

THE CITY OF

Troy Klecker
Community Development Director



OWATONNA

540 West Hills Circle
Owatonna, MN 55060-4794
Ph. (507) 774-7316
FAX: (507) 444-4351

DATE: April 2, 2020
TO: Mayor and City Council
FROM: Community Development Dept. - Troy Klecker
SUBJECT: Cemstone Concrete Materials, LLC

Purpose:

City Council to approve Resolution 50-20 approving a Development Agreement and Lease Agreement with Cemstone.

Background:

Staff has been working with Cemstone to relocate the business to the industrial park for a number of years. We have finally come to the point to move forward with a development agreement which calls for the City and Cemstone to swap properties. The City will own Cemstone's current site on North Street and Cemstone will own a 14 acre property along 32nd Avenue NW in the industrial park, currently owned by the City, to build a new facility. Cemstone would like to construct a temporary cement plant this summer on the site. Cemstone would have 5 years to construct a permanent facility on the site and vacate their current site. The City would lease the current Cemstone Stone site back to Cemstone at no cost for up to 5 years or until the new site is completed, whichever comes first. At that time, the City would look to redevelop the property to a commercial use. Tax increment financing has already been approved for the new site for Cemstone. The plan is to rezone the new site to I-2 Heavy Industrial District for the concrete plant and close on the swapping of properties on or before May 10th.

Budget Impact:

There are no additional costs associated with this development agreement. Costs associated with establishing the TIF district have been paid for by the EDA and will be reimbursed from the TIF proceeds.

Staff Recommendation:

Staff recommends approval of Resolution 50-20.

RESOLUTION NO. 50-20

RESOLUTION AUTHORIZING EXECUTION OF A
DEVELOPMENT AGREEMENT AND LEASE AGREEMENT

WHEREAS, Cemstone Concrete Materials, LLC (“Developer”) has requested the City of Owatonna, Minnesota assist with the financing of certain costs incurred in connection with the construction of a concrete ready-mix manufacturing facility in the City by the Developer (the “Project”);

WHEREAS, the Developer and the City have determined to enter into a Development Agreement providing for the City's tax increment financing assistance for the Project (the "Development Agreement") and in connection therewith the City, as landlord, proposes to enter into a Lease Agreement leasing certain land and improvements thereon to the Developer, as tenant (the "Lease Agreement").

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Owatonna, Minnesota, as follows:

1. The City Council hereby approves the Development Agreement and the Lease Agreement in substantially the form submitted, and the Mayor and City Administrator are hereby authorized and directed to execute the Development Agreement and Lease Agreement on behalf of the City and to do all other acts and things necessary and expedient thereto.

2. The approval hereby given to the Development Agreement and Lease Agreement includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by the City officials authorized by this resolution to execute the Development Agreement and the Lease Agreement. The execution of the Development Agreement and the Lease Agreement by the appropriate officer or officers of the City shall be conclusive evidence of the approval of the Development Agreement and Lease Agreement in accordance with the terms hereof.

Passed and adopted this ____ day of _____, 2020, with the following vote:

Aye ____; No ____; Absent ____.

Approved and signed this _____ day of _____, 2020.

ATTEST:

Thomas A. Kuntz, Mayor

Kris M. Busse, City Administrator/City Clerk

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF OWATONNA, MINNESOTA

AND

CEMSTONE CONCRETE MATERIALS, LLC

This document was drafted by:

BRIGGS AND MORGAN (MLI)
Professional Association
2200 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402

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DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of the 7th day of April, 2020, by and between the City of Owatonna, Minnesota (the "City"), a municipal corporation existing under the laws of the State of Minnesota and Cemstone Concrete Materials, LLC, an Iowa limited liability company (the "Developer").

WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Section 469.124 to 469.133, the City has heretofore established Development District No. 3 (the "Development District") and has adopted a development program therefor (the "Development Program"); and

WHEREAS, pursuant to the provisions of Minnesota Statutes, Section 469.174 through 469.1794, as amended (hereinafter, the "Tax Increment Act"), the City has heretofore established, within the Development District, Tax Increment Financing District No. 3-11 (the "Tax Increment District") and has adopted a tax increment financing plan therefor (the "Tax Increment Plan") which provides for the use of tax increment financing in connection with certain development within the Development District; and

WHEREAS, in order to achieve the objectives of the Development Program and particularly to make the land in the Development District available for development by private enterprise in conformance with the Development Program, the City has determined to assist the Developer with the financing of certain costs of a Project (as hereinafter defined) to be constructed within the Tax Increment District as more particularly set forth in this Agreement; and

WHEREAS, the City believes that the development and construction of the Project, and fulfillment of this Agreement are vital and are in the best interests of the City, the health, safety, morals and welfare of residents of the City, and in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the requirements of the Business Subsidy Law, Minnesota Statutes, Section 116J.993 through 116J.995, apply to this Agreement; and

WHEREAS, the City has adopted criteria for awarding business subsidies that comply with the Business Subsidy Law, after a public hearing for which notice was published; and

WHEREAS, the Council has approved this Agreement as a subsidy agreement under the Business Subsidy Law;

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Agreement, as the same may be from time to time modified, amended or supplemented;

Business Day means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close;

City means the City of Owatonna, Minnesota;

County means Steele County, Minnesota;

Developer means Cemstone Concrete Materials, LLC, an Iowa limited liability company, its successors and assigns;

Development District means the real property included in Development District No. 3 heretofore established;

Development Program means the Development Program approved in connection with the Development District;

Development Property means the real property described in Exhibit A attached to this Agreement;

Event of Default means any of the events described in Section 4.1 hereof;

Note Payment Date means August 1, 2020, and each February 1 and August 1 of each year thereafter to and including February 1, 2029; provided, that if any such Note Payment Date should not be a Business Day, the Note Payment Date shall be the next succeeding Business Day;

Prime Rate means the rate of interest from time to time publicly announced by U.S. Bank National Association in St. Paul, Minnesota, as its "prime rate" or "reference rate" or any successor rate, which rate shall change as and when that rate or successor rate changes;

Project means the construction of a concrete ready-mix manufacturing facility operated by the Developer on the Development Property located in the City;

Site Improvements means the site improvements undertaken or to be undertaken on the Development Property, more particularly described on Exhibit C attached hereto;

State means the State of Minnesota;

Tax Increments means 95% of the tax increments derived from the Development Property which have been received by the City in accordance with the provisions of Minnesota Statutes, Section 469.177;

Tax Increment Act means Minnesota Statutes, Sections 469.174 through 469.1794, as amended;

Tax Increment District means Tax Increment Financing District No. 3-11 located within the Development District, a description of which is set forth in the Tax Increment Financing Plan, which was qualified as an economic development district under the Tax Increment Act;

Tax Increment Financing Plan means the tax increment financing plan approved for the Tax Increment District by the City Council on August 14, 2017, and any future amendments thereto;

Termination Date means the earlier of (i) February 1, 2029, (ii) the date the Reimbursement Amount is paid in full, (iii) the date on which the Tax Increment District expires or is otherwise terminated, or (iv) the date this Agreement is terminated or rescinded in accordance with its terms;

TIF Note means the Tax Increment Revenue Note (Cemstone Project) to be executed by the City and delivered to the Developer pursuant to Article III hereof, the form of which is attached hereto as Exhibit B; and

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

(1) The City is a municipal corporation and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The Tax Increment District is an "economic development district" within the meaning of Minnesota Statutes, Section 469.174, Subdivision 12, and was created, adopted and approved in accordance with the terms of the Tax Increment Act.

(3) The development contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program.

(4) To finance certain costs within the Tax Increment District, the City proposes, subject to the further provisions of this Agreement, to apply Tax Increments to reimburse the Developer for a portion of the costs of the Site Improvements incurred in connection with the Project as further provided in this Agreement.

(5) The City makes no representation or warranty, either expressed or implied, as to the Development Property or its condition or the soil conditions thereon, or that the Development Property shall be suitable for the Developer's purposes or needs.

Section 2.2. Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(1) The Developer is an Iowa limited liability company and has the power and authority to enter into this Agreement and to perform its obligations hereunder and doing so will not violate its articles of organization, member control agreement or operating agreement, or the laws of the State and by proper action has authorized the execution and delivery of this Agreement.

(2) The Developer shall cause the Project to be constructed in accordance with the terms of this Agreement, the Development Program, and all applicable local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations).

(3) The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not have been or be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(4) The Developer will use its best efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

(5) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(6) The Developer will cooperate fully with the City with respect to any litigation commenced with respect to the Project.

