

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

**November 1, 2022**

*Date of Report (Date of earliest event reported)*

**emcore®**

**EMCORE CORPORATION**

*Exact Name of Registrant as Specified in its Charter*

**New Jersey**  
*State of Incorporation*

**001-36632**  
*Commission File Number*

**22-2746503**  
*IRS Employer Identification Number*

**2015 W. Chestnut Street, Alhambra, California, 91803**  
*Address of principal executive offices, including zip code*

**(626) 293-3400**  
*Registrant's telephone number, including area code*

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)  
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)  
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))  
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of Each Class	Trading symbol(s)	Name of Each Exchange on Which Registered
Common stock, no par value	EMKR	The Nasdaq Stock Market LLC (Nasdaq Global Market)

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

### **Item 1.01 Entry into a Material Definitive Agreement.**

On November 1, 2022, EMCORE Chicago Inertial Corporation (“EMCORE Chicago”), a wholly owned subsidiary of EMCORE Corporation (“EMCORE”), entered into a Purchase and Sale Agreement (the “Purchase Agreement”) dated as of November 1, 2022 with HSRE Fund VII Holding Company, LLC (“Buyer”), pursuant to which the parties agreed to consummate a sale and leaseback transaction (the “Sale and Leaseback Transaction”). Under the terms of the Purchase Agreement, EMCORE Chicago agreed to sell its property located at 8412 West 185<sup>th</sup> St., Tinley Park, Illinois (the “Real Property”) to Buyer, for a total purchase price of \$10.9 million. The net proceeds to be received by EMCORE Chicago will be reduced by transaction commissions and expenses incurred in connection with the sale.

At the consummation of the Sale and Leaseback Transaction, EMCORE Chicago will enter into a Single-Tenant Triple Net Lease (the “Lease Agreement”) with Buyer pursuant to which EMCORE Chicago will lease back from Buyer the Real Property for a term commencing on the consummation of the Sale and Leaseback Transaction and ending twelve (12) years after the consummation of the Sale and Leaseback Transaction, unless earlier terminated or extended in accordance with the terms of the Lease Agreement. Under the Lease Agreement, EMCORE Chicago’s financial obligations will include base monthly rent of \$0.58 per square feet, or approximately \$58,557 per month, which rent will increase on an annual basis at three percent (3%) over the life of the lease. EMCORE Chicago will also be responsible for all monthly expenses related to the leased facilities, including insurance premiums, taxes and other expenses, such as utilities. In connection with the execution of the Lease Agreement, EMCORE will execute a Lease Guaranty (the “Guaranty”) with Buyer under which EMCORE will guarantee the payment when due of the monthly rent, and all other additional rent, interest and charges to be paid by EMCORE Chicago under the Lease Agreement, and the performance by EMCORE Chicago of all of the material terms, conditions, covenants and agreements of the Lease Agreement.

EMCORE anticipates that the close of the Sale and Leaseback Transaction will occur in the quarter ending December 31, 2022, subject to satisfaction of certain customary closing conditions for transactions of this type.

The foregoing summaries of the Purchase Agreement, the Lease Agreement and the Guaranty are qualified in their entirety by reference to the full text of the Purchase Agreement, the form of Lease Agreement and the form of Guaranty, which are attached to this Current Report on Form 8-K as Exhibits 10.1, 10.2 and 10.3, respectively, and which are incorporated by reference into this Item 1.01.

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**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit Number</b>	<b>Exhibit Description</b>
10.1	<a href="#"><u>Purchase and Sale Agreement dated November 1, 2022 by and between EMCORE Chicago Inertial Corporation and HSRE Fund VII Holding Company, LLC*</u></a>
10.2	<a href="#"><u>Form of Single-Tenant Triple Net Lease.</u></a>
10.3	<a href="#"><u>Form of Lease Guaranty.</u></a>

\* Schedules and attachments to the Purchase Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The registrant hereby undertakes to furnish supplemental copies of any of the omitted schedules and attachments upon request by the Securities and Exchange Commission.

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**EMCORE CORPORATION**

By: /s/ Tom Minichiello

Name: Tom Minichiello

Title: Chief Financial Officer

Dated: November 3, 2022

PURCHASE AND SALE AGREEMENT

between

EMCORE CHICAGO INERTIAL CORPORATION,

a Delaware corporation,

and

HSRE FUND VII HOLDING COMPANY, LLC,

a Delaware limited liability company

November 1, 2022

8412 West 185th Street, Tinley Park, Illinois

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into this 1st day of November, 2022 (the "Effective Date"), by and between EMCORE CHICAGO INERTIAL CORPORATION, a Delaware corporation ("Seller"), and HSRE FUND VII HOLDING COMPANY, LLC, a Delaware limited liability company ("Buyer").

1. SALE. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, on the terms and conditions set forth in this Agreement, all of the following (collectively, the "Property"): (a) the land described in Exhibit A attached hereto (the "Land"), together with all rights, easements and interests appurtenant thereto, including, but not limited to, any streets or other public ways adjacent to the Land and any water or mineral rights owned by, or leased to, Seller; (b) all improvements located on the Land, including, but not limited to that certain building commonly known as 8412 West 185th Street, Tinley Park, Illinois (the "Building"), and all other structures, systems, and utilities associated with, and utilized by Seller in, the ownership and operation of the Land and the Buildings (all such improvements being collectively referred to as the "Improvements"); (c) all, if any, warranties, permits, approvals, reports, studies, surveys and other comparable analysis, depictions or examinations of the Land and/or the Improvements (collectively, the "Intangibles"); and (d) those of the operating contracts and service contracts and other comparable agreements (the "Contracts") delivered by Seller to Buyer as part of the Documents (as hereinafter defined) that Buyer expressly elects to assume pursuant to Section 8.2 hereof.

2. PURCHASE PRICE.

2.1. Purchase Price. The total purchase price to be paid to Seller by Buyer for the Property shall be \$10,900,000.00 (the "Purchase Price").

2.2. Earnest Money. No later than two (2) business days after the Effective Date, Buyer shall deposit the sum of \$250,000.00 as its earnest money deposit (the "Earnest Money") in an escrow with First American Title Insurance Company (the "Title Company"), having its office at 601 Travis, Suite 1875, Houston, TX 77002, Attn: Lisa Aguilar, phone: (713) 850-0455, e-mail: [lgaguilar@firstam.com](mailto:lgaguilar@firstam.com) ("Escrowee"). The Earnest Money, together with all interest earned thereon, is hereinafter referred to as the "Deposit." If Seller and Buyer complete the purchase and sale of the Property in accordance with this Agreement, the Deposit shall be applied against the Purchase Price at Closing.

3. CLOSING. The purchase and sale contemplated herein shall be consummated at a closing ("Closing") to take place by mail through an escrow with the Title Company on the basis of a "deed and money" escrow closing. The Closing shall occur on December 12, 2022, or at such other time as the parties may agree upon in writing (the "Closing Date"). The Closing shall be effective as of 12:01 A.M. on the Closing Date.

4. PROPERTY INSPECTION.

4.1. Due Diligence Period. During the period commencing on the Effective Date to 5:00 p.m. Central Time on December 1, 2022 (the "Due Diligence Period"), Buyer shall have the right, at Buyer's sole cost and expense, to conduct a Due Diligence Inspection (hereinafter defined). If Buyer, in its sole and absolute discretion, determines that the results of any inspection, test or examination do not meet Buyer's criteria for the purchase, financing or operation of the Property in the manner contemplated by Buyer, or if Buyer, in its sole discretion, otherwise determines, for any or no reason, that the Property is unsatisfactory to it or that Buyer does not wish to proceed with the acquisition of the Property, then Buyer may terminate this Agreement by written notice to Seller, given prior to the expiration of the Due Diligence Period, whereupon the Deposit shall be immediately returned to Buyer and neither party shall have any further obligation or liability under this Agreement except as otherwise expressly provided hereunder.

4.2. Due Diligence Documents. On or prior to the Effective Date, Seller shall deliver to Buyer all of the agreements, documents, contracts, information, records, reports and other items described in Exhibit B attached hereto (the "Documents") that are in its possession or reasonable control. The Documents shall

be treated as confidential information by Buyer; provided, however, that (a) Buyer may disclose the Documents to Buyer's agents, attorneys, accountants, consultants, brokers, employees, officers, directors, partners, managers, members, prospective lenders, and prospective partners (collectively, the "Related Parties") in connection with the potential acquisition of the Property, and (b) the following materials and information shall not be subject to the confidentiality obligations set forth herein: (i) information which is or becomes generally available to the public other than as a result of a wrongful disclosure by Buyer; (ii) information which reasonably can be demonstrated to be known to Buyer or a Related Party prior to its disclosure hereunder; (iii) information which becomes available to Buyer or a Related Party on a non-confidential basis from sources other than Seller; and (iv) information which Buyer or a Related Party may be compelled to disclose by court order or applicable law.

4.3. Due Diligence Inspections. During the Due Diligence Period and thereafter through Closing or the earlier termination of this Agreement, Buyer and the Related Parties shall be entitled to conduct a "Due Diligence Inspection," which includes the rights to: (i) enter upon the Land and Improvements, with at least twenty-four (24) hours prior notice to Seller, during normal business hours on business days, to perform inspections and tests of the Land and the Improvements and environmental studies and investigations of the Land and the Improvements (subject to Section 4.4 below); (ii) examine and copy any and all books, records, correspondence, financial data, and all other Documents and matters, public or private, maintained by Seller or its agents, and relating to receipts and expenditures pertaining to the Property and/or Tenant (hereinafter defined); (iii) make investigations with regard to zoning, environmental, building, code and other legal requirements; and (iv) make or obtain market studies and real estate tax analyses. In the event this Agreement is terminated for any reason other than a default by Seller, Buyer shall, promptly after such termination, provide Seller with copies of all final written reports, investigations and studies that are prepared, conducted or made by, for or on behalf of Buyer by third parties (and such shall be delivered to Seller without any representation or warranty whatsoever as to its contents, completeness or otherwise by Buyer), other than economic analyses, internal memoranda or those reports, opinions, investigations or studies that are privileged (and Buyer's obligation to deliver or return the foregoing shall survive the expiration or termination of this Agreement).

4.4. Environmental Testing. Buyer shall not conduct, nor allow any Related Party to conduct, any intrusive physical or environmental testing, inspection or investigation of the Property (e.g., core samplings), and nothing contained in this Agreement shall be deemed to grant Buyer any right of access to conduct intrusive physical or environmental testing, inspection or investigation of the Property, without first obtaining Seller's prior written consent (which may be withheld in Seller's sole discretion) and, upon request of Seller, entering into an additional agreement with respect thereto in a form reasonably acceptable to Seller. Prior to performing any environmental tests or studies on the Property beyond the scope of work generally performed in a "Phase I" environmental property assessment study, Buyer shall notify Seller of the scope of work intended to be performed and shall provide Seller an opportunity to confer, either directly or through Seller's consultants, with Buyer's environmental consultants in order to determine whether to consent to any sampling or testing of surface or subsurface soils, surface water or ground water. Seller may elect to deny Buyer permission to conduct intrusive testing or other inspections of the soils, surface water or ground water based on Seller's determination, in its sole discretion, that such inspections are inadvisable

4.5. Due Diligence Insurance and Indemnity. In the event that, as a result of the actions taken by Buyer or its agents, representatives and consultants at the Property as part of the Due Diligence Inspection, any physical damage occurs to the Property, then Buyer shall promptly repair such damage at Buyer's sole cost and expense; provided, however, that Buyer shall have no obligation to repair any damage to the extent caused by Seller's negligence or misconduct, to remediate, contain, abate, restore or control any latent condition discovered by Buyer (as long as Buyer takes reasonable steps not to exacerbate such condition once discovered by Buyer). Buyer hereby indemnifies and agrees to protect, defend (with counsel reasonably acceptable to Seller) and hold harmless Seller and Seller's members, employees, licensees, contractors, agents and invitees from and against any and all losses, injuries, damages, claims, liens, causes of action, judgments, demands, liabilities, penalties, costs and expenses (including reasonable fees of attorneys) (collectively, "Losses") actually incurred in connection with or

arising directly or indirectly out of or in any way connected with (i) Buyer's Due Diligence Inspections of the Property, or (ii) any act or omission by Buyer or the Related Parties in connection with such Due Diligence Inspections, but expressly excluding Losses arising out of latent defects, the displacement or disturbance of pre-existing conditions, the negligence or misconduct of Seller, or any diminution in value in the Property arising from, or related to, matters discovered by Buyer during its investigation of the Property. Furthermore, during its performance of any investigations at the Land, Buyer shall maintain (a) commercial general liability insurance with coverages of not less than \$1,000,000.00 for injury or death to any one person and \$2,000,000.00 for injury or death to more than one person and \$1,000,000.00 with respect to property damage, and (b) worker's compensation insurance for all of its employees and Buyer shall provide Seller with written evidence of the same. The requirement to carry the insurance specified in the preceding sentence may be satisfied through Buyer's or its affiliates' blanket or umbrella insurance policies. Buyer agrees to keep the Property free and clear of any liens that may arise as a result of Buyer's activities and those of its agents, consultants and contractors at or on the Property. All activities undertaken in connection with Buyer's due diligence activities shall fully comply with applicable laws and regulations, including laws and regulations relating to worker safety, and with Seller's reasonable security procedures.

5. TITLE AND SURVEY MATTERS.

5.1. Title and Survey. At Closing, Seller agrees to deliver to Buyer a special warranty deed (the "Deed"), in recordable form, conveying the Land and the Improvements to Buyer or Buyer's assignee or designee, free and clear of all liens, claims and encumbrances except for the Permitted Exceptions (as hereinafter defined). Buyer shall obtain, at Seller's sole cost, and deliver to Seller a commitment (the "Title Commitment") issued by the Title Company, for an owner's title insurance policy insuring Buyer (the "Title Policy"), ALTA Policy Form B-2006, with extended form coverage, in the full amount of the Purchase Price. Buyer shall, at Seller's sole cost, order an ALTA, as-built survey of the Land and the Improvements located thereon (the "Survey").

5.2. Liquidated Defects. On or prior to Closing, Seller shall be unconditionally obligated to cure or remove the following items (the "Liquidated Defects"), whether described in the Title Commitment, or first arising or first disclosed by the Title Company (or otherwise) to Buyer after the date of the Title Commitment, and whether or not raised in a Title Objection Notice (defined below): (a) liens securing a mortgage, deed of trust or trust deed evidencing an indebtedness of Seller; (b) judgment liens against Seller or its managing agent; (c) tax liens; (d) broker's liens based on the written agreement of Seller or its managing agent; and (e) any mechanics liens that are based upon a written agreement between either (x) the claimant (a "Contract Claimant") and Seller or its managing agent, or (y) the Contract Claimant and any other contractor, supplier or materialman with which Seller or its managing agent has a written agreement. Notwithstanding anything to the contrary set forth herein, if, prior to Closing, Seller fails to so cure or remove all Liquidated Defects, then Buyer may either (1) exercise all of its rights and remedies under Section 15.1; or (2) proceed to Closing with title to the Property as it then is, with the right to deduct from the Purchase Price a sum equal to the aggregate amount necessary to cure or remove (by endorsement or otherwise, as reasonably determined by Buyer, acting in good faith) the Liquidated Defects.

5.3. Title Review Period. Additionally, Buyer shall have until November 26, 2022 (the "Title Review Period") to review the Title Commitment and Survey and deliver in writing to Seller such objections thereto (the "Title Objection Notice") specifying any lien, claim, encumbrance, restriction, covenant, condition, exception to title or other matter disclosed by the Title Commitment, and the Survey that is not a Liquidated Defect ("Other Defects"). Seller shall be obligated to advise Buyer in writing ("Seller's Cure Notice") within five (5) business days after Buyer delivers the Title Objection Notice, which (if any) of the Other Defects specified in the Title Objection Notice Seller is willing to cure (the "Seller's Cure Items"). If Seller delivers the Seller's Cure Notice, and identifies any Seller's Cure Items, Seller shall be unconditionally obligated to cure or remove the Seller's Cure Items prior to the Closing. In the event that Seller fails to timely deliver a Seller's Cure Notice, or in the event that Seller's Cure Notice (specifying Seller's Cure Items) does not include each and every Other Defect specified in the Title Objection Notice,

then Buyer may either (A) elect to terminate this Agreement by written notice to Seller, in which event the Deposit shall be immediately returned to Buyer and neither party shall have any further obligation or liability under this Agreement except as otherwise expressly provided hereunder, or (B) proceed to Closing, accepting title to the Property subject to those Other Defects not included in Seller's Cure Notice. For purposes of this Agreement, the term, "Permitted Exceptions," shall mean both (i) all liens, claims, encumbrances, restrictions, covenants, conditions, matters or exceptions of record (other than Liquidated Defects) that are set forth in the Title Evidence, but not objected to by Buyer in a Title Objection Notice; and (ii) any Other Defects that Seller elects, or is deemed to have elected, not to cure, but despite which, pursuant to (B) above, Buyer nevertheless elects to close.

5.4. New Title Defects. Seller shall cause the Title Company to provide to Buyer supplemental reports to the Title Commitment (together with copies of any instruments constituting exceptions which are identified therein) covering any additions or deletions from the date of the Title Commitment through the Closing Date. Buyer shall have five (5) days following the receipt of a supplemental report and/or any supplement to the Survey (but not later than the Closing Date) to notify Seller in writing of its disapproval of any new Other Defect contained in such supplemental report and/or Survey. Following any disapproval by Buyer, Buyer and Seller shall have the same rights and duties with respect to disapproved items as is provided in Section 5.3; except that in no event shall the period for notice and response extend beyond the Closing Date.

6. "AS IS" SALE.

Prior to the Closing: (i) Buyer has or will have conducted all such Due Diligence Inspections, investigations, tests, analyses, appraisals and evaluations of the Property (including for Hazardous Materials, as defined below) as Buyer considers necessary or appropriate; and (ii) Seller has or shall make available to Buyer, and otherwise allow Buyer access to, copies of the Documents.

Prior to the Closing, Buyer has or will have reviewed, examined, evaluated and verified all of the Documents and the results of the Due Diligence Investigations to the extent it deems necessary or appropriate with the assistance of such experts as Buyer deemed appropriate.

Prior to the Closing, Buyer: (i) is or will be familiar with the physical condition of the Property; (ii) has or will have completed its due diligence with respect to the Property and the Documents to its satisfaction; (iii) is or will be acquiring the Property based exclusively upon its own investigations and inspections of the Property and the Documents, except for the representations, warranties and covenants of Seller expressly provided herein and/or in any of the documents delivered at Closing; (iv) is experienced in the acquisition of real property similar to the Property; (v) has been and will continue to be represented by advisors and consultants (including counsel) of its choice in the transaction contemplated by this Agreement; and (vi) recognizes the risks of acquiring and owning the Property and that an allocation of risk is intended by this Agreement.

