

**WALDWICK BOARD OF EDUCATION**  
Waldwick, New Jersey

**SPECIAL MEETING AGENDA**  
**JANUARY 14, 2022**

**Julia A. Traphagen Building 11 Conference Room**  
**153 Summit Avenue**  
**9:00 A.M.**

**I. CALL TO ORDER - OPENING STATEMENT**

**II. ADEQUATE NOTICE OF MEETING**

This is a SPECIAL MEETING of the Waldwick Board of Education for which adequate notice has been given pursuant to the Open Public Meetings Act, Chapter 231, Laws of 1975. A legal notice was published on Friday, January 14, 2022 specifying the time, date, location and, to the extent known as required under Section 13 of the Act, and a separate written advance notice of this meeting under Section 3(d) of the Act, the agenda of the meeting was posted at the School Administration Building and hand delivered to the Waldwick Borough Clerk on Thursday, January 13, 2022. It is posted on the District website. This is an official meeting.

**III. ROLL CALL**

Trustee Christine Figliuolo  
Vice President Andrew Frey  
Trustee Julie Mangler  
Trustee Mary Beth Nappi  
Trustee Timothy O'Hare  
Trustee Troy Seifert  
President Daniel Marro, Sr.

Dr. Paul Casarico, Superintendent of Schools  
Mr. John Griffin, School Business Administrator/Board Secretary

**IV. PLEDGE OF ALLEGIANCE**

**V. APPROVAL - LEASE AGREEMENT FOR TEMPORARY CLASSROOMS  
- HIGH SCHOOL/ MIDDLE SCHOOL - MOBILEASE MODULAR SPACE,  
INC. - ESCNJ BID #20/21-43**

Offered by Trustee \_\_\_\_\_, seconded by Trustee \_\_\_\_\_:

BE IT RESOLVED that upon recommendation of the Superintendent, the Waldwick Board of Education approves the attached 24 month lease agreement with Mobilease Modular Space, Inc. for temporary classroom

space at the High School/Middle School for the Referendum Project through ESCNJ Bid #20/21-43 in the amount of \$541,200.00.

**ROLL CALL VOTE**

	YES	NO	ABSTAIN	ABSENT
Trustee Figliuolo				
Vice President Frey				
Trustee Mangler				
Trustee Nappi				
Trustee O'Hare				
Trustee Seifert				
President Marro				

**VI. ADJOURNMENT**

Hearing no further business, the meeting was adjourned at \_\_\_\_\_ a.m. on motion of Trustee \_\_\_\_\_, seconded by Trustee \_\_\_\_\_.

**Lease Agreement**

Lease Agreement #: 202209  
Customer Name: Waldwick Public Schools  
Lease Activation Date: January 11<sup>th</sup> 2022

**Mobilelease Modular Space, Inc. – 201 Route 130, Pedricktown, NJ 08067**  
**Telephone: 856-686-9600 -- Fax: 856-686-9240**

Mobilelease Modular Space, Inc. (MMS), a New Jersey corporation, hereby referred to as the "Lessor" will lease the equipment specified below (the "Equipment") to the following hereby referred to as the "Lessee":

**Lessee Billing Address:**

Lessee Name: Waldwick Public Schools  
  
Address: 155 Summit Ave,  
City, State, Zip: Waldwick, NJ 07463  
Customer Contact: John Griffin  
Phone: 201-445-3131  
Email: griffinj@waldwickschools.org  
Fax: \_\_\_\_\_  
Mobile: \_\_\_\_\_

**The Equipment will be located at:**

Lessee Name: Waldwick High School  
  
Address: 155 Wycoff Ave  
City, State, Zip: Waldwick, NJ 07463  
Site Contact: John Griffin  
Phone: 201-445-3131  
Email: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Mobile: \_\_\_\_\_

Lessee hereby leases Equipment from Lessor for a minimum of 24 months (the "Minimum Lease Period") from the start of the lease term in accordance with the terms and conditions of this Lease Agreement including the terms and conditions set forth on the attached page (this "Lease Agreement"). Leasing month is defined as a calendar month.

Lessee agrees to pay Lessor, without demand and in advance, the monthly lease rate and other charges on the due dates set forth in this Lease Agreement. The lease activation date for the Equipment, subject to Section 3(d) of the Terms and Conditions, will be on or about 08/01/22. The Lease Agreement will expire on or about 07/01/2024.