(7) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Project.

(8) The Developer shall complete the construction of the Project within five years from the date of certification of the District.

(9) The Developer acknowledges that Tax Increment projections contained in the Tax Increment Financing Plan are estimates only and the Developer acknowledges that it shall place no reliance on the amount of projected Tax Increments and the sufficiency of such Tax Increments to reimburse the Developer for a portion of the costs of the Site Improvements as provided in Article III.

(10) The Developer will not seek a reduction in the market value as determined by the County Assessor of the Project or other facilities, if any, that it constructs on the Development Property, pursuant to the provisions of this Agreement, for so long as the TIF Note remains outstanding.

ARTICLE III

UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1. Site Improvements. The parties agree that the Site Improvements to be installed or constructed by the Developer are essential to the successful completion of the Project. The costs of the Site Improvements shall be paid by the Developer. The City shall reimburse the Developer for the lesser of (a) \$363,814; or (b) the actual costs of the Site Improvements actually incurred and paid by the Developer (the "Reimbursement Amount"), as further provided in Section 3.3 hereof.

Section 3.2. Limitations on Undertaking of the City. Notwithstanding the provisions of Sections 3.1, the City shall have no obligation to the Developer under this Agreement to reimburse the Developer for the Reimbursement Amount, if the City, at the time or times such payment is to be made is entitled under Section 4.2 to exercise any of the remedies set forth therein as a result of an Event of Default which has not been cured.

Section 3.3. Reimbursement: Tax Increment Revenue Note. The City shall reimburse the payments made by the Developer under Section 3.1 for costs of the Site Improvements through the issuance of the City's TIF Note in substantially the form attached to this Agreement as Exhibit B, subject to the following conditions

(1) The TIF Note shall be dated, issued and delivered when the Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the construction of the Site Improvements has been completed and that the Developer has incurred and paid all costs of the Site Improvements, as described in and limited by Section 3.1 and shall have submitted paid invoices for the costs of construction of the Site Improvements in an amount not less than the Reimbursement Amount

(2) The principal amount of the TIF Note shall be payable solely from the Tax Increments.

(3) On each Note Payment Date and subject to the provisions of the TIF Note, the City shall pay, against the principal outstanding on the TIF Note, the Tax Increments received by the City during the preceding 6 months. All such payments shall be applied to reduce the principal of the TIF Note.

(4) The TIF Note shall be a special and limited obligation of the City and not a general obligation of the City, and only Tax Increments shall be used to pay the principal of the TIF Note.

(5) The City's obligation to make payments on the TIF Note on any Note Payment Date or any date thereafter shall be conditioned upon the requirements that: (A) there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement and (B) this Agreement shall not have been rescinded pursuant to Section 4.2.

(6) The TIF Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit B. In the event of any conflict between the terms of the TIF

Note and the terms of this Section 3.3, the terms of the TIF Note shall govern. The issuance of the TIF Note pursuant and subject to the terms of this Agreement, and the taking by the City of such additional actions as bond counsel for the TIF Note may require in connection therewith, are hereby authorized and approved by the City.

Section 3.4. Business Subsidies Act.

(1) In order to satisfy the provisions of Minnesota Statutes, Sections 116J.993 to 116J.995 (the "Business Subsidies Act"), the Developer acknowledges and agrees that the amount of the "Business Subsidy" granted to the Developer under this Agreement is \$363,814 which is the Reimbursement Amount for the Site Improvements and that the Business Subsidy is needed because the Project is not sufficiently feasible for the Developer to undertake without the Business Subsidy. The Tax Increment District is an economic development district and the public purpose of the Business Subsidy is to encourage the construction of manufacturing facilities in the City.

(2) The creation of jobs has been determined not to be a goal of the City for the Project pursuant to Minnesota Statutes, Sections 116J.993 to 116J.995 and the City has held a public hearing and set the wage and job goals at zero.

(3) The Developer shall provide the City with information about the Project as requested by the City so that the City can satisfy the reporting requirements of Minnesota Statutes, Section 116J.994, Subd. 8.

(4) The Developer agrees to continue operations within the City for at least five (5) years after the benefit date, which is the date the Developer completes construction of the Project.

(5) Other than the City providing the TIF Note, there are no other state or local government agencies providing financial assistance for the Project.

(6) Cemstone Products Company is the parent corporation of the Developer.

(7) The Developer certifies that it does not appear on the Minnesota Department of Employment and Economic Development's list of recipients that have failed to meet the terms of a business subsidy agreement.

ARTICLE IV

EVENTS OF DEFAULT

Section 4.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

(1) Failure by the Developer to timely pay any ad valorem real property taxes assessed and special assessments or other City charges with respect to the Development Property, when due and payable.

(2) Failure of the Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

(3) The holder of any mortgage on the Development Property or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

(4) If the Developer shall:

(a) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(b) make an assignment for the benefit of its creditors; or

(c) admit in writing its inability to pay its debts generally as they become due;
or

(d) be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or a receiver, liquidator or trustee of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within sixty (60) days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

Section 4.2. Remedies on Default. Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice to the Developer, but only if the Event of Default has not been cured within said thirty (30) days:

(1) The City may suspend its performance under this Agreement and the TIF Note until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.

(2) The City may cancel and rescind the Agreement and the TIF Note.

(3) The City may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 4.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 4.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.5. Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

Section 4.6. Indemnification of City.

(1) The Developer (a) releases the City and its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees (collectively, the "Indemnified Parties") from, (b) covenants and agrees that the Indemnified Parties shall not be liable for, and (c) agrees to indemnify and hold harmless the Indemnified Parties against, any claim, cause of action, suit or liability for loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or on the Development Property.

(2) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement or to any actions undertaken by the City which are not contemplated by this Agreement but shall, in any event and without regard to any fault on the part of the City, apply to any pecuniary loss or penalty (including interest thereon from the date the loss is incurred

or penalty is paid by the City at a rate equal to the Prime Rate) as a result of the Project causing the Tax Increment District to not qualify or cease to qualify as an "economic development district" under Section 469.174, Subdivision 12, of the Act and Section 469.176, Subdivision 4c. or to violate limitations as to the use of Tax Increments as set forth in Section 469.176, Subdivision 4c.

(3) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

ARTICLE V

DEVELOPER'S OPTION TO TERMINATE AGREEMENT

Section 5.1. The Developer's Option to Terminate. This Agreement may be terminated by the Developer, if (i) the Developer is in compliance with all material terms of this Agreement and no Event of Default has occurred; and (ii) the City fails to comply with any material term of this Agreement, and, after written notice by the Developer of such failure, the City has failed to cure such noncompliance within ninety (90) days of receipt of such notice, or, if such noncompliance cannot reasonably be cured by the City within ninety (90) days, of receipt of such notice, the City has not provided assurances, reasonably satisfactory to the Developer, that such noncompliance will be cured as soon as reasonably possible.

Section 5.2. Action to Terminate. Termination of this Agreement pursuant to Section 5.1 must be accomplished by written notification by the Developer to the City within sixty (60) days after the date when such option to terminate may first be exercised. A failure by the Developer to terminate this Agreement within such period constitutes a waiver by the Developer of its rights to terminate this Agreement due to such occurrence or event.

Section 5.3. Effect of Termination. If this Agreement is terminated pursuant to this Article V, this Agreement shall be from such date forward null and void and of no further effect; provided, however, the termination of this Agreement shall not affect the rights of either party to institute any action, claim or demand for damages suffered as a result of breach or default of the terms of this Agreement by the other party, or to recover amounts which had accrued and become due and payable as of the date of such termination. Upon termination of this Agreement pursuant to this Article V, the Developer shall be free to proceed with the Project at its own expense and without regard to the provisions of this Agreement; provided, however, that the City shall have no further obligations to the Developer with respect to reimbursement of the expenses set forth in Section 3.3; or to make any further payments on the TIF Note.

ARTICLE VI

ADDITIONAL PROVISIONS

Section 6.1. Restrictions on Use. Until termination of this Agreement, the Developer agrees for itself, its successors and assigns and every successor in interest to the Development Property, or any part thereof, that the Developer and such successors and assigns shall operate, or cause to be operated, the Project as a manufacturing facility, which may include a contractor store, glass processing equipment, office, shop and truck maintenance facility and parking of ready mix trucks and equipment and shall devote the Development Property to, and in accordance with, the uses specified in this Agreement.

Section 6.2. Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Development Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successor or on any obligations under the terms of this Agreement.