THE PROPERTY IS BEING SOLD, AND BUYER IS ACCEPTING POSSESSION OF THE PROPERTY ON THE CLOSING DATE, "AS IS, WHERE IS, WITH ALL FAULTS," WITH NO RIGHT OF SETOFF OR REDUCTION IN THE PURCHASE PRICE EXCEPT FOR SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS EXPRESSLY PROVIDED IN THIS AGREEMENT THAT SURVIVE CLOSING AND/OR EXPRESSLY SET FORTH IN ANY OF THE DOCUMENTS DELIVERED AT CLOSING (COLLECTIVELY, THE "SELLER WARRANTIES AND COVENANTS"). NONE OF SELLER, ITS COUNSEL OR BROKERS, NOR ANY PARTNER, MEMBER, OFFICER, DIRECTOR, EMPLOYEE, AGENT OR ATTORNEY OF SELLER, ITS COUNSEL OR BROKER NOR ANY OTHER PARTY RELATED IN ANY WAY TO ANY OF THE FOREGOING (ALL OF WHICH PARTIES ARE HEREIN COLLECTIVELY CALLED THE "SELLER PARTIES") HAVE OR SHALL BE DEEMED TO HAVE MADE ANY VERBAL OR WRITTEN REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTEES (WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) TO BUYER WITH RESPECT TO THE PROPERTY, ANY MATTER SET FORTH, CONTAINED OR ADDRESSED IN THE DOCUMENTS RELATING

TO THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ACCURACY AND COMPLETENESS THEREOF) OR THE RESULTS OF BUYER'S INVESTIGATIONS OF THE PROPERTY, EXCEPT FOR SELLER'S WARRANTIES AND COVENANTS.

BUYER HAS OR WILL HAVE HAD THE OPPORTUNITY TO CONDUCT TESTS AND INSPECTIONS TO CONFIRM INDEPENDENTLY ALL INFORMATION THAT BUYER CONSIDERS MATERIAL TO ITS PURCHASE OF THE PROPERTY OR THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. EXCEPT FOR SELLER'S WARRANTIES AND COVENANTS, BUYER IS NOT RELYING ON (AND SELLER AND EACH OF THE OTHER SELLER PARTIES DOES HEREBY DISCLAIM AND RENOUNCE) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, FROM SELLER OR ANY OTHER SELLER PARTY, AS TO: (i) THE OPERATION OF THE PROPERTY OR THE INCOME POTENTIAL, USES, OR MERCHANTABILITY OR FITNESS OF ANY PORTION OF THE PROPERTY FOR A PARTICULAR PURPOSE; (ii) THE PHYSICAL CONDITION WHETHER VISIBLE OR NOT, OF THE PROPERTY OR THE CONDITION OR SAFETY OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, SOILS AND GEOLOGY, INCLUDING HAZARDOUS MATERIALS, LOT SIZE, OR SUITABILITY OF THE PROPERTY FOR A PARTICULAR PURPOSE; (iii) THE PRESENCE OR ABSENCE, LOCATION OR SCOPE OF ANY HAZARDOUS MATERIALS IN, AT, OR UNDER THE PROPERTY; (iv) THE ACCURACY OF ANY STATEMENTS, CALCULATIONS OR CONDITIONS STATED OR SET FORTH IN SELLER'S BOOKS AND RECORDS CONCERNING THE PROPERTY OR SET FORTH IN ANY OF SELLER'S OFFERING MATERIALS WITH RESPECT TO THE PROPERTY; (v) THE OPERATING PERFORMANCE, THE INCOME AND EXPENSES OF THE PROPERTY OR THE ECONOMIC STATUS OF THE PROPERTY; (vi) THE ABILITY OF BUYER TO OBTAIN ANY AND ALL NECESSARY GOVERNMENTAL APPROVALS OR PERMITS FOR BUYER'S INTENDED USE AND DEVELOPMENT OF THE PROPERTY; AND (vii) SELLER'S OWNERSHIP OF ANY PORTION OF THE PROPERTY.

EXCEPT FOR THE SELLER'S WARRANTIES AND COVENANTS, BUYER, FOR BUYER AND BUYER'S CORPORATE SUCCESSORS AND PERMITTED ASSIGNS UNDER THIS AGREEMENT, HEREBY RELEASES SELLER AND THE OTHER SELLER PARTIES, AND THEIR CORPORATE SUCCESSORS AND PERMITTED ASSIGNS UNDER THIS AGREEMENT FROM, AND WAIVES ALL CLAIMS AND LIABILITY, INCLUDING ENVIRONMENTAL LIABILITY (DEFINED BELOW), AGAINST SELLER AND THE OTHER SELLER PARTIES, AND THEIR CORPORATE SUCCESSORS AND PERMITTED ASSIGNS UNDER THIS AGREEMENT FOR OR ATTRIBUTABLE TO THE FOLLOWING:

(i) ANY AND ALL STATEMENTS OR OPINIONS HERETOFORE OR PRIOR TO CLOSING MADE, OR INFORMATION FURNISHED PRIOR TO CLOSING, BY THEM TO BUYER OR ITS AGENTS OR REPRESENTATIVES, AND

(ii) ANY PHYSICAL OR ENVIRONMENTAL CONDITION AT THE PROPERTY FIRST ARISING AND ACCRUING PRIOR TO SELLER'S ACQUISITION OF THE LAND AND NOT CAUSED OR EXACERBATED BY SELLER OR ANY OTHER SELLER PARTY OR THEIR SUCCESSORS OR ASSIGNS, INCLUDING, WITHOUT LIMITATION, CLAIMS OR LIABILITIES RELATING TO THE PRESENCE, DISCOVERY OR REMOVAL OF ANY HAZARDOUS MATERIALS IN, AT, ABOUT OR UNDER THE PROPERTY, OR FOR, CONNECTED WITH OR ARISING OUT OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON ENVIRONMENTAL LAW.

ONCE CLOSING HAS OCCURRED, EXCEPT FOR THE SELLER'S WARRANTIES AND COVENANTS, BUYER RELEASES (BUT DOES NOT INDEMNIFY) SELLER AND THE OTHER SELLER PARTIES FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL LIABILITIES AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION,

AND LIABILITY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY OTHER ENVIRONMENTAL LAWS, IN EACH CASE ONLY TO THE EXTENT FIRST ARISING AND ACCRUING PRIOR TO SELLER'S ACQUISITION OF THE LAND AND NOT CAUSED OR EXACERBATED BY SELLER OR ANY OTHER SELLER PARTY OR THEIR SUCCESSORS OR ASSIGNS.

As used herein "Environmental Law" means any federal, state or local statute, law, ordinance, regulation, rule, code, order, consent decree or judgment, and any permits, approvals, licenses, registrations, filings and authorizations, in each case in existence as of the Closing Date, relating to pollution or protection of the environment, the impact of Hazardous Materials on property, health or safety or the use or release of Hazardous Materials. As used herein "Environmental Liability" means any claim, demand, order, suit, obligation, liability, cost (including, without limitation, the cost of any investigation, testing, compliance or remedial action), consequential damages, loss or expense (including attorneys' and consultants' fees and expenses) arising out of, relating to or resulting from any Environmental Law, the presence, use or release of any Hazardous Materials or environmental, health or safety matter or condition, including natural resources, and related in any way to the Property or to this Agreement or its subject matter, in each case, only to the extent first arising and accruing prior to Seller's acquisition of the Land. As used herein "Hazardous Materials" means (i) any petroleum, petroleum products, by-products or breakdown products, radioactive materials, urea formaldehyde foam insulation, lead-based paint, asbestos-containing materials or polychlorinated biphenyls or (ii) any chemical, material or substance defined or regulated as toxic or hazardous or as a pollutant, contaminant or waste, or words of similar import, under any Environmental Law.

NOTHING CONTAINED IN THIS SECTION 6 SHALL IN ANY MANNER (i) AFFECT OR LIMIT ANY OF THE TERMS OF THE LEASE OR THE OBLIGATIONS, COVENANTS, INDEMNITIES AND LIABILITIES OF SELLER, AS TENANT, UNDER THE NEW LEASE, AND THE RIGHTS AND REMEDIES OF BUYER, AS LANDLORD, UNDER THE NEW LEASE, (ii) AFFECT OR LIMIT ANY OF THE TERMS OF THE LEASE GUARANTY OR THE OBLIGATIONS, COVENANTS, INDEMNITIES AND LIABILITIES OF GUARANTOR UNDER THE GUARANTY, AND THE RIGHTS AND REMEDIES OF BUYER, AS LANDLORD, UNDER THE GUARANTY, (iii) APPLY TO ANY CONDITIONS FIRST ARISING FOLLOWING CLOSING OR (iv) APPLY TO THE OCCUPANCY OR USE OF THE PROPERTY BY SELLER OR ANY SELLER PARTY FOLLOWING CLOSING.

This Section 6 shall survive the Closing.

7. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller represents and warrants to Buyer that the following matters are true as of the Effective Date and shall be true as of the Closing Date (the "Seller Representations"):

7.1. Documents. To Seller's actual knowledge, Seller has delivered to Buyer true and complete copies of the Documents in its possession or reasonable control.

7.2. Contracts. There are no contracts of any kind relating to the management, leasing, operation, maintenance or repair of the Property, except the Contracts. Seller has not received any written notice alleging that it has failed to timely perform all of the obligations required to be performed by it, nor alleging that Seller is otherwise in default under, any of such Contracts. Seller has delivered to Buyer complete copies of all Contracts and all commission agreements pursuant to which a leasing commission or finder's fee may be due and payable after Closing in connection with any Lease (the "Commission Agreements").

7.3. Environmental Matters. Except as disclosed in the Documents delivered by Seller to Buyer pursuant to Section 4.2, Seller has not received any written notice of any pending or threatened claims, complaints, notices, correspondence or requests for information received by Seller with respect to any violation or alleged violation of any Environmental Law, any releases of Hazardous Materials or with

respect to any corrective or remedial action for, or cleanup of, the Property or any portion thereof. Seller has not transported, disposed of or treated, or arranged for the transportation, disposal or treatment of, any Hazardous Materials from, at or to the Property in violation of Environmental Law. To Seller's actual knowledge, there are no underground storage tanks at the Property.

7.4. Compliance with Laws and Codes. Seller has not received any written notice advising or alleging that, and Seller has no actual knowledge that, the entirety of the Property (including the Improvements), and the use and operation thereof, are not in compliance with all applicable municipal and other governmental laws, ordinances, rules, regulations, codes (including Environmental Laws), licenses, permits and authorizations, and there are presently and validly in effect all licenses, permits and other authorizations necessary for the use, occupancy and operation of the Property as it is presently being operated, except for that certain correspondence dated September 13, 2022, from Village of Tinley Park, Community Development Department outlining repairs needed in connection with a change of owner inspection conducted at the Property (the "Village Repair Letter").

7.5. Litigation. There are no pending, or, to Seller's actual knowledge, threatened, judicial, municipal or administrative proceedings affecting the Property, or in which Seller is or will be a party by reason of Seller's ownership or operation of the Property or any portion thereof, including, without limitation, proceedings for or involving collections, condemnation, eminent domain, alleged building code or environmental or zoning violations, or personal injuries or property damage alleged to have occurred on the Property or by reason of the condition, use of, or operations on, the Property. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending, or, to Seller's actual knowledge, threatened, against Seller, nor are any of such proceedings contemplated by Seller.

7.6. Re-Zoning. Seller is not a party to, nor does Seller have any actual knowledge of, any threatened proceeding for the rezoning of the Property or any portion thereof, or the taking of any other action by governmental authorities that would have an adverse or material impact on the value of the Property or use thereof.

7.7. Authority. The execution and delivery of this Agreement, the New Lease and all documents contemplated hereunder by Seller, and the performance of this Agreement, the New Lease and all documents contemplated hereunder by Seller, have been duly authorized by Seller, and this Agreement is (and the New Lease and all documents contemplated hereunder shall, at Closing, be) binding on Seller and enforceable against Seller in accordance with its terms. No consent of any creditor, investor, judicial or administrative body, governmental authority, or other governmental body or agency, or other party to such execution, delivery and performance by Seller is required. Neither the execution of this Agreement, the New Lease and all documents contemplated hereunder nor the consummation of the transactions contemplated hereby will (i) result in a breach of, default under, or acceleration of, any agreement to which Seller is a party or by which Seller or the Property are bound; or (ii) violate any restriction, court order, agreement or other legal obligation to which Seller and/or the Property is subject.

7.8. Real Estate Taxes. Seller has not received written notice of, and does not have any actual knowledge of, any proposed increase in the assessed valuation of the Property, other than in the ordinary course and as included in the Documents. There is not now pending, and Seller agrees that it will not, without the prior written consent of Buyer (which consent will not be unreasonably withheld or delayed), institute prior to the Closing Date, any proceeding or application for a reduction in the real estate tax assessment of the Property or any other relief for any tax year.

7.9. United States Person. Seller is a "United States Person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and shall execute and deliver an "Entity Transferor" certification at Closing.

7.10. Condemnation. Seller has not received any written notice advising it of any pending or threatened condemnation or other governmental taking proceedings affecting all or any part of the Property.

7.11. Physical Condition. Seller has not received any written notice, report or other written communication advising or alleging of the existence of any material structural or other physical defect or deficiency in the condition of the Improvements and the mechanical systems therein.

7.12. Leases. There are no leases, licenses or occupancy agreements binding upon the Property other than that certain Lease between Archive America of Illinois, Inc (“Existing Tenant”) and Seller (the “Existing Lease”).

7.13. Patriot Act. Neither Seller nor any person, group, entity or nation that Seller is acting, directly or indirectly for, or on behalf of, is named by any Executive Order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person,” or is otherwise a banned or blocked person, group, entity, or nation pursuant to any law that is enforced or administered by the Office of Foreign Assets Control, and Seller is not engaging in the transaction contemplated under this Agreement, directly or indirectly, on behalf of, or instigating or facilitating such transaction, directly or indirectly, on behalf of, any such person, group, entity or nation. Seller is not engaging in the transaction contemplated under this Agreement, directly or indirectly, in violation of any laws relating to drug trafficking, money laundering or predicate crimes to money laundering. None of the funds of Seller have been or will be derived from any unlawful activity with the result that the investment of direct or indirect equity owners in Seller is prohibited by law or that the transaction contemplated under this Agreement is or will be in violation of law. Seller has and will continue to implement procedures, and has consistently and will continue to consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times prior to Closing.

7.14. No Bankruptcy. No petition in bankruptcy (voluntary or otherwise), attachment, execution proceeding, assignment for the benefit of creditors, or petition seeking reorganization or insolvency, arrangement or other action or proceeding under federal or state bankruptcy law is pending against or contemplated (or, to Seller’s knowledge, threatened) by or against Seller or any general partner or managing member of Seller.

7.15. ERISA. Neither the execution and delivery of this Agreement nor any of the transactions contemplated thereunder involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which a tax could be imposed pursuant to Section 4975(c) of the Code.

The Seller Representations shall survive the Closing Date and the delivery of the Deed for a period of one (1) year (the “Survival Period”). If Seller learns that any Seller Representation has become untrue in any respect or was untrue when made in any respect, Seller shall give prompt notice of the same to Buyer. Such notice shall include whether Seller is electing to take any action available to Seller that Seller deems appropriate to allow Seller to make true the Seller Representation or otherwise cure the problem with the Seller Representation, in which case, if the same is capable of being made true or cured, Seller shall have the right to postpone the Closing for up to thirty (30) days to make true or cure such Seller Representation. If Seller does not include in its notice Seller’s intent to take action or if Seller is unable to make the Seller Representation true or otherwise cure the problem therewith within the allowed time period, and the applicable Seller Representation is materially untrue or incorrect, then Buyer shall thereafter have the option, by providing notice to Seller (within five (5) days after the date of (x) Seller’s notice to Buyer if Seller does not, in such notice, elect to take action or (y) the expiration of the allowed time period if, in such notice, Seller elects to take action but cannot cure) of Buyer’s election either (i) to terminate this Agreement effective upon the date of Buyer’s notice, in which case the Deposit shall be returned to Buyer, or (ii) to proceed with its purchase of the Property notwithstanding such untrue representation or warranty in which case Buyer shall have irrevocably waived any of rights with respect

to the untruthfulness of the representation or warranty in question to the extent expressly disclosed in Seller's notice; provided, however, in the event any Seller Representative becomes untrue or incorrection in any material respect as a result of a breach by Seller of this Agreement, Buyer shall be entitled to all of the rights and remedies set forth in Section 15.1.

Notwithstanding the foregoing, no claim for a breach of any Seller Representation shall be actionable or payable unless (a) the breach in question results from, or is based on, a condition, state of facts or other matter which was not actually known by Buyer prior to Closing or (b) which was included in any of the Documents actually delivered by Seller to Buyer pursuant to Section 4.2 and/or any of the reports actually commissioned and obtained by Buyer prior to Closing. Furthermore, Seller shall have no liability to Buyer for a breach of any Seller Representations unless written notice containing a description of the specific nature of such breach has been given by Buyer to Seller and Buyer shall have commenced an action against Seller with respect to such breach prior to thirty (30) days following the expiration of the Survival Period and the amount of damage suffered by Buyer as a result of such breach, when aggregated with any other breach, is at least \$25,000.00 provided, however, in no event shall Seller's liability with respect to the breach of Seller Representations exceed \$150,000.00. The provisions of this Section 7 shall survive the Closing.

8. COVENANTS OF SELLER. From and after the Effective Date, Seller hereby covenants with Buyer as follows:

8.1. Leasing Activities and Expenses. Seller shall not execute and enter into any new lease, license or occupancy agreement for all or some portion of the Land and the Improvements. Commissions of leasing and rental agents and tenant improvement allowances for any leases affecting the Property shall be paid in full at or prior to Closing by Seller, without contribution or proration from Buyer or credited to Buyer at Closing (any such commissions or tenant improvements allowances, "Seller's Commissions"). Seller hereby indemnifies, protects, defends and holds Buyer, and its successors and assigns (the "Buyer's Indemnified Parties"), harmless from and against any and all Losses that any or all of the Buyer's Indemnified Parties actually suffers and incurs as a result of the failure by Seller to timely pay or discharge any of the Seller's Commissions. Notwithstanding the foregoing, (i) Seller, as tenant ("Tenant"), shall enter into a lease agreement with Buyer, as landlord, pursuant to which Tenant leases the entire Building at Closing, in the form attached hereto as Exhibit C (the "New Lease"), (ii) Seller, shall cause EMCORE CORPORATION, a New Jersey corporation, as guarantor ("Guarantor"), to enter into a guaranty of the New Lease in the form attached hereto as Exhibit D (the "Lease Guaranty"), and (iii) Seller, as landlord, shall execute and deliver, and shall cause Existing Tenant to execute and deliver, a termination of the Existing Lease in the form attached hereto as Exhibit E (the "Lease Termination Agreement"). Seller hereby agrees to indemnify, protect, hold harmless and, if requested by Buyer in Buyer's sole and absolute discretion, defend (with counsel of Buyer's choosing) Buyer, its successors and assigns, from any and all Losses to the extent arising out of or in connection with the Existing Lease. Provided Seller and Existing Tenant execute and deliver a consent to sublease agreement in the form attached hereto as Exhibit F (the "Sublease Consent"), Seller, as sublessor, shall be entitled to enter into a new sublease agreement with Existing Tenant, as sublessee, pursuant to which Existing Tenant shall sublease a portion of the Building at Closing, in which event, Buyer shall, at Closing, execute and deliver the Sublease Consent. The provisions of this Section shall survive Closing.