**SCHEDULE OF VALUES:****I. ONE-TIME CHARGES:**

Item	Quantity	Unit	Rate	Extension
General Conditions, Delivery & Installation/ engineering	3	Lump Sum	\$60,000	\$180,000.00
Aluminum decks and ramps	3		\$24,000	\$72,000.00
Teardown and return	3		\$28,000	\$84,000.00
<b>TOTAL ONE-TIME CHARGES</b>				<b>\$336,000.00</b>

**II. MONTHLY RENTAL CHARGES:**

Units	Size	Serial Numbers	Monthly Rate	Extension
(3) 2-classroom bldgs	(3) 28x64'		\$8,550.00	\$205,200.00
<b>TOTAL MONTHLY LEASE CHARGES for 24 MONTHS</b>				<b>\$205,200.00</b>



## Lease Agreement

Lease Agreement #:	202209
Customer Name:	Waldwick Public Schools
Lease Activation Date:	January 11 <sup>th</sup> 2022

**Building Warranty:** Mobilelease to warranty the building throughout the length of the lease term

### Payment Terms:

1. Progress payments for installation to be made based upon schedule of values
2. If the order is cancelled after the buildings are ordered and prior to the beginning of the lease the customer will pay a buyout of \$10,000.00 per building to cancel the contract

### Other documents attached and incorporated by reference into this Lease Agreement:

<input checked="" type="checkbox"/>	Terms and Conditions of the Lease Agreement
	MMS proposal dated 1.7.22
	Pricing based upon ESCNJ Bid # - ESCNJ 20/21-43

No agent, employee or representative of the Lessor has any authority to make any representation or warranty concerning the Equipment that is not specifically included in the Lease Agreement. Unless specifically identified herein, this Agreement supersedes all prior negotiations, proposals, and documents. This Agreement will not be subject to any additional provision that may be contained in the Lessor's purchase order, although Lessor's Purchase Order number may be used by the parties as a convenient reference for invoicing purposes.

This Agreement will not become binding and effective until signed by an authorized agent of the Lessee and an authorized agent of the Lessor. Lessee warrants that the person signing on Lessee's behalf is authorized to enter into this Agreement for the Lessee.

Signed by duly authorized agents, with the intent to be legally bound.

#### **Mobilelease Modular Space, Inc.**

By:	_____
Print: Murph Barton	_____
Title: VP	_____
Date:	_____

#### **Customer**

By:	_____
Print:	_____
Title:	_____
Date:	_____

# General Terms and Conditions of Operating Lease Agreement

## 1. Lease

This transaction is a Lease and not a sale. Lessee does not acquire through this Lease or by payment of rental under this Lease any right, title or interest in or to the Equipment, except the right to possess and use the Equipment so long as Lessee is not in default under this Lease. Lessee agrees that all certificates of title or registration applicable to the Equipment will reflect Lessor ownership of the Equipment.

Notwithstanding the express intent of the parties, should a court of competent jurisdiction determine that this Agreement is not a true lease, but rather one intended as security, then solely in that event and for the expressly limited purposes thereof, Lessee shall be deemed to have hereby granted Lessor a security interest in this Lease, the Equipment, and all accessions thereto, substitutions and replacements therefore, and proceeds (including insurance proceeds) thereof (but without the power of Lessee to dispose of the Equipment); to secure the prompt payment and performance as and when due of all obligations and indebtedness of Lessee (or any affiliate of Lessee) to Lessor, now existing or hereafter created.

## 2. Monthly Lease and Other Payments

(a) Lessor and Lessee understand and intend that the obligation of Lessee to make Monthly Lease Payments hereunder shall constitute a binding contractual obligation of Lessee for the Minimum Lease Period. Lessee covenants to include all Monthly Lease Payments due in its annual budget and to make the necessary annual appropriation for all such Monthly Lease Payments. This Lease shall not be subject to termination by Lessee in the event that Lessee fails to appropriate any Monthly Lease Payments.

(b) The start of the Lease term is the date on which Lessor substantially completes its scope of work for building delivery, installation, and other site construction work or the date of building occupancy by the Lessee, whichever comes first, unless otherwise agreed to by or between the parties. Monthly Lease Payments will accrue through and including the month in which the later of the Return Date or End of the Term occurs. The "Return Date" is the date on which the Equipment is removed from the site and returned to Lessor in accordance with the terms of this Lease. The "End of the Term" is the date on which the term of this Lease is to expire, either originally or under a renewal term. Monthly Lease Payments and such other charges will be prorated on a daily basis where necessary.

