary of all cameras bought or leased by DCS is shown in Table 3 below.

| No. | Description  | Total Amount | No. of Units | No. of Units Installed | No. of Units in Inventory | Notes   |
|-----|--|--------------|--------------|------------------------|---------------------------|---|
| 1   | Cameras purchased with financing through 2012 bonds and ELGA | \$41,745,650 | 5,811        | 2,448                  | 3,363                     | Paid by ELGA loans and 2012 bonds   |
| 2   | Cameras purchased then leased to FMS                         | \$8,400,000  | 975          | N/A                    | N/A                       | Cameras purchased through ELGA loans and leased back to FMS for notes receivable for a total of \$8.4 million in principal.   |
| 3   | Prepaid cameras  | \$2,999,990  | 334          | 334                    | -                         | Cameras pre-paid by DCS.<br>Per Weaver's discussion with Scott Peters, Director of Support Services at DCS, on 4/10/17, the camera's received were simultaneously installed onto buses in several locations around Texas. Scott Peters provided installation reports that noted the bus number that was on the invoice upon receiving the cameras. Per Weaver's discussion with Martin Clark, they were installed within DCS's Texserve Fund (out of county) in FY17 (147 -Judson ISD, 26-South San Antonio ISD, and 161 - Pflugerville ISD). |

*Table 3: Cameras Purchased from FMS*

67. The FMS Services Agreement obligated FMS to operate the Stop-Arm Program in Dallas County on behalf of DCS. In return, DCS promised to pay a service fee of \$190,000.00 per month in addition to 50% of the gross revenues in excess of \$350,000 they received for operating the Stop-Arm Program. The Services Agreement also obligated FMS to pay DCS \$400,000.00 per month plus \$15.00 per citation to operate the Stop Arm Program outside Dallas County.

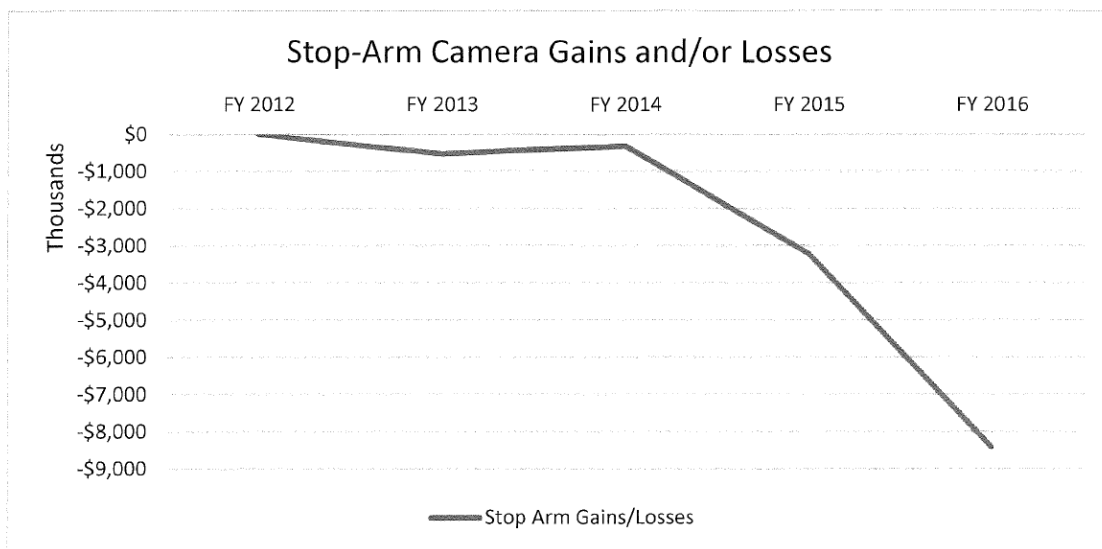
68. FMS failed to make the required payments under the FMS Services Agreement for their operation of the Stop Arm Camera Program outside of Dallas County. In March or April of 2017, DCS sent FMS a demand letter notifying them of their default under the FMS Services Agreement.

69. In exchange for the bribes and kickback payments, Dr. Sorrells obligated DCS to pay for Stop Arm Camera Program costs in an amount approaching \$70,000,000.00.

70. The Stop Arm Camera Program suffered consistent losses during the fiscal years



from 2012 to 2016, and independent forensic accountants determined that the Stop Arm Camera Program would not be effective as it was structured. *See* Table 4.



*Table 4: Gains/Losses from DCS Stop Arm Camera Program for Fiscal Years 2012 to 2016*

71. From January 2012 to June 2017, DCS made payments for the Stop Arm Camera Program in the amount of \$69,958,747.00. The following table enumerates DCS’s payments related to the Stop Arm Camera Program:



| <b>No.</b>   | <b>Name</b>                            | <b>Associated with</b> | <b>Total Payments</b> |
|--------------|--|------------------------|-----------------------|
| 1            | Force Multiplier Solutions Inc. or LLC | Robert Leonard         | \$ 21,388,169         |
| 2            | ONGO LIVE, INC.                        | Robert Leonard         | 29,594,786            |
| 3            | Robert Leonard                         | Robert Leonard         | 280,201               |
| 4            | Elf Marketing/Slater Swartwood         | Slater Swartwood Jr.   | 198,250               |
| 5            | ELGA                                   | Stop-Arm Financing     | 952,800               |
| 6            | Grinnell State Bank                    | Stop-Arm Financing     | 958,600               |
| 7            | Growth Funding Equipment Finance       | Stop-Arm Financing     | 71,206                |
| 8            | Origin Bank                            | Stop-Arm Financing     | 1,246,003             |
| 9            | Prime Alliance Bank                    | Stop-Arm Financing     | 168,066               |
| 10           | Preston Hollow Capital, LLC            | Stop-Arm Financing     | 9,967,321             |
| 11           | Lakeside Bank                          | Stop-Arm Financing     | 2,528,231             |
| 12           | Leasing Innovations                    | Stop-Arm Financing     | 2,605,115             |
| <b>Total</b> |  |                        | <b>\$ 69,958,747</b>  |

*Table 5: DCS Payments related to the Stop Arm Camera Program  
from January 2012 to July 2017*

72. As early as February of 2017, investigative reporting by Scott Friedman of KXAS-TV5 began to uncover and make public the conspiracy regarding the Stop-Arm Camera Program, KXAS-TV 5 published over ninety news articles regarding the Stop-Arm Camera Program and Sale Leaseback Transactions, detailing the insider dealings that lead to DCS's debilitating debt.<sup>3</sup>

73. In a news article published on January 25, 2018, Scott Friedman interviewed Dallas Mayor Pro Tem Dwaine Caraway regarding his connections to Slater Swartwood Sr. and Robert Leonard. Financial records illustrate Caraway was paid as a consultant to Elf Investments to search for land to use in South Dallas, Texas. Elf Investments also gave tens of thousands of dollars to Mr. Caraway as loans that were never paid off. As of the time of the interview, Mr. Caraway told Scott Friedman no one from Elf Investments had asked him to repay the tens of thousands he owed

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<sup>3</sup> See, e.g., Bigger Buses, Bigger Problems: <https://www.nbcdfw.com/investigations/Dallas-County-Schools-Investigative-Series-401118835.html>, accessed July 9, 2018.



under the illusory loan Elf Investments provided to Caraway.

74. Upon information and belief, Mr. Caraway voted in favor of policies that benefitted Robert Leonard and passionately convinced the rest of city council to grant DCS a twenty-five-year extension of the Stop-Arm Program in 2015 in exchange for payments from Swartwood, Sr. All the while, DCS's losses related to the program continued to mount.

75. Without Mr. Caraway's advocacy of the enabling legislation regarding stop arm violations for which DCS never made a profit but rather incurred tens of millions of dollars of the house of cards of the conspiracy would have

### **C. The Sale-Leaseback Transaction.**

76. In February 2015, due to the deteriorating financial position of DCS caused by the Stop-Arm Camera transactions, DCS was forced to sell four bus service centers to provide additional capital to sustain its operations.

77. Accordingly, after an RFP process in which Wedgewood Investment Group and Realterm NAT participated, Wedgewood was awarded the RFP.<sup>4</sup> in June 2015, DCS entered into an agreement with 2015 Acquisitions 5, LLC c/o Net Lease Capital Advisors (the "Purchaser") to sell four bus service centers with a leaseback provision to allow for DCS's continued use, despite 2015 Acquisition not having been awarded the RFP or even responded to the RFP Lee Trebels a/k/a Rudy Trebels served as the registered agent for Wedgewood.

78. As part of the Sale-Leaseback Transaction, Wedgewood and DCS paid real estate broker commissions to Anrock Realty Services, LLC. Slater Swartwood Sr., who has pleaded guilty to conspiracy to commit money laundering in the events surround these transactions, served

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<sup>4</sup> Both Wedgewood and Realterm NAT retained Slater Swartwood, Sr. / Anrock Realty Services, LLC for their brokerage services, again showing the insider nature of the Sale Leaseback Transaction.



as the manager and owner of Anrock Realty, and upon information and belief, has provided brokerage service to Robert Leonard.

79. The four bus service centers, which were owned by DCS free and clear and were exempt from ad valorem property taxation, consisted of land, buildings, and equipment and were sold for \$25 million dollars to the Purchaser. DCS leased back the property and agreed to make monthly triple net lease payments for approximately 40 years.

80. Upon information and belief, DCS used the proceeds of the Sale Leaseback Transaction to pay a \$10,000,000.00 deficiency in DCS's General Fund caused by losses from the Stop Arm Camera Program. The remainder of the funds was set aside for triple net lease payments to the Purchaser.

81. Although DCS received immediate cash of \$22.6 million dollars from the sale of the four bus service centers, after the payment of fees and commissions to the Trebels and Swartwood, Sr., DCS committed itself to pay \$45.87 million dollars on the 20-year lease agreement otherwise would not have owed on land DCS owned free and clear. These losses are directly tied to the fraudulent Stop Arm Camera Program propagated by the Conspiracy Defendants.

82. These losses, as described above, combined with outstanding bond obligations used to finance the Stop-Arm Camera Program and Sale-Lease Transaction, traditional financing debt, fees, and financing charges, caused damaged to DCS in excess of \$125,000,000.00.

## **VII. CAUSES OF ACTION**

**Count 1: Violation of the Racketeer Influenced Corrupt Organizations Act under 18 U.S.C § 1962(c) against the Conspiracy Defendants.**

83. DCS repeats, realleges, and incorporates the allegations, tables, figures, and exhibits contained in the foregoing paragraphs as fully set forth herein.



84. The Conspiracy Defendants conspired to pay millions of dollars in bribes, campaign contributions, and kickbacks to Dr. Rick Sorrells in return for favorable treatment regarding lucrative contracts with DCS, namely, the Stop Arm Camera Program and the related Sale Leaseback Transaction, resulting in over \$100,000,000.00 in losses to DCS and its taxpayers.

85. A RICO claim under 18 U.S.C § 1962(c) requires a DCS to prove: (1) a person engaged in (2) a pattern of racketeering activity connected to (3) the conduct or control of an enterprise.

86. All of the Conspiracy Defendants qualify as persons under 18 U.S.C. §1961(3) as each Defendant is an “individual or entity capable of holding a legal or beneficial interest in property.”

87. A “racketeering activity” as defined by 18 U.S.C. § 1961(1) includes, *inter alia*, any act or threat involving bribery that is chargeable under state law and punishable with imprisonment for more than one year. Furthermore, money laundering is indictable under 18 U.S.C. § 1956.

88. On information and belief, the Conspiracy Defendants committed the racketeering activity under Section 36.02 of the Texas Penal Code, and the crime is punishable with imprisonment for more than one year.

89. On information and belief, the Conspiracy Defendants intentionally or knowingly offered, conferred, or agreed to confer on another or solicited, accepted, or agreed to accept from another a benefit in the form of money and property for the consideration of the recipient’s decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official, or voter. Dr. Rick Sorrells, Larry Duncan, and Dwaine Caraway were public servants or public officials.



90. Two Conspiracy Defendants have already pleaded guilty to federal charges related to the Stop Arm Camera Program. Dr. Sorrells has pleaded guilty to Conspiracy to Commit Honest Services Wire Fraud, and Mr. Swartwood, Sr. has pleaded guilty to Conspiracy to Commit Money Laundering.

91. Upon information and belief, certain individual Conspiracy Defendants controlled their respective companies or enterprises as follows: (a) Dr. Sorrells, as the former Superintendent of DCS, controlled DCS; (b) Slater. Swartwood, Sr., as the owner of several shell companies involved in fraudulent transactions between DCS and FMS, controlled Anrock and Cambridge; (c) Slater Swartwood., Jr., controlled ELF Marketing; (d) Robert Leonard controlled FMS; (e) Lee Trebels controlled Westwood; and (f) Brian Trebels controlled ELGA.

92. It was a part and object of the conspiracy that Swartwood, Sorrells, and Leonard, as well as other Conspiracy Defendants, did knowingly conduct and attempt to conduct financial transactions affecting interstate commerce and foreign commerce, which transactions involved the proceeds of specified unlawful activity, that is, honest services wire fraud in violation of 18 U.S.C. §§ 1343 and 1346, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of 18 U.S.C. § 1956(a)(1)(B)(i). *See Exhibit B*, Swartwood Sr., Information at ¶6.

93. DCS seeks threefold damages, costs of suit, and a reasonable attorneys' fee pursuant to 18 U.S.C. § 1964(c).



**Count 2: Breach of Contract Against FMS.**

94. DCS repeats, realleges, and incorporates the allegations, tables, figures, and exhibits contained in the foregoing paragraphs as fully set forth herein.

95. DCS and FMS entered into enforceable agreements, including, but not limited to, the FMS APA, the FMS Services Agreement, and the FMS Technology License Agreement.

96. FMS breached the FMS APA by failing to deliver the agreed upon stop arm cameras to DCS.

97. FMS breached the FMS Services Agreement by failing to remit to DCS monies due under the Services Agreement. In accordance with the Services Agreement, FMS was to pay DCS \$400,000.00 per month plus \$15.00 per citation for operating the Stop Arm Camera Program outside Dallas County. While DCS continuously operated the program as required by the Services Agreement, FMS failed to fulfill its own obligations. Ultimately, DCS was forced to send a letter to FMS demanding remittance of the funds owed.

98. Moreover, FMS breached the FMS Technology License Agreement by assigning its provisions to another company. Per the FMS Technology License Agreement, FMS granted DCS a full and exclusive right to license the Stop-Arm Bus Camera Program technology throughout Texas. By thereafter assigning the exact same license to another entity, FMS breached an explicit and material term of its agreement with DCS.

99. DCS has met all conditions precedent to filing suit for breach of contract.

100. DCS has been damages by FMS's breach of contract.

**Count 3: Breach of Contract Against ELF Marketing.**

101. DCS repeats, realleges, and incorporates the allegations, tables, figures, and exhibits contained in the foregoing paragraphs as fully set forth herein.



102. DCS and ELF Marketing entered into a valid and enforceable agreement.

103. ELF Marketing breached the contract by failing to perform consulting services required by the agreement and by failing to submit detailed invoices to DCS for work ELF allegedly performed.

104. DCS has met all conditions precedent to filing suit for breach of contract.

105. DCS has been damaged by ELF Marketing's breach of contract.

**Count 4: Breach of Contract Against ELGA**

106. DCS repeats, realleges, and incorporates the allegations, tables, figures, and exhibits contained in the foregoing paragraphs as fully set forth herein.

107. DCS and ELGA entered into a valid and enforceable agreements regarding financing for the Stop Arm Camera Program.

108. Upon information and belief, ELGA entered into intentionally inflated and trumped up financing arrangements with DCS to further the Stop Arm Camera Program conspiracy.

109. These inflated and trumped up financing arrangements are material breaches of the agreements.

110. DCS has met all conditions precedent to filing suit for breach of contract.

111. DCS has been damaged by ELGA's breach of contract.

**Count 5: Fraud Against the Conspiracy Defendants.**

112. DCS repeats, realleges, and incorporates the allegations, tables, figures, and exhibits contained in the foregoing paragraphs as fully set forth herein.

113. DCS repeats, realleges, and incorporates the allegations contained in the foregoing paragraphs as fully set forth herein.

114. In concert with the other Conspiracy Defendants, FMS and its principal Robert



Leonard represented to DCS that the Technology License Agreement, which granted DCS the exclusive right to operate the Stop Arm Camera Program throughout the state of Texas, would be a functional and economic boom to DCS and would generate substantial amounts of revenue for DCS for the benefit of its taxpayers. In exchange for the exclusive right to operate the Stop Arm Camera Program throughout Texas, DCS paid FMS \$25,000,000. Now, only four years later, the license has shown to be worth merely pennies on the dollar.

115. The statements from FMS and Robert Leonard regarding the functionality and profitability of the Technology License Agreement were untrue.

116. In reliance upon FMS's and Robert Leonard's representations, DCS continued to spend exorbitant funds to operate the Stop-Arm Camera Program while receiving minimal return. Over the span of five years, DCS paid approximately \$69,958,747.00 in connection with the Stop-Arm Camera Program and incurred millions more in financial obligations. Of this amount, in addition to the ELGA loans, approximately \$28,201.00 was paid to Robert Leonard and \$19,000,000.00 in direct obligations in a promissory note with FMS. Although the program continued to drain DCS's funds, Leonard continuously made representations regarding the impending success of the Stop-Arm Camera Program, when in fact he knew that it was failing and would continue to do so. Thus, DCS detrimentally relied on FMS and Robert Leonard's representations to its detriment.

117. In addition to the fraudulent misrepresentations made by FMS and Leonard, and as explained in detail in the factual summary *supra*, the Conspiracy Defendants worked in concert to perpetrate the fraud on DCS, including numerous insider transactions regarding the Stop-Arm Camera Program and the Sale-Leaseback Transaction.

118. The fraud perpetrated by the Conspiracy Defendants caused damage to DCS and



its taxpayers in an amount over \$125,000,000.00.

119. Pursuant to Section 41.003 of the Texas Civil Practice and Remedies Code, DCS seeks exemplary damages due to the Conspiracy Defendants' fraud.

**Count 6: Breach of the Duty of Loyalty Against Dr. Rick Sorrells and Larry Duncan.**

120. DCS repeats, realleges, and incorporates the allegations, tables, figures, and exhibits contained in the foregoing paragraphs as fully set forth herein.

121. As the Superintendent of DCS, Dr. Rick Sorrells had a duty of loyalty and to provide honest services to DCS. As Superintendent of DCS, Sorrells had the authority to enter into contracts and to purchase equipment for DCS.

122. Instead of upholding his fiduciary duty to DCS, Sorrells intentionally allowed himself to be influenced by Robert Leonard and the other Conspiracy Defendants. He further breached his duty by accepting bribes and kickbacks of over \$3,000,000.00 from the Conspiracy Defendants and giving favorable treatment in the form of lucrative contracts to the Conspiracy Defendants regarding the Stop Arm Camera Program and the Sale-Leaseback Transaction. Such contracts and bribes continued in the face of FMS's poor performance and against Sorrells's business judgment. In fact, he entered into contracts with FMS, even though he would not have done so if he had not been receiving payments from the Conspiracy Defendants.

123. With DCS suffering and the Stop-Arm Camera Program failing, Sorrells continued to enter into agreements with FMS. To fund these transactions, Sorrells signed the Master Government Obligation Contract on behalf of DCS. Although he was presented with lending options with better terms and lower costs, Sorrells continued to choose ELGA to fund the ventures. Ultimately, because of the guidance of Sorrells, DCS entered into a promissory note with FMS in the amount of \$18,000,000.00 and twelve separate promissory notes payable to ELGA at a cost of



over \$20,800,000.00 as well as a consulting agreement with ELF Marketing. As evidenced by the vast amounts of unused camera equipment collecting dust in storage, Sorrells entered into these transactions even though it was obvious that they were against DCS's interests.

124. As President of the Board of Trustees for Dallas County Schools, Larry Duncan also owed a duty of loyalty and honest services to DCS. Like Dr. Sorrells, upon information and belief, Larry Duncan took campaign contributions from those related to Robert Leonard, Swartwood., Sr., and other Conspiracy Defendants that went unreported. In return for these campaign contributions, Mr. Duncan's took actions against his business judgment in continuing the Stop Arm Camera Program and authorizing a lucrative severance for Dr. Sorrells, despite Dr. Sorells' rampant bribery, fraud, and corruption that was well known as the time of Dr. Sorrells' resignation.

125. DCS suffered damages proximately caused by Dr. Sorrells's and Larry Duncan's egregious conduct, including their intentional reception of bribes and campaign contributions, in return for actions to the detriment of the entity they were charged with leading.

**Count 7: Civil Conspiracy against the Conspiracy Defendants.**

126. DCS repeats, realleges, and incorporates the allegations, tables, figures, and exhibits contained in the foregoing paragraphs as fully set forth herein.

127. The Conspiracy Defendants are a combination of two or more persons.

128. One object of the combination was to accomplish unlawful purposes or a lawful purpose by unlawful means.

129. Each of the members of this conspiracy had a meeting of the minds on the course of action.

130. One or more of the members committed an unlawful act to further the object or



course of action.

131. DCS suffered injury as a proximate result of the wrongful act.

**Count 8: Uniform Fraudulent Transfer Act §§24.005 and 24.006 Against FMS and Robert Leonard.**

132. DCS repeats, realleges, and incorporates the allegations, tables, figures, and exhibits contained in the foregoing paragraphs as fully set forth herein.

133. DCS was a creditor of FMS because FMS was obligated to make certain payments to DCS under contracts related to the Stop-Arm Bus Camera Program.

134. On August 16, 2017 and November 27, 2017, FMS transferred substantially all of its assets, including assets that had been exclusively licensed to DCS, to another entity for the benefit of Robert Leonard, and FMS ceased doing business shortly thereafter.

135. Upon information and belief, FMS transferred substantially all of its assets with the actual intent to hinder, delay, or defraud DCS. Specifically, in doing so, FMS intentionally prevented DCS from obtaining collection of the amounts owed under its agreements.

136. Shortly after the transfer of all of its assets and liabilities, FMS apparently ceased to operate. This transfer was taken to accomplish two objectives. First, to shield FMS from the impending repercussions of the massive fraud and conspiracy forwarded by its management. Second, to hinder DCS's recovery of monies owed by tying such funds up in payments to Robert Leonard.

137. Alternatively, FMS made the transfer of substantially all of its assets without receiving reasonably equivalent value and (a) was engaged or was about to engage in a business or a transaction for which the remaining assets of FMS were unreasonably small in relation to the business or transaction; or (b) intended to incur or believed or reasonably should have believed that FMS would incur, debts beyond FMS' ability to pay as they became due.



138. Since FMS transferred its assets and liabilities, DCS has been unable to recover monies due to it under its agreements with FMS. Thus, FMS's fraudulent transfer has caused DCS to incur damages.

139. Robert Leonard receives \$25,000.00 per month in a benefit of FMS' fraudulent transfer of substantially all its assets. Robert Leonard is a subsequent transferee of FMS' fraudulent transfer and pursuant to the Uniform Fraudulent Transfer Act §24.009(b)(1)-(2), is also liable FMS' fraudulent transfer.

140. DCS seeks to avoid the transfer or the recovery of the fraudulently transferred property or, alternatively, an award of damages in the amount of the value of the property fraudulently transferred.

141. Additionally, pursuant to the Texas Uniform Fraudulent Transfer Act §24.008(3)(b), DCS seeks an order from the Court appointing a receiver over Robert Leonard to take charge of the monthly payments made and due to him because of FMS' fraudulent transfer.

**Count 9: Fraud in Real Estate Transactions Pursuant to Business and Commerce Code §27.01 *et seq* against the Conspiracy Defendants.**

142. DCS repeats, realleges, and incorporates the allegations, tables, figures, and exhibits contained in the foregoing paragraphs as fully set forth herein.

143. The Conspiracy Defendants, by and through the actions described supra, made numerous misstatements of material fact, especially regarding the functionality and profitability of the Stop Arm Camera Program, and such misrepresentations were made to induce DCS to enter into the Stop Arm Camera Program.

144. DCS relied upon these representations to its detriment.

145. As a result of the reliance on the Conspiracy Defendants misrepresentations, DCS was placed into an untenable financial situation.



146. Furthermore, the Conspiracy Defendants made material misrepresentations regarding the Sale Leaseback Transaction, including misrepresentations regarding the value of the property and non-arms-length nature of the Sale Leaseback transaction. DCS relied upon such representations to their detriment.

147. Because the misrepresentations by the Conspiracy Defendants were intentionally made to defraud DCS, the Conspiracy Defendants are liable to DCS for actual and exemplary damages, as well as reasonable and necessary attorneys' fees, expert witness fees, costs for copies of depositions, and costs of court.

**Count 10: Attorneys' Fees.**

148. DCS repeats, realleges, and incorporates the allegations, tables, figures, and exhibits contained in the foregoing paragraphs as fully set forth herein.

149. DCS claims its reasonable and necessary attorneys' fees pursuant to 18 U.S. §1964(c) and Chapter 38 of the Texas Civil Practice and Remedies Code.

**VIII. PIERCING THE CORPORATE VIEL  
AGAINST THE CONSPIRACY DEFENDANTS**

150. DCS repeats, realleges, and incorporates the allegations, tables, figures, and exhibits contained in the foregoing paragraphs as fully set forth herein.

151. While shareholders of corporations and members of limited liability companies are generally shielded from personal liability for corporate or company obligations, when these same shareholders or members abuse the company privilege, courts will disregard the legal fiction and hold them personally liable. The Texas Supreme Court has held that Texas courts should take a flexible, fact-specific approach because the purpose of the corporate veil doctrine is to prevent use of the corporate entity as a cloak for fraud or illegality or to work an injustice, and that purpose should not be thwarted.



152. Because certain corporate Conspiracy Defendants were used as a sham to perpetrate a fraud for the personal benefit other Conspiracy Defendants, applicable law and equity dictate that those Conspiracy Defendants be held personally liable for the acts and omissions of all other Conspiracy Defendants complained of herein. Further, upon information and belief, each corporate Conspiracy Defendant is the alter-ego of each other corporate Conspiracy Defendant, as well as every individual Conspiracy Defendant, such that the Court may impose liability upon all Conspiracy Defendants, jointly and severally, for the wrongful actions of any of the Conspiracy Defendants.

### **IX. ALTER EGO LIABILITY**

153. DCS repeats, realleges, and incorporates the allegations, tables, figures, and exhibits contained in the foregoing paragraphs as fully set forth herein.

154. Upon information and belief, Robert Leonard is jointly and severally liable for the wrongful conduct of FMS and for the payment of judgments identified in the paragraphs above because Robert Leonard is the alter ego of FMS.

155. Leonard has served as the Chief Executive Officer, Director, and Executive Vice President of FMS. He frequently used company and its funds to further fraud upon DCS, such as bribing Sorrells and contributing to Duncan's campaign. Furthermore, Leonard intentionally diverted company assets for his own personal use.

156. Upon information and belief, all transactions entered into by FMS were created and furthered by Robert Leonard. He had sole authority to enter into these transactions. As discussed at length above, FMS used its corporate structure to perpetuate fraud against DCS and to evade its obligation to pay monies due to DCS under its agreements.

157. For the aforementioned reasons, DCS asserts that Robert Leonard is personally



liable for the actions taken by his corporate structures and entities to the detriment of DCS.

158. Slater Swartwood Sr. is jointly and severally liable for the wrongful conduct of Anrock and Cambridge and for the payment of judgments identified in the paragraphs above because Slater Swartwood Sr. is the alter ego of Anrock and Cambridge.

159. Slater Swartwood, Sr., used the corporate structures of Anrock and Cambridge as a sham to perpetrate a fraud against DCS by funneling bribes and laundering money through these corporations. Accordingly, Slater Swartwood, Sr. is personally liable for the actions taken by his corporate structures and entities to the detriment of DCS.

160. Upon information and belief, Slater Swartwood, Jr. is jointly and severally liable for the wrongful conduct of ELF and for the payment of judgments identified in the paragraphs above because he is the alter ego of ELF. Slater Swartwood, Jr., used the corporate structure of ELF marketing as a sham to perpetrate a fraud related to the Stop Arm Camera Program, and, accordingly, he is personally liable for the actions taken by ELF to the detriment of DCS.

161. Upon information and belief, Lee Trebels is jointly and severally liable for the wrongful conduct of Wedgewood and for the payment of judgments identified in the paragraphs above because Lee Trebels is the alter ego of Wedgewood. Upon information and belief, Lee Trebels used the corporate structure of Wedgewood as a sham to perpetrate a fraud, and, accordingly, he is personally liable for the actions taken by Wedgewood to the detriment of DCS.

162. Upon information and belief, Brian Trebels jointly and severally liable for the wrongful conduct of ELGA and for the payment of judgments identified in the paragraphs above because Brian Trebels is the alter ego of ELGA. Upon information and belief, Brian Trebels used the corporate structure of ELGA as a sham to perpetrate a fraud, and, accordingly, he is personally liable for the actions taken by ELGA to the detriment of DCS.



## **X. EXEMPLARY DAMAGES**

163. Defendants' actions and inactions in harming DCS warrant the award of exemplary damages against them of two times the amount of actual damages. Such an award is appropriate concerning the severe nature of the wrongs, the deplorable character of the conduct involved, the high degree of culpability of the wrongdoers, the situation and sensibilities of the parties concerned, the substantial offense upon the public sense of justice and propriety in Defendants' scamming hundreds of thousands of taxpayers and jeopardizing the financial vulnerability of thousands of young students and their school systems, as well as the net worth of the Defendants who made millions from their bad acts.

## **XI. REQUEST FOR DISCLOSURE**

164. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, DCS requests that Defendants disclose, with 50 days of service, the information or material described in Rule 194.2.

## **XII. PRAYER FOR RELIEF**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff Dissolution Committee for the Former Board of Trustees for Dallas County Schools respectfully prays that Defendants be cited to appear and show cause and answer herein, and that upon hearing and/or trial that the Court award relief in favor of DCS against Defendants, as follows:

- a. actual damages;
- b. exemplary damages pursuant to Section 41.007 of the Texas Civil Practices and Remedies Code;
- c. threefold damages, costs of suit, and a reasonable attorneys' fee under 18 U.S.C § 1962(c);



- d. an order appointing a receiver of Robert Leonard pursuant to Uniform Fraudulent Transfer Act §24.008(3)(b).
- e. reasonable and necessary attorneys' fees;
- f. pre- and post-judgment interest;
- g. costs of court;
- h. and such further and other relief, whether at law or in equity, to which DCS shows itself justly entitled.



Dated: July 27, 2018

Respectfully submitted:

/s/ Stephanie D. Curtis

Stephanie D. Curtis

Texas State Bar No. 05286800

Mark A. Castillo

Texas State Bar No. 24027795

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**COUNSEL FOR THE DISSOLUTION  
COMMITTEE FOR THE FORMER  
BOARD OF TRUSTEES OF DALLAS  
COUNTY SCHOOLS**



# Exhibit *A*



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED  
APR 2  
2018 AM 9:25

DEPUTY CLERK *AA*

UNITED STATES OF AMERICA

v.

NO.

RICKY DALE SORRELLS

(Related to Case No. 3:17-CR-678-M)

**3-18CR-169-N**

INFORMATION

The United States Attorney Charges:

Introduction

1. From in or around 2011 to in or around 2017, Person A, the president of Company A, a technology company that put cameras on school buses, paid **Ricky Dale Sorrells**, the superintendent of Dallas County Schools (DCS), in excess of \$3 million in bribe and kickback payments in exchange for favorable official action, including **Sorrells'** decision to enter into contracts and licensing agreements on behalf of DCS and to purchase school-bus-camera equipment.
2. To disguise the bribe and kickback payments made to **Sorrells**, Person A funneled a significant portion of the illicit payments through various pass-through companies created and operated by his business associate, Slater Washburn Swartwood, Sr., as well as through a law firm. Person A also created an account in the name of a nonexistent company so he could conceal payments that he made toward **Sorrells'** credit card debt.
3. To further disguise the bribe and kickback payments, **Sorrells** received a portion



of the payments through shell companies which he created in his and/or a family member's name(s) at Person A's behest.

4. In an effort to obscure the illegal purpose of the payments from Person A to **Sorrells**, the coconspirators created fake consulting agreements, fake invoices, a fake real estate business, fake loan documents, discussed tying all past payments from Person A to **Sorrells** to the "note," conspired to have **Sorrells** begin making payments on the "loan," after which Person A would "recycle" the money back to **Sorrells**, and created a document with a narrative to ensure that they all had their stories straight.

5. In total, **Sorrells** received more than \$3 million in bribe and kickback payments from Person A to help secure over \$70 million in contracts, agreements, and orders for Company A, all of which the coconspirators concealed from DCS, its board, and the taxpayers who funded DCS. DCS, for its part, made just pennies on the dollar under the agreements that **Sorrells**, on DCS's behalf, entered into with Company A, leaving the agency in severe debt and teetering on the verge of bankruptcy.

#### Duty of Honest Services

6. Until March 2017, **Sorrells** was the superintendent of DCS. In that capacity, he had authority to enter into contracts on DCS's behalf that exceeded \$50,000 and had the authority over purchasing, including equipment orders.

7. **Sorrells** was a public servant as a result of his position. **Sorrells** owed a duty of honest services to the citizens of Dallas County and his employer to perform the duties



and responsibilities of his office free from bias, conflicts of interest, self-enrichment, self-dealing, concealment, deceit, fraud, kickbacks, and bribery.

8. DCS and the citizens of Dallas County expected, and were entitled to receive, **Sorrells'** honest services in his fulfillment of his employment responsibilities. It was a violation of **Sorrells'** duty, and of DCS's and the citizens of Dallas County's rights to his honest services, for **Sorrells** to accept bribe and kickback payments from a vendor, such as Company A, whose contracts, agreements, and purchase orders **Sorrells** participated in awarding.

9. By paying and causing the payment of bribes and kickbacks to **Sorrells**, Person A deprived DCS and the citizens of Dallas County of their right to **Sorrells'** honest services in the fulfillment of his employment responsibilities.



**Count One**  
**Conspiracy to Commit Honest Services Wire Fraud**  
**[Violation of 18 U.S.C. § 1349]**

10. All preceding paragraphs of this Information are realleged and incorporated by reference as if set forth fully herein.

11. From in or around 2011 to in or around 2017, in the Dallas Division of the Northern District of Texas and elsewhere, the defendant, **Sorrells**, Person A, Swartwood, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to violate Title 18, United States Code, Sections 1343 and 1346.

12. It was a part and object of the conspiracy that **Sorrells**, Person A, Swartwood, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and to deprive DCS and the citizens of Dallas County of its intangible right to **Sorrells'** honest services as a public servant, would and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Sections 1343 and 1346, to wit, **Sorrells**, while serving as the superintendent of DCS, would take official action favorable to Company A, including entering into contracts and licensing agreements on behalf of DCS and purchasing school-bus-camera equipment, in return for payments from Person A, which were often funneled to **Sorrells** through pass through-



companies owned and controlled by Swartwood, and in connection therewith and in furtherance thereof, the coconspirators transmitted and caused to be transmitted interstate electronic wire transfers of funds.

Manner and Means of the Honest Services Fraud Conspiracy

13. During the honest services fraud conspiracy, Person A paid **Sorrells** over \$3 million in bribes and kickbacks, including paying a portion of **Sorrells'** credit card debt and student loan debt.

14. In return, **Sorrells**, acting on behalf of DCS, took official action favorable to Person A and Company A, including, but not limited to, purchasing millions of dollars worth of cameras, many of which were never installed on school buses and instead sat unused in a warehouse, and entering into a \$340,000 per month servicing agreement and a \$25 million asset purchase/licensing agreement. In the end, **Sorrells'** official actions for the benefit of Person A and Company A resulted in DCS paying Company A over \$70 million and incurring significant and ultimately debilitating debt.

15. As part of the conspiracy, the coconspirators undertook significant efforts to disguise and conceal the source and purpose of the bribe and kickback payments to **Sorrells**.

16. Person A generally did not pay **Sorrells** directly. Instead, Person A caused over \$2 million in bribe and kickback payments to be transferred to pass-through entities controlled by Swartwood, including Elf Investments, Cambridge Realty Group, LLC



(Cambridge), and Anrock Realty Services, LLC (Anrock), after which Swartwood, at Person A's direction, would pay **Sorrells** or shell companies that **Sorrells** controlled.

17. Person A also caused approximately \$800,000 in bribe and kickback payments to be transferred to a law firm, after which the law firm, at Person A's direction, would pay **Sorrells** or shell companies that **Sorrells** controlled.

18. As part of the conspiracy, and as a further act of concealment, Person A directed **Sorrells** to open shell companies in a family member's name and/or his name, including Allegro Research and Consulting (Allegro), Photon IT Product Development, Inc. (Photon), and Sreig International (Sreig), so it did not appear that **Sorrells** was directly receiving payments.

19. Person A, at various times during the conspiracy, had **Sorrells** submit phony "consulting" invoices in an attempt to grant the bribe and kickback payments an air of legitimacy. The coconspirators also created fake real estate referrals that **Sorrells** allegedly supplied so payments to him could be justified as a fee.

20. Person A, at some point during the conspiracy, decided that all past and future payments to **Sorrells** were better concealed as a "loan."

21. At various points during the conspiracy, Person A discussed having **Sorrells** start to make payments on the loan to make it appear legitimate, but Person A assured **Sorrells** that he would recycle the fake payments back to **Sorrells**, potentially through PayPal.

22. In addition to bribe and kickback payments made through Swartwood's companies



and the law firm, Person A also paid over \$200,000 toward **Sorrells's** credit card and student loan debt.

23. In order to disguise a portion of these bribe and kickback payments, Person A created and funded a bank account for a nonexistent company and then used the entity to pay some of **Sorrells's** credit card debt.

All in violation of 18 U.S.C. § 1349.



**Forfeiture Notice**

[18 U.S.C. § 981(a)(1)(C) & 28 U.S.C. § 2461(c)]

The allegations contained in Count One of this Information are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

Upon conviction of the offense in violation of 18 U.S.C. § 1349 set forth in Count One of this Information, the defendant, **Ricky Dale Sorrells**, shall forfeit to the United States of America, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offense. The property to be forfeited includes the following:

- \$8,633.51 in United States currency seized from the account ending in x5221 on March 6, 2017;
- \$3,659.01 in United States currency seized from the account ending in x1665 on March 5, 2017;
- 2014 Maserati GHI, Vehicle Identification Number ZAM57RTA0E1112238, titled to Ricky Dale Sorrells;
- 2012 Porsche Cayenne, Vehicle Identification Number WDCGG5HB2FG437070, titled to Ricky Dale Sorrells;
- Assorted jewelry purchased from Windsor Auction House, Inc. on or about April 5, 2013 in the amount of \$49,662.93; and
- Custom-made 14K gold bracelet set with 51 princess cut diamonds weighing 10.53 carats with a grade of H/SI<sub>1</sub> purchased for \$16,400 on May 21, 2015.

If any of the property described above, as a result of any act or omission of the




defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c).



ERIN NEALY COX  
UNITED STATES ATTORNEY



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ANDREW O. WIRMANI

Assistant United States Attorney  
Texas Bar No. 24052287

JOSEPH A. MAGLIOLO

Assistant United States Attorney  
Texas Bar No. 24074634

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED  
APR 2 2018 MAR 33 AM 9:25

UNITED STATES OF AMERICA

v.

RICKY DALE SORRELLS

NO.

**3-18CR-169-N**

DEPUTY CLERK *AA*

**FACTUAL RESUME**

In support of Ricky Dale Sorrells' plea of guilty to the offense in Count One of the Information, Sorrells, the defendant, Cynthia Barbare, the defendant's attorney, and the United States of America (the government) stipulate and agree to the following:

**ELEMENTS OF THE OFFENSE**

To prove the offense alleged in Count One of the Information charging a violation of 18 U.S.C. § 1349, that is, conspiracy to commit honest services wire fraud in violation of 18 U.S.C. §§ 1343 and 1346, the government must prove each of the following elements beyond a reasonable doubt:<sup>1</sup>

- First:* That the defendant and at least one other person made an agreement to commit the crime of conspiracy to commit honest services wire fraud in violation of 18 U.S.C. §§ 1343 and 1346, as charged in the Information;
- Second:* That the defendant knew the unlawful purpose of the agreement; and
- Third:* That the defendant joined in the agreement willfully, that is, with the intent to further the unlawful purpose.

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<sup>1</sup> See *United States v. Simpson*, 741 F.3d 539, 547 (5th Cir. 2014)



The elements of honest services wire fraud are as follows:

- First:* That the defendant knowingly devised or intended to devise any scheme to defraud, as set forth in the Information;
- Second:* That the scheme to defraud employed false material pretenses or omissions;
- Third:* That the defendant transmitted or caused to be transmitted by way of wire communications, in interstate commerce, any writing, sign, signal, picture, or sound for the purpose of executing such scheme; and
- Fourth:* That the defendant acted with a specific intent to defraud.<sup>2</sup>

### **STIPULATED FACTS**

1. The defendant agrees that the following facts are true and correct and that his testimony at any trial would reflect the same.
2. From in or around 2011 to in or around 2017, in the Dallas Division of the Northern District of Texas and elsewhere, the defendant, Sorrells, Person A, Slater Washburn Swartwood, Sr., and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to violate Title 18, United States Code, Sections 1343 and 1346.
3. Sorrells, at all relevant times, knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose.

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<sup>2</sup> Fifth Circuit Pattern Jury Instructions (2015), 2.57.



4. Before the conspiracy started and until March 2016, Sorrells served as the superintendent of Dallas County Schools (DCS). DCS's primary responsibility was the operation of its school bus system, which transported children to and from school each day in various Texas school districts.

5. As a result of his position, Sorrells was a public servant. As superintendent, Sorrells had authority to enter into contracts on DCS's behalf that exceeded \$50,000. He also had the authority over purchasing, including the purchasing of bus-camera-equipment from Company A.

6. Sorrells met Person A, the owner of Company A, in approximately 2009. Company A sold bus cameras.

7. Around that time, DCS put out a request for proposal to put cameras in its school buses. Although Company A submitted one of the highest bids, DCS ultimately chose them because their camera systems included stop arm cameras, which DCS viewed as a potential source of revenue.

8. DCS and Company A entered into a Professional Services Agreement in the middle of 2010, under which DCS agreed to purchase between 100 and 150 bus-camera systems, just a fraction of the buses in its fleet. The agreement contemplated additional camera purchases by DCS to outfit its entire fleet, but it did not set forth any specific terms, and it did not bind DCS to buy the cameras from Company A.

9. Shortly thereafter, Person A told Sorrells that he was underpaid. Person A told Sorrells that he could do research for him and that someone would pay him. Person A instructed Sorrells to open a company, Allegro Research and Consulting (Allegro), in a



family member's name to receive the payments. The first payment corresponded with DCS's first purchase of cameras from Company A. The money was sent to Sorrells from a law firm, although Sorrells was fully aware that he was being paid by Person A. Subsequent payments to Allegro followed a similar pattern.

10. Sorrells understood almost immediately that the "consulting" he was doing for Person A was merely a front, and that Person A was paying him to secure favorable official action for Company A, including the purchase of additional cameras. Despite doing only approximately 20 to 30 hours of internet research for Person A, Person A paid Sorrells, via the law firm, \$50,000. Beyond this, Sorrells did no work—consulting or otherwise—for Person A or Company A for the remainder of the conspiracy.

11. To conceal the true purpose of the payments, Person A created a fake Craigslist advertisement and told Sorrells to respond to it, after which a lawyer would be his contact. Sorrells, per Person A's advice, also communicated with Person A about Allegro using a family member's email address in order to separate himself from the bribe and kickback payments.