8.2. Contracts. Seller shall, effective at or prior to Closing, terminate any contract that would bind the Property following Closing.

8.3. Operation of Property. From and after the Effective Date and through and including the Closing Date, Seller shall operate and manage the Property in the same manner in which it is being operated as of the Effective Date, maintaining present services, and shall maintain the Property in its same repair and working order; shall keep on hand sufficient materials, supplies, equipment and other personal property for the efficient operation and management of the Property in the manner in which it is being operated as of the Effective Date; and shall perform, when due, all of Seller's obligations under the Contracts, governmental approvals and other agreements relating to the Property and otherwise in accordance with

applicable laws, ordinances, rules and regulations affecting the Property. Except as otherwise specifically provided herein, at Closing, Seller shall deliver the Property in substantially the same condition as exists on the Effective Date, reasonable wear and tear and Casualty Damage, and Eminent Domain (as defined in Section 14 hereof) excepted. Seller shall maintain its existing insurance policies with respect to the Buildings continuously in force through and including the Closing Date. Seller shall, to the extent Seller obtains knowledge thereof, promptly notify Buyer of any change in any condition with respect to the Property. Seller shall promptly (and in any event within five (5) business days) deliver any materials, reports, information or other documents that it obtains or discovers after the Effective Date that would constitute a Document to the extent Seller did not, for any reason, deliver such items as part of the Documents. Furthermore, prior to Closing, Seller shall, at Seller's sole cost, obtain any deed stamps required by the Village of Tinley Park, Illinois (the "Village") and complete any and all inspections and actions required by the Village in connection therewith or otherwise required by the Village in connection with the conveyance of the Property, including, without limitation, performing any repairs or actions required by City as a result of such inspections. Without limitation, prior to Closing, at Seller's sole cost and expense, Seller shall perform or cause to be performed all of the repairs set forth in the Village Repair Letter.

8.4. CC&Rs. Seller shall use commercially reasonable efforts to obtain and deliver to Buyer an estoppel certificate from the Declarant under that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for Tinley Crossings Corporate Center.

8.5. No Assignment. After the Effective Date and prior to Closing, Seller shall not assign, alienate, lien, encumber or otherwise transfer all or any part of the Property or any interest therein. Without limitation of the foregoing, Seller shall not grant any easement, right of way, restriction, covenant or other comparable right affecting the Land or the Improvements without obtaining Buyer's prior written consent, which consent shall not be unreasonably withheld. Seller shall not market the Property or enter into any agreement, arrangement or understanding, formal or informal, for the sale of the Property, whether conditional or otherwise.

9. CONDITIONS PRECEDENT TO CLOSING. The obligations of Buyer to pay the Purchase Price and close the transaction contemplated herein are subject to the following conditions precedent (the "Conditions Precedent"):

9.1. Representations and Warranties. As of the Closing Date, the representations and warranties made by Seller to Buyer as of the Effective Date shall be true, accurate and correct in all material respects as if specifically remade at that time.

9.2. Title. At Closing, the Title Company shall issue the Title Policy to Buyer insuring Buyer as the fee simple owner of the Land and the Improvements for the full amount of the Purchase Price, which Title Policy shall provide full "extended form" coverage and such endorsements as Buyer requires as Buyer notifies Seller and the Title Company on or prior to the expiration of the Due Diligence Period.

9.3. SNDA. On or prior to the Closing, Seller shall deliver to Buyer a Subordination, Non-Disturbance and Attornment Agreement from Tenant dated within thirty (30) days of Closing, in such form as Buyer's lender may reasonably require (each, a "SNDA").

9.4. New Lease. Tenant and Buyer, as landlord, shall enter into the New Lease.

9.5. CQ. Tenant shall have completed all actions required to enable the Village to issue a certificate of occupancy for the Property.

Each Condition Precedent is for the sole benefit of Buyer and may be waived at any time by written notice thereof from Buyer to Seller. The waiver of any particular Condition Precedent by Buyer shall not constitute the waiver of any other. In the event of the failure of a Condition Precedent for any reason whatsoever, Buyer may elect, in its sole discretion, to terminate this Agreement in which event the

Deposit shall be immediately returned to Buyer and neither party shall have any further obligation or liability under this Agreement except as otherwise expressly provided hereunder.

10. SELLER'S CLOSING DELIVERIES. At Closing, Seller shall deliver or cause to be delivered to Buyer the following, in form and substance acceptable to Buyer:

10.1. Deed. The Deed, executed by Seller, in recordable form.

10.2. New Lease. Two (2) originals of the New Lease executed by Tenant, together with one (1) original of the Lease Guaranty executed by Guarantor and any and all certificates of insurance required to be delivered by Tenant to Landlord pursuant to the New Lease.

10.3. Existing Lease. The Lease Termination Agreement, duly executed by Seller and Existing Tenant and, if applicable, the Sublease Consent, duly executed by Seller and Existing Tenant.

10.4. General Assignment. An assignment, executed by Seller, to Buyer of all right, title and interest of Seller and its agents in and to the Intangibles (including, but not limited to, the governmental approvals). On or prior to Closing, Seller shall, at Seller's sole cost, cause to be assigned to Buyer any and all guarantees and warranties issued with respect to the Improvements, including, but not limited to, any roof warranties, in accordance with their terms such that the same are enforceable by Buyer after Closing.

10.5. Contracts. Seller shall provide evidence acceptable to Buyer of the termination of all management and listing agreements binding upon the Land and the Improvements.

10.6. Closing Statement. A closing statement conforming to the proration and other relevant provisions of this Agreement.

10.7. Closing Certificate. A certificate, signed by Seller, certifying to the Buyer that the representations and warranties of Seller contained in this Agreement are true and correct in all material respects as of the Closing Date and that all covenants required to be performed by Seller prior to the Closing Date have been performed, in all material respects.

10.8. Entity Transfer Certificate. Entity Transfer Certification confirming that Seller is a "United States Person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended. Seller also shall execute and deliver to Buyer and the Title Company a duly executed affirmation reasonably satisfactory to the Title Company and Buyer for the purposes of satisfying the Title Company and Buyer that the transaction is exempt from the withholding requirements under state and local law. If Seller fails to execute the appropriate documents under this subsection, or the transaction is not exempt from withholding requirements of state and local law, Buyer or the Title Company may withhold the amount of such taxes (calculated at the highest rate required or permitted by law) from proceeds otherwise to be paid to Seller at the Closing.

10.9. ALTA Statement. If required by the Title Company, an Owner's Affidavit and a "gap" affidavit, each executed by Seller and in form and substance acceptable to the Title Company.

10.10. Proof of Authority. Seller shall provide such proof of authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any documents or certificates on behalf of Seller as may be reasonably required by Title Company.

10.11. Property Items. To the extent not previously delivered to Buyer, (i) originals of the assigned Contracts and permits or approvals, (ii) all plans and specifications related to the Land and the Improvements in Seller's possession and control or otherwise available to Seller, (iii) a current certificate

of occupancy (or comparable permit or license) with respect to the entirety of the Property and (iv) keys to all locks located in the Property, to the extent in Seller's possession or control.

10.12. Other. Such other documents and instruments as may reasonably be required by Buyer or the Title Company and that may be reasonably necessary or appropriate to consummate this transaction and to otherwise effect the agreements of the parties hereto.

11. CLOSING DELIVERIES. At Closing Buyer shall cause the following to be delivered to Seller:

11.1. Purchase Price. The Purchase Price, plus or minus prorations, shall be delivered to the Title Company in escrow for disbursement to Seller.

11.2. New Lease. Two (2) originals of the New Lease executed by Buyer, as landlord;

11.3. Sublease. If applicable, the Sublease Consent, duly executed by Buyer, as landlord.

11.4. Closing Statement. A closing statement conforming to the proration and other relevant portions of this Agreement.

11.5. Other. Such other documents and instruments as may reasonably be required by Seller or the Title Company and that may be reasonably necessary or appropriate to consummate this transaction and to otherwise effect the agreements of the parties hereto.

12. PRORATIONS AND ADJUSTMENTS. The following shall be prorated and adjusted between Seller and Buyer as of the Closing Date, except as otherwise specified:

12.1. Security Deposits. The amount of all cash security and any other cash tenant deposits required to be made by Tenant under the New Lease shall be credited to Buyer.

12.2. Utilities and Operating Expenses. The readings and billings for utilities will be made if possible as of the day before the Closing Date, in which case Seller shall pay all such bills and no proration shall be made at the Closing with respect to utility bills. Otherwise, water, electricity, sewer, gas, telephone and other utility charges based, to the extent practicable, on final meter readings and final invoices, shall be prorated at Closing.

12.3. Contracts. Amounts paid or payable under the Contracts assumed by Buyer shall be prorated.

12.4. Assessments. All assessments, general or special, shall be prorated as of the Closing Date, with Seller being responsible for any installments of assessments that are due and payable prior to the Closing Date and Buyer being responsible for any installments of assessments that are due and payable on or after the Closing Date.

12.5. Taxes. All ad valorem real estate and personal property taxes with respect to the Land and the Improvements shall be prorated as of the Closing Date, based on an accrual basis for the calendar year in which the Closing occurs (and prior years not yet due and payable), such that Seller shall pay all such taxes attributable to calendar year 2021 and that portion of calendar year 2022 taxes allocable to the period prior to the Closing Date regardless of when due and payable and Buyer shall be responsible for all such taxes for calendar year 2022 attributable to the period from and after the Closing Date.

12.6. Rent. The portion of base and additional rent owing under the New Lease from Tenant to Buyer, as landlord, for the month of Closing and allocable to the portion of such month occurring after Closing shall be credited by Seller to Buyer on behalf of Tenant.

12.7. Other. Such other items as are customarily prorated in transactions of this nature shall be ratably prorated.

For purposes of calculating prorations, Buyer shall be deemed to be in title to the Property, and therefore entitled to the income therefrom and responsible for the expenses thereof, for the entire day upon which the Closing occurs. All such prorations shall be made on the basis of the actual number of days of the year and month that shall have elapsed as of the Closing Date. The amount of such prorations shall be adjusted in cash after Closing, as and when complete and accurate information becomes available. Seller and Buyer agree to cooperate and use their good faith and diligent efforts to make such adjustments no later than 30 days after the Closing, or as soon as is reasonably practicable if and to the extent that the required final proration information is not available within such 30-day period. Items of income and expense for the period prior to the Closing Date will be for the account of Seller and items of income and expense for the period on and after the Closing Date will be for the account of Buyer, all as determined by the accrual method of accounting. Bills received after Closing that relate to expenses incurred, services performed or other amounts allocable to the period prior to the Closing Date shall be paid by Seller. Any amounts not so paid by Seller may be set off against amounts (if any) otherwise due Seller hereunder. The obligations of the parties pursuant to this Section 12 shall survive the Closing and shall not merge into any documents of conveyance delivered at Closing.

13. CLOSING EXPENSES. Buyer will pay the costs of any endorsements to the Title Policy and one-half the costs of any escrows hereunder. Seller shall pay the entire cost of the basic premium for the Title Policy, the cost of the Survey, the cost of all state, county and municipal transfer taxes, any pre-payment penalties associated with the payment of any indebtedness encumbering the Land or the Improvements, any expenses relating to the assignment of the existing warranties to Buyer, the cost of recording the Deed, and one-half of the cost of any escrows hereunder.

14. DESTRUCTION, LOSS OR DIMINUTION OF PROJECT. Notwithstanding anything to the contrary set forth in this Agreement, if, prior to Closing, either (a) \$400,000.00 or more of damage is caused to the Property as a result of any earthquake, hurricane, tornado, flood, landslide, fire, act of war, terrorism, terrorist activity or other casualty, or any portion of the Property equal to or greater than such amount is taken (or is threatened to be taken) under the power or threat of eminent domain (temporarily or permanently), (b) material access to the Property, or a material portion of the parking is destroyed as a result of a casualty or is taken (or is threatened to be taken) under the power or threat of eminent domain (temporarily or permanently) or (c) any portion of the Property is rendered untenable or is taken (or threatened to be taken) under the power or threat of eminent domain (temporarily or permanently) such that the use of the balance of the Property is materially impaired (any event under subsections (a) through (c) of this Section 14 being a "Material Change"), then, in any such event, Buyer may elect to terminate this Agreement by giving written notice to Seller of its election to terminate this Agreement (a "Material Event Termination Notice") on or before the 30th day after Buyer receives written notice of such destruction, taking or threatened taking. Buyer, at its option and in its sole discretion, may extend the Closing Date to allow Buyer such full 30-day period to determine if Buyer elects to issue a Material Event Termination Notice. If Buyer does not give (or has no right to give) a Material Event Termination Notice within such 30-day period, then (i) this transaction shall close as set forth in this Agreement, (ii) Buyer shall pay the full Purchase Price (subject to clause (iv) below), (iii) Seller shall assign to Buyer the proceeds of any insurance policies payable to Seller (or shall assign the right or claim to receive such proceeds after Closing), or Seller's right to or portion of any condemnation award (or payment in lieu thereof), and (iv) the amount of any deductible or self-insured or uninsured amount shall be a credit against the Purchase Price. If Buyer timely delivers a Material Event Termination Notice pursuant to this section, the Deposit shall be immediately returned to Buyer and neither party shall have any further obligation or liability under this Agreement except as otherwise expressly provided hereunder. Seller shall not settle or compromise any insurance claim or condemnation action without the prior written consent of Buyer, and Buyer shall have the option to participate in any such claim or action. Seller shall obtain Buyer's prior approval (which shall not be unreasonably withheld, delayed or conditioned) with respect to (Y) the repair of any Material Change (including the plans, contracts and contractors for such repair work), and (Z) the repair of any other casualty or condemnation if such repair will not be fully and

completed repaired prior to the Closing. In the event that Buyer is not entitled pursuant to this Section 14 to terminate the Agreement, or otherwise elects to not terminate this Agreement, as a result of any Casualty Damage or Eminent Domain, Tenant shall have no right to terminate the New Lease and the New Lease shall be and remain in full force and effect at Closing notwithstanding any such Casualty Damage or Eminent Domain.

15. DEFAULT.

15.1. Default by Seller. If Seller fails to perform any of the covenants and agreements contained herein to be performed by Seller within the time for performance as specified herein (including Seller's obligation to close), Buyer may elect either to (i) terminate Buyer's obligations under this Agreement by written notice to Seller, in which event the Deposit shall be returned immediately to Buyer and Seller shall reimburse Buyer for Buyer's actual out-of-pocket costs and expenses (including reasonable attorneys' fees, costs and disbursements) related to the negotiation of this Agreement and the transactions contemplated hereby and Buyer's due diligence, up to a maximum of \$50,000.00; or (ii) file an action for specific performance. Seller agrees that in the event Buyer elects (ii) above, Buyer shall not be required to post a bond or any other collateral with the court or any other party as a condition to Buyer's pursuit of an action. Seller hereby covenants and agrees that in the event that a default on the part of Seller hereunder is willful in nature, Buyer may (in addition to any and all other remedies of Buyer hereunder) file an action for damages actually suffered by Buyer by reason of Seller's defaults hereunder (including, but not limited to, attorneys' fees, engineering fees, fees of environmental consultants, appraisers' fees, and accountants' fees incurred by Buyer in connection with this Agreement and any action hereunder). Nothing in this Section 15.1 shall be deemed to in any way to limit or prevent Buyer from exercising any right of termination provided to Buyer elsewhere in this Agreement or limit the rights and remedies of Buyer with respect to any terms, conditions or covenants that expressly survive the termination of this Agreement. Notwithstanding the foregoing, in the event Seller defaults in any of its post-closing obligations or any obligations that survive Closing or a termination of this Agreement, Buyer shall have all of its remedies at law and in equity on account of such default. The provisions of Section shall survive any termination of this Agreement.

15.2. Default by Buyer. SELLER AND BUYER AGREE THAT, IF THE BUYER FAILS TO CONSUMMATE THE PURCHASE AND SALE OF THE PROPERTY IN BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT (A "CLOSING DEFAULT"), SELLER, AS ITS SOLE AND EXCLUSIVE REMEDY, SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT AND UPON TERMINATION THE DEPOSIT SHALL BE PAID TO SELLER AS LIQUIDATED DAMAGES AND AS SELLER'S SOLE REMEDY. SELLER AND BUYER AGREE THAT, UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, ACTUAL DAMAGES MAY BE DIFFICULT TO ASCERTAIN AND THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT WILL BE INCURRED BY SELLER AS A RESULT OF A CLOSING DEFAULT. Notwithstanding the foregoing, in the event Buyer defaults in any of its post-closing obligations or any obligations other than the obligation to close the purchase of the Property, Seller shall have all of its remedies at law or in equity on account of such default.

16. SUCCESSORS AND ASSIGNS; TAX-DEFERRED EXCHANGE. The terms, conditions and covenants of this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective nominees, successors, beneficiaries and assigns; provided, however, no conveyance, assignment or transfer of any interest whatsoever of, in or to the Property or of this Agreement shall be made by Seller or Buyer during the term of this Agreement, except Seller may assign all or any of its right, title and interest under this Agreement to any third party intermediary (an "Intermediary") in connection with a tax-deferred exchange pursuant to Section 1031 of the Internal Revenue Code (an "Exchange"). Buyer may not assign this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, without the consent of Seller, Buyer may assign all or any of its right, title and interest under this Agreement to: (i) an Intermediary in connection with an Exchange; (ii) any affiliate or subsidiary of Buyer; or (iii) any joint venture partnership, limited liability company or other entity in which Buyer or any affiliate or subsidiary of

Buyer has an interest or manages or advises. In the event of an assignment of this Agreement by Buyer, its assignee shall be deemed to be the Buyer hereunder for all purposes hereof, and shall have all rights of Buyer hereunder (including, but not limited to, the right of further assignment), but the assignor shall not be released from liability hereunder. In the event either party elects to assign this Agreement to an Intermediary, the other party shall reasonably cooperate with the assigning party (without incurring any additional liability or any additional third party expenses) in connection with such election and the consummation of the Exchange, including without limitation, by executing an acknowledgment of the assigning party's assignment of this Agreement to the Intermediary.