Section 6.3. Titles of Articles and Sections. Any titles of the several parts, articles and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 6.4. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (1) in the case of the Developer is addressed to or delivered personally to:

Cemstone Concrete Materials, LLC
Attention: Tim Becken
2025 Centre Pointe Boulevard #300
Mendota Heights, MN 55120

- (2) in the case of the City is addressed to or delivered personally to the City at:

City of Owatonna, Minnesota
Attention: Administrator
Owatonna City Hall
540 West Hills Circle
Owatonna, MN 55060

with a copy to:

Briggs and Morgan, P.A.
Attention: Mary Ippel
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

Walbran & Furness, Chartered
Attention: Mark M. Walbran
140 East Main Street
P.O. Box 273
Owatonna, MN 55060

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

Section 6.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 6.6. Law Governing. This Agreement will be governed and construed in accordance with the laws of the State.

Section 6.7. Expiration. This Agreement shall expire on the Termination Date.

Section 6.8. Provisions Surviving Rescission or Expiration. Sections 4.5 and 4.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 6.9. Assignability of Agreement. This Agreement may be assigned only with the consent of the City. The TIF Note may only be assigned pursuant to the terms of the TIF Note.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and on its behalf and the Developer has caused this Agreement to be duly executed in its name and on its behalf, on or as of the date first above written.

CITY OF OWATONNA, MINNESOTA

By _____
Its Mayor

By _____
Its Administrator

This is a signature page to the Development Agreement by and between the City of Owatonna, Minnesota and Cemstone Concrete Materials, LLC.

CEMSTONE CONCRETE MATERIALS, LLC

By _____
Its _____

This is a signature page to the Development Agreement by and between the City of Owatonna, Minnesota and Cemstone Concrete Materials, LLC.

EXHIBIT A

Description of Development Property

Property located in the City of Owatonna, Steele County, Minnesota with the following
Parcel Identification Number:

17-577-0102

EXHIBIT B

Form of TIF Note

No. R-1

\$ _____

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF STEELE
CITY OF OWATONNA

TAX INCREMENT REVENUE NOTE
(CEMSTONE PROJECT)

The City of Owatonna, Minnesota (the "City"), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the amounts hereinafter described (the "Payment Amounts") to Cemstone Concrete Materials, LLC (the "Developer") or its registered assigns (the "Registered Owner"), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

The principal amount of this Note shall equal from time to time the principal amount stated above, as reduced to the extent that such principal installments shall have been paid in whole or in part pursuant to the terms hereof; provided that the sum of the principal amount listed above shall in no event exceed \$363,814 as provided in that certain Development Agreement, dated as of April 7, 2020, as the same may be amended from time to time (the "Development Agreement"), by and between the City and the Developer. This Note bears no interest.

The amounts due under this Note shall be payable on August 1, 2020, and on each February 1 and August 1 thereafter to and including February 1, 2029, or, if the first should not be a Business Day (as defined in the Development Agreement), the next succeeding Business Day (the "Payment Dates"). On each Payment Date the City shall pay by check or draft mailed to the person that was the Registered Owner of this Note at the close of the last business day of the City preceding such Payment Date an amount equal to the sum of the Tax Increments (hereinafter defined) received by the City during the six month period preceding such Payment Date. All payments made by the City under this Note shall be applied to principal.

The Payment Amounts due hereon shall be payable solely from 95% of tax increments (the "Tax Increments") from the Development Property (as defined in the Development Agreement) within the City's Tax Increment Financing District No. 3-11 (the "Tax Increment District") within its Development District No. 3 which are paid to the City and which the City is entitled to retain pursuant to the provisions of Minnesota Statutes, Sections 469.174 through 469.1794, as the same may be amended or supplemented from time to time (the "Tax Increment Act"). This Note shall terminate and be of no further force and effect following the last Payment Date defined above, on any date upon which the City shall have terminated the Development Agreement under Section 4.2(2) thereof or the Developer shall have terminated the Development Agreement under Article V

thereof, on the date the Tax Increment District is terminated, or on the date that all principal payable hereunder shall have been paid in full, whichever occurs earliest.

The City makes no representation or covenant, expressed or implied, that the Tax Increments will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City's payment obligations hereunder shall be further conditioned on the fact that no Event of Default under the Development Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder, but such unpaid amounts shall become payable if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Development Agreement the City elects to cancel and rescind the Development Agreement, the City shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Development Agreement, including without limitation Section 3.2 thereof, for a fuller statement of the rights and obligations of the City to pay the principal of this Note, and said provisions are hereby incorporated into this Note as though set out in full herein.

This Note is a special, limited revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. This Note is not a general obligation of the City and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal of this Note and no property or other asset of the City, save and except the above-referenced Tax Increments, is or shall be a source of payment of the City's obligations hereunder.

This Note is issued by the City in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including the Tax Increment Act.

This Note may be assigned only with the consent of the City which consent shall not be unreasonably withheld. In order to assign the Note, the assignee shall surrender the same to the City either in exchange for a new fully registered note or for transfer of this Note on the registration records for the Note maintained by the City. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional, charter or statutory limitation thereon.

IN WITNESS WHEREOF, City of Owatonna, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Mayor and Administrator and has caused this Note to be dated as of _____, 20____.

Administrator

Mayor

DO NOT EXECUTE UNTIL PAID INVOICES FOR SITE IMPROVEMENTS ARE GIVEN TO THE CITY – REFER TO SECTION 3.3(1).

CERTIFICATION OF REGISTRATION

It is hereby certified that the foregoing Note was registered in the name of Cemstone Concrete Materials, LLC, and that, at the request of the Registered Owner of this Note, the undersigned has this day registered the Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

<u>NAME AND ADDRESS OF REGISTERED OWNER</u>	<u>DATE OF REGISTRATION</u>	<u>SIGNATURE OF ADMINISTRATOR</u>
Cemstone Concrete Materials, LLC Attention: _____ 2025 Centre Pointe Boulevard #300 Mendota Heights, MN 55120	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EXHIBIT C

Site Improvements

Landscaping, including irrigation
Foundations and Footings
Grading/earthwork
Engineering
Survey
Environmental Testing
Soil Borings
Site Preparation
Onsite Utilities
Storm Water/Ponding
Outdoor Lighting
Onsite Road, Curb, Gutter, Driveway, Sidewalk and Streetscape Improvements
Parking

LEASE AGREEMENT

BY AND BETWEEN

CITY OF OWATONNA, MINNESOTA,

as Landlord

and

CEMSTONE CONCRETE MATERIALS, LLC,

as Tenant

OWATONNA, MINNESOTA

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Exhibit A-2	Depiction of the Premises

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of the 8th day of May, 2020, by and between CITY OF OWATONNA, a home rule city and political subdivision of the State of Minnesota (“Landlord”), and CEMSTONE CONCRETE MATERIALS, LLC, an Iowa limited liability company (“Tenant”). In consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, Landlord leases, rents and demises the Premises to Tenant, and Tenant accepts and leases the Premises from Landlord, upon the following terms and conditions:

ARTICLE 1 -BASIC LEASE PROVISIONS AND DEFINITIONS

1.1 Basic Lease Provisions and Definitions. This Article is an integral part of this Lease and all of the following terms are incorporated into this Lease in all respects. In addition to other terms which are defined in Article 21 and elsewhere in this Lease, the following terms when used in this Lease shall have the meanings set forth in this Article.

1.2 Landlord Address. Landlord’s Address is

City of Owatonna
Attn: Kris Busse
540 West Hills Circle
Owatonna, MN 55060
Kris.busse@ci.owatonna.mn.us

or at such other location as allowed under the notice provision of this Lease.

1.3 Tenant Address. Tenant’s Address is as follows:

Cemstone Concrete Materials, LLC
Attn: Tim Becken
2025 Centre Pointe Boulevard, Suite 300
Mendota Heights, MN 55102
timbecken@cemstone.com

or at such other location as allowed under the notice provision of this Lease.

1.4 Premises. The land consisting of approximately 7.8 acres and to be legally described as set forth in Exhibit A-1 (“Land”), together with all the improvements within the land, including, but not limited to buildings (“Building”), parking areas, driveways and all other improvements, and all easements and rights benefiting or appurtenant to the Premises. The Premises is depicted in Exhibit A-2 and is located on 639 Riverside Avenue in City of Owatonna, County of Steele, State of Minnesota.

1.5 Rent Commencement Date. May 8, 2020.

1.6 Lease Term. The period beginning on the Rent Commencement Date and ending on the date that is the last day of the calendar month that is five (5) years after the Rent Commencement Date.

