

Ordinance 2022-18

AN ORDINANCE AUTHORIZING PURCHASE OF ASSETS AND LEASE OF SPACE FOR AN EMERGENCY RESPONDER TRAINING CENTER

The City of Morgantown hereby ordains that the City Manager is authorized to execute a Bill of Sale, Promissory Note, Security Agreement, and Lease, substantially in the form attached hereto, providing for acquisition of personal property and lease of real property for the purpose of establishing and operating an Emergency Responder Training Center and similar or related purposes, together with authority to execute such other and additional documents as may be necessary and helpful to effectuate the purposes of the transaction described in the Bill of Sale, Promissory Note, Security Agreement, and Lease and to comply with the City’s obligations under such documents and in operation of the property.

FIRST READING: **October 18, 2022**

Mayor

SECOND READING: **November 1, 2022**

ADOPTED: **November 1, 2022**

City Clerk

FILED: **November 2, 2022**

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that Glenmark Holding Limited Liability Company, a West Virginia limited liability company (the “*Seller*”), for good and valuable consideration in hand paid by The City of Morgantown, West Virginia, a municipal corporation (“*Purchaser*”), Seller does hereby transfer, sell, assign and convey to Purchaser lawful title and all of Seller’s rights, title, and interests in and with respect to the assets of Seller listed as “Purchased Assets” on **Exhibit A**, attached hereto and incorporated herein by reference (the “*Purchased Assets*”), said Purchaser, its successors and assigns, to have and to hold the Purchased Assets for its own proper use and benefit, and grants Purchaser the option to purchase the assets of Seller listed as “Option Assets” on **Exhibit A** (the “*Option Assets*”) subject to the terms of that certain Promissory Note executed by and between the parties as of _____, 2022 (the “Promissory Note”).

Seller warrants and represents that it owns, and has the authority to sell, convey and/or assign to Purchaser the Purchased Assets and the Option Assets sold hereunder free and clear of all security interests, liens, encumbrances, interests, mortgages, claims, or charges of all kinds and every person and persons whatsoever, and that, with respect to the Option Assets, it will maintain such ownership and authority to sell such Option Assets free and clear of all security interests, liens, encumbrances, interests, mortgages, claims, or charges of all kinds and every person and persons whatsoever, in accordance with the terms of the Promissory Note. The actual consideration for the Purchased Assets under this conveyance is **\$1,000,000.00**. The actual consideration for the Option Assets under this conveyance is **\$500,000.00**.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Bill of Sale as of this ___ day of _____ 2022.

**THE CITY OF MORGANTOWN,
WEST VIRGINIA**, a municipal corporation

By: _____

**GLENMARK HOLDING LIMITED LIABILITY
COMPANY**, a West Virginia limited liability company

By: _____
Mark J. Nesselroad, Member

EXHIBIT A**Purchased Assets:**

- Action Target – Range Equipment & Bullet Proof Glass;

Option Assets:

- MILO and Simulation Room Equipment;
- Acoustic Wall Outward-Facing Soundproofing Trade Fixtures;
- Vending Equipment;
- Security Center Equipment and System;
- Classroom Furniture and Equipment; and
- Training Room Equipment and Shelving.

LEASE

This Lease is entered into this ____ day of _____ 2022 (“Effective Date”), by and between **Glenmark Holding Limited Liability Company** (“Glenmark” or “Lessor”); and **The City of Morgantown, West Virginia, a West Virginia municipal corporation** (“Lessee”). The parties agree as follows:

ARTICLE I – Premises

1.1 **Demise:** Glenmark hereby leases to Lessee, and Lessee hereby rents from Glenmark, that certain premises located within the primary and largest multi-tenant building (“Building”) situate within Sabraton Plaza shopping center (“Shopping Center”) and consisting of approximately 19,938 square feet and having an address of 1389 Earl Core Road, Morgantown, WV 26505, as more particularly outlined on the floor plan attached to this Lease as Exhibit B (“Premises”); provided, however, that Glenmark shall have the option, on 30 days’ prior notice to Lessee, to retake possession, separate from the Premises, and lease to other tenants that certain portion of the Premises consisting of a room measuring approximately 25’ x 31’ and designated as the “Dojo Room” on Exhibit B.

1.2 **Non-Exclusive Easement:** Glenmark grants to Lessee, as an appurtenance to the Premises, for the entire term of this Lease (subject to the rights of Glenmark described herein) a non-exclusive easement in common with the other tenants, occupants, and patrons of the Shopping Center in and to and for the use of the Common Areas (as defined below).

1.3 **Delivery:** Prior to the Effective Date, Lessee has inspected the Premises.

Upon the Effective Date, Glenmark shall deliver, and Lessee shall accept delivery and possession of the Premises “**As Is;**” provided, however, Glenmark shall remove its personal property from the Premises, within 90 days after the Effective Date.

ARTICLE II – Rent & Late Fee

2.1 **Rent:** Beginning on the Rental Commencement Date, Lessee shall pay to Glenmark annual rent for the Premises during the initial term of this Lease in the sum of \$240,000.00, which annual rent is to be paid by Lessee in monthly installments of \$20,000.00, in advance without notice, set off, or demand on or before the first day of each calendar month, for the initial term of this Lease. The amount of annual base rent shown above for the initial term includes base rent and Lessee’s share of Common Expenses.

2.2 **Rental Commencement Date:** Lessee’s duty to pay rent commences immediately upon the earlier of the following: (i) 90 days after the Effective Date, provided Glenmark has removed its personal property from the Premises, or (ii) the date Glenmark delivers the Premises to Lessee with its personal property removed (“Rental Commencement Date”). Upon the Rental Commencement Date, the parties shall execute a memorandum confirming such date and the initial term of this Lease, in the form attached hereto as Exhibit A.

2.2.1 If the Rental Commencement Date is on a day other than the first day of the month, the portion of rent payable for any partial month is to be calculated pro rata according to the number of days leased during the month at the applicable rent rate, and thereafter rent is due and payable on the 1st day of each calendar month during the entire term and any renewal thereof. Lessee shall make rent payments to Glenmark’s address listed in Section 16.1 of this Lease.

2.3 [Reserved]

2.4 **Late Fee:** If any rent payment, or any other payment of Lessee due therewith, is not received by Glenmark by the 10th day of the month, it is considered late, and Lessee shall automatically

pay a late fee equal to the greater of \$200.00 or 5% of the total delinquency, for each month or portion thereof that the delinquency remains unpaid.

ARTICLE III – Taxes, Assessments, & Common Expenses

3.1 Common Expenses: “Common Expenses” means the following expenses incurred by Glenmark because of ownership of the Shopping Center and Building, this Lease, or otherwise:

3.1.1 Federal, state, county, or municipal taxes (excluding any sales or income taxes), assessed, levied, or imposed against the Shopping Center and related real estate, in whole or in part, from time to time (collectively, "Taxes");

3.1.2 All fire fees or similar miscellaneous municipal or county assessments assessed against the Shopping Center, in whole or in part, assessed, levied, or imposed from time to time;

3.1.3 All expenses relating to fire and security monitoring of the Shopping Center, along with supervision of the Building;

3.1.4 All utility charges for utility systems that service the Shopping Center or Building that are not separately metered or that service Common Areas;

3.1.5 All expenses relating to the insurance, maintenance, repair, cleaning, and general upkeep of the Common Areas, including costs associated with the maintenance and repairs of the utility systems servicing the Common Areas, Common Area janitorial services, garbage removal from Common Areas, garbage collection fees for the Shopping Center, Common Area lighting, Common Area parking (cleaning, resealing, patching, paving, and restriping), and snow removal and security services with respect to Common Areas;

3.1.6 All expenses relating to the maintenance, repair, and upkeep of the Building and its shared utility systems;

3.1.7 Administrative and management fees not to exceed five percent (5%) of Common Expenses; and

3.1.8 All other expenses incurred by Glenmark for the benefit and upkeep of the Building or Shopping Center, which are in keeping with or similar in nature to the foregoing.

3.2 Common Areas: "Common Areas" means all areas of the Shopping Center that are available for the common use of the owners, tenants, and patrons of the Shopping Center, including but not limited to common parking areas, access roads and driveways, sidewalks, landscaped areas, lawn areas, utilities, and portions of the Building at which the Premises is located intended for common and shared use by owners, tenants, and patrons, excluding leased areas, conveyed areas, or areas designated to be leased or conveyed.

3.3 Payment of Common Expenses:

3.3.1 Lessee’s proportionate share of Common Expenses is included as part of Lessee’s yearly and monthly rental as stated in Section 2.1.

3.4 Personal Property, B&O, Franchise, & Other Miscellaneous Taxes & Fees: Lessee shall be responsible for timely payment of all personal property, income, unemployment compensation, business and occupation, franchise, and other miscellaneous business taxes and fees assessed against Lessee, its business, or the Premises.

ARTICLE IV – Term

4.1 Term: This Lease is effective as of the Effective Date. The term of this Lease is for ten (10) years, plus the time period from the Effective Date until the Rental Commencement Date. The term

is not subject to extension, renewal, or other modification, unless expressly amended by written agreement of the parties hereto.