17. **NOTICES.** Any notice, demand or request which may be permitted, required or desired to be given in connection therewith shall be given in writing and directed to Seller and Buyer as follows:

Seller: EMCORE Chicago Inertial Corporation  
c/o EMCORE Corporation  
Attn: General Counsel  
2015 Chestnut St.  
Alhambra, CA 91803  
Email: legal@emcore.com

With a copy to  
its attorneys: Pillsbury Winthrop Shaw Pittman LLP  
Attn: Adam J. Weaver  
909 Fannin, Suite 2000  
Houston, TX 77010  
Email: adam.weaver@pillsburylaw.com

Buyer: c/o High Street Logistics Properties, LLC  
1S450 Summit Avenue, Suite 250  
Oakbrook Terrace, Illinois 60181  
Attn: Adam Naparsteck  
Email: anaparsteck@highstreetlp.com

With a copy to  
its attorneys: Barack Ferrazzano Kirschbaum & Nagelberg LLP  
200 West Madison Street, Suite 3900  
Chicago, Illinois 60606  
Attn: Jeremy Bunnow  
Email: jeremy.bunnow@bfkn.com

Notices shall be deemed properly delivered and received: (i) the same day when personally delivered; or (ii) one day after deposit with Federal Express or other comparable commercial overnight courier; or (iii) the same day when sent by electronic mail.

18. **BENEFIT.** This Agreement is for the benefit only of the parties hereto and their nominees, successors, beneficiaries and assignees as permitted in Section 16 and no other person or entity shall be entitled to rely hereon, receive any benefit herefrom or enforce against any party hereto any provision hereof.

19. **LIMITATION OF LIABILITY.** Upon the Closing, Buyer shall neither assume nor undertake to pay, satisfy or discharge any liabilities, obligations or commitments of Seller other than those specifically agreed to between the parties and set forth in this Agreement. Except with respect to the foregoing obligations, Buyer shall not assume or discharge any debts, obligations, liabilities or commitments of Seller, whether accrued now or hereafter, fixed or contingent, known or unknown.

20. BROKERAGE. Each party hereto represents and warrants to the other that it has dealt with no brokers or finders in connection with this transaction and/or the New Lease other than CBRE, Inc. (“Broker”). Seller shall pay a broker’s commission to Broker provided the parties proceed to Closing pursuant to a separate agreement between Seller and Broker. Seller and Buyer each hereby indemnify, protect and defend and hold the other harmless from and against all Losses, resulting from the claims of any broker, finder, or other such party, claiming by, through or under the acts or agreements of the indemnifying party. The obligations of the parties pursuant to this Section 20 shall survive the Closing or any earlier termination of this Agreement.

21. MISCELLANEOUS.

21.1. Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, letters of intent and proposals, in each case with respect to the transaction contemplated herein, are hereby superseded and rendered null and void and of no further force and effect and are merged into this Agreement. Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

21.2. Time of the Essence. Time is of the essence of this Agreement.

21.3. Legal Holidays. If any date herein set forth for the performance of any obligations by Seller or Buyer or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term “legal holiday” means any state or federal holiday for which financial institutions or post offices are generally closed for observance thereof in the State in which the Property is located.

21.4. Construction. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Seller and Buyer have contributed substantially and materially to the preparation of this Agreement. The headings of various sections in this Agreement are for convenience only, and are not to be utilized in construing the content or meaning of the substantive provisions hereof.

21.5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of in which the Land is located.

21.6. Partial Invalidity. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity of enforceability of any other provision hereof.

21.7. Permitted Termination. In the event that Buyer exercises any right it may have hereunder to terminate this Agreement, the Deposit shall be immediately returned to Buyer and neither party shall have any further obligation or liability under this Agreement except as otherwise expressly provided hereunder.

21.8. Bulk Sales. Seller shall comply with the bulk transfer provisions of the state in which the Property is located or similar laws and indemnify, protect, defend and hold harmless Buyer for any Loss related thereto. Without limiting the generality of the foregoing, not later than twenty (20) days prior to the Closing Date, Seller shall file, and provide Buyer with evidence of the filing of, a “Notice of Sale/Purchase of Business Assets” with the Illinois Department of Revenue (the “IDR”) in connection with the requirements of (i) the Illinois Income Tax Act, 35 ILCS 5/902(d) as amended, and (ii) Section 5j of the Illinois Retailers’ Occupation Tax Act, 35 ILCS 120/5j, as amended (collectively, “the Illinois Tax Act”). In the event that the IDR either (i) issues a certificate(s) requiring withholding under the Illinois Tax Act

with respect to the Closing (the "Certificate") or (ii) fails to issue the Certificate, then Buyer shall be entitled to withhold the amounts required pursuant to the Certificate or, in the event the Certificate is not issued, such other amounts necessary to comply with the requirements of the Illinois Tax Act (the "Withholding Amounts") from the payment of the Purchase Price, which Withholding Amount shall be deposited at Closing with Escrowee pursuant to escrow instructions reasonably acceptable to Seller and Buyer that shall provide for the release of the Withholding Amounts (including, without limitation, all earnings thereon) to Seller only upon the furnishing of a bulk sales release of stop order or other evidence that no further sums are required to be withheld by the IDR under the Illinois Tax Act. Seller and Buyer shall reasonably cooperate in obtaining any such evidence and in causing the Withholding Amounts to be paid by Escrowee to Seller upon the furnishing of such evidence.

21.9. Attorney's Fees. If litigation or arbitration is required by either party to enforce or interpret the terms of this Agreement or any closing documents delivered in connection with this Agreement, the substantially prevailing party of such action or arbitration shall, in addition to all other relief granted or awarded by the court or arbitrator, be awarded costs and reasonable attorneys' fees, charges and disbursements (including those of in-house counsel) and expert witnesses fees and costs incurred by reason of such action or arbitration and those incurred in preparation thereof at both the trial or arbitration and appellate levels.

21.10. Waiver of Trial by Jury. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ALL RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING OUT OF THIS CONTRACT.

The provisions of this Section 21 shall survive the Closing and any termination of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

SELLER:

EMCORE CHICAGO INERTIAL CORPORATION, a Delaware corporation

By: /s/ Ryan Hochgesang  
Name: Ryan Hochgesang  
Its: VP, General Counsel

S-1

2259213.v1

4874-2036-1015.v4

BUYER:

HSRE FUND VII HOLDING COMPANY, LLC, a Delaware limited liability company

By: /s/ Andrew M. Zgetowicz  
Name: Andrew M. Zgetowicz  
Its: Chief Investment Officer

S-2

2259213.v1

4874-2036-1015.v4

S-3

2259213.v1

4874-2036-1015.v4

2259213.v6

**SUMMARY OF BASIC LEASE INFORMATION AND DEFINITIONS**

This SUMMARY OF BASIC LEASE INFORMATION AND DEFINITIONS ("**Summary**") is hereby incorporated into and made a part of the attached Single-Tenant Triple Net Lease dated as of [\_\_\_\_\_] [\_\_\_\_], 2022, which pertains to the Premises described below. All references in the Lease to the "**Lease**" shall include this Summary. All references in the Lease to any term defined in this Summary shall have the meaning set forth in this Summary for such term. Any initially capitalized terms used in this Summary and any initially capitalized terms in the Lease which are not otherwise defined in this Summary shall have the meaning given to such terms in the Lease.

1.1 **Landlord's Address:** c/o High Street Logistics Properties  
600 Unicorn Drive, Suite 208  
Woburn, Massachusetts 01801

1.2 **Tenant's Address:** EMCORE Chicago Inertial Corporation  
c/o EMCORE Corporation

Attn: General Counsel  
2015 Chestnut St.  
Alhambra, CA 91803  
Email: legal@emcore.com

*With a copy to:*

Pillsbury Winthrop Shaw Pittman LLP  
Attn: James J. Masetti  
2550 Hanover Street  
Palo Alto, CA 94304-1115  
Email: [jim.masetti@pillsburylaw.com](mailto:jim.masetti@pillsburylaw.com)

1.3 **Premises:** The real property located at **8412 West 185<sup>th</sup> Street, Tinley Park, Illinois**, as more particularly described in **Exhibit A** attached hereto (the "**Property**"), together with all buildings, improvements and facilities, now or subsequently located on the Property from time to time, including, without limitation, the building containing approximately **100,415** rentable square feet (the "**Building**").

1.4 **Commencement Date:** [\_\_\_\_\_] [\_\_\_\_], 2022

1.5 **Expiration Date:** The date that is **twelve (12) years** after the Commencement Date; provided, however, if such date is not the last day of the calendar month, then the Expiration Date shall be the last day of such calendar month following the expiration of such **twelve (12) year** period.

1.6 **Monthly Rent**

<b>Months of Initial Lease Term</b>	<b>Monthly Rent</b>
*1 – 12	\$62,340.98
13 – 24	\$64,098.24
25 – 36	\$65,908.22
37 – 48	\$67,772.50
49 – 60	\$69,692.71
61 – 72	\$71,670.52
73 – 84	\$73,707.67
85 – 96	\$75,805.94
97 – 108	\$77,967.15
109 – 120	\$80,193.20
120 – 132	\$82,486.02
132 – 144	\$84,847.64

\*This period shall include any partial month at the beginning of the Term, in which case the period would be equal to the partial month, plus calendar months 1-12.

1.7 **Permitted Use:** The Premises may be used for all legally permitted uses, but excluding the Prohibited Uses (as defined in **Exhibit D** attached hereto).

1.8 **Interest Rate:** The lesser of: **(a)** an interest rate equal to the Prime Rate (as stated under the column "Money Rates" in the Wall Street Journal), plus **six percent (6%)** per annum; or **(b)** the maximum rate permitted by law.

1.9 **Guaranty:** That certain Lease Guaranty dated as of the date hereof (the "**Guaranty**") by **Emcore Corporation**, a New Jersey corporation ("**Guarantor**") for the benefit of Landlord, which Guaranty is attached hereto as **Exhibit C** and made a part hereof. Simultaneously with the execution and delivery of this Lease, Tenant shall cause Guarantor to execute and deliver the Guaranty to Landlord.

## SINGLE-TENANT TRIPLE NET LEASE

This SINGLE-TENANT TRIPLE NET LEASE ("**Lease**"), which includes the preceding Summary of Basic Lease Information and Definitions ("**Summary**") attached hereto and incorporated herein by this reference, is made as of [\_\_\_\_\_, 2022, by and between [\_\_\_\_\_] ("**Landlord**"), and **EMCORE CHICAGO INERTIAL CORPORATION**, a Delaware corporation ("**Tenant**").

**1. Lease of Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises upon and subject to the terms, covenants and conditions contained in this Lease to be performed by each party. The parties hereby stipulate that the Premises contains the rentable square feet set forth in the Summary.

**2. Term; Options to Extend.**

**2.1 Term.** This Lease shall be effective upon the date of its full execution and delivery by Landlord and Tenant (the "**Effective Date**"). The term of this Lease (the "**Term**") shall commence upon the Commencement Date and shall, subject to **Section 2.2** below, expire on the Expiration Date, unless sooner terminated or extended as permitted herein, and if extended, the "**Term**" will include any Option Term.

**2.2 Options to Extend.** Subject to the terms hereof, Landlord hereby grants to Tenant **three (3) options** (each, an "**Extension Option**") to extend the Term of this Lease with respect to the entire Premises for **five (5) years** each (each, an "**Option Term**"), on the same terms, covenants and conditions as provided for in this Lease during the initial Lease Term (or prior Option Term, as the case may be), except that **(a)** the Monthly Rent for the first year of each Option Term shall be equal to the Fair Market Rental Rate (as defined below), and **(b)** the Monthly Rent during each Option Term shall increase annually at a rate equal to the annual escalations consistent with the Fair Market Rental Rate. Each Extension Option must be exercised, if at all, by written notice ("**Extension Notice**") delivered by Tenant to Landlord no earlier than the date that is **twelve (12) months** prior to the expiration of the then-current Term, and no later than the date which is **nine (9) months** prior to the expiration of the then-current Term. Failure of Tenant to timely exercise any such Extension Option, shall render such Extension Option (and any succeeding Extension Option, if any) null and void and of no further force or effect whatsoever. Notwithstanding the foregoing or anything in this Lease to the contrary, Tenant shall have no right to exercise an Extension Option if Tenant is in default at the time such Extension Option is exercised.

**2.3 Fair Market Rental Rate.** For purposes of the Lease, the term "**Fair Market Rental Rate**" shall mean the prevailing market rental rate and annual rental escalations that comparable institutional landlords have accepted in current transactions between non-affiliated parties for renewals of existing tenants of comparable credit-worthiness, for comparable space located in the vicinity of the Premises, for a comparable use, for a comparable period of time in a comparable properties and buildings ("**Comparable Transactions**"); provided however, that the Rent shall not be reduced by reason of any costs or expenses saved by Landlord by reason of Landlord's not having to find a new tenant for such premises (including, without limitation, brokerage commissions, costs of improvements, rent concessions or lost rental income during any vacancy period).

**1.1.1** Landlord shall determine the Fair Market Rental Rate by using its good faith judgment. Landlord shall provide written notice of such amount (the "**Landlord's FMR Notice**") within **fifteen (15) days** after Tenant provides the applicable Extension Notice. Tenant shall have **thirty (30) days** ("**Tenant's Review Period**") after receipt of Landlord's FMR Notice within which to accept such rental or to reasonably object thereto in writing. If Tenant does not timely object to Landlord's FMR Notice, then Tenant shall be deemed to have accepted the Fair Market Rental Rate set forth in Landlord's FMR Notice. In the event Tenant timely objects to Landlord's FMR Notice, Landlord and Tenant shall attempt to agree upon such Fair Market Rental Rate using their reasonable good faith efforts. If Landlord and Tenant fail to reach agreement within **fifteen (15) days** following Tenant's Review Period ("**Outside Agreement Date**"), then each party shall place in a separate sealed envelope their final proposal as to Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with Subsections **2.3.3** through **2.3.7** below.

**1.1.2** In the event that Landlord fails to timely provide Landlord's FMR Notice, then Tenant may commence such negotiations by providing Tenant's determination of the Fair Market Rental Rate ("**Tenant's FMR Notice**"), in which event Landlord shall have **thirty (30) days** ("**Landlord's Review Period**") after receipt of Tenant's FMR Notice within which to accept or reject such Fair Market Rental

Rate. In the event Landlord fails to accept in writing such Fair Market Rental Rate proposed by Tenant in Tenant's FMR Notice, then such Fair Market Rental Rate shall be deemed rejected, and Landlord and Tenant shall attempt in good faith to agree upon such Fair Market Rental Rate using their reasonable good faith efforts. If Landlord and Tenant fail to reach agreement within **fifteen (15) days** following Landlord's Review Period (which shall be, in such event, the "**Outside Agreement Date**" in lieu of the above definition of such date), then each party shall place in a separate sealed envelope their final proposal as to the Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with Subsections **2.3.3** through **2.3.7** below.

**1.1.3 Arbitration.** If the Fair Market Rental Rate (including, annual rental escalations) for the applicable Option Term has not been determined on or prior to the Outside Agreement Date as set forth above, then Landlord and Tenant shall meet with each other within **five (5) business days** of the Outside Agreement Date and exchange the sealed envelopes and then open such envelopes in each other's presence. If Landlord and Tenant do not mutually agree upon the Fair Market Rental Rate for the applicable Option Term within **five (5) business days** of the exchange and opening of envelopes, then, within **ten (10) business days** of the exchange and opening of envelopes, each of Landlord and Tenant will appoint a qualified commercial real estate broker with at least 10 years' experience in leasing comparable industrial space owned by institutional landlords in the county where the Premises is located (each, an "**Arbitrator**"). The **two (2)** Arbitrators so appointed shall appoint an impartial third Arbitrator, similarly qualified, who has no business relationship with either Landlord or Tenant, within ten (10) business days after the appointment of the last appointed Arbitrator, and shall notify the parties of the identity of such third Arbitrator. If the two (2) Arbitrators are unable to timely agree upon a third Arbitrator, either Landlord or Tenant may, upon not less than **five (5) business days'** written notice to the other party, apply to the American Arbitration Association for appointment of a third similarly qualified Arbitrator. The three (3) Arbitrators are referred to in this Lease as the "**Arbitration Panel.**" The determination of the Arbitration Panel shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Rental Rate (including, and annual rental escalations) for the Premises is the closest to the actual Fair Market Rental Rate for the Premises as determined by the Arbitration Panel, taking into account the requirements of this Article. Such Arbitration Panel may hold such hearings and require such briefs as the Arbitration Panel determines is necessary. In addition, Landlord and Tenant may submit to the Arbitration Panel, with a copy to the other party, within **five (5) business days** after the appointment of the Arbitration Panel any market data and additional information that such party deems relevant to the determination of the Fair Market Rental Rate ("**FMRR Data**") and the other party may submit a reply in writing within **five (5) business days** after receipt of such FMRR Data.

**1.1.4** The Arbitration Panel shall, within **thirty (30) days** of its appointment, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Fair Market Rental Rate including, and annual rental escalations), and shall notify Landlord and Tenant of such determination.

**1.1.5** The decision of the Arbitration Panel shall be binding upon Landlord and Tenant.

**1.1.6** The cost of arbitration shall be paid by Landlord and Tenant equally.

**1.1.7** If Landlord and Tenant reach agreement regarding the Fair Market Rental Rate, or if the Arbitration Panel determines the Fair Market Rental Rate, then, within **ten (10) business days**, the parties shall execute an amendment to this Lease confirming the terms and conditions applicable to the applicable Option Term, including the newly extended expiration date and the Monthly Rent determined in accordance with this Section.

### **3. Rent.**

**3.1 Monthly Rent.** Tenant agrees to pay Landlord, as base rent for the Premises, the monthly base rent ("**Monthly Rent**") in the amounts designated in the Summary. The Monthly Rent shall be paid by Tenant in advance on the first day of each and every calendar month commencing upon the Commencement Date. Monthly Rent for any partial month shall be prorated in the proportion that the number of days this Lease is in effect during such month bears to the actual number of days in such month.

**3.2 Additional Rent.** All amounts and charges payable by Tenant under this Lease in addition to the Monthly Rent shall be considered additional rent ("**Additional Rent**") for the purposes of this Lease, and the word "**Rent**" in this Lease shall include Monthly Rent and such Additional Rent. Rent shall be paid to

Landlord as provided in **Section 7**, without any prior demand therefor and without any defense, counterclaim, deduction or offset, in lawful money of the United States of America.