(c) Unless otherwise specified in this Lease, charges for delivery, installation, tear down and return charges and all other work by Lessor will be due and payable immediately upon the execution of this Lease without demand. The first Monthly Lease Payment and a security deposit equal to (1) Monthly Lease Payment will be due and payable immediately upon the execution of this Lease. Each additional Monthly Lease Payment and all other charges due thereafter are due and payable without demand and in advance on the first of each month immediately following the month in which the Lease commences. All other sums payable by Lessee under this Lease are due and payable when invoiced. Unless agreed otherwise, all payments made under this Lease will be made by Lessee's check drawn on its regular bank checking account or such other form of payment as is acceptable to Lessor. All payments by Lessee will be made without setoff or deduction of any kind.

(d) Lessee will pay Lessor for any and all sales and use taxes, other direct taxes including property taxes (real and personal), and registration fees imposed by any city, county, state, or federal government or other taxing authorities having jurisdiction and related directly or indirectly to the Equipment or its use, excluding federal or state taxes relating to income (all of the foregoing that Lessee is to pay, "Taxes"). Taxes may be allocated by Lessor on either an individual or prorated basis for any item of Equipment based on purchase price, value, possession, use, location, rentals, delivery or operation of such Equipment. Lessee's obligations under this Subsection will survive the termination of this Lease. If the Lessee is tax exempt, a tax-exempt certificate must be provided to the Lessor immediately upon the execution of this Lease or all applicable taxes will be added to all invoice amounts due under this Lease.

(e) For Lessee's convenience, Lessor intends to issue invoices for all amounts due under this Lease. If Lessee fails to pay any amount due within ten days of the due date, Lessor may impose a charge on such amount of one and one-half percent per month or the highest rate permitted by law whichever is lower, from the due date until payment in full is received by Lessor.

## 3. Delivery, Installation and Removal of Equipment

(a) For the purposes of this Lease, "Equipment" means the modular buildings as proposed by Lessor.

(b) Unless otherwise specified in this Lease, Lessee will provide free and clear access for delivery, installation, tear down, removal and return delivery of the Equipment by standard mobile transport vehicles. Unless otherwise specified in this Lease, Lessee will be solely responsible, at its cost, for preparation of the site on which the Equipment is to be used (the "Site"), including any required structural or grade alterations and the identification of all utility lines (electric, water, storm and sanitary sewer, natural gas, telephone, CATV, etc.). Lessee will provide firm and level ground on no more than a 12-inch (12") slope from one end of the building to the other for safe and unobstructed installation of the Equipment. Site selection is the sole responsibility of the Lessee. If, in the judgment of the Lessor, additional equipment or materials are required to make ready the Site for the installation, tear down, return delivery or the removal of the Equipment there will be a change order to the Lease per Section 3 (g) of this Lease. LESSOR ASSUMES NO LIABILITY NOR OFFERS ANY WARRANTY FOR THE FITNESS OR ADEQUACY OF THE SITE OR THE UTILITIES AVAILABLE AT THE SITE.

(c) Unless otherwise specified in this Lease, Lessee will have sole responsibility, at Lessee's cost, to obtain any and all licenses, titles, building and other permits and any other approvals and certificates as may be required by law or otherwise for the installation and placement of the Equipment and Lessee's lawful operation, possession or occupancy of the Equipment.

(d) Lessor's delivery of the Equipment is subject to delays in manufacturing, modification, delivery, installation, tear down, removal or return delivery due to Site conditions, fire, flood, windstorm, lightning, theft, riot, civil disturbance, strike or other labor actions, acts of God, or any circumstances beyond Lessor's control (including but not limited to breaches by Lessor's sub-contractors or manufacturers) which delay the manufacture or modification of products or the making of deliveries in the normal course of business.

(e) Lessor may suspend work at the Site if Lessor deems the Site to be unsafe.

