

RESOLUTION 2012-92

RESCINDING RESOLUTION NO. 2012-054 AND AUTHORIZING THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY TO ENTER INTO A LEASE AGREEMENT WITH GWA HOLDINGS LLC TO LEASE CUYAHOGA COUNTY AUDITOR'S PERMANENT PARCEL NUMBER 014-16-008 WHICH IS LOCATED AT 4371 PEARL ROAD IN CLEVELAND, OHIO ("PROPERTY") FOR A TERM OF FIVE (5) YEARS WITH AN OPTION TO PURCHASE THE PROPERTY DURING THE LEASE TERM

WHEREAS, The City of Cleveland transferred the Brooklyn Garage property to the Greater Cleveland Regional Transit Authority pursuant to the Mass Transit System Transfer Agreement dated September 5, 1975; and

WHEREAS, the Greater Cleveland Regional Transit Authority ("GCRTA") is the owner of record of the Property; and

WHEREAS, the Property was used as a bus depot until the Brooklyn Garage closed in 2003, is no longer needed for transit operations, and is excess to the GCRTA; and

WHEREAS, GCRTA wishes to maximize the revenue from its real property assets and decrease its yearly asset maintenance costs associated with the Property; and

WHEREAS, the Greater Cleveland Regional Transit Authority has posted a for sale or for lease sign on the Property and has advertised and marketed the Property through a fair and open process with Ostendorf-Morris Company; and

WHEREAS, GWA Holdings, LLC is an Ohio limited liability company whose principals also own and operate Autos Direct Online, Inc.; and

WHEREAS, the Board of Trustees adopted Resolution No. 2012-054 authorizing the sale of the Property to GWA Holdings, LLC but the sale was not consummated due to environmental concerns; and

WHEREAS, GWA Holdings, LLC wishes to lease the Property to use as a headquarters for Autos Direct Online, Inc. while the environmental concerns are investigated and obtain an option to purchase the Property during the lease term; and

WHEREAS, the Federal Transit Administration is reviewing the lease agreement and concurrence is expected shortly.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. That the General Manager/Secretary-Treasurer is hereby authorized to enter into a lease agreement with GWA Holdings, LLC for the Property.

Section 2. That the lease term shall be five (5) years, commencing on November 1, 2012.

Section 3. That the annual rent shall be one hundred seventeen thousand seven hundred four & 00/100 dollars (\$117,704.00).

Section 4. That an option to purchase shall be granted to GWA Holdings, LLC during the lease term for a purchase price in the amount of six hundred thousand & 00/100 dollars (\$600,000.00).

Section 5. That approval of this resolution will allow GCRTA to enter into the lease agreement contingent upon receipt of Federal Transit Administration concurrence.

Section 6. That Resolution No. 2012-054 is hereby rescinded and this resolution shall become effective immediately upon its adoption.

Adopted: October 23, 2012

  
\_\_\_\_\_  
President

Attest:   
\_\_\_\_\_  
CEO, General Manager/Secretary-Treasurer



Greater Cleveland Regional Transit Authority  
**STAFF SUMMARY AND COMMENTS**

<b>TITLE/DESCRIPTION:</b> <b>CONTRACT:</b> LEASE OF 4371 PEARL ROAD ("BROOKLYN GARAGE") <b>VENDOR:</b> GWA HOLDINGS, LLC (AUTOS DIRECT ONLINE, INC.) <b>AMOUNT:</b> \$117,704.00 / YEAR	<b>Resolution No.:</b> 2012-92
	<b>Date:</b> October 18, 2012
	<b>Initiator:</b> Programming and Planning
<b>ACTION REQUEST:</b> <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

- 1.0 **PURPOSE/SCOPE:** GCRTA wishes to lease the Brooklyn Garage property to GWA Holdings, LLC ("GWA") to maximize revenue from this real estate asset, decrease its asset maintenance costs, and bring an ongoing business into a vacant property.
- 2.0 **DESCRIPTION/JUSTIFICATION:** The City of Cleveland transferred the Brooklyn Garage property to RTA pursuant to the Mass Transit System Transfer Agreement in 1975. The property is comprised of a 5.13 acre parcel of land located between Pearl and State Roads in the City of Cleveland and includes an 117,704 square foot industrial building. The Brooklyn Garage closed in February 2003. The property was declared excess in 2008 and has been on the market since 2008. The property has been listed as available for sale or lease by GCRTA's real estate broker, Ostendorf-Morris Company. Resolution No. 2012-054 was adopted by the Board authorizing the sale of this property to GWA Holdings, LLC. A purchase agreement was entered into but the transaction did not close due to environmental concerns with the property. GWA has offered to lease the property for \$117,704 per year for a term of five years while the environmental concerns are investigated. During the lease term, GWA will have an option to purchase the property for \$600,000. GWA will be responsible for all maintenance, insurance, taxes, and utility costs.
- 3.0 **PROCUREMENT BACKGROUND:** Does Not Apply.
- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Does Not Apply.
- 5.0 **POLICY IMPACT:** This action is compliant with the Board of Trustees Real Estate Procedures that require Board of Trustees approval of all leases with total revenue to GCRTA in excess of \$25,000. It also complies with FTA requirements. FTA concurrence for the lease agreement was requested and is expected shortly. The approval of this resolution will allow GCRTA to enter into the lease agreement contingent upon receipt of FTA concurrence.
- 6.0 **ECONOMIC IMPACT:** Entering into this lease allows GCRTA to gain revenue from its real estate. The rent to be paid is within market value and the rate of return exceeds typical market rates. GCRTA will also save approximately \$90,000 per year in expenses for maintaining this shutdown facility. GWA's option to purchase the property for \$600,000 during the lease term enables GCRTA to sell the property and collect sale proceeds reasonably within the property's appraised market value.
- 7.0 **ALTERNATIVES:** Not approve the lease and continue marketing the property.

- 8.0 RECOMMENDATION: This action was presented to the Operations Committee on October 9, 2012. Staff recommends that the Board of Trustees approve the resolution to authorize the lease agreement with GWA Holdings, LLC.
- 9.0 ATTACHMENTS: Lease Agreement (Draft)

Recommended and certified as appropriate to the availability of funds, legal form and conformance with the Procurement requirements.



---

CEO, General Manager/Secretary-Treasurer

## LEASE

This Lease is made on \_\_\_\_\_, 2012, by the **GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY**, a political subdivision of the State of Ohio organized under Ohio Revised Code ("R.C.") Chapter 306, whose principal business office is located at 1240 West 6th Street, Cleveland, Ohio 44113-1331 ("Lessor"), and **GWA Holdings, LLC**, an Ohio Limited Liability Company ("Purchaser"), located at 5330 Smith Rd., Brook Park, Ohio 44142 ("Lessee") (collectively "the Parties").

1. **AGREEMENT TO LEASE.** Lessor leases the Leased Premises, as hereinafter described, to Lessee, and Lessee leases the Leased Premises from Lessor, according to the provisions of this Lease.

2. **PREMISES.** (a) The Leased Premises is the property commonly known as Brooklyn Garage (referred to in its entirety as "the Facility") located at 4371 Pearl Road; Cleveland, Ohio 44109 but more particularly described in Exhibit "A" which is attached and made a part of this paragraph of this Lease (the "Leased Premises").

(b) The Facility was funded, at least in part, with federal transportation grants. FTA concurrence with the terms of this Lease Agreement is required before Lessor may execute.

3. **TERM.** (a) Commencement Date. The initial term of this Lease will be sixty (60) months, beginning on November 1, 2012 (the "Commencement Date") and expiring on October 31, 2017. Lessee shall have limited access, at Lessor's discretion, as early as October 24, 2012 to prepare the Facility for their tenancy subject to the terms of Section 3(d).

(b) Option to Purchase. Lessee shall have an Option to Purchase the Property for six hundred thousand & 00/100 dollars (\$600,000.00) during the lease term. Lessee shall exercise its Option to Purchase by executing and delivering to Lessor a Purchase and Sale Agreement in a form substantially similar to Exhibit "B" attached hereto.

(c) Early Termination: Not Applicable.