12. To conceal the bribe and kickback payments, Person A also asked Sorrells to open a second shell company, Photon IT Product Development, Inc. (Photon). Sorrells had no experience in IT and did no work for Person A through Photon. Nonetheless, Person A provided Sorrells with a template to create a fake consulting agreement for Photon. Person A also instructed Sorrells to submit fake invoices for "consulting" work to disguise bribe and kickback payments, which Sorrells did on less than five occasions.



Thereafter, Person A stopped asking for invoices, but the payments to Sorrells through Photon continued. Sorrells signed Photon documents with the fake name "D. Brumbe."

13. After creating Photon, Sorrells, on Person A's advice, created Sreig International (Sreig), a purported real estate referral company. Sorrells did not purchase real estate with, or make referrals using, Sreig; instead, the company was just another justification for Sorrells to receive disguised bribe and kickback payments from Person A. Swartwood and Person A created a few fake real estate referrals for Sreig to allegedly provide in exchange for payment.

14. At some point, Person A told Sorrells that it would be safer and easier to get him money by paying off any debts that he had and asked Sorrells to provide his bills. Thereafter, Sorrells would hand Person A his credit card statements and Person A would pay the bills. Person A also paid Sorrells' student loan debt.

15. When Sorrells was doing purported "consulting" work for Person A, he did not receive 1099s. This became an issue, after which Person A decided that all payments to Sorrells—including past payments which the coconspirators had characterized as consulting or referral fees—should be concealed as an alleged loan. The loan went through various iterations—secured by Sorrells' home, a personal note, a five-year balloon note, a bi-annual interest-only loan—but it was always a fake loan intended to disguise bribe and kickback payments that Person A made to Sorrells. According to Person A, the note had to be crystal clear and would wipe all prior payments out. Indeed, the coconspirators would often discuss having Sorrells make payments on the loan, but then have Person A recycle the money back to Sorrells.



16. In total, Sorrells received over \$3 million from Person A, which he spent on credit card debt, trips, personal expenses, an apartment in New Orleans, and cars and jewelry, including the cars and jewelry listed in the forfeiture notice of the Information. In return for these payments, Sorrells, on behalf of DCS, purchased millions of dollars worth of cameras from Company A, and entered into agreements, including a \$25 million asset purchase/licensing agreement.

17. Sorrells knew that he was taking bribes from Person A and Person A, in making payments to Sorrells, was absolutely trying to influence Sorrells' conduct as a public servant. Although the payments that Sorrells received came from various sources, including several companies associated with Swartwood, Sorrells was fully aware that all of the payments were made by Person A.

18. Sorrells had no shell companies prior to meeting Person A. Person A was fully aware that Sorrells, as the superintendent of DCS, had great latitude over DCS's business and had the authority to enter into contracts and to purchase camera equipment. Person A understood Sorrells authority before he made the first bribe payment. Person A would often tell Sorrells that "we are pressing forward" with the camera program and then ask him whether he needed any money. Person A often reminded Sorrells of the payments he was providing in conjunction with DCS's decisions regarding Company A. If Sorrells put up any resistance to the purchase of additional cameras, Person A would tell Sorrells things like "Now I need your help and you aren't around" and "After all I have done for you, you've got to do this for me." Even though Company A performed poorly, Sorrells, on behalf of DCS, continued to do business with them because Sorrells



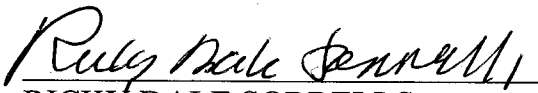
was getting paid. And there were decisions that Sorrells would not have made but for the payments that he was receiving from Person A.

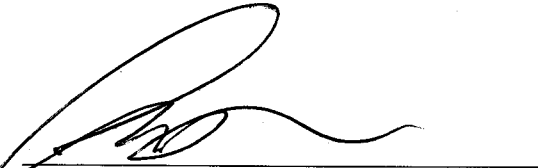
19. It was usually within a month after DCS made a payment to Company A that Sorrells would receive a kickback payment from Person A.


20. The defendant agrees that the defendant committed all the essential elements of the offense(s). This factual resume is not intended to be a complete accounting of all the facts and events related to the offense charged in this case. The limited purpose of this statement of facts is to demonstrate that a factual basis exists to support the defendant's guilty plea to Count(s) One of the Information.

AGREED TO AND STIPULATED on this 7<sup>th</sup> day of March, 2018.

ERIN NEALY COX  
UNITED STATES ATTORNEY

  
RICKY DALE SORRELLS  
Defendant

  
CYNTHIA BARBARE  
Attorney for Defendant

  
ANDREW O. WIRMANI  
Assistant United States Attorney  
Texas Bar No. 24052287  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED

APR 2 2018 AM 9:25

UNITED STATES OF AMERICA

v.

RICKY DALE SORRELLS

NO.

**3-18CR-169-N**

DEPUTY CLERK *da*

**PLEA AGREEMENT**

Ricky Dale Sorrells, the defendant, Cynthia Barbare, the defendant's attorney, and the United States of America (the government) agree as follows:

1. **Rights of the defendant:** The defendant understands that the defendant has the rights:
  - a. to have his case presented to a federal grand jury;
  - b. to plead not guilty;
  - c. to have a trial by jury;
  - d. to have the defendant's guilt proven beyond a reasonable doubt;
  - e. to confront and cross-examine witnesses and to call witnesses in the defendant's defense; and
  - f. against compelled self-incrimination.

2. **Waiver of rights and plea of guilty:** The defendant waives these rights and pleads guilty to the offense alleged in Count One of the Information, charging a violation of 18 U.S.C. § 1349, that is, conspiracy to commit honest services wire fraud. The defendant understands the nature and elements of the crime to which the defendant is



pleading guilty, and agrees that the factual resume the defendant has signed is true and will be submitted as evidence.

3. **Sentence:** The maximum penalties the Court can impose include:

- a. imprisonment for a period not to exceed twenty years;
- b. a fine not to exceed \$250,000, or twice any pecuniary gain to the defendant or loss to the victim(s);
- c. a term of supervised release of not more than three years, which will follow any term of imprisonment. If the defendant violates the conditions of supervised release, the defendant could be imprisoned for the entire term of supervised release;
- d. a mandatory special assessment of \$100;
- e. restitution to victims or to the community, which is mandatory under the law, and which the defendant agrees may include restitution arising from all relevant conduct, not limited to that arising from the offense of conviction alone;
- f. costs of incarceration and supervision; and
- g. forfeiture of property.

4. **Sentencing agreement:** Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the parties agree that the appropriate term of imprisonment in this case is one that does not exceed ten years or 120 months' imprisonment. If the Court accepts this plea agreement, this sentencing provision is binding on the Court. Other than the agreed maximum term of imprisonment, there are no other sentencing limitations, and the Court remains free to determine the appropriate sentence under the advisory United States Sentencing Guidelines and 18 U.S.C. § 3553.



5. **Rejection of agreement:** Pursuant to Federal Rule of Criminal Procedure 11(c)(5), if the Court rejects this plea agreement, the defendant will be allowed to withdraw the defendant's guilty plea. If the defendant declines to withdraw the defendant's guilty plea, the disposition of the case may be less favorable than that contemplated by the plea agreement.

6. **Mandatory special assessment:** Prior to sentencing, the defendant agrees to pay to the U.S. District Clerk the amount of \$100 in satisfaction of the mandatory special assessment in this case.

7. **Defendant's agreement:** The defendant shall give complete and truthful information and/or testimony concerning the defendant's participation in the offense of conviction. Upon demand, the defendant shall submit a personal financial statement under oath and submit to interviews by the government and the U.S. Probation Office regarding the defendant's capacity to satisfy any fines or restitution. The defendant expressly authorizes the United States Attorney's Office to immediately obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court. The defendant fully understands that any financial obligation imposed by the Court, including a restitution order and/or the implementation of a fine, is due and payable immediately. In the event the Court imposes a schedule for payment of restitution, the defendant agrees that such a schedule represents a minimum payment obligation and does not preclude the U.S. Attorney's Office from pursuing any other means by which to satisfy the defendant's full and immediately enforceable financial obligation. The defendant understands that the defendant has a continuing



obligation to pay in full as soon as possible any financial obligation imposed by the Court.

8. **Forfeiture of property:** The defendant agrees not to contest, challenge, or appeal in any way the administrative or judicial (civil or criminal) forfeiture to the United States of any property noted as subject to forfeiture pursuant to the plea of guilty, specifically the forfeiture of the following:

- \$8,633.51 in United States currency seized from the account ending in x5221 on March 6, 2017;
- \$3,659.01 in United States currency seized from the account ending in x1665 on March 5, 2017;
- 2014 Maserati GHI, Vehicle Identification Number ZAM57RTA0E1112238, titled to Ricky Dale Sorrells;
- 2012 Porsche Cayenne, Vehicle Identification Number WDCGG5HB2FG437070, titled to Ricky Dale Sorrells;
- Assorted jewelry purchased from Windsor Auction House, Inc. on or about April 5, 2013 in the amount of \$49,662.93; and
- Custom-made 14K gold bracelet set with 51 princess cut diamonds weighing 10.53 carats with a grade of H/SI<sub>1</sub> purchased for \$16,400 on May 21, 2015.

The defendant agrees that this property is subject to forfeiture under 18 USC § 981(a)(1)(C) & 28 U.S.C. 2461(c). The defendant consents to entry of any orders or declarations of forfeiture regarding such property and waives any requirements (including notice of forfeiture) set out in 19 U.S.C. §§ 1607-1609; 18 U.S.C. §§ 981, 983, and 985; the Code of Federal Regulations; and Rules 11 and 32.2 of the Federal Rules of Criminal Procedure. The defendant agrees to provide truthful information and evidence necessary



for the government to forfeit such property. The defendant agrees to hold the government, its officers, agents, and employees harmless from any claim whatsoever in connection with the seizure, forfeiture, storage, or disposal of such property.

9. **Government's agreement:** The government will not bring any additional charges against the defendant based upon the conduct underlying and related to the defendant's plea of guilty. The government will file a Supplement in this case, as is routinely done in every case, even though there may or may not be any additional terms. This agreement is limited to the United States Attorney's Office for the Northern District of Texas and does not bind any other federal, state, or local prosecuting authorities, nor does it prohibit any civil or administrative proceeding against the defendant or any property.

10. **Violation of agreement:** The defendant understands that if the defendant violates any provision of this agreement, or if the defendant's guilty plea is vacated or withdrawn, the government will be free from any obligations of the agreement and free to prosecute the defendant for all offenses of which it has knowledge. In such event, the defendant waives any objections based upon delay in prosecution. If the plea is vacated or withdrawn for any reason other than a finding that it was involuntary, the defendant also waives objection to the use against the defendant of any information or statements the defendant has provided to the government, and any resulting leads.

11. **Voluntary plea:** This plea of guilty is freely and voluntarily made and is not the result of force or threats, or of promises apart from those set forth in this plea



agreement. There have been no guarantees or promises from anyone as to what sentence the Court will impose.

12. **Waiver of right to appeal or otherwise challenge sentence:** The defendant waives the defendant's rights, conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742, to appeal the conviction, sentence, fine and order of restitution or forfeiture in an amount to be determined by the district court. The defendant further waives the defendant's right to contest the conviction, sentence, fine and order of restitution or forfeiture in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255. The defendant further waives the defendant's right to seek any future reduction in the defendant's sentence (e.g., based on a change in sentencing guidelines or statutory law). The defendant, however, reserves the rights (a) to bring a direct appeal of (i) a sentence exceeding the statutory maximum punishment, or (ii) an arithmetic error at sentencing, (b) to challenge the voluntariness of the defendant's plea of guilty or this waiver, and (c) to bring a claim of ineffective assistance of counsel.

13. **Representation of counsel:** The defendant has thoroughly reviewed all legal and factual aspects of this case with the defendant's attorney and is fully satisfied with that attorney's legal representation. The defendant has received from the defendant's attorney explanations satisfactory to the defendant concerning each paragraph of this plea agreement, each of the defendant's rights affected by this agreement, and the alternatives available to the defendant other than entering into this agreement. Because the defendant concedes that the defendant is guilty, and after conferring with the defendant's attorney, the defendant has concluded that it is in the




defendant's best interest to enter into this plea agreement and all its terms, rather than to proceed to trial in this case.

14. **Entirety of agreement:** This document is a complete statement of the parties' agreement and may not be modified unless the modification is in writing and signed by all parties. This agreement supersedes any and all other promises, representations, understandings, and agreements that are or were made between the parties at any time before the guilty plea is entered in court. No promises or representations have been made by the United States except as set forth in writing in this plea agreement.

AGREED TO AND SIGNED this 7<sup>th</sup> day of March, 2018.

ERIN NEALY COX  
UNITED STATES ATTORNEY

  
\_\_\_\_\_  
ANDREW O. WIRMANI  
Assistant United States Attorney  
Texas Bar No. 24052287  
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Tel: (214) 659-8600  
Fax: (214) 659-8809  
Email: andrew.wirmani@usdoj.gov  
\_\_\_\_\_  
STEVE FAHEY  
Criminal Chief



I have read or had read to me this plea agreement and have carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it.



RICKY DALE SORRELLS

Defendant

Date

3/7/18

I am the defendant's attorney. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge and belief, my client's decision to enter into this plea agreement is an informed and voluntary one.



CYNTHIA BARBARE

Attorney for Defendant

Date

3/7/18




# Exhibit B



**ORIGINAL**

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

2017 DEC 27 PM 3:15  
DEPUTY CLERK 

UNITED STATES OF AMERICA

v.

SLATER WASHBURN SWARTWOOD,  
SR.

NO.

**8-17CR-678-M**

**INFORMATION**

The United States Attorney Charges:

**Introduction**

1. From in or around 2011 to in or around 2017, Person A, the president of Company A, a technology company that put cameras on school buses, paid Person B, the superintendent of a state agency, millions of dollars in bribe and kickback payments in exchange for favorable official action, including Person B's decision to enter into contracts and licensing agreements on behalf of the state agency and to purchase school-bus-camera equipment.
2. Person B was a public servant as a result of his position. Person B owed a duty of honest services to the citizens of Dallas County and his employer to perform the duties and responsibilities of his office free from bias, conflicts of interest, self-enrichment, self-dealing, concealment, deceit, fraud, kickbacks, and bribery.
3. To hide the bribe and kickback payments that Person A made to Person B, Person



A funneled a significant portion of the illicit payments through various companies created and operated by his business associate, defendant **Slater Washburn Swartwood, Sr.**



**Count One**  
**Conspiracy to Commit Money Laundering**  
**[Violation of 18 U.S.C. § 371]**

4. Paragraphs 1 through 3 of this Information are realleged and incorporated by reference as if set forth fully herein.

5. From in or around 2011 to in or around 2017, in the Dallas Division of the Northern District of Texas and elsewhere, the defendant, **Swartwood**, Persons A and B, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to violate Section 1956(a)(1) of Title 18, United States Code.

6. It was a part and object of the conspiracy that **Swartwood**, Persons A and B, and others known and unknown, did knowingly conduct and attempt to conduct financial transactions affecting interstate commerce and foreign commerce, which transactions involved the proceeds of specified unlawful activity, that is, honest services wire fraud in violation of 18 U.S.C. §§ 1343 and 1346, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of 18 U.S.C. § 1956(a)(1)(B)(i).



Manner and Means of the Money Laundering Conspiracy

7. During the money laundering conspiracy, Person A paid Person B over \$3 million in bribes and kickbacks, including paying a portion of Person B's credit card debt and student loan debt arising from his son's college tuition. In return, Person B, acting on behalf of the state agency, entered into contracts and licensing agreements with Company A, which resulted in the state agency paying Company A over \$70 million and incurring significant and ultimately debilitating debt.

8. To disguise and conceal the source and purpose of the bribe and kickback payments to Person B, Person A generally did not directly pay Person B.

9. Instead, Person A caused approximately \$2 million in bribe and kickback payments to be transferred to pass-through entities controlled by Swartwood, including Elf Investments, Cambridge Realty Group, LLC (Cambridge), and Anrock Realty Services, LLC (Anrock), after which Swartwood, at Person A's direction, would pay Person B or shell companies that he controlled.

10. To further disguise and conceal the source and purpose of the bribe and kickback payments from Person A to Person B, the coconspirators, at various points during the money laundering conspiracy, created sham loan, consulting, or real estate agreements in an attempt to make the payments to Person B appear legitimate.

Overt Acts

11. In furtherance of the conspiracy and to effect the illegal objects thereof, the



following overt acts, among others, were committed in the Dallas Division of the Northern District of Texas and elsewhere:

- a. On or about April 15, 2016, Person A caused approximately \$200,000 to be wired from a bank account of Company A to a bank account of Anrock.
- b. On or about April 15, 2016, Swartwood, at Person A's direction, caused approximately \$200,000 to be transferred from the bank account of Anrock to a bank account ending in 7802, a shell company controlled by Person B, which is known to the United States Attorney.

All in violation of 18 U.S.C. § 371.



**Forfeiture Notice**  
**[18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)]**

The allegations contained in the Introduction and Count One of this Information are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), upon conviction of a conspiracy to violate 18 U.S.C. § 1956, in violation of 18 U.S.C. § 371, the defendant, **Slater Washburn Swartwood, Sr.**, shall forfeit to the United States of America any property, real or personal, which constitutes or is derived from proceeds traceable to said violation. The property to be forfeited includes, but is not limited to, a money judgment.

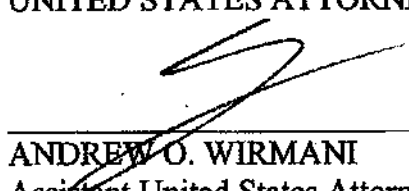
If any of the property described above, as a result of any act or omission of the defendant:

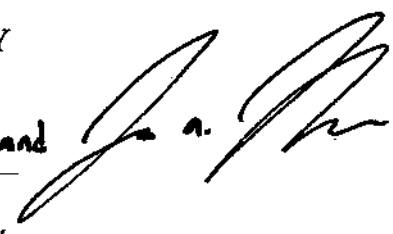
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1) and 28 U.S.C. § 2461(c).



ERIN NEALY COX  
UNITED STATES ATTORNEY



and 

---

ANDREW O. WIRMANI  
Assistant United States Attorney  
Texas Bar No. 24052287  
JOSEPH A. MAGLIOLO  
Assistant United States Attorney  
Texas Bar No. 24074634  
1100 Commerce Street, Third Floor  
Dallas, Texas 75242-1699  
Tel: 214.659.8600  
Fax: 214.659.8809



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

NO.

SLATER WASHBURN SWARTWOOD,  
SR.

**FACTUAL RESUME**

In support of Slater Washburn Swartwood, Sr.'s plea of guilty to the offense(s) in Count(s) One of the Information, Swartwood, the defendant, Max Stern, the defendant's attorney, and the United States of America (the government) stipulate and agree to the following:

**ELEMENTS OF THE OFFENSE**

To prove the offense alleged in Count One of the Information charging a violation of 18 U.S.C. § 371, that is, conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i), the government must prove each of the following elements beyond a reasonable doubt:<sup>1</sup>

*First:* That the defendant and at least one other person made an agreement to commit the crime of money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i), as charged in the Information;

*Second:* That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and

---

<sup>1</sup> Fifth Circuit Pattern Jury Instruction 2.15A (5th Cir. 2015).



*Third:* That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the Information, in order to accomplish some object or purpose of the conspiracy.

### **STIPULATED FACTS**

1. The defendant agrees that the following facts are true and correct and that his testimony at any trial would reflect the same.

2. From in or around 2011 to in or around 2017, in the Dallas Division of the Northern District of Texas and elsewhere, the defendant, Swartwood, Persons A and B, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to violate Section 1956(a)(1) of Title 18, United States Code.

3. Swartwood, at all relevant times, knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose.

4. Swartwood started working with Person A as a real estate adviser in approximately 1985. In approximately 2010, he began doing real estate consulting for Company A, at first as an employee and later as a consultant.

5. Company A, which was owned and controlled by Person A, sold cameras and related services for school buses. Company A entered into various contracts and a licensing agreement with a Texas state agency acting through its superintendent, Person B. Under these contracts and the licensing agreement, the state agency purchased



millions of dollars of camera equipment from Company A. All of these contracts, agreements, and purchase orders were entered into by Person A and Person B on behalf of their respective organizations. The ongoing business relationship between Company A and the state agency generated millions of dollars in revenue for Company A, a portion of which Person A illegally kicked back to Person B in return for further agreements and camera-equipment orders.

6. Generally, Person A did not pay Person B directly. Instead, to disguise the source and illegal purpose of the payments, Person A funneled the bribe and kickback payments to Person B through various pass-through companies owned or controlled by Swartwood.

7. More specifically, between 2011 and 2016, Person A provided Swartwood with approximately \$2 million to funnel to Person B through Swartwood's companies, Elf Investments, Cambridge Realty Group, LLC (Cambridge), and Anrock Realty Services, LLC (Anrock). After Swartwood was paid, he would almost immediately transfer the funds to Person B at Person A's direction.

8. Swartwood, per Person B's instruction, would pay the money to Person B's personal bank account or to various shell companies owned or controlled by Person B, which are known to the United States Attorney.

9. To further conceal the illegal bribe and kickback payments, the coconspirators created numerous versions of a fake loan. All parties understood that the loans in their various iterations were fake and that Person B would never be required to pay Person A back and lacked even the financial capability to do so. In fact, when the



media began scrutinizing the relationship between Company A and the state agency, the coconspirators discussed having Person B begin to make payments on the loan to make it appear legitimate, after which Person A would “recycle” the money back to Person B. The coconspirators also spent a significant amount of time discussing how to get their stories straight so they could explain the paper trail left by the multi-year bribery scheme they had engaged in.

10. Swartwood also knew that Person A was concealing bribe and kickback payments to Person B by funneling payments to Person B through a law firm.

11. Swartwood agrees and stipulates that, in furtherance of the money laundering conspiracy, and as set forth in Paragraph 11 of the Information, that, on or about April 15, 2016, Person A caused approximately \$200,000 to be wired from a bank account of Company A to a bank account of Anrock. That same day, Swartwood, at Person A’s direction, caused approximately \$200,000 to be transferred from the bank account of Anrock to a bank account ending in 7802, a shell company controlled by Person B, which is known to the United States Attorney. To further conceal the true purpose of the payment, the coconspirators characterized the payment as related to “Consulting.”

12. The defendant agrees that the defendant committed all the essential elements of the offense(s). This factual resume is not intended to be a complete accounting of all the facts and events related to the offense charged in this case. The limited purpose of this statement of facts is to demonstrate that a factual basis exists to support the defendant’s guilty plea to Count(s) One of the Information.



ERIN NEALY COX  
UNITED STATES ATTORNEY

Slater Washburn Smartwood, Sr.  
SLATER WASHBURN  
SMARTWOOD, SR.  
Defendant

Max Stern  
MAX STERN  
Attorney for Defendant

Andrew O. Wirmani  
ANDREW O. WIRMANI  
Assistant United States Attorney  
Texas Bar No. 24052287  
Dallas, Texas 75242-1699  
Tel: (214) 659-8600  
Fax: (214) 659-8809  
Email: andrew.wirmani@usdoj.gov



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

NO.

SLATER WASHBURN SWARTWOOD,  
SR.

**PLEA AGREEMENT**

Slater Washburn Swartwood, Sr., the defendant, Max Stern, the defendant's attorney, and the United States of America (the government) agree as follows:

1. **Rights of the defendant:** The defendant understands that the defendant has the rights:
  - a. to have his case presented to a federal grand jury;
  - b. to plead not guilty;
  - c. to have a trial by jury;
  - d. to have the defendant's guilt proven beyond a reasonable doubt;
  - e. to confront and cross-examine witnesses and to call witnesses in the defendant's defense; and
  - f. against compelled self-incrimination.

2. **Waiver of rights and plea of guilty:** The defendant waives these rights and pleads guilty to the offense alleged in Count One of the Information, charging a violation of 18 U.S.C. § 371, that is, conspiracy to commit money laundering. The



defendant understands the nature and elements of the crime to which the defendant is pleading guilty, and agrees that the factual resume the defendant has signed is true and will be submitted as evidence.

3. **Sentence:** The maximum penalties the Court can impose include:

- a. imprisonment for a period not to exceed five years;
- b. a fine not to exceed \$250,000, or twice any pecuniary gain to the defendant or loss to the victim(s);
- c. a term of supervised release of not more than three years, which may be mandatory under the law and will follow any term of imprisonment. If the defendant violates the conditions of supervised release, the defendant could be imprisoned for the entire term of supervised release;
- d. a mandatory special assessment of \$100;
- e. restitution to victims or to the community, which may be mandatory under the law, and which the defendant agrees may include restitution arising from all relevant conduct, not limited to that arising from the offense of conviction alone;
- f. costs of incarceration and supervision; and
- g. forfeiture of property.

4. **Court's sentencing discretion and role of the Guidelines:** The defendant understands that the sentence in this case will be imposed by the Court after consideration of the United States Sentencing Guidelines. The guidelines are not binding on the Court, but are advisory only. The defendant has reviewed the guidelines with the defendant's attorney, but understands no one can predict with certainty the outcome of the Court's



consideration of the guidelines in this case. The defendant will not be allowed to withdraw the defendant's plea if the defendant's sentence is higher than expected. The defendant fully understands that the actual sentence imposed (so long as it is within the statutory maximum) is solely in the discretion of the Court.

5. **Mandatory special assessment:** Prior to sentencing, the defendant agrees to pay to the U.S. District Clerk the amount of \$100, in satisfaction of the mandatory special assessment in this case.

6. **Defendant's agreement:** The defendant shall give complete and truthful information and/or testimony concerning the defendant's participation in the offense of conviction. Upon demand, the defendant shall submit a personal financial statement under oath and submit to interviews by the government and the U.S. Probation Office regarding the defendant's capacity to satisfy any fines or restitution. The defendant expressly authorizes the United States Attorney's Office to immediately obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court. The defendant fully understands that any financial obligation imposed by the Court, including a restitution order and/or the implementation of a fine, is due and payable immediately. In the event the Court imposes a schedule for payment of restitution, the defendant agrees that such a schedule represents a minimum payment obligation and does not preclude the U.S. Attorney's Office from pursuing any other means by which to satisfy the defendant's full and immediately enforceable financial obligation. The defendant understands that the defendant has a continuing



obligation to pay in full as soon as possible any financial obligation imposed by the Court.

7. **Forfeiture of property:** The defendant agrees not to contest, challenge, or appeal in any way the administrative or judicial (civil or criminal) forfeiture to the United States of any property noted as subject to forfeiture pursuant to the plea of guilty, specifically the forfeiture of cash seized from the defendant's residence. The defendant agrees that this property is subject to forfeiture under 21 U.S.C. § 853(a). The defendant consents to entry of any orders or declarations of forfeiture regarding such property and waives any requirements (including notice of forfeiture) set out in 19 U.S.C. §§ 1607-1609; 18 U.S.C. §§ 981, 983, and 985; the Code of Federal Regulations; and Rules 11 and 32.2 of the Federal Rules of Criminal Procedure. The defendant agrees to provide truthful information and evidence necessary for the government to forfeit such property. The defendant agrees to hold the government, its officers, agents, and employees harmless from any claim whatsoever in connection with the seizure, forfeiture, storage, or disposal of such property.

8. **Government's agreement:** The government will not bring any additional charges against the defendant based upon the conduct underlying and related to the defendant's plea of guilty. The government will file a Supplement in this case, as is routinely done in every case, even though there may or may not be any additional terms. The government will dismiss, after sentencing, any remaining charges in the pending Information. This agreement is limited to the United States Attorney's Office for the Northern District of Texas and does not bind any other federal, state, or local prosecuting



authorities, nor does it prohibit any civil or administrative proceeding against the defendant or any property.

9. **Violation of agreement:** The defendant understands that if the defendant violates any provision of this agreement, or if the defendant's guilty plea is vacated or withdrawn, the government will be free from any obligations of the agreement and free to prosecute the defendant for all offenses of which it has knowledge. In such event, the defendant waives any objections based upon delay in prosecution. If the plea is vacated or withdrawn for any reason other than a finding that it was involuntary, the defendant also waives objection to the use against the defendant of any information or statements the defendant has provided to the government, and any resulting leads.

10. **Voluntary plea:** This plea of guilty is freely and voluntarily made and is not the result of force or threats, or of promises apart from those set forth in this plea agreement. There have been no guarantees or promises from anyone as to what sentence the Court will impose.

11. **Waiver of right to appeal or otherwise challenge sentence:** The defendant waives the defendant's rights, conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742, to appeal the conviction, sentence, fine and order of restitution or forfeiture in an amount to be determined by the district court. The defendant further waives the defendant's right to contest the conviction, sentence, fine and order of restitution or forfeiture in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255. The defendant, however, reserves the rights (a) to bring a direct appeal of (i) a sentence exceeding the statutory maximum punishment, or (ii) an arithmetic error



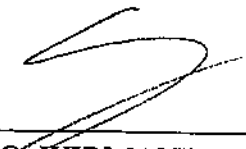
at sentencing, (b) to challenge the voluntariness of the defendant's plea of guilty or this waiver, and (c) to bring a claim of ineffective assistance of counsel.

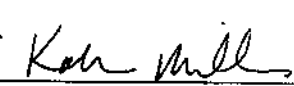
12. **Representation of counsel:** The defendant has thoroughly reviewed all legal and factual aspects of this case with the defendant's attorney and is fully satisfied with that attorney's legal representation. The defendant has received from the defendant's attorney explanations satisfactory to the defendant concerning each paragraph of this plea agreement, each of the defendant's rights affected by this agreement, and the alternatives available to the defendant other than entering into this agreement. Because the defendant concedes that the defendant is guilty, and after conferring with the defendant's attorney, the defendant has concluded that it is in the defendant's best interest to enter into this plea agreement and all its terms, rather than to proceed to trial in this case.

13. **Entirety of agreement:** This document is a complete statement of the parties' agreement and may not be modified unless the modification is in writing and signed by all parties. This agreement supersedes any and all other promises, representations, understandings, and agreements that are or were made between the parties at any time before the guilty plea is entered in court. No promises or representations have been made by the United States except as set forth in writing in this plea agreement.




ERIN NEALY COX  
UNITED STATES ATTORNEY

  
\_\_\_\_\_  
ANDREW O. WIRMANI  
Assistant United States Attorney  
Texas Bar No. 24052287  
1100 Commerce Street, Third Floor  
Dallas, Texas 75242-1699  
Tel: (214) 659-8600  
Fax: (214) 659-8809  
Email: andrew.wirmani@usdoj.gov


  
\_\_\_\_\_  
KATHERINE MILLER  
Deputy Criminal Chief

I have read or had read to me this plea agreement and have carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it.

  
\_\_\_\_\_  
SLATER WASHBURN  
SMARTWOOD, SR.  
Defendant

12/26/17  
\_\_\_\_\_  
Date

I am the defendant's attorney. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge and belief, my client's decision to enter into this plea agreement is an informed and voluntary one.

  
\_\_\_\_\_  
MAX STERN  
Attorney for Defendant

12/27/17  
\_\_\_\_\_  
Date



# Exhibit C





NBC 5 INVESTIGATES

## BIG BUSES, BIGGER PROBLEMS: INVESTIGATING DCS

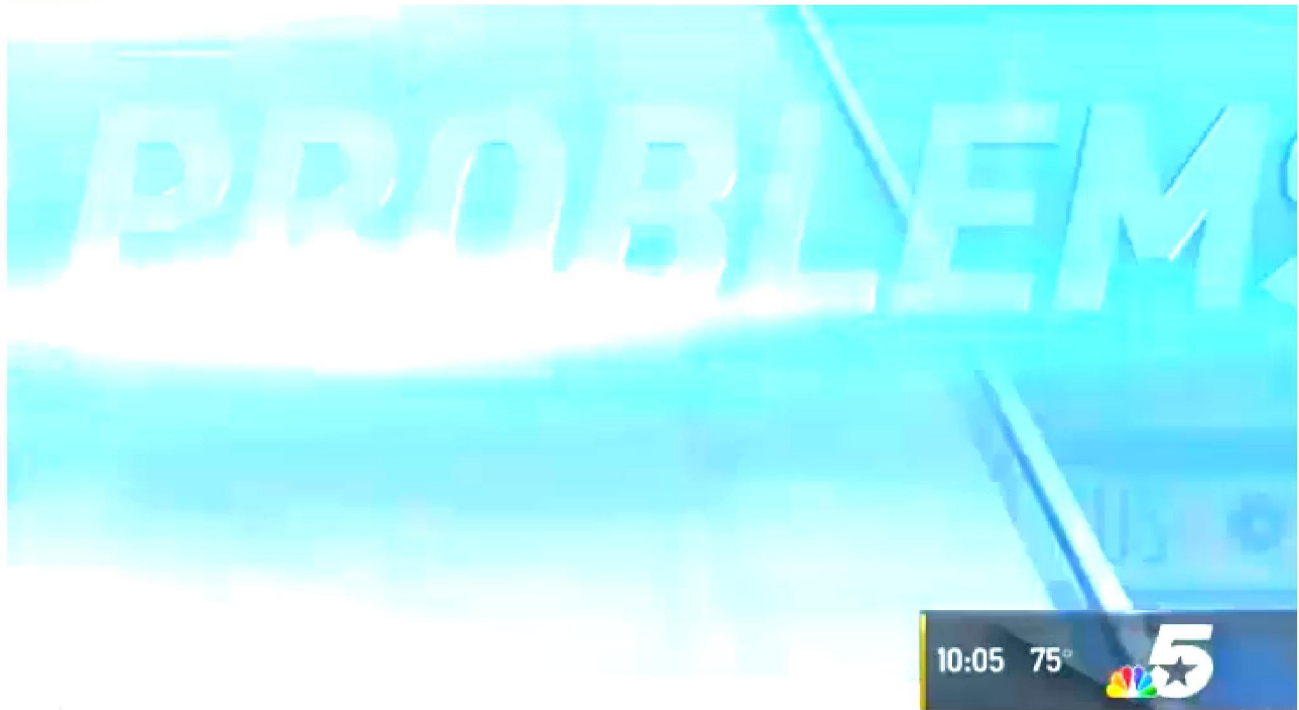
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# DCS Board President Accepted Large Campaign Donations from Bus Camera Vendor

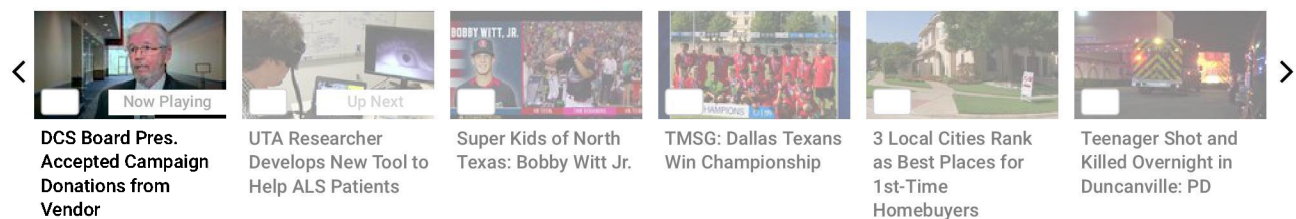
Camera program contributed to \$42 million DCS budget gap

By Scott Friedman

Published at 9:08 PM CST on Feb 6, 2017 | Updated at 10:39 PM CST on Feb 6, 2017



DCS board president Larry Duncan accepted campaign contributions from people tied to the bus camera company with which DCS had partnered for a program that has left the district struggling to pay its bills. (Published Monday, Feb. 6, 2017)



NBC 5 Investigates has obtained records showing Larry Duncan, president of the

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e than \$200,000 in

[TRENDING STORIES](#)





Campaign finance records show since 2012, Duncan received about \$245,000 from employees of Force Multiplier Solutions, family members and other associates including the company's chief executive officer, Robert Leonard, who contributed \$150,000.

All of Duncan's other campaign donations combined since 2009 totaled only about \$8,600.

Check records show DCS has paid Force Multiplier and its predecessor company more than \$50 million, much of that for bus camera equipment.

#### [INVESTIGATIVE](#) **New Safety Technology Delayed on North Texas Commuter Line**

Duncan defended accepting the campaign contributions from the company, saying they were legal and did not cloud his judgment in any way.

"Every penny is legal, honest, open and ethical. The state legislators set up this system so that people like me could hold office and run for office, and the system is working," Duncan said.

When asked if accepting contributions like this could give the impression that business at DCS is for sale, Duncan responded, "No, it's not, and I will not stand for my reputation being questioned. Twenty years I've been in public service."

#### • **Kissing Bugs Attack Central Texas Woman: Report**

DCS and Force Multiplier partnered to launch a business together in which DCS bought Force Multiplier cameras and then gave them to other school districts for free.

In return, DCS got a cut of the fines collected from tickets given to people who run past school bus stop signs. But the program didn't collect as much as DCS expected, and it's now at least \$20 million behind, according to the agency's new chief financial officer.

"If you see any elected official who has the overwhelming majority of his campaign contributions from a single source, that is a red flag," said Cal Jillson, political science professor at Southern Methodist University.

#### • [RESPONDS](#) **Senior Says Contractor Ran Off With \$2,100**

Jillson says the donations raise big questions about ethics and influence.

"So it's a direct relationship between very, very large – unexpectedly large – campaign contributions and then a contract for services that has gone south," Jillson said.

**NBC 5 Investigates** asked Duncan whether the rest of the DCS board was aware he had accepted contributions of that size from this vendor.

#### [INVESTIGATIVE](#) **Behind the Cameras: The Fall of Dallas County Schools**

"I don't know. There's no way I could know that," Duncan said.

2



**VIDEO** Massive Hammerhead Shark Caught Off Texas Coast

3



**VIDEO** Teen Dies After Mistaking Peanut Chips Ahoy! Packaging for Regular

4



Serious Heat Could Soon Break Records

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DFW Airport, TX



92°

Few Clouds  
Feels Like 96°



Radar



Forecast



Maps

## WHAT DO YOU THINK?

**How much damage do you think President Trump made yesterday by having a closed-door meeting with Vladimir Putin and the comments he made at the joint press conference?**

☐ A lot of damage

☐ A little damage

☐ Barely any damage

☐ No damage at all

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Records show Duncan donated some of the money he received to other members of the DCS board and also to candidates for the Dallas City Council and the school board at the Dallas Independent School District.

#### INVESTIGATIVE | [Texas-Mexico Border – Trust Between Guard, Patrol Grows](#)

The city council passed the bus camera ordinance that allows DCS to operate the stop-arm cameras, and Dallas ISD is Dallas County Schools's biggest customer for bus service.

So DCS has a direct interest in those two organizations.

Just last week, DCS disbanded the camera program it operated outside of Dallas County and laid off 93 employees.

#### INVESTIGATIVE | [Texas-Mexico Border – 'The Last Stand'](#)

**NBC 5 Investigates** reached out to the CEO of Force Multiplier Solutions for comment Monday but he did not immediately respond.

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by Taboola

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# Exhibit D





Brian Trebels  
Manager  
Wedgewood Investment Group, LLC  
211 Waukegan Road, Suite 100  
Northfield, IL 60093

Dear Mr. Trebels:

Thank you for your proposal submitted for the Dallas County Schools (DCS) RFP # 02-17-15-01, Sale-Lease Back of Properties. Wedgewood Investment Group, LLC is being awarded as the investment company that DCS will be working with.

Please contact Susan Falvo, Assistant Superintendent of Operations and Project Management at 214-944-4502, or myself, if you need additional information or have any questions.

Sincerely,

Alan Hagy  
Purchasing Manager  
Dallas County Schools  
214-944-4522  
[ahagy@dcschools.com](mailto:ahagy@dcschools.com)



# Exhibit E



**REAL ESTATE PURCHASE AGREEMENT**

**BETWEEN**

**DALLAS COUNTY SCHOOLS**

**(Seller)**

**AND**

**2015 ACQUISITIONS 5 LLC**

**(Buyer)**

**DATED: JUNE 5, 2015**



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## REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this "Agreement") is made, entered into and effective as June 5, 2015 (the "Effective Date") between **DALLAS COUNTY SCHOOLS**, a county school district in the State of Texas (also known as **Dallas County Board of School Trustees and Dallas County School District**) ("Seller"), and **2015 ACQUISITIONS 5 LLC**, a Delaware limited liability company ("Buyer").

### Background Information

A. Seller is the owner of six (6) parcels of real property located in Dallas County, Texas more particularly described on Exhibit A-1, attached hereto and made a part hereof (said real property, together with all appurtenances and hereditaments thereto, shall be referred to collectively as the "**Real Property**").

B. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of Seller's right, title and interest in the Property (defined below) at the price and on the terms and conditions hereinafter set forth.

### Statement of Agreement

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the foregoing Background Information and as follows:

## ARTICLE I

### PURCHASE AND SALE OF PROPERTY

1.01 Agreement. On the terms and conditions set forth below, Seller hereby agrees to sell the Property to Buyer and Buyer hereby agrees to purchase the Property from Seller.

1.02 Property. Subject to the terms and conditions of this Agreement, Seller agrees to sell, and Buyer agrees to purchase the following:

(a) Land. The Real Property, together with, without warranty of title, all of Seller's right, title and interest, if any, in and to all easements, rights and appurtenances pertaining to such land, including, without limitation, (1) all minerals, oil, gas, and other hydrocarbon substances thereon, (2) all adjacent strips, streets, roads, alleys and rights of way, public or private, open or proposed, (3) covenants, easements, privileges, and hereditaments, whether or not of record, and (4) all access, air, water, riparian, development, utility, and solar rights (collectively, the "**Land**").

(b) Improvements. All improvements and structures currently located or under construction on the Land, including any buildings, together with any and all parking lots and parking structures, located in and on the Land (collectively, the "**Improvements**").



(c) **Tangible Personal Property.** To the extent lawfully transferable, all of Seller's right, title and interest, if any, in and to the building systems, fixtures, and machinery that constitutes fixtures incorporated therein, but excluding Seller's Equipment and Seller's Trade Fixtures (collectively, the "**Tangible Personal Property**"). For purposes herein, "**Seller's Equipment**" means all equipment located from time to time at the Property, including, without limitation, all underground and above-ground storage tanks (collectively, the "**Storage Tanks**"), but excluding fixtures (other than Seller's Trade Fixtures and the Storage Tanks) which are an integral part of the Real Property and which are customarily included in commercial buildings. For purposes herein, "**Seller's Trade Fixtures**" means all office furniture, fixtures and equipment owned by Seller which are located in the Improvements, all to the extent such items are not permanently affixed to the Improvements or which may be decommissioned (or dismantled and removed) without damage (that is not repairable or not repaired upon decommissioning or dismantling and removal) to (i) the structural components of load bearing walls, (ii) footings, (iii) the structural components of the roof system, foundation and exterior walls, specifically excluding the non-load bearing walls, glass and windows, and doors, (iv) the slab or (v) the mechanical, electrical, plumbing, fire/life safety or heating, ventilating and air conditioning systems of the building, each taken as a whole.

(d) **Intangible Property.** To the extent lawfully transferable, all of Seller's right, title and interest, if any, in, to and under all warranties, occupancy certificates or permits or their local equivalent issued in the name of Seller relating to, or used by Seller in connection with the installation, operation and maintenance of the Real Property, and relate exclusively to the ownership of the Real Property or the Tangible Personal Property (collectively, the "**Intangible Property**").

(e) **Property Defined.** The Land, the Improvements, the Tangible Personal Property and the Intangible Property are referred to collectively as the "**Property**". The Improvements, the Tangible Personal Property and the Intangible Property located on the individual properties described on **Exhibit A-2** attached hereto, together with such applicable parcel of Real Property, are referred to separately as the "**Individual Property**".

(f) **Excluded Property.** Any and all tangible property or personal property of Seller located at the Real Property and not Tangible Personal Property as identified above, including, without limitation, the Storage Tanks, shall be excluded from the sale contemplated by this Agreement and shall remain the property of Seller.