1.7 Base Rent. Tenant shall pay no Base Rent during the Lease Term.

1.8 Additional Rent. All payments required to be made by Tenant to Landlord under this Lease.

1.9 Permitted Use. The Premises may be used as a ready-mix concrete plant and aggregate facility, including a contractor store, glass processing equipment, office, shop and truck maintenance facility and parking of ready mix trucks and equipment.

ARTICLE 2 -PREMISES AND LEASE TERM

2.1 Premises. Landlord hereby leases, rents and demises the Premises to Tenant, and Tenant hereby accepts and leases the Premises from Landlord.

2.2 Lease Term. This Lease shall be for the term defined as the Lease Term in Article 1. The Lease Term shall commence on the Rent Commencement Date and shall terminate at 11:59 p.m. of the Expiration Date. Notwithstanding the fact that the Lease Term commences on the Rent Commencement Date, all terms and conditions of this Lease, and all of the obligations of Landlord and Tenant under this Lease, are binding and of full force and effect from and after the Effective Date.

ARTICLE 3 -USE AND OTHER COVENANTS

3.1 Permitted Uses. Tenant shall occupy and use the Premises solely for the Permitted Use, subject to both Governmental Regulations and the requirement of this Lease. If any governmental or third party approvals are required for the Permitted Use, it shall be Tenant's responsibility, at its sole cost, to obtain and maintain such approvals.

3.2 Prohibited Uses. Tenant shall not use or allow the Premises to be used for any unlawful purpose. Tenant shall not commit or allow to be committed any nuisance or waste at or outside the Premises and shall take all reasonable action to prevent odors, emissions, fumes, liquids or other substances or noise or vibrations from escaping or extending beyond the Premises. Tenant shall not do or permit anything to be done at or outside the Premises, nor bring or keep anything therein, which will cancel, affect or unreasonably increase the existing rate of any insurance. Tenant shall not: (a) keep any live animals at the Premises; (b) use the Premises as living quarters, sleeping quarters or for lodging purposes; or (c) store or warehouse goods other than reasonably required in the operation of its business.

3.3 Continuous Operation of Business. Tenant shall open for business with the public at the Premises as a concrete plant and aggregate facility, including, without limitation, the retail sale of professional grade supplies, but shall have no obligation to continuously occupy and operate its business in all or any portion of the Premises.

3.4 Absolute Triple Net Lease. Except as otherwise expressly provided in this Lease, Landlord and Tenant do each state and represent that it is their respective intention that this Lease be interpreted and construed as an absolute triple net lease and all Additional Rent shall be paid by Tenant to Landlord without abatement, deduction, diminution, deferment, suspension, reduction, setoff, defense or counterclaim with respect to the same. The obligations of Tenant shall not be affected by reason of damage to or destruction of the Premises from whatever cause, or from any condemnation, eminent domain or like proceedings, or from any other cause whether similar or dissimilar to the foregoing or by any laws or customs to the contrary. It is the further express intent of Landlord and Tenant that, except as otherwise expressly provided in this Lease: (a) the obligations of Landlord and Tenant hereunder shall be separate and independent covenants and agreements and that the Additional Rent, and all other charges and sums payable by Tenant hereunder, shall commence at the times provided herein and shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to an express provision in this Lease; (b) all costs and expenses of whatsoever character or kind, general or special, ordinary or extraordinary, foreseen or unforeseen, and of every kind and nature whatsoever that may be necessary or required in and about the Premises, or any portion thereof, and Tenant's possession or authorized use thereof during the term of this

Lease, shall be paid by Tenant and all provisions of this Lease are to be interpreted and construed in light of the intention expressed in this Section; (c) all Real Estate Taxes, insurance premiums, utility costs, repair, maintenance and replacement costs of the Building, Premises and all other costs, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature whatsoever relating to the Premises, or any portion thereof, which may arise or become due during the term of this Lease shall be paid or discharged by Tenant as Additional Rent; and (d) Tenant hereby agrees to indemnify, defend and save Landlord harmless from and against such costs, fees, charges, expenses, reimbursements and obligations, and any interest thereon.

3.5 Quiet Enjoyment. Tenant, upon fully complying with and promptly performing all of the terms and conditions of this Lease, and upon the prompt and timely payment of all amounts due, shall have quiet and peaceful possession and enjoyment of the Premises for the Lease Term, subject to the terms and conditions of this Lease, without interference by any person or entity claiming by, through or under Landlord.

3.6 Hazardous Substances. Tenant shall not store, generate, discharge, treat, dispose of, sell, handle or transport any Hazardous Substances on or about the Premises, except for Hazardous Substances commonly utilized in the operation of the Tenant's business, but then only in such quantities and to the extent allowed under Governmental Regulations. In all events any Hazardous Substances shall be handled and stored in strict compliance with all Governmental Regulations and environmental requirements, and evidence of such compliance shall be given to Landlord if requested by Landlord. All Hazardous Substances shall be disposed of in accordance with Governmental Regulations and environmental requirements. In no event shall any Hazardous Substances be disposed of on the Premises through the sewer system serving the Premises or stored underground. In addition, Tenant shall comply with, and immediately, upon request, provide Landlord with copies of all permits, inspection reports, monitoring reports, licenses, orders, demands, compliance requests, edicts or other documents filed, served, delivered or transmitted either with, to or from the Minnesota Department of Health, Minnesota Pollution Control Agency or the Environmental Protection Agency (or any successor organization) or other governmental body. If Tenant becomes aware that any Hazardous Substances have been released or are located at or beneath the Premises, Tenant shall immediately give written notice to Landlord of such condition. At the end of the Lease Term or earlier termination of Tenant's possession of the Premises, Tenant shall remove, at its cost, and in full compliance with all applicable Governmental Regulations and environmental requirements, all Hazardous Substances from the Premises. Tenant agrees to defend, indemnify, and hold the Landlord harmless from all claims, lawsuits, costs, expenses, damages or liabilities (including reasonable attorneys' fees and costs) arising from Tenant's breach of any of the obligations or representations contained in this Section, including costs of remediation, cleanup and detoxification of the Premises. Tenant further agrees to defend, indemnify, and hold Landlord harmless from all claims, lawsuits, costs, expenses, damages or liabilities (including reasonable attorneys' fees and costs) as a result of any Hazardous Substances located at the Premises not caused or permitted by Landlord. The provisions of this Section shall survive the expiration or termination of this Lease.

Tenant, at its cost, further agrees to comply with each present and future Governmental Regulations and environmental requirements regulating the collection, sorting, separation, recycling of waste products, garbage, refuse, infectious waste and trash (collectively, the "Waste") in or about the Premises. Tenant shall sort and separate the Waste into such containers and categories as required by Governmental Regulations and environmental requirements. Such separate receptacles shall be removed from the Premises in accordance with collection schedules prescribed by law or otherwise reasonably prescribed by Tenant.

3.7 Compliance with Laws. From and after the Rent Commencement Date, Tenant shall, at its cost, promptly comply with all Governmental Regulations with respect to the Building and Premises, including,

but not limited to, compliance with Governmental Regulations as they relate to or result from, any alterations or improvements performed by or on behalf of Tenant at the Premises, or any Governmental Regulations enacted from and after the Rent Commencement Date. Further, Tenant shall comply with all Governmental Regulations in connection with the Permitted Use and the operation, use or maintenance of any personal property, machinery and equipment at the Building or Premises from and after the Rent Commencement Date.

3.8 Signs. Tenant shall, at its cost, install and maintain exterior building signs and other site signs at all times during the Lease Term. Tenant's signs are subject to the following terms and conditions: (a) prior to the installation, modification or replacement of any signs, Tenant shall obtain the written approval of Landlord to specific signage (which approval shall not be unreasonably withheld, delayed or conditioned); (b) Tenant shall be responsible for all costs to construct and install Tenant's signs; (c) Tenant shall obtain all requisite licenses, permits and governmental approvals for Tenant's signs, and Tenant acknowledges that Landlord does not represent that any such licenses, permits and governmental approvals shall be forthcoming; (d) Tenant shall, at its sole cost, maintain all such Tenant signs and associated wiring consistent in a manner with other commercial operations in the Owatonna, Minnesota area and shall promptly perform all repairs and replacements (or removal if Tenant desires to remove a sign rather than replace it) necessary to maintain compliance with such standard; (e) Tenant's signs shall at all times comply with all Governmental Regulations, and Landlord's approval of Tenant's signs is not a representation of compliance; (f) Tenant assumes all risk of loss with respect to Tenant's signs and associated wiring; (g) upon the expiration or earlier termination of the Lease, Tenant shall, at its sole cost, remove Tenant's signs and repair and restore the Building to the condition substantially similar to that existed prior to the installation of Tenant's signs (including attempting to eliminate variations in coloration resulting from varying levels of exposure to the elements). Additionally, so long as the same complies with Governmental Regulations and the Restrictions, Tenant shall have the right to erect temporary signage or other promotional items that advertise significant promotional events, subject to approval by Landlord as set forth above, and Tenant may, without Landlord's consent, install any and all signs, displays and other advertising matter within the Premises and up to and on the windows as Tenant elects, in its sole discretion.