(d) Possession. If for any reason Lessor cannot deliver possession of the Leased Premises to Lessee on the Commencement Date: (i) Neither party shall cause this Lease to be void or voidable; (ii) Lessor shall not be liable to Lessee for any resultant loss or damage; and (iii) unless Lessor is not able to deliver possession of the Leased Premises to Lessee on the Commencement Date because of Lessee's delays, Lessor shall waive rent for the period between the Commencement Date and the date on which Lessor delivers possession of the Leased Premises to Lessee. No delay in delivery of possession of the Leased Premises will extend the term.

(e) Early Possession. If Lessee occupies the Leased Premises prior to the Commencement Date with Lessor's permission, Lessee shall observe all of the provisions of this Lease from the beginning of the occupancy; however, rent otherwise due under this Lease will be abated up to the Commencement Date, and Lessee shall pay as rent Lessor's actual costs incurred by reason of the Lessee's early occupancy.

5. **RENT.** (a) Payment. Commencing January 1, 2013, Lessee shall pay Lessor the monthly rent stated in the Basic Lease Information page Exhibit "C" hereto, which is hereby incorporated herein by reference, in equal consecutive monthly installments on or before the

first day of each month during the term of this Lease. The Parties agree that no Rent will be assessed for November and December 2012. The monthly rent will be paid in advance at the address specified for Lessor in the basic Lease information, or such other place as Lessor designates, without prior demand and without any abatement, deduction or setoff, unless otherwise agreed in writing. If the Commencement Date occurs on a day other than the first day of a calendar month, or if the expiration date occurs on a day other than the last day of a calendar month, then the monthly rent for such fractional month will be prorated on a daily basis.

(b) Option Term Rent. Not applicable.

(c) Additional Rent. Lessee shall pay to Lessor without deduction or offset all amounts which this Lease requires Lessee to pay (the "Additional Rent") at the place where the monthly rent is payable. Lessor will have the same remedies for a default in the payment of Additional Rent as it has for default in the payment of monthly rent.

(c) Late Payment. If Lessee fails to pay any rent or Additional Rent on or before the date they are due and payable, such unpaid amount will be subject to a late payment charge equal to two percent (2%) of such unpaid amounts ("Late Payment Charge"). This Late Payment Charge is intended to compensate Lessor for its additional administrative costs resulting from Lessee's failure, and has been agreed upon by the Parties, after negotiation, as a reasonable estimate of the additional administrative cost which will be incurred by Lessor as a result of Lessee's failure. The actual cost in each instance is extremely difficult, if not impossible, to determine. This Late Payment Charge will constitute liquidated damages and will be paid to Lessor together with such unpaid amounts. The payment of this Late Payment Charge will not constitute a waiver by Lessor of any default by Lessee under this Lease.

(d) Security Deposit. Upon execution of this Lease, Lessee shall deposit with Lessor a refundable security deposit in the amount nine thousand eight hundred eight & 67/100 dollars (\$9,808.67). Lessor shall not be required to segregate or pay interest to Lessee on the security deposit.

6. **TAXES.** (a) Obligation for Payment. Lessee shall pay all taxes (collectively, the "tax"), including without limitation real estate tax related to Lessee's use of the Leased Premises and personal property taxes, levied, confirmed, or imposed during the term of this Lease (other than net income taxes) whether or not now customary or within the contemplation of the Parties: (i) upon, measured by, or reasonably attributable to the cost or value of Lessee's equipment, furniture, fixtures, and other personal property located in the Leased Premises or by the cost or value of any Leasehold improvements made in or to the Leased Premises by or for Lessee regardless of whether title to such improvements is in Lessee or Lessor; (ii) upon or measured by the monthly rent, including without limitation any gross receipts tax or excise tax levied by the federal government or any other governmental body with respect to the receipt of monthly rent; (iii) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use, or occupancy by Lessee of the Leased Premises or any portion of the Leased Premises; (iv) upon this transaction or any document to which Lessee is a party creating or transferring an interest or an estate in the Leased Premises; (v) upon the Leased Premises and all personal property, furniture, fixtures, and equipment, and all replacements, improvements, or additions to them, whether owned by Lessor or Lessee; and (vi) impositions based in whole or in part on monthly rent, whether made in addition to or in substitution for any other tax.

(b) Property Taxes. Lessee acknowledges that Lessor will be assessed for Lessee's use of the Facility, as Lessee's usage is not tax exempt. The property tax to be paid by Lessee will be determined by the Cuyahoga County Fiscal Officer. Lessee shall pay the property tax directly to Lessor within fourteen (14) days of receiving the bill from Lessor. The obligations stated herein shall survive the expiration of the term of this Lease.

(c) Taxes Payable in Installments. Excepting the real property tax, unless Lessor has exercised its rights under paragraph 6(g), and if, by law, any tax may at the option of the taxpayer be paid in installments (whether or not interest accrues on the unpaid balance of such tax), Lessee may exercise the option to pay the tax (and any accrued interest on the unpaid balance of such tax) in installments and in such event Lessee will pay such installments as they become due during the term of this Lease as the same respectively become due and before any fine, penalty, further interest or cost may be added to them.

(d) Taxes for Period other than Term. Any tax, including taxes which have been converted into installment payments, relating to a fiscal period of the taxing authority, a part of which period is included within the term and a part of which is included in a period of time prior to the commencement or after the end of the term, will, whether or not such tax or installments are assessed, levied, confirmed, imposed upon or in respect of, or become a lien upon the Leased Premises, or become payable, during the term, be adjusted between the Parties as of the commencement or end of the term, so that Lessee will pay that portion of such tax or installment which that part of such fiscal period included in the term bears to such fiscal period, and Lessor will pay the remainder.

(e) Other Impositions. Lessee will not be obligated to pay local, state, or federal net income taxes assessed against Lessor; local, state, or federal capital levy of Lessor; or sales, excise, franchise, gift, estate, succession, inheritance, or transfer taxes of Lessor.

(f) Right to Contest Taxes. Lessee will have the right to contest the amount or validity, in whole or in part, of any tax by appropriate proceedings diligently conducted in good faith, only after paying such tax or posting such security as Lessor may reasonably require in order to protect the Leased Premises against loss or forfeiture, including the payment of real property tax directly to Lessor. Upon the termination of any such proceedings, Lessee will pay the amount of such tax or part of such tax as finally determined, together with any costs, fees, interest, penalties, or other related liabilities. Lessor will not be required to join in any such contest or proceedings unless the provisions of any law or regulations then in effect will require that such proceedings be brought by or in the name of Lessor. In that event Lessor will join in such proceedings or permit them to be brought in its name; however, Lessor will not be subjected to any liability for the payment of any costs or expenses in connection with any such contest or proceedings, and Lessee will indemnify Lessor against and save Lessor harmless from any such costs and expenses.

(g) Estimated Payments. Not Applicable.

(h) Final Settlement. Not Applicable.

(i) Assessments on Real Property. Lessee is responsible for any and all assessments on the Facility. Lessor shall invoice Lessee for any such assessments. Lessee shall remit payment to Lessor within thirty (30) days of receipt of said invoice.

(j) Re-Opener. Not Applicable.

**7. UTILITIES.** (a) Lessee's Obligation. Lessee shall reimburse Lessor for gas, electric, sewer, and water utilities incurred during the Term. Lessor shall invoice Lessee for the utilities as Additional Rent. Lessee shall remit payment to Lessor within thirty (30) days of receipt of the invoice from Lessor. Lessee shall obtain and pay appropriate suppliers for all other utility services, including but not limited to phone and cable. Lessee shall also procure, or cause to be procured, without cost to Lessor, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance upon the Leased Premises of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying any such service to and upon the Leased Premises. Upon the request of Lessee and at Lessee's sole expense and liability, Lessor shall join with Lessee in any application required for obtaining any such services.

(b) Warranty. Excepting Force Majeure, Lessor warrants to Lessee that electricity, water, sanitary and drainage sewers, telephone, and natural gas shall be available at the outside wall of the building throughout the term of this Lease. If any such utility service becomes unavailable or is interrupted for more than thirty (30) consecutive days (without default by Lessee), Lessee may terminate this Lease by notice to Lessor given within sixty (60) days after such services become unavailable, or within ten (10) days after the ninetieth (90th) day of interruption, as the case may be. The notice shall specify a termination date no more than thirty (30) days after the date of such notice. This Lease shall end on the termination date, and rent and other charges shall be appropriately prorated between the Parties as of the termination date.