4.2 Holding Over: If Lessee remains in possession of all or any part of the Premises after the expiration of the term of the Lease or any renewal thereof, Lessee shall be deemed to be occupying the Premises as a tenant from month to month at a monthly rent equal to one hundred twenty-five percent (125%) of the then current monthly rent and subject to all of the other terms and provisions hereof, except only as to the rent and term of the Lease. As a tenant on a month-to-month basis, Lessee shall vacate the Premises upon receiving thirty (30) days written notice from Glenmark.

ARTICLE V – [Reserved]

5.1 [Reserved]

ARTICLE VI – Leasehold Improvements, Fixtures, & Personal Property

6.1 Leasehold Improvements: Lessee shall not remove any leasehold improvements or fixtures, including trade fixtures, installed in or on the Premises at any time, whether installed by or on behalf of Lessee or by or on behalf of Glenmark, whether preexisting or installed after the Effective Date, except if replaced in the normal course of business with the same or better quality or if their removal is consented to in advance by Glenmark in writing. Upon expiration or earlier termination of this Lease, all leasehold improvements, fixtures, and trade fixtures are deemed part of the Premises and title thereto is vested solely in Glenmark, provided, however, that if Lessee is not in default hereunder, this provision shall not restrict, during the term of this lease, Lessee’s ownership, use, or transfer of the Purchased Assets or the Option Assets, as defined in that certain Bill of Sale executed by and between the parties as of _____, 2022.

6.2 Personal Property: All personal property, owned by Lessee and delivered to the Premises, is to remain the property of Lessee and be removable at any time, and Lessee shall remove all such personal property, and repair any damage caused by such removal, upon the expiration or termination of this Lease; provided, Lessee is not at such time in default of any terms or covenants of this Lease.

ARTICLE VII – Utilities & Services

7.1 Utilities. Lessee shall pay all charges for consumption or use of utilities at the Premises, including water, gas, sewer, and electric; Lessee shall pay all charges directly for utilities that are separately metered, and shall pay, through Common Expenses, for utilities not separately metered. Electric and gas utilities are currently directly metered for the Premises and shall be placed in the name of and directly billed to Lessee. Water is not separately metered; thus, water and any other utility costs that are paid by Lessee through Common Expenses are included as part of Lessee’s yearly and monthly rental as stated in Section 2.1. Lessee shall be solely responsible for the cost, extension, installation, maintenance, and repair of all telephone, telecommunications, data, cable, internet, I/T services, security, and other similar utilities at the Premises.

7.2 Garbage Removal & Janitorial Services: Lessee shall be responsible for janitorial services for the Premises and dispose of garbage in common dumpsters to be located in an area determined by Glenmark. If Lessee fails to observe its obligations in this Article, Glenmark, may cause such work or services to be completed and invoice Lessee for the costs associated therewith. Lessee shall be responsible for and pay, at Lessee’s sole cost and expense, all costs required to manage, remove, and dispose of any waste or garbage that exceeds a normal volume (in excess of Lessee’s percentage allocation of Common Expenses) of garbage and also all additional responsibilities and costs necessary to dispose of any abnormally odorous waste or environmentally harmful waste (i.e., lead from the shooting range backstop and HVAC filters), which waste is produced from Lessee’s use and/or occupation of the Premises.

7.3 Security: Lessee shall be solely responsible for providing security services to the Premises in a manner acceptable to Lessee. Lessee shall utilize companies and providers stipulated by Glenmark in order to fully integrate building systems (fire/security/sprinkler/other). Glenmark is not obligated to provide any security services at the Shopping Center.

ARTICLE VIII – Use, Operations, and Surrender

8.1 Permitted Use: Lessee shall utilize the Premises solely as a properly licensed and fully compliant police, defense, and firearms training center and shooting range, all subject to and fully compliant with all applicable federal, state and local licensing and applicable laws and regulations. Lessee shall ensure all aspects of the Premises, Lessee’s Buildout, construction thereof, and continuous operation and maintenance of the Premises and Lessee’s business are compliant with all zoning ordinances, building codes, laws, statutes, ordinances, rules, and regulations imposed by the City of Morgantown, State of West Virginia, Monongalia County, United States of America, NIOSH, OSHA, EPA, and other governmental or regulating entities, and Lessee shall obtain and maintain all permits and approvals for the same.

8.2 Compliance with Laws: Lessee shall ensure that all use of the Premises is in full compliance with all applicable federal, state and local laws, codes, statutes, ordinances, rules, and regulations, including but not limited to those imposed by the City of Morgantown, Monongalia County, State of West Virginia, United States of America, NIOSH, OSHA, EPA, and other governmental or regulating entities. Lessee shall obtain any required certificate of occupancy for the Premises and all appropriate business licenses, registrations, and certifications as required by law. Within a reasonable amount of time (but no more than 5 days) after Glenmark’s request, Lessee shall provide Glenmark with evidence of any such licenses and/or certifications.

8.3 Prohibited Uses: No illegal, improper, or offensive uses are permitted on the Premises or at the Shopping Center. Lessee shall do nothing that increases the risks of fire, other casualty, or liability on the Premises or at the Shopping Center beyond Lessee’s general business operations. Without express written consent of Glenmark, Lessee shall not host, sponsor, or allow to occur on the Premises or at the Shopping Center any of the following: open house, exterior display, or similar type of matter open to the public, or any other event or matter that is outside of the normal course of business of Lessee.

Lessee shall not:

8.3.1 Do anything that compromises the structural integrity of the Premises, Building, or Shopping Center;

8.3.2 Commit waste or allow anyone under its control to commit waste, by failing to take ordinary or proper care of the Premises, Building, or Shopping Center;

8.3.3 Use any advertising medium or use or permit the use of any apparatus for sound reproduction or transmission that can be heard beyond the boundaries of the Premises;

8.3.4 Fail to keep all Lessee’s mechanical apparatuses in the Premises in good condition and repair and free from vibration and other noise that may be heard or felt outside of the Premises;

8.3.5 Use any electrical appliances and other items that will overload the electrical service to the Premises, Building, or Shopping Center (If additional electric service is needed to operate Lessee's business, Lessee shall be responsible for all costs associated with said upgrade.);

8.3.6 Block or obstruct the Shopping Center access roads or any parking spaces (except normal everyday use permitted hereunder by Lessee’s employees, customers, patrons, invitees, licensees, or guests);

8.3.7 Utilize the Premises in a manner that constitutes a legal nuisance to an adjoining owner or occupant;

8.3.8 Alter any sound proofing or acoustics of the Premises that would cause gunfire, music, or other sound produced within the Premises to be heard by other tenants within the Shopping Center or by persons outside the Premises;

8.3.9 Utilize the Premises for any of the following purposes: any purposes that would constitute a legal nuisance to an adjoining owner or occupant; waste material disposal or collection facility; any dumping, disposing, incineration, or mass reduction of garbage (exclusive of garbage compactors or dumpsters provided as part of the Common Areas); any use that emits a strong, unusual, offensive, or obnoxious odor, fumes, dust, or vapors, or any sound that can be unreasonably heard outside of the Premises; any use that creates explosives or other similar hazards; any labor camp, junk yard, recycling facility, or animal stock yard; industrial or agricultural facility (including, without limitation, manufacturing, smelting, mining, rendering, brewing, refining, chemical manufacturing or processing, or other manufacturing uses); truck or auto or bus repair or storage facility; any establishment providing adult entertainment or displays of variety including or depicting nudity or lewd acts; any establishment selling or exhibiting materials or devices that are pornographic (as determined by community standards in the Monongalia County, WV area); massage parlor; facility for gambling, slot machines, on- or off-site betting, table gaming, video lottery, bingo, or similar games of chance; dance hall; bar; billiard or pool hall; night club; facility for sale of paraphernalia for use with illicit drugs; stockyards or facilities containing animals; facilities or events for the show or display or competitive use of animals; veterinary clinic; auction house; flea market; funeral home; residential housing; hotel or motel; school; car wash; gas station; athletic venue of any kind; facility for the sale or display or rental of automotive parts or accessories or supplies or maintenance items; variety or variety discount store, discount department store (including, but not limited to Dollar General, Fred’s, Bill’s, McCrory’s, Dollar Tree, Ninety-Nine Cents Only, Deals, Dollar Express, or any store operated by Variety Wholesaler’s, Inc.); seafood restaurant, quick service restaurant specializing in seafood, or facility for sale of prepared seafood as a principal business; business that sells cellular or mobile phone products or services; business that primarily leases or markets or provides or rents with the option to own or occasionally sells consumer durable goods; hearing healthcare provider; grocery supermarket; business that sells pizza or hamburgers as its primary sales item; investment brokerage, insurance sales or related financial services business; packing and shipping center offering packaging and mailing services and the retail sale of packaging materials; cannabis dispensary or business that sells cannabis (medical, recreational, or other); or any other purpose other the permitted use under Section 8.1.