## **ARTICLE II**

### **PURCHASE PRICE**

2.01 **Amount of Purchase Price.** The purchase price for the Property (the "**Purchase Price**") shall be TWENTY-FIVE MILLION AND NO/100 DOLLARS (\$25,000,000.00), subject to possible adjustment as set forth below in Section 2.01(b) below, payable to Escrow Agent (defined below) for the benefit of Seller at Closing (as hereinafter defined), in immediately available funds, adjusted by all prorations, credits, allowances and other adjustments specifically provided for herein. The Purchase Price shall be payable as follows:



(a) On the Effective Date, Buyer shall deliver to Republic Title of Texas, Inc. (Chase Evans), 2626 Howell Street, 10<sup>th</sup> Floor, Dallas, Texas 75204, Phone: 214-855-8888 ("Escrow Agent") a cash deposit in the amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) (which, together with interest accrued thereon, is referred to as the "Earnest Money"). The Earnest Money shall be non-refundable to Buyer, except as otherwise provided in this Agreement. Escrow Agent shall hold the Earnest Money in accordance with Section 3.01 of this Agreement.

(b) The balance of the Purchase Price due from Buyer at Closing (after crediting the Earnest Money and plus or minus the credits, allowances and other adjustments as provided herein) shall be paid by Buyer to Escrow Agent on the Closing Date (as hereinafter defined) and disbursed to Seller at Closing in accordance with the terms of this Agreement and that certain Escrow Agreement among Seller, Buyer and Escrow Agent dated as of the date hereof (the "Escrow Agreement").

### ARTICLE III

#### INITIAL CONTINGENCIES

3.01 Earnest Money. The Earnest Money shall be held by Escrow Agent in accordance with the provisions of this Section 3.01:

(a) If Buyer timely delivers a Termination Notice (as defined below), this Agreement shall terminate, in which case both parties shall be fully released from all further liability and obligations hereunder, except as may expressly survive hereunder, and the Earnest Money shall be returned promptly to Buyer; and

(b) If the transaction contemplated hereby is consummated, the Earnest Money shall be paid to Seller and credited to Buyer against the Purchase Price at Closing.

3.02 Due Diligence Period. During the period beginning upon the Effective Date and ending at 5:00 p.m. (New York, New York time) on June 5, 2015 (hereinafter referred to as the "Due Diligence Period"), Buyer shall have the right to examine any documents or files maintained by Seller related to the Property which are in Seller's possession or control. Buyer shall have the right, in its sole discretion, for any reason or no reason, to approve or disapprove of the Property or any other aspect of the transactions contemplated by this Agreement. If Buyer determines at any time prior to the expiration of the Due Diligence Period that it elects to terminate this Agreement, then Buyer may terminate this Agreement by written notice to Seller given not later than 5:00 p.m. (New York, New York time) on June 5, 2015 (the "Termination Notice"), whereupon neither party shall have any further rights, duties or obligations hereunder except with respect to the provisions of this Agreement which expressly survive the termination hereof, and the Earnest Money shall be returned promptly to Buyer.



## ARTICLE IV

### SUBMISSION MATERIALS

4.01 Seller's Cooperation. Seller agrees to submit to Buyer, within 2 business days after the Effective Date, the following information and/or materials, to the extent the same is in Seller's possession or control, for Buyer's use in preparation for the purchase of the Property ("**Property Information**"). Except as otherwise provided in Section 11.01 of this Agreement, Seller makes no representation as to the accuracy or completeness of the Property Information. The Property Information shall include:

(a) surveys, site plans, topographical studies, plat maps, property descriptions, zoning maps and engineering drawings for the utilities and public services servicing the Property;

(b) soils reports for the Property;

(c) environmental studies of the Property;

(d) the most recent real estate tax bills for the Property;

(e) the final unconditional certificates of occupancy for the Improvements;  
and

(f) a copy of the title insurance policies (or other form of title evidence) issued upon Seller's acquisition of the Property.

All materials provided to Buyer pursuant to this Article IV shall be kept confidential in accordance with the terms of this Agreement. If this transaction is not closed in accordance with the terms hereof all such materials shall be returned to Seller upon demand. Except as set forth in Section 11.01, all of such information shall be provided without representation or warranty of any kind, express or implied.

## ARTICLE V

### EVIDENCE OF TITLE

5.01 Title Commitment. Promptly following the Effective Date, Seller shall obtain from Escrow Agent and deliver to Buyer a commitment (the "**Title Commitment**") to issue a Texas standard form of owner's title insurance policy covering the Land, together with copies of all instruments reflected as exceptions set forth therein, certified to at least the Effective Date of this Agreement, in the full amount of the Purchase Price. To be acceptable to Buyer, the Title Commitment shall list Seller as holder of good and marketable title to the Property, and shall commit to insure said title free and clear of the standard printed exceptions contained in Schedule B of the Title Commitment and free and clear of all liens, charges, encumbrances and clouds of title, whatsoever, except the following (the "**Permitted Exceptions**");

(a) Those created by Buyer;



- (b) Zoning ordinances, legal highways and public rights-of-way;
- (c) Real estate taxes which are a lien on the Property but which are not yet due and payable; and
- (d) Easements and restrictions of record acceptable to Buyer.

Title to the Property shall be conveyed to Buyer free from all liens, encumbrances, encroachments and other exceptions to title except the Permitted Exceptions. For title to the Property to be acceptable to Buyer on the Closing, the Title Commitment must (i) commit to insure that all parcels of land are contiguous, and if the legal description for the Land includes more than one parcel, that there are no gaps nor gores among them; and (ii) commit to insure that on the Closing Date, the Property shall have direct access to dedicated public highways that abut the Property.

5.02 Title Policy. At Closing, and as a condition of Closing, a proforma owner's title insurance policy in the form of the Title Commitment, containing no exceptions related to mechanics' liens and that otherwise shows no change in the state of the title to the Property since the effective date of the Title Commitment, shall be issued by Escrow Agent as agent for First American Title Insurance Company to Buyer in the amount of the Purchase Price (the "Title Policy").

5.03 Survey. Buyer may obtain a survey of the Property (the "Survey"), prepared by a surveyor registered in the State of Texas, which cost shall be paid by Buyer. The Survey shall contain a legal description of the Property that matches the Title Commitment, shall be certified by the surveyor to Seller, Buyer, Buyer's lender and the title insurance company and shall be dated no more than forty-five (45) days prior to the Closing Date (the "Survey").

5.04 Defects. In the event that an examination of either the Title Commitment (including any endorsements) or the Survey obtained hereunder discloses any matter adversely affecting title to the Property, or if title to the Property is not marketable, or if the Property is subject to liens, encumbrances, easements, conditions, restrictions, reservations or other matters not specifically excepted by the terms of this Agreement, or in the event of any encroachment or other defect shown by the Survey (the foregoing collectively referred to as "Defects"), Seller shall have a reasonable time, not to exceed thirty (30) days after written notice thereof, within which to cure or remove any such Defects. In the event Seller is unable or unwilling to cure or remove the Defects within said 30-day period, Seller shall immediately give notice of Seller's inability to Buyer and thereafter, Buyer shall have ten (10) days after receipt of such notice within which to make its election either: (a) to accept title to the Property subject to such Defects; or (b) to withdraw from this transaction and terminate this Agreement, upon which termination the Earnest Money shall be refunded promptly to Buyer and thereafter neither party shall have any further liability to the other hereunder, except as may expressly survive hereunder. Notwithstanding the foregoing, any delinquent real property taxes, deeds of trust, mortgages and, to the extent arising out of the acts of Seller, mechanic's liens (collectively, "**Monetary Liens**"), first discovered or disclosed after the Effective Date shall be automatically deemed unpermitted exceptions, and Seller shall cause all such Monetary Liens to be removed from record on or before the Closing Date. In addition, Seller, at Seller's sole cost and expense, shall be obligated



to release and discharge of record, on or before the Closing Date, any Defect voluntarily created by Seller from and after the Effective Date.

## **ARTICLE VI**

### **DEED AND OTHER DOCUMENTS**

6.01 **"AS-IS" Sale.** Buyer acknowledges that prior to the Closing, Buyer will have independently and personally inspected the Property and that Buyer has entered into this Agreement based upon its ability to make such examination and inspection. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN THE DOCUMENTS TO BE EXECUTED AT CLOSING TO THE CONTRARY, BUYER ACKNOWLEDGES THAT BUYER IS PURCHASING THE PROPERTY IN "AS-IS, WHERE-IS" CONDITION "WITH ALL FAULTS" AS OF THE CLOSING AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, FROM SELLER OR ANY OF ITS PARTNERS, SHAREHOLDERS, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, TRUSTEES AND BENEFICIARIES (THE "SELLER PARTIES") AS TO ZONING, PLATTING, SUBDIVISION, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTERS OR THINGS RELATING TO OR AFFECTING THE PROPERTY, INCLUDING, WITHOUT LIMITATION; (I) THE CONDITION, FITNESS FOR ANY PARTICULAR PURPOSES, SUITABILITY, OR MERCHANTABILITY OF THE PROPERTY, (II) THE STRUCTURAL INTEGRITY OF AND/OR ANY DEFECTS IN THE PROPERTY, (III) THE ACCURACY OR COMPLETENESS OF ANY OF THE INFORMATION, DATA, MATERIALS OR CONCLUSIONS CONTAINED IN ANY INFORMATION PROVIDED BUYER, (IV) THE FAILURE OF THE PROPERTY TO COMPLY WITH ANY LAWS APPLICABLE TO THE PROPERTY, (V) THE ENVIRONMENTAL CONDITION OF THE PROPERTY, OR (VI) ANY OTHER WARRANTY OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM SELLER OR ANY OTHER PARTY ON BEHALF OF SELLER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN THE DOCUMENTS TO BE EXECUTED AT CLOSING TO THE CONTRARY, BUYER IS ACQUIRING THE PROPERTY ON THE BASIS OF ITS OWN INDEPENDENT INSPECTIONS, INQUIRIES AND/OR INVESTIGATIONS AND NOT AS A RESULT OF ANY WARRANTIES OR REPRESENTATIONS OF SELLER. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE BUYER OF REAL ESTATE AND THAT EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN THE DOCUMENTS TO BE EXECUTED AT CLOSING TO THE CONTRARY IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF BUYER'S CONSULTANTS, AND THAT BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAME, AND UPON CLOSING SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTION AND INVESTIGATIONS. THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL



TO OR AFFECTING THE PROPERTY BY SELLER, ANY AGENT OF SELLER OR ANY THIRD PARTY. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON OTHER THAN SELLER. IF BUYER ACQUIRES THE PROPERTY, THEN EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN THE DOCUMENTS TO BE EXECUTED AT CLOSING TO THE CONTRARY, BUYER ASSUMES ALL RISKS RELATING IN ANY MANNER TO THE PROPERTY, AND SHALL BE SOLELY AND COMPLETELY RESPONSIBLE FOR THE PAYMENT OF ALL COSTS AND EXPENSES IN CONNECTION WITH THE PROPERTY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN THE DOCUMENTS TO BE EXECUTED AT CLOSING TO THE CONTRARY, BUYER, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, INCLUDING WITHOUT LIMITATION, WAIVES AND RELEASES ALL CLAIMS AGAINST AND RIGHTS TO RECOVER FROM THE SELLER PARTIES, AND EACH OF THEM, ANY AND ALL PRESENT OR FUTURE DEMANDS, CLAIMS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, LOSSES, LIABILITIES, DAMAGES, PENALTIES, FINES, LIENS, JUDGMENTS, COSTS OR EXPENSES, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATING TO PROPERTY, OTHER THAN THE RIGHT TO ADD SELLER AS A THIRD PARTY DEFENDANT WITH RESPECT TO ANY CLAIM BROUGHT BY A THIRD PARTY THAT WAS NOT CAUSED BY BUYER OR ANY OF ITS EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, CONTRACTORS OR INVITEES (COLLECTIVELY, THE "BUYER PARTIES"). THE PROVISIONS OF THIS SECTION 6.01 SHALL NOT APPLY TO OR LIMIT ANY OF SELLER'S OBLIGATIONS UNDER THIS AGREEMENT OR ANY OF THE DOCUMENTS EXECUTED BY SELLER AT CLOSING. THE PROVISIONS OF THIS SECTION 6.01 SHALL SURVIVE THE CLOSING.

6.02 Special Warranty Deed. Seller shall, at the Closing, convey fee simple title to the Property to Buyer by a duly and validly executed, recordable special warranty deed, free and clear of all liens and encumbrances, except the Permitted Exceptions in the form attached hereto as Exhibit E (the "Deed").

6.03 Other Documents. Buyer and Seller agree that such other documents as may be legally necessary or appropriate to carry out the terms of this Agreement shall be executed and delivered by the appropriate party at Closing.

## ARTICLE VII

### POSSESSION AND INSPECTION

7.01 Access. Seller shall afford all representatives of Buyer reasonable access to the Property for the purpose of conducting any surveys, inspections and tests reasonably required by Buyer. In conducting any inspections of or entries onto the Property, Buyer (and its agents and contractors) shall not interfere with Seller and its contractors. Subject to the following limitations, this privilege shall include the right to make surveys, site plans, renderings, soil tests, environmental inspections, borings, percolation tests and other tests to obtain any relevant



information necessary to determine subsurface, topographic and drainage conditions and the suitability of the Property for use and development by Buyer. Buyer's inspection of the Property may include a non-invasive Phase I environmental inspection (the "**Phase I Report**"), but no Phase II environmental inspection or other invasive inspection or sampling of soil, water, air or other materials, either as part of the Phase I inspection or any other inspection, may be performed without Seller's prior written consent. Before conducting any on-site inspection of the Property, Buyer shall provide Seller with proof of insurance that is reasonably acceptable to Seller. If any inspection or test disturbs the Property, Buyer shall restore the Property to substantially the same condition as existed prior to any such inspection or test. Buyer shall keep the Property free and clear of any liens and indemnify, defend, and hold Seller harmless from all claims and liabilities for injury to persons or damage to property resulting from any such entry, inspection and testing by Buyer or its representatives or contractors. Buyer's obligations under the preceding 2 sentences shall survive the Closing and any termination of this Agreement.

7.02 Possession at Closing. Subject to the terms of the Leases, Buyer shall be entitled to full and exclusive possession of the Property as of the Closing Date.

## **ARTICLE VIII**

### **CLOSING**

8.01 Closing Date. The purchase and sale of the Property shall be consummated (the "**Closing**") on or before June 5, 2015 and shall be extended by such time, if any, as is necessary to cure Defects, as set forth in Section 5.04 hereof (the "**Closing Date**"). Subject to the foregoing provision of this Section 8.01, the Closing shall be at such time and place as Buyer and Seller may mutually agree upon. Notwithstanding the foregoing, Buyer has the right to adjourn the Closing one time, for a period up to two (2) business days by written notice to Seller received not later than one (1) business day prior to the scheduled Closing.

8.02 Conditions Precedent to Buyer's Obligation to Close. Buyer's obligations to purchase the Property and pay the Purchase Price are subject to the satisfaction (or waiver by Buyer in writing) of the following conditions and actions precedent ("**Buyer's Conditions Precedent**");

(i) Seller shall have delivered duly executed and acknowledged, if required, counterparts of one or more (as specified by Buyer) leases of the Property, each dated as of the Closing Date and each in substantially the form attached hereto as **Exhibit C** (individually, a "**Lease**" and collectively, the "**Leases**");

(ii) No material adverse change shall have occurred to the condition of the Property, including environmental changes to the Property and the state of title, between the Effective Date and the Closing Date, except as provided for in this Agreement;

(iii) Seller shall have received all necessary governmental approvals for the occupancy and use of the Improvements in accordance with the Leases;

(iv) Seller shall have delivered the Deed, together with all required conveyance forms;



(v) Seller shall have delivered a duly executed bill of sale for the transfer of all of the Property (except for the Land) in the form attached hereto as **Exhibit F** (the “**Bill of Sale**”);

(vi) Escrow Agent shall be irrevocably committed to issue to Buyer the Title Policy;

(vii) All representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects as if made on the Closing Date;

(viii) Seller shall have performed and observed, in all material respects, all covenants of Seller under this Agreement;

(ix) Seller shall have delivered each of the Closing Documents required to be delivered by Seller under Section 8.04 of this Agreement;

(x) As of the Closing Date, Seller shall have a credit rating of at least Baa1 by Moody's Investors Services, Inc.;

(xi) Buyer shall have received the Survey in form acceptable to Buyer;

(xii) Seller shall have delivered a duly executed and acknowledged subordination, nondisturbance and attornment agreement in the form attached hereto as **Exhibit G** with such changes as Buyer's lender may reasonably require (the “**SNDA**”);

(xiii) Seller shall have delivered certificates of insurance for all coverages required by the Leases, in form and substance satisfactory to Buyer and Buyer's lender;

(xviii) Seller, as tenant, shall have paid its first payment of Fixed Rent and Additional Rent (each as defined in the Leases) under the Leases and any Fixed Rent payable for a partial month in which the Lease Commencement Date occurs pursuant to Section 5(b) of the Leases; and

(xix) Seller shall have delivered legal opinions covering the due authorization, execution, delivery and enforceability of the Leases, in forms satisfactory to Buyer and Buyer's lender (together, the “**Lease Opinion Letters**”), at the sole cost and expense of Seller.

**8.03 Conditions Precedent to Seller's Obligation to Close.** Seller's obligation to convey the Property to Buyer is subject to the satisfaction (or waiver by Seller in writing) of the following conditions and actions precedent (“**Seller's Conditions Precedent**”):

(i) Buyer shall have performed and observed, in all material respects, all covenants of Buyer under this Agreement;

(ii) All representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects as if made on the Closing Date; and

(iii) Buyer shall have delivered each of the Closing Documents required to be



delivered by Buyer under Section 8.05 of this Agreement and shall have paid to Escrow Agent the balance due of the Purchase Price.

**8.04 Seller's Deliveries in Escrow.** On or before the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following items, original documents and instruments, fully executed and, where required, notarized, as applicable, with respect to the Property:

(i) The Deed, together with all conveyance forms and transfer tax forms, if any, as may be required by Escrow Agent;

(ii) The Leases;

(iii) The Bill of Sale;

(iv) Any disclosures and reports as are required by applicable state and local law in connection with the conveyance of the Land;

(v) A Foreign Investment in Real Property Tax Act affidavit;

(vi) The SNDA;

(vii) Certified copies of the organizational documents of Seller, together with a resolution or consent authorizing the transactions contemplated by this Agreement and a certificate of good standing from the State of Texas; and

(viii) Any additional deliveries required of Seller hereunder and any documents that Buyer or the Escrow Agent may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

**8.05 Buyer's Deliveries in Escrow.** On or before the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following with respect to the Property:

(i) The Purchase Price for the Property less the Earnest Money, plus or minus credits, allowances, and other adjustments as provided in this Agreement in immediate, same-day federal funds wired for credit into the Escrow Agent's escrow account;

(ii) The Leases, executed by Buyer and, where required, notarized;

(iii) The Bill of Sale executed by Buyer and, where required, notarized;

(iv) Any disclosures and reports as are required by applicable state and local law in connection with the conveyance of Land; and

(v) Any additional deliveries required of Buyer hereunder and any documents that Seller or the Escrow Agent may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

**8.06 Closing Statements.** At least three (3) business days prior to the Closing Date, Seller and Buyer shall provide Escrow Agent with the costs and adjustments contemplated by



this Agreement. Escrow Agent shall then prepare a closing statement (the "Closing Statement") for each party at least two (2) business days prior to the Closing. Buyer and Seller shall deposit with the Escrow Agent executed Closing Statements consistent with this Agreement, in the form required by the Escrow Agent.

## ARTICLE IX

### **APPORTIONMENTS AND ADJUSTMENTS**

9.01 **Adjustments at Closing.** On the Closing Date, Buyer and Seller shall apportion, adjust and pay the following items in the manner hereinafter set forth:

(a) **Taxes.** Seller shall be responsible for all real estate taxes and installments of special assessments assessed with respect to the Property for the period prior to Closing, if any.

(b) **Seller's Expenses.** Seller shall, at the Closing (unless previously paid), pay by credit against the Purchase Price the following:

(i) The costs of any deed stamps, conveyance fees or other charges required to be paid in connection with the recording of the Deed, if any;

(ii) ½ of the escrow fee charged by Escrow Agent for conducting the Closing; and

(iii) All of Seller's attorney's fees and expenses, including the cost of the Lease Opinion Letters.

(c) **Buyer's Expenses.** Buyer shall, at the Closing (unless previously paid), pay the following:

(i) Seller's listing broker fee in the amount of \$555,000 (the "Seller's Broker Fee") to Slater Swartwood at Anroc Realty ("Seller's Broker");

(ii) The costs of furnishing the Title Commitment and the premium for the Title Policy, including any endorsements required by Buyer;

(iii) ½ of the escrow fee charged by Escrow Agent for conducting the Closing;

(iv) The cost of the Survey;

(v) The cost of any recording charges and fees related to recording any financing documents recorded by Buyer's lender; and

(vi) All of Buyer's attorney's fees and expenses.

(d) **Survival.** The provisions of this Article IX shall survive Closing.



## ARTICLE X

### EMINENT DOMAIN AND CASUALTY

10.01 Taking By Eminent Domain. If, prior to the Closing, eminent domain proceedings shall be threatened or commenced against more than five percent (5%) of any Individual Property, Buyer shall have the option (a) to elect to proceed with this transaction, in which event any compensation award paid or payable as a result of such eminent domain proceedings shall be the sole property of Buyer, or (b) to terminate this Agreement, in which event Seller shall retain such award and the Earnest Money shall be returned promptly to Buyer and thereafter neither party shall have any further liability to the other hereunder, except as may expressly survive hereunder. Seller agrees that it shall give to Buyer written notice of any such threatened or actual eminent domain proceedings within ten (10) days after Seller first becomes aware thereof, and upon the giving of such notice, Buyer shall then have thirty (30) days during which to exercise the options granted in this Section 10.01. If Buyer fails to exercise such options within said 30-day period, this Agreement shall terminate, the Earnest Money shall be returned to Buyer and thereafter both parties shall be released from further liability or obligation hereunder, except as otherwise expressly set forth herein. Notwithstanding anything to the contrary contained herein, in the event that any of the Improvements or access to any Individual Property is affected by any threatened or commenced eminent domain proceedings, Buyer shall have the options set forth in (a) and (b) above.

10.02 Casualty. If, prior to the Closing Date, any portion of the Property shall be destroyed or damaged in an amount in excess of the Material Damage Amount (as herein defined), by fire or other casualty, then Buyer shall have the option to terminate this Agreement by written notice to Seller within ten (10) days after Buyer has received notice of the casualty from Seller, in which event the Earnest Money shall be promptly returned to Buyer, and thereupon, this Agreement shall terminate, and neither party shall have any further rights or obligations hereunder, except as expressly set forth herein. Seller agrees to give Buyer notice of any fire or other casualty within forty-eight (48) hours after learning of any such event. In the event of fire or other casualty causing damage not resulting in a termination of this Agreement, Buyer shall have the right to approve (such approval not to be unreasonably withheld, conditioned or delayed) the adjustment and settlement of any insurance claim relating to said damage, and upon the Closing Date Seller shall assign to Buyer the interest of Seller in and to any insurance proceeds with respect to said damage, and there shall be no reduction in the Purchase Price. In such event, Seller will also credit against the Purchase Price the amount of any deductible on Seller's casualty and insurance policies covering said damage. For the purposes hereof, the term "Material Damage Amount" shall mean: damage (i) which is not covered by collectible insurance, or (ii) damage to more than ten percent (10%) of the Improvements at any Individual Property. If the Closing Date is less than ten (10) days following the last day on which Buyer is entitled to elect to terminate this Agreement, then Buyer may elect to delay Closing until such election is made or deemed to have been made.



## **ARTICLE XI**

### **WARRANTIES AND REPRESENTATIONS**

11.01 Seller's Warranties and Representations. In addition to any other representation or warranty contained in this Agreement, Seller hereby represents and warrants as follows:

(a) The execution, delivery and performance of this Agreement and the Leases, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance against, the Property, under any agreement or other instrument to which Seller is a party, or by which Seller or the Property is bound;

(b) Seller is duly formed and validly existing under the laws of the jurisdiction of its organization and is qualified to transact business in the State of Texas. The execution, delivery and performance by Seller of this Agreement and the Leases and the performance by Seller of the transactions contemplated hereunder and thereunder, and the conveyance and delivery by Seller to Buyer of possession and title to the Property on the Closing Date have each been duly authorized by such persons or authorities as may be required. If requested by Escrow Agent Seller shall provide Escrow Agent and Buyer with certified resolutions, or other instruments, evidencing such authorization in a form satisfactory to the Escrow Agent for issuance of the Title Policy to Buyer;

(c) Seller is not a "Foreign Person" as that term is defined in the Foreign Investment in Real Property Tax Act and is not a person or entity with whom the U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control of the Department of the Treasury ("OFAC"), (including those named on OFAC's Specially Designated and Blocked Persons List) or under any similar 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 similar governmental action.

(d) This Agreement is, and the Leases when executed and delivered by Seller will be, a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

(e) Seller has not received any written notice of any violation of any applicable law, statute, ordinance, rule, regulation, order, or determination of any governmental authority or any board of fire underwriters (or similar body), or any restrictive covenant or deed restriction or zoning ordinance or classification affecting the Property, including, without limitation, applicable building codes, flood disaster laws, and health and environmental laws and regulations.

(f) Seller has not received any written notice of any condemnation, environmental, zoning, and/or other land-use regulation proceedings, adversely affecting the Property or any part thereof and, to Seller's knowledge, no such proceedings are contemplated.



(g) Other than the amounts disclosed by the tax bills of public record, no other real property taxes have been or will be assessed against the Property for the current tax year. Seller has no knowledge, and Seller has received no notice to the contrary, of any special assessments or charges which will result from work, activities or improvements done to the Property by Seller. Seller has no knowledge and Seller has received no notice to the contrary of any intended public improvements which will result in any charge being levied against, or in the creation of any lien upon, the Property or any portion thereof.

(h) Seller has not received any written notice of any action, suit, litigation or other proceeding affecting the Property or any part thereof and, to Seller's knowledge, no such action, suit, litigation or other proceeding has been threatened.

(i) The Property Information is and will be true, correct, accurate, and complete and will not intentionally omit to state any fact or condition, the omission of which makes any of such materials materially misleading.

(j) No brokerage or leasing commissions or other compensation is due or payable to a broker with whom Seller has dealt with respect to or on account of the Leases other than the Seller's Broker Fee to Seller's Broker and no brokerage or leasing commissions or other compensation will become due or payable for any extensions or renewals of the Leases other than the Seller's Broker Fee to Seller's Broker.

(k) Other than the Leases, there are no other lease agreements, licenses, or other occupancy agreements affecting the Property.

(l) No bankruptcy, insolvency, reorganization or similar action or proceeding, whether voluntary or involuntary, is pending or, to Seller's knowledge, has been threatened in writing, against Seller.

(m) Other than the Permitted Exceptions and the Leases, when fully executed and delivered at Closing, there are no contracts or agreements relating to the Property that are currently in effect which will be binding on Buyer after the Closing Date.

(n) There are no options to purchase or rights of first refusal of which Seller is a party with respect to the Property, and there are no other options to purchase or rights of first refusal with respect to the Property.

(o) Seller owns the Property and has not assigned, pledged encumbered, or transferred the Property and no person or entity has any right or option to acquire the Property, other than the rights of Buyer under this Agreement.

When used herein, the phrase "to Seller's knowledge" shall mean the actual knowledge of Dr. Rick Sorrells (employee of Seller) and such is the individual most likely to have actual knowledge relevant to Seller's representations herein.

The warranties, representations, covenants and agreements set forth in this Section 11.01 shall not be cancelled by performance under this Agreement, but shall survive the Closing and the delivery of the Deed for a period of one (1) year. All representations and warranties set forth



in this Section 11.01 shall be true and correct in all material respects as of the date hereof and as of the Closing Date, and at Closing, if requested by Buyer, Seller shall so certify, in writing, in form reasonably requested by Buyer.

**11.02 Buyer's Warranties and Representations.** In addition to any other representation or warranty contained in this Agreement, Buyer hereby represents and warrants as follows:

(a) The execution, delivery and performance by Buyer of this Agreement and the performance by Buyer of the transactions contemplated hereunder, and the acceptance by Buyer of possession and title to the Property on the Closing Date have each been duly authorized by such persons or authorities as may be required, and this Agreement has been, and all of the documents to be delivered by Buyer at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Buyer, enforceable in accordance with their terms. If requested by Escrow Agent, Buyer shall provide Escrow Agent and Seller with certified resolutions, or other instruments, evidencing such authorization in a form satisfactory to the Escrow Agent for issuance of the Owner's Title Policy to Buyer; and

(b) There is no contract to which Buyer is a party or, to Buyer's knowledge, binding on Buyer which is in conflict with this Agreement. There is no action or proceeding pending or, to Buyer's knowledge, threatened against Buyer which challenges or impairs Buyer's ability to execute or perform its obligations under this Agreement.

The warranties, representations, covenants and agreements set forth in this Section 11.02 shall not be cancelled by performance under this Agreement, but shall survive the Closing and the delivery of the Deed for a period of one (1) year. All representations and warranties set forth in this Section 11.02 shall be true and correct in all material respects as of the date hereof and as of the Closing Date, and at Closing, if requested by Seller, Buyer shall so certify, in writing, in form reasonably requested by Seller.

**11.03 Default.** (a) If Buyer is not then in default in its obligations or agreements hereunder and Buyer's Conditions Precedent set forth in this Agreement have not been satisfied, or Seller fails to perform any of the covenants or agreements contained in this Agreement which are to be performed by Seller, Seller shall be deemed to be in default hereunder, and Buyer may, at its option, as Buyer's sole and exclusive remedy either (i) terminate this Agreement by giving notice of termination to Seller, whereupon the Earnest Money shall be promptly paid to Buyer and neither party shall have any further rights or obligations hereunder, except as expressly set forth herein, or (ii) seek specific performance of this Agreement. Buyer expressly waives all rights at law or in equity to seek monetary damages (including without limitation any and all consequential, speculative and punitive damages) for any default by Seller hereunder; provided, however, Buyer shall not be deemed to have waived and shall be entitled to recover attorneys' fees and costs in connection with any specific performance action.

(b) If Seller is not then in default in its obligations or agreements hereunder and Buyer's Conditions Precedent set forth in this Agreement have been satisfied or waived (as provided herein), and Buyer fails to perform any of the covenants or agreements contained in this Agreement which are to be performed by Buyer, Buyer shall be deemed to be in default



hereunder, and Seller may, at its option, as Seller's sole and exclusive remedy, terminate this Agreement by giving notice of termination to Buyer, whereupon Seller shall receive the entire Earnest Money as full and complete liquidated damages (and not as a penalty or forfeiture), Seller and Buyer hereby agreeing that actual damages will be difficult to ascertain.

## **ARTICLE XII**

### **NOTICES**

12.01 Notice Procedure. Any notices required hereunder shall be in writing, shall be deemed effective upon receipt or refusal, may be transmitted by the parties' respective legal counsel, and shall be transmitted by (a) personal service, (b) reputable overnight delivery service, (c) facsimile (confirmed receipt), (d) email transmission (if followed on the same day by delivery to a reputable overnight delivery service), or (e) certified mail, postage prepaid, return receipt requested, and shall be addressed to the parties as follows or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith:

- (a) If intended for Buyer, to:

WedgeWood Investment Group, LLC  
211 Waukegan Road, Suite 100  
Northfield, Illinois 60093  
Attention: Brian Trebels

with a copy to:

Kelley Drye & Warren LLP  
101 Park Avenue  
New York, New York 10178  
Attention: John A. Garraty, Esq.

- (b) If intended for Seller, to:

Dallas County Schools  
612 N. Zang Boulevard  
Dallas, Texas 75208  
Attention: Dr. Rick Sorrells, Superintendent

with a copy to:

Strasburger & Price, LLP  
901 Main Street, Suite 4400  
Dallas, Texas 75202  
Attention: Michael Jung



## ARTICLE XIII

### GENERAL PROVISIONS

13.01 Governing Law. This Agreement is being executed and delivered in the State of Texas and shall be construed and enforced in accordance with the laws of the State of Texas. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts in the State of Texas.

13.02 Entire Agreement. This Agreement constitutes the entire contract between the parties hereto, and may not be modified except by an instrument in writing signed by the parties hereto, and supersedes all previous agreements, written or oral, if any, of the parties. Exhibits referred to in this Agreement are attached hereto and incorporated herein by reference.

13.03 Time of Essence. Time is of the essence of this Agreement in all respects. Any time period providing for the performance of the parties' obligations herein which would otherwise end on a Saturday, Sunday or national holiday shall be extended to the next succeeding business day.

13.04 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

13.05 Invalidity. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

13.06 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, nor shall the same constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing waiver. No waiver shall be binding, unless executed, in writing, by the party making the waiver.

13.07 Headings. The section headings contained in this Agreement are for convenience only and shall not be considered for any purpose in construing this Agreement. As used in this Agreement, the masculine, feminine and neuter genders, and the singular and plural numbers shall be each deemed to include the other whenever the context so requires.

13.08 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same document. Signatures hereon sent by facsimile or electronic mail may be treated as original signatures, and any party so executing this Agreement agrees to deliver to the other party "paper" originals of said signatures after such transmission by facsimile or electronic mail.

13.09 Business Days. "Business day" means any day on which business is generally transacted by banks in the State of Texas. If the final date of any period set forth in this



Agreement falls upon a day which is not a business day, then, and in such event, the time period shall be extended to the next business day.

13.10 Assignment. Buyer shall not have any right to assign its right, title and interest in, to or under this Agreement without the written consent of Seller, which consent may be granted or withheld by Seller in its sole discretion; provided, however, Buyer may assign this Agreement to an entity controlled by Buyer without Seller's consent. Such assignment shall not relieve Buyer of its obligations hereunder.

13.11 Attorney Fees. In the event either party hereto brings or commences legal proceedings to enforce any of the terms of this Agreement, the successful party shall then be entitled to receive from the other of said parties, in every such action commenced, a reasonable sum as attorneys' fees and costs, including all fees and costs incurred upon any appeals, to be fixed by the court in the same action.

13.12 Confidentiality. To the extent permitted by applicable law, the parties shall maintain the confidentiality of this Agreement and this transaction. Neither party shall make any public announcement or other disclosure to any person of this transaction before the Closing, without the specific prior written consent of the other, except for such disclosures as may be necessary to permit such party to perform its obligations or to permit the reasonable exercise of its rights hereunder, including Buyer's disclosure of this Agreement to its attorneys, accountants, financial advisors, mortgage brokers, and prospective lenders, investors and assignees. Notwithstanding anything to the contrary set forth herein, the obligations of confidentiality contained herein and therein, as they relate to the transactions contemplated by this Agreement shall not apply to the tax structure or tax treatment of such transactions, and each party hereto (and any employee, representative, or agent of any party hereto) may disclose to any and all persons, without limitation of any kind, the tax structure and tax treatment of such transactions and all materials of any kind (including opinions or other tax analysis) that are provided to such party relating to such tax treatment and tax structure; provided, however, that such disclosure shall not include the name (or other identifying information not relevant to the tax structure or tax treatment) of any person and information for which nondisclosure is reasonably necessary in order to comply with applicable securities laws.

13.13 No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Buyer and Seller only and are not for the benefit of any other third party, and accordingly, except as provided in this sentence, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

13.14 Waiver of Sovereign Immunity. To the fullest extent permitted by law, Seller agrees that:

(a) To the extent that Seller may be entitled in any state or jurisdiction to claim or benefit from any immunity (whether characterized as state immunity, sovereign immunity, act of state or otherwise) now or hereafter for itself or any of its property or assets, including, without limitation, the Property (which it now has or may hereafter acquire) in respect of its obligations under this Agreement from service of process or other documents relating to proceedings,



jurisdiction, suit, judgement, execution, attachment (whether before awarded or judgement, in aid or execution or otherwise) or legal process or to the extent that in any such jurisdiction there may be attributed to it or any of its property or assets, including, without limitation, the Property, such immunity (whether or not claimed), Seller expressly, unconditionally and irrevocably agrees not to claim, invoke or permit to be invoked on it or its property or assets' behalf (including, without limitation the Property) or for it or its property or assets' benefit (including, without limitation the Property) and hereby expressly, unconditionally and irrevocably waives such immunity.

(b) Subject to any applicable appellate rights, Seller consents generally in respect of any proceedings to the giving of any relief or the issue of any process in connection with the proceedings including, without limitation, the making enforcement or execution against any property or assets whatsoever, including, without limitation, the Property (irrespective of its use or intended use) of any order or judgement which may be made or given in the proceedings; and

(c) Seller irrevocably and unconditionally acknowledges that the execution, delivery and performance of this Agreement constitute private and commercial (and not public) acts of Seller for purposes of any applicable immunity laws.

13.15 Independent Consideration. Notwithstanding any provision contained in this agreement to the contrary, \$100.00 out of the Earnest Money shall be non-refundable to Buyer and shall be paid to Seller as independent consideration for Seller's execution of this contract (the "Independent Consideration").



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date first set forth above.

**SELLER:**

**DALLAS COUNTY SCHOOLS**, a county school district in the State of Texas

By: *Rick A. Sorrells*  
Name: Dr. Rick Sorrells  
Title: Superintendent

**BUYER:**

**2015 ACQUISITIONS 5 LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date first set forth above.

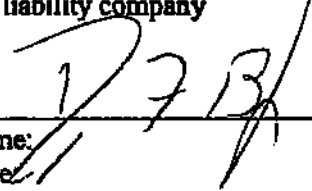
**SELLER:**

**DALLAS COUNTY SCHOOLS**, a county  
school district in the State of Texas

By: \_\_\_\_\_  
Name: Dr. Rick Sorrells  
Title: Superintendent

**BUYER:**

**2015 ACQUISITIONS 5 LLC**, a Delaware  
limited liability company

By:  \_\_\_\_\_  
Name:  
Title:



## **EXHIBIT A-1**

### **Legal Description of Property**

#### **TRACT 1: (Fee Simple)**

All that certain tract or parcel of land, a part of the Robert Kleberg Survey Abst. No. 716, Dallas County, Texas and being a part of that certain called 68.5 acre tract described in Deed dated May 16, 1924, from J. V. Lincoln et ux to A. S. Broadfoot as found in Vol. 1096, page 477 of the Deed Records of Dallas County, Texas and this portion thereof described as follows

BEGINNING at an iron or steel bar (found part of a car spring leaf) for corner at the occupied East corner of a 20 acre tract out of said 68.5 acre tract described in Deed dated September 30, 1933 from J. M. Stockard to G. H. Salmon as found in Vol. 1815, page 317, of the Deed Records of Dallas County, Texas; said point being in the Southwest line of a community asphalt road;

THENCE South 44 degrees 48 minutes East along the Northeast line of said 68.5 acre tract, 561.83 feet to a 1/2" iron rod set for corner in same and at the North corner of a certain 164 ft. x 250 ft lot out of said 68.5 acre tract described as "THIRD TRACT" in Deed dated December 20, 1968 from R. Leland Cook, et ux to Gregory L. Cook, et ux as found in Vol. 68250, page 165-68 of the Deed Records of Dallas County, Texas; said point being in the Southwest line of said road;

THENCE SOUTH 44 degrees 21 minutes 28 seconds West along the Northwest line of said lot, 250.0 feet to a 1/2" iron rod set for corner in same; and at its West corner;

THENCE South 44 degrees 48 minutes East along the Southwest line of said lot 61.00 feet to a 1/2" iron rod set for corner in same;

THENCE South 45 degrees 06 minutes 54 seconds West, 1219.40 feet to a 1/2" iron rod set for corner in the occupied Southwest line of said 68.5 acre tract;

THENCE North 45 degrees West along the occupied Southwest line of same 622.23 feet to a 1" iron rod found for corner at the West corner of said 28.5 acre tract and the South corner of said Salmon's 20 acre tract;

THENCE North 45 degrees East along the occupied Southeast line of said Salmon tract, 1473.00 feet to the point of beginning.

#### **TRACT 2:**

##### **Parcel 1 (Fee Simple)**

Being all of SOUTHWEST SERVICE CENTER ADDITION, an Addition to the City of Lancaster, Dallas County, Texas, according to the plat thereof recorded in Volume 2000249, Page 7, Real Property Records, Dallas County, Texas.



**Parcel 2 (Easement Estate)**

Easement rights contained in Easement Agreement by and between BLUEBELL CREAMERIES, L.P. and DALLAS COUNTY SCHOOLS dated 12/06/1999, filed 03/29/2000, recorded in Volume 2000062, Page 6202, Real Property Records, Dallas County, Texas.

**TRACT 3: (Fee Simple)**

BEING a tract or parcel of land lying in the WILLIAM HOWERTON SURVEY, ABSTRACT NO. 559, Dallas County, Texas and being the same property conveyed in a Deed to Zion Chapel Economic Development, Inc. as recorded in Volume 2000246, Page 4170, Deed Records, Dallas County, Texas, and being more fully described as follows:

BEGINNING at a 3/8" iron rod found at the Southeast Corner of said Zion Chapel Economic Development, Inc., said iron being on the North line of W. Wintergreen Road;

THENCE South 89 degrees 12 minutes 25 seconds W and said W. Wintergreen Road, 249.98' to a 1/2" iron pipe found for corner;

THENCE North 02 degrees 26 minutes 14 seconds W, 871.15' to a 1/2" iron pipe set for corner;

THENCE North 89 degrees 11 minutes 46 seconds E, 250' to a 1/2" iron pipe found for corner;

THENCE South 02 degrees 26 minutes 08 seconds East, 871.2' to the POINT OF BEGINNING and CONTAINING 5.0 acres of land, more or less.

**TRACT 4: (Fee Simple)**

Being Lot 2, Block A/6130, of DALLAS COUNTY SCHOOLS-SERVICE CENTER-EAST ADDITION, an Addition to the City of Dallas, Dallas County, Texas, according to the plat thereof recorded in Volume 96028, Page 2860, Real Property Records, Dallas County, Texas.