**8. INSURANCE.** (a) "All-Risk" Coverage. Lessor shall retain property insurance covering the Facility during the term of the Lease. Lessee shall, at its sole expense, obtain and keep in force from the Commencement Date or occupancy date whichever first occurs during the term of this Lease, "all-risk" coverage insurance insuring their contents and any improvements and betterments installed / constructed by them. The Lessor shall carry insurance on all buildings and other improvements located at the Facility for the replacement value thereof. Lessee is responsible for the cost of all property insurance paid by Lessor for the Facility. Lessor shall invoice Lessee for the property insurance as Additional Rent. Lessee shall remit payment to Lessor within thirty (30) days of receipt of the invoice from Lessor.

(b) General Liability. Lessee shall, at its sole expense, obtain and keep in force during the term of this Lease general liability insurance with a combined single limit of not less than two million dollars (\$2,000,000) for injury to or death of any one person, for injury to or death of any number of persons in one occurrence, and for damage to property, insuring against any and all liability of the Parties including, without limitation, coverage for contractual liability, broad form property damage, fire legal liability (minimum limit \$1 million), non-owned automobile liability, with respect to the Leased Premises or arising out of the maintenance, use, or occupancy of the Leased Premises. Such insurance will insure the performance by Lessee of the indemnity agreement as to liability for injury to or death of persons and damage to property set forth in section 20. Such insurance will be noncontributing with any insurance which may be carried by Lessor and will contain a provision that Lessor, although named as an additional insured, will nevertheless be entitled to recover under the policy for any loss, injury, or damage to Lessor, its agents, officers, and employees, or the property of such persons located on the Leased Premises. The limits and coverage of all such insurance will be adjusted by agreement of the Parties during every third lease year during the term of this Lease in conformity with the then prevailing custom of insuring liability in the City of Cleveland.



(c) Other Matters. Lessee shall obtain and keep all insurance required in this paragraph and all renewals of it from companies authorized to transact business in the State of Ohio, and rated at least A- Class X by AM Best's Insurance Reports (property liability) or from companies approved by Lessor. Lessee shall carry the general liability insurance in the name of Lessee and shall name Lessor as an additional named insured. Lessee shall notify Lessor of any changes to the policy affecting policies required by this Lease. All insurance policies will be subject to approval by Lessor and any lender as to form and substance. All insurance policies will, to the extent obtainable, (1) provide that no act or omission of Lessee which would otherwise result in forfeiture or reduction of the insurance will affect or limit the obligation of the insurance company to pay the amount of any loss sustained, and (2) contain a waiver by the insurer of its rights of subrogation against Lessor. Upon issuance, Lessee shall deliver to Lessor, and any other lender whom the Parties may designate, each insurance policy or a duplicate or certificate of such policy. Lessee may satisfy its obligation under this paragraph by appropriate endorsements of its blanket insurance policies.

9. **WAIVER OF SUBROGATION.** The Parties shall waive all rights to recover against each other or against any other lessee or occupant of the Facility, or against the officers, directors, shareholders, partners, joint ventures, employees, agents, customers, invitees, or business visitors of each other or of any other lessee or occupant of the building, for any loss or damage arising from any cause covered by any insurance required to be carried by each of them pursuant to section 8 or any other insurance or self-insurance plan actually carried by each of them. Lessee shall cause its insurer(s) to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Facility or the Leased Premises or the contents of either of them. Lessee shall cause all other occupants of the Leased Premises claiming by, under, or through Lessee to execute and deliver to Lessor a waiver of claims similar to the waiver in this paragraph.

10. **USES.** (a) Lawful Use Only. Lessee may use the Leased Premises for vehicle sales, light maintenance and repair as well as retail and/or office purposes, as may or may not be permitted by the zoning ordinances governing the Facility. Lessee shall not use or occupy, or permit any portion of the Leased Premises to be used or occupied: (i) in violation of any law, ordinance, order, rule, regulation, certificate of occupancy, or other governmental requirement; (ii) for any disreputable business or purpose; or (iii) in any manner or for any business or purpose that creates risks of fire or other hazards, or that would in any way violate, suspend, void, or increase the rate of fire or liability or any other insurance of any kind at any time carried by Lessor upon all or any part of the Facility or its contents. Lessee shall comply with all laws, ordinances, orders, rules, regulations, and other governmental requirements relating to the use, condition, or occupancy of the Leased Premises, and all rules, orders, regulations, and requirements of the board of fire underwriters or insurance service office, or any other similar body, having jurisdiction over the Facility. Lessee shall pay Lessor for any increase in the cost of any insurance carried by Lessor attributable to Lessee's activities, property, or improvements in the Leased Premises or Lessee's failure to perform and observe its obligations and covenants under this Lease. The Parties agree that a schedule or "make-up" of rates for the Leased Premises or the Facility issued by the body making its fire insurance rates shall be conclusive evidence of the facts stated in it and of the items and charges in the fire insurance rates then applicable. The Parties agree that a final judgment of any court, or the admission of Lessee, that Lessee has violated any law or requirement of governmental or insurance authorities affecting the Facility shall be conclusive evidence of such violation.

(b) Right to Contest. Lessee may contest by appropriate proceedings diligently conducted in good faith in the name of Lessee, or, with the prior written consent of the

Lessor, in the name of Lessor, or both, without cost or expense to Lessor, the validity or application of any law, ordinance, order, rule, regulation or legal requirement of any nature. If compliance with any such law, ordinance, order, rule, regulation, or requirement may legally be delayed pending the prosecution of any proceeding without incurring any lien, charge, or liability of any kind against the Leased Premises, or Lessee's interest in the Leased Premises, and without subjecting Lessee or Lessor to any liability, civil or criminal, for failure so to comply, Lessee may delay compliance until the final determination of such proceeding. Even if such lien, charge, or liability may be incurred by reason of any such delay, Lessee may so contest and delay, so long as: (i) such contest or delay does not subject Lessor to criminal liability; and (ii) Lessee furnishes to Lessor security, reasonably satisfactory to Lessor, against any loss or injury by reason of any contest or delay. Lessor will not be required to join any proceedings referred to in this paragraph unless the provision of any applicable law, rule, or regulation at the time in effect requires that such proceedings be brought by or in the name of Lessor, or both. If Lessor is required to join such proceedings or permit them to be brought in its name, then Lessee shall pay all related expenses.

**11. REPAIRS AND MAINTENANCE.** Lessee shall, at its sole cost and expense, maintain the Leased Premises and make necessary and customary repairs, restorations, and replacement to the Leased Premises, including without limitation fixtures and appurtenances to the Leased Premises as and when needed to preserve them in good working order and condition as exists on the Commencement Date, normal wear and tear and deterioration exempted.

**12. ALTERATIONS.** Lessee shall not make any alterations, additions, or improvements to the Leased Premises without prior written consent from GCRTA's Property Manager unless Lessor has provided Lessee with prior verbal consent and any alteration, addition, or improvement: (a) costs less than \$50,000 including labor and materials; (b) does not change the general character of the Leased Premises, or reduce the fair market value of the Leased Premises below its fair market value prior to the alteration, addition, or improvement; (c) is made with due diligence, in a good and workmanlike manner and in compliance with all laws as that term is defined in section 10; (d) is promptly and fully paid for by Lessee; and (e) is made under the supervision of an architect or engineer reasonably satisfactory to Lessor and in accordance with plans and specifications and cost estimates approved by Lessor. Lessor may designate a supervising architect to assure compliance with the provisions of this section, and if it does, Lessor shall pay the supervising architect's charges. Subject to Lessee's rights in section 14, all alterations, additions, fixtures, and improvements, whether temporary or permanent in character, made in or upon the Leased Premises by Lessee, will immediately become Lessor's property and, at the end of the term of this Lease will remain on the Leased Premises without compensation to Lessee. If Lessor provides Lessee with notice no less than ninety (90) days prior to the end of this Lease, Lessor may require that any alterations, additions, fixtures and improvements made in or upon the Leased Premises be removed by Lessee. In that event, Lessee shall remove such alterations, additions, fixtures and improvements at Lessee's sole cost and shall restore the Leased Premises, including but not limited to re-painting of the Facility's original exterior color, to the condition in which they were before such alterations, additions, improvements, and additions were made, reasonable wear and tear excepted.