8.4 [Reserved]

8.5 Signage:

8.5.1 General: For all signage, Lessee shall provide Glenmark with the proposed location, dimensions, size, content, and design of any signage, including signage provided for below, to allow Glenmark to review and approve or deny the same, which approval or denial is in the sole but reasonable discretion of Glenmark. Glenmark has no duty to construct, design, install, maintain, or repair Lessee’s signage. Lessee, at its sole cost and expense, shall be responsible for the costs of constructing, designing, installing, maintaining, and repairing Lessee’s signage. Lessee shall, at all times, maintain Lessee’s signage in good condition and repair. Lessee shall neither install nor change Lessee's signage without the prior written consent of Glenmark. Lessee shall ensure that its signs (including size, location, and style) comply with all zoning ordinances and regulations imposed by the City of Morgantown (if applicable) and other governmental entities, and Lessee shall obtain all zoning permits and approvals for Lessee’s signage. If approved by Glenmark as to its other attributes, Lessee shall ensure that its signage to be attached to the exterior of the Building is in backlit canned letter form on a raceway.

8.5.2 Locations: If approved by Glenmark as to its other attributes, Lessee may have signage in the following locations: (a) subject to availability and Glenmark’s decision as to location, one dual-sided panel on an existing exterior multi-tenant sign that is located along Earl Core Road; (b) exterior façade of the Premises or on the front corner parapet of the Building where Defense In Depth’s signage existed (provided it has not been replaced by a different tenant) in the form of backlit letters/logo on a raceway; and (c) on Lessee’s entry door / glass storefront. Such signage is subject to Section 8.5.1.

8.5.3 Advertisements: Lessee shall not place or maintain any temporary advertising, flyers, banners, other similar articles, or any other matter on the exterior of the Premises, the Building, or on the grounds of the Shopping Center without the express written consent of Glenmark on a case-by-case basis. Lessee shall ensure that all advertisements located within the Premises are professionally prepared and are displayed in a tasteful manner; no paper/cardboard/plastic flyers, strobe lighting, or flashing lights. All advertisements viewable from the exterior of the Premises, including but not limited to displays, banners, and other similar advertising on the Building, on the outside or inside of the Premises, and at the Shopping Center are subject to the signage requirements under Section 8.5.1 on a case-by-case basis.

8.6 Regulations: As the Premises is part of a larger shopping center, Glenmark reserves the right to impose rules, restrictions, and regulations, as may be defined by Glenmark, upon any portion of the Premises, Building, and/or Shopping Center to ensure the safe, efficient, and productive operation of the Shopping Center. Such rules, restrictions, and regulations may include a declaration and reciprocal easement agreement, which, if any, will be provided to Lessee and which Lessee, upon receipt, shall acknowledge it has received, reviewed, and understands. Provided said rules, restrictions, and regulations are reasonable and ordinary, Lessee shall conform thereto, upon reasonable prior written notice.

8.7 Glenmark’s Right to Inspect: Glenmark, at all reasonable times and upon 24 hours notice for non-emergency situations, has the right to enter upon and examine the Premises, show the Premises to prospective purchasers or tenants, and/or make such inspection, repairs, alterations, improvements, or additions as Glenmark may deem necessary for the protection of the Premises. Lessee shall bear the expense of said repairs unless the repaired items are the responsibility of Glenmark as stated herein. At any time during the last 180 days of the term of this Lease, Glenmark may erect signs advertising the Premises for lease and, upon 24 hours notice (oral or written), may show the Premises to prospective tenants during Lessee’s hours of operation.

8.8 Surrender of Premises: At the end of the term of this Lease, however determined, in addition to Lessee’s other duties under this Lease, Lessee shall peaceably deliver to Glenmark the Premises vacant (subject to Article VI), unencumbered, in good repair, and broom clean, ordinary wear and tear excepted.

8.9 Parking: Lessee has non-exclusive access and an easement in common with other tenants of the Shopping Center for common customer/visitor/employee parking. The parking spaces are generally not reserved and are intended to be used by the customers, patrons, invitees, licensees, and guests of the owners and tenants of the Shopping Center without charge. Lessee shall ensure its employees utilize the parking areas behind or farthest from the Building but not adjacent to buildings within the Shopping Center. Lessee shall not use parking areas for any forbidden use or for other business, temporarily or permanently. Lessee shall not rent parking spaces to others or its customers, patrons, invitees, licensees, or guests. Lessee shall not permit vehicles owned, operated, or controlled by Lessee or its employees, agents, customers, patrons, invitees, licensees, or guests to remain parked or generally idle upon the Shopping Center for periods of more than twenty-four (24) hours. All large trucks or other vehicles owned and operated by Lessee or its agents are prohibited from parking in a manner that reduces visibility/accessibility/operation of the Shopping Center or violates Section 8.3.6. The parking areas of the Shopping Center are Common Areas; yet, Glenmark reserves the right to dedicate or reserve portions of the parking spaces for specific occupants of the Shopping Center.

8.10 Deliveries: All deliveries to the Premises are to be made at times and in a manner that do not disrupt the business of other owners, tenants, or occupants of the Shopping Center and in a manner that does not interfere with the flow of traffic in the Shopping Center.

ARTICLE IX – Alterations, Improvements, & Maintenance

9.1 Alterations and Improvements: Lessee shall neither make any exterior or structural alterations, additions, improvements, changes, or roof cuts to the roof of the Building, nor install or cause to be installed any trade fixtures, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades, or awnings, without the express prior written consent of Glenmark, which consent will not be unreasonably withheld if such alterations do not adversely impact the value of the Building, do not adversely affect the operations of any other occupants of the Shopping Center, and are architecturally compatible with the Shopping Center. Lessee shall present to Glenmark plans and specifications for alterations and improvements at the time approval is sought. After notification from Lessee to Glenmark, Lessee has the right, without Glenmark's consent, to make or cause to be made, interior alterations or improvements to the Premises not exceeding \$5,000.00 that do not adversely impair the structural quality of the Building, adversely impair the value of the Premises or Building, do not adversely affect the operations of any other occupants of the Shopping Center, are architecturally compatible with the Shopping Center, and are otherwise in compliance with this Lease. Lessee shall ensure that all alterations and improvements are in a good and workmanlike manner and are constructed and made in accordance with all applicable laws, zoning, and building codes and performed by licensed, insured, and bonded contractors subject to Glenmark’s approval. All improvements and alterations made by Lessee become property of Glenmark at the expiration of the term of this Lease unless Glenmark specifically agrees, in writing, that Lessee may remove any such alterations.

9.2 Maintenance: Lessee shall, at all times, generally maintain the appearance, cleanliness, repair and replacement, and day-to-day upkeep and operation of the Premises (including, without limitation, all doors; entrances/exits; locks; windows; glass; interior walls and partitions; MILO and simulation room equipment; vending equipment; security center equipment and system classroom furniture, trade fixtures, and equipment; training room equipment and shelving; shooting range walls, acoustic wall trade fixtures and soundproofing, ceiling, bullet traps (e.g., shooting range backstops), and Action Target range equipment and bullet proof glass) and related items, trade fixtures, equipment, furnishings, lighting, signage, hot water tanks, floor surfaces, moldings, bulkheads, ceiling, and interior utilities solely servicing the Premises) in good order, condition, and repair at its sole expense and consistent with the quality and presentation of first-class commercial space. Such maintenance includes, but is not limited to, removal of ice and snow from the sidewalk surrounding the Premises, continuous operational ADA compliance of the Premises, interior janitorial services and interior maintenance of the Premises, changing light bulbs, interior painting, clearing interior plumbing drains (and any exterior utility work required because of clogged interior plumbing drains), window and floor and general cleaning, and any interior or exterior maintenance and repair necessitated by willful act, misconduct, or negligence of Lessee. Lessee shall keep the Premises free from rubbish and debris. As to bullet traps (e.g., shooting range backstops) and servicing the removal of lead, replacement of rubber, and similar maintenance, Lessee shall provide to Glenmark all documentation evidencing such services and/or a copy of such contract to Glenmark, on a basis no less than the manufacturer’s suggested timeframe or annually, whichever is less. Lessee shall reimburse Glenmark for all HVAC filter changes, upkeep, repairs, and replacements; provided that any capital expense HVAC replacement expenses will be amortized over the useful life of the underlying improvement. Except for a short term basis, not to exceed 48 hours, Lessee shall not store materials, equipment, or other personal property outside of the Building. Lessee shall ensure that all its maintenance is performed in a good and workmanlike manner, in accordance with all applicable laws, zoning, and building codes, and, if performed by someone other than Lessee, performed by licensed and insured contractors subject to Glenmark’s approval.

9.2.1 Pests & Plumbing: Lessee shall keep the Premises free from pests. Lessee shall contract with a pest extermination company and have the Premises treated for pests at least monthly and such additional times as are reasonably necessary to keep the Premises pest free. Lessee shall provide to Glenmark any documentation evidencing such pest extermination services and/or a copy of such contract to Glenmark. Lessee shall ensure that the plumbing facilities of the Premises and, Lessee's use of plumbing related to the Building, are not used for any other purpose than that for which they are constructed and no foreign substance of any kind, including but not limited to chemicals and synthetic substances that the plumbing was not designed to facilitate, is poured or disposed of therein; Lessee shall solely bear the expense of any breakage, stoppage, or damage resulting from a violation of this requirement.