**TRACT 5: (Fee Simple)**

Being 590,293 square feet or 13.5316 acre tract of land situated in the Harrison Webb Survey, Abstract No. 1896 and William Bennett Survey, Abstract No. 171, Dallas County, Texas and being all of Lot 3, Block 6492 of Paccar Addition, an addition to the City of Dallas, Dallas County, Texas, according to the Map thereof recorded in Volume 93043, Page 3087, Map Records of Dallas County, Texas and part of Lot 3, Block 8/6495 of Lombardy Business Park, an addition to the City of Dallas, Dallas County, Texas according to the map thereof recorded in Volume 83144, Page 863, Map Records of Dallas County, Texas and being more particularly described as follows (the bearing source for this survey was taken from the said map);

Beginning at a found 1/2 inch iron rod for a corner in the northerly line of Rentsel Street (a 56 foot right of way), said point being the common southerly corner of said Lot 3, Block 6492, and Lot 2, Block 6492 of the said Paccar Addition and said point being S 89 degrees 28 minutes 19 seconds E, a distance of 482.44 feet from the easterly corner of a right of way corner clip at the



intersection of the northerly line of Rentsell Street with the easterly line of Stemmons Freeway (Interstate Highway 35, a variable width right of way);

Thence, N 00 degrees 34 minutes 41 seconds E, departing the northerly line of Rentsell Street and with the common line of said Lots 2 and 3, Block 6492, a distance of 330.00 feet to a found 1/2 inch iron rod for a corner at the common northerly corner of said Lots 2 and 3, Block 6492 and said point in the southerly line of Lot 1, Block 6492 of Manana Park Addition, an addition to the City of Dallas, Dallas County, Texas according to the map thereof recorded in Volume 79149, Page 1, Map Records, Dallas County, Texas;

Thence, S 89 degrees 28 minutes 19 seconds E, with the northerly line of said Lot 3, Block 6492, and the southerly line of the said Lot 1, Block 6492 of Manana Park Addition, passing at a distance of 143.33 feet the northeast corner of said Lot 1, Block 6492 and the northwest corner of said Lot 3, Block 8/6493, continuing with the northerly line of said Lot 3, Block 8/6495 and the southerly line of the said Lot 1, Block 6492 of Manana Park Addition, the southerly line of Lot 2, Block 6492 of Manana Plaza Addition, an Addition to the City of Dallas, Dallas County, Texas according to the map thereof recorded in Volume 74088, Page 1982, and the southerly line of Lot 3, Block 6493 of F. W. Allen Subdivision, an addition to the City of Dallas, Dallas County, Texas, according to the map thereof recorded in Volume 80113, Page 1196, both in the Map Records of Dallas County, Texas in all a distance of 844.49 feet to a set 1/2 inch iron rod for an angle point;

Thence, S 88 degrees 47 minutes 19 seconds E, continuing with the northerly line of said Lot 3, Block 8/6495 and the southerly line of said Lot 9, Block 6493 of F. W. Allen Subdivision, a distance of 241.74 feet to a set 1/2 inch iron rod for a corner, said point being the northeast corner of said Lot 3, Block 8/6495 and in the westerly line of a tract of land conveyed to Dallas Power & Light Company described in Volume 3323, Page 22, Deed Records of Dallas County, Texas;

Thence, S 00 degrees 29 minutes 55 seconds W, with the easterly line of said Lot 3, Block 8/6495 and the westerly line of the said Dallas Power & Light Company tract, a distance of 830.55 feet to a set 1/2 inch iron rod for a corner, said point being the southeast corner of said Lot 1, Block 8/6495 and the northeast corner of a tract of land conveyed to 3112 Corporation by deed recorded in Volume 80135, Page 960, Deed Records of Dallas County, Texas;

Thence, N 89 degrees 19 minutes 16 seconds W, with the southerly line of said Lot 3, Block 8/6495 and the northerly line of the said 3112 Corporation tract, a distance of 465.39 feet to a found 1/2 inch iron rod for a corner in the easterly line of Finnell Street (a 56 foot right of way), said point being the most southerly southwest corner of said Lot 3, Block 8/6495;

Thence, N 00 degrees 40 minutes 44 seconds E, with the easterly line of Finnell Street, a distance of 441.06 feet to a set 1/2 inch iron rod for a corner, said point at the beginning of a non-tangent curve to the left with a central angle of 189 degrees 54 minutes 28 seconds, a radius of 43.50 feet, a chord bearing of W 44 degrees 22 minutes 15 second W and a chord distance of 86.68 feet;



Thence, Northerly and Westerly, continuing with the easterly and northerly line of Finnell Street, and along said curve, an arc distance of 144.24 feet to a set 1/2 inch iron rod for a corner;

Thence, N 89 degrees 25 minutes 19 seconds W, continuing with the northerly line of Rentsel Street, passing at a distance of 416.10 feet with the common corner of said Lot 3, Block 8/6493 and said Lot 3, Block 6492, continuing in all a distance of 561.54 feet to the Point of Beginning.

SAVE AND EXCEPT that certain 2.000 acre tract of land conveyed to Paccar Leasing Corporation in Special Warranty Deed filed 02/24/1995, recorded in Volume 95039, Page 2016;

and

SAVE AND EXCEPT that certain 2.441 acre tract of land conveyed to the City of Dallas in General Warranty Deed filed 03/22/2011, recorded in Volume 2001057, Page 5253, Real Property Records, Dallas County, Texas.



## EXHIBIT A-2

### Legal Descriptions of Individual Property

#### 1. Kleberg Property: 12728 Garden Grove, Dallas, TX 75253:

##### TRACT 1:

All that certain tract or parcel of land, a part of the Robert Kleberg Survey Abst. No. 716, Dallas County, Texas and being a part of that certain called 68.5 acre tract described in Deed dated May 16, 1924, from J. V. Lincoln et ux to A. S. Broadfoot as found in Vol. 1096, page 477 of the Deed Records of Dallas County, Texas and this portion thereof described as follows

BEGINNING at an iron or steel bar (found part of a car spring leaf) for corner at the occupied East corner of a 20 acre tract out of said 68.5 acre tract described in Deed dated September 30, 1933 from J. M. Stockard to G. H. Salmon as found in Vol. 1815, page 317, of the Deed Records of Dallas County, Texas; said point being in the Southwest line of a community asphalt road;

THENCE South 44 degrees 48 minutes East along the Northeast line of said 68.5 acre tract, 561.83 feet to a 1/2" iron rod set for corner in same and at the North corner of a certain 164 ft. x 250 ft lot out of said 68.5 acre tract described as "THIRD TRACT" in Deed dated December 20, 1968 from R. Leland Cook, et ux to Gregory L. Cook, et ux as found in Vol. 68250, page 165-68 of the Deed Records of Dallas County, Texas; said point being in the Southwest line of said road;

THENCE SOUTH 44 degrees 21 minutes 28 seconds West along the Northwest line of said lot, 250.0 feet to a 1/2" iron rod set for corner in same; and at its West corner;

THENCE South 44 degrees 48 minutes East along the Southwest line of said lot 61.00 feet to a 1/2" iron rod set for corner in same;

THENCE South 45 degrees 06 minutes 54 seconds West, 1219.40 feet to a 1/2" iron rod set for corner in the occupied Southwest line of said 68.5 acre tract;

THENCE North 45 degrees West along the occupied Southwest line of same 622.23 feet to a 1" iron rod found for corner at the West corner of said 28.5 acre tract and the South corner of said Salmon's 20 acre tract;

THENCE North 45 degrees East along the occupied Southeast line of said Salmon tract, 1473.00 feet to the point of beginning.

#### 2. Raney Property: 2951 W. Wintergreen Road and 3001 W. Wintergreen Road, Lancaster, TX 75134:

##### TRACT 2:

Parcel 1 (Fee Simple)



Being all of SOUTHWEST SERVICE CENTER ADDITION, an Addition to the City of Lancaster, Dallas County, Texas, according to the plat thereof recorded in Volume 2000249, Page 7, Real Property Records, Dallas County, Texas.

**Parcel 2 (Easement Estate)**

Easement rights contained in Easement Agreement by and between BLUEBELL CREAMERIES, L.P. and DALLAS COUNTY SCHOOLS dated 12/06/1999, filed 03/29/2000, recorded in Volume 2000062, Page 6202, Real Property Records, Dallas County, Texas.

**TRACT 3: (Fee Simple)**

BEING a tract or parcel of land lying in the WILLIAM HOWERTON SURVEY, ABSTRACT NO. 559, Dallas County, Texas and being the same property conveyed in a Deed to Zion Chapel Economic Development, Inc. as recorded in Volume 2000246, Page 4170, Deed Records, Dallas County, Texas, and being more fully described as follows:

BEGINNING at a 3/8" iron rod found at the Southeast Corner of said Zion Chapel Economic Development, Inc., said iron being on the North line of W. Wintergreen Road;

THENCE South 89 degrees 12 minutes 25 seconds W and said W. Wintergreen Road, 249.98' to a 1/2" iron pipe found for corner;

THENCE North 02 degrees 26 minutes 14 seconds W, 871.15' to a 1/2" iron pipe set for corner;

THENCE North 89 degrees 11 minutes 46 seconds E, 250' to a 1/2" iron pipe found for corner;

THENCE South 02 degrees 26 minutes 08 seconds East, 871.2' to the POINT OF BEGINNING and CONTAINING 5.0 acres of land, more or less.

3. Lawnview Property: 4600 Lawnview, Dallas, TX 75227.

**TRACT 4: (Fee Simple)**

Being Lot 2, Block A/6130, of DALLAS COUNTY SCHOOLS-SERVICE CENTER-EAST ADDITION, an Addition to the City of Dallas, Dallas County, Texas, according to the plat thereof recorded in Volume 96028, Page 2860, Real Property Records, Dallas County, Texas.

4. North Dallas Property: 2455 Rentzel Street and 10700 Finnell Street, Dallas, TX 75220:

**TRACT 5: (Fee Simple)**

Being 590,293 square feet or 13.5316 acre tract of land situated in the Harrison Webb Survey, Abstract No. 1896 and William Bennett Survey, Abstract No. 171, Dallas County, Texas and being all of Lot 3, Block 6492 of Paccar Addition, an addition to the City of Dallas, Dallas



County, Texas, according to the Map thereof recorded in Volume 93043, Page 3087, Map Records of Dallas County, Texas and part of Lot 3, Block 8/6495 of Lombardy Business Park, an addition to the City of Dallas, Dallas County, Texas according to the map thereof recorded in Volume 83144, Page 863, Map Records of Dallas County, Texas and being more particularly described as follows (the bearing source for this survey was taken from the said map);

Beginning at a found 1/2 inch iron rod for a corner in the northerly line of Rentsel Street (a 56 foot right of way), said point being the common southerly corner of said Lot 3, Block 6492, and Lot 2, Block 6492 of the said Paccar Addition and said point being S 89 degrees 28 minutes 19 seconds E, a distance of 482.44 feet from the easterly corner of a right of way corner clip at the intersection of the northerly line of Rentsell Street with the easterly line of Stemmons Freeway (Interstate Highway 35, a variable width right of way);

Thence, N 00 degrees 34 minutes 41 seconds E, departing the northerly line of Rentsell Street and with the common line of said Lots 2 and 3, Block 6492, a distance of 330.00 feet to a found 1/2 inch iron rod for a corner at the common northerly corner of said Lots 2 and 3, Block 6492 and said point in the southerly line of Lot 1, Block 6492 of Manana Park Addition, an addition to the City of Dallas, Dallas County, Texas according to the map thereof recorded in Volume 79149, Page 1, Map Records, Dallas County, Texas;

Thence, S 89 degrees 28 minutes 19 seconds E, with the northerly line of said Lot 3, Block 6492, and the southerly line of the said Lot 1, Block 6492 of Manana Park Addition, passing at a distance of 143.33 feet the northeast corner of said Lot 1, Block 6492 and the northwest corner of said Lot 3, Block 8/6493, continuing with the northerly line of said Lot 3, Block 8/6495 and the southerly line of the said Lot 1, Block 6492 of Manana Park Addition, the southerly line of Lot 2, Block 6492 of Manana Plaza Addition, an Addition to the City of Dallas, Dallas County, Texas according to the map thereof recorded in Volume 74088, Page 1982, and the southerly line of Lot 3, Block 6493 of F. W. Allen Subdivision, an addition to the City of Dallas, Dallas County, Texas, according to the map thereof recorded in Volume 80113, Page 1196, both in the Map Records of Dallas County, Texas in all a distance of 844.49 feet to a set 1/2 inch iron rod for an angle point;

Thence, S 88 degrees 47 minutes 19 seconds E, continuing with the northerly line of said Lot 3, Block 8/6495 and the southerly line of said Lot 9, Block 6493 of F. W. Allen Subdivision, a distance of 241.74 feet to a set 1/2 inch iron rod for a corner, said point being the northeast corner of said Lot 3, Block 8/6495 and in the westerly line of a tract of land conveyed to Dallas Power & Light Company described in Volume 3323, Page 22, Deed Records of Dallas County, Texas;

Thence, S 00 degrees 29 minutes 55 seconds W, with the easterly line of said Lot 3, Block 8/6495 and the westerly line of the said Dallas Power & Light Company tract, a distance of 830.55 feet to a set 1/2 inch iron rod for a corner, said point being the southeast corner of said Lot 1, Block 8/6495 and the northeast corner of a tract of land conveyed to 3112 Corporation by deed recorded in Volume 80135, Page 960, Deed Records of Dallas County, Texas;

Thence, N 89 degrees 19 minutes 16 seconds W, with the southerly line of said Lot 3, Block 8/6495 and the northerly line of the said 3112 Corporation tract, a distance of 465.39 feet to a



found 1/2 inch iron rod for a corner in the easterly line of Finnell Street (a 56 foot right of way), said point being the most southerly southwest corner of said Lot 3, Block 8/6495;

Thence, N 00 degrees 40 minutes 44 seconds E, with the easterly line of Finnell Street, a distance of 441.06 feet to a set 1/2 inch iron rod for a corner, said point at the beginning of a non-tangent curve to the left with a central angle of 189 degrees 54 minutes 28 seconds, a radius of 43.50 feet, a chord bearing of W 44 degrees 22 minutes 15 second W and a chord distance of 86.68 feet;

Thence, Northerly and Westerly, continuing with the easterly and northerly line of Finnell Street, and along said curve, an arc distance of 144.24 feet to a set 1/2 inch iron rod for a corner;

Thence, N 89 degrees 25 minutes 19 seconds W, continuing with the northerly line of Rentsel Street, passing at a distance of 416.10 feet with the common corner of said Lot 3, Block 8/6493 and said Lot 3, Block 6492, continuing in all a distance of 561.54 feet to the Point of Beginning.

SAVE AND EXCEPT that certain 2.000 acre tract of land conveyed to Paccar Leasing Corporation in Special Warranty Deed filed 02/24/1995, recorded in Volume 95039, Page 2016;

and

SAVE AND EXCEPT that certain 2.441 acre tract of land conveyed to the City of Dallas in General Warranty Deed filed 03/22/2011, recorded in Volume 2001057, Page 5253, Real Property Records, Dallas County, Texas.



**EXHIBIT B**

**Intentionally Omitted**



**EXHIBIT C**

**Form of Lease**

**[FORM OF LEASE FOLLOWS THIS PAGE]**



**LEASE**

**Between**

**2015 Acquisitions 5 LLC, a Delaware limited liability company  
as Landlord**

**and**

**Dallas County Schools, a county school district in the State of Texas  
as Tenant**

**Dated as of May 29, 2015**



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| <b>Schedule 2</b> | Fixed Rent Amounts  |
| <b>Exhibit A</b>  | Legal Description of Premises                                   |
| <b>Exhibit B</b>  | Permitted Encumbrances  |
| <b>Exhibit C</b>  | Form of Subordination, Non-Disturbance and Attornment Agreement |
| <b>Exhibit D</b>  | List of Environmental Reports                                   |
| <b>Exhibit E</b>  | Other Leases  |



## **LEASE**

This Lease (this "Lease") is made as of May 29, 2015 (the "Effective Date"), between the Landlord and the Tenant specified below.

### **PART I.**

#### **BASIC LEASE PROVISIONS; DEFINITIONS**

The following list sets out certain fundamental provisions and definitions pertaining to this Lease:

- |  |   |
|--|---|
| <b>1. Date of Lease:</b>   | <b>As of: May 29, 2015</b>  |
| <b>2. Landlord name, and state of and type of entity (whether one or more persons, collectively referred to herein as "Landlord"):</b> | <b>2015 Acquisitions 5 LLC, a Delaware limited liability company</b>  |
| <b>3. Landlord business and notice address:</b>  | <b>2015 Acquisitions LLC<br/>c/o Net Lease Capital Advisors LLC<br/>Ten Tara Boulevard, Suite 130<br/>Nashua, NH 03062<br/>Attention: Douglas F. Blough<br/><br/>Email: dblough@netleasecapital.com</b> |
| <b>4. with a copy to:</b>  | <b>Kelley Drye &amp; Warren LLP<br/>101 Park Avenue<br/>New York, NY 10178<br/>Attention: John A. Garraty, Jr., Esq.<br/><br/>Email: jgarraty@kelleydrye.com</b>  |
| <b>5. Tenant name and state of and type of entity:</b>   | <b>Dallas County Schools, a county school district in the State of Texas</b>  |



**6. Tenant business and notice address:**

**Dallas County Schools**

**Attn: Dr. Rick Sorrells, Superintendent**

**612 N. Zang Blvd.**

**Dallas, TX 75208**

**Email: rsorrells@dcschools.com**

**7. with copies to:**

**Matthew Marchant**

**Strasburger & Price, L.L.P.**

**2801 Network Blvd., Suite 600**

**Frisco, TX 75034**

**Email: matthew.marchant@strasburger.com**



8. **Premises:** that certain lot or parcel of real estate which is described on Exhibit A hereto (the "Premises"), together in each case with all improvements situated on said property as of the date hereof and all improvements constituting real property or fixtures thereto constructed on said parcel during the Term (together with all right, title and interest of Landlord in and to the lighting, electrical, mechanical, plumbing and heating, ventilation and air conditioning systems used in connection with said property, and all other carpeting, draperies, appliances and other fixtures and equipment attached or appurtenant to said property), and all rights, easements, rights of way, and other appurtenances thereto, excepting, however, any Storage Tanks (as described in Section 34(e) of Part II).
9. **Building:** all buildings and improvements located on the parcel of land described on Exhibit A hereto, excepting, however, any Storage Tanks (as described in Section 34(e) of Part II).
10. **Primary Term:** shall commence on the Effective Date (the "Lease Commencement Date") and shall expire on the last day of the twentieth (20<sup>th</sup>) Lease Year; all subject to all terms and conditions of this Lease.

If the Lease Commencement Date is on any day other than the first day of a calendar month, Tenant shall pay all amounts due under the Lease for the remaining portion of such calendar month (as more particularly described in Section 5(b) of Part II).

As used in this Lease, "Term" shall include the Primary Term and any Renewal Term thereof which becomes effective pursuant to Section 3 of Part II.

As used in this Lease, "Lease Year" shall mean, each twelve (12) month period during the Term commencing on the Lease Commencement Date (or on the first day of the first calendar month following the Lease Commencement Date if the Lease Commencement Date is on any day other than the first day of a calendar month).

11. **Renewal Options:** The Tenant shall have the following Renewal Options (herein so called) to extend the Primary Term of this Lease for up to a total of three (3) Renewal Terms (herein so called) on and subject to the following terms and conditions and subject to the terms and conditions of Section 3 of Part II of this Lease:

Provided that no Material Event of Default has occurred and is continuing at the time Tenant exercises a Renewal Option or at the commencement of the relevant Renewal Term, Tenant shall have Renewal Options for three (3) Renewal Terms of five (5) years each if, and only if, at least nine (9) months prior to the end of the then current Term, time being of the essence, Tenant provides Landlord with written notice that it proposes to exercise a Renewal Option for a Renewal Term. The Fixed Rent for each Lease Year of each of the Renewal Terms shall be payable in the amounts set forth on Schedule 2 hereto for the respective periods specified thereon.

12. **Required Advance Notice of Exercise of Renewal Options:** Nine (9) months prior to the expiration of the then-current Term, time being of the essence. (See Section 3 of Part II.)



13. Fixed Rent (See Section 5 of Part II): shall mean the amounts set forth on Schedule 2 hereto for the respective periods specified thereon.
14. Broker: Anroc Realty
15. Lender: The lender or lenders holding mortgage loans (the "Loan") secured by the Premises from time to time.
16. Lease Default Rate: the greater of (a) ten percent (10%) or (b) five percent (5%) per annum above the Prime Rate as in effect from time to time, but in no event higher than the highest rate permitted to be contracted for under applicable Law. "Prime Rate" means the current rate of interest per annum announced from time to time by Citibank N.A. (or its successor) as its prime rate in New York, New York, or, if Citibank N.A. shall cease to announce such rate, then the current rate published as the prime rate in *The Wall Street Journal*. It is the intention of the parties hereto to conform strictly to the applicable usury Laws, and whenever any provision herein provides for payment by Tenant to Landlord of interest at a rate in excess of the highest legal rate permitted to be charged, such rate herein provided to be paid shall be deemed reduced to such highest legal rate.
17. Permitted Encumbrances: shall mean taxes (as defined in Section 29 of Part II), Legal Requirements (as defined in Section 10 of Part II), any matters consented to by Landlord, Tenant and Lender in writing, those covenants, restrictions, reservations, liens, conditions, encroachments, easements, encumbrances and other matters of title that affect the Premises as of the Lease Commencement Date (including, without limitation, those listed on Exhibit B hereto) or which arise due to the acts or omissions of Tenant, or due to the acts or omissions of Landlord with Tenant's consent, after the Lease Commencement Date.
18. Exhibits: All Exhibits and Schedules to this Lease are incorporated herein by this reference.
19. Payment of Fixed Rent: As set forth in Section 5(a) of Part II, Fixed Rent shall be paid by wire transfer or by automated clearing house (ACH) to the account set forth in the rent direction letter from Landlord to Tenant delivered concurrently with the execution and delivery of this Lease, as such rent direction may be modified from time to time by the joint written direction of Landlord and Lender.
20. Certain Definitions: The following terms shall have the definitions given to them in the following Sections of this Lease:

|                       |                          |
|-----------------------|--------------------------|
| Additional Rent       | Section 5(d) of Part II  |
| alteration            | Section 16(a) of Part II |
| Appraiser             | Section 13(d) of Part II |
| Assumed New Loan Rate | Section 5(f) of Part II  |



|  |                                 |
|--|---------------------------------|
| <b>business day</b>                            | <b>Section 38(l) of Part II</b> |
| <b>Casualty</b>                                | <b>Section 13(a) of Part II</b> |
| <b>Commercial Closure</b>                      | <b>Section 34(c) of Part II</b> |
| <b>Condemnation</b>                            | <b>Section 14(a) of Part II</b> |
| <b>Covered Parties</b>                         | <b>Section 26 of Part II</b>    |
| <b>Premises</b>                                | <b>Section 8 of Part I</b>      |
| <b>Dedications</b>                             | <b>Section 28 of Part II</b>    |
| <b>Designated Person</b>                       | <b>Section 42(n) of Part II</b> |
| <b>Discount Rate</b>                           | <b>Section 21(g) of Part II</b> |
| <b>Disqualifying Default</b>                   | <b>Section 13(c) of Part II</b> |
| <b>Due Date</b>                                | <b>Section 5(a) of Part II</b>  |
| <b>Easements</b>                               | <b>Section 28 of Part II</b>    |
| <b>Environmental Laws</b>                      | <b>Section 38(a) of Part II</b> |
| <b>Environmental Claim</b>                     | <b>Section 38(d) of Part II</b> |
| <b>Event of Default</b>                        | <b>Section 21 of Part II</b>    |
| <b>Fair Market Value of the Premises</b>       | <b>Section 13(d) of Part II</b> |
| <b>Financial Statements</b>                    | <b>Section 36(a) of Part II</b> |
| <b>guaranties</b>                              | <b>Section 22 of Part II</b>    |
| <b>Hazardous Materials</b>                     | <b>Section 38(a) of Part II</b> |
| <b>Immediate Repairs</b>                       | <b>Section 41 of Part II</b>    |
| <b>Interest Rate</b>                           | <b>Section 16 of Part I</b>     |
| <b>Involuntary Conversion Termination Date</b> | <b>Section 14(b) of Part II</b> |
| <b>Laws</b>                                    | <b>Section 10 of Part II</b>    |
| <b>Lease Commencement Date</b>                 | <b>Section 10 of Part I</b>     |
| <b>Lease Default Rate</b>                      | <b>Section 16 of Part I</b>     |



|                           |                          |
|---------------------------|--------------------------|
| Lease Year                | Section 10 of Part I     |
| Legal Requirements        | Section 10 of Part II    |
| Loan                      | Section 15 of Part I     |
| Major Condemnation        | Section 14(b) of Part II |
| Material Event of Default | Section 13(c) of Part II |
| Matters of Record         | Section 27 of Part II    |
| Moody's                   | Section 13(c) of Part II |
| Mortgage                  | Section 18(a) of Part II |
| Net Proceeds              | Section 13(c) of Part II |
| Notice of Breach          | Section 21(h) of Part II |
| Other Leases              | Section 21(a) of Part II |
| person(s)                 | Section 38(k) of Part II |
| Primary Term              | Section 10 of Part I     |
| Prime Rate                | Section 20 of Part I     |
| Regulated Activity        | Section 38(b) of Part II |
| Rejectable Offer          | Section 14(c) of Part II |
| Renewal Options           | Section 11 of Part I     |
| Renewal Terms             | Section 11 of Part I     |
| Restoration               | Section 13(c) of Part II |
| Restoration Cost          | Section 13(d) of Part II |
| Restriction               | Section 38(c) of Part II |
| S&P                       | Section 13(c) of Part II |
| SNDA                      | Section 18(a) of Part II |
| Stipulated Loss Values    | Section 14(c) of Part II |
| Taking                    | Section 14(a) of Part II |



|                             |                          |
|-----------------------------|--------------------------|
| tax or taxes                | Section 29 of Part II    |
| Tenant's Termination Notice | Section 14(b) of Part II |
| Term                        | Section 10 of Part I     |
| Third Parties               | Section 38(b) of Part II |
| trade fixtures              | Section 17 of Part II    |
| Treasury Rate               | Section 21(g) of Part II |
| Trustee                     | Section 13(c) of Part II |



## **PART II.**

### **1. PREMISES**

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and on the conditions herein provided, the Premises described in Section 8 of Part I hereof, subject, however, to the Permitted Encumbrances.

### **2. NO MERGER OF TITLE**

There shall be no merger of this Lease nor of the leasehold estate created hereby with the fee estate in or ownership of the Premises by reason of the fact that the same entity may acquire or hold or own (i) this Lease or such leasehold estate or any interest therein and (ii) the fee estate or ownership of any of the Premises or any interest therein. No such merger shall occur unless and until all persons having any interest in (x) this Lease or such leasehold estate and (y) the fee estate in the Premises including, without limitation, Lender's interest therein, shall join in a written, recorded instrument effecting such merger.

### **3. RENEWAL OPTIONS**

Tenant has the Renewal Options, and may extend the Term of this Lease for each of the Renewal Terms described in Section 11 of Part I hereof, upon all of the terms set forth in this Lease with the Fixed Rent in the amounts specified on Schedule 2 hereto for the respective Renewal Terms. Tenant may exercise a Renewal Option and commence a Renewal Term only if no Material Event of Default shall have occurred and be continuing under this Lease or any of the Other Leases (as hereinafter defined) at the time of any such election and on the date of commencement of the applicable Renewal Term, and by giving Landlord written notice of each such election not later than the Required Advance Notice of Exercise of Renewal Options (as defined in Section 12 of Part I). If Tenant fails to timely exercise any Renewal Option, then all subsequent Renewal Options shall automatically expire and be null and void.

### **4. USE**

Tenant may use the Premises for any use for which the Premises are currently used, or for any other lawful use so long as such other lawful use would not (i) have an adverse effect on the value of the Premises, other than to a de minimus extent, (ii) materially increase (when compared to the foregoing use) the likelihood that Tenant, Landlord or Lender would incur liability under any Environmental Laws (as hereinafter defined), (iii) increase the cost of insurance of the Premises. In no event shall the Premises be used for any use which shall violate any of the provisions of any Permitted Encumbrances or any covenants, restrictions or agreements hereafter created by or consented to by Tenant applicable to Premises or (iv) constitute a public or private nuisance. Tenant agrees that with respect to the Permitted Encumbrances and any covenants, restrictions or agreements hereafter created by or consented to by Tenant, Tenant shall observe, perform and comply with and carry out the provisions thereof required therein to be observed and performed by Landlord.



## **5. FIXED RENT**

(a) Commencing as of the Lease Commencement Date, Tenant shall pay Fixed Rent to Landlord, or to Lender if directed by Landlord in writing or if required to do so by Lender in writing under the SNDA Agreement, at the business address of Landlord or Lender, as the case may be, specified herein, or at such other address as Landlord, with the written consent of any then Lender, shall from time to time designate by written notice to Tenant. Except as hereinafter provided, the Fixed Rent shall be due and payable in the amounts set forth on Schedule 2 hereto for the respective periods shown on such Schedule 2. Schedule 2 is incorporated herein by this reference. Fixed Rent shall be due and payable in advance by not later than 3:00 p.m. Eastern time commencing on the Lease Commencement Date and thereafter, on the first day of each month (or if such first day is not a business day, the first business day of each month), during the Term (each such date being referred to herein as a "Due Date"). Notwithstanding the foregoing, from the Lease Commencement Date until Tenant is notified otherwise by Landlord and Lender as specified above, Fixed Rent shall be paid by wire transfer or by automated clearing house (ACH) to the account set forth in the rent direction letter from Landlord to Tenant delivered concurrently with the execution and delivery of this Lease, as such rent direction letter may be modified from time to time by the joint written direction of Landlord and Tenant.

(b) The Fixed Rent to be paid on the Lease Commencement Date as set forth on Schedule 2 includes \$\_\_\_\_\_ (the "First Amount") representing the Fixed Rent for every month of the first Lease Year other than the first month (which first month also includes an additional \$2 million Fixed Rent amount). If the Lease Commencement Date shall be on any day other than the first day of a calendar month, the First Amount will be prorated on a per diem basis, and the Fixed Rent payable on the Commencement Date will be adjusted to reflect such pro ration.

(c) If any installment of Fixed Rent is not paid on its Due Date, Tenant shall pay Landlord interest on such overdue payment at the Lease Default Rate, accruing from the Due Date of such payment until the same is paid. All Fixed Rent and Additional Rent shall be payable in U.S. Dollars.

(d) Commencing as of the Lease Commencement Date, all taxes, costs, expenses, Stipulated Loss Values, and other amounts which Tenant is required to pay pursuant to this Lease (other than Fixed Rent), together with every fine, penalty, interest and cost which may be added for non-payment or late payment thereof, shall constitute additional rent ("Additional Rent"). All Additional Rent shall be paid directly by Tenant to the party to whom such Additional Rent is due. If Tenant shall fail to pay any such Additional Rent or any other sum due hereunder when the same shall become due, Landlord shall have all rights, powers and remedies with respect thereto as are provided herein or by Law in the case of non-payment of any Fixed Rent and shall have the right to pay the same on behalf of Tenant, and Tenant shall repay such amounts to Landlord on demand. Tenant shall pay to Landlord interest at the Lease Default Rate on all overdue Additional Rent and other sums due hereunder, in each case paid by Landlord or Lender on behalf of Tenant, from the date of payment by Landlord or Lender until repaid by Tenant.



## **6. NET LEASE; TRUE LEASE**

The obligations of Tenant hereunder shall be separate and independent covenants and agreements, and Fixed Rent, Additional Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events, and the obligations of Tenant hereunder shall continue during the Term, unless the requirement to pay or perform the same shall have been terminated pursuant to the provisions of Section 14 of this Part II. This is an absolutely net lease and Fixed Rent, Additional Rent and all other sums payable hereunder by Tenant shall be paid without notice or demand, and without setoff, counterclaim, recoupment, abatement, suspension, reduction or defense. This Lease is the absolute and unconditional obligation of Tenant, and the obligations of Tenant under this Lease shall not be affected by any interference with Tenant's use of any of the Premises for any reason, including, but not limited to, the following: (i) any damage to or destruction of any of the Premises by any cause whatsoever, (ii) any Condemnation (except as otherwise expressly provided in Section 14 of this Part II), (iii) the prohibition, limitation or restriction of Tenant's use of any of the Premises, (iv) any eviction by paramount title or otherwise, (v) Tenant's acquisition of ownership of any of the Premises other than pursuant to an express provision of this Lease, (vi) any default on the part of Landlord under this Lease or under any other agreement, (vii) any latent or other defect in, or any theft or loss of any of the Premises, (viii) any condition or act constituting constructive eviction, or (ix) any other cause, whether similar or dissimilar to the foregoing, any present or future Law to the contrary notwithstanding. All costs and expenses and other obligations of every kind and nature whatsoever relating to the Premises and the appurtenances thereto and the use and occupancy thereof which may arise or become due and payable with respect to the period which ends on the expiration or earlier termination of the Term in accordance with the provisions hereof (whether or not the same shall become payable during the Term or thereafter) shall be paid and performed by Tenant. Tenant shall pay all expenses related to the maintenance and repair of the Premises, and taxes and insurance costs. This Lease shall not terminate and Tenant shall not have any right to terminate this Lease (except as otherwise expressly provided in Section 14 of this Part II), or to abate Fixed Rent or Additional Rent during the Term.

Landlord and Tenant agree that this Lease is a true lease and does not represent a financing arrangement. Each party shall reflect the transaction represented hereby in all applicable books, records and reports (including income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

Tenant shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Landlord or any action with respect to this Lease which may be taken by any trustee, receiver or liquidator or by any court.

## **7. CONDITION**

Tenant acknowledges that Tenant is fully familiar with the physical condition of the Premises and that Landlord makes no representation or warranty express or implied, with respect to same. **EXCEPT FOR LANDLORD'S COVENANT OF QUIET ENJOYMENT SET FORTH IN SECTION 32 OF THIS PART II, LANDLORD MAKES NO, AND**



**EXPRESSLY HEREBY DENIES ANY, REPRESENTATIONS OR WARRANTIES REGARDING THE CONDITION OR SUITABILITY OR ENVIRONMENTAL CONDITIONS OF, OR TITLE TO, THE PREMISES TO THE EXTENT PERMITTED BY LAWS, AND TENANT WAIVES ANY RIGHT OR REMEDY OTHERWISE ACCRUING TO TENANT ON ACCOUNT OF THE CONDITION OR SUITABILITY OF THE PREMISES, OR TITLE TO THE PREMISES, AND TENANT AGREES THAT IT TAKES THE PREMISES "AS IS," WITHOUT ANY SUCH REPRESENTATION OR WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES.** Tenant has examined the Premises and title to the Premises, and has found all of the same satisfactory for all purposes.

#### **8. LIENS**

Tenant shall not, directly or indirectly, create, or permit to be created or to remain, and shall remove and discharge (including, without limitation, by any statutory bonding procedure or any other bonding procedure reasonably satisfactory to Landlord and Lender which shall be sufficient to prevent any loss of the Landlord's or Lender's interest in the Premises) within thirty (30) days after filing thereof, any mortgage, lien, encumbrance or other charge on the Premises or the leasehold estate created hereby or any Fixed Rent or Additional Rent payable hereunder which arises for any reason, other than: the Landlord's Mortgage (and any assignment of leases or rents collateral thereto); the Permitted Encumbrances which are specified on Exhibit B hereto or which subsequently arise with the prior written consent of Landlord and Lender; and any mortgage, lien, encumbrance or other charge created by or resulting from any act or omission by Landlord or those claiming by, through or under Landlord (other than Tenant), without Tenant's consent. Landlord shall not be liable for any labor, services or materials furnished to Tenant or to any party holding any portion of the Premises through or under Tenant and no mechanic's or other liens for any such labor, services or materials shall attach to Landlord's interest in the Premises. In the event of the failure of Tenant to discharge any charge, lien, security interest or encumbrance as aforesaid, Landlord may, discharge such items by payment or bond or both, and Tenant will repay to Landlord, upon demand, any and all amounts paid by Landlord therefor, or by reason of any liability on such bond, and also any and all incidental expenses, including reasonable attorneys' fees, actually incurred by Landlord in connection therewith, and interest on such amounts at the Lease Default Rate.

#### **9. REPAIRS AND MAINTENANCE**

(a) Tenant shall keep, maintain and repair, at its sole cost and expense, the Premises, including, without limitation, the roof, walls, footings, foundations, HVAC, mechanical and electrical equipment and systems in or serving the Premises and structural and nonstructural components and systems of the Premises, parking areas, sidewalks, roadways and landscaping in good repair and appearance, and shall make all repairs and replacements (substantially equivalent in quality and workmanship to the original work) of every kind and nature, whether foreseen or unforeseen, which may be required to be made in order to keep and maintain the Premises in as good repair as they were as of the date of this Lease, except for any Major Condemnation of the Premises. Tenant shall perform such pest control as is necessary to keep the Premises substantially free of rodents and other pests. Tenant shall do or cause others to do all shoring of the Premises or of the foundations and walls of the Building and every other act



necessary or appropriate for the preservation and safety thereof (including, without limitation, any repairs required by Law as contemplated by Section 10 of this Part II), by reason or in connection with any excavation or other building operation upon the Premises, and Landlord shall have no obligation to do so. Landlord shall not be required to make any repair, replacement, maintenance or other work whatsoever, or to maintain the Premises in any way, except as set forth herein, and Tenant waives the right to make repairs, replacements or to perform maintenance or other work at the expense of the Landlord, which right may be provided for in any Laws. Tenant shall, in all events, make all repairs, replacements and perform maintenance and other work for which it is responsible hereunder, in a good, proper and workmanlike manner.

(b) If Tenant shall be in default under any of the provisions of this Section 9, Landlord may, after thirty (30) days written notice to Tenant and failure of Tenant to cure during said period, or such additional period as may be reasonably necessary if the commencement of a cure by Tenant has occurred during such thirty (30) day period and Tenant is diligently pursuing such cure but such cure cannot be completed in such time period, and without notice in the event of an emergency, do whatever is necessary to cure such default as may be appropriate under the circumstances for the account of and at the expense of Tenant. If an emergency exists, Landlord shall use reasonable efforts to notify Tenant of the situation by phone or other available communication before taking any such action to cure such default. All reasonable sums so paid by Landlord and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest at the Lease Default Rate from the date of payment or incurring of the expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

(c) If replacement of the roof is required, Landlord shall perform, or cause to be performed as a construction advisor, as a service to Tenant, all work required to replace the roof of the Building. Tenant shall be responsible for funding the costs to replace the roof of the Building, provided that such costs shall not include any fee to Landlord.

#### **10. COMPLIANCE WITH LAWS**

During the Term Tenant shall comply, and cause the Premises to comply, at Tenant's sole cost and expense, with all Laws and Legal Requirements relating to the Premises. As used herein, (i) the term "Laws" shall mean all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted governmental authority or agency (but excluding those which by their terms are not applicable to and do not impose any obligation on Tenant, Landlord or the Premises or which are due to take effect after expiration of the Term), and (ii) the term "Legal Requirements" shall mean all Laws and covenants, restrictions and conditions now or in the future of record which may be applicable to Tenant, Landlord (with respect to the Premises) or to all or any part of or interest in the Premises, or to the ownership, use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Premises, including insurance requirements and requirements of Permitted Encumbrances.



## **11. ACCESS TO PREMISES**

(a) Upon reasonable notice to Tenant, and during Tenant's business hours, Landlord and Lender and their respective employees, contractors, agents and representatives may enter onto the Premises to (i) show the Premises to purchasers and potential purchasers, and to mortgagees and potential mortgagees, or (ii) for the purpose of inspecting the Premises or performing any work which Landlord is permitted to perform under this Lease; provided, that, for purposes of subpart (ii) of this sentence, Landlord and Lender shall not be required to give notice prior to entry onto the Premises during the continuance of an Event of Default or in the event of an emergency situation. Upon reasonable notice to Tenant, during the last twelve (12) months of the then-current Term, unless Tenant shall have exercised the next Renewal Option, Landlord also may enter onto the Premises to show the Premises to persons wishing to rent the same. No such entry shall constitute an eviction of Tenant but any such entry shall be done by Landlord in such reasonable manner as to minimize any disruption of Tenant's business operation.

(b) Upon request of Landlord or Lender, Tenant will arrange for meetings between such Landlord or Lender (or its representatives) and a representative of Tenant designated by Tenant to discuss operations at the Premises and Tenant's financial statements; provided, that Tenant shall not be obligated to arrange for such meetings more than once in each calendar year so long as no Event of Default is continuing.

## **12. WAIVER OF SUBROGATION**

To the extent not prohibited by applicable Laws, Tenant, on behalf of Tenant and its insurers, waives, releases and discharges the Landlord from all claims arising out of damage to or destruction of the Premises, or Tenant's trade fixtures, Tenant's equipment, other personal property or business, and any loss of use, regardless of whether any such claim results from the negligence or fault of any Landlord or otherwise, occasioned by any fire or other casualty or occurrence whatsoever (whether similar or dissimilar). Tenant will look only to Tenant's insurance coverage (regardless of whether Tenant maintains any such coverage) in the event of any such claim. Tenant covenants that its policy or policies of property insurance will permit and provide for waiver of subrogation as provided in this section. Notwithstanding the provisions set forth in Section 30 with respect to Landlord acquiring certain insurance policies as a service to Tenant, Tenant is solely responsible for providing such insurance as may be required to protect Tenant against any injury, loss, or damage to Tenant's property at the Premises, including, without limitation, any loss of business or profits from any casualty or other occurrence at the Premises.

## **13. DAMAGE; DESTRUCTION**

(a) In the event of any damage to or destruction of the Premises by fire, the elements or other casualty during the Term (a "Casualty"), Tenant shall give Landlord and Lender, if any, prompt written notice thereof. Landlord, with Tenant's consultation, shall adjust, collect and compromise any and all claims covered by insurance. All amounts so paid or payable shall be retained or paid over to the party entitled thereto in accordance with the provisions of this Section 13. Landlord, with Tenant's consultation, shall take all appropriate action in



connection with such claim. If the amount of the insurance claim is anticipated to be in excess of \$250,000, Lender may participate in such proceeding(s), and Landlord shall deliver all instruments reasonably requested by Lender to permit such participation, and Tenant shall pay all costs and expenses in connection therewith.

(b) In the event of any such Casualty (whether or not insured against) the Term shall continue and there shall be no abatement or reduction of Fixed Rent, Additional Rent or of any other sums payable by Tenant hereunder.

(c) All proceeds of any insurance required to be carried hereunder less any reasonable expenses of Landlord or Lender in collecting such proceeds (the "Net Proceeds") shall be delivered to Tenant to apply in accordance with the terms of this Lease if (i) the estimated cost of restoring or repairing the Premises as nearly as possible to its value, condition, character, utility and useful life immediately before such Condemnation or Casualty with such changes as Tenant proposes and Landlord approves in writing, but in any event assuming the Premises have been maintained in accordance with the requirements of Section 9 of Part II (such restoration or repair of the Premises, whether in connection with a Condemnation or a Casualty, as the context requires, herein called a "Restoration"), shall be \$250,000 or less, and (ii) no Material Event of Default (as hereinafter defined) has occurred and is continuing at the time of delivery of the Net Proceeds. In all other events the Net Proceeds shall be delivered to a trustee which shall be a federally insured bank or other financial institution, selected by Landlord and Tenant and reasonably satisfactory to Lender (the "Trustee") to be held and disbursed in accordance with the provisions of Section 13(e) of this Part II; provided, however, that if at the time of the delivery of the Net Proceeds or payment of an Insurance Reserve Payment (as hereinafter defined) a Mortgage is in existence, the Lender or the servicer of the Loan may act as Trustee without the consent of either Landlord or Tenant. "Material Event of Default" shall mean and include (i) any failure to make any payment of Fixed Rent due hereunder and under any of the Other Leases when due hereunder and under any of the Other Leases which is not cured within the period specified in Section 21(a) below, and (ii) the occurrence and continuance of any event or condition described in subparts (v) (with respect to the Premises and any of the properties subject to the Other Leases), (vi) or (vii) of Section 21(a) of Part II hereof after the applicable notice and cure periods have expired, provided that no cure period shall be applicable in the case of Section 21(a)(vi) or 21(a)(vii).

(d) If the Net Proceeds exceed \$250,000, Tenant shall, whether or not the Net Proceeds of such insurance are sufficient for the purpose or delivered to Tenant, promptly complete the Restoration, at Tenant's sole cost and expense, of the improvements damaged by such Casualty (including any alterations previously made by Tenant hereunder) or, if the Building was under construction at such time, to the condition and fair market value thereof which would be anticipated at the time of completion as required under this Lease, and as a service to Tenant, Landlord shall provide construction supervisory services to assist Tenant in completing such restoration. Tenant shall be responsible for funding all insurance deductibles and any excess of the Restoration cost over the amount of any insurance proceeds. Tenant shall not have any right to abate the payment of Fixed Rent or Additional Rent as a result of any Casualty.