3.3 **Management Fee.** In addition to each payment of Monthly Rent, on the first day of each and every calendar month commencing upon the Commencement Date and continuing through the Term, Tenant shall pay to Landlord, as Additional Rent, a monthly management fee (the "**Management Fee**") in an amount equal to **\$1,000** per month; provided however, that the amount of the Management Fee shall increase **two and one-half percent (2.5%)** as of each annually anniversary of the Commencement Date.

3.4 **Late Charges.** Any Rent payable by Tenant to Landlord under this Lease which is not paid within **five (5) days** after the same is due will be automatically subject to a late payment charge, as Additional Rent, of **five percent (5%)** of the delinquent amount, in each instance, to cover Landlord's additional administrative costs. In addition to the late charge set forth above, Tenant shall also be required to pay interest at the Interest Rate on all such unpaid sums (including any late charge(s)), said interest charges, as applicable, to be payable on the first (1st) of each month throughout the Term of this Lease, without further notice or demand therefor by Landlord. Such late charges and interest will be due and payable as set forth herein and will accrue from the date that such Rent (including late charges and interest) sums are payable under the provisions of this Lease until actually paid by Tenant.

4. **Triple-Net Lease.** Except as otherwise provided herein, all Rent shall be absolutely net to Landlord so that this Lease shall yield net to Landlord, the Rent to be paid each month during the Term of this Lease. Accordingly, and except as otherwise provided herein, all actual costs, expenses and obligations of every kind or nature whatsoever relating to the Premises which may arise and accrue during the Term of this Lease shall be paid by Tenant or reimbursed by Tenant to Landlord. Nothing herein contained shall be deemed to require Tenant to pay or discharge any mortgages or deeds of trust of any character whatsoever which may exist or hereafter be placed upon the Premises by an affirmative act or omission of Landlord.

5. **Hazardous Substances.** Tenant shall comply with the terms and conditions set forth on **Exhibit B** attached hereto and made a part hereof.

6. **Use.**

6.1 **General.** Tenant shall use the Premises only for the Permitted Use specified in the Summary. Tenant shall, at its sole cost and expense, observe and comply with all requirements of all recorded covenants, conditions and restrictions now or hereafter affecting the Premises and all laws, statutes, codes, rules and regulations now or hereafter in force relating to or affecting the Premises, including the condition, use, occupancy, alteration or improvement of the Premises (whether structural or non-structural, including unforeseen and/or extraordinary alterations or improvements, and regardless of the period of time remaining in the Term) of the Premises, including, without limitation, the provisions of the Americans with Disabilities Act ("**ADA**") as it pertains to the condition, use, occupancy, improvement and alteration (whether structural (except as otherwise provided herein) or non-structural, including unforeseen and/or extraordinary alterations or improvements, and regardless of the period of time remaining in the Term) of the Premises (collectively, "**Laws**"). Tenant shall not allow, suffer or permit the Premises or any use thereof to constitute a nuisance.

6.2 **Signs and Auctions.** Subject to (a) Landlord's approval of the plans and specifications applicable thereto (which approval shall not be unreasonably withheld, conditioned or delayed), (b) the approval of all applicable governmental and quasi-governmental entities, and (c) all Laws, Landlord hereby grants Tenant the right, at Tenant's sole cost and expense, to install an exterior identification sign on the face of the Building and a monument sign at the entrance to the Property. Upon the expiration or earlier termination of this Lease, Tenant shall be responsible, at its sole cost and expense, for the removal of such signage and the repair of all damage to the Building and the Property caused by the installation and removal of such signage. If Tenant fails to so remove such signs and perform such repairs, then Landlord shall have the right to do so on behalf of Tenant, in which event Tenant shall reimburse Landlord for the actual costs thereof within ten (10) days after written demand therefor. Except for such signage, Tenant may not install any signs on the exterior of the Building or at the Property. Tenant shall have no right to conduct any auction in, on or about the Premises.

7. **Payments and Notices.** All Rent and other sums payable by Tenant to Landlord hereunder shall be paid to Landlord at the address designated in the Summary, or to such other persons and/or at such other places as Landlord may hereafter designate in writing. Any notice required or permitted to be given

hereunder must be in writing and given by personal delivery, or delivery by nationally recognized overnight courier or express mailing service, or by email transmission, with a hard copy of such notice delivered no later than one (1) business day after email transmission by another method specified in this Section 7, or by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant at the address(es) designated in the Summary, or to Landlord at the address(es) designated in the Summary. Either party may, by written notice to the other, specify a different address for notice purposes. Notice given in the foregoing manner shall be deemed given **(i)** upon receipt if sent by email transmission, provided such transmission is prior to 5:00 p.m. Central Time on a business day (if such transmission is after 5:00 p.m. Central Time on a business day or is on a non-business day, such notice will be deemed given on the following business day), **(ii)** when actually received or refused by the party to whom sent if personally served, or **(iii)** one day after deposit with Federal Express or other comparable commercial overnight courier, or **(iv)** if mailed, on the day of actual delivery or refusal as shown by the certified mail return receipt or the expiration of three (3) business days after the day of mailing, whichever first occurs. For purposes of this Lease, a "**business day**" is Monday through Friday, excluding holidays observed by the United States Postal Service.

**8. Surrender.** Upon the expiration or sooner termination of this Lease, Tenant shall surrender all keys for the Premises to Landlord, and Tenant shall deliver exclusive possession of the Premises to Landlord broom clean and in substantially the same condition and repair as when delivered by Landlord, reasonable wear and tear excepted (and casualty damage excepted), with all of Tenant's personal property and trade fixtures, Tenant Improvements and Tenant Changes (except for such Tenant Improvements and Tenant Changes identified by Landlord to remain upon the Premises pursuant to **Section 11.2** below) removed therefrom and all damage caused by such removal repaired, as required pursuant to **Section 11.2** below. Without limitation of the foregoing, any and all telephonic, coaxial, ethernet, or other data, computer, word-processing, facsimile, cabling, or electronic wiring installed by Tenant in, on or about the Premises, including all lines above the office ceiling is to be removed in its entirety, at Tenant's sole cost and expense. In the event that Tenant fails to timely surrender the Premises in the condition required herein, then in addition to Landlord's rights and remedies under the Lease and/or at law and equity, Landlord may perform such work on behalf of Tenant, in which event Tenant shall reimburse Landlord for the actual costs thereof within **ten (10) days** after written demand therefor.

**9. Taxes.**

9.1 **Real Property Taxes.** Tenant agrees to pay to the applicable taxing authority, prior to delinquency, all general and special real property taxes, assessments (including, without limitation, change in ownership taxes or assessments, but excluding all taxes imposed by the county or other governmental authority on the sales proceeds received by Landlord in connection with any sale of the Property), liens, bond obligations, license fees or taxes, commercial rent taxes and any similar impositions in-lieu of other impositions now or previously within the definition of real property taxes or assessments and any and all assessments under any covenants, conditions and restrictions affecting the Premises (collectively "**Real Property Taxes**") which may be now or hereafter levied or assessed against the Premises applicable to the period from the Commencement Date, until the expiration or sooner termination of this Lease; provided, however, Real Property Taxes shall not include Landlord's general income, franchise, estate or inheritance taxes. All Real Property Taxes for the tax year in which this Lease terminates shall be apportioned and adjusted so that Tenant shall not be responsible for any Real Property Taxes for a period of time accruing subsequent to the expiration of the Lease Term.

9.2 **Personal Property Taxes.** Tenant shall be liable for, and shall pay before delinquency, all taxes and assessments (real and personal) levied against **(a)** any personal property or trade fixtures placed by Tenant in or about the Premises (including any increase in the assessed value of the Premises based upon the value of any such personal property or trade fixtures); and **(b)** any Tenant Improvements or alterations in the Premises (whether installed and/or paid for by Landlord or Tenant).

**10. Repairs.**

10.1 **Tenant's Repair Obligations.** Tenant shall at all times and at Tenant's sole cost and expense, keep, maintain, clean, repair, replace and preserve the Premises and all parts thereof, structural and non-structural, including, without limitation, utility meters, plumbing, pipes and conduits, all heating, ventilating and air conditioning systems located within or serving the Premises, all fixtures, furniture and equipment, if any, Tenant's signs, if any, locks, closing devices, security devices, windows, window sashes, casements and frames, floors and floor coverings, shelving, restrooms, ceilings, interior walls, roof, skylights, interior and demising walls, doors, electrical and lighting equipment, sprinkler systems, parking

areas, driveways, walkways, parking lots, loading dock areas and doors, fences, signs, lawns and landscaping, if any, all Tenant Improvements, Tenant Changes or other alterations, additions and other property and/or fixtures located within the Premises in good condition and repair, reasonable wear and tear excepted.

10.2 Landlord's Repair Rights. Landlord has no obligation whatsoever to alter, remodel, improve, repair, renovate, retrofit, replace, redecorate or paint all or any part of the Premises, nor shall Landlord have any right to do so, except as expressly provided in this **Section 10.2** and in **Sections 17** and **18** below. If Tenant fails to perform Tenant's obligations under **Section 10.1** hereof, or under any other provision of this Lease, and such failure continues for **fifteen (15) days** after prior written notice to Tenant thereof (or in the case of an emergency, immediately without prior notice), then Landlord shall have the option (but not the obligation) to enter upon the Premises to perform such obligations on Tenant's behalf necessary to return the Premises to good order, condition and repair, in which event Tenant shall reimburse Landlord for **105%** of the actual costs thereof within **ten (10) days** after written demand therefor.

10.3 Condition of Premises. Tenant further acknowledges and agrees that Tenant occupied the Premises prior to the Commencement Date and, except to the extent specifically set forth in this Lease, the leasing of the Premises as provided for herein is made on an "AS-IS" condition and basis with all faults. Notwithstanding the foregoing, subject to delays due to Force Majeure Events (hereinafter defined), Landlord shall, at Landlord's sole cost, replace the roof overlay of the building prior to the end of calendar year 2023.

## 11. Alterations.

### 11.1 Tenant Changes; Conditions.

(a) Tenant may make Minor Alterations (as defined below) in the Premises without Landlord's prior written consent. Except for Minor Alterations, Tenant shall not make any alterations, additions, or improvements to the Premises (collectively, "**Tenant Changes**," and individually, a "**Tenant Change**") unless Tenant first obtains Landlord's prior written approval thereof, which approval Landlord shall not unreasonably withhold, condition or delay. "**Minor Alterations**" are alterations that **(A)** do not affect the building systems or the structure or roof of the Building; **(B)** do not require a building permit pursuant to applicable Laws; and **(C)** do not cost in excess of **\$100,000** in the aggregate during any 12-month period.

(b) Prior to performing any Tenant Changes, Tenant shall submit to Landlord plans and specifications for such Tenant Changes for Landlord's approval. After Landlord has approved the Tenant Changes and the plans, specifications and working drawings therefor, Tenant shall: **(i)** enter into an agreement for the performance of such Tenant Changes with licensed and bondable contractors and subcontractors selected by Tenant and reasonably approved by Landlord; and **(ii)** before proceeding with any Tenant Change, provide Landlord with at least ten (10) days' prior written notice thereof. In addition, before proceeding with any Tenant Change, Tenant's contractors shall obtain, on behalf of Tenant and at Tenant's sole cost and expense, all necessary governmental permits and approvals for the commencement and completion of such Tenant Change.

(c) All alterations by Tenant, including Tenant Changes, shall be performed: **(i)** in accordance with the plans, specifications and working drawings pre-approved by Landlord; **(ii)** lien-free and in a good and workmanlike manner; **(iii)** in compliance with all Laws, rules and regulations of all governmental agencies and authorities including, without limitation, applicable building permit requirements and the provisions of Title III of the ADA and all applicable laws; and **(iv)** by licensed contractors and subcontractors.

11.2 Removal of Tenant Changes and Tenant Improvements. All Tenant Changes and tenant improvements in the Premises installed by Tenant (the "**Tenant Improvements**"), shall become the property of Landlord and shall remain upon and be surrendered with the Premises at the end of the Term of this Lease, unless Landlord requests their removal, in which event Tenant shall remove the same and restore the Premises to its original condition at Tenant's expense on or prior to the expiration or earlier termination of the Lease. At Tenant's request prior to Tenant making any Tenant Changes or Tenant Improvements, Landlord will notify Tenant whether Tenant is required to remove the Tenant Changes or Tenant Improvements at the expiration or termination of this Lease. If Landlord requires Tenant to remove any such items, Tenant shall, at its sole cost, remove the identified items on or before the expiration or sooner termination of this Lease and repair any damage to the Premises caused by such installation and

removal (and, in the event Tenant fails to remove such items, Tenant shall pay to Landlord all of Landlord's commercially reasonable costs of such removal and repair).

**12. Liens.** Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against all or any part of the Premises. Tenant shall, at Landlord's request, provide Landlord with enforceable, conditional and final lien releases (and other reasonable evidence reasonably requested by Landlord to demonstrate protection from liens) from all persons furnishing labor and/or materials with respect to the Premises. Landlord shall have the right at all reasonable times to post on the Premises and record any notices of non-responsibility which it deems necessary for protection from such liens. If any such liens are filed, Tenant shall, at its sole cost, within **thirty (30) days** after written notice to Tenant thereof, cause such lien to be released of record (or bonded in a manner satisfactory to Landlord) so that it no longer affects title to the Premises.

**13. Assignment and Subletting.**

**13.1 Restriction on Transfer.** Tenant shall not directly or indirectly assign or in any manner transfer this Lease or any estate or interest therein (including, without limitation, by transfer of a controlling interest in Tenant), or sublet the Premises or any part thereof or grant any license, concession or other right of occupancy of any portion of the Premises (any of the foregoing, a "**Transfer**"), without the prior written consent of Landlord, which consent Landlord will not unreasonably withhold, condition or delay except as provided in this **Section 13**. The consent by Landlord to any Transfer shall not constitute a waiver of the necessity for such consent to any subsequent Transfer. Notwithstanding the foregoing, Landlord hereby approves and consents to Tenant entering into a sublease with Archive America of Illinois, Inc., subject to Landlord's receipt of a consent to sublease in a form reasonably acceptable to Landlord.

**13.2 Transfer Notice.** If Tenant desires to effect a Transfer, then at least **twenty (20) days** prior to the date when Tenant desires the Transfer to be effective (the "**Transfer Date**"), Tenant agrees to give Landlord a notice (the "**Transfer Notice**"), stating the name, address and business of the proposed assignee or other transferee (sometimes referred to hereinafter as "**Transferee**"), reasonable information (including references) concerning the character, ownership, and financial condition of the proposed Transferee, the Transfer Date, any ownership or commercial relationship between Tenant and the proposed Transferee, and the consideration and all other material terms and conditions of the proposed Transfer, all in such detail as Landlord may reasonably require.

**13.3 Permitted Transfers and Subletting.** Notwithstanding the provisions of this **Section 13** to the contrary, Tenant may assign this Lease or sublet the Premises or any portion thereof without Landlord's consent, to any entity (a) that controls, is controlled by or is under common control with Tenant, or (b) resulting from a merger or consolidation with Tenant, or (c) that acquires all of the assets of Tenant's business as a going concern; provided, however, that in all events (i) Tenant shall remain liable hereunder, (ii) Guarantor shall remain liable under the Guaranty pursuant to the term thereof, (iii) no such transaction shall be undertaken with the intent of circumventing Tenant's liability under this Lease, (iv) Tenant shall provide Landlord with at least ten (10) days prior written notice thereof, and (v) Landlord shall have received an executed copy of all documentation effecting such Transfer on or before its effective date.

**13.4 No Release.** Notwithstanding any Transfer, Tenant and Guarantor shall at all times remain fully responsible and liable for the payment of the Rent herein specified and for compliance with all of Tenant's other obligations under this Lease (even if future assignments and sublettings occur subsequent to the assignment or subletting by Tenant, and regardless of whether or not Landlord's approval has been obtained for such future assignments and sublettings).

**14. Entry by Landlord.** Landlord and its employees and agents shall at all reasonable times and upon at least twenty-four hours' prior written notice to Tenant (except in the event of an emergency, in which event no notice shall be required and Landlord may enter the Premises at any time) have the right to enter the Premises to inspect the same, to exhibit the Premises to prospective tenants, lenders or purchasers, to post notices of non-responsibility, to alter, improve or repair the Premises as contemplated by this Lease and/or to otherwise exercise its rights and remedies under this Lease; provided, however, that any such entry shall be in accordance with ITAR (as defined below).

**15. Utilities and Services.**

15.1 Tenant's Payment; Interruption in Service. Tenant shall be solely responsible for obtaining and shall promptly pay all charges for heat, air conditioning, water, gas, electricity or any other utility used, consumed or provided in, furnished to or attributable to the Premises directly to the supplying utility companies following the Commencement Date, together with all deposits and hook-up and connection charges for such utilities. Tenant shall reimburse Landlord within thirty (30) days of billing for any hook-up, connection, fixture or other charges and/or tariffs that are charged to Landlord by utility companies. In the event that Tenant is prevented from using, and does not use, the Premises, Building or Property or any portion thereof, for three (3) consecutive business days or ten (10) business days in any twelve (12) month period (the "**Eligibility Period**") as a result of Landlord's negligence or willful misconduct, then Tenant's Rent shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Property or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises. However, in the event that Tenant is prevented from conducting, and does not conduct, its business in any portion of the Premises for a period of time in excess of the Eligibility Period, and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein, the Rent for the entire Premises shall be abated; provided, however, if Tenant reoccupies and conducts its business from any portion of the Premises during such period, the Rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Property bears to the total rentable area of the Premises, shall be payable by Tenant from the date such business operations commence.

## 16. Indemnification and Exculpation.

16.1 Tenant's Assumption of Risk and Waiver. Except to the extent such matter is not covered by the insurance required to be maintained by (or otherwise maintained by) Tenant under this Lease and such matter is attributable to the gross negligence or willful misconduct of Landlord or Landlord's agent(s), Landlord shall not be liable to Tenant, Tenant's employees, agents or invitees for: **(i)** any damage to property of Tenant, or of others, located in, on or about the Premises, **(ii)** the loss of or damage to any property of Tenant or of others by theft or otherwise, **(iii)** any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliance of plumbing works or from the roof, street or subsurface or from any other places or by dampness or by any other cause of whatsoever nature, or **(iv)** any such damage caused by other persons in the Premises, occupants of adjacent property, or the public, or caused by operations in construction of any private, public or quasi-public work. Notwithstanding anything in this Lease to the contrary, Landlord shall in no event be liable for any punitive, special, indirect, or consequential damages or loss of business or profits and Tenant hereby waives any and all claims for any such damages. All property of Tenant kept or stored on the Premises shall be so kept or stored at the sole risk of Tenant and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers, unless such damage shall be caused by the gross negligence or willful misconduct of Landlord or Landlord's agent(s). Landlord or its agents shall not be liable for interference with the light or other intangible rights.