9.2.2 Structural & Other: Glenmark shall generally maintain and repair the Common Areas and structural components, major mechanical, HVAC (subject to Lessee reimbursement as stated above), roof, foundation, siding, exterior painting, and exterior utility components of the Premises, Building, and Shopping Center; however, if any damage to the Premises, Building, or Shopping Center is caused by Lessee's use of the Premises or the willful act, misconduct, or negligence of Lessee, its employees, agents, customers, invitees, successors, or assigns, Lessee shall be solely liable for all costs associated with repairing such damage and shall repair such damage or replace the damaged equipment, structure, fixture, or improvement as specified and required by Glenmark in Glenmark's sole but reasonable discretion. Lessee shall immediately notify Glenmark of any items needing addressed pursuant to Glenmark's maintenance and repair responsibilities hereunder; if Lessee fails to do so, Lessee shall be liable as stated above.

ARTICLE X – Insurance

10.1 Insurance: Lessee shall, at all times during the entire term of this Lease, procure and keep in full force and effect the following:

10.1.1 Liability Insurance: a comprehensive policy of general or business liability insurance on an occurrence basis with respect to the Premises and the business operated by Lessee thereon in which the combined limits of liability are not less than \$1,000,000.00 per accident or occurrence in respect of bodily injury and damage to persons or property;

10.1.2 Fire and Extended Property Coverage: fire, vandalism, malicious mischief, and additional peril insurance with "All-Risk," Extended Coverage covering and insuring all of Lessee's interest and personal property in or about the Premises, in an amount equal to 100% of the full replacement value thereof, as determined annually by a qualified insurance appraiser or consultant, and rental insurance in amounts sufficient to pay all amounts required herein to be paid by Lessee for any period of up to 3 months in which the Premises may be damaged or destroyed (Glenmark is not obligated to insure Lessee's business or personal property.);

10.1.3 Worker's Compensation: worker's compensation coverage in accordance with all applicable West Virginia statutes and regulations for all of its employees employed at the Premises who are eligible for such compensation coverage (Lessee shall make all payments and fund contributions necessary to secure and provide full and complete coverage and protection as required by West Virginia law.);

10.1.4 Employer's Liability. a policy of employer's liability insurance in which the combined limit is not less than \$1,000,000.00 per accident for bodily injury or disease; and

10.1.5 Other Insurance. a policy of business interruption and extra expense coverage to include rental payment continuation for a minimum of 12 months, loss of profits, and other extra expenses experienced during recovery from property loss; plate glass coverage for replacement of glass from breakage; automobile liability insurance for owned or hired vehicles, with a combined single limit of

not less than \$1,000,000 or, if higher, that amount as may be required by statute or rule of the state or locality; and umbrella insurance in the minimum amount of \$5,000,000.

10.2 Provisions/Procurement of Policies: All insurance required hereunder may be carried under blanket policies maintained by the party required to maintain such insurance. Any insurance required to be carried by Lessee is to contain provisions that: (a) the policy is not subject to cancellation or change, except after the giving of at least 30 days written notice to all parties named as insured therein, (b) that notice is received and accepted that the insured has waived right of recovery from Glenmark for any damage or loss caused by the risks covered in such policy, and (c) names Glenmark, Lessee, and any persons, firms, or corporations having an insurable interest designated by Glenmark and by Lessee, as insureds/loss payees, as their interests may appear.

10.3 Proof/Certificates. Lessee shall, annually, provide Glenmark with written evidence of these insurance coverages and their required provisions under this Article. In addition, any party obligated to maintain the insurance policies hereunder shall, within 15 days after request thereof, deliver to the other party a certificate of insurance naming the other party as an additional insured, evidencing that the insurance required hereunder is in full force and effect.

ARTICLE XI – Waiver, Release, & Indemnity

11.1 Waiver: Glenmark/Lessee hereby releases Lessee/Glenmark from and waives any and all liability or responsibility to Lessee/Glenmark or anyone claiming through or under Lessee/Glenmark by way of subrogation for any loss or damage specifically insured against or required by the terms hereof to be insured against by Glenmark/Lessee or anyone for whom Glenmark/Lessee is responsible hereunder. All policies of insurance pertaining to the Building, the Shopping Center, the Premises, and/or its contents are to be endorsed to provide that the insurance company may not be subrogated with respect to insurance carried by Lessee against Glenmark. Neither Lessee nor Lessee’s insurance company or companies are to have any right of action against Glenmark for any loss or damage to Lessee’s property in or about the Premises when such loss or damage is in fact covered, or required by the terms hereof to be covered, by insurance carried by Lessee. Neither Glenmark nor Glenmark’s insurance company or companies are to have any right of recovery against Lessee for any loss or damage to the Building, the Shopping Center, the Premises, or to Glenmark’s property in or upon the foregoing when loss or damage is in fact covered, or required by the terms hereof to be covered, by insurance carried by Glenmark. Nothing contained in this Article is to be construed to prevent Glenmark from pursuing any claim against Lessee for punitive or consequential damages.

11.2 Mutual Release of Liability: No party hereto is to be liable to the other for damage arising out of the occurrence of damage to or destruction of the Shopping Center, Building, the Premises, or the contents thereof by fire or other casualty, when such loss is fully covered and paid for by any insurance policy of either party; the parties hereby waive all claims against one another for any such damages, whether or not such damage or destruction be the result of negligence on the part of any party hereto, its agents, servants or employees.

11.3 Indemnification:

11.3.1 Lessor: Glenmark shall indemnify Lessee and save it harmless from and against any and all claims, actions, damages, liability, and expenses in connection with loss of life, personal injury, environmental hazards or violations, criminal acts, destruction and/or damage to property arising from or out of the development, operation, use, management, maintenance, or ownership by Glenmark of the Premises or occasioned wholly or in part by an act or omission of Glenmark, its agents, contractors, customers, employees, or invitees, except for claims or liability arising from the grossly negligent act or omission or willful misconduct of Lessee, or its agents or employees, or solely from Lessee’s failure to perform any of its duties under this Lease.

11.3.2 Lessee: To the extent permitted by law, Lessee shall indemnify and defend Glenmark and save it harmless from and against any and all claims, actions, damages, liability, and expenses in connection with loss of life, personal injury, environmental hazards or violations, criminal acts, destruction and/or damage to property arising from or out of the occupancy or use by Lessee of the Premises or the operation of Lessee’s business or any equipment and machinery situated on the Premises under the control of Lessee, its agents, contractors, customers, employees, or invitees, or occasioned wholly or in part by an act or omission of Lessee, its agents, contractors, customers, employees, or invitees, except for claims or liability arising from the grossly negligent act or omission or willful misconduct of Glenmark, or its agents or employees, or solely from Glenmark’s failure to perform any of its duties under this Lease.

11.3.3 If Glenmark/Lessee is made a party to any litigation for which Lessee/Glenmark owes Glenmark/Lessee a duty to indemnify and save harmless hereunder, Lessee/Glenmark shall protect and hold Glenmark/Lessee harmless and shall pay all costs, expenses, and reasonable attorneys’ fees incurred or paid by Glenmark/Lessee in connection with such litigation.

ARTICLE XII – Damage or Destruction

12.1 If the Premises is damaged, destroyed, or rendered partially untenable for its intended use by fire or other casualty, Glenmark, in its sole discretion, has the option of either terminating this Lease or repairing the Premises. If Glenmark elects to repair the Premises, any rental due hereunder is to be proportionally reduced according the area of the Premises that is unusable by Lessee until the Premises is repaired or restored as herein provided. If Glenmark elects to repair and discovers such repairs will take more than 120 days to complete or the insurance proceeds are insufficient to complete the restoration, Glenmark or Lessee may, within 30 days after the date of such discovery, terminate this Lease by giving the other party written notice. If this Lease is so terminated, all rent is to be prorated to the date of such destruction, and all insurance proceeds payable on account of the damage, destruction, or casualty to the Premises are to belong to Glenmark, and Lessee is to have no claim against such insurance proceeds.

12.2 Notwithstanding anything stated herein, if the Premises, Building, Shopping Center, or any of its utilities or HVAC system are damaged or otherwise need repair or maintenance because of the negligence, intentional, or willful and wanton misconduct of Lessee, its employees, customers, patrons, invitees, or licensees, Lessee shall be responsible for all costs and expenses associated therewith, to the extent not covered by Lessee’s insurance.

12.3 If there is a total destruction of the Premises by fire or otherwise, the Lease portion of this agreement may terminate at the option of Lessee, and if Lessee exercises its right to terminate, Glenmark shall be liable for reimbursement to Lessee for any rent paid in advance but not yet accrued as of the date of said total destruction.

12.4 If the Premises or any part thereof is taken or condemned for a public or quasi-public use, this Lease is to, as to the part so taken, terminate as of the date title vests in the condemner, and the rent is to be adjusted accordingly as to the part so taken, or is to cease if the entire Premises be so taken. In no event is any part of any condemnation award to belong to Lessee, but the same is to be the sole, absolute, and exclusive property of Glenmark.

ARTICLE XIII – Default by Lessee

13.1 Event of Default: Any one or more of the following events constitute an "Event of Default":

13.1.1 The failure of Lessee to pay any installment of rent, Common Expenses, or other sum of money within 10 days after notice to Lessee that the same is due; provided, Glenmark is not to be

obligated to give Lessee notice of late payments more than 2 times in any 12 month period, and on the third time a payment is late it is an immediate Event of Default without notice or grace period.

13.1.2 A breach or event of default by Lessee under and/or non-renewal or termination by Lessee of that certain Promissory Note dated _____, by and between Glenmark and Lessee ("Promissory Note"), prior to the expiration.