(e) Net Proceeds held by the Trustee shall be invested in Permitted Investments (as defined in the Mortgage) or in accordance with other standards adopted by Lender, Landlord and Tenant from time to time, and shall be disbursed in accordance with the following conditions:

(i) If the Restoration Cost exceeds \$250,000, before commencing the Restoration the architects, general contractor(s), and plans and specifications for the Restoration shall be approved by Landlord and Lender, which approval shall not be unreasonably withheld or delayed; and which approval shall be granted to the extent that the plans and specifications depict a Restoration which is substantially similar to the improvements and equipment which existed prior to the occurrence of the Casualty or Taking, whichever is applicable, or, if the Building was under construction prior thereto, which depict a Restoration to the condition which the Building was to have been constructed.

(ii) At the time of any requested disbursement, no Material Event of Default shall exist and no mechanics' or materialmen's liens shall have been filed and remain undischarged or unbonded.

(iii) Disbursements shall be made from time to time in an amount not exceeding the hard and soft cost of the work and costs incurred since the last disbursement upon receipt of (A) satisfactory evidence, including architects' certificates of the stage of completion, of the estimated costs of completion and of performance of the work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications, (B) partial releases of liens, if the same are obtainable or, if such partial releases are not obtainable, endorsements to Landlord's and Lender's title insurance policies showing no exceptions for mechanics' or materialmen's or any similar liens, and (C) other reasonable evidence of cost and payment so that Landlord and Lender can verify that the amounts disbursed from time to time are represented by work that is completed in place or delivered to the site and free and clear of mechanics' lien claims.

(iv) Each request for disbursement shall be accompanied by a certificate of Tenant describing the work, materials or other costs or expenses for which payment is requested, stating the cost incurred in connection therewith and stating that Tenant has not previously received payment for such work or expense and the certificate to be delivered by Tenant upon completion of the work shall, in addition, state that the work has been substantially completed and complies with the applicable requirements of this Lease.

(v) The Trustee may retain ten percent (10%) of the Net Proceeds until the Restoration is at least fifty percent (50%) complete, which amount may continue to be held as retainage until the Restoration is substantially complete.

(vi) At all times the undisbursed balance of the Net Proceeds held by Trustee, plus any funds paid by Tenant for any deductibles under the insurance policies or for the cost of completing the Restoration, shall be not less than the cost of completing the Restoration, free and clear of all liens.



(vii) In addition, before commencement of Restoration and at any time during Restoration, if the estimated cost of Restoration, as reasonably determined by an independent architect mutually agreed upon by the parties in their reasonable discretion, exceeds the amount of the Net Proceeds available for such Restoration, Tenant shall fund at its own expense the costs of such Restoration until the remaining Net Proceeds are sufficient for the completion of the Restoration.

(viii) Provided no Material Event of Default exists and is continuing, any Net Proceeds remaining after final payment has been made for such Restoration shall be promptly delivered to Tenant, in the event of a Casualty, and delivered to Landlord, in the event of a Taking. Notwithstanding any contrary provision hereof, if a Material Event of Default has occurred and is continuing, Landlord shall be entitled to retain any Net Proceeds and to apply the same to either repair the damages or to pay other amounts due Landlord hereunder or Lender under the Mortgage, at Lender's or, if there is then no Lender, Landlord's sole option. No such retention by Landlord shall impose on Landlord any obligation to repair the Premises or relieve Tenant of its obligations to repair the Premises.

#### **14. CONDEMNATION; REJECTABLE OFFERS**

(a) Promptly upon obtaining knowledge of any proceeding for condemnation or eminent domain with respect to the Premises (a "Taking" or "Condemnation"), Tenant and Landlord shall each notify the other and Lender, and if the anticipated condemnation award exceeds \$250,000, each shall be entitled to participate in such proceeding at Tenant's sole expense. Subject to the provisions of this Section 14, Tenant hereby assigns to Landlord's Lender or to Landlord, in that order, any award or payment in respect of any Condemnation of the Premises, except that (except as hereinafter provided) nothing in this Lease shall be deemed to assign to Landlord or Lender any award relating to any award or payment on account of an interruption of Tenant's business at the Premises or the Tenant's trade fixtures, moving expenses and out-of-pocket expenses incidental to the move, if available, to the extent Tenant shall have a right to make a separate claim therefor against the condemnor, it being agreed, however, that Tenant shall in no event be entitled to any payment that reduces the award to which Landlord is or would be entitled for the condemnation of Landlord's interest in the Premises.

(b) If (i) the Premises are improved, more than 50% of the Buildings on the Premises shall subject of a Taking or (ii) the Premises are unimproved, more than 50% of the land comprising the Premises shall be subject of a Taking (in either case, a "Major Condemnation"), then not later than ninety (90) days after the Taking has occurred, Tenant, at its option, may serve written notice upon Landlord and Lender ("Tenant's Termination Notice") of Tenant's intention to terminate this Lease on any Fixed Rent payment Due Date specified in such notice, which Due Date (the "Involuntary Conversion Termination Date") shall be no sooner than sixty (60) days and no later than one hundred twenty (120) days after Tenant's Termination Notice but, in any event, not later than the last day of the Term of this Lease. If the Involuntary Conversion Termination Date occurs during the Primary Term, such notice must be accompanied by a Rejectable Offer, as described in Section 14(c) of this Part II, in which event the provisions of such Section 14(c) shall be controlling.



(c) To the maximum extent permitted by applicable law, in the event of a Major Condemnation during the Primary Term, then contemporaneously with the delivery of Tenant's Termination Notice, Tenant shall deliver to Landlord and Lender (i) an irrevocable rejectable written offer (the "Rejectable Offer") to purchase Landlord's interest in the Premises on the Involuntary Conversion Termination Date for a price equal to the "Stipulated Loss Value" (herein so called) as specified on Schedule 1 attached hereto, and (ii) a certificate from an officer of Tenant which (A) describes the event(s) giving rise to the Major Condemnation, and (B) states that the superintendent or chief executive officer, as applicable, for Tenant has determined that such event has rendered the Premises unsuitable for Restoration or for the continued use and occupancy in Tenant's operations. Within thirty (30) days after the date Landlord receives the items required to be delivered in (i) and (ii) above, Landlord shall deliver written notice of its election to either accept or reject Tenant's Rejectable Offer (with a failure to respond constituting a deemed acceptance of such Rejectable Offer, it being agreed that, in such case, no acceptance by Lender or any other party shall be required). In the event of an acceptance or deemed acceptance of a Rejectable Offer made under this Section 14(c), on the applicable Involuntary Conversion Termination Date the Premises shall be conveyed to Tenant or its designee and the net award, if any, payable in connection with the Major Condemnation (or the right to receive the same when made if payment therefor has not yet been made) shall be assigned and/or turned over to the Tenant on the closing of the title in exchange for payment by Tenant to Landlord of all Fixed Rent, Additional Rent and all other sums due hereunder through the date of such closing plus the Stipulated Loss Value for the Premises. If the Landlord and the Landlord's Lender reject a Rejectable Offer made under this Section 14(c) by a written notice given to the Tenant within the time period set forth above, then this Lease shall terminate on the Involuntary Conversion Termination Date (except with respect to covenants, obligations and liabilities of Tenant hereunder, actual or contingent, which have arisen on or prior to such termination, and except for the provisions of Sections 26 and 34 of this Part II, all of which shall survive such termination of this Lease) and any net award payable in connection with a Major Condemnation (or the right to receive the same when made if payment therefor has not yet been made) shall be assigned or paid and belong to the Landlord, and, in addition, the Tenant shall pay to the Landlord, all Fixed Rent accrued as of such Involuntary Conversion Termination Date, and all Additional Rent and all other amounts then due and payable (or accrued but not yet due and payable) by the Tenant under this Lease. Except for a termination as provided for in the immediately preceding sentence, Tenant shall not be permitted to abate Fixed Rent or Additional Rent as a result of a Taking or Condemnation. No rejection of a Rejectable Offer shall be effective unless any Lender shall have consented thereto in writing. In addition, Lender may accept Tenant's Rejectable Offer under this Section 14(c) by written notice to Tenant delivered in accordance herewith and within the time periods provided herein (notwithstanding any notice by Landlord to the contrary) and, in such event, Tenant's Rejectable Offer shall be deemed accepted for all purposes hereof. Tenant's right to terminate this Lease under this Section 14(c) is conditioned on payment of the full amount of the Stipulated Loss Value to Landlord if Landlord accepts the Rejectable Offer.

(d) If Tenant shall purchase the Premises pursuant to a Rejectable Offer under Section 14(c) which is accepted or deemed accepted, Landlord shall convey or cause to be conveyed title thereto, the state of which shall be free and clear of any encumbrance voluntarily created by Landlord, except for Permitted Encumbrances and liens and encumbrances created by, through, under or with the consent of Tenant, and Tenant or its



designee shall accept such title, subject, however, to the condition of the Premises on the date of purchase and all applicable Laws and Legal Requirements, but free of the lien of any Mortgage held by Lender and of liens, and encumbrances resulting from acts of Landlord taken without the consent of Tenant. Upon the Involuntary Conversion Termination Date hereunder, Tenant shall, by wire transfer of immediately available funds, pay into the same account or to the same address as then designated for the payment of Fixed Rent, the Stipulated Loss Value shown on Schedule 1 hereto, together with all Fixed Rent, Additional Rent, and other sums then due and payable or accrued hereunder to and including such date of purchase, and there shall be delivered to Tenant a special warranty deed (or its local equivalent) and any other instruments necessary to convey the title thereto described above and to assign any other property then required to be assigned by Landlord pursuant hereto. Landlord shall pay the following charges incident to such conveyance and assignment, including, its counsel fees, ½ of the escrow fees, recording fees, title insurance premiums, transfer taxes and all other applicable taxes (other than any franchise, income or capital gains tax, or any similar state, local, foreign or successor provision) which may be imposed by reason of such conveyance and assignment and the delivery of said deed or conveyance and other instruments regardless of who is required to pay such taxes under State or local law or custom. Tenant shall pay the following charges incident to such conveyance and assignment: its counsel fees and ½ of the escrow fees. Upon the completion of such purchase of the entire Premises by Tenant but not prior thereto (whether or not any delay or failure in the completion of such purchase shall be the fault of Landlord), this Lease shall terminate, except with respect to indemnifications, obligations and liabilities of Tenant hereunder, actual or contingent, which have arisen on or prior to such completion of such purchase, and except for the provisions of Sections 26 and 34 of this Part II, all of which shall survive such termination of this Lease. Prior to the completion of such purchase, this Lease shall continue in full force and effect, and Tenant shall continue to be obligated for Fixed Rent, Additional Rent and all other sums then due and payable hereunder, without setoff, counterclaim, recoupment, abatement, suspension, reduction or defense.

(e) In the event of any Taking of a portion of the Premises which does not result in a termination of this Lease, the net award resulting from the Taking; i.e., after deducting therefrom all reasonable expenses incurred in the collection thereof, shall be held in accordance with Section 13(c) of this Part II. In the event of any such Taking, Tenant shall promptly commence and diligently complete the Restoration (as defined in Section 13(c) of this Part II) of the Premises in accordance with all Laws and Legal Requirements and all other terms of this Lease, and as a service to Tenant, Landlord shall provide construction supervisory services to assist Tenant in completing such restoration, provided that Landlord shall not be entitled to charge any fee for acting as construction supervisor hereunder. Any net award from Condemnation not resulting in a termination of this Lease shall be disbursed in the same manner as set forth in Section 13(e) of this Part II. Tenant shall be responsible for funding any excess of the restoration cost over the amount of any condemnation award.

(f) No agreement with any Taking authority in settlement of or under threat of any Taking shall be made by Landlord or Lender without Tenant's prior written consent (provided, that Tenant's consent shall not be required if a Material Event of Default then exists and is continuing), or by Tenant without Landlord's and Lender's prior written consent.



(g) In the case of any Taking, all Fixed Rent, Additional Rent and other obligations of Tenant shall continue unabated until the termination of this Lease or Tenant's purchase of the Premises pursuant to Section 14(d) of this Part II (except for the provisions of Sections 26 and 24 of this Lease, which shall survive the termination of this Lease).

## **15. ASSIGNMENT AND SUBLETTING**

(a) Provided no Material Event of Default shall have occurred and be continuing, Tenant shall have the right to assign this Lease, or to sublet the whole or any part of the Premises, subject to the limitations of Section 4 of this Part II, provided Tenant shall remain liable for all of its obligations hereunder, which liability of Tenant shall be and remain that of a primary obligor and not a guarantor or surety. Tenant agrees that in the case of an assignment of this Lease, Tenant shall, within fifteen (15) days after the execution and delivery of any such assignment, deliver to Landlord (i) a duplicate original of such assignment in recordable form and (ii) an agreement executed and acknowledged by the assignee in recordable form wherein the assignee shall agree to assume and agree to observe and perform all of the terms and provisions of this Lease on the part of the Tenant to be observed and performed from and after the date of such assignment. In the case of a sublease, Tenant shall, within fifteen (15) days after the execution and delivery of such sublease, deliver to Landlord a duplicate original of such sublease. Any sublease must expressly be made subject and subordinate to this Lease.

(b) During the continuance of an Event of Default under this Lease, Landlord shall have the right to collect and enjoy all rents and other sums of money payable under any sublease of any of the Premises, and Tenant hereby irrevocably and unconditionally assigns such rents and money to Landlord, which assignment may be exercised upon and after (but not before) the occurrence of an Event of Default.

## **16. ALTERATIONS**

(a) Provided no Material Event of Default shall have occurred and be continuing, Tenant may make any structural or non-structural, interior and/or exterior alterations, changes, additions, improvements, reconstructions or replacements of any of the Premises ("alterations"), other than those which would result in a diminution in the value of the Premises or impair the structural integrity of the Building. Tenant shall obtain the prior written consent of Landlord and Lender to any alteration which would result in a diminution in the value of the Premises or impair the structural integrity of the Building, which consent may be withheld in any such person's sole discretion.

(b) Tenant shall do all such work in a good and workmanlike manner, at its own cost, and in accordance with Laws and Legal Requirements. Tenant shall discharge, within thirty (30) days (by payment or by filing the necessary bond, or otherwise), any mechanics', materialmen's or other lien against the Premises and/or Landlord's interest therein, which lien may arise out of any payment due for any labor, services, materials, supplies, or equipment furnished to or for Tenant in, upon, or about the Premises.

(c) At Tenant's sole cost and without liability to Landlord, Landlord agrees to cooperate with Tenant in obtaining any necessary permits, variances and consents for any



alterations which Tenant is permitted to make hereunder; provided none of the foregoing shall, in any manner, result in a material reduction of access to the Premises, a diminution in the value of the Premises, or a change in zoning.

(d) Tenant agrees that in connection with any alteration on the Premises: (i) the fair market value of the Premises shall not be lessened as a result of any such alteration, or its structural integrity impaired; (ii) all such alterations shall be performed in a good and workmanlike manner, and shall be expeditiously completed in compliance with all Laws and Legal Requirements; (iii) Tenant shall promptly pay all costs and expenses of any such alteration; (iv) Tenant shall procure and pay for all permits and licenses required in connection with any such alteration; (v) upon undertaking any upgrades or modifications to the Premises, to notify Landlord and Lender of the nature thereof, and (vi) all alterations shall be made under the supervision of an architect or engineer and in accordance with plans and specifications which shall be submitted to Landlord and Lender to permit Landlord and Lender to confirm that the requirements hereof are satisfied) prior to the commencement of the alterations.

(e) All contracts and payments to contractors, subcontractors, suppliers and other persons in connection with any alteration, Restoration, repair or other work performed at the Premises shall be entered into, made and performed in compliance with all Laws and Legal Requirements.

## **17. SURRENDER**

At the expiration or other termination of this Lease, Tenant shall surrender the Premises to Landlord in as good order and condition as they were at the commencement of the Term or may be put in thereafter in accordance with this Lease, reasonable wear and tear and (other than for any Restoration required by the terms of this Lease) damage to the Premises any Major Condemnation of the Premises excepted. All alterations, except Tenant's furniture, trade fixtures, satellite communications dish and equipment, computer and other similar moveable equipment and shelving ("trade fixtures"), shall become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the termination or other expiration of the Term. At the expiration or termination of the Term, Tenant may remove its trade fixtures, as well as its signs and identification marks, from the Premises. Tenant agrees to repair any and all damage caused by such removal. Trade fixtures and personal property not so removed at the end of the Term or within thirty (30) days after the earlier termination of the Term for any reason whatsoever shall become the property of Landlord, and Landlord may thereafter cause such property to be removed from the Premises. The reasonable cost of removing and disposing of such property and repairing any damage to any of the Premises caused by such removal shall be borne by Tenant. Landlord shall not in any manner or to any extent be obligated to reimburse Tenant for any property which becomes the property of Landlord as a result of such expiration or earlier termination. The provisions of this Section 17 shall survive the termination or expiration of this Lease.

At any time during the Term, Tenant may remove the trade fixtures from the Premises. Tenant agrees to repair any and all damage caused by such removal.



## **18. SUBORDINATION OF LEASE**

(a) This Lease shall be subject and subordinate to any Mortgage and to all advances made upon the security thereof, provided that Lender shall execute and deliver to Tenant an agreement substantially in the form attached as Exhibit C hereto ("SNDA"), providing that the Lender or any other purchaser at a foreclosure sale or sale in lieu of foreclosure shall be bound to recognize this Lease and agrees to not disturb Tenant's possession of the Premises in the event of foreclosure if Tenant is not then in default hereunder beyond any applicable cure period. Tenant agrees, upon receipt of such SNDA, to execute such SNDA and such further reasonable instrument(s) as may be necessary to so subordinate this Lease. The term "Mortgage" shall include any mortgages, deeds of trust or any other similar hypothecations on the Premises securing Lender's Loan to Landlord, regardless of whether or not such Mortgage is recorded.

(b) Tenant agrees to attorn, from time to time, to Lender, and to any purchaser of the Premises, for the remainder of the Term, provided that Lender or such purchaser shall then be entitled to possession of the Premises, subject to the provisions of this Lease. Each such party shall however, upon demand of the other, execute instruments in confirmation of the foregoing provisions reasonably satisfactory to the requesting party acknowledging such subordination, non-disturbance and attornment and setting forth the terms and conditions hereof and in the SNDA.

(c) Tenant hereby consents to any assignment of this Lease by Landlord to or for the benefit of any Lender. Without limitation of the preceding sentence, Tenant hereby specifically consents to any Assignment of Lease and Rents executed by Landlord to and for the benefit of the Lender as of the Lease Commencement Date.

## **19. TENANT'S OBLIGATION TO DISCHARGE LIENS**

Prior to the imposition of any fine, lien, interest or penalty Tenant shall timely pay and discharge all amounts and obligations which Tenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty and interest with respect thereto.

## **20. UTILITIES**

Tenant agrees to timely pay for all utilities consumed by it in the Premises, prior to delinquency.

## **21. TENANT DEFAULT**

(a) Any of the following occurrences or acts shall constitute an Event of Default (herein so called) under this Lease: if (i) Tenant shall default in the payment when due of any installment of Fixed Rent payable hereunder, and such default shall continue for five (5) business days after written notice to Tenant thereof; or (ii) Tenant shall default in the payment when due of any Additional Rent payable hereunder and such default shall continue for five (5) business days after notice of such default is sent to Tenant by Landlord or Lender; or (iii) the failure by Tenant to pay for insurance maintained by Landlord on behalf of Tenant under this Lease as and when required under this Lease, and such default shall continue for five (5)



business days after written notice to Tenant thereof; or (iv) Tenant shall default in fulfilling any of the other covenants, agreements or obligations of this Lease, and such default shall continue for more than thirty (30) days after written notice thereof from Landlord or Lender specifying such default, provided, that if Tenant has commenced to cure within said thirty (30) days, and thereafter is in good faith diligently prosecuting same to completion, said thirty (30) day period shall be extended, for a reasonable time not to exceed one hundred sixty (160) days following the date of Landlord's or Lender's notice thereof; or (v) any execution or attachment shall be issued against Tenant or any of its property whereby the Premises shall be taken or occupied or attempted to be taken or occupied by someone other than Tenant, and the same shall not be bonded, dismissed, or discharged as promptly as possible under the circumstances; or (vi) Tenant (A) shall make any assignment or other act for the benefit of creditors, (B) shall file a petition or take any other action seeking relief under any state or federal insolvency or bankruptcy Laws, or (C) shall have an involuntary petition or any other action filed against it under any state or federal insolvency or bankruptcy Laws which petition or other action is not vacated or dismissed within sixty (60) days after the commencement thereof; (vii) the estate or interest of Tenant in the Premises shall be levied upon or attached in any proceeding and such estate or interest is about to be sold or transferred and such process shall not be vacated or discharged within sixty (60) days after such levy or attachment; (viii) any representation or warranty made by Tenant to Landlord or the Lender herein or in connection with Landlord's purchase of the Premises or in any document delivered pursuant to this Lease is misleading or false when made in any material respect or (ix) an Event of Default occurs under any of the Leases on Exhibit E attached hereto (the "Other Leases").

(b) If an Event of Default shall have occurred and be continuing, Landlord shall be entitled to all remedies available at law or in equity. Without limiting the foregoing, Landlord shall have the right to give Tenant notice of Landlord's termination of the Term of this Lease. Upon the giving of such notice, the Term of this Lease and the estate hereby granted shall expire and terminate on such date as fully and completely and with the same effect as if such date were the date herein fixed for the expiration of the Term of this Lease, and all rights of Tenant hereunder shall expire and terminate, but Tenant shall remain liable as hereinafter provided.

(c) If an Event of Default shall have occurred and be continuing, Landlord shall have the immediate right, whether or not the Term of this Lease shall have been terminated pursuant to Section 21(b) of this Part II, to re-enter and repossess the Premises and the right to remove all persons and property therefrom by summary proceedings, ejectment, any other legal action or in any lawful manner Landlord determines to be necessary or desirable. Landlord shall be under no liability by reason of any such reentry, repossession or removal. No such re-entry, repossession or removal shall be construed as an election by Landlord to terminate this Lease unless a notice of such termination is given to Tenant pursuant to Section 21(b) of this Part II.

(d) At any time or from time to time after a re-entry, repossession or removal pursuant to Section 21(c) of this Part II, whether or not the Term of this Lease shall have been terminated pursuant to Section 21(b) of this Part II, Landlord may (but, except to the extent expressly required by any applicable Law, shall be under no obligation to) relet the Premises for the account of Tenant, in the name of Tenant or Landlord or otherwise, without notice to Tenant, for such term or terms and on such conditions and for such uses as Landlord, in its



absolute discretion, may determine. Landlord may collect any rents payable by reason of such reletting. Landlord shall not be liable for any failure to relet the Premises or for any failure to collect any rent due upon any such reletting.

(e) No expiration or termination of the Term of this Lease pursuant to Section 21(b) of this Part II, by operation of law or otherwise, and no re-entry, repossession or removal pursuant to Section 21(c) of this Part II or otherwise, and no reletting of the Premises pursuant to Section 21(d) of this Part II or otherwise, shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, re-entry, repossession, removal or reletting.

(f) In the event of any expiration or termination of the Term of this Lease or re-entry or repossession of the Premises or removal of persons or property therefrom by reason of the occurrence of an Event of Default, Tenant shall pay to Landlord all Fixed Rent, Additional Rent and other sums required to be paid by Tenant, in each case together with interest thereon at the Lease Default Rate from the due date thereof to and including the date of such expiration, termination, re-entry, repossession or removal; and thereafter, Tenant shall, until the end of what would have been the Term of this Lease in the absence of such expiration, termination, re-entry, repossession or removal and whether or not the Premises shall have been relet, be liable to Landlord for, and shall pay to Landlord, as liquidated and agreed current damages: (i) all Fixed Rent, Additional Rent and other sums which would be payable under this Lease by Tenant in the absence of any such expiration, termination, re-entry, repossession or removal, less (ii) the net proceeds, if any, of any reletting effected for the account of Tenant pursuant to Section 21(d) of this Part II, after deducting from such proceeds all reasonable expenses of Landlord in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, reasonable attorneys' fees and expenses (including, without limitation, fees and expenses of appellate proceedings), alteration costs and expenses of preparation for such reletting. Tenant shall pay such liquidated and agreed current damages on the dates on which Fixed Rent would be payable under this Lease in the absence of such expiration, termination, re-entry, repossession or removal, and Landlord shall be entitled to recover the same from Tenant on each such date.

(g) At any time after any such expiration or termination of the Term of this Lease or re-entry or repossession of the Premises or removal of persons or property thereon by reason of the occurrence of an Event of Default, whether or not Landlord shall have collected any liquidated and agreed current damages pursuant to Section 21(f) of this Part II, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord on demand, as and for liquidated and agreed final damages for Tenant's default and in lieu of all liquidated and agreed current damages beyond the date of such demand (it being agreed that it would be impracticable or extremely difficult to fix the actual damages), an amount equal to the sum of (i) the excess, if any of (A) the aggregate of all Fixed Rent, Additional Rent and other sums which would be payable under this Lease, in each case from the date of such demand (or, if it be earlier, the date to which Tenant shall have satisfied in full its obligations under Section 21(f) of this Part II to pay liquidated and agreed current damages) for what would be the then-unexpired Term of this Lease in the absence of such expiration, termination, re-entry, repossession or removal, discounted at the rate equal to the then rate on U.S. Treasury obligations of comparable maturity to such Term (the "Treasury Rate"), but in no event greater



than the non-default rate of interest for the Loan (such lower rate being referred to as the "Discount Rate") over (B) the amount of such rental loss that Tenant proves could be reasonably avoided by commercially reasonable mitigation efforts by Landlord, discounted at the Discount Rate for the same period, plus (ii) all reasonable legal fees and other costs and expenses incurred by Landlord and Lender as a result of Tenant's default under this Lease. If any Law shall limit the amount of liquidated final damages to less than the amount above agreed upon, Landlord shall be entitled to the maximum amount allowable under such Law.

Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy at law or in equity, including the right of injunction. Tenant waives any rights of redemption granted by any Laws if Tenant is evicted or dispossessed, for any cause, or if Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the terms of this Lease.

(h) In addition to the foregoing remedies set forth in this Section 21 and all other remedies available at law or in equity, and regardless of whether or not an Event of Default has occurred under this Lease, if Tenant has failed to perform any of its duties, obligations, covenants or agreements under this Lease, Landlord may give notice to Tenant that it has failed to perform any such duty, obligation, covenant or agreement (herein called a "Notice of Breach") and may thereafter pursue any rights or remedies available to it at law or in equity including, without limitation, filing a suit for damages as a result of such breach or a suit for specific performance of any such duties, obligations, covenants or agreements. Any Notice of Breach delivered under this Section 21(h) or any such rights or remedies pursued by Landlord shall not be deemed to be a notice of default under any provision of this Section 21 and shall not result, with or without the passage of time, in an Event of Default existing under this Lease; provided, that the delivery of any such Notice of Breach shall not limit Landlord's right (which right will not be exercised without the consent of Lender so long as the Premises are subject to a Mortgage which requires Lender's consent for the exercise thereof) to subsequently deliver notice (with respect to the same event or condition which is the subject of such Notice of Breach or any other event or condition) which will declare or, with the passage of time, result in an Event of Default hereunder.

## **22. LANDLORD ASSIGNMENT OF WARRANTIES**

Landlord assigns to Tenant, without recourse or warranty whatsoever, all warranties, guaranties and indemnities, express or implied, and similar rights which Landlord may have against any manufacturer, seller, engineer, contractor or builder with respect to the Premises, including, but not limited to, any rights and remedies existing under contract or pursuant to the Uniform Commercial Code (collectively, the "guaranties"). Such assignment shall remain in effect during the Term. Landlord hereby agrees to execute and deliver at Tenant's expense such further documents, including powers of attorney (which shall contain indemnity agreements from Tenant to Landlord which shall be in form reasonably satisfactory to Landlord), as Tenant may reasonably request in order that Tenant may have the full benefit of the assignment of guaranties effected or intended to be effected by this Article. Upon the occurrence of a termination of this Lease, the guaranties shall automatically revert to Landlord.



**23. RENT PAYMENTS**

If Landlord's interest in this Lease shall pass to another, or if the Fixed Rent or Additional Rent hereunder shall be assigned, or if a party, other than Landlord, shall become entitled to collect the Fixed Rent or Additional Rent due hereunder, then notice thereof shall be given to Tenant by Landlord in writing, or, if Landlord is an individual and shall have died or become incapacitated, by Landlord's legal representative, accompanied by due proof of the appointment of such legal representative; provided, that if Fixed Rent is then being paid to Lender, then notwithstanding such notice from Landlord, Tenant shall continue to pay Fixed Rent to Lender until it receives contrary notice from Lender. Until such notice and proof shall be received by Tenant, Tenant may continue to pay the rent due hereunder to the one to whom, and in the manner in which, the last preceding installment of rent hereunder was paid, and each such payment shall fully discharge Tenant with respect to such payment.

Tenant shall not be obligated to recognize any agent for the collection of rent or otherwise authorized to act with respect to the Premises until written notice of the appointment and the extent of the authority of such agent shall be given to Tenant by the one appointing such agent.

**24. HOLDOVER**

If Tenant shall hold over after the expiration date of the Term, or if Tenant shall hold over after the date specified in any termination notice given by Tenant under Section 13(d) or 14(b) of this Part II, then, in either such event, Tenant shall be a month-to-month Tenant on the same terms as herein provided, except that the monthly Fixed Rent for the duration of the holdover period will be 1.25 times the average monthly Fixed Rent payable by Tenant during the last year of the Primary Term or, if applicable, during the last year of the Renewal Term immediately preceding such holdover period.

**25. NOTICES**

Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties (including Lender) by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Premises, each such notice or demand shall be in writing, and any Laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by delivery by nationally recognized overnight courier service provided a receipt is required, or by e-mail confirmed in one business day by nationally recognized overnight courier service at its Notice Address set forth in Part I hereof, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless delivery of the notice or demand is refused or rejected, in which case the date of such refusal or rejection shall be deemed the date of service thereof).

**26. TENANT COVENANTS**

**TENANT COVENANTS FOR THE BENEFIT OF LANDLORD AND ANY OF LANDLORD'S DIRECT OR INDIRECT OWNERS, PARTNERS, TRUSTEES,**



BENEFICIAL OWNERS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, OFFICERS, DIRECTORS OR SHAREHOLDERS, AND ANY SUCH PARTY'S DIRECT OR INDIRECT OWNERS, PARTNERS, TRUSTEES, BENEFICIAL OWNERS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, OFFICERS, DIRECTORS OR SHAREHOLDERS, TOGETHER WITH THE LENDER, AND ANY OWNER, PARTNER, MEMBER, MANAGER, TRUSTEE, BENEFICIAL OWNER, OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR AGENT OF THE LENDER OR ANY HOLDER OF A NOTE OR PASS THROUGH OR SIMILAR CERTIFICATE ISSUED BY THE LENDER, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (HEREIN, COLLECTIVELY, "COVERED PARTIES") THAT THE PREMISES WILL AT ALL TIMES BE USED, OPERATED AND MAINTAINED WITHOUT NEGLIGENCE, MISCONDUCT OR BREACH OF THE TERMS OF THIS LEASE AND TENANT WILL TIMELY PERFORM ALL OF ITS OBLIGATIONS UNDER, AND ABIDE BY ALL THE TERMS, PROVISIONS, COVENANTS AND CONDITIONS, OF THIS LEASE. LANDLORD ACKNOWLEDGES THAT, NOTWITHSTANDING THE FOREGOING, TO THE EXTENT THAT THE FOREGOING PROVISIONS IN THIS PARAGRAPH 26 ARE DEEMED TO BE AN INDEMNIFICATION, SUCH PROVISIONS MAY NOT BE ENFORCEABLE UNDER APPLICABLE LAWS.

**27. TENANT TO COMPLY WITH MATTERS OF RECORD**

Tenant agrees to perform all obligations of Landlord and pay all expenses and costs which Landlord or Tenant may be required to pay in accordance with, and to comply and cause the Premises to comply in all respects with all of the terms and conditions of, any reciprocal easement agreement or any other agreement or document of record now affecting the Premises (including, without limitation, those matters described on Exhibit B hereto) or hereafter executed with Tenant's written consent (herein referred to collectively as the "Matters of Record") during the Term.

**28. INTENTIONALLY OMITTED**

**29. TAXES**

(a) Subject to the provisions hereof relating to contests, Tenant shall pay and discharge, before any interest or penalties are due thereon, all of the following taxes, charges, assessments, ground rents, levies and other items (collectively, "tax" or "taxes"), which are imposed or assessed prior to the Lease Commencement Date or on or subsequent to the Lease Commencement Date during the Term, regardless of whether payment thereof is due prior to, during or after the Term: all taxes of every kind and nature (including, without limitation, real, ad valorem and personal property), on or with respect to the Premises (including, without limitation, any taxes assessed against Landlord's reversionary estate in the Premises or against any real property other than the Premises which is included within the tax parcel which includes the Premises), the Fixed Rent or Additional Rent payable hereunder, this Lease or the leasehold estate created hereby; all charges and/or assessments for any easement or agreement maintained for the benefit of the Premises; all ground rents on or with respect to the Premises; and all general and special assessments, levies, water and sewer assessments and other utility charges, use charges and rents and all other public charges and/or taxes whether of a like or



different nature. Landlord shall promptly deliver to Tenant any bill or invoice Landlord receives with respect to any tax; provided, that the Landlord's failure to deliver any such bill or invoice shall not limit Tenant's obligation to pay such tax. Landlord agrees to cooperate with Tenant to enable Tenant to receive tax bills directly from the respective taxing authorities. Nothing herein shall obligate Tenant to pay, and the term "taxes" shall exclude (unless the taxes referred to in clauses (i) and (ii) below are in lieu of or a substitute for any other tax or assessment upon or with respect to any of the Premises which, if such other tax or assessment were in effect on the Lease Commencement Date, would be payable by Tenant hereunder or by Law), federal, state or local (i) franchise, capital stock or similar taxes, if any, of Landlord, unless such taxes are based on the value of the Premises or the gross rents therefrom; (ii) income, excess profits or other taxes, if any, of Landlord, determined on the basis of or measured by Landlord's net income; (iii) any estate, inheritance, succession, gift, capital levy or similar taxes of Landlord; (iv) except as otherwise provided in Section 14(d) of this Part II, any taxes in connection with the transfer or other disposition of any interest, other than Tenant's (or any person claiming under Tenant), in the Premises or this Lease, to any person or entity, including, but not limited to, any transfer, capital gains, sales, gross receipts, value added, income, stamp, real property gains or withholding tax; and (v) any interest, penalties, professional fees or other charges relating to any item listed in clauses (i) through (v) above; provided, further, that Tenant is not responsible for making any additional payments in excess of amounts which would have otherwise been due, as tax or otherwise, but for a withholding requirement which relates to the particular payment and such withholding is in respect to or in lieu of a tax which Tenant is not obligated to pay; and provided, further, that if at any time during the Term of this Lease, the method of taxation shall be such that there shall be assessed, levied, charged or imposed on Landlord a tax upon the value of the Premises or any present or future improvement or improvements on the Premises, including any tax which uses rents received from Tenant as a means to derive value of the property subject to such tax, then all such levies and taxes or the part thereof so measured or based shall be payable by Tenant, but only to the extent that such levies or taxes would be payable if the Premises were the only property of Landlord, and Tenant shall pay and discharge the same as herein provided. In the event that any assessment against the Premises is payable in installments, Tenant may pay such assessment in installments; and in such event, Tenant shall be liable only for those installments which become due and payable prior to or during the Term, or which are appropriately allocated to the Term even if due and payable after the Term. Tenant shall deliver, or cause to be delivered, to Landlord and Lender, promptly upon Landlord's or Lender's written request, evidence satisfactory to Landlord and Lender that the taxes required to be paid pursuant to this Section 29 have been so paid and are not then delinquent.

(b) After prior written notice to Landlord, at Tenant's sole cost, Tenant may contest (including seeking an abatement or reduction of) in good faith any taxes agreed to be paid hereunder; provided, that (i) Tenant first shall satisfy any Laws and Legal Requirements, including, if required, that the taxes be paid in full before being contested, (ii) no Event of Default has occurred and is continuing, and (iii) failing to pay such taxes will not subject Landlord or Lender to criminal or civil penalties or fines or to prosecution for a crime, or result in the sale, forfeiture or loss of any portion of the Premises, the Fixed Rent or any Additional Rent. Tenant agrees that each such contest shall be promptly and diligently prosecuted to a final conclusion, except that Tenant shall have the right to attempt to settle or compromise such contest through negotiations. Tenant shall pay any and all losses, judgments, decrees and costs



(including, without limitation, all reasonable attorneys' fees and expenses) in connection with any such contest and shall promptly, after the final determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof. At Tenant's sole cost, Landlord shall assist Tenant as reasonably necessary with respect to any such contest, including joining in and signing applications or pleadings. Any rebate applicable to any portion of the Term shall belong to Tenant.

### **30. INSURANCE**

(a) Landlord shall obtain, place and maintain, as a service to Tenant, at Tenant's sole cost and expense (as provided in Section 30(d)), the following insurance policies with respect to the Premises:

(i) All-Risk insurance for the Building for one hundred percent (100%) of its replacement value. Said All-Risk policy shall not exclude flood coverage if the Premises is located in a Flood Zone A, and shall not exclude and shall affirmatively provide, earthquake, earth movement, terrorism and wind storm coverage.

(ii) General Liability coverage, including Broad Form Endorsement, on an occurrence basis, in combined policy limits of not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence for bodily injury and for property damage with respect to the Premises caused by the negligent acts of Landlord. In addition, Landlord shall maintain an umbrella liability insurance policy covering negligent acts of Landlord in an amount of not less than Five Million and No/100 Dollars (\$5,000,000.00).

(iii) Rent loss insurance (not less than twelve (12) months) with respect to the Premises.

(iv) Such other insurance, in amounts and against such risks, as is customarily maintained by owners or operators of similar properties as may be required by Lender.

(b) Tenant shall obtain, place and maintain, at Tenant's sole cost and expense, a storage tank pollution policy covering all environmental damages and remediation costs relating to the Storage Tanks (as defined below), naming Landlord and Lender as additional insureds. Such policy must have a policy limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate and a One Million Dollar (\$1,000,000) limit of defense, with deductibles of not more than Five Thousand Dollars (\$5,000) per incident, for which Tenant shall be solely responsible for paying. Such insurance shall, at a minimum, contain sufficient terms, conditions, coverages and coverage limits, as may be required to satisfy any financial assurance requirements required pursuant to Environmental Laws for the Storage Tanks.

Landlord may provide such All-Risk and/or General Liability insurance required by Section 30(a) hereof through blanket insurance covering the Premises and other locations of Landlord and/or its affiliates, provided that such blanket insurance policy specifically designates



the Premises and allocates specific coverage limits to the Premises as required hereunder, which shall not be reduced by claims as to other property covered by such blanket policy; and Landlord may maintain the required limits in the form of excess and/or umbrella policies, provided that the other requirements set forth herein have been satisfied.

Any insurance maintained by Landlord pursuant to this Section 30 shall be approved in writing by Tenant as to premiums and conformance to the terms of this Section 30, and Tenant shall have the right to propose alternative insurance to be agreed upon by Landlord. Landlord will provide Tenant with a statement (which may be sent via email) showing the amounts and costs of insurance to be obtained hereunder not less than ten (10) days prior to the date of renewal of any policy, and Tenant will notify Landlord of any objections to the proposed coverage within five (5) days following receipt of such statement, or Landlord's proposed coverages and costs will be deemed to have been approved.

Any insurance maintained pursuant to this Section 30 shall name Landlord and Lender as additional insured parties and/or as loss payees, as appropriate, as their respective interests may appear. All proceeds received from such All-Risk and/or builder's risk insurance shall be used in the first instance in accordance with Tenant's obligations under Section 13 hereof and any surplus shall be retained by Tenant.

All insurance coverage required to be carried under this Section 30 shall be carried with insurance companies licensed to do business in the state in which the Premises is located and which have a claims paying ability rating of "A" or better by Standard & Poor's ("S&P") or a rating of "NAIC-1" by the Securities Valuation Office of the National Association of Insurance Commissioners and shall require the insured's insurance carrier to notify the Landlord and Lender at least thirty (30) days prior to any cancellation or material modification of such insurance.

Each insurance policy referred to above shall, to the extent applicable, contain standard non-contributory mortgagee clauses in favor of Lender and shall provide that it may not be canceled except after thirty (30) days prior notice to Landlord and Lender and that any loss otherwise payable thereunder shall be payable notwithstanding (i) any act or omission of Landlord or Tenant which might, absent such provision, result in a forfeiture of all or a part of such insurance payment, (ii) the occupation or use of any of the Premises for purposes more hazardous than permitted by the provisions of such policy, (iii) any foreclosure or other action or proceeding taken by any Lender pursuant to any provision of the Mortgage upon the happening of an event of default therein, or (iv) any change in title or ownership of any of the Premises. Except as specifically provided herein, any insurance policy may be written with a deductible of not more than Twenty Thousand and No/100 Dollars (\$20,000.00).

Landlord and Tenant shall renew or replace each policy, and shall deliver to the other party and Lender a certificate or other evidence of the then existing policy and each renewal or replacement policy, not less than ten (10) days prior to the expiration of such policy (together with a certificate of a responsible officer of Landlord or Tenant that the insurance maintained by such party with respect to the Premises is in compliance with the requirements of this Section 30 of Part II of this Lease.



(c) At all times when any construction is in progress, Tenant shall maintain, at its sole cost and expense, or cause to be maintained by its contractors and subcontractors with such companies reasonably approved by Landlord, builder's risk insurance, completed value form, covering all physical loss, in an amount reasonably satisfactory to Landlord.

(d) On the date hereof, Tenant shall pay to Landlord an amount equal to [\$\_\_\_\_\_], which represents the aggregate amount of the premiums for the insurance required to be obtained by Landlord under Section 30(a) hereof for the remaining term of Landlord's existing policies. On each Due Date during the term of this Lease thereafter, Tenant shall pay to Landlord, or if directed by Landlord, to Lender, at the place and in the manner for payment of Fixed Rent, an amount equal to 1/12<sup>th</sup> of the estimated annual premium (each such payment, an "Insurance Reserve Payment"), as determined by Landlord and Lender, for the insurance required by Section 30(a) hereof for the following annual policy period. The Trustee shall hold the Insurance Reserve Payments in escrow (such escrow, the "Insurance Reserve") for the payment of premiums for the insurance required by Section 30(a) for the following annual policy period as estimated by Landlord and Lender. Promptly after the end of each annual policy period, Landlord, Tenant and Lender shall true-up the amount of the Insurance Reserve Payments with the amount of the actual insurance premiums for the insurance required by this Section 30 for the previous annual policy period, and Tenant shall promptly pay any underpayment or receive a refund of any overpayment from the insurance reserve. If at any time Landlord reasonably determines that amounts held in the Insurance Reserve will not be or are not then sufficient to pay the costs of such insurance premiums when due or when reasonably foreseen to be due (the amounts by which the amounts so held are insufficient being an "Insurance Deficiency"), then Tenant will pay the amount of the Insurance Deficiency to Landlord, or if directed by Landlord, to Trustee, within five (5) business days following Landlord's written request.

(e) Notwithstanding anything to the contrary contained herein and subject to Section 12 of this Lease, Landlord shall not be responsible for placing or maintaining any insurance with respect to Tenant's, negligence liability, equipment, trade fixtures or other personal property, or any other matters other than as set forth in Section 30(a), and such insurance shall be obtained, placed and maintained by Tenant at its sole cost and expense.

### **31. LANDLORD EXCULPATION**

Anything contained herein to the contrary notwithstanding, any claim based upon liability of Landlord under this Lease shall be enforced only against the Landlord's interest in the Premises and shall not be enforced against the Landlord individually or personally other than with respect to fraud or the misappropriation of insurance or Condemnation proceeds. In no event shall any partner, shareholder, trustee, manager, member, beneficial owner, officer, director or other owner or agent of Landlord have any liability under this Lease.