**13. MECHANIC'S LIENS.** Lessee shall pay or cause to be paid all costs and charges for work done by it or caused to be done by it, in or to the Leased Premises, and for all materials furnished for or in connection with such work. Lessee shall indemnify Lessor against and hold Lessor harmless from all liabilities, liens, claims, and demands on account of such work. If any such lien is filed against the Leased Premises, Lessee shall cause such lien to be discharged of

record within ten (10) days after the filing of such lien. If Lessee desires to contest such a lien, Lessee shall furnish Lessor, within such ten-day period, security reasonably satisfactory to Lessor of at least one hundred fifty percent (150%) of the amount of the lien, plus estimated costs and interest. If a final non-appealable judgment establishing the validity or existence of a lien for any amount is entered, Lessee shall satisfy it at once. If Lessee fails to pay any charge for which such a lien has been filed, and does not give Lessor such security, Lessor may, at its option, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with it. Lessee shall immediately reimburse Lessor for the amount paid as Additional Rent. Nothing contained in this Lease is the consent or agreement of Lessor to subject Lessor's interest in the Leased Premises to liability under any lien law. If either Party receives notice that a lien has been or is about to be filed against the Leased Premises, or that any action affecting title to the Leased Premises has been commenced on account of work done by or for Lessee or labor or materials furnished to or for Lessee, they shall immediately give the other Party written notice of such notice. At least fifteen (15) days prior to the commencement of any work (including without limitation and maintenance, repairs, alterations, additions, improvements, or installations) in or to the Leased Premises, by or for Lessee, Lessee shall give Lessor written notice of the proposed work and the names and addresses of the persons supplying labor and materials for the proposed work. Lessor shall have the right to post notices of non-responsibility or similar notices on the Leased Premises in order to protect the Leased Premises against any such liens.

**14. SURRENDER OF PREMISES.** At the end of this Lease, Lessee shall surrender the Leased Premises in good order and condition, ordinary wear and tear excepted. If Lessee is not then in default, Lessee may remove from the Leased Premises any trade fixtures, equipment, and movable furniture placed in the Leased Premises by Lessee, whether or not such trade fixtures or equipment are fastened to the building. Lessee shall not remove any trade fixtures or equipment without Lessor's prior written consent if such trade fixtures or equipment are used in the operation of the Leased Premises and the removal of such fixtures or equipment would impair the structure of the building or if Lessor paid for said trade fixtures or equipment through rent abatement or other means. Whether or not Lessee is then in default, Lessee shall remove such alterations, additions, improvements, trade fixtures, equipment, and furniture as Lessor has requested in accordance with section 12. Lessee shall fully repair any damage occasioned by the removal of any trade fixtures, equipment, furniture, alterations, additions, and improvements. If any trade fixtures, equipment, furniture, alterations, additions, and improvements are not removed by Lessee, Lessee warrants that all such property is to be conclusively deemed to have been abandoned by Lessee and Lessor may appropriate, sell, store, destroy, or otherwise disposed of such property without notice to Lessee or to any other person and without obligation to account for them. The Lessee shall pay Lessor all expenses incurred in connection with Lessor's disposition of such property, including without limitation the cost of repairing any damage to the Facility or Leased Premises caused by removal of such property. Lessee shall perform the covenants of this section even after any termination of this Lease.

**15. HOLDOVER.** If Lessee holds over or remains in possession or occupancy of the Leased Premises after the expiration of the initial term or any renewal term or after any earlier termination of this Lease and rent is paid by Lessee and accepted by Lessor for or during any period of time it so holds over or remains in possession or occupancy, the Parties shall create only a tenancy from month to month at one hundred fifty percent (150%) of the last monthly rental and upon other terms (other than length of term) herein specified, which at any time either Party may terminate by giving the other Party thirty (30) days' notice of its intentions to terminate the same.

**16. DAMAGE TO PREMISES.** In the event that the Facility or improvements now located on the Leased Premises are damaged or injured from any cause whatever during the term of this Lease so as to render un-leasable all or any substantial part of the Leased Premises, and if in the judgment of the Parties the Leased Premises cannot, within ninety (90) days, be restored to its condition prior to such damage or injury, then the Lessee may terminate this Lease as of the end of the month immediately following the date of the damage or injury by giving notice in writing to the Lessor within thirty (30) days after such damage or injury. If Lessee exercises the right to termination, Lessee shall assign to the Lessor the Lessee's interests in all insurance proceeds payable as a result of said damage or injury, exclusive of insurance proceeds relating to damage or injury to property removable by Lessee under the provisions of section 14. Lessee shall prorate and pay Lessor all Rent and Additional Rent due hereunder by the last day of the month following the date of said damage or injury. If the period of time agreed upon by the Parties is in excess of ninety (90) days, and the Lessee has not elected, as aforesaid, to terminate this Lease, then neither Party may terminate this Lease on account of such damage or injury, but the Lessee shall repair, reconstruct, or restore the Leased Premises to a condition equivalent to that of its former condition. Lessee shall, upon completion of repair, recondition or restoration, be entitled to so much of the insurance proceeds payable to Lessor as a result of such damage or injury as are required to defray costs attributable to the repairs, reconstruction or restoration of Lessor's insurable interests.

**17. CONDEMNATION.** (a) Total Taking. If, by exercise of the right of eminent domain or by conveyance made in response to the threat of the exercise of such right (in either case a "taking"), all of the Leased Premises are taken, or if so much of the Leased Premises are taken that the Leased Premises (even if the restorations described in subparagraph (b) were to be made) cannot be used by Lessee for the purposes for which they were used immediately before the taking, the Parties shall end this Lease on the earlier of either the vesting of title to the Leased Premises in the condemning authority, or the taking of possession of the Leased Premises by the condemning authority (in either case the "ending date"). If the Lease ends according to this subsection (a), Lessor shall appropriately prorate prepaid rent to the ending date. The award in a taking subject to this subparagraph (a) will be allocated according to subsection (d).

(b) Partial Taking. If, after a taking, so much of the Leased Premises remains that the Leased Premises can be used for substantially the same purposes and at the same capacity for which it was used immediately before the taking: (i) The Parties will end this Lease on the ending date as to the part of the Leased Premises which was taken; (ii) Lessor shall appropriately allocate prepaid rent to the part of the Leased Premises which was taken and prorated to the ending date; (iii) Beginning on the day after the ending date, Lessor shall reduce the rent for the remaining portion of the Leased Premises in the proportion of the area of the Leased Premises remaining after the taking to the area of the Leased Premises before the taking; (iv) (v) Lessor shall pay Lessee the net award made to Lessor on account of the taking (after deducting from the total award attorneys', appraisals and other costs incurred in connection with obtaining the award, and amounts paid to the holders of mortgages affecting the Leased Premises).

(c) Lessee's Award. In connection with any taking subject to subsection (a) or (b), Lessee may prosecute its own claim by separate proceedings against the condemning authority for damages legally due to it (such as the loss of fixtures which Lessee was entitled to remove, and moving expenses) only so long as Lessee's award does not diminish or otherwise adversely affect Lessor's award.

(d) Allocation of an Award for a Total Taking. If this Lease ends according to subsection (a), the Parties agree that the condemnation award will be paid in the order in this subsection to the extent it is sufficient:

(i) First, to reimburse Lessor for its attorneys' fees, appraisal fees, and other costs incurred in prosecuting the claim for the award;

(ii) Second, to pay Lessor compensation for lost rent and the reversion;

(iii) Third, to pay Lessee its adjusted book value as of the date of the taking of its improvements (excluding trade fixtures) made to the Leased Premises (In computing the adjusted book value of the improvement, the Parties shall conclusively presume improvements have been depreciated or amortized for federal income tax purposes over their useful lives with a reasonable salvage value); and

(iv) Fourth, the Parties shall divide the balance equally between themselves.