13.1.3 [Reserved]

13.1.4 Default by Lessee in the performance or observance of any covenant, duty, or agreement of this Lease (other than a default involving the payment of money), which default is not cured within 30 days after the giving of notice thereof by Glenmark, unless such default is of such nature that it cannot be cured within such 30 day period, in which case no Event of Default is to occur so long as Lessee commences the curing of the default within such 30 day period and thereafter diligently prosecutes the curing of same; provided, however, if Lessee defaults in the performance of any such covenant, duty, or agreement of this Lease more than one time in any 12 month period notwithstanding whether such default is cured by Lessee, any further similar default is deemed an Event of Default without the ability for cure.

13.1.5 The sale of Lessee's interest in the Premises under attachment, execution, or similar legal process.

13.1.6 If Lessee is adjudicated as bankrupt or insolvent under any state bankruptcy or insolvency law, or if an order for relief is entered against Lessee under the Federal Bankruptcy Code, and if such adjudication or order is not vacated within 10 days.

13.1.7 The commencement of a case under any chapter of the Federal Bankruptcy Code by or against Lessee or the filing of a voluntary or involuntary petition proposing the adjudication of Lessee as bankrupt or insolvent, or the reorganization of Lessee, or an arrangement by Lessee with its creditors, unless the petition is filed or case commenced by a party other than Lessee and is withdrawn or dismissed within 30 days after the date of its filing.

13.1.8 The appointment of a receiver or trustee for the business or property of Lessee, unless such appointment is vacated within 10 days of its entry or the making by Lessee of an assignment for the benefit of its creditors, or if in any other manner Lessee's interest in this Lease passes to another by operation of law.

13.1.9 The vacation or abandonment of the Premises by Lessee at any time.

13.1.10

13.1.11 The occurrence of any other event described as constituting an "Event of Default" elsewhere in this Lease or the Promissory Note.

13.2 Remedies: Upon an Event of Default, Glenmark has the right, in addition to all other rights and remedies at law, in equity, and under this Lease, to do any one or more of the following:

13.2.1 Termination of Lease: Glenmark may terminate this Lease, by written notice to Lessee, without any right by Lessee to reinstate its rights by payment of rent due or other performance of the terms and conditions hereof. Upon such termination, Lessee shall immediately surrender possession of the Premises to Glenmark, and Lessee shall immediately pay to Glenmark an amount equal to the aggregate of all rent that then remains due to Glenmark but unpaid by Lessee up to the termination date.

13.2.2 Reletting. With or without terminating this Lease, as Glenmark may elect, Glenmark may re-enter and repossess the Premises, or any part thereof, and lease it to any other person upon such terms as Glenmark shall deem reasonable, for a term within or beyond the term of this Lease; provided, that any such reletting prior to termination is to be for the account of Lessee, and Lessee shall remain liable for (i) all rent, Common Expenses, and other sums that would be payable under this Lease

by Lessee in the absence of such expiration, termination, or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of Lessee after deducting from such proceeds all of Glenmark’s expenses, reasonable attorneys’ fees and expenses, employee’s expenses, alteration costs, expenses of preparation for such reletting, and all costs and expenses, direct or indirect, incurred as a result of Lessee’s breach of this Lease. If the Premises are, at the time of default, sublet or leased to others, Glenmark may, as Lessee’s agent, collect rents due from any subtenant or other tenant and apply such rents to the rent and other amounts due hereunder without in any way affecting Lessee’s obligations to Glenmark hereunder. Such agency, being given for security, is hereby declared to be irrevocable.

13.2.3 Acceleration of Rent. Glenmark may declare all rent for the entire balance of the then current term immediately due and payable, together with all other charges, payments, costs, and expenses payable by Lessee as though such amounts were payable in advance on the date the Event of Default occurred; provided, however, that in the event that such acceleration is not allowed by applicable laws governing the Lessee, Glenmark may declare all rent for the entire balance of the current fiscal year of Lessee immediately due and payable, together with all other charges, payments, costs, and expenses payable by Lessee as though such amounts were payable in advance on the date the Event of Default occurred.

13.2.4 Right of Distress and Lien: Glenmark has, to the extent permitted by law, a right of distress for rent and lien on all of Lessee’s property in the Premises, as security for rent and all other charges payable hereunder.

13.2.5 Rent: If Glenmark does not terminate this Lease, Lessee’s rental rate is to increase one hundred twenty-five percent (125%) of the then current rental rate paid by Lessee.

13.2.6 Survival of Lessee’s Obligations: No expiration or termination of this Lease and no repossession of the Premises or any part thereof is to relieve Lessee of its liabilities and obligations hereunder, all of which are to survive such expiration, termination, or repossession, and Glenmark may, at its option, sue for and collect all rent and other charges due hereunder at any time as when such charges accrue. However, the parties expressly agree that if Glenmark exercises its remedy of terminating this Lease, no rent is to accrue and be payable to Glenmark by Lessee after the date that Glenmark elects to terminate this Lease.

13.2.7 Not Exclusive Right: Except as to and between Subsections 13.2.1 and 13.2.2 of this Article, no right of remedy hereon conferred upon or reserved to Glenmark is intended to be exclusive of any other right or remedy herein or by law provided, but is to be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law, in equity, and by statute.

13.2.8 Expenses: If Glenmark commences suit for the repossession of the Premises, for the recovery of rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Lessee to be kept or performed, and a breach is established, Lessee shall pay to Glenmark all expenses incurred in connection therewith, including reasonable attorneys’ fees.

13.2.9 Change of Locks. Upon Glenmark providing Lessee notice of Event of Default, Glenmark shall be entitled to immediately change the locks for the Premises and control or limit access to the Premises until such time as Lessee corrects the Event of Default to Glenmark’s satisfaction.

ARTICLE XIV – Default by Glenmark

14.1 Glenmark’s Right to Cure: Glenmark is not, in any event, to be charged with default in the performance of any of its obligations hereunder unless and until Glenmark has failed to perform such obligations within 30 days (or such additional time as is reasonably required to correct any such default) written notice to Glenmark by Lessee properly specifying wherein Glenmark has failed to perform any such obligations. Such notice is to be computed from the date of Glenmark’s receipt. If Glenmark’s

failure to perform or observe any covenant or obligation of this Lease cannot be cured by Glenmark within 30 days after the giving of notice thereof by Lessee, Lessee shall not charge Glenmark with default if Glenmark commences the curing of the default within such 30 day period and thereafter diligently pursues the curing of same. Upon an event of default by Glenmark hereunder, Lessee may pursue all rights and remedies it has at law, in equity, and under this Lease.”

ARTICLE XV – Estoppel / Subordination and Attornment

15.1 **Estoppel:** At any time and from time-to-time during this Lease, within 15 days after request by Glenmark, Lessee shall deliver to Glenmark a written statement, in recordable form, certifying Lessee has accepted possession of the Premises, that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and that the dates to which the rent and other charges have been paid in advance, if any; and certifying that there are no defenses or offsets thereto, or stating those claimed by Lessee. If Lessee fails to submit the necessary documentation as required by this Section 15.1 within the time period, the applicable estoppel shall be deemed approved and Glenmark may take all necessary action to execute the estoppel on Lessee’s behalf and Lessee appoints Glenmark its attorney-in-fact for such execution.

15.2 **Subordination and Attornment:**

15.2.1 For the purposes of this Lease, the following terms mean as follows:

"Encumbrance" means any lien, security interest, or Encumbrance on or against the Premises, now or hereafter existing, which is evidenced or perfected by a Security Instrument, judgment lien, writ of execution, mechanic’s liens, tax lien, or notice of lis pendens.

"Leasehold Mortgagee" means the holder of any debt instrument, now or hereafter existing, the payment of which is secured by a Security Instrument that encumbers or places a lien upon Lessee’s interest in and to the Premises.

"Mortgagee" shall mean the holder of any debt instrument, now or hereafter existing, the payment of which is secured by a Security Instrument that encumbers or places a lien upon Glenmark’s interest in and to the Premises.

"Security Instrument" means any now or hereafter existing deed of trust, credit line deed of trust, mortgage, UCC fixture filing, security agreement, UCC financing statement, assignment of leases and rents, or similar security instrument that secures the payment of any indebtedness or any other obligations and all renewals, modifications, amendments, supplements, consolidations, replacements, or extensions thereof, to the full extent of the amounts secured thereby.

15.2.2 Lessee hereby acknowledges and agrees that this Lease is and is to be subject and subordinate to, at all times, the Encumbrance of any Security Instrument securing a Mortgagee, whether the Security Instrument is dated, executed, acknowledged, delivered, or recorded prior to, concurrently with or subsequent to this Agreement, or a memorandum thereof, to the end and effect that any and all such Security Instruments are to be deemed to have been executed, acknowledged, delivered and recorded prior to this Agreement or a memorandum thereof, without knowledge of this Agreement, actual, constructive, or otherwise, on the part of such Mortgagee; provided, however, that any such Mortgagee is to be deemed to have (i) acknowledged and recognized the validity of this Lease, and the rights of Lessee, its successors, assigns, and sublessees, to quiet use, enjoyment, and possession of the Premises, and (ii) covenanted and agreed not to disturb or otherwise foreclose or terminate this Lease or the rights of Lessee, its successors, assigns, and sublessees, to quiet use, enjoyment and possession of the Premises absent the occurrence of an unremedied or uncured Event of Default.