(f) The prices quoted for building delivery, installation, site construction costs, teardown, return delivery and other "one-time" charges assume dry, summer construction conditions unless otherwise specified in this Lease. If winter or wet conditions exist at the time of installation, tear

## General Terms and Conditions of Operating Lease Agreement

down, removal or return delivery, there will be a change order to the Lease per Section 3 (g) of this Lease. The due dates of such charges and the start date of this Lease assume accuracy of the information given to Lessor with respect to Site conditions and location and are subject to adjustment to the extent that the timing of or physical nature of access to the Site is or becomes limited, the Site does not have adequate load bearing or topographic qualities or is otherwise not properly prepared, utilities are not correctly located, provision of utilities is not timely, applicable licenses or permits from the authorities having jurisdiction are not provided by the Lessee in a timely manner or Lessee otherwise delays completion of Lessor's scope of work.

(g) Unless otherwise specified in this Lease, Lessee will pay Lessor all costs and expenses plus 15% basis for all change order work that is not part of the scope of work to be provided by Lessor including, but not limited to, costs incurred by Lessor in order to correct improper work performed by Lessee, additional work performed by Lessor due to Site conditions as defined in Sections 3 (b) to 3 (f) or repair to, or periodic maintenance of, Equipment as defined in Section 4 of this Lease and any/all other unknown work that is not specifically defined as by Lessor herein. All sums payable for change orders are immediately due and payable when invoiced.

(h) Lessee has caused an inspection of the Equipment to be made and has found the same to be in good order and in compliance with the provisions of this Lease. Lessee has accepted delivery of the Equipment and acknowledges to Lessor that this Lease contains a complete description of the items of Equipment delivered and accepted. As between Lessor and Lessee, the Equipment is deemed to have been finally accepted by Lessee pursuant to this Lease immediately upon Lessee's occupancy of the Equipment. Lessee accepts the Equipment "as is," and Lessor makes no warranties regarding the Equipment, except as may be stated elsewhere in this Lease.

### 4. Maintenance of Equipment

(a) Lessee will not move or in any way modify the Equipment without the prior written consent of Lessor. Notwithstanding Lessor's consent to Lessee's modification of the Equipment, Lessee is liable for the cost of the removal of such modification or restoration of the Equipment immediately upon the Return Date or End of Term of this Lease. Lessor may place its name on the Equipment, and Lessee will assure that such name is not removed or concealed in whole or in part.

(b) Lessee, at Lessee's sole cost, will keep the Equipment at all times until the Return Date in good repair and operating condition, subject to ordinary wear and tear, and free of any and all liens and encumbrances. Lessor will have the right to inspect the Equipment from time to time until the Return Date and if Lessor believes the Equipment to be misused, abused or neglected, Lessee agrees to pay on demand all costs and expenses plus 15% incurred by Lessor in connection with the immediate repair of the Equipment and restoring it so as to meet such standards. If Lessee fails to reimburse Lessor for such repair costs, Lessor may summarily remove and repossess the Equipment at the Lessee's sole cost.

(c) Lessee, at Lessee's sole cost, agrees to perform periodic preventive maintenance on all HVAC systems. Lessee agrees to provide Lessor, within (10) days of completion, written proof of such Work. Maintenance shall include a minimum of four (4) filter changes (March, June, September and December) and (2) two complete clean and checks per year (March and September) according to the HVAC manufacturer's recommended procedures. Unless otherwise agreed to in writing by Lessor, all HVAC service work is to be performed under a separate Service Agreement between the Lessee and a certified and bonded mechanical contractor whom has been pre-approved to do warranty work by both the HVAC system supplier and the Lessor. Lessor will provide these services when necessary if Lessee fails to perform such required periodic maintenance. Lessee agrees to pay on demand all costs and expenses plus 15% incurred by Lessor in connection with performing such Work on the Equipment. Lessee's failure to perform such scheduled periodic maintenance will immediately void any/all warranties offered to the Lessor by the HVAC system supplier and all subsequent repairs costs will be the full responsibility of the Lessee per Section 3 (g) of this Lease.

Lessee at Lessee's sole cost, agrees to perform (2) complete carpet cleanings and (2) complete strip, seal and waxing of all vinyl floor coverings (June and December) per year according to the floor covering manufacturers' recommended procedures. Lessee agrees to provide Lessor, within (10) days of completion, written proof of such Work. Lessor will provide these services when necessary if Lessee fails to perform such required periodic maintenance. Lessee agrees to pay on demand all costs and expenses plus 15% incurred by Lessor in connection with performing such Work on the Equipment. Lessee's failure to perform such scheduled maintenance will immediately void any/all warranties on floor coverings and the structural decking below and all subsequent repair costs will be the full responsibility of the Lessee per Section 3 (g) of this Lease.