**18. SUBORDINATION AND ATTORNMENT.** (a) This Lease and Lessee's rights under this Lease are subject to and subordinate to any conveyances made by Lessor as a part of any public/private Joint Venture, any ground lease or underlying lease, first mortgage, first deed of trust or other first lien encumbrance or indenture, together with any renewals, extensions, modifications, consolidations, and replacements of them, which now or at any subsequent time affect the Leased Premises or any interest of Lessor in the Leased Premises or Lessor's interest in this Lease and the estate created by this Lease (except to the extent that any such instrument expressly provides that this Lease is superior to it). This provision shall be self-operative and no further instrument of subordination shall be required in order to affect it. Nevertheless, Lessee shall execute, acknowledge and deliver to Lessor, at any time and from time to time, upon demand by Lessor, such documents as may be requested by Lessor, any ground lessor or underlying lessor or any mortgagee, or any holder of a deed of trust or other instrument described in this section, to confirm or effect any such subordination. If Lessee without good cause fails or refuses to execute, acknowledge, and deliver any such documents within twenty (20) days after written demand, Lessor, its successors and assigns shall be entitled to execute, acknowledge, and deliver any such documents on behalf of Lessee as Lessee's attorney-in-fact. Lessee constitutes and irrevocably appoints Lessor, its successors and assigns, as Lessee's attorney-in-fact to execute, acknowledge, and deliver on behalf of Lessee any documents described in this section.

(b) If any person succeeds to Lessor's interest in the Leased Premises, Lessee shall pay to such successor all rents subsequently payable under this Lease. Lessee shall, upon request of any one so succeeding to the interest of Lessor, automatically become the Lessee of, and attorn to, such successor in interest without change in this Lease. The Parties warrant that such successor in interest will not be bound by: (i) Any payment of rent for more than one month in advance; (ii) Any amendment or modification of this Lease made without its written consent. Upon request by such successor in interest and without cost to Lessor or such successor in interest, Lessee shall execute, acknowledge, and deliver an instrument or instruments confirming the attornment. The Parties warrant that in this instrument of attornment, such successor in interest will not disturb Lessee in its use of the Leased Premises in accordance with this Lease. If Lessee without good cause fails or refuses to execute, acknowledge, and deliver any such instrument within twenty (20) days after written demand, Lessee shall allow such successor in interest to execute, acknowledge, and deliver any such

document for and on behalf of Lessee as Lessee's attorney-in-fact. Lessee shall constitute and irrevocably appoint such successor in interest as Lessee's attorney-in-fact to execute, acknowledge and deliver on behalf of Lessee any document described in this section.

**19. LESSOR'S RIGHT OF ACCESS.** Lessor, its agents, employees, and contractors may enter the Leased Premises at any time in response to an emergency, or at reasonable hours to: (a) Inspect the Leased Premises; (b) Exhibit the Leased Premises to prospective purchasers, lenders, or lessees; (c) Determine whether Lessee is complying with its obligations in this Lease; (d) Supply any service or conduct any testing which this Lease or the needs of the Facility require Lessor to provide; (e) Post notices of non-responsibility or similar notices; or (f) Make repairs which this Lease requires Lessor to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Lessor's adjacent premises. Lessor warrants all such work shall be done as promptly as reasonably possible and so as to cause as little interference to Lessee as reasonably possible. Lessee waives any claim on account of any injury or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Leased Premises, or any other loss occasioned by such entry. Lessor shall at all times have a key with which to unlock all of the doors in the Leased Premises (excluding Lessee's vaults, safes and similar areas designated in writing by Lessee in advance). Lessor shall have the right to use any means which Lessor may deem proper to open doors in the Leased Premises in an emergency in order to enter the Leased Premises. If Lessor enters the Leased Premises in accordance with this section, the Parties agree that no entry to the Leased Premises by Lessor by any means will be a forcible or unlawful entry into the Leased Premises or a detainer of the Leased Premises or an eviction, actual or constructive, of Lessee from the Leased Premises, or any part of the Leased Premises, nor will any such entry entitle Lessee to damages or any abatement of rent or other charges which this Lease requires Lessee to pay.

**20. INDEMNIFICATION.** Lessee shall indemnify Lessor, its agents, and employees against, and hold Lessor, its agents, and employees harmless from, any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), losses, liabilities, judgments, and expenses (including, without limitation, attorneys' fees and court costs) incurred in connection with or arising from: (a) the use or occupancy of the Leased Premises by Lessee or any person claiming under Lessee; (b) any activity, work, or thing done, or permitted or suffered by Lessee in or about the Leased Premises; (c) any acts, omissions, or negligence of Lessee or any person claiming under Lessee, or the contractors, agents, employees, invitees, or visitors of Lessee or any such person; (d) any breach, violation, or nonperformance by Lessee or any person claiming under Lessee or the employees, agents, contractors, invitees, or visitors of Lessee or any such person of any term, covenant, or provision of this Lease or any law, ordinance, or governmental requirement of any kind; (e) (except for loss of use of all or any portion of the Leased Premises or Lessee's property located within the Leased Premises which is proximately caused by or results proximately from the negligence of Lessor), any injury or damage to the person, property, or business of Lessee, its employees, agents, contractors, invitees, visitors, or any other person entering upon the Leased Premises under the express or implied invitation of Lessee; or (f) any liability or loss from claims or causes of action resulting solely from Lessee's release of toxic or hazardous material, substance, or waste or from the failure of Lessee to comply with federal, state, or local laws or regulations relating to environmental protection. If any action or proceeding is brought against Lessor, its employees, or agents by reason of any such claim, Lessee, upon notice from Lessor, shall defend the claim at Lessee's expense with counsel reasonably satisfactory to Lessor.

**21. WAIVER AND RELEASE.** Lessee shall waive and release all claims against

Lessor, its employees, and agents with respect to all matters for which Lessor has disclaimed liability pursuant to the provisions of this Lease. In addition, Lessee agrees that Lessor, its agents, and employees, will not be liable for any loss, injury, death, or damage (including consequential damages) to persons, property, or Lessee's business occasioned by theft, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, order of governmental body or authority, fire, explosion, falling objects, steam, water, rain or snow, leak or flow of water (including water from the transit system, rain or snow from the Leased Premises or into the Leased Premises or from the roof, street, subsurface or from any other place, or by dampness or from the breakage, leakage, obstruction, or other defects of pipes, sprinklers, wires, appliances plumbing, air conditioning, or lighting fixtures of Leased Premises, or from construction, repair, or alteration of the Leased Premises or from any acts or omissions of any other Lessee, occupant, or visitor of the Leased Premises, or from any cause beyond Lessor's control, unless and to the extent that such is compensable under the insurance policy maintained by Lessor and premiums assessed as Additional Rent to Lessee).

**22. QUIET ENJOYMENT.** So long as the Lessee pays the rent, and performs all of its obligations in this Lease, the Lessee's possession of the Leased Premises will not be disturbed by Lessor, or anyone claiming by, through or under the Lessor except to the extent necessary to maintain and secure the Facility or carry out a duty required under this Lease.

**23. DEFAULT.** (a) Events of Default. The following occurrences are "Events of Default":

(i) Lessee defaults in the due and punctual payment of rent, and such default continues for five (5) days after notice from Lessor; however, Lessee will not be entitled to more than one (1) notice for default in payment of rent during any twelve-month period, and if, within twelve (12) months after any such notice, any rent is not paid when due, an event of default will have occurred without further notice;

(ii) Lessee vacates or abandons the Leased Premises;

(iii) This Lease or the Leased Premises or any part of the Leased Premises are taken upon execution or by other process of law directed against Lessee, or are taken upon or subjected to any attachment by any creditor of Lessee or claimant against Lessee, and such attachment is not discharged within fifteen (15) days after its levy;

(iv) Lessee files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or is dissolved, or make an assignment for the benefit of creditors;

(v) Involuntary proceedings under any such bankruptcy laws or insolvency act or for the dissolution of Lessee are instituted against Lessee, or a receiver or trustee is appointed for all or substantially all of Lessee's property, and such proceeding is not dismissed or such receivership or trusteeship is not vacated within sixty (60) days after such institution or appointment;

(vi) Lessee fails to take possession of the Leased Premises on the Commencement Date of the term; or

(vii) Lessee or Lessor breaches any of the other agreements, terms, covenants, or conditions which this Lease requires Lessee or Lessor to perform, and such breach continues

for a period of thirty (30) days after notice by the non-breaching party.