### **32. QUIET ENJOYMENT**

Landlord warrants and agrees that Tenant, on paying the Fixed Rent, Additional Rent and other charges due hereunder and performing all of Tenant's other obligations pursuant to this Lease, shall and may peaceably and quietly have, hold, and enjoy the Premises for the full Term,



free from molestation, eviction, or disturbance by Landlord or by any other person(s) lawfully claiming by, through or under Landlord, subject, however, to the Permitted Encumbrances.

### **33. TRANSFER OF TITLE**

In the event of any transfer(s) of the title to the Premises, Landlord (and in the case of any subsequent transfer, the then-grantor) automatically shall be relieved from and after the date of such transfer, of all liability with respect to the performance of any obligations on the part of said Landlord contained in this Lease thereafter to be performed; it being intended hereby that the covenants, conditions and agreements contained in this Lease on the part of Landlord shall, subject to the foregoing, be binding on Landlord, its successors and assigns, only during and with respect to their respective successive period of ownership. Landlord may freely transfer the Premises and this Lease without the consent of Tenant.

### **34. HAZARDOUS MATERIALS**

(a) For the purposes hereof, the term "Hazardous Materials" shall include, without limitation, any material, waste or substance which is (i) included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in or pursuant to any Laws, or subject to regulation under any Law; (ii) listed in the United States Department of Transportation Optional Hazardous Materials Table, 49 C.F.R. Section 172.101, as enacted as of the date hereof or as hereafter amended, or in the United States Environmental Protection Agency List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302, as enacted as of the date hereof or as hereafter amended; or (iii) explosive, radioactive, asbestos, lead paint, polychlorinated biphenyl, petroleum or a petroleum product or waste oil. The term "Environmental Laws" shall include all Laws pertaining to health, industrial hygiene, Hazardous Materials or the environment, including, but not limited to each of the following, as enacted as of the date hereof or as hereafter amended: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; the Emergency Planning and Community Response Act, 42 U.S.C. §11001 et seq.; Oil Pollution Act, 33 U.S.C. §2701 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.; the Toxic Substance Control Act, 15 U.S.C. §2601 et seq.; the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Asbestos Hazard Emergency Response Act, 15 U.S.C. §2641 et seq.; the Occupational Health and Safety Act, 29 U.S.C. §651 et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Texas Water Code Ann., §26 et seq.; Texas Clean Air Act, Texas Health & Safety Code Ann., ch. 382, and 35 Texas Code ch. 335.

(b) Tenant represents and warrants to Landlord and Lender that, except as disclosed in the environmental reports listed on Exhibit D hereto (the "Environmental Reports"), to the best of Tenant's knowledge, after due inquiry, including inquiry of Tenant's environmental risk management consultant, (i) neither the Premises, nor any portion thereof, has been used by Tenant or, to the best of Tenant's knowledge, by any prior owner for the generation, manufacture, storage, handling, transfer, treatment, recycling, transportation, processing, production, refinement or disposal (each, a "Regulated Activity") of any Hazardous Materials; and (ii) to the best of Tenant's knowledge, there are no Hazardous Materials present on, in or under the Premises or any portion thereof except to the extent expressly permitted by the terms



of this Section 34(b). Tenant covenants it (i) will comply, and will cause the Premises to comply, with all Environmental Laws applicable to the Premises, (ii) will not use, and shall prohibit the use of the Premises for Regulated Activities or for the storage, handling or disposal of Hazardous Materials (other than in connection with the operation and maintenance of the Premises and in commercially reasonable quantities as a consumer thereof, subject to compliance with applicable Environmental Laws), (iii) will not install or permit the installation on the Premises of any underground storage tanks or surface impoundments and shall not permit there to exist any petroleum contamination in violation of applicable Environmental Laws originating on the Premises, and (iv) shall cause any alterations of the Premises to be done in a way which complies with applicable Environmental Laws, including those relating to exposure of persons working on or visiting the Premises to Hazardous Materials and, in connection with any such alterations, shall remove any Hazardous Materials present upon the Premises which are not in compliance with applicable Environmental Laws or which present a danger to persons working on or visiting the Premises. Tenant will fully comply with all registration and reporting requirement applicable to the Premises or any part thereof or Tenant's use thereof, including without limitation all governmental requirements relating to storage tanks. Tenant will add and maintain throughout the Term Landlord and Lender as additional insureds on Tenant's pollution liability insurance policies.

Notwithstanding any provision of this Lease to the contrary, Landlord agrees that Tenant may use household and commercial cleaners and chemicals to maintain the Premises, provided that such use is in compliance with all Environmental Laws.

(c) If, at any time during the Term, Hazardous Materials shall be found in, on or under the Premises, and such Hazardous Materials have been caused by Tenant, its contractors, guests, and invitees, then Tenant shall (at Tenant's sole expense), or shall cause such responsible third parties to, promptly commence and diligently prosecute to completion all investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (collectively, "Remedial Work") to the extent required by Environmental Laws, and in compliance with Environmental Laws, and at Tenant's sole cost; provided, that except as otherwise expressly provided in this subparagraph (c), Landlord shall not be required to accept any institutional control (such as a deed restriction) that restricts the permitted use of the Premises or any real property as a condition to any remedial plan approved by any governmental agency in connection with such Remedial Work, and provided further, that Tenant shall have no obligation to perform Remedial Work with respect to any Hazardous Materials that have migrated onto the Premises from any off-site location as the result of any actions by third parties not affiliated with Tenant ("Third-Party Contamination"), unless it is technically impractical to perform the Remedial Work without also performing such actions with respect to such Third-Party Contamination.

(d) To the extent that Tenant has knowledge thereof, Tenant shall promptly provide written notice to Landlord and Lender of any of the following matters which are not specified in the Environmental Reports described on Exhibit D hereto:

(i) any proceeding or investigation commenced or threatened by any governmental authority with respect to the presence of any Hazardous Material affecting the Premises;



(ii) any proceeding or investigation commenced or threatened by any governmental authority, against Tenant or Landlord or Lender, with respect to the presence, suspected presence, release or threatened release of Hazardous Materials from the Premises;

(iii) all written notices of any pending or threatened investigation or claims made or any lawsuit or other legal action or proceeding brought by any person against (A) Tenant or Landlord or Lender or the Premises, or (B) any other party occupying the Premises or any portion thereof, in any such case relating to any loss or injury allegedly resulting from any Hazardous Material or relating to any violation or alleged violation of Environmental Laws;

(iv) the discovery of any occurrence or condition on the Premises, of which Tenant becomes aware and which is not corrected within thirty (30) days, or written notice received by Tenant of an occurrence or condition on any real property adjoining or in the vicinity of the Premises, which reasonably could be expected to lead to the Premises or any portion thereof being in violation of any Environmental Laws or subject to any restriction on ownership, occupancy, transferability or use under any Environmental Laws or which might subject Landlord or Lender to any Environmental Claim. "Environmental Claim" means any claim, action, investigation or written notice by any person alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental response costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based on or resulting from (A) the presence, or release into the environment, of any Hazardous Materials at the Premises, or (B) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law; and

(v) the commencement and completion of any Remedial Work.

**(e) TENANT SHALL BE SOLELY RESPONSIBLE FOR AND SHALL PAY ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, ASSESSMENTS, LOSSES, DAMAGES, LIABILITIES, INVESTIGATIONS, WRITTEN NOTICES, COSTS AND EXPENSES OF ANY KIND SUFFERED OR INCURRED BY ANY COVERED PARTY (INCLUDING, WITHOUT LIMITATION, DIMINUTION IN PROPERTY VALUE AND REASONABLE EXPENSES OF INVESTIGATION BY ENGINEERS, ENVIRONMENTAL CONSULTANTS AND SIMILAR TECHNICAL PERSONNEL AND REASONABLE FEES AND DISBURSEMENTS OF COUNSEL TO ANY COVERED PARTY), ARISING OUT OF, IN RESPECT OF OR IN CONNECTION WITH (I) TENANT'S BREACH OF ITS REPRESENTATIONS, WARRANTIES, COVENANTS OR OBLIGATIONS IN THIS LEASE, (II) THE OCCURRENCE OF ANY REGULATED ACTIVITY AT, ON OR UNDER THE PREMISES AT ANY TIME DURING OR PRIOR TO THE TERM OF THIS LEASE, (III) ANY ENVIRONMENTAL CLAIM WITH RESPECT TO THE PREMISES, (IV) THE RELEASE, THREATENED RELEASE OR PRESENCE OF ANY HAZARDOUS MATERIALS AT, ON, UNDER OR FROM THE PREMISES, REGARDLESS OF HOW DISCOVERED BY TENANT, LANDLORD OR ANY THIRD PARTY, EXCEPT TO THE EXTENT THAT TENANT CAN DEMONSTRATE THAT SUCH RELEASE, THREATENED RELEASE OR PRESENCE OCCURRED SOLELY SUBSEQUENT TO THE TERM OF THIS LEASE, (V) ANY REMEDIAL WORK REQUIRED TO BE PERFORMED PURSUANT TO ANY ENVIRONMENTAL LAW OR THE TERMS**



**HEREOF WITH RESPECT TO MATTERS ARISING OR OCCURRING PRIOR TO OR DURING THE TERM, OR (VI) ANY MATTERS ARISING UNDER OR RELATING TO ANY ENVIRONMENTAL LAW AND RELATING TO THE TENANT OR THE PREMISES. LANDLORD ACKNOWLEDGES THAT, NOTWITHSTANDING THE FOREGOING, TO THE EXTENT THAT THE FOREGOING PROVISIONS IN THIS PARAGRAPH 34(e) ARE DEEMED TO BE AN INDEMNIFICATION, SUCH PROVISIONS MAY NOT BE ENFORCEABLE UNDER APPLICABLE LAWS.**

(f) Landlord and Tenant acknowledge the presence of certain underground storage tanks and above-ground storage tanks and associated pumps and piping at the Premises as described in the Environmental Reports (together with any and all additional tanks and associated pumps and piping as may hereafter be located on or under the Premises, collectively, the "Storage Tanks"). Landlord and Tenant agree that Tenant is, and shall remain at all times during the term of this Lease, the sole and exclusive holder of title to the Storage Tanks. Without limiting the breadth of any other Tenant covenant in this Section 34, Tenant agrees that it shall be solely responsible for all regulatory compliance obligations arising under Environmental Laws in connection with the Storage Tanks. Tenant agrees, at its sole expense, to remove all Storage Tanks from the Premises by no later than seventy-five (75) days prior to the expiration or earlier termination of this Lease and comply with all tank closure requirements, including any further investigations and remedial actions, as may be required by any federal, state and/or local governmental agency exercising jurisdiction with respect to the Storage Tanks in connection with the same.

(g) Tenant shall provide such information and certifications which Landlord may reasonably request, from time to time, to ensure Tenant's compliance with Environmental Laws. In the event that Landlord has reason to believe that (i) Tenant has failed to comply with any Environmental Laws, or (ii) there exists a threat of harm to the environment or human health, Landlord or its agent shall have the right, but not the obligation, at any time during business hours or otherwise upon reasonable written notice, to enter upon the Premises, and conduct or cause to be conducted a Phase I environmental site assessment and/or compliance audit, at Landlord's sole expense (unless such Phase I environmental site assessment and/or compliance audit concludes that (i) Tenant has failed to comply with any of the requirements of this Section 34, or (ii) there exists a threat of harm to the environment or human health, in which case Tenant shall pay for any such Phase I environmental site assessment and/or compliance audit). In the event such Phase I environmental site assessment or compliance audit recommends further testing, then Landlord or its agent shall likewise have the right, but not the obligation, at any time during business hours or otherwise upon reasonable written notice, to enter upon the Property and conduct or cause to be conducted, such additional assessment as may be required by Landlord, including without limitation testing, at Tenant's sole expense.

(h) The obligations of the Tenant under this Section 34 shall survive the termination of this Lease.



**35. ESTOPPEL CERTIFICATE**

Landlord and Tenant agree to deliver to each other, from time to time as reasonably requested in writing, and within a reasonable period of time after receipt of such request, an estoppel certificate, addressed to such persons as the requesting party may reasonably request, certifying 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), the dates to which any Fixed Rent due hereunder has been paid in advance, if any, and that to the knowledge of the signer of such certificate, no default hereunder by either Landlord or Tenant exists hereunder (or specifying each such default to which this signer may have knowledge), together with such other information as Landlord or Tenant may reasonably require with respect to the status of this Lease and Tenant's use and occupancy of the Premises.

**36. FINANCIAL STATEMENTS**

In the event that, at any time during the Term, Tenant does not have publicly available financial statements which can be accessed by Landlord and Lender, Tenant shall furnish, or cause to be furnished, the following statements to Landlord and Lender:

(a) As soon as practicable and in any event within one hundred twenty (120) days after the end of each fiscal year, audited consolidated statements or earnings, consolidated statements of cash flows, consolidated statements of stockholders equity, and consolidated balance sheets (collectively, "Financial Statements") as of the end of each such year, setting forth in each case in comparative form corresponding consolidated figures from the preceding year.

(b) as soon as practicable and in any event within ninety (90) days after the end of each fiscal quarter, unaudited Financial Statements as of the end of such quarter.

**37. WAIVER OF SOVEREIGN IMMUNITY.**

(a) To the extent that Tenant may be entitled in any state or jurisdiction to claim or benefit from any immunity (whether characterized as state immunity, sovereign immunity, act of state or otherwise) now or hereafter for itself or any of its property or assets, including, without limitation, the Premises (which it now has or may hereafter acquire) in respect of its obligations under this Lease from service of process or other documents relating to proceedings, jurisdiction, suit, judgment, execution, attachment (whether before awarded or judgment, in aid or execution or otherwise) or legal process or to the extent that in any such jurisdiction there may be attributed to it or any of its property or assets, including, without limitation, the Premises, such immunity (whether or not claimed), Tenant expressly, unconditionally and irrevocably agrees not to claim, invoke or permit to be invoked on it or its property or assets' behalf (including, without limitation the Premises) or for it or its property or assets' benefit (including, without limitation the Premises) and hereby expressly, unconditionally and irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.

(b) Subject to any applicable appellate rights, Tenant consents generally in respect of any proceedings to the giving of any relief or the issue of any process in connection with the



proceedings including, without limitation, the making enforcement or execution against any property or assets whatsoever, including, without limitation, the Premises (irrespective of its use or intended use) of any order or judgment which may be made or given in the proceedings; and

(c) Tenant irrevocably and unconditionally acknowledges that the execution, delivery and performance of this Agreement shall be deemed to constitute private and commercial (and not public) acts of Tenant for purposes of any applicable immunity Laws.

### **38. MISCELLANEOUS**

(a) This Lease shall be governed and construed in accordance with the Laws of the state of Texas.

(b) The headings of the Sections of Part I and Part II, are for convenient reference only, and are not to be construed as part of this Lease.

(c) The language of this Lease shall be construed according to its plain meaning, and not strictly for or against Landlord or Tenant; and the construction of this Lease and of any of its provisions shall be unaffected by any argument or claim that this Lease has been prepared, wholly or in substantial part, by or on behalf of Tenant or Landlord.

(d) Landlord and Tenant each warrant and represent to the other, that each has full right to enter into this Lease and that there are no impediments, contractual or otherwise, to full performance hereunder.

(e) This Lease shall be binding upon the parties hereto and shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of Landlord and the successors and assigns of Tenant.

(f) In the event of any suit, action, or other proceeding at law or in equity, by either party hereto against the other, by reason of any matter arising out of this Lease, the prevailing party shall recover, not only its legal costs, but also reasonable attorneys' fees (to be fixed by the Court) for the maintenance or defense of said suit, action or other proceeding, as the case may be.

(g) A waiver by either party of any breach(es) by the other of any one or more of the covenants, agreements, or conditions of this Lease, shall not bar the enforcement of any rights or remedies for any subsequent breach of any of the same or other covenants, agreements, or conditions.

(h) This Lease and the referenced schedules and exhibits set forth the entire agreement between the parties hereto and may not be amended, changed or terminated orally or by any agreement unless such agreement shall be in writing and signed by Tenant and Landlord and approved in writing by the Lender. Landlord and Tenant further agree that this Lease shall not be amended and no amendment shall be effective unless any guarantor of the Tenant's obligations under this Lease, remain liable for all of the Tenant's obligations under this Lease notwithstanding such amendment.



(i) If any provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by Law.

(j) The submission of this Lease for examination does not constitute a reservation of or agreement to lease the Premises; and this Lease shall become effective and binding only upon proper execution and unconditional delivery thereof by Landlord and Tenant.

(k) When the context in which words are used in this Lease indicates that such is the intent, words in the singular number shall include the plural and vice versa, and words in the masculine gender shall include the feminine and neuter genders and vice versa. Further, references to "person" or "persons" in this Lease shall mean and include any natural person and any corporation, partnership, joint venture, limited liability company, trust or other entity whatsoever.

(l) All references to "business days" contained herein are references to normal working business days, i.e., Monday through Friday of each calendar week, exclusive of federal and national bank holidays.

(m) Time is of the essence in the payment and performance of the obligations of Tenant under this Lease.

### **39. PURCHASE OPTION.**

(a) Purchase Option. Provided that no Material Event of Default is continuing, and subject to the requirements set forth in paragraph (c) below, on the last day of the Primary Term or applicable Renewal Term, time being of the essence with respect to such date (the "Purchase Date"), Tenant shall have the option (the "Purchase Option") to purchase the Premises and the land and improvements demised under the Other Leases (collectively, the "Properties") from the Landlord for the price equal to the Fair Market Value (defined below) of the Properties (the "Purchase Option Price").

(b) Notice. Tenant's right to exercise the Purchase Option is subject to Tenant giving Landlord written notice of its election to exercise the Purchase Option (the "Purchase Option Notice") not less than twelve (12) months prior to the last day of the Primary Term or applicable Renewal Term. The Purchase Option Notice shall specify the Fair Market Value of the Properties and the determination as to how the Fair Market Value was derived. Landlord shall have 30 days from the date of receipt of the Purchase Option Notice to object to the determination of the Fair Market Value in accordance with the provisions of paragraph (e) below. If Landlord fails to respond to the Purchase Option Notice within such 30 day period, Tenant shall send a second copy of the Purchase Option Notice to Landlord (the "Second Purchase Option Notice") with a statement in bold that reads "FAILURE TO RESPOND TO THIS NOTICE WITHIN FIFTEEN (15) BUSINESS DAYS AFTER RECEIPT BY LANDLORD SHALL BE DEEMED ACCEPTANCE." Failure by Landlord to object to the Fair Market Value determination set forth in the Second Purchase Option Notice within fifteen



(15) days after receipt by Landlord of the Second Purchase Option Notice shall be deemed an acceptance of the Fair Market Value. If Landlord objects to the Fair Market Value provided by Tenant, the Appraisal Procedure shall be used to determine the Fair Market Value.

(c) Closing Procedure. Within five (5) Business Days after sending the Purchase Option Notice, Tenant may obtain a title insurance commitment for the Properties with a then-current effective date. If such commitment reflects any matter materially and adversely affecting title to the Properties other than the Permitted Encumbrances (and other than easements or rights of way approved by Tenant and entered into by Landlord, this Lease, any documents recorded with Tenant's prior approval and any encumbrances created on or after the date hereof by Tenant or those claiming by, through or under Tenant or with Tenant's consent or which are the obligation of Tenant to remove hereunder), then Tenant may give Landlord written notice of such matter. If Tenant gives Landlord such notice, Landlord shall use reasonable efforts to cause such matter to be removed and corrected of record within thirty (30) days of receipt of Tenant's notice. If Landlord fails to do so within said thirty (30) days, Tenant may at its option (a) attempt to cause such encumbrances to be removed, (b) proceed to close, or (c) terminate the Purchase Option by giving written notice thereof to Landlord. If Tenant elects alternative (a) above, closing shall be postponed until the encumbrances in question are removed and, if Tenant is unable within a further period of ten (10) days to cause such encumbrances to be removed, Tenant may then elect either alternative (b) or (c) above. All costs and expenses incurred by Tenant in causing or attempting to cause such encumbrances to be removed, including reasonable attorneys' fees, shall be payable by Landlord. If Tenant elects option (c) above, Tenant shall have no further rights to purchase the Properties under this Section 39 or under any other lease by and between Tenant and Landlord.

(d) Subject to postponement pursuant to Section 39(c) hereof, Landlord shall convey the Properties to Tenant on the applicable Purchase Date at a closing location reasonably selected by Tenant, including without limitation in escrow through a title company or other qualified escrow agent. The deeds shall be in the usual, proper special warranty deed form for recording and registration, subject only to Permitted Encumbrances and the other matters permitted pursuant to Section 39(c) hereof, and shall be accompanied by all documents necessary to allow the deeds to be recorded and the ownership of the Properties (and their contents) to be transferred to Tenant. Tenant shall pay any state and local deed tax or revenue stamps or other transfer tax. The applicable Purchase Option Price (less the unpaid principal balance of any mortgages, if any and if assumed (subject to the terms thereof) by Tenant at the closing) shall be payable by wire transfer or other readily available funds. This Lease and all of the terms and provisions hereof shall remain in full force and effect until the purchase has closed. Upon conveyance and recording of the deeds from Landlord to Tenant, this Lease shall terminate and, except for provisions set forth herein that expressly survive the termination of the Lease, be of no further force and effect.

(e) Definitions. For purposes of this Section 39, the following terms shall have the meanings set forth below:

"Appraisal Procedure" shall mean the following procedure for determining the Fair Market Value: The Tenant and the Landlord shall attempt to agree among themselves as to the Fair Market Value. If they are unable to agree within thirty (30) days, then at the request of



either party, the Tenant and the Landlord shall mutually agree upon the appointment of a qualified Appraiser, but if the parties shall fail to choose an Appraiser within twenty (20) days after notice from either party of the necessity to select an Appraiser, then the Appraiser shall be selected by the American Arbitration Association. Within fifteen (15) days following the appointment of the Appraiser, each party shall submit to the Appraiser its determination of the Fair Market Value. The Appraiser shall within thirty (30) days following the submission of such determinations render its decision by selecting the determination submitted by either party which, in the judgment of the Appraiser, most nearly reflects the Fair Market Value. It is expressly understood that the Appraiser shall have no power or authority to select any other value other than the Fair Market Value submitted by the Landlord or the Tenant, and the decision of the Appraiser shall be final and binding upon the parties hereto. The fees and expenses of the Appraiser shall be paid by the Tenant.

“Appraiser” shall mean an individual having not less than five (5) years current experience appraising commercial properties of a nature and type similar to that of the Leased Property in the geographic area where the Premises are located and who is licensed in those geographic areas where licenses are required and who either (i) holds an MAI designation conferred by the American Institute of Real Estate Appraisers and is in good standing as an independent member thereof, or (ii) holds the Senior Member designation conferred by the American Society of Appraisers or any organizations succeeding thereto of similarly recognized national standing and is in good standing as an independent member thereof.

“Fair Market Value” shall mean the purchase price for the Properties, unencumbered by the leases between Tenant and Landlord, and subject only to the Permitted Encumbrances but free and clear of all mortgages, that would be obtained in an arm’s-length transaction between an informed and willing buyer and an informed and willing seller of the Properties, in either case under no compulsion to buy or sell the Properties, and neither of which is related to the Landlord or the Tenant, for the acquisition or sale of the Properties, taking into account the then existing Buildings (and not the highest and best use, if different from the existing Buildings). Such fair market sales value shall be calculated as the value for the use of the Properties, assuming, in the determination of such fair market value, that the Properties have been maintained in accordance with the provisions of this Lease, that no casualty or condemnation has occurred, and that the Tenant is a tenant in possession of the Properties at the time of renewal which is renewing its net lease and would be contemplating retention of the Properties with use and retention of all special features of the Properties attendant to the Tenant’s operations being considered in the sale price.

#### **40. CONTRACT FOR SERVICES; DISPUTE RESOLUTION.**

(a) Landlord and Tenant agree that (i) the services to be provided by Landlord to Tenant pursuant to this Lease, including without limitation those set forth in Sections 9(c), 13, 14 and 30, are essential terms of this Lease and (ii) the parties intend that this Lease is a contract for services for purposes of Chapter 271 of the Texas Code.

(b) Any dispute between Landlord and Tenant under this Lease is subject to adjudication as provided in Chapter 271 of the Texas Code, as in effect as of the date hereof.



41. **Intentionally deleted.**

42. **APPROPRIATIONS.**

(a) Availability of Funding. This Lease is contingent upon the appropriation of funds by the Texas Legislature or, in the absence of such appropriation, the availability to Tenant of funds from other sources. Tenant shall apply, or cause to be applied, any funds lawfully available to Tenant to the payment of Rent and other amounts payable under this Lease as they come due. Tenant agrees to use its best efforts to secure sufficient appropriated funds to pay all Rent (and all Additional Rent) for each year of the Lease term, and will not take any action, or omit to take any action, that would cause appropriated funds to cease to be available. Without limiting the foregoing, under no circumstances shall Tenant fail to seek any appropriation in order to obtain more convenient premises or to otherwise circumvent the requirements of this Lease.

(b) Covenant to Use School District Reimbursements. To the extent permitted by applicable law, Tenant agrees to use all reimbursements received from school districts it serves relating to this Lease to pay (or reimburse Tenant for) Fixed Rent and Additional Rent paid or payable by Tenant hereunder. Notwithstanding the foregoing, in no event shall Tenant's obligations hereunder be conditioned on receipt of any reimbursements or other payments from school districts.

**IN WITNESS WHEREOF,** Landlord and Tenant have duly executed this Lease as of the Date of Lease above written.

***[SIGNATURE PAGES FOLLOW.]***



**LANDLORD'S SIGNATURE PAGE**

Attached to and made a part of Lease dated as of May \_\_, 2015.

**2015 ACQUISITIONS 5 LLC**, a Delaware  
limited liability company

By: \_\_\_\_\_

Name:

Title:



**TENANT'S SIGNATURE PAGE**

Attached to and made a part of Lease dated as of May \_\_, 2015.

**DALLAS COUNTY SCHOOLS, a county  
school district in the State of Texas**

By: \_\_\_\_\_

Name: Dr. Rick Sorrells

Title: Superintendent



**SCHEDULE 1**  
**STIPULATED LOSS VALUES**

The Stipulated Loss Value shall at all times be \$25,555,000.



## **SCHEDULE 2**

### **FIXED RENT AMOUNTS**

During the Primary Term, Fixed Rent shall be paid by Tenant in the amounts hereinafter set forth in Subpart A of this **Schedule 2** with respect to the Primary Term. During any Renewal Term, Fixed Rent shall be paid in the amounts hereinafter set forth in Subpart B of this **Schedule 2** with respect to such Renewal Terms.

***/SCHEDULE 2 CONTINUED ON NEXT PAGE./***



**EXHIBIT B**

**PERMITTED ENCUMBRANCES**

[attached on the following pages]



**EXHIBIT C**

**FORM OF SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made as of \_\_\_\_\_, among \_\_\_\_\_ ("Lender"), \_\_\_\_\_, a Delaware statutory trust ("Lessor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Lessee").

**Recitals:**

A. Lessor and Lessee have entered into that certain Lease Agreement dated as of the date hereof (the "Lease"), concerning certain premises (the "Premises") on that certain real property in Texas, which is legally described on the attached Exhibit A (the "Land").

B. As security for a loan from Lender to Lessor (the "Loan"), Lessor is mortgaging the Land to Lender under a [Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents] dated as of the date hereof, recorded in the office of the County Recorder of \_\_\_\_\_ County, Texas, as document number \_\_\_\_\_ (as now or hereafter increased, amended, modified, supplemented, consolidated, replaced, substituted, extended and/or renewed, the "Mortgage").

C. Lender has required the execution of this Agreement as a condition to making any disbursements of Loan proceeds to finance the Premises.

D. Lender, Lessor and Lessee have agreed to the following with respect to their mutual rights and obligations pursuant to and under the Lease and the Mortgage.

NOW, THEREFORE, the parties hereby agree as follows:

1. Subordination. Subject to the terms of this Agreement, including without limitation Section 2 of this Agreement, all of Lessee's right, title and interest in and to the Premises, the Lease and all rights of Lessee under the Lease are and shall remain unconditionally subject and subordinate to the Mortgage in all respects.

2. Non-Disturbance. Provided that the Lease is then in full force and effect and Lessee is not then in default under the Lease beyond any applicable grace or cure periods provided in the Lease, Lessee's possession and operation of the Premises and use of the Premises shall not be disturbed for any reason, except as provided in the Lease, and the Lease shall not be extinguished or terminated by an action or proceeding to foreclose or otherwise enforce the Mortgage or by a conveyance in lieu of foreclosure, but rather, the Lease shall continue in full force and effect and the owner of the Premises following a foreclosure sale or conveyance in lieu of foreclosure ("New Owner") shall recognize and accept Lessee as the tenant under the Lease.



3. **Attornment.** Upon Lessee's receipt of notice that Lender or any other party has become the New Owner, Lessee will attorn to and recognize such New Owner as its substitute lessor under the Lease. Lessee's attornment to and recognition of New Owner pursuant to this Agreement will be effective and self-operative immediately upon Lessee's receipt of such notice without the execution or delivery of any further instrument. Upon New Owner's or Lessee's request, Lessee and New Owner will execute and deliver an instrument acknowledging the validity of the Lease and New Owner's obligations as the Landlord thereunder and Lessee's attornment to and recognition of New Owner.

4. **New Owner.** New Owner will be bound, as the lessor, to Lessee under all covenants and conditions of the Lease accruing from and after the date New Owner acquires title to and possession of the Land (the "Acquisition Date") for the remainder of the term of the Lease and any renewal or extension thereof pursuant to the terms of the Lease, which (provided the Lease is then in full force and effect and Lessee is not then in default under the Lease beyond any applicable grace or cure periods provided in the Lease) New Owner shall be deemed to have agreed to assume and perform by acquiring title to and possession of the Land, and Lessee shall, from and after the date New Owner succeeds to the interest of the "landlord" under the Lease, have the same remedies against New Owner for the breach of any covenant contained in the Lease that Lessee might have had under the Lease against Lessor if New Owner had not succeeded to the interest of the "landlord", except that New Owner:

a. will not be bound by any amendment, supplement or other modification of the Lease which was not consented to in writing by Lender;

b. will not be liable for any act, omission, or breach by any lessor under the Lease which occurs prior to the Acquisition Date, nor subject to any right of set-off or defense which Lessee may have against any prior lessor nor subject to any right of set-off from rent which the Lease affords to Lessee, provided that New Owner will be obligated to cure any continuing default under the Lease to the extent such default remains uncured after the Acquisition Date, provided that the term "continuing default" shall not include any failure by a prior Lessor to pay any money owed to Lessee with respect to any period prior to the Acquisition Date;

c. will not be personally liable in any respect under the Lease.

5. **Miscellaneous.**

a. **Notices.** All notices under this Agreement must be in writing and must be sent by personal delivery, by United States registered or certified mail (postage prepaid), by facsimile (with a copy sent the same day by one of the other prescribed methods of delivery) or by an independent overnight courier service, addressed to the addresses specified below or at such other place as a party may designate to the other parties by written notice given in accordance with this section. Notices given by mail are deemed effective three Business Days after the party sending the notice deposits the notice with the United States Post Office. Notices given by facsimile are deemed effective on the day transmitted. Notices delivered by courier are deemed effective on the next Business



Day after the day the party delivering the notice timely deposits the notice with the courier for overnight (next day) delivery.

If to Lender; [ ]

with copies to: [ ]

If to Lessor: [ ]

with copies to: [ ]

If to Lessee: [ ]

b. Notice of Default. Lessee will provide to Lender each notice of default by Lessor, as and when it provides such notice to Lessor, and Lender will have the right, but not the obligation, to cure any such default within the time provided in the Lease to Lessor to cure such default. Lessee agrees not to exercise any of its remedies in connection with any default notice to Lessor until the expiration of the cure period provided to Lender by this Agreement, and Lessee agrees to accept any cure from Lender as if made by Lessor. Notwithstanding the foregoing, unless Lender otherwise agrees in writing to assume any obligations of Lessor under the Lease or Lender becomes the New Owner, Lessor shall remain solely liable to perform Lessor's obligations under the Lease, both before and after Lender's exercise of any cure right under this Agreement.

c. No Advance Rent. Except as may be required by the Lease, Lessee will not pay the rent or any other sums due under the Lease more than one month in advance, except with the written consent of Lender.

d. Insurance and Condemnation Proceeds. All condemnation awards and insurance proceeds paid or payable with respect to the Premises and received by Lessor shall be applied and paid in the manner set forth in the Lease.

e. Assignment of Rents. Lessor and Lessee acknowledge that Lender is entitled, pursuant to an Assignment of Leases and Rents executed by Lessor in favor of Lender, to receive and collect all rent payable under the Lease directly from Lessee. Lessee agrees to pay all of said rent directly to Lender. Lessor acknowledges that Lessee's payment to Lender of rent due under the Lease in accordance with Lender's directions, without inquiry on the part of Lessee, shall constitute payment as required by the Lease for all purposes notwithstanding any countervailing instruction from Lessor at the time of Lender's request.

f. No Modification or Termination. Lessor will not cancel or terminate the Lease or amend, modify, supplement, or in any manner alter any of its terms without the prior written consent of Lender.



g. **No Other Subordination.** Lessor will not, during the term of the Mortgage, permit the Lease to become subordinate to the lien of any mortgage or security instrument in favor of any person or entity other than Lender.

h. **Successors and Assigns.** This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns, including any New Owner.

i. **Governing Law.** This Agreement and the Lease will be governed by and construed and interpreted in accordance with the internal laws of the State of Texas.

j. **Counterparts.** This Agreement may be signed in counterparts and each counterpart shall be effective as an original when counterparts have been signed by all parties.

k. **Lessee's Fixtures.** Neither the Mortgage nor any other security interest executed in connection with the Mortgage shall cover or be construed as subjecting in any manner to the lien of the Mortgage, any Lessee's trade fixtures, Lessee's equipment, other trade fixtures, signs or other personal property at any time furnished or installed by or for Lessee or its subtenants or licensees on the Premises regardless of the manner or mode of attachment.

[Signature page follows.]



IN WITNESS WHEREOF, this Subordination, Non-Disturbance and Attornment Agreement has been duly executed as of the day and year first above written.

[LANDLORD]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[ADD ACKNOWLEDGMENT]

[LENDER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[ADD ACKNOWLEDGMENT]

[SELLER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[ADD ACKNOWLEDGMENT]



**EXHIBIT A**

**Legal**



## **EXHIBIT D**

### **LIST OF ENVIRONMENTAL REPORTS**

- 1) Phase I Environmental Site Assessment, Dallas County Schools – Kleberg Service Center, 12728 Garden Grove Drive, Dallas, Texas 75253, dated May 5, 2015, prepared by IVI Assessment Services for 2015 Acquisitions 5 LLC, CTL Lending Group, LLC and CTL 2015 - 16 Trust (Dallas County Schools)
  
- 2) Phase I Environmental Site Assessment, Dallas County Schools – Pat Raney Service Center, 2951 & 3001 W. Wintergreen Road, Lancaster, Texas, dated May 5, 2015, prepared by IVI Assessment Services for 2015 Acquisitions 5 LLC, CTL Lending Group, LLC and CTL 2015 - 16 Trust (Dallas County Schools)
  
- 3) Phase I Environmental Site Assessment, Dallas County Schools – Lawnview Service Center, 4600 Lawnview Avenue, Dallas, Texas, dated May 5, 2015, prepared by IVI Assessment Services for 2015 Acquisitions 5 LLC, CTL Lending Group, LLC and CTL 2015 - 16 Trust (Dallas County Schools)
  
- 4) Phase I Environmental Site Assessment, Dallas County Schools – North Dallas Service Center, 2455 Rentzel Street & 10700 Finnell Street, Dallas, Texas, dated May 5, 2015, prepared by IVI Assessment Services for 2015 Acquisitions 5 LLC, CTL Lending Group, LLC and CTL 2015 - 16 Trust (Dallas County Schools)
  
- 5) Environmental Assessment, Lone Star Drive-in Theater, 4600 Lawnview Avenue, Dallas, Texas, dated February 19, 1994, prepared by Intera, Inc. for Lone Star Multi Theaters, Inc.
  
- 6) Environmental Assessment, 11-Acre Tract of Vacant Land, Rentzel Street and Finnell Street, Dallas, Texas, dated March 22, 1994, prepared by Intera, Inc. for Dallas County Schools
  
- 7) Building Materials Survey For Identification and Assessment of Asbestos-Containing Materials, Kleberg Service Center – 12728 Garden Grove Drive, Dallas, Texas, dated July 30, 2003, prepared by Wright Group Environmental Services for Dallas County Schools



- 8) Underground Storage Tank Testing Certification, Kleberg Service Center – 12728 Garden Grove Drive, Dallas, TX, dated June 23, 2014, prepared by TesTank, Inc. for Dallas County Schools
- 9) Underground Storage Tank Testing Certification, Lawnview Service Center – 4600 Lawnview Ave., Dallas, TX, dated June 17, 2014, prepared by TesTank, Inc. for Dallas County Schools
- 10) Underground Storage Tank Testing Certification, Pat Raney Service Center – 3001 W Wintergreen Rd, Lancaster, TX, dated June 24, 2014, prepared by TesTank, Inc. for Dallas County Schools
- 11) Underground Storage Tank Testing Certification, North Dallas Service Center – 2455 Rentzel St., Dallas, TX, dated June 24, 2014, prepared by TesTank, Inc. for Dallas County Schools
- 12) Emergency and Hazardous Chemical Inventory Report for 2013, Dallas County Schools: Kleberg, Raney, Lawnview and North Dallas Service Centers, dated April 21, 2014, by Texas Department of State Health Services
- 13) Special Waste Profile, Kleberg Service Center, dated June 24, 2014, prepared by Republic Services for Dallas County Schools
- 14) Analytical Report of Diesel Spills, Kleberg Service Center, dated February 2, 2014, prepared by TTI Environmental Laboratories



**EXHIBIT E**

**LIST OF OTHER LEASES**

1. Lease between Landlord and Tenant dated as of the date hereof (Kleberg Service Center, Texas).
2. Lease between Landlord and Tenant dated as of the date hereof (Raney Service Center, Texas).
3. Lease between Landlord and Tenant dated as of the date hereof (Lawnview Service Center, Texas).
4. Lease between Landlord and Tenant dated as of the date hereof (North Dallas Service Center, Texas).



**EXHIBIT D**

**Intentionally Omitted**



EXHIBIT E

Form of Deed

---

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**SPECIAL WARRANTY DEED**

STATE OF TEXAS           §  
                                      §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DALLAS     §

THAT \_\_\_\_\_ ("Grantor"), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, BARGAINED, SOLD and CONVEYED and by these presents does GRANT, BARGAIN, SELL and CONVEY unto \_\_\_\_\_ ("Grantee"), whose address for the purposes hereof is \_\_\_\_\_, those certain tracts or parcels of land located in Dallas County, Texas, and being more particularly described in Exhibit A attached hereto and incorporated herein by this reference for all purposes ("Property").

This Special Warranty Deed is made and accepted subject to the matters described in Exhibit B attached hereto and incorporated herein by this reference for all purposes, to the extent the same are valid and subsisting and affect the Property (the "Permitted Exceptions").

For the same consideration, Grantor hereby conveys unto Grantee, all interest, if any, of Grantor in any and all easements, rights and appurtenances pertaining to the Property and in any strips and gores between the Property and abutting properties and any land lying in or under the bed of any street, alley, road or right-of-way, open or proposed, abutting or adjacent to the Property.

GRANTEE, BY ITS ACCEPTANCE OF THIS SPECIAL WARRANTY DEED, HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES AS FOLLOWS:

GRANTEE HAS INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY GRANTEE IN ORDER TO ENABLE GRANTEE TO EVALUATE THE PURCHASE OF THE PROPERTY. GRANTEE HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT GRANTEE IS RELYING SOLELY UPON THE INSPECTION, EXAMINATION, AND EVALUATION OF THE PROPERTY BY GRANTEE AND THAT GRANTEE IS PURCHASING THE PROPERTY ON AN "AS IS", "WHERE IS", AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS, IMPLIED, OR STATUTORY, OF ANY KIND OR NATURE;



PROVIDED, HOWEVER, NOTHING CONTAINED IN THIS PARAGRAPH SHALL AFFECT THE LIMITED WARRANTY OF TITLE SET FORTH IN THIS SPECIAL WARRANTY DEED. THE EXPRESS INTENTION OF GRANTEE AND GRANTOR IS THAT GRANTEE IS PURCHASING THE PROPERTY FROM GRANTOR WITHOUT ANY REPRESENTATIONS AND WARRANTIES (OTHER THAN THE LIMITED WARRANTY OF TITLE SET FORTH IN THIS SPECIAL WARRANTY DEED), WARRANTIES OR COVENANTS, EXPRESS, IMPLIED, OR STATUTORY, FROM OR OF GRANTOR. GRANTEE HEREBY WAIVES AND RELINQUISHES ALL RIGHTS AND PRIVILEGES ARISING OUT OF, OR WITH RESPECT OR IN RELATION TO, ANY REPRESENTATIONS AND WARRANTIES (OTHER THAN THE LIMITED WARRANTY OF TITLE SET FORTH IN THIS DEED), WARRANTIES OR COVENANTS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WHICH MAY HAVE BEEN MADE OR GIVEN, OR WHICH MAY BE DEEMED TO HAVE BEEN MADE OR GIVEN, BY GRANTOR. IN ADDITION, GRANTEE HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT GRANTOR IS NOT REPRESENTING OR WARRANTING THAT ANYTHING CAN BE ACCOMPLISHED THROUGH GRANTEE'S OR GRANTOR'S EFFORTS WITH REGARD TO THE PLANNING, PLATTING OR ZONING PROCESS OF THE CITY, COUNTY OR ANY OTHER GOVERNMENTAL, MUNICIPAL OR QUASI-GOVERNMENTAL AUTHORITIES, BOARDS OR ENTITIES WITH JURISDICTION OVER THE PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GRANTEE HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED FROM THE TRANSACTION CONTEMPLATED HEREBY, AS ARE ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, AND THAT GRANTOR HAS NOT WARRANTED, AND DOES NOT HEREBY WARRANT, THAT THE PROPERTY NOW OR IN THE FUTURE WILL MEET OR COMPLY WITH THE REQUIREMENTS OF ANY HEALTH, ENVIRONMENTAL OR SAFETY CODE OR REGULATION OF THE STATE, THE CITY, THE COUNTY, OR ANY OTHER GOVERNMENTAL, MUNICIPAL, OR QUASI-GOVERNMENTAL AUTHORITY OR JURISDICTION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GRANTEE HEREBY ASSUMES ALL RISK (AND AGREES THAT GRANTOR SHALL NOT BE LIABLE TO GRANTEE (OR ITS SUCCESSORS AND ASSIGNS)) FOR ANY SPECIAL DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES RESULTING OR ARISING FROM OR RELATING TO OCCURRENCES ACCRUING ON OR AFTER THE DATE OF THIS DEED IN CONNECTION WITH THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR, OR OPERATION OF THE PROPERTY, EXCEPT AS EXPRESSLY SET FORTH HEREIN.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, its successors and assigns forever; and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND all and singular the title to the Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the Property or any part thereof, by, through or under Grantor, but not otherwise; subject, however, to the Permitted Exceptions.

Ad valorem taxes applicable to the Property have been paid up to, and including the year 2015. Ad valorem taxes applicable to the Property for the year 2015 have been prorated between the Grantor and the Grantee as of the date of this Special Warranty Deed and payment thereof is assumed by Grantee.



EXECUTED effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS       §

§

COUNTY OF DALLAS   §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, on behalf of said  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires:  
\_\_\_\_\_



EXHIBIT A  
LEGAL DESCRIPTION



EXHIBIT F

Form Bill of Sale

**BILL OF SALE**

This instrument (the "**Bill of Sale**") is executed and delivered as of the \_\_\_\_ day of \_\_\_\_\_, 2015 pursuant to that certain Real Estate Purchase Agreement ("**Agreement**") dated \_\_\_\_\_, 2015, by and between \_\_\_\_\_ ("**Seller**"), and \_\_\_\_\_ ("**Purchaser**").