(d) Lessee will perform, execute and comply with all Laws which in any way affect the use, operation, maintenance, or storage of the Equipment. "Laws" means all laws, rules, regulations or orders of any governmental agency or instrumentality of the United States, any state, municipality or local government and all orders, writs and decrees of any court, tribunal or administrative agency, in any case which now exist or hereafter arise (including but not limited to laws governing Hazardous Substances and other environmental risks and the Americans with Disabilities Act). Lessee will not make or permit any unlawful use or handling of the Equipment.

(e) HAZARDOUS SUBSTANCES. (i) "Hazardous Substances" means hazardous, toxic, radioactive or bio-hazardous substances or petroleum products. (ii) Lessee will not use or store Hazardous Substances in the Equipment, except such substances and in such quantities as would be normal in the operation of a commercial office. Lessee will not locate the Equipment at a remediation or nuclear site or use the Equipment for medical laboratory testing. (iii) Ordinary wear and tear does not include contamination by Hazardous Substances. If any returned Equipment is found to have been contaminated by Hazardous Substances during Lessee's possession, Lessee agrees to pay on demand all costs and expenses plus 15% incurred by Lessor for the clean up or Lessor may require Lessee to purchase the Equipment at the then current market price charged for an uncontaminated unit. Lessee's obligations under this subsection 4(e) will survive the Return Date or End of Term of this Lease.

(f) Lessee agrees that the Equipment lease hereunder will not be occupied by any person other than Lessee or its agents, employees or invitees. The Equipment will not be used for residential or dormitory purposes unless agreed to in writing by Lessor.

### 5. Disclaimer of Warranties

Lessor not being a seller (as such term is defined in the Uniform Commercial Codes), nor a seller's agent, expressly disclaims and makes to Lessee no warranty or representation, express or implied, of merchantability or fitness for any particular purpose or otherwise, including, but

## General Terms and Conditions of Operating Lease Agreement

not limited to: the fitness for use, design or condition of the Equipment; the quality or capacity of the Equipment; the workmanship in the Equipment; that the Equipment will satisfy the requirements of any law, rule, specification or contract pertaining thereto; and any guaranty or warranty against patent infringement or latent defects, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee. Lessor is not responsible or liable for any direct, indirect, incidental or consequential damage to or losses resulting from the installation, operation or use of the Equipment or any products manufactured thereby.

### 6. Limitation of Damages

Lessee does hereby expressly waive any and all claims and demands for loss of profits or other alleged consequential, incidental or punitive damages arising out of, or in connection with, this Lease. Lessor is not liable for any loss or damage to any property stored, located or transported in, upon, under or around any Equipment and Lessee does hereby waive any and all claims and demands for any such loss or damages.

### 7. End of Lease

(a) Unless specified otherwise, Lessee must give Lessor one hundred twenty (120) days prior written notice of the date on which the Equipment is to be returned.

(b) If Lessee, without any further written agreement or the consent of the Lessor, continues to possess or occupy the Equipment after the expiration of the initial and/or any subsequent renewal terms of the Lease, Lessee will then be deemed to have renewed this Lease for twelve (12) additional leasing months subject to such rate as Lessor declares to be in effect (and in the absence of such declaration at the most recent Monthly Lease Payment rate applicable to the Equipment). Lessor may terminate such extensions at any time.

(c) So long as no Default or Event of Default shall have occurred and be continuing and Lessee shall have given Lessor at least one hundred twenty (120) days prior written notice, Lessee shall have the option to purchase the Equipment for a price agreed to by Lessor. Payment of the Purchase Option Price, all applicable sales or use taxes, together with all other amounts due and owed by the Lessee under the Lease (including without limitation, Monthly Lease Payments) during such Minimum Lease Period shall be made on the last day of the Lease in immediately available funds against delivery of a bill of sale transferring to Lessee all rights, title and interest of Lessor in the Equipment on an "AS IS" "WHERE IS" basis, without any warranties, express or implied as defined in Section 5 of this Agreement.