16.2 Indemnification. Tenant shall be liable for, and shall indemnify, defend, protect and hold Landlord and Landlord's lenders, officers, directors, employees, agents, successors and assigns (collectively, "**Landlord Indemnified Parties**") harmless from and against, any and all claims, damages, judgments, suits, causes of action, losses, liabilities and expenses, including attorneys' fees and court costs (collectively, "**Indemnified Claims**"), arising or resulting from **(a)** any occurrence at the Premises following Tenant's occupancy of the Premises, unless caused by the gross negligence or willful misconduct of Landlord or its agents, employees or contractors, **(b)** any act or omission of Tenant or any of Tenant's Parties (as hereinafter defined); **(c)** the use of the Premises and conduct of Tenant's business by Tenant or any of Tenant's Parties, or any other activity, work or thing done or permitted by Tenant or any of Tenant's Parties, in or about the Premises; and/or **(d)** any default by Tenant of any obligations on Tenant's part to be performed under the terms of this Lease. In case any action or proceeding is brought against Landlord or any Landlord Indemnified Parties by reason of any such Indemnified Claims, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel approved in writing by Landlord, which approval shall not be unreasonably withheld. For purposes of this Lease, "**Tenant's Parties**" shall mean, collectively, Tenant's agents, employees, contractors, subtenants, invitees and assignees.

16.3 Survival; No Release of Insurers. The indemnification obligations under Section 16.2 shall survive the expiration or earlier termination of this Lease. The covenants, agreements and

indemnification in Sections 16.1 and 16.2 above, are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried pursuant to the provisions of this Lease.

## 17. Damage or Destruction.

17.1 Landlord's Rights and Obligations. In the event (a) the Building is damaged by fire or other casualty (a "Casualty"), and Landlord's contractor estimates in a writing delivered to the parties (the "Restoration Estimate") that Landlord's Restoration Obligation (as hereafter after defined) may be substantially completed within **two hundred seventy (270) days** from the date of such casualty, and (b) Landlord will receive insurance proceeds sufficient to cover the costs of substantially completing such Landlord's Restoration Obligation (or, if insurance proceeds are insufficient to cover the costs of substantially completing the Landlord's Restoration Obligation, but Landlord elects, in its sole and absolute discretion, to pay the amount of such insufficiency), then Landlord shall commence and proceed diligently to substantially complete Landlord's Restoration Obligation and this Lease shall continue in full force and effect. If, however, the Premises or any other part of the Building is damaged by Casualty, and the Restoration Estimate indicates it will require longer than **two hundred seventy (270) days** from the date of such casualty for Landlord to substantially complete Landlord's Restoration Obligation, or Landlord will not receive insurance proceeds sufficient to cover the costs of such Landlord's Restoration Obligation (and Landlord does not elect to pay the amount of such insufficiency), then either Landlord or Tenant may elect to terminate this Lease by delivery of written notice to the other party thereof within **thirty (30) days** after the date on which the Restoration Estimate is delivered to Tenant. In the event, Landlord delivers termination notice to Tenant in accordance with this Section solely as a result of the Restoration Estimate indicating it will require longer than **two hundred seventy (270) days** from the date of such casualty for Landlord to substantially complete Landlord's Restoration Obligation, Tenant may void such notice by providing written notice to Landlord within **ten (10) business days** electing to continue this Lease. In the event of any damage or destruction of all or any part of the Building, Tenant shall immediately notify Landlord thereof.

17.2 Landlord's Restoration Obligation. Landlord's obligation to rebuild and repair under this Section shall in any event be limited to restoring the Premises to substantially the condition in which the same existed prior to such casualty, exclusive of any Tenant Changes, Tenant Improvements, alterations, additions, improvements, fixtures and equipment installed by Tenant ("**Landlord's Restoration Obligation**"). Tenant agrees that promptly after completion of such work by Landlord, Tenant will proceed with reasonable diligence and at Tenant's sole cost and expense to restore, repair and replace all Tenant Changes, Tenant Improvements alterations, additions, improvements, fixtures, signs and equipment installed by Tenant.

17.3 Abatement of Rent. In the event that as a result of any such Casualty (and during the performance of Landlord's Restoration Obligation), Tenant is prevented from using, and does not use, the Building or any material portion thereof, then the Monthly Rent shall be abated or reduced, as the case may be, until Landlord's Restoration Obligation is substantially completed, in the proportion that the rentable square feet of the portion of the Building that Tenant is prevented from using, and does not use, bears to the total rentable square feet of the Building. Except for abatement of Monthly Rent as provided hereinabove, Tenant shall not be entitled to any compensation or damages for loss of, or interference with, Tenant's business or use or access of all or any part of the Premises resulting from any such damage, repair, reconstruction or restoration. Notwithstanding anything contained herein, no Monthly Rent (or portion thereof) shall abate after the date that is **two hundred seventy (270) days** from the date of the applicable casualty whether or not Landlord's Restoration Obligation is satisfied.

17.4 Inability to Complete. Notwithstanding anything to the contrary contained in this **Section 17**, in the event Landlord is obligated or elects to perform Landlord's Restoration Obligation pursuant to **Section 17.1** above, but (a) Landlord is not diligently proceeding to substantially complete the Landlord's Restoration Obligation, and (b) Landlord's Restoration Obligation has not been substantially completed within **ninety (90) days** after the later to occur of (i) the estimated restoration date set forth in the Restoration Estimate, and (ii) the date that is **two hundred seventy (270) days** after the date of the applicable Casualty (the last day of such **ninety (90) day** period, as the same may have been extended on account of Tenant Caused Delays (as hereinafter defined) and Force Majeure Events, such date being the "**Casualty Termination Date**"), Tenant shall have the right to terminate this Lease by providing **thirty (30) days'** prior written notice to Landlord within **sixty (60) days** after the Casualty Termination Date; provided however, such termination notice shall be null and void if Landlord actually substantially completes such Landlord's Restoration Obligation within such **thirty (30) days** period. In the event Landlord is delayed in the substantial completion of Landlord's Restoration Obligation by Force Majeure Events or Tenant Caused Delays, such delays shall be excused for all relevant purposes and the

Casualty Termination Date shall be extended for all relevant purposes to account for all such delays resulting from Force Majeure and Tenant Caused Delays. For purposes herein, the term "**Tenant Caused Delays**" shall mean delays in the design, construction or substantial completion of Landlord's Restoration Obligation caused or contributed by Tenant or any of the Tenant's Parties. In the event any Tenant Caused Delay causes Landlord to pay or incur costs or expenses in connection with the design, construction and/or completion of the Landlord's Restoration Obligation in excess of the costs or expenses that would otherwise have been paid or incurred by Landlord, Tenant shall pay any such reasonable out-of-pocket excess costs and expenses to Landlord, as Additional Rent, within **thirty (30) days** after Landlord submits invoices for any such excess costs or expenses.

17.5 Damage Near End of Term. Landlord and Tenant shall each have the right to terminate this Lease if any damage to the Building or Premises occurs during the last twelve (12) months of the Term of this Lease, Tenant has not exercised its Extension Option, and Landlord's contractor estimates in a writing delivered to the parties that the repair, reconstruction or restoration of such damage cannot be completed within the earlier of (a) the scheduled expiration date of the Lease Term, or (b) **ninety (90) days** after the date of such Casualty.

## 18. **Eminent Domain.**

18.1 Total or Partial Taking. In case all of the Premises, or such part thereof as shall materially and substantially interfere with Tenant's ability to conduct its business upon the Premises, shall be permanently taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, Tenant shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to said authority. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking, and Landlord shall be entitled to receive the entire amount of any award without deduction for any estate or interest of Tenant; provided, however, in the event of such a taking, Tenant shall be entitled to seek a separate award for Tenant's relocation expenses and damage to, or the cost of removal of, Tenant's personal property, as long as such separate award does not reduce the amount of the award that would otherwise be awarded to Landlord. In the event this Lease is not terminated following a taking, Landlord shall be entitled to the entire amount of the award without deduction for any estate or interest of Tenant, Landlord shall restore the Premises to an architecturally whole unit to the extent of any award proceeds received by Landlord, and a fair and equitable abatement shall be made to Tenant for the Monthly Rent corresponding to the time during which, and to the part of the Premises of which, Tenant shall be so deprived on account of such taking and restoration. If the award proceeds from the taking are insufficient to restore the Premises as required by the preceding sentence and Landlord does not provide its own funds to so restore the Premises, and if as a result thereof Tenant's ability to use the Premises as contemplated by this Lease is materially and permanently impaired, then Tenant may elect to terminate this Lease by giving Landlord written notice thereof; provided, however, Landlord may rescind such termination by giving Tenant written notice within ten (10) business days following Landlord's receipt of such termination notice from Tenant that Landlord will provide the necessary funds to so restore the Premises.

18.2 Temporary Taking. In the event of taking of the Premises or any part thereof for temporary use, (i) this Lease shall be and remain unaffected thereby and Rent shall not abate, and (ii) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Lease Term, provided that if such award exceeds the Monthly Rent payable by Tenant hereunder for such period, then Landlord shall be entitled to such excess amount. For purposes of this **Section 18.2**, a temporary taking shall be defined as a taking for a period of **eighteen (18) months** or less.

## 19. **Insurance.**

1.1.1 Tenant's Insurance. On or before the Commencement Date, and continuing thereafter until the expiration of the Term, Tenant shall obtain and keep in full force and effect respecting the Premises, the following insurance:

(a) Special Form insurance, including fire and extended coverage, sprinkler leakage (including earthquake sprinkler leakage), vandalism, malicious mischief, earthquake and flood coverage upon the building and property of every description and kind located on the Premises, including, without limitation, furniture, equipment and any other personal property and any Tenant Changes in an amount not less than the full replacement cost thereof.

(b) Commercial general liability insurance coverage, on an occurrence basis, including personal injury, bodily injury (including wrongful death), broad form property damage, operations hazard, owner's protective coverage, contractual liability, liquor liability, products and completed operations liability, and owned/non-owned auto liability, with a general aggregate of not less than Two Million Dollars (\$2,000,000) per occurrence with "umbrella" or excess liability coverage of not less than Five Million Dollars (\$5,000,000).

(c) Worker's compensation and employer's liability insurance, in statutory amounts and limits, covering all persons employed in connection with any work done in, on or about the Premises for which claims for death or bodily injury could be asserted against Landlord, Tenant or the Premises.

(d) Pollution legal liability insurance and/or environmental impairment insurance, covering claims for damage or injury caused by hazardous materials, including, without limitation, bodily injury, wrongful death, property damage, including loss of use, removal, cleanup and restoration of work and materials necessary to return the Premises and any other property of whatever nature located on the Premises to their condition existing prior to the Commencement Date of this Lease.

(e) Comprehensive automobile liability insurance covering Tenant against any personal injuries or deaths of persons and property damage based upon or arising out of the ownership, use, occupancy or maintenance of a motor vehicle at the Premises and all areas appurtenant thereto in the amount of not less than \$1,000,000, combined single limit.

(f) business interruption insurance with limits not less than an amount equal to two (2) years' rent due hereunder

1.1.1 Form of Policies. The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (i) name Landlord as an additional insured; (ii) be issued by an insurance company having a rating of not less than A-VIII in Best's Insurance Guide or which is otherwise acceptable to Landlord and licensed to do business in the State of Illinois; (iii) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and is non-contributing with any insurance requirement of Tenant; (iv) provide that the insurer shall endeavor to provide that said insurance shall not be canceled or coverage changed unless ten (10) days' prior written notice shall have been given to Landlord and any mortgagee. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Commencement Date and at least ten (10) days before the expiration dates thereof, and from time to time upon Landlord's written request therefor. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, Landlord may, at its option, in addition to Landlord's rights and remedies under this Lease and/or at law and equity, procure such policies for the account of Tenant, and **105%** of the cost thereof shall be paid to Landlord as Additional Rent within ten (10) days after delivery to Tenant of bills therefor.

1.1 Landlord's Insurance. Landlord will purchase and maintain **(a)** a standard policy of "all risk" insurance with customary exclusions covering the Building in the full replacement cost of the Building, together with rent loss insurance and windstorm coverage (on a full replacement cost basis), and **(b)** broad form commercial general liability insurance with a minimum combined single limit of liability of at least Two Million Dollars (\$2,000,000) (collectively, "**Landlord's Insurance**"). For purposes herein, "**Insurance Expenses**" shall mean all premiums, deductibles and other expenses paid or incurred by Landlord with respect to Landlord's Insurance. Tenant shall **(i)** be solely liable for the Insurance Expenses, and **(ii)** reimburse Landlord, as Additional Rent, for the Insurance Expenses accruing during the Term within thirty (30) days after delivery of invoices to Tenant therefor.

## 20. Waiver of Subrogation.

20.1 Waiver. Notwithstanding anything in this Lease to the contrary, each of Landlord and Tenant hereby waives its rights against the other with respect to any claims or damages or losses which are or would be covered under any insurance policies carried by the waiving party (or which are or would be covered by the coverages required to be obtained and maintained by such party under this Lease had such insurance been obtained and maintained as required herein). The foregoing waiver shall be in addition to, and not a limitation of, any other waivers or releases contained in this Lease. For purposes of this Section, any deductible or self-insured retention with respect to a party's insurance shall be deemed covered by, and recoverable by such party under, valid and collectible policies of insurance.

20.2 Waiver of Insurers. Each of Landlord and Tenant shall cause each insurance policy required to be obtained by it pursuant to this Lease to provide that the insurer waives all rights of recovery by way of subrogation against the other party in connection with any claims, losses and damages covered by such policy. If either party fails to maintain the insurance required hereunder, such risks shall be deemed to be self-insured with a deemed full waiver of subrogation as set forth in the immediately preceding sentence.

**21. Tenant's Default and Landlord's Remedies.**

21.1 Tenant's Default. The occurrence of any one or more of the following events shall constitute a default under this Lease by Tenant:

(a) the failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, within **five (5) business days** of written notice from Landlord that such payment was not received;

(b) the failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, where such failure shall continue for a period of **thirty (30) days** after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that it may be cured but more than **thirty (30) days** are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said **thirty (30) day** period and thereafter diligently prosecute such cure to completion;

(c) (i) the making by Tenant of any general assignment for the benefit of creditors, (ii) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within **sixty (60) days**), (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within **sixty (60) days**, or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within sixty (60) days;

(d) Tenant shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution;

(e) Tenant shall enter into or permit a Transfer to occur in violation of the terms and conditions of this Lease;

(f) Tenant fails to maintain the insurance coverages required to be maintained by Tenant under this Lease;

(g) Tenant fails to deliver an SNDA (as hereinafter defined) or Estoppel Certificate (as hereinafter defined) within the applicable time period requirement pursuant to this Lease and such failure shall continue for a period of **ten (10) days** after written notice thereof from Landlord to Tenant

21.2 Landlord's Remedies; Termination. In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(h) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(i) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(j) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(k) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom including, but not limited to: unamortized Tenant Improvement costs; attorneys' fees; unamortized brokers' commissions; the costs of refurbishment, alterations, renovation and repair of the Premises; and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, Tenant Changes, Tenant Improvements and any other items which Tenant is required under this Lease to remove but does not remove.

As used in Sections 21.2(a) and (b) above, the "worth at the time of award" is computed by allowing interest at the Interest Rate set forth in the Summary. As used in Section 21.2(c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

**21.1 Landlord's Remedies; Continuation of Lease.** In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall have the right to continue this Lease in full force and effect, whether or not Tenant shall have abandoned the Premises.

**21.2 Landlord's Remedies; Terminate Possession.** Landlord may enter the Premises without terminating this Lease, and in its discretion remove any property from the Premises, and relet the Premises or any part thereof for the account of Tenant, upon such terms as Landlord in Landlord's sole discretion shall determine. Landlord shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant relative to such reletting. In connection with such reletting, Landlord may make repairs, alterations, and additions to the Premises to the extent deemed reasonably necessary by Landlord, and Tenant shall upon demand pay the cost thereof. Landlord may collect the rents from any such reletting and apply the same first to the payment of the repairs, alterations, additions, expenses of re-entry, attorney's fees, court costs, collection services, and leasing commissions and second to the payment of Rent to be paid by Tenant, and any excess or residue shall operate only as an offsetting credit against the amount of Rent as the same thereafter becomes due and payable hereunder. No such re-entry or repossession, repairs, alterations and additions or reletting shall be construed as an eviction or ouster of Tenant or as an election by Landlord to terminate this Lease unless written notice thereof is delivered by Landlord to Tenant, nor shall the same operate to release the Tenant in whole or in part from any of the Tenant's obligations hereunder. Landlord may at any time sue and recover judgment for any damages remaining after the application of proceeds from any such reletting. In the event of reletting without termination of this Lease, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

**21.3 Landlord's Remedies; Cure Tenant Default.** Landlord may, without any obligation to do so, cure the default on behalf of Tenant, in which case Landlord may enter the Premises without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage or interruption of Tenant's business resulting therefrom. Tenant agrees to pay Landlord an amount equal any actual expenses that Landlord may incur in curing the default, including without limitation, reasonable attorney's fees, together with interest thereon at the Interest Rate from the date of expenditure.

**21.4 Rights and Remedies Cumulative.** All rights, options and remedies of Landlord contained in this Section 21 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Tenant hereby waives any right of redemption or relief from forfeiture following termination of, or exercise of any remedy by Landlord with respect to, this Lease. Without limiting the foregoing, Tenant expressly waives the service of any statutory demand or notice which is a prerequisite to Landlord's commencement of eviction proceedings against Tenant, including, without limitation, the demands and notices specified in 735 ILCS §§ 5/9-209 and 5/9-210. Notwithstanding the foregoing waiver of notices, Landlord may elect to serve such notices (including statutory notices) and combine such notices with any notices required under the provisions of this Lease.