ARTICLE 4 -REAL ESTATE TAXES, UTILITIES AND SERVICES

4.1 Real Estate Taxes. Tenant shall pay, prior to the date due, all Real Estate Taxes to the appropriate payee, and Landlord shall promptly forward any tax bills received to Tenant at the notice address set forth in this Lease. Upon Landlord's written request, Tenant shall provide Landlord with evidence of payment within thirty (30) days of such request. If Tenant fails to pay the Real Estate Taxes to the taxing authority when due, Tenant shall be responsible for the payment of all late charges, interest and other penalties resulting from such delinquency; provided that Tenant shall not be responsible for any late charges, interest or penalties for Real Estate Taxes that are not due to Tenant's failure to timely pay such Real Estate Taxes; and Landlord represents that no Real Estate Taxes are delinquent as of the Rent Commencement Date.

If Tenant fails to pay the Real Estate Taxes to the taxing authority when due, Landlord may, at its option, pay the delinquent and/or future Real Estate Taxes directly to the taxing authority on behalf of Tenant upon fifteen (15) day written notice to Tenant with the opportunity by Tenant to cure such failure during the fifteen (15) day period. Upon receipt of an invoice from Landlord, Tenant shall immediately reimburse Landlord for all Real Estate Taxes, late charges, interest and penalties paid, together with an additional administrative charge of fifteen percent (15%) calculated on the amount paid by Landlord, plus interest accruing at the Default Rate of Interest from the date of submission of the invoice to Tenant.

Real Estate Taxes for the Premises shall be allocated on a per diem basis with adjustment made between the parties as needed at the beginning and end of the Lease Term. Tenant shall be responsible for the per diem portion of any Real Estate Taxes due and payable relating to the period on and after the rent

Commencement Date. Both parties shall promptly reimburse the other party for any Real Estate Taxes paid by one party but the responsibility of the other party hereunder. To the extent Landlord or Tenant pays Real Estate Taxes due and payable relating to the time period prior to or following the end of the Lease Term that are not the obligation of the party, Landlord or Tenant, as the case may be, shall promptly reimburse the other so that the payment of Real Estate Taxes due and payable is consistent with the obligations hereunder.

4.2 Additional Tax Liability of Tenant. Tenant shall pay, before delinquency, all taxes levied, assessed or payable upon all or any part of Tenant's leasehold improvements, equipment, furniture, fixtures and other personal property located at the Premises. If any governmental authority or unit under any present or future law shall in any manner levy a tax on Rent or a tax in any form against Landlord from income derived from the leasing or rental of the Premises, such tax shall be paid by Tenant as Additional Rent.

4.3 Real Estate Tax Appeals. Tenant may, in its discretion, retain professional consultants and/or counsel to analyze the Real Estate Taxes and to prosecute any protests, refunds and appeals for any period during the Lease Term. Any refund obtained shall first be applied to pay the costs and expenses of the action and then to reimburse all parties who contributed to the payment of the Real Estate Taxes being refunded in a proportion reasonably related to the amounts paid for the Real Estate Taxes being refunded. Tenant shall not appeal any Real Estate Taxes without Landlord's prior written approval, which approval shall not be unreasonably withheld.

4.4 Utilities. If applicable, Tenant shall be responsible for the payment of all utility access, hook-up and connection charges for the Building, including, but not limited to, sewer access charges (SAC) and water access charges (WAC). Commencing with the Rent Commencement Date, Tenant shall pay when due, directly to the appropriate supplier, all utilities and services supplied to the Building and Premises, together with all taxes levied or other charges on all utilities and governmental charges based on utility consumption; provided, however, that Landlord and Tenant acknowledge that there shall be no charge for electricity services provided to the Premises, as City-owned property. Upon request by Landlord, Tenant shall provide Landlord with evidence of payment of the charges for all requested utilities and services supplied to the Building and Premises. If Tenant fails to pay the utilities and services supplied to the Building and Premises when due, Landlord may, at its option, pay the delinquent and/or future utilities and services supplied to the Building and Premises directly to the appropriate supplier on behalf of Tenant upon fifteen (15) day written notice to Tenant with the opportunity by Tenant to cure such failure during the fifteen (15) day period. Upon receipt of an invoice from Landlord, Tenant shall promptly reimburse Landlord for all utilities and services, late charges, interest and penalties paid, together with an additional administrative charge of fifteen percent (15%) calculated on the amount paid by Landlord, plus interest accruing at the Default Rate of Interest from the date of submission of the invoice to Tenant.

Tenant shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits or other facilities by which such utilities are supplied to, distributed in or serve the Premises. If Tenant desires to install any equipment which requires additional utility facilities or utility facilities of a greater capacity than the existing facilities, such installation shall be subject to Landlord's prior written approval. If approved by Landlord, Tenant shall be responsible, at its cost, for the installation of all such utility facilities and the utility services provided thereunder.

4.5 Trash Removal. Tenant shall, at its cost, be responsible to provide a regular service for trash removal from the Premises. Tenant shall contract directly with a waste management company for the removal of Tenant's trash and shall furnish its own dumpsters/containers at the Premises. Tenant shall, at its cost, be responsible for any recycling. Tenant shall, at its cost, also be responsible for regular pest and vermin control at the Premises.

4.6 Utility and Service Interruptions. Landlord shall not be liable to Tenant for damages if any utilities or services are interrupted or terminated because of repairs, installations, improvements or any other cause. No interruption or termination of utility services shall relieve Tenant of its obligation to pay Rent or the performance of any other obligation under this Lease.

ARTICLE 5 -MAINTENANCE OF THE PREMISES

5.1 Maintenance Obligations of Landlord. Landlord shall have no obligation to maintain, repair or replace the Building, any site work or other improvements located within the Premises, or any portion or component of the Building or any site work or other improvement located within the Premises.

5.2 Maintenance Obligations of Tenant. Tenant, at its cost, shall maintain the Building and Premises in reasonable good order, and to comply with fire, health and safety codes. Further, Tenant, at its cost, shall repair or replace any doors or windows that break or become damaged during the term of the Lease.

Tenant, at its cost, shall also reasonably maintain all site improvements located within the Premises to comply with fire, safety and health codes. Tenant, at its cost, shall: (1) promptly remove snow and ice from all parking areas, roadways, walkways and sidewalks within the Premises in accordance with standard practices; (2) regularly mow, water and maintain landscaped and planted areas within the Premises; and (3) regularly sweep the roadways and parking areas within the Premises.

Tenant, at its cost, shall reasonably maintain all structural components and exterior surfaces of the Building, including, but not limited to, the roof and roof membrane, footings, foundations, exterior and structural walls, gutters and downspouts, exterior portions of the exterior walls (including paint), canopies and awnings, and the underground utilities serving the Premises (wherever located) in the same condition as on the Rent Commencement Date, ordinary wear and tear excepted. Neither Tenant nor its contractors or agents shall without the prior written notice to Landlord: (i) penetrate or modify the roof or roof membrane; or (ii) access the roof to install, maintain, repair or replace any equipment or improvements, including, but not limited to, the HVAC.

5.3 Failure by Tenant to Maintain the Premises. If Tenant has failed to perform any its obligations as required under Section 5.2 of this Lease, Landlord shall provide written notice to Tenant of such failure. If Tenant, following such written notice, has failed to commence a cure for such failure within ten (10) days following such written notice to Tenant, or fails to complete the cure for such failure within thirty (30) following such written notice to Tenant, Landlord may, but shall not be obligated to, perform any obligation of Tenant under Section 5.2 of this Lease. In the event of an emergency (being defined as an imminent threat of injury to persons or damage to the Premises), Landlord shall not be required to provide notice to Tenant and Landlord shall have the right to make such temporary, emergency repairs to the Premises to the extent as may be reasonably necessary to prevent imminent damage to the Premises, or imminent injury to persons. The actual, direct and reasonable cost of Landlord to perform any of Tenant's obligations, plus an additional administrative charge of fifteen percent (15%) calculated on such cost (if not an emergency), shall be due and payable twenty (20) days after submission by Landlord to Tenant of an invoice, plus interest accruing at the Default Rate of Interest from the date of submission of the invoice to Tenant.