15.2.3 Lessee hereby attorns to and recognizes (i) any Mortgagee; (ii) any purchaser, including any Mortgagee, at a foreclosure sale, whether judicial or non-judicial in nature, under a Security Instrument; (iii) any transferee, including any Mortgagee, which acquires the Premises by way of a deed

or deeds in lieu of foreclosure; and (iv) any transferee, successor, or assign that succeeds to such Mortgagee's, purchaser's or transferee's interest in the Premises, as its landlord for the unexpired balance of the term, as applicable, under the same terms, provisions, and conditions as set forth in this Lease, which attornment is and is to be effective and self-operative upon the acquisition or any interest in or title to the Premises by any such Mortgagee, purchaser, transferee, successor or assign, without the execution, acknowledgment, delivery, or recording of any other instruments, documents or agreements by Glenmark, Lessee, or any Mortgagee, purchaser, transferee, successor, or assign.

15.2.4 Lessee shall not have the power, right, or authority to encumber Lessee's interest in and to the Premises without Glenmark's prior express written consent; but regardless, however, Lessee shall have neither the power, right, nor authority to encumber Glenmark's interest in and to the Premises.

15.2.5 Lessee shall not execute, acknowledge, or deliver any Security Instrument that places an Encumbrance on the Premises, in whole or in part, or subjects the Premises, in whole or in part, to any Encumbrance, without the 30 days notice to and prior express written consent of Glenmark. Furthermore, in the event any such Security Instrument is assigned, Lessee and such Leasehold Mortgagee shall notify Glenmark, in writing, of such assignment and the address of such assignee.

15.2.6 If Glenmark gives notice to Lessee with respect to or in connection with any Event of Default by Lessee, Glenmark shall also serve a copy of such notice upon each Leasehold Mortgagee and the assignee, if any, of any such Lease Mortgagee with respect to which Glenmark has received notice in accordance with the provisions of Section 15.2.5 of this Lease. Upon the receipt of such notice by such Leasehold Mortgagee or its assigns, the same is to have the right and opportunity to cure or remedy or cause to be cured or remedied any breach or default within the same time period provided to Lessee, and Glenmark shall accept such performance by the same as if the same had been done or performed by Lessee.

15.2.7 In the event any Leasehold Mortgagee exercises its rights of foreclosure, Assignment, or otherwise, and such Leasehold Mortgagee, its successors or assigns, becomes the holder of the leasehold estate of Lessee, Glenmark shall recognize such Leasehold Mortgagee, its successors or assigns, as the Lessee hereunder, subject to all terms and conditions of this Lease and subject to all uncured Lessee Events of Default.

ARTICLE XVI – Miscellaneous

16.1 Notices: Unless otherwise provided for in this Lease, any party giving or making any notice, request, demand, or other communication shall make the notice in writing and delivery by either hand delivery, reputable overnight express courier with fees prepaid and delivery confirmation, or certified mail with postage prepaid and return receipt requested. Notice by any other means is ineffective and void. Except as otherwise provided in this Lease, notice is deemed delivered and received upon the earlier of the following: (a) upon the other party obtaining possession or knowledge of its contents by way of the delivery methods described above, (b) 3 business days after deposit in the U.S. Mail, (c) the next business day if delivered by overnight express, or (d) the same day if by hand delivery. Any party giving notice shall properly address the notice to the appropriate person or entity at the last-known address of the party to whom the notice is to be given, as follows (phone/e-mail are for convenience only; not required):

- If to Glenmark: Glenmark Holding Limited Liability Company
Attn: Mark J. Nesselroad
1399 Stewartstown Road, Suite 200
Morgantown, WV 26505
- If to Lessee: City of Morgantown
Attn: Finance Director
389 Spruce Street

Morgantown, WV 26505

Each party may, from time to time, designate a different address by providing all other parties with written notice of the change in conformity with this Article.

16.2 Governing Law & Legal Fees: This Lease is to be governed in accordance with the laws of the State of West Virginia. If litigation arises between the parties regarding this Lease, the prevailing party is to be awarded court costs and reasonable attorneys' fees.

16.3 Waiver of Jury Trial: In the event of a dispute hereunder that leads to litigation, all parties hereto waive their rights to a trial by jury.

16.4 Entire Agreement: This Lease sets forth the entire understanding of the parties with respect to the subject matter hereof. Any previous agreements or understandings between the parties regarding the subject matter hereof are superseded by this Lease.

16.5 Partial Invalidity: If any term, covenant, or provision of this Lease, or the application thereof to any person or circumstances, is held, at any time or to any extent, to be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, is not to be affected thereby, and each term, covenant, condition, and provision of this Lease is to be valid and be enforced to the fullest extent permitted by law.

16.6 Recording/Disclosure: Lessee shall neither record this Lease nor cause it to be disclosed to the public.

16.7 Assignment, Subletting, & Attornment: Lessee shall neither assign this Lease, in whole or in part, nor sublet any portion of the Premises without obtaining the prior written consent of Glenmark at Glenmark's discretion. Furthermore, without the prior written consent of Glenmark, Lessee has no right or power to encumber the interest of Lessee in and to the Premises. Glenmark is entitled to sell all or any portion of the Shopping Center. If Glenmark elects to sell the Building, Glenmark may assign this Lease to the purchaser without Lessee's prior consent, and Lessee shall fully release Glenmark from all of its obligations under this Lease, effective as of the date of the assignment. Lessee shall attorn to and recognize any new owner as the landlord of this Lease.

16.8 Amendments and Waiver: This Lease cannot be amended, except in writing, signed by all parties hereto, except for the change of address provision. No waiver by any party at any time, express or implied, or any breach, of any provision of this Lease is to be deemed a waiver or breach of any other provision of this Lease or consent to any subsequent breach of the same or any other provision.

16.9 No Accord and Satisfaction: No acceptance by Glenmark of a lesser sum than the rents or other charges then due is, nor is any endorsement or statement on any check or any letter accompanying any check or payment to be deemed an accord and satisfaction.

16.10 No Partnership: As a result of this Lease, no party hereto, in any way or for any purpose, becomes a partner, joint venture, or member of a joint enterprise with the other party in the conduct of its business or otherwise. The relationship of Glenmark and Lessee, as established by this Lease, is strictly that of landlord and tenant.

16.11 Computation of Days: Unless otherwise specifically indicated, in computing the number of days for any purpose under this Lease, all days are counted, including Saturdays, Sundays, and holidays.

16.12 Brokerage: It is disclosed that Mark J. Nesselroad is a principal/beneficial owner of Glenmark and also a licensed real estate broker with Black Diamond Realty LLC. Neither party was represented by a broker as part of this Lease. Each party shall pay its own broker's commission/fee, if any.

16.13 Fiscal Year Funding: The parties recognize and agree that borrower is a municipal corporation and political subdivision of the State of West Virginia that is not permitted to obligate funds not available during the current budget year, and that Borrower’s obligations under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by Morgantown City Council or otherwise being available for this service. If funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on the last day of the fiscal year during which the agreement is executed. City agrees to use its best efforts to have the amounts contemplated under the agreement appropriated for the services provided in the agreement. Non-appropriation or non-funding shall not be considered an event of default.

[SIGNATURE PAGE TO LEASE FOLLOWS]

[SIGNATURE PAGE TO LEASE]

The parties sign, each as of the Effective Date:

Glenmark: **Glenmark Holding Limited Liability Company,**
a West Virginia limited liability company

By: _____
Mark J. Nesselroad, Member

Lessee: **The City of Morgantown, West Virginia,**
a West Virginia municipal corporation

By: _____
A. Kim Haws, City Manager

EXHIBIT A

Memorandum of Rental Commencement Date

This Memorandum of Rental Commencement Date is effective as of the ____ day of _____ 20__ (“Memorandum Date”), by and between **Glenmark Holding Limited Liability Company**, a West Virginia limited liability company having an address of 1399 Stewartstown Road, Suite 200, Morgantown, West Virginia 26505 ("Glenmark"); **The City of Morgantown**, West Virginia, a West Virginia municipal corporation, having an address of 389 Spruce Street, Morgantown, WV 26505 (“Lessee”).

Glenmark and Lessee entered into a lease dated _____, 20__ (“Lease”), demising commercial space consisting of a total of approximately 19,938 +/- square feet, located at 1389 Earl Core Road, Morgantown, WV 26505, as more particularly described in the Lease.

Pursuant to Section 2.2 of the Lease, Glenmark and Lessee, intending to be legally bound hereby, acknowledge and agree that the Rental Commencement Date is on the ____ day of _____ 20__, and that the initial term of the Lease ends on the ____ day of _____ 20__, at 11:59 PM, unless extended or terminated early as provided in the Lease. As supplemented hereby, the Lease is to continue in full force and effect.

The parties execute this Memorandum of Rental Commencement Date as of the Memorandum Date, each by its duly authorized agent or officer.