**22. Subordination.** This Lease shall be subject and subordinate at all times to **(a)** all ground leases or underlying leases that may now exist or hereafter be executed affecting the Premises or any portion thereof, **(b)** the lien of any mortgage, deed of trust or other security instrument that may now exist or hereafter be executed in any amount for which the Premises or any portion thereof, any ground leases or

underlying leases, or Landlord's interest or estate therein is specified as security, and **(c)** all modifications, renewals, supplements, consolidations and replacements thereof. If any ground lease or underlying lease terminates for any reason or any mortgage, deed of trust or other security instrument is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant, notwithstanding any subordination, shall attorn to and become the tenant of the successor in interest to Landlord at the option of such successor in interest. If any mortgage is foreclosed, or Landlord's interest under this Lease is conveyed or transferred in lieu of foreclosure: neither the mortgagee nor any person or entity acquiring title to the Property as a result of foreclosure or trustee's sale, nor any successor or assign of either of the foregoing, shall be **(i)** liable for any default by Landlord, **(ii)** bound by or liable for any payment of Rent which may have been made more than **thirty (30) days** before the due date of such installment, **(iii)** subject to any defense or offset which Tenant may have to the payment of Rent or other performance under this Lease arising from any default by Landlord, or **(iv)** bound by any amendment or modification to this Lease made without the consent of such mortgagee if such mortgagee's consent thereto is required. The provisions of this Section shall be self-operative and no further instrument shall be required to effect the provisions of this Section. Notwithstanding the foregoing, within **ten (10) days** following request by Landlord, Tenant agrees to execute any documents reasonably required to effectuate the foregoing subordination or such other reasonable and customary subordination, non-disturbance and attornment agreement submitted by Landlord to Tenant ("**SNDA**"), which documents may contain such other terms as any mortgagee or prospective mortgagee may reasonably require, or to make this Lease prior to the lien of any mortgage, deed of trust or underlying lease, as the case may be.

**23. Estoppel Certificate.** Within **ten (10) business days** following either party's written request, the non-requesting party shall execute and deliver to the other party and/or such parties as the requesting party may designate (including, without limitation, prospective lenders and purchasers of the Premises), an estoppel certificate ("**Estoppel Certificate**"), certifying: **(a)** the Commencement Date of this Lease; **(b)** that this Lease is unmodified and in full force and effect (or, if modified, that this Lease is in full force and effect as modified, and stating the date and nature of such modifications); **(c)** the date to which the Rent and other sums payable under this Lease have been paid; **(d)** that there are not, to the best of non-requesting party's knowledge, any defaults under this Lease by either Landlord or Tenant, except as specified in such certificate; and **(e)** such other matters as are reasonably requested by the requesting party. Any such estoppel certificate delivered pursuant to this **Section** may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of any portion of the Premises, as well as their assignees. Notwithstanding the foregoing, Landlord shall be obligated to deliver an Estoppel Certificate only if requested by a third party in connection with any prospective assignment of this Lease, Tenant equipment financing or other similar legitimate purpose.

**24. Quiet Enjoyment.** Landlord covenants and agrees with Tenant that, so long as Tenant is not in default under this Lease (beyond applicable notice and cure periods), Tenant shall and may peaceably and quietly have, hold and enjoy the Premises, in accordance with and subject to the terms and conditions of this Lease, as against all persons claiming by, through or under Landlord.

**25. Brokers.** Each party represents and warrants to the other, that no broker, agent or finder **(a)** negotiated or was instrumental in negotiating or consummating this Lease on its behalf, or **(b)** is or might be entitled to a commission or compensation in connection with this Lease. Each party shall indemnify, protect, defend and hold harmless the other party from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from any breach (or alleged breach) by such party of the foregoing representation.

**26. Holding Over.** If Tenant holds over after the expiration or earlier termination of the Term, then, without waiver of any right on the part of Landlord as a result of Tenant's failure to timely surrender possession of the Premises to Landlord, Tenant shall become a tenant at sufferance only, upon the terms and conditions set forth in this Lease so far as applicable (including Tenant's obligation to pay all costs, expenses and any other additional rent under this Lease), but at a Monthly Rent equal to **one hundred fifty percent (150%)** of the Monthly Rent applicable to the Premises immediately prior to the date of such expiration or earlier termination. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a consent to a hold over hereunder or result in an extension of this Lease. If Tenant remains in possession of all or any part of the Premises after the Expiration Date, then Tenant shall indemnify and hold Landlord harmless from and against all Losses (including, without limitation, consequential damages) resulting from or arising out of Tenant's failure to surrender the Premises, including, but not limited to, any amounts required to be paid to any tenant or prospective tenant who was to have occupied the Premises after the Expiration Date and any related attorneys' fees and brokerage commissions.

**27. Financials.** If Guarantor ceases to be a public traded company, Tenant shall provide or shall cause Guarantor to provide the following financials to Landlord:

(a) within 120 days after the end of each fiscal year, the audited consolidated balance sheet of Guarantor and its subsidiaries together with the related statements of income, stockholders' equity and cash flows as of the end of and for such year; and

(b) within 60 days after the end of each quarter, the unaudited consolidated balance sheet of Guarantor and its subsidiaries and the related unaudited statements of income, stockholders' equity and cash flows as of the end of and for such quarter and the then elapsed portion of the fiscal year.

**28. Landlord's Default and Tenant's Remedies.** Landlord shall be in default if it fails to perform any term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Tenant to Landlord; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is such that it cannot reasonably be performed within thirty (30) days, such default shall be deemed to have been cured if Landlord commences such performance within said thirty-day period and thereafter diligently undertakes to complete the same. Upon the occurrence of any such default, Tenant may sue for injunctive relief or to recover damages for any loss directly resulting from the breach, but Tenant shall not be entitled to terminate this Lease or withhold, offset or abate any sums due hereunder.

**29. Force Majeure.** If, by reason of acts of God, governmental restrictions, strikes, labor disturbances, shortages of materials or supplies, actions or inactions of governmental authorities, pandemic, or any other cause or event beyond Landlord's or Tenant's reasonable control (collectively, "**Force Majeure Events**"), Landlord or Tenant is unable to perform or is delayed in performing any of its non-monetary obligations under this Lease, no such inability or delay shall impose any liability upon such non-performing party or provide the other party with any right to offset, deduct or abate Rent by reason thereof. The terms of this paragraph shall not be applicable to or excuse any failing on the part of Tenant to satisfy Tenant's obligations to pay Rent or other required payments to Landlord.

**30. Attorney Fees and Costs.** In the event either party hereto initiates litigation to enforce the terms and provisions of this Lease, the non-prevailing party in such action shall reimburse the prevailing party for its reasonable attorney's fees, filing fees, and court costs.

**31. WAIVER OF JURY TRIAL.** LANDLORD AND TENANT KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER IN ANY MATTER ARISING OUT OF THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES OR ANY CLAIM OF INJURY OR DAMAGE.

**32. Time of Essence.** Time is of the essence of each and every provision of this Lease.

**33. Limitation of Landlord's Liability.** IF LANDLORD SHALL FAIL TO PERFORM ANY TERM, CONDITION, COVENANT OR OBLIGATION REQUIRED TO BE PERFORMED BY IT UNDER THIS LEASE AND IF TENANT SHALL, AS A CONSEQUENCE THEREOF, RECOVER A MONEY JUDGMENT AGAINST LANDLORD, TENANT AGREES THAT IT SHALL LOOK SOLELY TO LANDLORD'S RIGHT, TITLE AND INTEREST IN AND TO THE BUILDING FOR THE COLLECTION OF SUCH JUDGMENT; AND TENANT FURTHER AGREES THAT NO OTHER ASSETS OF LANDLORD, OR OF ANY OWNER, PARTNER, MEMBER OR MANAGER IN OR OF LANDLORD, SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER PROCESS FOR THE SATISFACTION OF TENANT'S JUDGMENT. Landlord shall in no event be liable to Tenant or any other person for any consequential, indirect, special or punitive damages, or for loss of business, revenue, income or profits and Tenant hereby waives any and all claims for any such damages.

**34. Transfer of Premises.** The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of, the Premises. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only), the transferor shall be automatically relieved of all covenants and obligations on the part of Landlord contained in this Lease. Landlord and Landlord's transferees and assignees shall have the absolute right to transfer all or any portion of their respective title and interest in the Premises, the

Building, and/or this Lease without the consent of Tenant, and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

**35. Authority.** Tenant hereby represents and warrants that (i) Tenant is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the State under which it was organized; (ii) Tenant is authorized to do business in the State where the Building is located; and (iii) the individual(s) executing and delivering this Lease on behalf of Tenant has been properly authorized to do so, and such execution and delivery shall bind Tenant to its terms.

**36. OFAC.** Tenant and Landlord each represents and warrants to the other that neither it nor any of its affiliated entities is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not Transfer this Lease to, contract with or otherwise engage in any dealings or transactions or be otherwise associated with such persons or entities.

**37. ITAR.** Landlord and Tenant shall comply with the requirements of the U.S. Department of State International Traffic in Arms Regulations (Title 22, CFR Parts 120-130), the U.S. Department of Commerce Export Administration Regulations (Title 15, CFR 730-774), and any other U.S. Government regulation applicable to the export/ import, re-export, or disclosure of controlled technical data to Foreign Nationals (collectively, "ITAR").

**38. Miscellaneous.** This Lease shall be governed by, and construed pursuant to, the laws of the state in which the Premises are located. All of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives and permitted successors and assigns. The invalidity or unenforceability of any provision of this Lease shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by law. This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement. The signature of a party transmitted electronically (e.g., e-signature) or by facsimile, email of a pdf copy, DocuSign or other similar technology application shall constitute and have the same force and effect as the original signature of the party.

[Signatures appear on following page]

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

LANDLORD: [ \_\_\_\_\_ ]

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

TENANT: EMCORE CHICAGO INERTIAL CORPORATION,  
a Delaware corporation

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**PARCEL 1**

LOT 14 IN TINLEY CROSSING CORPORATE CENTER UNIT 1, BEING A SUBDIVISION OF PART OF THE NORTH ½ OF SECTION 2, TOWNSHIP 35 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 16, 1998, AS DOCUMENT NUMBER R98-122885, IN WILL COUNTY, ILLINOIS.

**PARCEL 2**

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INGRESS AND EGRESS OF PEDESTRIAN AND VEHICULAR TRAFFIC OVER AND ACROSS THE EAST 15 FEET OF LOT 13A IN AFORESAID SUBDIVISION AS CREATED BY DECLARATION OF EASEMENT DATED APRIL 13, 2005 AND RECORDED AS DOCUMENT R200506765 IN WILL COUNTY, ILLINOIS.

Permanent Index No.: 19-09-02-106-002-0000

Address of Real Property: 8412 W. 185<sup>th</sup> Street, Tinley Park, IL 60477

## EXHIBIT B

### HAZARDOUS SUBSTANCES

#### Section 1. Environmental Definitions.

(a) “**Environmental Laws**” shall mean all present or future federal, state and municipal laws, ordinances, rules and regulations regulating or relating to health, safety, or environmental conditions at, on, in, under, or about the Premises or the environment or natural resources, including but not limited to the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Clean Water Act; the Toxic Substances Control Act and all state and local counterparts thereto, and any common or civil law obligations including but not limited to nuisance or trespass.

(b) “**Hazardous Substances**” shall mean and include any substance, material, waste, pollutant, or contaminant that is or could be regulated under any Environmental Laws or that may adversely affect human health or the environment, including but not limited to any solid or hazardous waste, hazardous substance, asbestos, petroleum (including but not limited to crude oil or any fraction thereof, natural gas, synthetic gas, polychlorinated biphenyls (PCBs), and radioactive material).

Section 2. **Restrictions on Tenant.** Tenant shall not, nor shall it cause or permit, the use, transportation, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Premises, or the transportation to or from the Premises of any Hazardous Substances without Landlord’s prior written consent. Tenant, at its sole cost and expense, shall operate its business in the Premises and on the Premises in compliance with all Environmental Laws and all requirements of this Lease, and shall remove all Hazardous Substances stored, disposed of or otherwise released by Tenant onto or from the Premises, whether during, prior to or following the Term, in a manner and to a level satisfactory to Landlord in its sole discretion, but in no event to a level and in a manner less than that which complies with all Environmental Laws and does not limit any future uses of the Premises or require the recording of any deed restriction or notice regarding the Premises. Notwithstanding the foregoing, Tenant may use or store without first obtaining Landlord’s consent (i) materials of a type and quantity disclosed in the certificate (the “**HazMat Certificate**”) substantially in the form attached hereto as **Exhibit B-1** delivered by Tenant to Landlord prior to the date of this Lease to the extent customary and necessary for the use of the Premises for the Permitted Use, (ii) products containing small quantities of Hazardous Substances (such as aerosol cans containing insecticides, toner for copiers, paints, household cleaners, office supplies, janitorial supplies, and the like) to the extent customary and necessary for the use of the Premises for general office and warehouse use purposes, and (iii) inventory and products sold by Tenant to its customers in the ordinary course of Tenant’s business provided such inventory and products remain and are sold in their original containers (collectively, “**Permitted Materials**”); provided that Tenant shall always use or store any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Premises, Building and appurtenant land or the environment. In the event Tenant wishes to use and/or store Hazardous Substances that are not Permitted Materials, Tenant shall deliver to Landlord an updated HazMat Certificate for Landlord’s approval, not to be unreasonably withheld, conditioned or delayed.

Section 3. **Notices, Affidavits, Etc.** Tenant shall immediately (a) notify Landlord of (i) any actual or alleged violation by Tenant, its employees, agents, representatives, customers, invitees or contractors of any Environmental Laws on, under or about the Premises, or (ii) the presence or suspected presence of any Hazardous Substances on, under or about the Premises, and (b) deliver to Landlord any notice received by Tenant relating to (a)(i) and (a)(ii) above from any source. Tenant shall execute affidavits, representations and the like within five (5) days of Landlord’s request therefor concerning Tenant’s best knowledge and belief regarding the presence of any Hazardous Substances on, under or about the Premises.

Section 4. **Tenant’s Indemnification.** Tenant shall indemnify Landlord and Landlord’s managing agent from any and all claims, losses, liabilities, costs, expenses and damages, including without limitation reasonable attorneys’ fees, costs of testing and remediation costs, incurred by Landlord in connection with any breach by Tenant of its obligations under this **Exhibit B**. The covenants and obligations under this **Exhibit B** shall survive the expiration or earlier termination of this Lease.

Section 5. **Inspections and Tests.** Landlord shall have access to, and the sole right to perform inspections and tests of, the Premises to determine Tenant’s compliance with Environmental Laws, its

obligations under this **Exhibit B**, or the environmental condition of the Premises. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Laws, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant. In no event shall Tenant conduct any inspections and tests regarding Hazardous Substances at the Premises (including, without limitation, air sampling) without the prior written approval of Landlord, which may be given or withheld in Landlord's sole discretion.

EXHIBIT B-1

Form of Hazardous Materials Disclosure Certificate

General Information

Name of Responding Company: \_\_\_\_\_
Mailing Address: \_\_\_\_\_
Signature: \_\_\_\_\_
Title: \_\_\_\_\_ Phone: \_\_\_\_\_
Date: \_\_\_\_\_ Age of Facility: \_\_\_\_\_ Length of Occupancy: \_\_\_\_\_
Major products manufactured and/or activities conducted on the property:

- Types of Business Activities (check all that apply)
Hazardous Materials Activities (check all that apply)
Machine Shop, Light assembly, Research and development, Product service or repair, Photo processing, Automotive service and repair, Manufacturing, Warehouse, Integrated/printed circuit, Chemical/pharmaceutical product, Silkscreen, Lathe/mill machining, Deionizer water product, Photo masking, Wave solder, Metal finishing
Degreasing, Chemical/etching/milling, Wastewater treatment, Painting, Striping, Cleaning, Printing, Analytical lab, Plating, Chemical/missing/synthesis

HAZARDOUS MATERIALS/WASTE HANDLING AND STORAGE

A. Are hazardous materials handled on any of your shipping and receiving docks in container quantities greater than one gallon? Yes No

B. If hazardous materials or waste are stored on the premises, please check off the nature of the storage and type(s) of materials below.

- Types of Storage Container (list above-ground storage only)
Type of Hazardous Materials and/or Waste Stored
1 gallon or 3 liter bottles/cans, 5 to 30 gallon carboys, 55 gallon drums, Tanks, Photo resist stripper, Paint, Flammable solvent, Gasoline/diesel Fuel, Nonflammable/chlorinated solvent, Oil/cutting fluid
Acid, Phenol, Caustic/alkaline cleaner, Cyanide

C. Do you accumulate hazardous waste onsite? Yes No

If yes, how is it being handled?
On-site treatment or recovery
Discharged to sewer
Hauled offsite If hauled offsite, by whom:
Incineration

D. Indicate your hazardous waste storage status with Department of Health Services:

Generator

- Interim status facility
- Permitted TSDF
- None of the above

WASTEWATER TREATMENT/DISCHARGE

A. Do you discharge industrial wastewater to:

- Sewer
- Storm drain
- Surface water
- No industrial discharge

B. Is your industrial wastewater treated before discharge?  Yes  No

If yes, what type of treatment is being conducted:

- Neutralization
- Metal hydroxide formation
- Closed-loop treatment
- Cyanide destruct
- HF treatment
- Other

SUBSURFACE CONTAINMENT OF HAZARDOUS MATERIALS/WASTES

A. Are buried tanks/sumps being used for any of the following:

- Hazardous waste storage
- Chemical storage
- Gasoline/diesel fuel storage
- Waste treatment
- Wastewater neutralization
- Industrial wastewater treatment
- None of the above

B. If buried tanks are located onsite, indicate their construction:

- Steel  Fiberglass  Concrete
- Inside open vault  Double walled

C. Are hazardous materials or untreated industrial wastewater transported via buried piping to tanks, process areas or treatment areas:  Yes  No

D. Do you have wet floors in your process areas?  Yes  No

If yes, name processes: \_\_\_\_\_

E. Are abandoned underground tanks or sumps located on the property?  Yes  No

HAZARDOUS MATERIALS SPILLS

A. Have hazardous materials ever spilled to:

- The sewer
- The storm drain
- Onto the property
- No spills have occurred

B. Have you experienced any leaking underground tanks or sumps?  Yes  No

C. If spills have occurred, were they reported?  Yes  No

Check which government agencies that you contacted regarding the spill(s):

- Department of Health Services
- Department of Fish and Game

- Environmental Protection Agency
- Regional Water Quality Control Board
- Fire Department

D. Have you been contacted by a government agency regarding soil or groundwater contamination on your site?  Yes  No

Do you have exploratory wells onsite?  Yes  No

If yes, indicate the following:

Number of wells: \_\_\_ Approximate depth of wells: \_\_\_ Well diameters: \_\_\_\_\_

PLEASE ATTACH ENVIRONMENTAL REGULATORY PERMITS, AGENCY REPORTS THAT APPLY TO YOUR OPERATION AND HAZARDOUS WASTE MANIFESTS.

Check off those enclosed:

- Hazardous Materials Inventory Statement, HMIS
- Hazardous Materials Management Plan, HMMP
- Department of Health Services, Generator Inspection Report
- Underground Tank Registrations
- Industrial Wastewater Discharge Permit
- Hazardous Waste Manifest

EXHIBIT C

GUARANTY

LEASE GUARANTY

This **LEASE GUARANTY** (this "**Guaranty**") is made as of \_\_\_\_\_, 2022, by **EMCORE CORPORATION**, a New Jersey corporation ("**Guarantor**"), to and for the benefit of \_\_\_\_\_ ("**Landlord**").