1. **Sale of Personalty**. For good and valuable consideration, Seller hereby sells, transfers, sets over and conveys to Purchaser the following (the "**Personal Property**"):

(a) **Tangible Personalty**. All of Seller's right, title and interest in and to all building systems, fixtures, machinery that constitutes fixtures (but excluding trade fixtures and all underground and above-ground storage tanks located at the Real Property) and other tangible personal property, if any, owned by Seller presently located on the Real Property and the Improvements (as defined in the Agreement) (the "**Tangible Property**").

(b) **Intangible Personalty**. All of Seller's right, title and interest, if any, in and to all of the following items, to the extent assignable (the "**Intangible Property**"): (i) warranties, licenses, permits, and occupancy certificates or their local equivalent issued in the name of Seller relating to, or used by Seller, in connection with the installation, operation and maintenance of the Real Property and relate exclusively to the ownership of the Real Property or the Tangible Property, and (iii) guaranties and warranties received by Seller from any contractor, manufacturer or other person in connection with the construction or operation of the Property.

EXCEPT FOR SELLER'S REPRESENTATIONS AND WARRANTIES CONTAINED IN THE AGREEMENT, PURCHASER IS PURCHASING THE PERSONAL PROPERTY ON AN "AS IS", "WHERE IS", AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS, IMPLIED, OR STATUTORY, OF ANY KIND OR NATURE.

[Signature page follows]



**IN WITNESS WHEREOF**, the undersigned have caused this Bill of Sale to be executed as of the date written above.

**SELLER:**

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

**PURCHASER:**

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name: [\_\_\_\_\_] \_\_\_\_\_  
Title: [\_\_\_\_\_]



**Schedule 1 to Bill of Sale**  
**Personal Property**



EXHIBIT G

Form of SNDA

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made as of [\_\_\_\_], among [\_\_\_\_] ("Lender"), [\_\_\_\_], a Delaware statutory trust ("Lessor"), and [\_\_\_\_], a [\_\_\_\_] ("Lessee").

**Recitals:**

A. Lessor and Lessee have entered into that certain Lease Agreement dated as of the date hereof (the "Lease"), concerning certain premises (the "Premises") on that certain real property in Texas, which is legally described on the attached Exhibit A (the "Land").

B. As security for a loan from Lender to Lessor (the "Loan"), Lessor is mortgaging the Land to Lender under a [Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents] dated as of the date hereof, recorded in the office of the County Recorder of [\_\_\_\_] County, Texas, as document number [\_\_\_\_] (as now or hereafter increased, amended, modified, supplemented, consolidated, replaced, substituted, extended and/or renewed, the "Mortgage").

C. Lender has required the execution of this Agreement as a condition to making any disbursements of Loan proceeds to finance the Premises.

D. Lender, Lessor and Lessee have agreed to the following with respect to their mutual rights and obligations pursuant to and under the Lease and the Mortgage.

NOW, THEREFORE, the parties hereby agree as follows:

1. Subordination. Subject to the terms of this Agreement, including without limitation Section 2 of this Agreement, all of Lessee's right, title and interest in and to the Premises, the Lease and all rights of Lessee under the Lease are and shall remain unconditionally subject and subordinate to the Mortgage in all respects.

2. Non-Disturbance. Provided that the Lease is then in full force and effect and Lessee is not then in default under the Lease beyond any applicable grace or cure periods provided in the Lease, Lessee's possession and operation of the Premises and use of the Premises shall not be disturbed for any reason, except as provided in the Lease, and the Lease shall not be extinguished or terminated by an action or proceeding to foreclose or otherwise enforce the Mortgage or by a conveyance in lieu of foreclosure, but rather, the Lease shall continue in full force and effect and the owner of the Premises following a foreclosure sale or conveyance in lieu of foreclosure ("New Owner") shall recognize and accept Lessee as the tenant under the Lease.

3. Attornment. Upon Lessee's receipt of notice that Lender or any other party has become the New Owner, Lessee will attorn to and recognize such New Owner as its substitute



lessor under the Lease. Lessee's attornment to and recognition of New Owner pursuant to this Agreement will be effective and self-operative immediately upon Lessee's receipt of such notice without the execution or delivery of any further instrument. Upon New Owner's or Lessee's request, Lessee and New Owner will execute and deliver an instrument acknowledging the validity of the Lease and New Owner's obligations as the Landlord thereunder and Lessee's attornment to and recognition of New Owner.

4. New Owner. New Owner will be bound, as the lessor, to Lessee under all covenants and conditions of the Lease accruing from and after the date New Owner acquires title to and possession of the Land (the "Acquisition Date") for the remainder of the term of the Lease and any renewal or extension thereof pursuant to the terms of the Lease, which (provided the Lease is then in full force and effect and Lessee is not then in default under the Lease beyond any applicable grace or cure periods provided in the Lease) New Owner shall be deemed to have agreed to assume and perform by acquiring title to and possession of the Land, and Lessee shall, from and after the date New Owner succeeds to the interest of the "landlord" under the Lease, have the same remedies against New Owner for the breach of any covenant contained in the Lease that Lessee might have had under the Lease against Lessor if New Owner had not succeeded to the interest of the "landlord", except that New Owner:

a. will not be bound by any amendment, supplement or other modification of the Lease which was not consented to in writing by Lender;

b. will not be liable for any act, omission, or breach by any lessor under the Lease which occurs prior to the Acquisition Date, nor subject to any right of set-off or defense which Lessee may have against any prior lessor nor subject to any right of set-off from rent which the Lease affords to Lessee, provided that New Owner will be obligated to cure any continuing default under the Lease to the extent such default remains uncured after the Acquisition Date, provided that the term "continuing default" shall not include any failure by a prior Lessor to pay any money owed to Lessee with respect to any period prior to the Acquisition Date;

c. will not be personally liable in any respect under the Lease.

5. Miscellaneous.

a. Notices. All notices under this Agreement must be in writing and must be sent by personal delivery, by United States registered or certified mail (postage prepaid), by facsimile (with a copy sent the same day by one of the other prescribed methods of delivery) or by an independent overnight courier service, addressed to the addresses specified below or at such other place as a party may designate to the other parties by written notice given in accordance with this section. Notices given by mail are deemed effective three Business Days after the party sending the notice deposits the notice with the United States Post Office. Notices given by facsimile are deemed effective on the day transmitted. Notices delivered by courier are deemed effective on the next Business Day after the day the party delivering the notice timely deposits the notice with the courier for overnight (next day) delivery.



If to Lender: [ ]  
with copies to: [ ]  
If to Lessor: [ ]  
with copies to: [ ]  
If to Lessee: [ ]

b. **Notice of Default.** Lessee will provide to Lender each notice of default by Lessor, as and when it provides such notice to Lessor, and Lender will have the right, but not the obligation, to cure any such default within the time provided in the Lease to Lessor to cure such default. Lessee agrees not to exercise any of its remedies in connection with any default notice to Lessor until the expiration of the cure period provided to Lender by this Agreement, and Lessee agrees to accept any cure from Lender as if made by Lessor. Notwithstanding the foregoing, unless Lender otherwise agrees in writing to assume any obligations of Lessor under the Lease or Lender becomes the New Owner, Lessor shall remain solely liable to perform Lessor's obligations under the Lease, both before and after Lender's exercise of any cure right under this Agreement.

c. **No Advance Rent.** Except as may be required by the Lease, Lessee will not pay the rent or any other sums due under the Lease more than one month in advance, except with the written consent of Lender.

d. **Insurance and Condemnation Proceeds.** All condemnation awards and insurance proceeds paid or payable with respect to the Premises and received by Lessor shall be applied and paid in the manner set forth in the Lease.

e. **Assignment of Rents.** Lessor and Lessee acknowledge that Lender is entitled, pursuant to an Assignment of Leases and Rents executed by Lessor in favor of Lender, to receive and collect all rent payable under the Lease directly from Lessee. Lessee agrees to pay all of said rent directly to Lender. Lessor acknowledges that Lessee's payment to Lender of rent due under the Lease in accordance with Lender's directions, without inquiry on the part of Lessee, shall constitute payment as required by the Lease for all purposes notwithstanding any countervailing instruction from Lessor at the time of Lender's request.

f. **No Modification or Termination.** Lessor will not cancel or terminate the Lease or amend, modify, supplement, or in any manner alter any of its terms without the prior written consent of Lender.

g. **No Other Subordination.** Lessor will not, during the term of the Mortgage, permit the Lease to become subordinate to the lien of any mortgage or security instrument in favor of any person or entity other than Lender.



h. **Successors and Assigns.** This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns, including any New Owner.

i. **Governing Law.** This Agreement and the Lease will be governed by and construed and interpreted in accordance with the internal laws of the State of Texas.

j. **Counterparts.** This Agreement may be signed in counterparts and each counterpart shall be effective as an original when counterparts have been signed by all parties.

k. **Lessee's Fixtures.** Neither the Mortgage nor any other security interest executed in connection with the Mortgage shall cover or be construed as subjecting in any manner to the lien of the Mortgage, any Lessee's trade fixtures, Lessee's equipment, other trade fixtures, signs or other personal property at any time furnished or installed by or for Lessee or its subtenants or licensees on the Premises regardless of the manner or mode of attachment.

[Signature page follows.]



IN WITNESS WHEREOF, this Subordination, Non-Disturbance and Attornment Agreement has been duly executed as of the day and year first above written.

[LANDLORD]

By: \_\_\_\_\_  
Name:  
Title:

[ADD ACKNOWLEDGMENT]

[LENDER]

By: \_\_\_\_\_  
Name:  
Title:

[ADD ACKNOWLEDGMENT]

[SELLER]

By: \_\_\_\_\_  
Name:  
Title:

[ADD ACKNOWLEDGMENT]



**EXHIBIT A**

**Legal Description**



# Exhibit F



**ASSET PURCHASE AGREEMENT**

**by and between**

**FORCE MULTIPLIER SOLUTIONS, INC.,**

**as Seller,**

**and**

**DALLAS COUNTY SCHOOLS,**

**as Buyer**

**as of February 28, 2014**



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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "*Agreement*") dated as of February 28, 2014 (the "*Execution Date*"), is entered into by and between Force Multiplier Solutions, Inc., a Louisiana corporation ("*Seller*"), and County Schools Trustees of Dallas County, Texas d/b/a Dallas County Schools, a county school district in the State of Texas ("*Buyer*"). Seller and Buyer are sometimes each referred to herein individually as a "*Party*" and collectively as the "*Parties*." Capitalized terms used in this Agreement or in Seller's Disclosure Schedules and not defined herein shall have the meanings assigned to them on *Appendix I*, or in the applicable Section of this Agreement to which reference is made on *Appendix I*.

WHEREAS, Seller is engaged in the assembly, development and distribution of technology and equipment used to provide school bus student safety and transit programs in the state of Texas, including automated stop arm violation management systems for school buses in the State of Texas (the "*Business*"); and

WHEREAS, the Seller desires to sell, assign, transfer, convey and deliver to Buyer, and Buyer desires to purchase, acquire and accept from Seller, all of the Assets (defined below), and assume the Assumed Liabilities, upon the terms and subject to the conditions of this Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations and warranties, covenants and agreements contained herein, Seller and Buyer agree as follows:

### ARTICLE 1 SALE AND PURCHASE OF ASSETS; CLOSING

1.1 **Sale and Assumption.** Subject to the terms and conditions set forth in this Agreement, at the Closing Date (defined below), Seller shall sell, assign, transfer and deliver to Buyer the Assets free and clear of all Liens and Buyer shall (a) purchase, take assignment of and receive the Assets from Seller and (b) assume the Assumed Liabilities.

1.2 **Assets.** The Assets shall consist of all of Seller's right, title and interest in and to the following (collectively, the "*Assets*"), all referring solely to the state of Texas:

(a) ***Tangible Personal Property.*** All tangible personal property, equipment, machinery, inventory, vehicles, furniture, fixtures, furnishings, office equipment, computers, telephones and office supplies used in the Business in the State of Texas, including but not limited to the personal property set forth on *Schedule 1.2(a)* ("*Tangible Personal Property*").

(b) ***Contracts.*** All rights and powers of Seller under any Contract listed on *Schedule 1.2(b)* (collectively, the "*Assumed Contracts*").

(c) ***Business Records.*** All books and records relating to the Business (except for those relating solely to the Excluded Assets and the Excluded Liabilities), including, but not limited to, machinery and equipment maintenance files, Customer lists, client account information, price/fee lists, supplier lists, lists of active leads and prospects, quality control records and procedures, client complaint and inquiry files, records (including, but not limited to,



copies of all correspondence with any Governmental Authority), sales material and records, strategic plans, and marketing and promotional surveys (collectively, the "***Business Records***").

(d) ***Pending Contracts and Pilot Programs.*** All rights and interest in and to pending Contracts, Pilot Programs, and such other leads and prospective business relationships related to the Business, including but not limited those set forth on ***Schedule 1.2(d)***.

(e) ***Permits.*** All of the Business Permits.

(f) ***Warranties.*** To the extent assignable, all rights in all warranties made by any manufacturer or vendor in connection with the Tangible Personal Property.

(g) ***Goodwill.*** All of Seller's goodwill relating to the Business.

**1.3 Assumed Liabilities.** Buyer shall assume only the following obligations and liabilities of Seller (the "***Assumed Liabilities***"):

(a) ***Assumed Contracts.*** Any obligations and liabilities of Seller under the Assumed Contracts arising after and relating to periods after the Effective Time (other than any obligation or liability arising from the breach by Seller of any such Contracts prior to the Effective Time, which liabilities and obligations shall be retained by Seller); and

(b) ***Other Liabilities.*** Any obligations and liabilities of Seller which are listed on ***Schedule 1.3(b)*** (other than any obligation or liability arising from Seller's actions or omissions prior to the Effective Time, which liabilities and obligations shall be retained by Seller); and

Notwithstanding anything to the contrary, Buyer shall not assume or otherwise be obligated to pay, perform or discharge any liabilities or obligations of Seller (whether absolute, accrued, contingent or otherwise and whether arising before or after the Closing) other than the Assumed Liabilities specifically set forth in this **Section 1.3** (all of such liabilities and obligations not so assumed by Buyer being referred to herein as the "***Excluded Liabilities***"). The Excluded Liabilities shall remain the exclusive liabilities and obligations of Seller.

**1.4 Excluded Assets.** The Assets shall not include any (a) asset of Seller not listed or described in **Section 1.2** or which is not used in connection with the Business, (b) contract rights arising under any Contract which is not an Assumed Contract, and (c) cash or cash equivalents of the Business (collectively, the "***Excluded Assets***").

**1.5 Purchase Price.** The aggregate purchase price for the Assets and the License shall be equal to \$25,000,000.00 (the "***Purchase Price***"), which shall be paid as follows:

(a) Prior to the Execution Date, Buyer paid to Seller \$2,000,000.00 toward the Purchase Price (the "***Deposit***");

(b) The \$23,000,000.00 balance of the Purchase Price remaining after the previous payment of the Deposit shall be reduced or increased by the True-Up Amount, in accordance with **Section 1.6**; and



(c) The balance of the Purchase Price remaining after the deduction or addition of True-Up Amount shall be evidenced by and paid according to an unsecured promissory note in favor of Seller, substantially in the form attached hereto as **Exhibit A** (the "***Promissory Note***").

**1.6 True-Up Adjustment.** At the Closing, Buyer shall provide to Seller a statement (the "***True-Up Adjustment Statement***") setting forth Buyer's calculation of the estimated balance owed to either Party resulting from the outstanding financial obligations by the other Party, pursuant to such previous written agreements and understandings between the Parties, as of the Closing (the "***True-Up Amount***"). If the calculation of the True-Up Amount results in Buyer owing money to Seller, the balance of the Purchase Price remaining after the payment of the Deposit shall be increased by the True-Up Amount. If the calculation of the True-Up Amount results in Seller owing money to Buyer, the balance of the Purchase Price remaining after the payment of the Deposit shall be decreased by the True-Up Amount.

**1.7 Closing/Closing Deliverables.** The transactions contemplated by this Agreement shall be completed (the "***Closing***") at the offices of Strasburger & Price, LLC, 901 Main Street, Suite 4400, Dallas, Texas 75202 on the date hereof (the "***Closing Date***"), and shall be effective as of 12:01 a.m. Central Time on the Closing Date (the "***Effective Time***"). At Closing, the following events shall occur (each event being conditioned on the occurrence of each other event and each event deemed to occur simultaneously with each other event):

(a) ***Bill of Sale, Assignment and Assumption Agreement.*** Buyer and Seller shall execute and deliver to each other a Bill of Sale, Assignment and Assumption Agreement, substantially in the form of the attached hereto as **Exhibit B** (the "***Bill of Sale***"), pursuant to which (i) Seller will evidence the transfer and conveyance of the Assets to Buyer, and (ii) Seller shall assign all Assumed Contracts to Buyer.

(b) ***Required Consents.*** Seller shall deliver to Buyer evidence or other assurance satisfactory to Buyer, that Seller has at Seller's expense and without cost or other adverse consequence to Buyer, sent required notices, made necessary filings and obtained such Required Consents listed on ***Schedule 2.5(b)***.

(c) ***Promissory Note.*** Buyer shall execute and deliver to Seller the Promissory Note.

(d) ***Lease Termination.*** Buyer and Seller shall execute and deliver to each other a Lease Termination Agreement, substantially in the form attached hereto as **Exhibit C** (the "***Termination Agreement***"), pursuant to which that certain Lease Agreement dated as of December 1, 2011, covering the facilities located at 1710 N. Beckley, Dallas, Texas 75208, shall be terminated effective as of the Closing Date.

(e) ***Lease Amendment.*** Buyer and Seller shall execute and deliver to each other a First Amendment to Sublease Agreement, substantially in the form attached hereto as **Exhibit D** (the "***Lease Amendment***"), pursuant to which that certain Sublease Agreement effective as of April 15, 2013, covering the office space located at 1505 Federal Street, Dallas, Texas 75201, will be amended to include additional space in the building.



(f) **License Agreement.** Buyer and Seller shall execute and deliver to each other a License Agreement, substantially in the form attached hereto as **Exhibit E** (the “**License Agreement**”), pursuant to which Seller will grant to Buyer an exclusive license in the State of Texas to use the Business Intellectual Property to operate the Business (the “**License**”).

(g) **Services Agreement.** Buyer and Seller shall execute and deliver to each other a Services Agreement substantially in the form attached hereto as **Exhibit F** (the “**Services Agreement**”), pursuant to which Seller will provide certain transition and technology management services to Buyer.

(h) **[INTENTIONALLY OMITTED]**

(i) **Lien Releases.** Seller shall deliver to Buyer complete releases of all Liens on the Assets, and evidence of the filing of such releases with appropriate Governmental Authorities to Buyer in forms acceptable to Buyer.

(j) **Secretary’s Certificate of Buyer.** Buyer shall deliver to Seller a certificate of the Secretary of Buyer certifying (i) that attached thereto are true and complete copies of all resolutions adopted by the Board of Trustees authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby; and (ii) the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder

(k) **Secretary’s Certificate of Seller.** Seller shall deliver to Buyer a certificate of the Secretary of Seller certifying (i) that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby; and (ii) the name and signature of the officer of Seller authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(l) **[INTENTIONALLY OMITTED]**

(m) **Existence.** Seller shall deliver to Buyer a certificate that Seller is in good corporate standing dated within five days of the Closing Date, to Buyer.

(n) **[INTENTIONALLY OMITTED]**

(o) **True-Up Adjustment Statement.** Buyer shall deliver to Seller the True-Up Adjustment Statement.



(p) **Other Documents.** Seller shall deliver such other good and sufficient instruments of transfer as Buyer reasonably deems necessary and appropriate to vest in Buyer all rights, title and interest in, to and under the Assets.

**1.8 Termination of Other Contracts.** Effective upon the Closing, (a) Buyer and Seller agree that the agreements set forth on *Schedule 1.8(a)* shall be terminated or shall automatically terminate and be of no further force and effect (and no future payments or obligations shall be owed thereunder) without further action on the part of Buyer or Seller, and (b) Buyer and Seller agree that the agreement listed on *Schedule 1.8(b)* will no longer apply to the State of Texas without further action on the part of Buyer or Seller.

## **ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF SELLER**

The Seller hereby represents and warrants to Buyer as follows:

**2.1 Organization and Good Standing.** Seller is a corporation duly organized and validly existing under the Laws of the State of Louisiana and has all requisite power and authority to carry on its businesses (including the Business) as now being conducted. Seller is qualified to do business in each jurisdiction in which the nature of its business makes such qualification necessary.

**2.2 Authority; Binding Effect.** Seller has full corporate power and authority to execute and deliver each of the Transaction Documents to which it is a party and to perform its obligations thereunder. All director, shareholder and other action on the part of Seller necessary for the authorization, execution and delivery of each of the Transaction Documents to which it is a party and the performance of all obligations of Seller thereunder has been taken or will be taken prior to the Closing. Each of the Transaction Documents to which Seller is a party constitutes, or when executed and delivered will constitute, a valid and legally binding obligation of Seller, enforceable against it in accordance with its terms.

**2.3 No Violation.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not (a) violate any provision of Law or Governmental Order applicable to the Seller; (b) conflict with or result in the breach of any provision of the certificate of formation or company agreement of the Seller; or (c) violate, conflict with or result in the breach of any provision of, or a default under, any Contract or other agreement to which the Seller or any of its subsidiaries is a party or by which Seller, its subsidiaries or any of their properties or the Business may be bound or subject (other than with respect to the assignment of the Assumed Contracts to Buyer, any transfer restrictions contained therein or consents to transfer required thereby).

**2.4 Employees.**

(a) *Schedule 2.4* sets forth the name, start date, title or position, and the annual or, as the case may be, hourly rate of compensation (or salary), accrued vacation time and accrued sick time as well as any extended sick leave time, severance arrangements, and all other benefits written or unwritten, for each individual engaged as an employee in the Business (the "*Employees*") certain of which employees will be offered employment with Buyer. Neither



Seller nor any of its subsidiaries has any Contract, written or unwritten, for the future employment of any Employee. No Employee or former employee of Seller or its subsidiaries or any relative, associate or agent of such employee has any interest in any property of Seller, any of its subsidiaries, or the Business, or is a party, directly or indirectly, to any Contract or other agreement or transaction with Seller, any of its subsidiaries, or with Buyer after the Effective Time. To the Knowledge of Seller, no Employee intends to terminate his or her employment with Seller, any of its subsidiaries, Buyer or the Business. No Employee has been given a pay increase in the 60 days preceding the Execution Date or the Closing Date. Seller represents and warrants that neither Seller nor any of its subsidiaries leases any of its employees.

(b) To the Knowledge of Seller, Seller and its subsidiaries have complied with all Laws relating to the employment of personnel and labor, and the provisions thereof relating to wages, hours, and equal opportunity, including, but not limited to, ERISA, the Fair Labor Standards Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 as amended. Seller has complied with all Laws with respect to the payment of social security, medicare, and other Taxes, including withholding requirements.

## **2.5 Contracts.**

(a) *Schedule 2.5(a)* sets forth a true and accurate list of each Contract related to the Business (the "***Business Contracts***"). Seller has provided Buyer with copies of each written Business Contract and each amendment, modification or supplement thereto. Each of the Business Contracts is in full force and effect and no event has occurred or condition exists that constitutes or, with the giving of notice or the passage of time or both, would constitute a default by any party to such Business Contract.

(b) The assignment to Buyer of the Assumed Contracts and the consummation of the transactions contemplated by this Agreement (i) do not require the consent of, notice to or filing with any other party to any of the Assumed Contracts or any other Person, and (ii) will not cause or result in the acceleration, termination or violation of, default under, grant of a Lien under, or any payments to become due under any of the Assumed Contracts (the "***Required Consents***").

(c) There are no other Contracts related to the Business or the Assets in effect as of the Effective Time except the Business Contracts. The Assumed Contracts are the only Contracts that are necessary for the Business and the use of the Assets.

**2.6 Compliance With Law; Permits.** The Business has been conducted, and the Assets have been used, in compliance with all applicable federal, state and local Laws. There are no Permits necessary to own, lease and operate the Business and the Assets and to carry on the Business as it is presently being conducted (collectively, the "***Business Permits***").

## **2.7 Customers; Pilot Participants.**

(a) *Schedule 2.7(a)* is a correct and current list of the names of all of the customers of the Business (the "***Customers***"). Seller has used, and has caused its subsidiaries to



use, commercially reasonable efforts to maintain good working relationships with all of its respective Customers.

(b) *Schedule 2.7(b)* is a correct and current list of the names of all of the school districts and other Persons (the "*Pilot Participants*") engaged in the pilot programs related to the Business (the "*Pilot Programs*"). Seller has used, and has caused its subsidiaries to use, commercially reasonable efforts to maintain good working relationships with all of the Pilot Participants.

## **2.8 Title to Assets; Real Property.**

(a) Seller is the sole and absolute owner of and has good and indefeasible title to or, in the case of leasehold interests, right to use all of the Assets free and clear of all Liens. As of the Closing Date, Buyer will have good and valid title to or, in the case of leasehold interests, rights to use all of the Assets, free and clear of all Liens; and Seller represents and warrants that as of the Closing Date it shall have no right, title, or interest whatsoever in or to any of the Assets.

(b) *Schedule 2.8(b)* lists the street address of each parcel of Real Property used in the Business. Seller does not own any Real Property. Except as disclosed on *Schedule 2.8(b)*, Seller is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property.

**2.9 Condition of Assets.** The Assets are in good operating condition, subject only to ordinary wear and tear. The Assets, together with the Intellectual Property to be licensed to Buyer pursuant to the License Agreement, constitute all assets (except for cash) necessary for Buyer to operate the Business following the Closing as currently operated by Seller.

**2.10 No Material Adverse Change.** Since July 1, 2013, (i) Seller has operated the Business only in the ordinary course of business and consistent with past practice; (ii) there has been no adverse change in the Business or in the Assets which has had a Material Adverse Effect on the business, operations or condition (financial or otherwise) of the Business or the Assets, or any material damage, destruction or loss to the Assets; and (iii) Seller has not entered into any transaction which is not at arm's length with any Person.

**2.11 Inventory, Equipment and Supplies.** Seller's inventory, equipment and supplies used in the Business as of the Closing Date shall (i) be of the quality and quantity maintained in the ordinary course of business of the Business and (ii) be usable in the ordinary course of business.

## **2.12 [INTENTIONALLY OMITTED]**

**2.13 Litigation and Court Orders.** There are no (i) outstanding Governmental Orders against Seller or its subsidiaries which would affect any of the Assets or the Business, or (ii) Actions (whether or not the defense or liabilities are covered by insurance) threatened or actually filed and served by, on behalf of, or against Seller or any of its subsidiaries affecting any of the Assets or the Business, in any court or before any Governmental Authority.



**2.14 Environmental Matters.**

(a) Neither Seller nor any of the Assets is subject to any pending or, to Seller's Knowledge, threatened Environmental Claim relating to the Business or the Assets and no state of facts exists which would form the basis for an Environmental Claim from any Governmental Authority. Seller is currently and has been at all times in compliance with all Environmental Laws that are applicable to the Assets and the Real Property. Seller has not received from any Governmental Authority or any other Person any: (i) notice or claim relating to Environmental Laws; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Effective Time.

(b) There has been no release of hazardous materials by Seller in contravention of Environmental Law with respect to the any of the Assets or the Real Property.

**2.15 [INTENTIONALLY OMITTED]**

**2.16 [INTENTIONALLY OMITTED]**

**2.17 Broker.** No amount is due to any broker, finder or financial advisor for the transactions contemplated by this Agreement.

**2.18 Intellectual Property.**

(a) The Intellectual Property used by and material to Seller in the conduct of the Business (i) is comprised only of Business Owned Intellectual Property and Business Licensed Intellectual Property, (ii) constitutes all of the Intellectual Property necessary and sufficient for Seller to currently conduct the Business, and (iii) contains only those items and rights that are owned by Seller or its subsidiaries or rightfully used by Seller or its subsidiaries pursuant to a valid and enforceable license.

(b) *Schedule 2.18(b)(i)* contains a true and complete list of the Business Owned Intellectual Property that Seller or any of its subsidiaries has either registered with a Governmental Authority or which Seller or any of its subsidiaries currently has filed for registration with a Governmental Authority, and any other Business Owned Intellectual Property material to and used in the conduct of the Business including but not limited to domain names or URLs, categories of trade secrets, unregistered copyrights, and website content. There are no pending patent, copyright or trademark applications of Seller or any of its subsidiaries. *Schedule 2.18(b)(ii)* contains a true and complete list of the Business Licensed Intellectual Property that is material to the Business as currently conducted. All of the fees and filings due as of the Closing Date with respect to all Business Owned Intellectual Property have been duly made. To the Knowledge of Seller, no party is in breach of any Business Licensed Intellectual Property. Seller and its subsidiaries owe no royalties or other payments to third parties in respect of the Business Licensed Intellectual Property relating to use of such Intellectual Property on or before the Closing Date.

(c) Upon the Closing, (i) Buyer will be the sole licensee of the Business Owned Intellectual Property applicable to this transaction, free and clear of all Liens, (ii) no third



party will have any ownership interest in or to any Business Owned Intellectual Property applicable to this transaction or, except as set forth in *Schedule 2.18(c)*, any right to use, license or sublicense any of the Business Owned Intellectual Property, and (iii) Buyer will have the sole right to use the Business Intellectual Property, sufficient to conduct the Business in Texas as currently conducted.

(d) The conduct of the Business by Seller or any of its subsidiaries has not infringed or misappropriated, and does not infringe or misappropriate, any Intellectual Property of any other Person. No Action before any Governmental Authority in any jurisdiction (i) challenging the validity, enforceability, continuity or ownership by Seller of any Business Owned Intellectual Property, nor to the Knowledge of the Seller, any Business Licensed Intellectual Property or (ii) to the effect that the use, distribution, licensing, sublicensing, sale or any other exercise of rights in the Business Intellectual Property by Seller or any of its members, managers, employees or independent contractors infringes or will infringe any Intellectual Property of any Person, is or has been asserted or threatened by any Person. As to any Business Owned Intellectual Property, no basis exists for such an Action, and no facts exist which would reasonably be expected to give rise to such an Action. As to any Business Licensed Intellectual Property, to the Knowledge of the Seller, no basis exists for such an Action, and no facts exist which would reasonably be expected to give rise to such an Action. To the Knowledge of the Seller, there is no unauthorized use, infringement or misappropriation of any Business Intellectual Property by any third party, member, current or former employee, Representative or contract worker of Seller.

(e) *Schedule 2.18(e)* is a copy of the current policy or policies of Seller and any of its subsidiaries relating to the physical and electronic protection of its information assets from unauthorized access, interception, disclosure, use or modification. Except as expressly set forth in *Schedule 2.18(e)*, all personal, user, business, Customer, or Pilot Participant information used by or in the possession, custody or control of Seller or any of its subsidiaries has been collected, stored, maintained and used in compliance with all applicable Laws as well as its and its Customers' and Pilot Participants' privacy policies and agreements. *Schedule 2.18(e)* contains a complete explanation of each and every event occurring at any time within the past 4 years in which a security system of Seller or any of its subsidiaries has been breached, or any information or communication in the possession, custody or control of Seller or any of its subsidiaries has been accessed, used or disclosed without the authority and permission of Seller or any of its subsidiaries, including, but not limited to, the system(s), information or communication(s) affected; how the event occurred; how it was mitigated or resolved; and what systems, policies and procedures were put in place to prevent its reoccurrence.

(f) To the extent any Intellectual Property included within Business Owned Intellectual Property has been developed or created by any Employee or third party (the "*IP Personnel*"), Seller or its subsidiaries has obtained, by written agreement with such IP Personnel, sole and exclusive ownership of all right, title, and interest in and to all such Intellectual Property. To the extent any Intellectual Property has been developed or created by any IP Personnel which has been used as a basis to derive any Business Owned Intellectual Property, Seller has obtained, by written agreement with such IP Personnel, sole and exclusive ownership of all right, title, and interest in and to all such Intellectual Property. Upon the Closing, no Person other than Buyer will possess any current or contingent rights of use of Intellectual



Property that is part of the Business Owned Intellectual Property in the state of Texas. The transactions contemplated by this Agreement will not result in any third party gaining a right to access the source code included in the Business Owned Intellectual Property in the state of Texas.

(g) None of the software included in the Business Owned Intellectual Property or, to the Knowledge of the Seller, the Business Licensed Intellectual Property contains any computer code (i) designed to harm, disable, infiltrate, or impair in any manner the operation of such software, or any other associated software, firmware, hardware, computer system or network (sometimes referred to as "viruses" or "worms" or "time bombs") or (ii) that would permit any Person to access such software to intentionally cause any harmful or malicious procedures, routines or mechanisms which would cause the software to cease functioning; to damage or corrupt data, storage media, programs, equipment or communications; or to copy, intercept, search, or otherwise access without authority any data, storage media, equipment or communications.

(h) Buyer has been provided a complete and accurate copy of the service log for support services which have been provided to the Customers or Pilot Participants over the 3 years immediately preceding the Closing Date, including, but not limited to, (i) the nature of each reported error or other request for support; (ii) the date such error report or other request for support was received; (iii) the nature and quantity of resources devoted to its resolution; (iv) the length of time required for its resolution; (v) how the resolution was achieved; and (vi) whether the error or other request for support reoccurred.

**2.19 Warranty.** Seller has delivered or made available to Buyer: (a) a specimen copy of the form of written warranties covering any of the Assets or the Business Intellectual Property which have not yet expired (identifying specific Assets or Business Intellectual Property) and (b) a summary of the warranty expense incurred with respect to the Business during the last two (2) fiscal years. To Seller's Knowledge no liability exists for any return claim, warranty claim or other obligation to provide parts or service on, or to repair or replace, any equipment or other property sold or delivered in connection with the Business in Texas at any time on or prior to the Closing Date. To Seller's Knowledge, no equipment or other property heretofore sold in connection with the Business is now the subject of any guarantee or warranty other than Seller's standard form of written warranties.

**2.20 Completeness of Disclosure.** No representation or warranty by Seller in this Agreement, the Disclosure Schedules, any other Transaction Document or any certificate or other document furnished or to be furnished to Buyer pursuant hereto, contains, or will contain at Closing, any untrue statement or omits, or will omit at Closing, to state a material fact required to be stated herein or therein or necessary to make any statement or fact herein or therein not misleading to the best of Seller's knowledge.

### **ARTICLE 3**

#### **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller as follows:



**3.1 Organization and Good Standing.** Buyer is a county school district duly organized, validly existing and in good standing under the Laws of the State of Texas.

**3.2 Organizational Authority; Binding Effect.** Buyer has full power and authority to execute and deliver each of the Transaction Documents to which it is a party and to perform its obligations thereunder. All action on the part of Buyer necessary for the authorization, execution and delivery of each of the Transaction Documents to which it is a party and the performance of all obligations of Buyer thereunder has been taken or will be taken prior to the Closing. Each of the Transaction Documents to which it is a party constitutes, or when executed and delivered will constitute, a valid and legally binding obligation of Buyer, enforceable against it in accordance with its terms.

**3.3 No Violation.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not (a) violate any Law or Governmental Order applicable to Buyer; (b) conflict with or result in the breach of any provision of Buyer's Board Policy; or (c) violate or result in the breach of any provision of, or a default under, any material Contract to which Buyer is a party or by which Buyer or any of its assets or properties may be bound or subject.

#### **ARTICLE 4 POST-CLOSING COVENANTS**

**4.1 Governmental Approvals and Consents.** To the extent not accomplished prior to Closing, Buyer and Seller shall (a) take all commercially reasonable actions to obtain all Required Consents and all consents, authorizations, orders and approvals from any Governmental Authorities that may be or become necessary for the execution, delivery and the performance of this Agreement and the other Transaction Documents, and to make all filings with, as applicable, any Governmental Authority or other Person required to be obtained or made by it for the consummation of the transactions contemplated by this Agreement or for the operation and conduct of the Business by Buyer from and after the Closing Date, and (b) cooperate with and promptly furnish information necessary to the other Party in connection with any requirements imposed upon such other Party in connection with the consummation of the transactions contemplated by this Agreement.

**4.2 Public Announcements.** Seller and Buyer shall consult with one another and seek one another's approval before issuing any press release with respect to the transactions contemplated by this Agreement and shall not issue any such press release prior to such consultation and approval; *provided, however*, that Buyer or Seller may, without such approval, make such press releases or other public announcement as it believes are required pursuant to any applicable Laws, in which case the Party required to make the release or announcement shall allow the other Party reasonable time to comment on such release or announcement in advance of such issuance; *provided, further*, that each Party may make internal announcements to their respective employees that are consistent with the Parties' prior public disclosures regarding the transactions contemplated by this Agreement.

**4.3 Employees.**



(a) ***Continued Employment.*** Buyer currently plans to offer to employ, within 30 days after the Closing Date, certain of the Employees listed on *Schedule 2.4*, upon the terms and conditions under which Buyer employs its employees. Any Employee to whom Buyer has offered employment under this Section 4.3(a) and who accepts such offer is referred to herein as a "***Transferring Employee.***" Buyer shall have the right to terminate any Transferring Employee upon written notice to such individual at any time, including immediately after Closing. Nothing herein shall be deemed to affect or limit in any way normal management prerogatives of Buyer after the Closing Date with respect to former Employees of Seller or to create or grant to such Employees any third party beneficiary rights or claims of any kind or nature.

(b) ***Benefits, Workers' Compensation.*** Seller agrees to, with respect to claims for workers' compensation and all claims under Seller's employee benefit plans and programs by Persons working for Seller accruing prior to the Effective Time, whether insured or otherwise (including, but not limited to, workers' compensation, life insurance, medical and disability programs), at its own expense, honor or cause its insurance carriers to honor such claims in accordance with the terms and conditions of such plans, programs or applicable workers' compensation statutes. All Transferring Employees shall be eligible to participate in Buyer's health and welfare benefit plans on the same basis as Buyer's newly hired employees.

(c) ***Severance Payments, Accrued Vacation.*** Seller shall be liable for any severance, separation, deferred compensation or similar benefits that are payable (i) to any Person who is or was an employee of Seller and who is not a Transferring Employee, including any such Person whose employment with the Business was terminated at or prior to the Effective Time; and (ii) to Transferring Employees, to the extent that such Transferring Employee's right to severance, separation, deferred compensation or similar benefits arises as a result of the transactions contemplated by this Agreement. Seller shall pay any and all obligations of Seller with respect to vacation and sick leave pay accrued by the Transferring Employees.

Nothing in this Agreement confers upon any former employee of Seller or Transferring Employee any rights or remedies of any nature or kind whatsoever under or by reason of this Section 4.4. Nothing in this Agreement shall limit the right of Buyer to terminate or reassign any Transferring Employee after the Closing Date or to change the terms and conditions of his or her employment in any manner.

#### **4.4 Transition Matters.**

(a) ***Discharge of Business Obligations After Closing Date.*** From and after the Closing Date, Seller shall pay and discharge and when due all of the Excluded Liabilities. After the Closing, Seller will cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer those business relationships related to the Business and existing prior to the Closing Date, including relationships with lessors, Employees, Governmental Authorities or similar Persons, licensors, Customers, Pilot Participants, suppliers and others, and Seller will satisfy the Excluded Liabilities in a manner that is not detrimental to any of such relationships. Seller will refer to Buyer all inquiries relating to the Business. Seller shall not take any action that would tend to diminish the value of the Assets after the Closing Date or that would interfere with the Business as operated by the Buyer after the Closing Date, including disparaging the Business or the name of Buyer or any of its Affiliates.



(b) **Misdirected Payments.** From and after the Closing, if Seller receives or collects any funds or assets of Buyer, including any funds or assets relating to or consisting of any of the Assets or arising from the operation of the Business by Buyer after the Closing Date, Seller shall remit such funds or assets to Buyer within three Business Days after its receipt thereof.

(c) **Services.** Pursuant to the Services Agreement, Seller shall provide to Buyer certain services in connection with the transition of Business operations and the utilization of the Intellectual Property pursuant thereto.

**4.5 Non-Competition; Non-Solicitation.** In recognition of the fact that the Business is a business involving relationships with its Customers and Pilot Participants, the success of which is due to the continuation of such relationships, and the business objectives of the Buyer in entering into this Agreement and the transactions contemplated hereby, including but not limited to the exclusive License granted to Buyer pursuant to the terms hereof, and the consideration paid therefor, Seller agrees that the following non-competition and non-solicitation provisions do not impose a greater restraint than is necessary to protect the legitimate business interests of the Buyer and contain certain limitations as to duration, geographic area and scope of activity which are reasonable under the circumstances.

(a) At any time following the Closing Date, except as permitted in this Section 4.5, neither Seller nor any of its Affiliates (collectively, the "**Restricted Parties**") shall own, manage, operate, control, participate in, perform services for, sell materials to, develop products or Intellectual Property for or otherwise carry on, a business, enterprise, venture, or other entity competitive with the Business in the State of Texas. The restrictions set forth in this Section 4.5 shall not be construed to prohibit or restrict any investment by a Restricted Party in any Person that is traded on a national securities exchange if the Restricted Parties collectively hold less than five percent (5%) of the outstanding voting securities of such Person. The duration of this covenant not to compete shall last indefinitely.

(b) For the period commencing on the Closing Date and expiring on the second (2nd) anniversary thereof, none of the Restricted Parties shall, without the prior written consent of Buyer, directly or indirectly, solicit to hire or hire, or enter into a consulting agreement with (i) any employee of or consultant to Buyer or any of its subsidiaries or (ii) any Person who was an employee of or consultant to Buyer or any of its subsidiaries within the 12 months preceding such solicitation or hiring. The foregoing restrictions are not intended to preclude general solicitations in newspapers or similar mass media not targeted towards current or former employees of Buyer or any of its subsidiaries or consultants or former consultants to Buyer or any of its subsidiaries.

(c) For the period commencing on the Closing Date and expiring on the second (2nd) anniversary thereof, none of the Restricted Parties shall, without the prior written consent of Buyer, directly or indirectly, for themselves or for a third party, solicit or otherwise engage in discussions for the purpose of establishing or influencing a customer relationship with any customer or prospective customer of Buyer or any of its subsidiaries that was a customer or prospective customer of Buyer or any of its subsidiaries as of the Closing Date or during the 12 months prior to the Closing Date (including such customer relationships and leads of Seller that



are acquired pursuant to this Agreement), which relationship would be reasonably likely to adversely impact the business relationship between such customer and Buyer.

**4.6 Wholesale Equipment.** At any time after the Closing, upon Buyer's request, Buyer shall have the right to purchase from Seller, at a wholesale discounted price determined at the time of the sale, any equipment used in the installation, maintenance, and operation of the Business.

**4.7 Website and Payment Processing Support.** Following the Closing, Seller will continue to provide Buyer, in exchange for the consideration provided by Buyer hereunder, access to the Alertbus Web Service, including the url [dallas.alertbus.com](http://dallas.alertbus.com), ("*Alertbus*") and the support and maintenance of Alertbus, and any other services that Seller is currently providing to the Business through or related to Alertbus, including the routing of payments through a third party server.

**4.8 Further Assurances.** At any time after the Closing, each Party shall execute, acknowledge and deliver any further assignments, conveyances and other assurances, documents and instruments of transfer reasonably requested by other Party, and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other Party hereto for the purpose of effecting the transactions contemplated by this Agreement.

**4.9 Access to and Retention of Records.** The Parties agree that, so long as the pre-Closing books and records for the Business remain in existence and available, any Party shall have the right to inspect and, at its expense, to make copies of the books and records at reasonable times for any proper purpose subject to the terms of this Agreement.