Glenmark:

Glenmark Holding Limited Liability Company,
a West Virginia limited liability company

By: _____
Mark J. Nesselroad, Member

Lessee:

The City of Morgantown, West Virginia,
a West Virginia municipal corporation

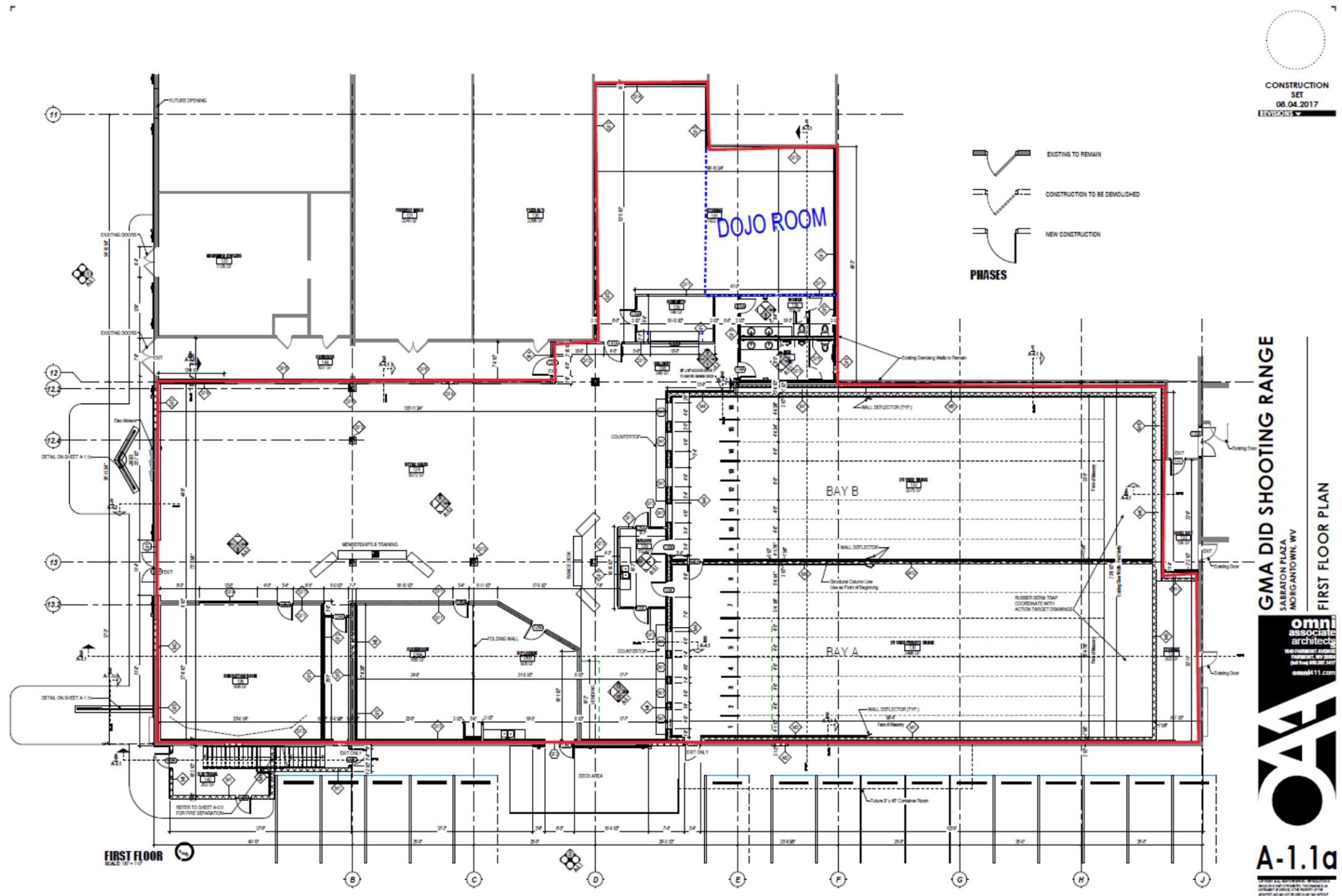
By: _____

Print: _____

Title: _____

EXHIBIT B

Floor Plan



CONSTRUCTION SET
08.04.2017
REVISED

PHASES

- EXISTING TO REMAIN
- CONSTRUCTION TO BE DEMOLISHED
- NEW CONSTRUCTION

GMA DID SHOOTING RANGE
SABBATION PLAZA
MORGANTOWN, WV

omni
associate
architects
140 FARMWAY AVENUE
MORGANTOWN, WV 26505
TEL: 304.528.1977
www.oa11.com

OA

A-1.1a

FIRST FLOOR PLAN

PROMISSORY NOTE

Principal Amount: \$1,500,000.00

Effective Date: _____, 2022

PROMISE TO PAY. The City of Morgantown, West Virginia, a municipal corporation having the address 389 Spruce Street, Morgantown, West Virginia 26505 (the "Borrower"), promises to pay to the order of **Glenmark Holding Limited Liability Company**, a West Virginia limited liability company having the address 1399 Stewartstown Road, Suite 200, Morgantown, West Virginia 26505 ("Lender"), in lawful money of the United States of America, the principal amount of **One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00)**, or so much as may be outstanding ("Obligation").

INTEREST RATE. Interest on this Promissory Note and the outstanding balance of the Obligation shall accrue at the lowest applicable federal rate allowed by law. Interest shall be calculated as accruing beginning on the Effective Date herein, and ending upon the full payment of this Promissory Note.

PAYMENT. The Obligation shall be repaid by Borrower based as follows:

A. Borrower shall make a payment of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) within fifteen (15) calendar days of the execution of this Promissory Note (the "Initial Payment").

B. The remaining balance of the Obligation, being a total of One Million and 00/100 Dollars (\$1,000,000.00), plus any and all accrued interest due (the "Remaining Balance"), if not already paid, shall be due and payable in full on **December 31, 2032** (the "Remaining Balance Maturity Date").

C. Provided, however, if Borrower (1) pays the Initial Payment pursuant to the terms herein, and (2) fulfills the full lease term of and all material obligations under that certain Lease Agreement dated _____, 2022 (the "Lease"), by and between Borrower and Lender, for that certain premises located at 1389 Earl Core Road, Morgantown, West Virginia, consisting of 19,938 square feet, more or less, within the Sabraton Plaza (the "Leased Premises"), Lender hereby agrees that the Remaining Balance shall be forgiven in full.

D. Provided, further, that during the term of the Lease, excluding any extensions or succeeding terms of such lease, Borrower shall exercise its best efforts to obtain grant funds in the amount of up to Five Hundred Thousand Dollars (\$500,000.00) for and in relation to the purchase of the Option Assets as identified in that certain Bill of Sale executed by and between the parties as of _____, 2022, (the "Grant Funds") and, in the event Borrower receives the Grant Funds, or a portion thereof, Borrower shall transfer such funds to Lender and Borrower and Lender shall agree, in the exercise of their reasonable discretion, on transfer of the Option Assets or a portion thereof to Borrower substantially equivalent to the value of the Grant Funds delivered to Lender.

PREPAYMENT. There shall be no prepayment penalty for the Obligation.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Promissory Note:

A. The failure to make prompt payment of any installment payment on this Promissory Note when due or payable.

B. The breach of any covenant, condition, or agreement made by Borrower under this Promissory Note or that certain accompanying Security Agreement dated of even date herewith.

C. A breach or event of default by Borrower under and/or termination by Borrower of the Lease prior to the expiration thereof.

LENDER'S RIGHTS. Upon the occurrence of an Event of Default, Lender may, upon demand, declare the entire unpaid principal balance on this Promissory Note due and payable, and then Borrower shall pay that amount. Lender may hire or pay someone else to help collect this Promissory Note if Borrower does not pay. Borrower also shall pay Lender reasonable costs of collection. This includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's reasonable legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post judgment collection services. If not prohibited by applicable law, Borrower also shall pay any court costs, in addition to all other sums provided by law. Notwithstanding anything to the contrary, Lender shall also have any and all remedies set forth under that certain accompanying Security Agreement dated of even date herewith. **This Promissory Note has been delivered to Lender and accepted by Lender in the State of West Virginia.**

GENERAL PROVISIONS. Lender may delay or forgo enforcing any of its rights or remedies under this Promissory Note without losing them. Upon any change in the terms of this Promissory Note, and unless otherwise expressly stated in writing, no party who signs this Promissory Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability until the Obligation is paid in full. All such parties agree that Lender may release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone.

FISCAL YEAR FUNDING. The parties recognize and agree that borrower is a municipal corporation and political subdivision of the State of West Virginia that is not permitted to obligate funds not available during the current budget year, and that Borrower's obligations under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by Morgantown City Council or otherwise being available for this service. If funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on the last day of the fiscal year during which the agreement is executed. City agrees to use its best efforts to have the amounts contemplated under the agreement appropriated for the services provided in the agreement. Non-appropriation or non-funding shall not be considered an event of default.

PRIOR TO SIGNING THIS PROMISSORY NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS PROMISSORY NOTE. BORROWER AGREES TO THE TERMS OF THE PROMISSORY NOTE AND ACKNOWLEDGES RECEIPT OF A COMPLETE COPY OF THE PROMISSORY NOTE.