RECITALS

**A.** EMCORE Chicago Inertial Corporation, a Delaware corporation ("**Tenant**"), and Landlord are parties to that certain Single-Tenant Triple Net Lease dated as of even date herewith (as may be amended from time to time, the "**Lease**"), with respect to certain premises located at **8412 West 185<sup>th</sup> Street, Tinley Park, Illinois**, as more particularly described in the Lease. Initially capitalized terms that are used but not otherwise defined herein shall have the meanings given to them in the Lease.

**B.** Tenant is a wholly-owned subsidiary of Guarantor, and Guarantor shall derive financial benefits from the success of Tenant and the Lease.

**C.** In order to induce Landlord to enter into the Lease with Tenant, Guarantor has agreed to execute and deliver this Guaranty to Landlord.

**NOW, THEREFORE**, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

**1. Guaranty of Payment.** Guarantor hereby jointly and severally, unconditionally and irrevocably guarantees **(a)** the payment when due of Monthly Rent, and all other Additional Rent, interest and charges to be paid by Tenant under the Lease, and **(b)** the performance by Tenant of all of the terms, conditions, covenants and agreements of the Lease (collectively, the "**Obligations**"). All payments required to be made by Guarantor hereunder shall be paid to Landlord in legal United States currency or tender at Landlord's address set forth below, or at such other address as Landlord may specify from time to time. This Guaranty shall constitute an agreement of suretyship as well as of guaranty and is irrevocable, unconditional and absolute and, if for any reason any such sums, or any part thereof, shall not be paid promptly when due, Guarantor will immediately pay the same to the person entitled thereto pursuant to the provisions of the Lease, regardless of any defenses or rights of set-off or counterclaim which Tenant may have or assert and regardless of whether Landlord shall have taken any steps to enforce any rights against Tenant to collect such sum, or any part thereof, and regardless of any other condition of contingency. Guarantor also agrees to pay to such person such further amount as shall be sufficient to cover the cost and expense of collecting such sum, or part thereof, or of otherwise enforcing this Guaranty, including, in any case, reasonable compensation to its attorney for all services rendered in that connection. Upon Tenant's failure to perform or observe any covenant, agreement, term or condition in the Lease to be performed or observed by Tenant, Guarantor will promptly perform and observe the same or cause the same promptly to be performed or observed.

**2. No Release or Discharge.** This Guaranty is irrevocable, absolute, present, continuing and unconditional, and the obligations of Guarantor shall not be released, impaired, modified, limited or affected in any way by **(a)** any extensions of time, indulgences or modification which Landlord may extend to Tenant in the performance of its obligations under the Lease; **(b)** any failure of Landlord to enforce any of the conditions of the Lease; **(c)** any assignment or other transfer of the Lease or this Guaranty by Landlord; **(d)** any assignment or other Transfer of the Lease by Tenant or the sublease of all or part of the Property by Tenant; **(e)** any amendments to or modifications of the Lease; **(f)** the release or discharge of Tenant in bankruptcy or other creditors' proceedings; or **(g)** any rejection or disclaimer of Tenant. In addition, the obligations hereunder of Guarantor shall extend and apply with respect to the full and faithful performance and observance of all of the covenants, terms and conditions of Tenant to be performed **(i)** if the Lease shall be renewed, or its term extended, for any period beyond the date specified in the Lease for the expiration of said term, either pursuant to any option granted under the Lease or otherwise; and **(ii)** if Tenant holds over beyond the term of the Lease.

3. **Waiver.** Guarantor hereby waives (and agrees not to assert): (a) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; (b) notice of any extensions of time for performance which Landlord may grant to Tenant and to any modifications or amendments to the Lease to which Landlord and Tenant, or their successors and assigns may agree; (c) any right to require that any action be brought against Tenant; (d) any rights Guarantor may have against Tenant by reason of one or more payments or acts in compliance with Guarantor's obligations hereunder; (e) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Tenant of the subrogation rights of Guarantor or of the right of Guarantor to proceed against Tenant for reimbursement; and (f) all defenses, offsets and counterclaims which Guarantor may at any time have with respect to any of the obligations of Tenant to Landlord Guarantor does not require any notice of Tenant's non-payment, non-performance or nonobservance of the covenants, terms, and conditions of the Lease, Guarantor hereby expressly waiving the right to receive such notice. Except for the defense of actual payment and actual performance of the Obligations, Guarantor waives all defenses (i) given to sureties or guarantors at law or in equity (other than the actual payment of the Obligations) and/or (ii) based upon questions as to the validity, legality or enforceability of the Obligations and/or the Obligations and agrees that Guarantor shall be primarily liable hereunder.

4. **Primary Obligation.** This Guaranty is a guaranty of payment and of performance This Guaranty is a primary obligation of Guarantor. Provided that all applicable notice, cure and grace periods have expired under the Lease with respect to any Tenant default, Landlord may proceed against Guarantor hereunder without first proceeding against or exhausting its rights and remedies against Tenant or any other guarantor.

5. **Bankruptcy of Tenant.** In the event of the rejection or disaffirmance of the Lease by Tenant or Tenant's trustee in bankruptcy, pursuant to bankruptcy law or any other law affecting creditors' rights, Guarantor will, and does hereby (without the necessity of any further agreement or act) assume all obligations and liabilities for Tenant under the Lease to the same extent as if (a) Guarantor were originally named the Tenant under the Lease, and (b) there had been no such rejection or disaffirmance, and Guarantor will confirm such assumption in writing, at the request of Landlord, upon or after such rejection or disaffirmance; and Guarantor shall upon such assumption (to the extent permitted by law) have all the rights of the Tenant under the Lease.

6. **Venue.** GUARANTOR HEREBY AGREES TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE WHERE THE PREMISES ARE LOCATED, OR SUCH OTHER VENUE AS LANDLORD CHOOSES, AND CONSENTS THAT ALL SERVICE OF PROCESS BE MADE BY CERTIFIED MAIL DIRECTED TO GUARANTOR AT GUARANTOR'S ADDRESS SET FORTH HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED THREE (3) BUSINESS DAYS AFTER THE SAME HAS BEEN DEPOSITED IN U.S. MAIL, POSTAGE PREPAID; PROVIDED THAT NOTHING CONTAINED HEREIN WILL PREVENT LANDLORD FROM BRINGING ANY ACTION OR EXERCISING ANY RIGHTS AGAINST ANY SECURITY OR AGAINST GUARANTOR INDIVIDUALLY, OR AGAINST ANY PROPERTY OF GUARANTOR WITHIN ANY OTHER STATE OR NATION TO ENFORCE ANY AWARD OR JUDGMENT OBTAINED IN THE VENUE PROVIDED ABOVE, OR SUCH OTHER VENUE AS LANDLORD CHOOSES. GUARANTOR WAIVES ANY OBJECTION TO VENUE AND ANY OBJECTION BASED ON A MORE CONVENIENT FORUM IN ANY ACTION INSTITUTED HEREIN.

7. **Notices.** Any notice, demand or other communication which either party may desire or may be required to give to the other party shall be in writing and addressed to the intended recipient at its address set forth below, or to such other address as such intended recipient may have designated by notice furnished in accordance herewith:

If to Landlord: c/o High Street Logistics Properties  
600 Unicorn Drive, Suite 208  
Woburn, Massachusetts 01801

If to Guarantor: EMCORE Corporation  
Attn: General Counsel  
2015 Chestnut St.  
Alhambra, CA 91803

Notices shall be deemed properly delivered and received: (i) the same day when personally delivered; or (ii) one day after deposit with Federal Express or other comparable commercial overnight courier.

Except as otherwise specifically required herein, notice of the exercise of any right, option or power granted to Landlord by this Guaranty is not required to be given.

**8. Governing Law.** For any matter relating to procedural or substantive law, this Guaranty shall be construed and enforced according to the internal laws of the State of Illinois without reference to conflict of laws.

**9. Interpretation.** If any provision of this Guaranty, or any paragraph, sentence, clause, phase, or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Guaranty shall be construed as if such invalid part were never included herein. The headings of sections and paragraphs in this Guaranty are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof. As used in this Guaranty, the singular includes the plural, and masculine, feminine and neuter pronouns are fully interchangeable, where the context so requires.

**10. Successors and Assigns.** This Guaranty shall be binding upon, and the term "Guarantor" shall include, the successors, assigns, legal representatives and other transferees of Guarantor. This Guaranty shall also inure to the benefit of Landlord's successors, assigns, and legal representatives.

**11. Due Authorization.** Guarantor represents and warrants that this Guaranty has been duly authorized by all necessary corporate action on Guarantor's part, has been duly executed and delivered by a duly authorized officer, and constitutes Guarantor's valid and legally binding agreement in accordance with its terms.

**12. Complete Agreement.** This Guaranty represents the entire understanding of the parties with respect to the subject matter hereof. This Guaranty shall not be modified except by a written agreement signed by the parties hereto.

[Signature pages to follow.]

**IN WITNESS WHEREOF**, Guarantor executes this Guaranty as in instrument under seal as of the day and year first written above.

**EMCORE CORPORATION,**  
a New Jersey corporation

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

## EXHIBIT D

### PROHIBITED USE

In no event shall Tenant use its Premises or occupancy of any part of the Premises in a manner constituting a Prohibited Use. If Tenant uses the Premises for a purpose constituting a Prohibited Use, then Tenant shall promptly discontinue such use upon notice of such violation.

**"Prohibited Use"** shall mean the use of any part of the Premises for the following types of operations and activities:

1. automobile/truck/forklift maintenance, repair or fueling;
2. battery manufacturing or reclamation;
3. ceramics and jewelry manufacturing or finishing;
4. chemical (organic or inorganic) manufacturing;
5. drum recycling;
6. dry cleaning;
7. electroplating and metal finishing;
8. explosives manufacturing, use or storage;
9. leather production, tanning or finishing;
10. machinery and tool manufacturing;
11. medical equipment manufacturing and hospitals;
12. metal shredding, recycling or reclamation;
13. metal smelting and refining;
14. mining;
15. paint, pigment and coating operations;
16. petroleum refining;
17. plastic and synthetic materials manufacturing;
18. solvent reclamation;
19. tire and rubber manufacturing;
20. fertilizer storage;
21. residential use or occupancy;
22. auctions of any type;
23. retail sales of any type;
24. tire storage;
25. hazardous waste treatment, storage or disposal; and
26. underground storage tanks.

**LEASE GUARANTY**

This **LEASE GUARANTY** (this "**Guaranty**") is made as of \_\_\_\_\_, 2022, by **EMCORE CORPORATION**, a New Jersey corporation ("**Guarantor**"), to and for the benefit of \_\_\_\_\_ ("**Landlord**").

**RECITALS**

**A.** EMCORE Chicago Inertial Corporation, a Delaware corporation ("**Tenant**"), and Landlord are parties to that certain Single-Tenant Triple Net Lease dated as of even date herewith (as may be amended from time to time, the "**Lease**"), with respect to certain premises located at **8412 West 185<sup>th</sup> Street, Tinley Park, Illinois**, as more particularly described in the Lease. Initially capitalized terms that are used but not otherwise defined herein shall have the meanings given to them in the Lease.

**B.** Tenant is a wholly-owned subsidiary of Guarantor, and Guarantor shall derive financial benefits from the success of Tenant and the Lease.

**C.** In order to induce Landlord to enter into the Lease with Tenant, Guarantor has agreed to execute and deliver this Guaranty to Landlord.

**NOW, THEREFORE**, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

**1. Guaranty of Payment.** Guarantor hereby jointly and severally, unconditionally and irrevocably guarantees **(a)** the payment when due of Monthly Rent, and all other Additional Rent, interest and charges to be paid by Tenant under the Lease, and **(b)** the performance by Tenant of all of the terms, conditions, covenants and agreements of the Lease (collectively, the "**Obligations**"). All payments required to be made by Guarantor hereunder shall be paid to Landlord in legal United States currency or tender at Landlord's address set forth below, or at such other address as Landlord may specify from time to time. This Guaranty shall constitute an agreement of suretyship as well as of guaranty and is irrevocable, unconditional and absolute and, if for any reason any such sums, or any part thereof, shall not be paid promptly when due, Guarantor will immediately pay the same to the person entitled thereto pursuant to the provisions of the Lease, regardless of any defenses or rights of set-off or counterclaim which Tenant may have or assert and regardless of whether Landlord shall have taken any steps to enforce any rights against Tenant to collect such sum, or any part thereof, and regardless of any other condition of contingency. Guarantor also agrees to pay to such person such further amount as shall be sufficient to cover the cost and expense of collecting such sum, or part thereof, or of otherwise enforcing this Guaranty, including, in any case, reasonable compensation to its attorney for all services rendered in that connection. Upon Tenant's failure to perform or observe any covenant, agreement, term or condition in the Lease to be performed or observed by Tenant, Guarantor will promptly perform and observe the same or cause the same promptly to be performed or observed.

**2. No Release or Discharge.** This Guaranty is irrevocable, absolute, present, continuing and unconditional, and the obligations of Guarantor shall not be released, impaired, modified, limited or affected in any way by **(a)** any extensions of time, indulgences or modification which Landlord may extend to Tenant in the performance of its obligations under the Lease; **(b)** any failure of Landlord to enforce any of the conditions of the Lease; **(c)** any assignment or other transfer of the Lease or this Guaranty by Landlord; **(d)** any assignment or other Transfer of the Lease by Tenant or the sublease of all or part of the Property by Tenant; **(e)** any amendments to or modifications of the Lease; **(f)** the release or discharge of Tenant in bankruptcy or other creditors' proceedings; or **(g)** any rejection or disclaimer of Tenant. In addition, the obligations hereunder of Guarantor shall extend and apply with respect to the full and faithful performance and observance of all of the covenants, terms and conditions of Tenant to be performed **(i)** if the Lease shall be renewed, or its term extended, for any period beyond the date specified in the Lease for the expiration of said term, either pursuant to any option granted under the Lease or otherwise; and **(ii)** if Tenant holds over beyond the term of the Lease.

**3. Waiver.** Guarantor hereby waives (and agrees not to assert): **(a)** all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; **(b)** notice of any extensions of time for performance which Landlord may grant to Tenant and to any modifications or amendments to the Lease to which Landlord and Tenant, or their successors and assigns may agree; **(c)** any right to require that any action be brought

against Tenant; **(d)** any rights Guarantor may have against Tenant by reason of one or more payments or acts in compliance with Guarantor's obligations hereunder; **(e)** any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Tenant of the subrogation rights of Guarantor or of the right of Guarantor to proceed against Tenant for reimbursement; and **(f)** all defenses, offsets and counterclaims which Guarantor may at any time have with respect to any of the obligations of Tenant to Landlord Guarantor does not require any notice of Tenant's non-payment, non-performance or nonobservance of the covenants, terms, and conditions of the Lease, Guarantor hereby expressly waiving the right to receive such notice. Except for the defense of actual payment and actual performance of the Obligations, Guarantor waives all defenses **(i)** given to sureties or guarantors at law or in equity (other than the actual payment of the Obligations) and/or **(ii)** based upon questions as to the validity, legality or enforceability of the Obligations and/or the Obligations and agrees that Guarantor shall be primarily liable hereunder.

**4. Primary Obligation.** This Guaranty is a guaranty of payment and of performance This Guaranty is a primary obligation of Guarantor. Provided that all applicable notice, cure and grace periods have expired under the Lease with respect to any Tenant default, Landlord may proceed against Guarantor hereunder without first proceeding against or exhausting its rights and remedies against Tenant or any other guarantor.

**5. Bankruptcy of Tenant.** In the event of the rejection or disaffirmance of the Lease by Tenant or Tenant's trustee in bankruptcy, pursuant to bankruptcy law or any other law affecting creditors' rights, Guarantor will, and does hereby (without the necessity of any further agreement or act) assume all obligations and liabilities for Tenant under the Lease to the same extent as if **(a)** Guarantor were originally named the Tenant under the Lease, and **(b)** there had been no such rejection or disaffirmance, and Guarantor will confirm such assumption in writing, at the request of Landlord, upon or after such rejection or disaffirmance; and Guarantor shall upon such assumption (to the extent permitted by law) have all the rights of the Tenant under the Lease.

**6. Venue.** GUARANTOR HEREBY AGREES TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE WHERE THE PREMISES ARE LOCATED, OR SUCH OTHER VENUE AS LANDLORD CHOOSES, AND CONSENTS THAT ALL SERVICE OF PROCESS BE MADE BY CERTIFIED MAIL DIRECTED TO GUARANTOR AT GUARANTOR'S ADDRESS SET FORTH HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED THREE (3) BUSINESS DAYS AFTER THE SAME HAS BEEN DEPOSITED IN U.S. MAIL, POSTAGE PREPAID; PROVIDED THAT NOTHING CONTAINED HEREIN WILL PREVENT LANDLORD FROM BRINGING ANY ACTION OR EXERCISING ANY RIGHTS AGAINST ANY SECURITY OR AGAINST GUARANTOR INDIVIDUALLY, OR AGAINST ANY PROPERTY OF GUARANTOR WITHIN ANY OTHER STATE OR NATION TO ENFORCE ANY AWARD OR JUDGMENT OBTAINED IN THE VENUE PROVIDED ABOVE, OR SUCH OTHER VENUE AS LANDLORD CHOOSES. GUARANTOR WAIVES ANY OBJECTION TO VENUE AND ANY OBJECTION BASED ON A MORE CONVENIENT FORUM IN ANY ACTION INSTITUTED HEREIN.

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600 Unicorn Drive, Suite 208  
Woburn, Massachusetts 01801

If to Guarantor: EMCORE Corporation  
Attn: General Counsel  
2015 Chestnut St.  
Alhambra, CA 91803

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Except as otherwise specifically required herein, notice of the exercise of any right, option or power granted to Landlord by this Guaranty is not required to be given.

8. **Governing Law.** For any matter relating to procedural or substantive law, this Guaranty shall be construed and enforced according to the internal laws of the State of Illinois without reference to conflict of laws.

9. **Interpretation.** If any provision of this Guaranty, or any paragraph, sentence, clause, phase, or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Guaranty shall be construed as if such invalid part were never included herein. The headings of sections and paragraphs in this Guaranty are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof. As used in this Guaranty, the singular includes the plural, and masculine, feminine and neuter pronouns are fully interchangeable, where the context so requires.

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[Signature pages to follow.]

**IN WITNESS WHEREOF**, Guarantor executes this Guaranty as in instrument under seal as of the day and year first written above.

**EMCORE CORPORATION,**  
a New Jersey corporation

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