(b) Remedies. If an Event of Default occurs pursuant to subsection 23(a), then the aggrieved party may, at its election, either:

(i) Give written notice of its intention to terminate this Lease on the date of such notice or on any later date specified in such notice, and, on the date specified in such notice Lessee's right to possession of the Leased Premises will cease and the Lease will be terminated (except as to Lessee's liability set forth in this subsection (i)) as if the expiration of the term fixed in such notice were the end of the term of this Lease. If this Lease is terminated by Lessor pursuant to the provisions of this subparagraph (i), Lessee shall remain liable to Lessor for damages in an amount equal to the rent and other sums which would have been owing by Lessee under this Lease for the balance of the term if this Lease had not been terminated, less the net proceeds, if any, of any re-letting of the Leased Premises by Lessor subsequent to such termination, after deducting all Lessor's expense in connection with such re-letting, including without limitation, the expenses set forth in subsection (ii)(2). Lessor shall be entitled to collect such damages from Lessee monthly on the days on which the rent and other amounts would have been payable under this Lease if this Lease had not been terminated and Lessor shall be entitled to receive such damages from Lessee on each such day. Alternatively, at the option of Lessor, if this Lease is terminated, Lessor shall be entitled to recover from Lessee: (A) the worth at the time of award of the unpaid rent which had been earned at the time of termination; (B) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amounts of such rent loss that Lessee proves could reasonably have been avoided; (C) the worth at the time of award of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of such rent loss that Lessee proves could reasonably be avoided; and (D) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result from such failure. The "worth at the time of award" of the amount referred to in clauses (A) and (B) is computed by allowing interest at the highest rate permitted by law. The "worth at the time of award" of the amount referred to in clause (C) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of Cleveland, Ohio, at the time of award. For the purpose of determining unpaid rental under clause (C), the monthly rent reserved in this Lease shall be deemed to be the sum of the rent and additional charges due under section 5 and the amounts last payable by Lessee pursuant to section 5 for the calendar year in which the award is made; or

(ii) (1) Without demand or notice, re-enter and take possession of the Leased Premises or any part of the Leased Premises; and repossess the Leased Premises as of the Lessor's former estate; and expel the Lessee from the Leased Premises and those claiming through or under Lessee; and, remove the effects of both or either, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenants or conditions. If Lessor elects to re-enter, as provided in this subsection (ii) or if Lessor takes possession of the Leased Premises pursuant to legal proceedings or pursuant to any notice provided by law, Lessor may, from time to time, without terminating this Lease, re-let the Leased Premises or any part of the Leased Premises in Lessor's or Lessee's name but for the account of Lessee, for such term or terms (which may be greater or lesser than the period which would otherwise have constituted the balance of the term of this Lease) and on such terms and conditions (which may include concessions of free rent, and the alteration and repair of the Leased Premises) as Lessor, in its uncontrolled discretion, may determine. Lessor may collect and receive the rents for the Leased Premises. Lessor shall not be responsible or



liable for any failure to re-let the Leased Premises, or any part of the Leased Premises, or for any failure to collect any rent due upon such re-letting. No such re-entry or taking possession of the Leased Premises by Lessor shall be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee. No notice from Lessor under this Lease or under a forcible entry and detainer statute or similar law will constitute an election by Lessor to terminate this Lease unless such notice specifically says so. Lessor reserves the right following any such re-entry, re-letting, or both, to exercise its right to terminate this Lease by giving Lessee such written notice, and in that event the Lease shall terminate as specified in such notice.

(2) If Lessor elects to take possession of the Leased Premises according to this subsection (ii) without terminating the Lease, Lessee shall pay Lessor: (A) the rent and other sums which would be payable under this Lease if such repossession had not occurred; less (B) the net proceeds, if any, of any re-letting of the Leased Premises after deducting all of Lessor's expenses incurred in connection with such re-letting, including without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, alteration, remodeling, repair costs, and expenses of preparation for such re-letting.

(3) If, in connection with any re-letting, the new lease term extends beyond the existing term or the Leased Premises covered by such re-letting include areas which are not part of the Leased Premises, a fair apportionment of the rent received from such re-letting and the expenses incurred in connection with such re-letting will be made in determining the net proceeds received from such re-letting. In determining the net proceeds from such re-letting, any rent concessions will be apportioned over the term of the new Lease and (A) Lessee shall pay such amounts to Lessor monthly on the days on which the rent and all other amounts owing under this Lease would have been payable if possession had not been retaken; (B) Lessor shall be entitled to receive the rent and other amounts from Lessee on each such day; and (C) Lessee shall pay Lessor when due amounts payable under this Lease or perform any of Lessee's other obligations under the Lease within the time permitted for its performance, upon such notice or without notice, as may be reasonable under the circumstances and without waiving any of its rights under this Lease.

(4) Lessee shall pay Lessor for all amounts so paid by Lessor and all cost and expenses incurred by Lessor in connection with the performance of any such obligations (together with interest at the prime rate from the date of Lessor's payment of such amount or incurring of each such cost or expense until the date of full repayment by Lessee) upon Lessor's demand. In the proof of any damages which Lessor may claim against Lessee arising out of Lessee's failure to maintain insurance, Lessor shall not be limited to the amount of the unpaid insurance premium but rather Lessor shall also be entitled to recover as damages for such breach, the amount of any uninsured loss (to the extent of any deficiency in the insurance required to be obtained by Lessee by the provisions of this Lease), damages, costs and expenses of suit, including attorney's fees, arising out of damage to, or destruction of, the Leased Premises occurring during any period for which Lessee has failed to provide such insurance.

(c) Remedies Cumulative. Lessor may bring suit or suits for the recovery of the rents and other amounts and damages set forth in this section from time to time at Lessor's election, and nothing in this Lease will be deemed to require Lessor to await the date on which the term of this Lease expires. Each right and remedy in this Lease shall be cumulative and shall be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Lessor of any such rights or

remedies shall not preclude the simultaneous or later exercise by Lessor of any other such rights or remedies. All such rights and remedies are cumulative and nonexclusive.

**24. LESSOR'S LIEN.** To secure the payment of all rent and its performance of this Lease, Lessee grants to Lessor an express first and prior contract lien and security interest on all property (including fixtures, equipment, chattels, and merchandise) which may be placed in the Leased Premises, and also upon all proceeds of any insurance which may accrue to Lessee by reason of the destruction or damage of any such property. The first and prior contract lien does not apply to any property located on the premises that was purchased pursuant to and subject to the first lien under Lessee's floor plan financing and/or LOC. Lessee shall not remove such property from the Leased Premises (except in the ordinary course of business) without the written consent of Lessor until all arrearages in rent have been paid. Lessee shall waive the benefit of all exemption laws in favor of such lien and security interest. This lien and security interest is given in addition to the Lessor's statutory lien and is cumulative with it. Upon the occurrence of an event of default, these liens may be foreclosed with or without court proceedings by public or private sale, so long as Lessor gives Lessee at least fifteen (15) days' notice of the time and place of the sale. Lessor shall have the right to become the purchaser if it is the highest bidder at such sale. Contemporaneous with its execution of this Lease (and if requested after such execution by Lessor), Lessee shall execute and deliver to Lessor Uniform Commercial Code financing statements in form and substance sufficient (upon proper filing) to perfect the security interest granted in this section. If requested by Lessor, Lessee shall also execute and deliver to Lessor Uniform Commercial Code continuation statements in form and substance sufficient to reflect any proper amendment of, modification in, or extension of the security interest granted in this section.

25. Not Applicable

**26. ENVIRONMENTAL INDEMNIFICATION.** As used in this Lease, the term "Hazardous Substance" shall mean:

(a) all materials and substances defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous waste," "toxic chemicals," "solid waste", "infectious waste," or similar terms in (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq., as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, 100 Stat. 1613), (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq., (iii) the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., or (iv) Section 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317);

(b) All materials and substances listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances, as the same may be amended or supplemented from time to time;

(c) Any material, waste or substance that is or contains (i) petroleum or petroleum derivatives, (ii) asbestos, (iii) polychlorinated byphenals, (iv) flammable explosives, (v) radioactive materials, (vi) radon gas, (vii) lead and lead-based paint, (viii) infectious, carcinogenic or mutagenic materials, or (ix) mold in a condition, location or type that may pose a risk to human life or safety or the environment, or that may cause damage to property;

(d) Those substances included within the definitions of "hazardous waste," "solid waste," or "infectious wastes" in § 3734.01, Ohio Revised Code, or "toxic chemical" under § 3751.01, Ohio Revised Code; and

(e) Such other substances, materials and wastes that are or become regulated as hazardous or toxic under applicable local, state or federal law.