ARTICLE 6 -ASSIGNMENT AND SUBLETTING

6.1 Assignment by Tenant. Tenant may not assign or transfer this Lease or sublet any portion of the Building and Premises, whether voluntary or by operation of law, without the prior written approval of Landlord, which approval may be withheld at Landlord's sole discretion.

6.2 Assignment by Landlord. The interest of Landlord in this Lease may be sold, conveyed, assigned or otherwise transferred without the consent of Tenant. Upon any such transfer of Landlord's interest in this Lease, Landlord shall have no further obligation under this Lease or to Tenant, except to the extent any obligation accrued prior to the date of such transfer.

ARTICLE 7 -ACCESS BY LANDLORD

7.1 Access. Upon reasonable prior notice, Landlord and Landlord's employees, agents and contractors shall have the right to enter the Premises at any time to examine the same, to show the Premises to prospective purchasers and lenders, to make repairs, alterations, improvements or additions as Landlord may deem necessary or desirable and as otherwise allowed under the terms of this Lease. Landlord shall use reasonable efforts to minimize the disturbance or inconvenience to Tenant's business at the Premises. In the event of an emergency, no prior notice shall be required, but Landlord shall provide reasonable notice to Tenant after Landlord has entered the Premises.

ARTICLE 8 -ALTERATIONS BY TENANT

8.1 Alterations by Tenant. Tenant shall not make any alterations, additions or improvements in or to the Building or Premises or any part thereof, or attach any fixtures or equipment thereto to the extent such alterations, additions or improvements will materially and adversely affect the structural, exterior or roof elements of the Building, or the mechanical, electrical, plumbing or life safety systems of the Building, or access or parking at the Premises, without Landlord's prior written consent. To the extent not restricted by the foregoing, Tenant shall have the right to make any alterations, additions or improvements in or to the Premises or any part thereof, or attach any fixtures or equipment thereto without the consent of the Landlord. All alterations, additions and improvements in or to the Premises to which Landlord consents or are otherwise permitted hereunder shall be made by Tenant at its cost and shall comply with all Governmental Regulations, including the ADA. If the Premises must be altered or improved to comply with Governmental Regulations as a result of Tenant's alterations, additions or improvements or use of the Premises, Tenant shall be responsible for all costs to alter or improve the Premises to comply with Governmental Regulations. Tenant shall indemnify and hold Landlord harmless from all claims, lawsuits, costs, expenses, damages or liabilities (including reasonable attorneys' fees and costs) arising or resulting from Tenant's alterations, additions or improvements. Ownership of all alterations, additions and improvements shall remain with Tenant until the Expiration Date or sooner termination of this Lease, at which time ownership shall vest in Landlord, except that Tenant's trade fixtures, equipment and personal property shall remain the property of Tenant. Landlord's approval of any alteration, addition or improvement shall not be deemed an acceptance or approval of any item that is in violation of Governmental Regulations and shall not be a representation of compliance.

ARTICLE 9 -INSURANCE

9.1 Property Insurance.

(a) Building and Improvements. Tenant shall, at its cost, carry and maintain reasonable limits of property insurance at all times during the Lease Term insuring the Building and all improvements located at the Premises. The property insurance coverage maintained by Tenant shall include: (1) special form insurance against direct cause of physical loss, including the cost of debris removal, in the amount of not less than the full insurable replacement cost of the Building (excluding the cost of excavations, foundations and footings) and all improvements located at the Premises, together with an agreed-amount endorsement and a replacement cost endorsement; (2) broad form or comprehensive boiler and machinery insurance on all equipment and pressure-fired vessels or apparatus at the Premises which provides for full repair and replacement cost coverage; and (3) any

additional commercially reasonable insurance as determined by Landlord. Notwithstanding the above, Tenant's requirement to carry such insurance and endorsements shall be subject to a commercially reasonable deductible and the reasonable availability and expense of such insurance or endorsements.

(b) Tenant's FF&E. Tenant shall, at its cost, carry and maintain a special form policy of property insurance at all times during the Lease Term insuring Tenant's leasehold improvements, merchandise, trade fixtures, furniture, equipment and personal property at the Premises in the amount of not less than the full insurable replacement cost of such items.

9.2 Liability Insurance. Tenant, at its cost, shall carry and maintain a policy of commercial general liability insurance covering the Premises and the business operated by Tenant in which the per occurrence combined single limit of liability shall not be less than three million dollars (\$3,000,000). The above-described limits of liability shall be adequate so long as Tenant also maintains an umbrella policy of insurance with per occurrence limits of liability of not less than ten million dollars (\$5,000,000). Tenant's liability insurance coverage may be subject to a reasonable deductible.

9.3 Workers' Compensation and Employers Liability Insurance. Tenant shall keep in full force and effect, at its sole cost and expense, workers' compensation insurance in accordance with the laws of the state where the Premises is located. Tenant shall also keep in full force and effect, at its sole cost and expense, employers liability insurance in the amount of One Million Dollars (\$1,000,000) bodily injury per accident and One Million Dollars (\$1,000,000) bodily by disease both as a policy limit and per employee.

9.4 Automobile Liability Insurance. Tenant shall keep in full force and effect, at its sole cost and expense, business automobile liability insurance covering all owned, non-owned and hired or borrowed vehicles of Tenant used in connection with the operation of its business from the Premises, in which the limits shall be not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence combined single limit, insuring for bodily injury, death and property damage.

9.5 Pollution Liability Insurance. Tenant shall keep in full force and effect, at its sole cost and expense, pollution liability insurance covering all activities at or around the Premises, in which the limits shall be not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence combined single limit, insuring for bodily injury, death and property damage.

9.6 General Insurance Requirements and Certificates. All insurance policies shall be with an insurance company or companies qualified to do business in the state where the Premises is located. All property insurance shall name Landlord a standard loss payee with respect to Landlord's interest in the Building and all improvements located at the Premises any improvements and betterments. All liability insurance shall name Landlord as an additional insured. To the extent possible, the insurance policies shall: (a) provide that the policy may not be canceled or materially reduced in amount or coverage without at least thirty (30) days prior written notice by the insurer to each insured and all additional insureds; (b) provide that an act or omission of one of the insured or additional insured which would void or otherwise reduce coverage shall not reduce or void the coverage as to any other insured or additional insured; and (c) be "occurrence" based and not "claims made" based.

Tenant shall deliver to Landlord certificates of insurance issued by the insurance carrier for each policy of insurance required to be maintained by Tenant under this Lease that expressly evidence the insurance coverages required under this Lease and that are reasonably acceptable to Landlord. In addition, Landlord may request that Tenant provides an endorsement to each insurance policy evidencing such coverages. All insurance certificates and endorsements shall be delivered to Landlord prior to occupancy of the Premises

by Tenant and, thereafter, within ten (10) days upon written request by Landlord during the term of this Lease.

9.7 Failure of Tenant to Insure. If Tenant fails to maintain the insurance or provide the insurance certificates or endorsements required under this Article, Landlord may, but shall not be obligated to, immediately obtain such insurance. Upon receipt of an invoice from Landlord, Tenant shall immediately reimburse Landlord for the cost of the insurance, together with an additional administrative charge of fifteen percent (15%) calculated on the amount paid by Landlord, plus interest accruing at the Default Rate of Interest from the date of submission of the invoice to Tenant.

ARTICLE 10 -INDEMNIFICATION AND WAIVER OF CLAIMS AND LIMITATION OF LIABILITY

10.1 Indemnification. Tenant shall defend, indemnify, and hold Landlord and Landlord's employees and agents harmless from and against and all third party claims, lawsuits, costs, expenses, damages or liabilities for injury to persons or damage to property and all reasonable attorneys' fees and other costs related thereto that: (a) arise from any breach or default by Tenant of this Lease; (b) arise from any negligent or intentional misconduct of Tenant in, about or to the Premises; (c) arise from any accident, injury, occurrence or damage in, about or to the Premises or that is connected with the Tenant's possession or use of the Premises; or (d) arise from any lien for labor or material furnished to the Premises by Tenant.