(d) Lessee may terminate this Lease prior to the expiration of the Minimum Lease Period with (120) days written notice to the Lessor, subject to all terms and conditions of the Lease, and the Lessee will pay the following termination charges:

- i. The remaining unpaid Monthly Lease Payments for the Minimum Lease Period or the Lease renewal period per Section 7 (b) of this Lease. The Monthly Lease Payment means the total monthly payment including that portion representing amortized One-Time Charges (any charges for delivery, installation, construction, teardown, return, etc. as shown on the Schedule of Values on Page 1 of the Lease Agreement), if applicable and any Lessee-requested modifications not provided as a separate charge under the terms of this Lease.
- ii. Tear down, removal; return delivery, repair, and disconnection of utilities, Site restoration, and other charges in accordance with this Lease.

### 8. Return of Equipment

Upon the End of Term, unless agreed otherwise, Lessee, at its sole expense, shall pay Lessor all costs and expenses plus 15% basis to tear down and remove and for the return delivery of such Equipment to Lessor F.A.S. or F.O.B. to such location as Lessor shall specify. Lessee agrees that the Equipment, when returned, shall be in the condition required by Section 4 hereof and that the Site, when the Equipment is returned, shall be in the condition required by Section 3 of this Lease. All components of the Equipment shall have been properly serviced, following the manufacturer's written operating and servicing procedures. If, in the opinion of Lessor, any Equipment fails to meet the standards set forth above, Lessee agrees to pay on demand all costs and expenses plus 10% incurred by Lessor in connection with repairing such Equipment and restoring it so as to meet such standards. If Lessee fails to return any Equipment as required hereunder, then, all of Lessee's obligations under this Lease Agreement (including, without limitation, Lessee's obligation to pay Monthly Lease Payments for such Equipment as defined in Section 7 (b) of this Agreement) shall continue in full force and effect until such Equipment shall have been returned in the condition required hereunder.

### 9. Indemnification

To the extent permitted by law, Lessee hereby specifically indemnifies, agrees to defend and hold harmless Lessor, its employees and agents and successors and assigns (if applicable) from any and all loss, claims, liabilities, damages, fines, forfeitures, seizures, penalties and expenses (including attorney's fees and investigative costs) (collectively "Losses") that may arise from or in connection with:

(a) The loss of or damage to the Equipment prior to the Return Date due to collision, fire, flood, windstorm, lightning, theft, riot, civil disturbance, or any other peril or casualty;

(b) The death of or injury to, including but not limited to, damage to the property (other than the Equipment) or any person as a result of, in whole or in part, the use or condition prior to the Return Date of the Equipment;

(c) Any act or omission of Lessee in violation of this Lease;

(d) The actual or alleged storage, maintenance, use, handling, repair, or operation of the Equipment, prior to the Return Date, including but not limited to any failure to use anchor straps, any work done on, or any materials supplied to or in connection with the operation, maintenance, possession or storage of the Equipment and any loss or damage to anything stored in any of the Equipment; and

(e) Any damage to Lessee's property or the property of any third parties incurred during or in connection with the fulfillment of Lessee's obligations by or on behalf of Lessee or the repossession or return of Equipment by Lessor in accordance with the terms of this Lease.

## General Terms and Conditions of Operating Lease Agreement

(f) In addition, to the fullest extent permitted by law, Lessee assumes and agrees to indemnify, defend, and keep harmless Lessor, its agents and employees, from and against any and all losses, damages, injuries, claims demands and expenses, including attorneys' fees and legal expenses (other than such as may directly and proximately result from the gross negligence or willful misconduct of Lessor), its agents or employees, arising on account of:

- i. The possession, maintenance, use, condition (including without limitation, latent and other defects and whether or not discoverable by Lessor or Lessee, any claim in tort for strict liability, and any claim for patent, trademark or copyright infringement) or operation of the Equipment by whomsoever used or operated, during the term of this Lease.
- ii. The loss, damage, destruction, removal, return, surrender, sale or other disposition of the Equipment, or any item thereof. Lessor shall give Lessee prompt notice of any claim or liability hereby indemnified against and that Lessee shall be entitled to control the defense thereof, so long as Lessee is not in Default hereunder.

The obligations contained in this Section 9 will survive expiration or termination of the term of this Lease and the Return Date. The indemnifications contained in this Section 9 will apply to any Losses whether they are asserted before or after the Return Date.