26.1 Lessee shall comply with all applicable federal, state, and local laws, regulations, administrative rulings, orders, ordinances, and the like, pertaining to the protection of the environment, including, but not limited to, those regulating the handling and disposal of Hazardous Substance ("Environmental Laws"). Further, during the term of this Lease, neither Lessee nor any agent or party acting at the direction or with the consent of Lessee shall manufacture, use, treat, store, or dispose of any Hazardous Substance in full compliance with all applicable Environmental Laws.

26.2 Without limiting any other indemnities contained in this Lease, Lessee agrees to indemnify and defend Lessor against, and to hold Lessor harmless from, any and all claims, demands, losses, liabilities, damages, injuries, costs and expenses (including, but not limited to, fees and disbursements of attorneys, experts and consultants) paid or incurred by, or asserted against, the Lessor for, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release onto or from the Leased Premises, of any Hazardous Substance placed on or under the Leased Premises during the term of this Lease and until possession of the Leased Premises is returned to Lessor, regardless of whether or not such contamination was caused by, or within the control of, Lessee.

26.3 If any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is necessary under any applicable Environmental Law because of, or in connection with, the presence or suspected presence of contamination for which Lessee is responsible pursuant to the preceding subsections about, under, within or near the Leased Premises, Lessee shall, within thirty (30) days after written demand for performance by Lessor or governmental authority having jurisdiction, including but not limited to the Federal Transit Administration, (or such shorter period of time as may be required under any applicable law, regulation, order or agreement), promptly commence and diligently prosecute to completion all such Remedial Work. All Remedial Work shall be performed by one or more contractors approved in advance in writing by Lessor. The Remedial Work shall be completed in compliance with the requirements of all governmental agencies having jurisdiction. All costs and expenses related to such Remedial Work shall be paid by Lessee including, without limitation, costs incurred by any Lessor in connection with monitoring or review of such Remedial Work. In the event Lessee shall fail to promptly commence or cause to be commenced, or fail to diligently prosecute to completion, any such Remedial Work, Lessor may, but shall not be required to, cause such Remedial Work to be performed and all costs and expenses so incurred shall become immediately due and payable from Lessee to Lessor.

26.4 Lessee shall give immediate written notice to Lessor of: (i) any proceeding, inquiry, notice, or other communication by or from any governmental or non-governmental entity regarding the presence or suspected presence of any Hazardous Substance at, on, about, under, within, near or in connection with the Leased Premises; (ii) all claims, demands, suits and the like, whether by a governmental agency or otherwise, relating to the environmental condition of the Leased Premises; and (iii) the receipt of any notice or discovery of any information regarding any actual, alleged, or potential use, manufacture, production, storage,

spillage, seepage, release, discharge, disposal or any other presence or existence or any Hazardous Substance at, on, about, under, within, near or in connection with the Leased Premises.

**27. MISCELLANEOUS PROVISIONS.** (a) No Offer Intended. The submission of this Lease to Lessee is not an offer to Lease the Leased Premises, or an agreement by Lessor to reserve the Leased Premises for Lessee. Lessor shall not be bound to Lessee until Lessee has duly executed and delivered duplicate original Leases to Lessor and Lessor has duly executed and delivered one of those duplicate original Leases to Lessee.

(b) Brokers. Lessor has utilized the brokerage services of Ostendorf-Morris. Lessor shall pay the brokerage commission due to Ostendorf-Morris if required. Lessee shall indemnify Lessor against any loss, liability, and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions from anyone with whom Lessee has dealt with regard to the Leased Premises or this Lease. Lessor shall indemnify Lessee against any loss, liability, and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions from anyone other than Ostendorf-Morris with whom Lessor has dealt with regard to the Leased Premises or this Lease.

(c) No Merger. The surrender of this Lease by Lessee or the cancellation of this Lease by agreement of Lessee and Lessor or the termination of this Lease on account of Lessee's default shall not work a merger, and shall, at Lessor's option, terminate any subleases or operate as an assignment to Lessor of any subleases. If Lessor exercises its option to terminate under this section, Lessor shall notify Lessee and all known sub-lessees in the Leased Premises.

(d) Estoppel Certificates. Within no more than ten (10) days after written request by Lessor, Lessee shall execute, acknowledge, and deliver to Lessor a certificate stating: (i) that this Lease is unmodified and in full force and effect, or, if the Lease is modified, the way in which it is modified accompanied by a copy of the modification agreement; (ii) the date to which rental and other sums payable under this Lease have been paid; (iii) that no notice has been received by Lessee of any default which has not been cured, or, if such a default has not been cured, what Lessee intends to do in order to effect the cure, and when it shall do so; (iv) that Lessee has accepted and occupied the Leased Premises; (v) that Lessee has no claim or offset against Lessor, or, if it does, stating the circumstances which gave rise to the claim or offset; (vi) that Lessee is not aware of any prior assignment of this Lease by Lessor, or, if it is, stating the date of the assignment and assignee (if known to Lessee); and (vii) such other matters as may be reasonably requested by Lessor. Any such certificate may be relied upon by any prospective purchaser of the Leased Premises and any prospective mortgagee or beneficiary under any deed of trust or mortgage encumbering the Leased Premises. If Lessor submits a completed certificate to Lessee, and if Lessee fails to object to its contents within five (5) days after its receipt of the completed certificate, the matters stated in the certificate shall conclusively be deemed to be correct. Furthermore, Lessee irrevocably appoints Lessor as Lessee's attorney-in-fact to execute and deliver on Lessee's behalf any completed certificate to which Lessee does not object within five (5) days after its receipt.

(e) No Waiver. No waiver of any condition or agreement in this Lease by either Party will imply or constitute a further waiver by such Party of the same or any other condition or agreement. No act or thing done by Lessor or Lessor's agents during the term of this Lease will be deemed an acceptance of a surrender of the Leased Premises, and no

agreement to accept such surrender will be valid unless in writing signed by Lessor. The delivery of Lessee's keys to any employee or agent of Lessor will not constitute a termination of this Lease unless Lessor has entered into a written agreement to that effect. No payment by Lessee, or receipt from Lessor, of a lesser amount than the rent or other charges stipulated in this Lease will be deemed to be anything other than a payment on account of the earliest stipulated rent. No endorsement or statement on any check, or any letter accompanying any check or payment as rent, will be deemed an accord and satisfaction. Lessor shall accept such check for payment without prejudice to Lessor's right to recover the balance of such rent or to pursue any other remedy available to Lessor. If this Lease is assigned, or if the Leased Premises or any part of the Leased Premises is sublet or occupied by anyone other than Lessee, Lessor may collect rent from the assignee, sub-lessee, or occupant and apply the net amount collected to the rent reserved in this Lease. No such collection will be deemed a waiver of the covenant in this Lease against assignment and subletting, or the acceptance of the assignee, sublessee, or occupant as Lessee, or a release of Lessee from the complete performance by Lessee of its covenants in this Lease.

(f) Joint and Several Liability. If Lessee is composed of more than one signatory to this Lease, each signatory shall be jointly and severally liable with each other signatory for payment and performance according to this Lease.

(g) Authority. If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor the Lessee is duly authorized and existing corporation, the Lessee is qualified to do business in the state of Ohio, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee shall provide evidence satisfactory to Lessor confirming these representations.

(h) Captions, Exhibits, Gender, and Number. The captions and table of contents are inserted in this Lease only for convenience of reference and do not define, limit, or described the scope or intent of any provisions of this Lease. The exhibits to this Lease are incorporated into the Lease. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another.

(i) Entire Agreement. This Lease contains the entire agreement between Lessor and Lessee with respect to its subject matter and may be amended only by subsequent written agreement between them. Except for those which are set forth in this Lease, no representations, warranties, or agreements have been made by Lessor or Lessee to one another with respect to this Lease.

(j) Notice. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be delivered personally or shall be mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to the Parties at the following addresses, or such other or further addresses as either of the Parties shall request by further written notice given in the manner herein required:

If to Lessor:           Greater Cleveland Regional Transit Authority  
                                  Attention: Property Manager  
                                  Planning and Programming  
                                  1240 West 6<sup>th</sup> Street  
                                  Cleveland, Ohio 44113-1331

With Copy to: Greater Cleveland Regional Transit Authority  
Attention: Senior Counsel – Contracts & Real Estate Section  
Legal Department  
1240 W. 6<sup>th</sup> St.  
Cleveland, Ohio 44113-1331

If to Lessee: GWA Holdings, LLC  
12327 Paddock Circle  
Strongsville, Ohio 44142  
Attention: Vince Hugo

(k) Severability. If any provisions of this Lease are found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease shall not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, the Parties shall add as a part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

(l) Governing Law and Venue. This Lease will be governed by the law of the State of Ohio and will be construed and interpreted according to that law. Venue on any action arising out of this Lease will be proper only in the Cuyahoga County, State of Ohio, Court of Common Pleas or in the case of Forcible Entry and Detainer actions, the Municipal Court having territorial jurisdiction.