## **ARTICLE 5 INDEMNIFICATION**

**5.1 Survival.** The representations and warranties contained herein shall survive the Closing and shall remain in full force and effect for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof). All covenants and agreements of the Parties contained herein to be performed to any extent after the Closing Date, including indemnification obligations hereunder, will survive until fully discharged and performed.

**5.2 Indemnification By Seller.** Subject to the other terms and conditions of this Article 5, Seller shall indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the "*Buyer Indemnitees*") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, any other Transaction Document or in any certificate or instrument delivered by or on behalf of the Seller pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified



date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement or any other Transaction Document; or

(c) any Excluded Liability or Excluded Asset.

**5.3 Indemnification By Buyer.** Subject to the other terms and conditions of this Article 5, Buyer shall indemnify and defend each of Seller and its Affiliates and their respective Representatives (collectively, the "*Seller Indemnitees*") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement, any other Transaction Document or in any certificate or instrument delivered by or on behalf of the Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement or any other Transaction Document; or

(c) any Assumed Liability;

*provided, that*, in each case, any such indemnification obligation shall be paid solely from revenue generated by Buyer's operation of the Business or any similar successor business anywhere in Texas.

**5.4 Indemnification Procedures.** The Party making a claim under this Article 5 is referred to as the "*Indemnified Party*", and the Party against whom such claims are asserted under this Article 5 is referred to as the "*Indemnifying Party*."

(a) ***Third Party Claims.*** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a Party to this Agreement or an Affiliate of a Party to this Agreement or a Representative of the foregoing (a "*Third Party Claim*") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has



been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel (subject to the approval of such counsel by the Indemnified Party, which approval shall not be unreasonably withheld, conditioned or delayed), and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (i) is asserted directly by or on behalf of a Person that is a current or future supplier, customer, or Pilot Program participant of the Business, or (ii) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 5.3(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof; *provided, that* the Indemnified Party shall have the right to take over the control of the defense or settlement of such Third Party Claim at any time if the Indemnified Party irrevocably waives all rights to indemnification from and by the Indemnifying party. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 5.3(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) ***Settlement of Third Party Claims.*** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 5.3(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within 10 days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such



Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim, and the Indemnifying Party shall have no further liability to the Indemnified Party for such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 5.3(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party written notice thereof. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to any facilities, office space, and Employees and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30 day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

(d) **Cooperation.** Upon a reasonable request by the Indemnifying Party, each Indemnified Party seeking indemnification hereunder in respect of any Direct Claim, hereby agrees to consult with the Indemnifying Party and to take actions reasonably requested by the Indemnifying Party in order to attempt to reduce the amount of Losses in respect of such Direct Claim. Any costs or expenses associated with taking such actions shall be included as Losses hereunder.

**5.5 Payments.** Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article 5, the Indemnifying Party shall satisfy its obligations within 15 Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The Parties agree that should an Indemnifying Party not make full payment of any such obligations within such 15 Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to the prime rate published in the Wall Street Journal, as adjusted from time to time. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed.

**5.6 Right of Set-Off.** Upon notice to Seller specifying in reasonable detail the basis for such set-off, Buyer may set off any amount to which it may be entitled under this Article 5 against amounts otherwise payable under the Promissory Note. The exercise of such right of set-



off by Buyer in good faith, whether or not ultimately determined to be justified, will not constitute an event of default or breach under this Agreement. Neither the exercise of nor the failure to exercise such right of set-off will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it.

**5.7 Effect of Investigation.** The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives).

## **ARTICLE 6 MISCELLANEOUS**

**6.1 Notices.** All notices, requests, demands, waivers, consents, claims and other communications that are required to be or may be given under this Agreement shall be in writing and (a) delivered in Person or by courier; (b) sent by facsimile transmission; (c) mailed, certified first class mail, postage prepaid, return receipt requested; or (d) delivered by nationally recognized overnight courier service, to the appropriate Party as follows:

If to Seller:

Force Multiplier Solutions, Inc.  
1505 Federal Street, Suite 200  
Dallas, Texas 75201  
Attention: Robert C. Leonard  
Facsimile: (504) 831-8799

With a copy (which shall not constitute notice) to:

E. John Litchfield  
201 St. Charles Avenue  
4204 Place St. Charles  
New Orleans, LA 70170-4204  
Facsimile: (504) 561-8655

If to Buyer:

Dallas County Schools  
612 North Zang Boulevard  
Dallas, Texas 75208  
Attention: Rick D. Sorrells, Ed.D.  
Facsimile: (214) 944-4509

With a copy (which shall not constitute notice) to:

Strasburger & Price, L.L.P.  
901 Main Street, Suite 4400  
Dallas, Texas 75202



Attention: Richard Rafferty  
Facsimile: (214) 659-4036

or to such other address as the Parties set forth above shall have furnished to the other Party set forth above by notice given in accordance with this Section 6.1. Such notices shall be effective (i) if delivered in Person or by courier, upon actual receipt by the intended recipient; (ii) if sent by facsimile transmission, when the sender receives facsimile confirmation that such notice was received at the facsimile number of the addressee; (iii) if mailed, upon the earlier of three days after deposit in the mail and the date of delivery as shown by the return receipt therefore; or (iv) if sent by nationally recognized overnight courier, upon the date of delivery.

**6.2 Confidential Nature of Information.** Each Party agrees that it will treat in confidence, and will cause each of its Representatives to so treat, all documents, materials and other information which it shall have obtained regarding the other Party or its Affiliates during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), the access to records after Closing provided for herein and the preparation of this Agreement and other related documents ("***Confidential Information***"), and shall protect such Confidential Information with no less than the care and diligence with which it protects its own confidential information, and in any event no less than reasonable care and diligence. Such Confidential Information shall not be communicated to any third Person (other than, in the case of Buyer, to its counsel, accountants, financial advisors or lenders, and in the case of Seller, to its counsel, accountants, financial advisors or lenders). No other party shall use any Confidential Information in any manner whatsoever; provided, however, that after the Closing Buyer may use or disclose any Confidential Information reasonably related to the Assets. The obligation of each Party to treat such documents, materials and other information in confidence shall not apply to any information which (i) is or becomes available to such Party from a third-party source legally entitled to make such disclosure without violation of any such obligation of confidentiality to the other Party, (ii) is or becomes available to the public other than as a result of disclosure by such Party or its agents, (iii) is required to be disclosed under applicable Law or judicial process, but only to the extent it must be disclosed (provided, that such Party notifies the other Party in advance of such requirement to disclose, cooperates with the other Party in taking legally available steps to resist or narrow any such request, and if disclosure is required, uses its commercially reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be afforded to the Confidential Information), or (iv) such Party reasonably deems necessary to disclose to obtain any of the consents or approvals contemplated hereby. Each Party acknowledges that a violation of this Section 6.2 may cause the other Party irreparable harm which may not be adequately compensated for by money damages. Each of the Parties therefore agrees that in the event of any actual or threatened violation of this Section 6.2, the disclosing party shall be entitled, in addition to other remedies that it may have, to a temporary restraining order and to preliminary and final injunctive relief against the receiving party, without the necessity of posting a bond.

**6.3 Payment of Expenses.** Except as specifically provided for herein, each of the Parties shall pay their own expenses, including the disbursements and fees of all their respective attorneys, accountants, advisors, agents and other Representatives, incidental to the preparation and carrying out of this Agreement.



**6.4 Governmental Immunity.** This Agreement is expressly made subject to Buyer's governmental immunity under the Texas Civil Practice and Remedies Code and all applicable state, federal, and local Laws. The Parties hereto expressly agree that no provision in this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that Buyer has by operation of law.

**6.5 Consent to Exclusive Jurisdiction.** Any Action brought with respect to this Agreement must be brought in any court of competent jurisdiction sitting in Dallas, Texas and, by execution and delivery of this Agreement, each Party (a) accepts, generally and unconditionally, the exclusive jurisdiction of such courts and any related appellate court and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement and (b) irrevocably waives any objection it may now or hereafter have as to the venue of any such Action brought in such a court or that such court is an inconvenient forum.

**6.6 Severability.** If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provision, covenants and restrictions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions, covenants, restrictions and other matters contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term, provision, covenant or restriction is invalid, void or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions, covenants, restrictions and other matters contemplated hereby are fulfilled to the extent possible.

**6.7 Waiver; Remedies Cumulative.** Any provision of this Agreement may be waived at any time by the Party that is entitled to the benefits thereof to the extent permitted by applicable Law. The waiver by any Party of any condition or of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other condition or subsequent breach. The rights and remedies of the parties to this Agreement are cumulative and not alternative.

**6.8 Counterparts.** This Agreement may be executed by facsimile or PDF in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**6.9 Entire Agreement; Amendment.** This Agreement and the other Transaction Documents (including the schedules and exhibits hereto and thereto) constitute the entire agreement between the Parties with respect to the subject hereof and supersedes all prior memoranda, correspondence, conversations and negotiations. This Agreement may not be amended, modified, or supplemented at any time, except by an instrument in writing signed by each Party.

**6.10 Assignment; Successors and Assigns; No Third-Party Beneficiaries.** No Party shall have the right to assign any rights or obligations pursuant to this Agreement to any other Person and any attempted assignment shall be void. Subject to the immediately preceding sentence, all of the terms and provisions of this Agreement shall be binding upon, and inure to



the benefit of, and be enforceable by, the respective successors and assigns of the Parties hereto. Except as set forth in Article 5 and Section 6.2, this Agreement does not confer rights or benefits as a third-party beneficiary or otherwise upon any Person that is not a Party hereto.

**6.11 Governing Law.** This Agreement shall be construed in accordance with and governed by the Laws of the State of Texas applicable to agreements made and to be performed wholly within that jurisdiction.

**6.12 Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY ACTION WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

**6.13 Rules of Construction.** Unless the context otherwise requires, as used in this Agreement: (a) a term has the meaning ascribed to it; (b) "or" is not exclusive; (c) "including" means "including, without limitation;" (d) words in the singular include the plural; (e) words in the plural include the singular; (f) words applicable to one gender shall be construed to apply to each gender; (g) the terms "hereof," "herein," "hereby," "hereto" and derivative or similar words refer to this entire Agreement; (h) the term "Section" shall refer to the specified Section of this Agreement; and (i) the headings in this Agreement are inserted for convenience and identification only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

*[Signature Page Follow]*



IN WITNESS WHEREOF, the Parties have executed this Asset Purchase Agreement on the date first mentioned above.


**SELLER:**

**FORCE MULTIPLIER SOLUTIONS, INC.**

By:  CEO.  
Name: Robert C. Leonard  
Title: Chairman and CEO

**BUYER:**

**DALLAS COUNTY SCHOOLS**

By:   
Name: Rick D. Sorrells, Ed. D.  
Title: Superintendent

11/19/14

19 FEB 2014  
N  
ASSET PURCHASE  
AGREEMENT



# Exhibit G



## TECHNOLOGY LICENSE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of this 28th day of February, 2014 (the "Effective Date of this Agreement") by and among Dallas County Schools, a county school district ("LICENSEE"), whose address is 612 North Zang Boulevard, Dallas, Texas 75208, United States of America, and the Force Multiplier Solutions group of business entities ("LICENSORS"), which are: Force Multiplier Solutions, Inc., a Louisiana corporation, whose address is 1505 Federal Street, Suite 200, Dallas, Texas 75201, United States of America; BUSGUARD, LLC, a Louisiana limited liability company, with its principal place of business at 5804 River Oaks Road S, New Orleans, Louisiana 70123, United States of America; and ONGO LIVE, INC., a Louisiana business corporation, with its principal place of business at 5804 River Oaks Road S, New Orleans, Louisiana 70123, United States of America (collectively LICENSEE and LICENSORS are referenced as the "Parties").

WHEREAS, LICENSORS are engaged in the business of inter alia, designing and developing systems and products in the nature of hardware and software and have, over the years, acquired and developed substantial and valuable technical knowledge, know-how, and experience in the design and development of such systems, services and products described on Schedule A attached hereto (the "Technology"); and

WHEREAS, LICENSEE and LICENSOR have entered into an Asset Purchase Agreement, dated as of the date hereof (the "Asset Purchase Agreement"), pursuant to which LICENSEE is acquiring all of the LICENSORS' business operations in the State of Texas (the "Territory") involving the distribution of technology and equipment used to provide school bus student safety programs, including automated stop arm violation management systems for school buses in the State of Texas (the "Business"); and

WHEREAS, LICENSEE desires to utilize the Technology to operate the Business in the Territory, including in the use, support, maintenance and sale of the types of products listed in the attached Schedule A (the "Licensed Products"); and

WHEREAS, LICENSORS and LICENSEE believe it is in their mutual interest and desire to enter into an agreement whereby LICENSEE would use the LICENSORS' Technology to conduct the Business in the Territory, including in the use, support, maintenance, import and sale of the Licensed Products, and license other parties to do so, pursuant to the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement, the Parties hereto agree as follows:

### 1. LICENSE

A. LICENSORS hereby grant to LICENSEE a fully paid up, perpetual, exclusive (in the Territory) right and license, including the right and license to sublicense, to use their Technology in order to conduct the Business in the Territory, including the right to process, prepare, sell and maintain the Licensed Products and services associated therewith using said Technology in the Territory. The license granted hereunder includes



the right to use any and all Intellectual Property (as defined in the Asset Purchase Agreement) necessary to conduct the Business in the Territory.

B. No right or license is being conveyed to LICENSEE to otherwise use the Technology in any country or other political subdivision other than the Territory except anywhere where LICENSEE has work performed by LICENSORS.

C. The LICENSEE may grant sub-licenses to third parties and others under the Agreement in the Territory.

## **2. TERM**

This Agreement shall be effective as of the date of execution by the Parties and shall extend for the period set forth in Schedule A (the "Term").

## **3. CONSIDERATION**

A. The Purchase Price (as defined in the Asset Purchase Agreement), which shall be considered fully paid for purposes of this Agreement, shall constitute the consideration for the licenses granted herein, which shall be considered fully earned.

B. LICENSEE and LICENSORS hereby agree and acknowledge that LICENSORS will provide upgrades, updates and revisions of the Licensed Technologies and Licensed Products as they become available within ninety (90) days.

## **4. LICENSORS' OBLIGATIONS/CONFIDENTIALITY**

A. LICENSORS shall meet with and provide LICENSEE with such Technology relating to the installation, and operation of hardware, software, machinery, equipment, materials, specifications, designs, and processing procedures, methods, layout and the like which LICENSORS believes LICENSEE may require or benefit from in order to operate and sell Licensed Products in the Territory.

B. LICENSORS, jointly and severally, represent, warrant and covenant that they have the right and power to grant the licenses granted herein and that there are no other agreements with any other party in conflict with such grant.

C. LICENSORS further, jointly and severally, represent, warrant and covenant that they have no actual knowledge that the Technology infringes any valid rights of any third party.

## **5. IMPROVEMENTS**

A. During the Term of this Agreement, each LICENSOR shall advise LICENSEE of any technical improvements and/or inventions relating to the Technology and/or the Licensed Products of which it becomes aware. Any technical improvements and/or inventions relating to the Technology as configured as of the date of this Agreement which becomes owned by or licensed to any LICENSOR shall become part of the



Technology licensed to LICENSEE under the terms of Section 1. All improvements and/or inventions related to the Technology that are developed by any LICENSOR for, at the direction of, or jointly with LICENSEE shall become a part of the licensed Technology of LICENSEE, and LICENSORS agree to execute any and all documents requested by LICENSEE in order to perfect LICENSEE'S rights in same.

B. LICENSEE may also engage any of the LICENSORS to undertake Design Work (as defined below) on an individual Technology or Technologies ("Design Phase") by completing the Technology Development Request Form attached hereto as Schedule B and obtaining LICENSORS' written consent to the terms and related compensation related to the specific request. Each completed and executed Technology Development Request Form is incorporated into this Agreement, and the Technology identified therein shall be developed and produced as therein and herein provided but at a separate and additional reasonable cost to be determined by the Parties.

C. LICENSORS hereby agree to, create, design, and develop design documentation for the Technologies ("Design Documentation") for a specified time. This period shall be established and agreed to by both the LICENSORS and LICENSEE. Any Design Documentation must be fulfilled or waived at the sole discretion of the LICENSEE. After the creation of the Design Documentation by LICENSORS and the approval of same by LICENSEE, LICENSEE may engage LICENSORS to, and LICENSORS hereby agree to, manufacture a certain agreed upon number of prototypes, which shall not exceed 10 total prototypes of the Technologies for use in the testing of such Technology (collectively, the "Design Work").

D. All prototypes created and/or manufactured by LICENSORS during the Design Phase shall be shipped FOB Dallas, Texas.

## **6. TECHNICAL INFORMATION**

LICENSORS represent, warrant and covenant that the technical information and assistance relating to the Technology licensed or conveyed under this Agreement shall be provided with reasonable care and will, where applicable, be of the same types as currently practiced by LICENSORS.

## **7. INDEMNITY**

A. LICENSORS agree, jointly and severally, to defend, indemnify and hold LICENSEE, its officers, directors, agents and employees, harmless against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against LICENSEE based on LICENSORS' negligence or intentional misconduct.

B. LICENSEE agrees to defend, indemnify and hold LICENSORS, their officers, directors, agents and employees, harmless against all costs, expenses, and losses (including reasonable attorney's fees and costs) incurred through claims of third parties against LICENSORS based on LICENSEE's negligence or intentional misconduct; provided, that any such indemnification obligation shall be paid solely from revenue



generated by LICENSEE's operation of the Business or any similar successor business anywhere in the State of Texas.

C. LICENSORS agree, jointly and severally, to defend, indemnify and hold LICENSEE, its officers, directors, agents and employees, harmless against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against LICENSEE based on a breach by LICENSORS of any representation, warranty or covenant made in this Agreement.

D. LICENSEE agrees to defend, indemnify and hold LICENSORS, their officers, directors, agents and employees, harmless against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against LICENSORS based on a breach by LICENSEE of any representation, warranty or covenant made in this Agreement; provided, that such indemnification obligation shall be paid solely from revenue generated by LICENSEE's operation of the Business or any similar successor business anywhere in the State of Texas.

## **8. INSURANCE**

LICENSORS shall, throughout the Term of the Agreement, obtain and maintain at its own cost and expense from a qualified insurance company licensed to do business in Texas and having a Moody's rating of B+ or better, standard Product Liability Insurance naming LICENSEE, and its officers, directors, employees, agents, and shareholders, as an additional insured. Such policy shall provide protection against all claims, demands, and causes of action arising out of any defects or failure to perform, alleged or otherwise, of the Licensed Products or any material used in connection therewith or any use thereof. The amount of coverage shall be as specified in Schedule A attached hereto. The policy shall provide for 60 days' notice to LICENSEE from the insurer by registered or certified mail, return receipt requested, in the event of any modification, cancellation, or termination thereof. LICENSORS agree to furnish LICENSEE a certificate of insurance evidencing same within 60 days after execution of this Agreement.

## **9. NOTICE AND PAYMENT**

A. Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party at the above stated address or mailed by certified, registered or Express mail, return receipt requested or by Federal Express.

B. Any of the Parties may change the address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

## **10. JURISDICTION/DISPUTES**

Any Action brought with respect to this Agreement must be brought in any court of competent jurisdiction sitting in Dallas, Texas and, by execution and delivery of this Agreement, each Party (a) accepts, generally and unconditionally, the exclusive jurisdiction of such courts and any related appellate court and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement and (b)



irrevocably waives any objection it may now or hereafter have as to the venue of any such Action brought in such a court or that such court is an inconvenient forum.

#### **11. GOVERNMENTAL IMMUNITY**

This Agreement is expressly made subject to LICENSEE's governmental immunity under the Texas Civil Practice and Remedies Code and all applicable state, federal, and local Laws. The Parties hereto expressly agree that no provision in this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that LICENSEE has by operation of law.

#### **12. AGREEMENT BINDING ON SUCCESSORS**

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

#### **13. AMENDMENTS**

This Agreement may not be modified or altered except by a written instrument duly executed by both Parties.

#### **14. COMPLIANCE WITH LAWS**

In exercising their rights under this Agreement, the Parties shall fully comply with the requirements of any and all applicable laws, regulations, rules and orders of any governmental body having jurisdiction over the exercise of rights under this Agreement.

#### **15. ASSIGNABILITY**

None of the LICENSORS may assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of LICENSEE which shall not be unreasonably withheld.

#### **16. WAIVER; REMEDIES CUMULATIVE**

Any provision of this Agreement may be waived at any time by the Party that is entitled to the benefits thereof to the extent permitted by applicable law. The waiver by any Party of any condition or of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other condition or subsequent breach. The rights and remedies of the parties to this Agreement are cumulative and not alternative.

#### **17. RELATIONSHIP**

Nothing contained herein, or done pursuant to this Agreement, shall constitute the Parties as entering into a joint venture or partnership or shall constitute any Party hereto as the agent for the other Party for any purpose or in any sense.



## **18. HEADINGS**

Headings used herein are for convenience only and shall not in any way affect the construction of, or be taken into consideration in interpreting this Agreement.

## **19. SEVERABILITY**

If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provision, covenants and restrictions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions, covenants, restrictions and other matters contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term, provision, covenant or restriction is invalid, void or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions, covenants, restrictions and other matters contemplated hereby are fulfilled to the extent possible.

## **20. INTEGRATION**

This Agreement, the Asset Purchase Agreement, the Trademark Use License Agreements, and the exhibits and schedules hereto and thereto constitute the entire understanding of the Parties with respect to the Technology, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their agreement. It shall not be modified or amended except in writing signed by the Parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may conflict with this Agreement.

***[Signature Page Follows]***



IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

DALLAS COUNTY SCHOOLS

By: *Rita Snodgrass*  
Title: *Superintendent*  
Date: *2/19/14*

FORCE MULTIPLIER SOLUTIONS, INC.

By: *Robert C. Leonard*  
Title: *Chairman CEO*  
Date: *19 Feb 2014*

BUSGUARD, LLC

By: *Robert C. Leonard*  
Title: *Chairman CEO*  
Date: *19 FEB 2014*

ONGO LIVE, INC

By: *Robert C. Leonard*  
Title: *Chairman CEO*  
Date: *19 FEB 2014*

*(R)*  
*19 FEB 2014*



**SCHEDULE A TO  
AGREEMENT DATED [date]  
BY AND AMONG DALLAS COUNTY SCHOOLS AND  
FORCE MULTIPLIER SOLUTIONS, INC., BUSGUARD, LLC AND ONGO  
LIVE, INC.**

**1. Licensed Products**

The Licensed Products are as follows:

**Busguard® System**

Busguard® System is used to increase student safety both inside and outside the school bus, to improve operating efficiencies, and to administer the School Bus Stop Arm Program. The system collects valuable information from the moment it is turned on in the morning and transmits the data back to the FxS servers where the information is stored and accessed by a host of software systems designed to assist transportation officials with alerts, reporting, and fleet management tools described in detail in Schedule 2.18(b)(i) and Schedule 2.18(b)(ii) of the Asset Purchase Agreement.

Each morning, when the bus is started, the driver logs in to the system using their thumb print on Busguard's ThumbsUp! System. This tells the system the driver's identification number, clock in time, and automatically populates the Rollout® so that the system knows 1) which route the bus is running that day, which students are expected to be on the bus, and the scheduled ETA for the bus to reach each of his stops and destinations for the day.

GPS logs when the bus leaves, makes each stop, and arrives at each destination. This information is also logged to the Student Manifest. In case a child goes missing the district will know when and where the student was last seen. GPS is also used by the system to log stop arm events.

When the school bus stops to load or unload students it extends its stop arm. When the stop arm is extended it sends an electronic signal to the Busguard® Unit. This signal is what tells it to make a copy of the video recorded while the stop arm is out. The Unit then ships the video from 1 of the exterior cameras to the FxS server over a cellular modem. Once it has been received by the server it automatically uploads to the Evidence Application. The Evidence Application is the program that the Video Monitors use to review video of stops. If a Video Monitor witnesses anything pass by the stop arm they request the remaining videos of the potential violation from the Unit. Once the remaining videos have been downloaded, the Monitor looks up the license plate information, uploads the video and still shots to the Law Enforcement Reviewer Page. Law Enforcement reviews the potential violation video every day selecting either "Approve" or "Disapprove" for each one. If a video is Approved it is automatically uploaded to



Alertbus® and to the printer. The printer mails out citations once it has a group large enough to qualify for bulk rate postage (once a week at a minimum). Once the Violator receives the citation they have 2 options: a) Pay the fine, or b) Deny Liability. When a fine is paid online at <https://alertbus.com> it goes through Alertbus® to the First Data so we can track it. When a check or credit card payment is taken in person or by mail authorized personnel log the payment information into the Alertbus® Dashboard. If the Violator chooses to deny liability then the adjudication process is also managed and administered through the Alertbus® Dashboard. If the Violator does not respond then they are automatically sent to collections after 60 days, and this is also tracked and managed by Alertbus®.

The cameras are also used by the school district, transportation department, and police to access audio and video evidence of incidents on the bus, or around the bus.

Each system is equipped with a VOIP system for real time communication with the bus. The driver also has a silent alarm they can press to send a RED ALERT! back to designated personnel. When a RED ALERT! is registered designated personnel receive email and text message alert with a link to take them directly into the bus. Using the Console and Vehicle Control Center authorized personnel can pull up a live audio/video feed directly into the bus, and see the exact location of the bus.

### **ONGO Live Transit Management System**

Force Multiplier Solutions' ONGO® System is the most comprehensive, scalable, bundled services solution for transit management available in the transit industry. The system covers all aspects of transit management including public rider safety monitoring, driver/operator monitoring, managing all route efficiencies, and controls all vehicle communications. The ONGO® System can be installed on all means of transit vehicles including buses, streetcars, trains, light rails and vans. The ONGO System increases ridership safety both inside and outside the vehicle, and improves operating efficiencies. The system collects valuable information from the moment it is turned on in the morning and transmits the data back to the FxS servers where the information is stored and accessed by a host of software systems designed to assist transportation officials with alerts, reporting, and fleet management tools described in detail in Schedule 2.18(b)(i) and Schedule 2.18(b)(ii) of the Asset Purchase Agreement.

Whenever a vehicle is started, the driver logs in to the system using their thumb print on the ThumbsUp! ® System. This tells the system the driver's identification number, clock in time, and automatically populates the Rollout® so that the system knows 1) which route the bus is running that day, and the scheduled ETA for the bus to reach each of his stops and destinations for the day.

GPS logs when the bus leaves, makes each stop, and arrives at each destination.

The cameras are also used by the school district, transportation department, and police to access audio and video evidence of incidents on the vehicle, or around the vehicle.



Each system is equipped with a VOIP system for real time communication with the bus. The driver also has a silent alarm they can press to send a RED ALERT! back to designated personnel. When a RED ALERT! is registered designated personnel receive email and text message alert with a link to take them directly into the bus. Using the Console and Vehicle Control Center authorized personnel can pull up a live audio/video feed directly into the bus, and see the exact location of the bus.

The system's onboard Accelerometer alerts designated personnel when the vehicle is making a hard break, or when it is making a fast turn or if there is a traffic accident.

Each system is equipped with Mobile Advertising displays. The ONGO unit use GPS to prompt advertisements for local businesses in the area the vehicle is traveling.

The Engine Kill feature allows the vehicle to be shut-off remotely should there be any reason to do so.

The Door Blast feature allows the doors to be placed in the open position remotely should there be any reason to do so.

The Sound Blast feature, which can be remotely triggered, sends a loud disabling sound from the ONGO Unit's Speaker in the event of a hostage situation.

**Proprietary Equipment:**

- a. The Busguard System *(as described in Schedule 2.18(b)(i) and Schedule 2.18(b)(ii) of the Asset Purchase Agreement)*
- b. The ONGO Transit System *(as described in Schedule 2.18(b)(i) and Schedule 2.18(b)(ii) of the Asset Purchase Agreement)*

**Software Suite:**

- a. Alertbus® *(as described in Schedule 2.18(b)(i) and Schedule 2.18(b)(i) of the Asset Purchase Agreement)*
- b. Console (School Bus) *(as described in Schedule 2.18(b)(i) and Schedule 2.18(b)(ii) of the Asset Purchase Agreement)*
- c. Console (Transit) *(as described in Schedule 2.18(b)(i) and Schedule 2.18(b)(ii) of the Asset Purchase Agreement)*
- d. Evidence Application *(as described in Schedule 2.18(b)(i) and Schedule 2.18(b)(ii) of the Asset Purchase Agreement)*
- e. Unit App *(as described in Schedule 2.18(b)(i) and Schedule 2.18(b)(ii) of the Asset Purchase Agreement)*

**2. Licensed Territory**



The Territory is the State of Texas of the United States

**3. Term**

Perpetual

**4. Insurance**

Such reasonable amounts that are agreed to by the Parties.



**SCHEDULE B TO  
AGREEMENT DATED [date]  
BETWEEN DALLAS COUNTY SCHOOLS AND  
FORCE MULTIPLIER SOLUTIONS, INC.**

Technology Development Request Form

Pursuant to the terms and conditions of that one certain Technology License Agreement dated \_\_\_\_\_ (the "Agreement"), the LICENSEE and the LICENSOR(S) hereby designate the following described item as a "Technology":

Description of Technology: (provide description or attach exhibit): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Estimated Design Phase timeframe: (if any): \_\_\_\_\_

Special Terms and/or Conditions: (if any): \_\_\_\_\_  
\_\_\_\_\_

Capitalized terms used herein and not defined, shall have the meanings set forth in the Agreement.

To the extent that there are any conflicts between the terms of this Technology Development Request Form and the Agreement, the terms of this Technology Development Request Form control.

Executed effective as of \_\_\_\_\_ (date).

[LICENSOR(S)]

By: \_\_\_\_\_  
Name:  
Title:

[LICENSEE]

By: \_\_\_\_\_  
Name:  
Title:



# Exhibit H



## **SERVICES AGREEMENT**

This SERVICES AGREEMENT (this "Agreement") is made, as of February 28, 2014, by and between:

FORCE MULTIPLIER SOLUTIONS, INC., a corporation organized under the laws of the state of Louisiana, herein represented by its chairman and chief executive officer, Robert C. Leonard; and

COUNTY SCHOOLS TRUSTEES OF DALLAS COUNTY, TEXAS d/b/a DALLAS COUNTY SCHOOLS (herein "Dallas County Schools"), a county school district in the state of Texas, herein represented by Rick Sorrells, Ed.D., its superintendent.

WHEREAS, Force Multiplier Solutions, Inc. and Dallas County Schools have entered into a Technology License Agreement dated as of even date herewith (the "License Agreement") whereby it has licensed the right to use certain proprietary technology and systems, in the state of Texas; and

WHEREAS the parties have a mutual interest in ensuring that the technology and systems made the subject of this Agreement work in an efficient, optimal manner for the purposes intended;

NOW THEREFORE, the parties hereto, in consideration of the premises, the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

### **ROYALTY DETERMINATION**

Dallas County Schools hereby agree to pay to Force Multiplier Solutions, Inc. a royalty of seven and one-half percent (7 ½%) (the "Applicable Rate") of all monies received by Dallas County Schools during the term of this Agreement for paid violations under the School Bus Stop Arm Program operated by Dallas County Schools pursuant to the license and other rights granted to Dallas County Schools under the License Agreement (the "Royalty").

The Royalty shall be earned on a calendar month basis and shall be paid no later than 60 days after the end of each such calendar month. Force Multiplier Solutions, Inc. shall be provided with such information and reports reasonably required to determine the accuracy of the Royalty due and its payment.

### **DUTIES**

For and in consideration of the Royalty, Force Multiplier Solutions, Inc. shall:



- (a) devote sufficient business time, attention and best efforts, to address the business affairs of Dallas County Schools under the direction of its superintendent relating to transportation in transit and schools and student safety, including while in transit, and the "Stop Arm Program" through its School Bus Safety Enforcement System focusing on, among other things required of it from time-to-time, increasing the effectiveness of the student safety program and its effectiveness (the "Consulting Services"); and
- (b) use best efforts to provide to Dallas County Schools the services of the individuals listed on Schedule A, each of whom is currently employed by Force Multiplier Solutions, Inc., with such individuals to perform for Dallas County Schools the same functions and services that such individuals provided to Force Multiplier Solutions, Inc. as of immediately prior to the date hereof, for a period of time not to exceed 30 days after the date hereof, with the intention being that Dallas County Schools after the date hereof will hire certain of such individuals as shall be determined by Dallas County Schools in its sole discretion to work for Dallas County Schools and will require Force Multiplier Solutions, Inc. to provide the services of such individuals to perform for Dallas County Schools the functions of their current positions with Force Multiplier Systems, Inc. until such time as Dallas County Schools is ready to make offers of employment to such individuals.

The Consulting Services under this Agreement shall be performed primarily by Robert C. Leonard ("Designee") or, if he is disabled or deceased, by another individual of equal expertise to be determined at that time and, for a period of up to six months after the date of this Agreement, shall be performed secondarily by James Buchanan, Stephen Loeb and Slater Swartwood, Jr. If for any reason Robert C. Leonard is unavailable or unable to perform Consulting Services under this Agreement, Force Multiplier Solutions, Inc. shall provide Dallas County Schools with written notice that another individual has been proposed to serve as the Designee. Within 21 calendar days after mailing, by certified mail or by private delivery service, of this notice, if Dallas County Schools objects to the individual proposed to serve as Designee, it shall notify Force Multiplier Solutions, Inc. of that objection, in writing, and Force Multiplier Solutions, Inc. shall propose another individual to serve as Designee and notify Dallas County Schools of that selection, in writing. If (i) Dallas County Schools objects to such individual, and the parties cannot agree upon an individual to replace Robert C. Leonard as the Designee, and (ii) such failure to agree upon an individual to replace Robert C. Leonard as the Designee occurs during the first three years that this Agreement is in effect, then the Applicable Rate shall be automatically reduced to five percent (5%), effective upon 30 calendar days following delivery of written notice by either party that such agreement upon a replacement Designee cannot be reached.

Designee may engage in other activities and shall not be exclusive to Dallas County Schools. Such activities shall include, but not exclusively, work with Force Multiplier Solutions, Inc. in any and all manner or fashion. Designee shall perform his duties in a professional and business-like manner and further promote the character and identity of Dallas County Schools in a most favorable manner.



## TERM

The term of this Agreement shall commence upon the date of this Agreement and shall continue until the License Agreement is terminated, unless this Agreement is earlier terminated by mutual consent.

## INDEPENDENT CONTRACTOR

For purposes of this Agreement and the duties undertaken herein, Force Multiplier Solutions, Inc. shall be an independent contractor and not an employee, partner or agent of Dallas County Schools. None of Force Multiplier Solutions, Inc., the Designee, nor any employee of Force Multiplier Solutions, Inc. shall be entitled to receive any benefit normally or customarily provided to employees of Dallas County Schools such as, but not limited to, vacation payment, retirement, health care or sick pay. Dallas County Schools shall not be responsible for withholding income or other taxes from the payments made to Force Multiplier Solutions, Inc. Dallas County Schools shall not be responsible for filing any returns or for paying any income, social security, or other tax levied with respect to any payment made pursuant to this Agreement.

## NONDISCLOSURE

In connection with the duties to be performed under this Agreement, Dallas County Schools and Force Multiplier Solutions, Inc. may, from time-to-time, have access to certain information which will be considered confidential by one or the other party. This Confidential Information is a valuable asset to the party and either may suffer irreparable harm from disclosure of all or any such Confidential Information to third parties or use of same for any purpose other than as contemplated by this Agreement and the License Agreement. Accordingly, both parties agree to a) hold all confidential information in strictest confidence, b) to not disclose any Confidential Information to third parties without the specific prior written consent of the other party, except as may be required by law or applicable regulatory or judicial proceedings, provided that the party that is required to disclose such information shall provide the other party with prompt advance notice so that such non-disclosing party may seek, at its sole cost and expense, a protective order or other appropriate remedy, and c) to not use any Confidential Information except for purposes absolutely necessary to effect performance under this Agreement.

Both parties agree that the Confidential Information is owned by the party hereto which produces it and that, subject to the terms of the License Agreement, which terms shall take precedence if conflicting with the terms of this Agreement, use of any Confidential Information does not create a license or other right in the other party to use it except in connection with the performance of duties and obligations hereunder.



Confidential Information in this Agreement means, without limitation, with respect to a party, confidential and/or proprietary information about the products, services, customers and customers lists and databases, business plans, technical data, contracts, operating methods, marketing strategies and plans, financial projections, financial data and statements, prototypes, employee information, and trade secrets of such party in each case whether provided to the other party by such party or of which the other party becomes aware, and without regard to whether the Confidential Information is conveyed to the other party advertently or inadvertently, by oral, electronic, or written means, or as a consequence of observation by the other party. Confidential Information does not include information (i) which is or becomes available to a party from a third-party source legally entitled to make such disclosure without violation of any such obligation of confidentiality to the other party, (ii) of one party which is or becomes available to the public other than as a result of disclosure by the other party or its agents, or (iii) which is required to be disclosed under applicable law or judicial process, but only to the extent it must be disclosed (provided, that the party required to disclose such information notifies the other party in advance of such requirement to disclose, cooperates with the other party in taking legally available steps to resist or narrow any such request, and if disclosure is required, uses its commercially reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be afforded to the Confidential Information).

#### GOVERNMENTAL IMMUNITY

This Agreement is expressly made subject to Dallas County Schools' governmental immunity under the Texas Civil Practice and Remedies Code and all applicable state, federal, and local Laws. The parties hereto expressly agree that no provision in this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that Dallas County Schools has by operation of law.

#### GOVERNING LAW/JURISDICTION

This Agreement shall be construed in accordance with and governed by the laws of the State of Texas applicable to agreements made and to be performed wholly within that jurisdiction. Any Action brought with respect to this Agreement must be brought in any court of competent jurisdiction sitting in Dallas, Texas and, by execution and delivery of this Agreement, each Party (a) accepts, generally and unconditionally, the exclusive jurisdiction of such courts and any related appellate court and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement and (b) irrevocably waives any objection it may now or hereafter have as to the venue of any such Action brought in such a court or that such court is an inconvenient forum.

***[Signature Page Follows]***



19<sup>th</sup> IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the  
day of February, 2014.

DALLAS COUNTY SCHOOLS

By: *Rick Sorrells*  
Name: Rick Sorrells, Ed. D.  
Title: Superintendent

FORCE MULTIPLIER SOLUTIONS, INC.

By: *Robert C. Leonard CEO*  
Name: Robert C. Leonard  
Title: Chairman and Chief Executive Officer

*MM*  
*2/19/14*

*(D)*  
*19 FEB 2014*  
*SERVICE*  
*AGREEMENT*



## **SCHEDULE A**

See attached.



DCS MIGRATION  
2/11/2014

Management/Administration

| Employee Name     | Start Date | Title                                | Accrued Vacation Days | Pay Type | Rate | Annual Pay |
|-------------------|------------|--------------------------------------|-----------------------|----------|------|------------|
| Jerad Akin        | 12/10/2012 | Manager                              | 5                     | Salary   |      |            |
| Tiffany LeBlanc   | 3/2/2009   | Call Center Manager                  | 7                     | Salary   |      |            |
| Mike Taylor       | 7/9/2012   | Service Tech Mgr                     | 5                     | Salary   |      |            |
| Jennifer Robinson | 10/26/2012 | Monitoring Supervisor                | 5                     | Salary   |      |            |
| Sherry Shaver     | 8/27/2012  | Helpline Supervisor/Alertbus Support | 5                     | Salary   |      |            |
| Dwight Cummins    | 7/15/2010  | Sr. Hardware Technician              | 7                     | Salary   |      |            |
| Eric V Smith      | 10/18/2012 | Janitor/Warehouse Asst.              | 5                     | Salary   |      |            |
| Steven Holmes     | 5/14/2012  | Evidence Coordinator                 | n/a                   | Hourly   |      |            |

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Helpline Operators

| Employee         | Start Date | Position          | Accrued Vacation Days | Pay Type |
|------------------|------------|-------------------|-----------------------|----------|
| Arnulfo Martinez | 9/26/2013  | Helpline Operator | n/a                   | Hourly   |
| Veronica Vasquez | 10/26/2012 | Helpline Operator | n/a                   | Hourly   |

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Reviewers

| Employee             | Start Date | Position       | Accrued Vacation Days | Pay Type |
|----------------------|------------|----------------|-----------------------|----------|
| Gilbert Camberos     | 11/8/2012  | Video Reviewer | n/a                   | Hourly   |
| Hyonora Darrough     | 1/11/2013  | Video Reviewer | n/a                   | Hourly   |
| Clemence Mucyo       | 8/26/2013  | Video Reviewer | n/a                   | Hourly   |
| Treasure Hope Easley | 8/19/2013  | Video Reviewer | n/a                   | Hourly   |
| Dennis Romero        | 9/23/2013  | Video Reviewer | n/a                   | Hourly   |
| Linda Romero         | 1/25/2013  | Video Reviewer | n/a                   | Hourly   |

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Processors

| Employee       | Start Date | Position        | Accrued Vacation Days | Pay Type |
|----------------|------------|-----------------|-----------------------|----------|
| Sergio Arvizu  | 8/31/2012  | Video Processor | n/a                   | Hourly   |
| Chris Tinney   | 8/12/2012  | Video Processor | 5                     | Salary   |
| Derek Gannaway | 10/15/2012 | Video Processor | 5                     | Salary   |
| Carlos Trevino | 9/3/2012   | Video Processor | n/a                   | Hourly   |
| Eric Reveles   | 10/26/2012 | Video Processor | n/a                   | Hourly   |



**DCS MIGRATION**

|                 |            |                 |     |        |    |
|-----------------|------------|-----------------|-----|--------|----|
| Robert Coronado | 1/29/2013  | Video Processor | n/a | Hourly | \$ |
| Brandon Aiverez | 12/11/2013 | Video Processor | n/a | Hourly | \$ |
| Lauren Peterson | 8/19/2013  | Video Processor | n/a | Hourly | \$ |
| Sara Myers      | 8/27/2012  | Video Processor | 5   | Salary |    |

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**Service Technicians**

| Employee           | Start Date | Position     | Accrued Vacation Days | Pay Type | Annual Pay |
|--------------------|------------|--------------|-----------------------|----------|------------|
| Zach Hodges        | 9/4/2012   | Service Tech | 5                     | Salary   |            |
| Ramon Granados     | 11/13/2012 | Service Tech | 5                     | Salary   |            |
| Charles Richardson | 2/25/2013  | Service Tech | 0                     | Salary   |            |
| Kristopher Lee     | 11/26/2012 | Service Tech | 5                     | Salary   |            |
| Ramon Diaz         | 11/13/2012 | Service Tech | 5                     | Salary   |            |
| John Webster       | 12/3/2012  | Service Tech | 5                     | Salary   |            |
| Damon Andrews      | 12/3/2012  | Service Tech | 5                     | Salary   |            |
| Timothy Scudder    | 9/4/2012   | Service Tech | 5                     | Salary   |            |
| Anthony Robinson   | 9/17/2013  | Service Tech | 0                     | Salary   |            |
| Martell Garner     | 9/9/2013   | Service Tech | 0                     | Salary   |            |
| Lourdy Devalon     | 9/16/2013  | Service Tech | 0                     | Salary   |            |
| Vincent Holiday    | 1/13/2014  | Service Tech | 0                     | Salary   |            |
| Jay Key            | 10/14/2013 | Service Tech | 0                     | Salary   |            |

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**Summary**

| Position            | # of Employees | Annual | Monthly |
|---------------------|----------------|--------|---------|
| Management/Admin    | 7              | \$     | \$      |
| Helpline Operators  | 2              | \$     | \$      |
| Reviewers           | 6              | \$     | \$      |
| Processors          | 9              | \$     | \$      |
| Service Technicians | 13             | \$     | \$      |
|                     | 37             | \$     | \$      |