### 10. Insurance

(a) Lessee, at Lessee's sole cost, will procure and keep in full force and effect, from the initial delivery date until the return of all Equipment, the following policies of insurance satisfactory to Lessor as to the insurer and as to the form and amount of coverage, with premiums prepaid:

- i. Commercial General Liability Insurance with a minimum combined single limit of \$1,000,000 per person and \$5,000,000 per occurrence, written on an occurrence form, including coverage for premises, operations contractual liability, broad form property damage, independent contractors and personal injury liability, naming Lessor as an additional insured.
- ii. Commercial Property Insurance protecting against all loss and damages, at full replacement cost (the amount shown as "Insurance Valuation" on Page 1 of the Lease Agreement) as defined sustained or suffered due to the loss of or damage to the Equipment as result of collision, fire, lightning, theft, flood, windstorm, explosion, or any other casualty, naming Lessor as the loss payee.

(b) Lessee will deliver certificates evidencing all such insurance to Lessor immediately upon delivery of the Equipment to Lessee's site, time being of the essence. Each certificate will state that such insurance will not terminate or be materially changed without thirty (30) days' prior written notice to Lessor.

(c) If Lessee fails to deliver the insurance certificates defined in paragraph (a) and as required by paragraph (b) on the date required, Lessee will be in default under this Lease.

(d) Obtaining insurance as described above will not affect Lessee's obligations and indemnities under this Lease, and the loss, damage to, or destruction of any of the Equipment will neither terminate this Lease nor, except to the extent that Lessor is actually compensated by insurance paid for by Lessee, relieve Lessee of any of Lessee's liability under this Lease.

(e) If Lessee fails to deliver certificates evidencing such insurance to Lessor as required in Section 10 (b) of this Lease, Lessee agrees to pay on demand all costs and expenses plus 15% incurred by Lessor in connection with providing the insurance required in Section 10 (a) of this Lease.

### 11. Default

The occurrence of one or more of the following in clauses (a)-(e) below will constitute an Event of Default under this Lease:

(a) Lessee fails to pay when due any Monthly Lease Payment or any other payment due under this Lease or fails to perform its obligations under this Lease;

(b) Lessee fails to perform or observe any other term or condition under this Lease and such failure remains un-remedied for more than thirty (30) days after such failure to perform or observe;

(c) Lessee or any other person or entity which controls more than fifty percent (50%) of Lessee's equity (a "Control Person") or any guarantor of any of Lessee's obligations hereunder (a "Guarantor") (i) becomes insolvent, (ii) becomes subject to any voluntary or involuntary bankruptcy or reorganization proceedings, (iii) commits an act of bankruptcy, (iv) makes an assignment for the benefit of creditors, (v) appoints or submits to the appointment of a receiver for all or any of its assets, (vi) admits in writing its inability to pay its debts as they become due or (vii) enters into any type of voluntary or involuntary liquidation or dissolution;

(d) Lessee, any Control Person or any Guarantor defaults under any other agreement with Lessor or any affiliate of Lessor; and

(e) Any letter of credit, guaranty or other security given to secure the performance of Lessee's obligations under this Lease expires, terminates or in the reasonable opinion of Lessor becomes worthless.

Upon occurrence of an Event of Default, Lessor will have the option to declare the entire balance of Monthly Lease Payments for the remainder of the stated Lease or renewal term immediately due and payable and to accelerate and make immediately due and payable any other amounts owed under this Lease. Lessor will also have the option to retake and retain any or all of the Equipment free of all rights of Lessee without any further liability or obligation to redeliver any of the Equipment to Lessee, and Lessee hereby grants Lessor the right to enter upon any premises where all or any of the Equipment is located in order to take possession of and remove such Equipment. Notwithstanding the foregoing, if an Event of Default occurs under clause (c) above, such accelerations will occur automatically without the need for declaration. Lessee will pay to Lessor on demand all fees, costs and expenses incurred by Lessor in enforcing its rights under this Lease, including without limitation reasonable attorneys' fees.



## General Terms and Conditions of Operating Lease Agreement

The remedies provided in favor of Lessor will be cumulative and in addition to all other remedies provided in this Lease or existing by law or in equity. No action taken by Lessor pursuant to this Section 11 or Section 13 will release Lessee from Lessee's Covenants, obligations and indemnities provided under this Lease, including but not limited to Lessee's obligation for the payments of Monthly Lease Payments provided in this Lease.

If Lessor retakes possession of the Equipment or any part of the Equipment and there is at the time of such retaking, in, upon or attached to such repossessed Equipment, any other property, goods or things of value owned by Lessee or in the custody or control of Lessee, Lessor is authorized to take possession of such other property, goods or things and hold the same for Lessee, at Lessee's sole cost, either in Lessor's possession or in public storage, at Lessor's sole discretion.