(m) Binding Effect. This Lease will inure to the benefit of, and will be binding upon, the successors and permitted assigns of the Parties.

(n) Not Applicable

(o) Incorporation of Letter Agreement. Notwithstanding the foregoing, Lessor and Lessee have reached agreement on certain other matters as specified in the Letter Agreement attached hereto and incorporated herein as Exhibit "D". Exhibit "D" may be amended in writing by the Parties without amendment of the Lease. If there is a conflict between the Lease and Exhibit "D", Exhibit "D" controls.

IN WITNESS WHEREOF, Lessor and Lessee have signed and sealed this Lease as of the day and year first above written.

LESSEE: **GWA Holdings, LLC**

LESSOR: **Greater Cleveland Regional Transit Authority**

By: \_\_\_\_\_

By: \_\_\_\_\_

Joseph A. Calabrese, CEO

Its: \_\_\_\_\_

Its: General Manager/Secretary-Treasurer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

The legal form and correctness of the within instrument are hereby approved.

\_\_\_\_\_  
Sheryl King Benford General Counsel,  
Deputy General Manager - Legal Affairs

STATE OF OHIO            )  
  ) SS.  
CUYAHOGA COUNTY    )

BEFORE ME, a notary public in and for said County and State, came the Greater Cleveland Regional Transit Authority, a body politic, by Joseph A. Calabrese, CEO, its General Manager/Secretary-Treasurer, who acknowledged that he did execute the foregoing instrument, on behalf of said Authority; that the same is his free act and deed, individually and as such officer; and the free act and deed of the Authority.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at Cleveland, Ohio this \_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF OHIO        )  
                                  ) SS.  
CUYAHOGA COUNTY )

BEFORE ME, a notary public in and for said County and State, personally appeared the above named, \_\_\_\_\_, who acknowledged that he/she did sign the foregoing instrument on behalf of GWA Holdings, LLC and that the same is his/her free act and deed.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at Cleveland, Ohio, this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
NOTARY PUBLIC

This instrument prepared by:



## EXHIBIT "A"

### Description of Leased Premises

#### PARCEL ONE

Situated in the City of Cleveland, Cuyahoga County, State of Ohio, and known as being a part of original Brooklyn Township lot No. 58 and bounded and described as follows:

Commencing in the Southeast corner of said original lot No. 58, in the center of West 35th Street; thence North along the East line of said original lot No. 58, in the center of West 35th Street, 1122.54 feet to the place of beginning; thence West 266.64 feet, to a stone; thence Northwesterly 462.16 feet to the center of Pearl Road; thence by an angle to the right of  $111^{\circ} 30'$  from said last described line, Northeasterly along the center of Pearl Road, 413.82 feet to a point; thence East by an angle to the right of  $58^{\circ} 21' 30''$ , to the East line of said line of said original lot No. 58, in the center of West 35th Street; thence South along the East line of said original lot No. 58, in the center of West 35th Street to the place of beginning. This parcel has a frontage of 426.15 feet on the Easterly side of Pearl Road, and 463 feet, more or less, on the West side of West 35th Street.

#### PARCEL TWO

situated in the City of Cleveland

County of Cuyahoga and State of Ohio:

And known as being part of Original Brooklyn Township, Lot No. 58 and being further bounded and described as follows:

Beginning in the center line of Pearl Road, 66 feet wide, at the northwesterly corner of Parcel II of land conveyed to John P. Farrelly, Bishop of the Diocese of Cleveland by deed recorded in Vol. 1193 of Deeds, page 681 of Cuyahoga County Records; said beginning point being  $N 32^{\circ} 38' 44'' E$ , 530.17 feet measured along said center line, from a stone monument in said center line at the south line of land conveyed to Cephas Brainard by deed recorded in Vol. 412 of Deeds, page 448 of Cuyahoga County Records.

Course No. 1: Thence South  $73^{\circ} 43' 12''$  East - 253.80 feet.

Course No. 2: Thence South  $67^{\circ} 35' 15''$  East - 22.76 feet.

Course No. 3: Thence South  $80^{\circ} 43' 02''$  East - 181.55 feet to the northeasterly corner of Parcel II; as aforesaid.

Course No. 4: Thence North  $75^{\circ} 42' 15''$  West along the northeasterly line of said Parcel II, 456.14 feet to the place of beginning and containing 0.0646 Acres of land according to a survey by Bauer Survey Company, dated February 21, 1958.

**EXHIBIT "B"**  
**PURCHASE AGREEMENT**

*Same purchase agreement as previously executed but \$600K purchase price*

**EXHIBIT "C"**

**BASIC LEASE INFORMATION**

Lessor: Greater Cleveland Regional Transit Authority

Lessee: GWA Holdings, LLC

Premises: Former RTA Brooklyn Garage

City: Cleveland

County: Cuyahoga

State: Ohio

Zip Code: 44109

TERM: Sixty (60) Months

COMMENCEMENT DATE: November 1, 2012

MONTHLY RENT (Initial Term): \$9,808.67

**LESSOR'S ADDRESS FOR NOTICES:**

Greater Cleveland Regional Transit Authority  
Attention: Property Manager  
Programming and Planning  
1240 West 6th Street  
Cleveland, Ohio 44113-1331

**LESSEE'S ADDRESS FOR NOTICES:**

GWA Holdings  
Attention: Vince Hugo

***12327 Paddock Circle  
Strongsville, Ohio 44142***

The basic Lease information is part of the Lease. However, if any of the basic Lease information contradicts any provision of the Lease, the provisions of the Lease will prevail.

## EXHIBIT "D"

### LETTER AGREEMENT

To: Vince Hugo  
GWA Holdings

From: Joseph A. Calabrese, CEO  
General Manager/Secretary-Treasurer

Re: Letter Agreement  
Brooklyn Garage Lease Deal Points

Date: October \_\_\_\_\_, 2012

In addition to the terms of the Lease Agreement dated \_\_\_\_\_ by and between GWA Holdings, LLC, an Ohio Limited Liability Company ("Lessee") and the Greater Cleveland Regional Transit Authority ("Lessor") (collectively, the "Parties"), the Parties have reached agreement on certain items regarding usage of the Brooklyn Garage (the "Facility").

Please acknowledge your agreement with the below items.

- Prior to the commencement of the Lease, Lessee has caused an Environmental Baseline Study of the Facility to be conducted. Lessee shall not be responsible for any issues predating its occupancy of the Facility. Lessor may conduct environmental investigations during the term of this lease.
- Lessor's security card access reader at the Facility will be disabled. Lessee will provide Lessor with a new key to access the facility.
- Lessee will maintain the fire suppression system throughout the Facility and fire pump and will submit maintenance records to Lessor upon termination of the Lease.
- Lessee will maintain the emergency generator for the Facility and will submit maintenance records to Lessor upon termination of the Lease.
- Lessor will maintain the Veeder Root System at the Facility and Lessee will reimburse Lessor for those costs.
- If the fire alarm is triggered and Lessor is charged for the emergency response, Lessee will reimburse Lessor for the amount charged.
- The Parties will exchange a list of emergency contact personnel.
- Lessee acknowledges and agrees that certain Lessor personnel will continue to access the Leased Premises for purposes including but not limited to inspections, monitoring of equipment, and testing. Lessor's access shall occur during normal business hours and with reasonable prior notice unless exigent circumstances exist.
- The Parties will have a "test day" prior to the commencement of the Lease to identify assets, appurtenances, fixtures, and equipment that Lessee will be required to maintain in good working order.
- Lessee will landscape, clear snow, and maintain the Leased Premises.

Acknowledged and Agreed to by:

\_\_\_\_\_  
Vince Hugo  
GWA Holdings, LLC

\_\_\_\_\_  
Joseph A. Calabrese, CEO  
General Manager/Secretary-Treasurer