10.2 Waiver and Release of Liability. Tenant hereby releases, waives and discharges Landlord and Landlord's employees and agents from all liabilities, claims and rights of recovery for any loss or damage to all property in, on or about the Premises, including, but not limited to, the Building, fixtures, building systems and all improvements located at the Premises, and Tenant's trade fixtures, equipment, personal property and any loss of use or business interruption, from any casualty or other cause whatsoever, regardless whether a result of the negligence of Landlord or otherwise. This Section shall not be deemed to release, waive or discharge any liability for intentional misconduct. This Section shall be inapplicable to the extent prohibited by law or if it would have the effect, but only to the extent it would have the effect, of invalidating any insurance coverage of Tenant. The waiver set forth in this Section controls to the extent in conflict with any indemnification provisions set forth in this Lease.

10.3 Limitation of Liability. In the event of a sale or lease of any land comprising the Premises, or the transfer or assignment of Landlord's interest in this Lease, Landlord shall be released from all further obligations subsequently accruing under this Lease, but shall remain liable for any obligations accruing prior to the date of transfer that the transferring Landlord was required to perform prior to the date of transfer. Tenant agrees to look solely to Landlord's equity interest in the Premises, as it may then be encumbered, for the recovery of any judgment against Landlord. It is specifically understood and agreed that Landlord and Landlord's partners, whether general or limited (if Landlord is a partnership) or its directors, governors, officers, managers, members or shareholders (if Landlord is a limited liability company or corporation), shall never be personally liable for any such judgment. Tenant hereby waives any and all rights, claims and remedies against Landlord for consequential damages or injury or damage to, or interference with, Tenant's business, including but not limited to, compensation or claims for inconvenience, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use. This Section shall not be deemed to release, waive or discharge any liability for intentional misconduct. The waiver set forth in this Section controls to the extent in conflict with the indemnification provisions set forth in this Lease.

ARTICLE 11 -LIENS AND ENCUMBRANCES

11.1 Liens and Encumbrances. Tenant shall keep the Premises free from any liens arising out of any construction work performed by or on behalf of Tenant, materials furnished by or on behalf of Tenant or any other obligations incurred by Tenant. If any such lien is filed against the Premises, Tenant shall give Landlord immediate written notice and shall cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, within thirty (30) days after imposition of the lien. Tenant shall not cause any mortgage, deed of trust, pledge, security agreement, financing statement or other encumbrance to be placed, filed or recorded against the Premises or Tenant's leasehold estate, except for Tenant's trade fixtures, furniture, equipment and personal property. Tenant may grant a security interest in Tenant's trade fixtures, furniture, equipment and personal property to its banking institution in the ordinary course of Tenant's business.

ARTICLE 12 -DEFAULT BY TENANT

12.1 Tenant's Default. The occurrence of any one or more of the following events set forth in this Section shall constitute a default and breach of this Lease by Tenant:

(a) Failure to Pay Rent or Other Amounts Due. The failure by Tenant to make any payment of Rent, as and when due; provided that Tenant shall have the opportunity to cure such default for a period of five (5) days after written notice of the default from Landlord to Tenant. Notwithstanding the above, if Tenant fails to make any payment and notice of this failure has already been given to Tenant at least two times within the previous twelve (12) months, no notice shall be required to be given to Tenant by Landlord during this twelve (12) month period before exercising the remedies available to Landlord.

(b) Failure to Perform and Other Breach. The failure by Tenant to observe, perform or comply with any of the terms or conditions of this Lease (other than those described in subsections 12.1 (a), (c) or (d)) or any other agreements between Landlord and Tenant related to the Premises; provided that Tenant shall have the opportunity to cure such default for a period of thirty (30) days after written notice of the default from Landlord to Tenant, or for a longer time period up to sixty (60) days in the event the cure of such failure reasonably requires more than thirty (30) days to complete and Tenant promptly commences the cure of such failure within the thirty (30) day period and, thereafter, diligently pursues the cure to completion within the sixty (60) day period. Notwithstanding the above, if Tenant fails to perform or comply with any of these terms or conditions of this Lease and notice of this failure has already been given to Tenant at least two times within the previous twelve (12) months, no notice shall be required to be given to Tenant by Landlord during this twelve (12) month period before exercising the remedies available to Landlord.

(c) Bankruptcy or Appointment of Receiver. If (1) Tenant files a petition in bankruptcy or for reorganization or rearrangement under any state or federal bankruptcy or other statute, law or regulation, (2) Tenant makes a general assignment or general arrangement for the benefit of creditors, (3) a petition in bankruptcy or for reorganization or rearrangement is filed against Tenant under any state or federal bankruptcy or other statute, law or regulation and is not dismissed within sixty (60) days, and (4) a custodian, receiver or trustee is appointed to take possession of any substantial part of Tenant's assets located at the Premises or other locations and such appointment is not vacated within sixty (60) days.

12.2 Landlord's Remedies upon Tenant's Default. If Tenant is in default hereunder, Landlord shall be entitled to take any action it deems advisable under one or more of the provisions of this Section, as well

as to take any action available at law or in equity, which remedies shall be cumulative and not alternative, including, but not limited to, the following:

(a) Termination of the Lease. Landlord may give a written termination notice to Tenant specifying a date on which this Lease shall terminate, and, on such date, this Lease shall terminate.

(b) Right of Reentry without Termination. Landlord may, without notice and at its option, terminate Tenant's right of possession of the Premises without terminating this Lease. In the event that Landlord terminates Tenant's right of possession of the Premises without terminating this Lease, then Landlord may reenter and repossess the Premises, with or without process of law, and remove all personal property from the Premises without liability for damages. In such event, Landlord may, but is not obligated to, without notice and at its option, relet the Premises or any part of the Premises upon such terms and conditions acceptable to Landlord in its sole discretion and may collect and receive the rents from such reletting. Landlord shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant about reletting. Landlord may make repairs, alterations and additions to the Premises and redecorate the same to the extent Landlord deems necessary or desirable, in its sole discretion. Reentry, repossession or reletting by Landlord shall not terminate this Lease or release Tenant, in whole or in part, from any obligations under this Lease, including Tenant's obligation to pay Rent. Notwithstanding Landlord's exercise of its right to terminate Tenant's right of possession of the Premises without terminating this Lease, Landlord may at any time thereafter elect to terminate this Lease.

(c) Damages without Termination. In the event that this Lease remains in effect without termination, Tenant shall pay to Landlord: (1) the Rent that would be payable under this Lease by Tenant until the end of the Lease Term; plus (2) all reasonable costs directly or indirectly incurred by Landlord relating to Tenant's default and Landlord's repossession and reletting of the Premises, including, but not limited to: brokerage commissions; reasonable attorneys' fees and legal costs; collection costs; interest at the Default Rate of Interest; lease inducements such as moving or improvement allowances; alteration, repair and remodeling costs and expenses to prepare the Premises for reletting; and the unamortized balance of any Tenant Allowance paid to Tenant and the brokerage commissions incurred by Landlord related to the execution of this Lease; less (3) the rent received by Landlord, if any, from any reletting. The rent received by Landlord from reletting shall be applied (i) first to the payment of any indebtedness of Tenant to Landlord other than Rent, and (ii) second to the payment of any costs incurred by Landlord as set forth in subsection (c)(2) above, and (iii) third to the payment of Rent. If the rent received by Landlord from reletting is insufficient to satisfy the payment of Rent when due under this Lease, then Tenant shall pay Landlord the deficiency. The deficiency shall be calculated and paid monthly. If the rent received by Landlord from reletting is greater than the amount necessary for the payment of rent, the full amount of such excess shall be retained by Landlord and shall in no event be payable to Tenant. Tenant will pay damages monthly on the day Rent is payable under this Lease, and Landlord shall be entitled to recover the same from Tenant on each such day. Tenant agrees that Landlord shall be entitled to periodically sue Tenant for sums due under this Lease or which become due prior to judgment and that such suit or recovery of any amount due Landlord shall not be a defense to any subsequent action brought for any amount not previously reduced to judgment in favor of Landlord. Landlord shall have no affirmative obligation to mitigate its damages in the event of any default by Tenant.