### 12. Lessor's Right to Cure

If Lessee defaults in any of its obligations under this Lease, whether or not an Event of Default then exists, Lessor may pay all amounts or perform or cause to be performed all obligations required to be paid or performed by Lessee under this Lease and recover from Lessee as additional Lease payments all costs and expenses plus 15% for all services so performed.

### 13. Set-Off

Without limiting any other provision of this Lease, upon the occurrence of an Event of Default, Lessor will have the immediate right, without notice, demand, or other action, to set-off against Lessee any amounts Lessor may hold as prepayments or deposits for Lessee's liabilities to Lessor whether or not then due to Lessor. Unless otherwise prohibited by law, Lessor will be deemed to have exercised such right to set-off and to have made a charge against any such sums immediately upon the occurrence of any Event of Default by Lessee.

### 14. Assignment, Amendment, Modification, Miscellaneous

(a) Lessee will not have the right to assign this Lease or to sublet, rent or otherwise hire out or transfer possession of any of the Equipment to any person or entity other than Lessor, without the prior written consent of Lessor.

(b) This Lease contains the entire Agreement between the parties pertaining to the subject matter of this Lease. No agreements, representation or understandings not specifically contained in this Lease will be binding upon any of the parties hereto unless reduced to writing and signed by the parties to be bound thereby. Any amendment, modification or addendum to this Lease will not be binding on Lessor unless signed by an authorized officer of Lessor. This Lease will be governed as to its construction, interpretation and effect by the laws of the State of New Jersey without regard to principles or choice of Laws.

### 15. Assignment by Lessor

Lessor's rights, title and interest in the Equipment may be assigned, reassigned, transferred or conveyed to any other party by Lessor, in whole or in part to one or more assignees and sub assignees by Lessor and, to the extent of their interest, by any Registered Owner without the necessity of obtaining the consent of Lessee; provided that (i) any assignment, other than an assignment to or by a Registered Owner, shall not be effective until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee, and (ii) Lessee shall retain all such notices as a register of all assignees (other than Registered Owners) and shall make all payments to the assignee or assignees designated. In the event that Lessor's interest in the Equipment is assigned, Lessee agrees to execute all documents within (30) days of written request by Lessor. Documents may include notices of assignment, chattel mortgages, financing statements, etc. that may be reasonably requested by Lessor, or any other assignee, to protect its interests in this Agreement and the Equipment.

(a) To the extent permitted by applicable law, Lessee (i) waives any and all rights and remedies conferred upon a Lessee by Sections 2A-508 through 2A-522 of the Uniform Commercial Code and (ii) any rights now or hereafter conferred by statute or otherwise to recover incidental or consequential damages from any Assignee for any breach of warranty or for any other reason or to set-off or deduct all or any part of any claimed damages resulting from Lessee's default, if any, under this Agreement provided, however, that no such waiver shall preclude Lessor from asserting any claim, right or action against Lessee as otherwise provided in this Lease Agreement.

(b) Subject to Section 2, the obligations of Lessee to pay the Monthly Lease Payments due under this Agreement and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events without abatement, diminution, deduction, set off or defense, for any reason, including without limitation, any defects, malfunctions, breakdowns, or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances. This provision shall not limit Lessee's rights or actions against the Lessor as otherwise provided in this Lease Agreement.

### 16. Additional Provisions

(a) Lessee and Lessor hereby irrevocably waive all rights to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort, or otherwise) arising out of or relating to this Lease Agreement or the actions of Lessor or Lessee in the negotiation, administration, performance or enforcement hereof.

(b) In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

### 17. New Jersey Law Governs

This Lease and the rights and obligations of the parties hereunder shall in all respect be governed by, and construed in accordance with the laws of the State of New Jersey, including all matters of construction, validity and performance regardless of the location of the Equipment. The venue of any proceeding relating to this Lease shall be the court of general jurisdiction closest to West Deptford, New Jersey.

### 18. Time Provision for Filing Suit

Lessee agrees that any suit or claim against Lessor arising out of this Lease, including but not limited to suits or claims based on alleged breach of contract or warranty, must be brought within 180 days of the event giving rise to the suit or claim or be forever barred. The Lessee waives the right to rely on any longer limitation periods, statutory or otherwise.