**THE CITY OF MORGANTOWN,
WEST VIRGINIA, a municipal corporation**

By: _____
_____ , _____

**GLENMARK HOLDING LIMITED LIABILITY
COMPANY, a West Virginia limited liability company**

By: _____
Mark J. Nesselroad, Member

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (“Agreement”) is made and entered into as of _____, 2022, by and between **The City of Morgantown, West Virginia**, a West Virginia municipal corporation, (hereinafter the “Grantor”), and **Glenmark Holding Limited Liability Company**, a West Virginia limited liability company (hereinafter the “Secured Party”).

GRANT OF SECURITY INTEREST. For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word “Collateral” as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, in which Grantor is giving to Lender a security interest for the payment of the Indebtedness and performance of all other obligations under the Note and this Agreement: (i) Action Target – Range Equipment & Bullet Proof Glass; (ii) MILO and Simulation Room Equipment; (iii) Acoustic Wall Outward-Facing Soundproofing Trade Fixtures; (iv) Vending Equipment; (v) Security Center Equipment and System; (vi) Classroom Furniture and Equipment; and (vii) Training Room Equipment and Shelving.

In addition, the word “Collateral” also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located: (i) All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any of the collateral described herein, whether added now or later; and (ii) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor ’s right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

Grantor hereby acknowledges that Grantor has an option to purchase specific items listed as the Collateral; however, this Agreement shall create a security interest in favor of Secured Party in the Collateral owned as of the effective date herein, as well as the Collateral in the event that Grantor exercises and purchases the Collateral under that certain option.

GRANTOR’S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Perfection of Security Interest. Grantor agrees to take whatever actions are reasonably requested by Lender to perfect and continue Lender’s security interest in the Collateral, so long as such actions are allowed under Grantor’s incorporation and organization. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting ownership of or title to the Collateral, and Grantor will note Lender’s interest upon any and all chattel paper if not delivered to Lender for possession by Lender.

No Violation. To the best of Grantor’s knowledge, the execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party, and its certificate or articles of organization or operating agreement do not prohibit any term or condition of this Agreement.

Location of the Collateral. Except in the ordinary course of Grantor’s business, Grantor agrees to keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts or general intangibles, the records concerning the Collateral) at the real estate located at **1389 Earl**

Core Road, Morgantown, West Virginia 26505, or at such other locations that are acceptable to Lender.

Removal of the Collateral. Grantor shall not remove the Collateral from its existing location, 1389 Earl Core Road, Morgantown, West Virginia 26505, without Lender’s prior written consent. Grantor shall, whenever requested, advise Lender of the exact location of the Collateral.

Transactions Involving Collateral. Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral without Lender’s prior written consent. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement.

Title. Grantor represents and warrants to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement and subject to such terms stated in the Bill of Sale and Promissory Note executed by and between the Parties with respect to the Collateral on or about the date of this Agreement. . Grantor shall defend Lender’s rights in the Collateral against the claims and demands of all other persons arising during the period of Grantor’s ownership.

Repairs and Maintenance. Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

Inspection of Collateral. Lender and Lender’s designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located.

Taxes, Assessments and Liens. Grantor will pay when due all taxes, assessments and liens upon the Collateral. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender’s interest in the Collateral is not jeopardized in Lender’s sole reasonable opinion. If the Collateral is subjected to a lien which is not discharged within thirty (30) days, Grantor shall, to the extent Grantor has funds available and allocated for such purpose, deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, and other charges that could accrue as a result of foreclosure or sale of the Collateral, which amount shall be reasonably agreed by the Parties. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor further agrees to furnish Lender, upon request, with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender’s interest in the Collateral is not jeopardized.

Compliance with Governmental Requirements. Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect,

applicable to the ownership, production, disposition, or use of the Collateral, including all laws or regulations relating to the undue erosion of highly-erodible land or relating to the conversion of wetlands for the production of an agricultural product or commodity. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion is not jeopardized.

Maintenance of Casualty Insurance. Grantor shall procure and maintain special form insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include a waiver of subrogation endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

Application of Insurance Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Collateral. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. So long as Grantor is not in breach of this Agreement, or the Lease, Promissory Note, or Bill of Sale executed by the Parties on or about the date of this Agreement, Lender will consent to repair or replacement of the damaged or destroyed Collateral, and Lender shall, upon satisfactory proof of cost estimate or expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay all of the Indebtedness, and shall pay the balance to Grantor. Any such amount retained by Lender shall be promptly delivered to Grantor upon payment or release of the Indebtedness, or the portion thereof that it was retained to satisfy.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any material provision of this Agreement or any material provision of the Loan Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Loan Documents, Lender on Grantor's behalf may (but shall not be obligated to), after giving Grantor prior written notice and reasonable opportunity to take any action reasonably necessary to address the contents of the written notice, take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment

payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

- A. The failure to make prompt payment of any installment of principal or interest on the Note when due or payable.
- B. Should any representation or warranty made in the Loan Documents prove to be false or misleading in any material respect.
- C. The material breach of any covenant, condition, or agreement made by the Borrower under the Loan Documents.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the West Virginia Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

Assemble Collateral. Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender, or at the Premises described in the Loan Documents, at Grantor's option. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender promptly returns them to Grantor after repossession.

Sell the Collateral. Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Grantor, and other persons as required by law, reasonable notice of the time and place of any public sale, or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

Obtain Deficiency. If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

Other Rights and Remedies. Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

Election of Remedies. Except as may be prohibited by applicable law, all of the Parties' rights and remedies, whether evidenced by this Agreement, the Loan Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by any Party to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of another Party under this Agreement, after the Party's failure to perform, shall not affect the other Party's right to declare a default and exercise its remedies.

LIMITATION ON RECOVERY. No provision of this Agreement shall permit, or be construed to permit, Lender to recover any amount in excess of the amount due to Lender under the Loan Documents from Grantor. Any amount delivered to or received by Lender in excess of such allowable recovery shall be promptly delivered to Grantor.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Loan Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. To the extent that Grantor has funds available and allocated for such purpose, Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorney's fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the state of West Virginia. This Agreement has been accepted by Lender in the State of West Virginia.

No Waiver. Neither Party shall be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by the Party to be charged with such waiver. No delay or omission on the part of a Party in exercising any right shall operate as a waiver of such right or any other right. A waiver by a Party of a provision of this Agreement shall not prejudice or constitute a waiver of the Party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a Party, not any course of dealing between Lender and Grantor, shall constitute a waiver of any of the Party's rights or of any of the

other Party's obligations as to any future transactions. Whenever the consent of a Party is required under this Agreement, the granting of such consent by the Party in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the reasonable discretion of the Party.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each Party agrees to keep the other informed at all times of its current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties. Lender may at any time, and without further authorization from Grantor, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. To the extent Grantor's funds are available and allocated for such purpose, Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstances, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstances. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreement made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full or otherwise released, at which point all such agreements, representations, warranties, and obligations of Grantor under this Agreement shall automatically terminate.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms, and certain words used in a general reference being uncapitalized, shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word “Agreement” means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

Chattel Paper. The words “Chattel Paper” shall mean chattel paper, including electronic chattel paper, as defined in the Uniform Commercial Code and shall include, without limitation, a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods or a lease of specific goods and license of software used in the goods;

Default. The word “Default” means an Event of Default set forth in this Agreement in the section titled “Default”.

Environmental Laws. The words “Environmental Laws” mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. (“CERCLA”), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 (“SARA”), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words “Event of Default” mean any of the events of default set forth in this Agreement in the default section of this Agreement.

General Intangibles. The words “General Intangibles” shall mean general intangibles as defined in the Uniform Commercial Code and shall include, without limitation, any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money and oil, gas or other minerals before extraction.

Grantor. The word “Grantor” means The City of Morgantown, West Virginia, a West Virginia municipal corporation. .

Indebtedness. The word “Indebtedness” means the indebtedness evidenced by the Note or Loan Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Loan Documents.

Instruments. The word “Instruments” shall mean instruments as defined in the Uniform Commercial Code and shall include, without limitation, a negotiable instrument or any other

writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment and any certificates of deposit now or hereafter purchased by Grantor.

Loan Documents. The words “Loan Documents” mean the this Agreement, the Bill of Sale, and the Promissory Note, all between the parties and related to the transaction contemplated therein.

Lender. The word “Lender” means Glenmark Holding Limited Liability Company, a West Virginia limited liability company, its successors and assigns.

Note. The word “Note” means that Promissory Note dated of even date herewith executed by Borrower in favor of Lender in the principal amount of \$1,500,000.00, as well as any substitute, replacement or refinancing note or notes therefor.

Property. The word “Property” means all of Grantor’s right, title and interest in and to all the personal property as described in the “Collateral Description” section of this Agreement.

Uniform Commercial Code. The words "Uniform Commercial Code" means the Uniform Commercial Code now or hereafter in effect in the State of West Virginia, except to the extent the Uniform Commercial Code of another state shall take precedence.

FISCAL YEAR FUNDING. The parties recognize and agree that Grantor is a municipal corporation and political subdivision of the State of West Virginia that is not permitted to obligate funds not available during the current budget year, and that Grantor’s obligations under the Agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by Morgantown City Council or otherwise being available for this service. If funds are not appropriated or otherwise available for this service, the Agreement shall terminate without penalty on the last day of the fiscal year during which the Agreement is executed. City agrees to use its best efforts to have the amounts contemplated under the Agreement appropriated for the services provided in the agreement. Non-appropriation or non-funding shall not be considered an event of default.

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