(d) Damages in the Event of Termination. Upon termination of this Lease, Landlord, at its option, may accelerate all amounts owed during the entire Lease Term, including Rent. Upon termination, all amounts owed during the entire Lease Term shall be immediately due and payable, which amounts shall include: (1) the amount of the unpaid Rent owed by Tenant under this Lease

as of the date of termination; (2) the Worth of the unpaid Rent that would have been owed by Tenant under the Lease for the balance of the Lease Term after the date of termination; and (3) all reasonable costs directly or indirectly incurred by Landlord relating to Tenant's default and Landlord's repossession and reletting of the Premises, including, but not limited to: brokerage commissions; reasonable attorneys' fees and legal costs; collection costs; interest at the Default Rate of Interest; lease inducements such as moving or improvement allowances; alteration, repair and remodeling costs and expenses to prepare the Premises for reletting; and the unamortized balance of any Tenant Allowance paid to Tenant and the brokerage commissions incurred by Landlord related to the execution of this Lease. Landlord shall be entitled to recover damages under this subsection in addition to the damages collected in the event of reentry to the extent such damages do not duplicate Landlord's recovery. Landlord shall have no affirmative obligation to mitigate its damages in the event of any default by Tenant. Tenant's obligations under this subsection shall survive the expiration or earlier termination of this Lease.

(e) Personal Property. In the event of default, whether or not Landlord terminates this Lease, Landlord may, at its option, without notice, enter into the Premises and remove Tenant's property, fixtures, furnishings, signs and other evidences of tenancy. Landlord shall not be responsible for the preservation or safekeeping of any such property. All property not claimed by Tenant within fifteen (15) days after default and notice by Landlord to Tenant of this fifteen (15) day period shall be deemed abandoned and conclusively presumed to have been conveyed to Landlord and may be disposed of by Landlord. Any property removed, stored or disposed of by Landlord shall be at the cost and expense of Tenant. Tenant shall pay to Landlord, upon demand, all expenses incurred in such removal, storage or disposal of such property and all costs incurred by Landlord.

12.3 Late Charges. Tenant hereby acknowledges that late payment by Tenant of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any amount of Rent from Tenant shall not be received by Landlord on or before five (5) days after the date such amount is due (whether or not Tenant is in default under this Lease), then Tenant shall pay to Landlord a late charge equal to five percent (5%) of such amount past due. Acceptance of late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its rights and remedies under this Lease. Acceptance of late payments of Rent by Landlord shall not prevent Landlord from obtaining late charges under this subsection.

12.4 Interest. Notwithstanding anything to the contrary contained in this Lease, if any amount of Rent from Tenant shall not be received by Landlord on or before the date such amount is due (whether or not Tenant is in default under this Lease), then Tenant shall pay to Landlord interest on the amount unpaid at the Default Rate of Interest from the date such amount is due.

12.5 Landlord's Right to Cure. If Tenant fails to perform any maintenance or other obligation of Tenant under this Lease, then Landlord may, at its option, perform the maintenance or other obligation on behalf of Tenant upon reasonable notice to Tenant. Upon receipt of an invoice from Landlord, Tenant shall promptly pay all reasonable costs incurred by Landlord to perform the maintenance or other obligation of Tenant, plus an additional administrative charge of fifteen percent (15%) calculated on such cost shall be due and payable twenty (20) days after submission by Landlord to Tenant of an invoice, plus interest accruing at the Default Rate of Interest from the date of submission of the invoice to Tenant.

ARTICLE 13 -DEFAULT BY LANDLORD

13.1 Default by Landlord. Landlord shall not be in default unless Landlord fails to observe, perform or comply with any of the terms or conditions of this Lease within thirty (30) days after written notice from

Tenant to Landlord specifying with particularity the failure; provided that in the event the cure of such failure reasonably requires more than thirty (30) days to complete, then Landlord shall not be in default if Landlord promptly commences the cure of such failure within the thirty (30) day period and, thereafter, diligently pursues the cure to completion.

ARTICLE 14 -DAMAGE BY FIRE OR OTHER CASUALTY

14.1 Repair and Restoration. If the Building or Premises, or any part thereof, is damaged by fire or other casualty during the Lease Term, and this Lease is not terminated pursuant to Section 14.2 of this Lease, Tenant shall, at its cost, repair such damage and restore the Building and Premises to substantially the same condition in which the Building and Premises existed before the occurrence of such fire or other casualty and in compliance with all laws, and this Lease shall, subject to this Section, remain in full force and effect. Tenant shall be obligated to repair and restore the Building and Premises whether or not insurance proceeds exist. Tenant shall keep the Premises free from any liens for work performed to repair and restore the Premises in accordance with this Lease. Landlord shall not be obligated to repair or restore the Building or the Premises for any reason, or to make any replacement of, any movable furniture, equipment, trade fixtures or personal property in the Building or Premises. No fire or other casualty damage to the Building or Premises, whether or not the Building or Premises is rendered unusable by such damage, shall relieve Tenant of its obligation to pay Rent or any other obligation under this Lease.

Except for repair or restoration that is reasonably expected to cost less than one hundred thousand dollars (\$100,000.00), all insurance proceeds recovered on account of damage or destruction to the Building or Premises shall be deposited with a depository acceptable to Landlord and Tenant (“Depository”). Landlord shall immediately endorse to Tenant or to the Depository, as applicable, any such insurance proceeds. Tenant shall also endorse to the Depository, as applicable, any such insurance proceeds. All insurance proceeds recovered on account of damage or destruction to the Building or Premises shall be applied to the payment of the cost of repairing and restoring the Building and Premises so damaged. The Depository shall disburse the Proceeds during the course of repair and restoration in accordance with customary construction disbursements. If, after the repair and restoration has been completed in accordance with the terms of this Lease, there are remaining insurance proceeds (whether or not held by the Depository), then Tenant shall be entitled to such excess insurance proceeds (after first deducting from such proceeds, the fees and expenses of the Depository). If insurance proceeds are not available to pay the fees and expenses of the Depository, Tenant shall be responsible to pay these fees and expenses.

In the event that the Building or Premises is not repaired or restored in accordance with this Section for any reason, then Landlord shall be entitled to an amount equal to Landlord’s reasonable estimate of the cost to repair and restore the Premises as required hereunder from Tenant, whether or not insurance proceeds exist. Tenant shall be entitled to any insurance proceeds in excess of such amount.

14.2 Termination of Lease. If the Building, or any part thereof, is damaged by fire or other casualty during the last twelve (12) months of the term of this Lease and the repair and restoration work to be performed by Tenant in accordance with Section 14.1 of this Lease cannot, as reasonably estimated by Tenant be completed within ninety (90) days after the occurrence of such fire or other casualty, then Landlord or Tenant shall have the right, by giving written notice to Landlord within thirty (30) days after the occurrence of such fire or other casualty, to terminate this Lease as of the date of such notice. If Tenant terminates, then Tenant shall pay all Rent and other charges due under the Lease for the balance of the Lease Term with its notice. In addition, if either party terminates, Landlord shall be entitled, upon termination, to an amount equal to Landlord’s reasonable estimate of the cost to repair and restore the Building and Premises as required hereunder, whether or not insurance proceeds exist. Tenant shall be entitled to any insurance proceeds in excess of such amount. If neither party exercises the right to terminate this Lease in accordance with this Section, Tenant shall repair such damage and restore the Building and

Premises in accordance with Section 14.1 of this Lease, and this Lease shall, subject to Section 14.1, remain in full force and effect.

ARTICLE 15 -EMINENT DOMAIN

15.1 Eminent Domain. If all of the Premises is taken by eminent domain during the term of this Lease, this Lease shall automatically terminate as of the earlier of the date Tenant is required to vacate the Building taken or the date title of the taken property passes from Landlord to another party. Landlord shall have the right to terminate this Lease if any part of the Premises is taken by eminent domain during the Lease Term. Tenant shall have the right to terminate this Lease only if a substantial portion of the Building is taken by eminent domain during the Lease Term, and the remaining portion of the Building is not reasonably suitable for Tenant's purposes or Tenant's use of the Building has been materially and adversely affected by such taking, and reasonable substitute space is not available. A substantial portion of the Building shall be thirty percent (30%) or more of the Leasable Floor Area of the Building. Landlord or Tenant shall exercise such termination right by giving written notice to the other within thirty (30) days after the date of such taking. If either Landlord or Tenant exercises such right to terminate this Lease in accordance with this Section, this Lease shall terminate as of the earlier of the date Tenant is required to vacate the portion of the Building taken or the date title of the taken property passes from Landlord to another party. All obligations of Landlord and Tenant incurred prior to any termination as a result of eminent domain, including Tenant's obligation to pay Rent, shall survive termination.

If a portion of the Building is taken by eminent domain, and neither Landlord nor Tenant exercises its right hereunder to terminate this Lease, this Lease shall terminate as to the portion of the Building so taken as of the earlier of the date Tenant is required to vacate the portion of the Building taken or the date title of the taken property passes from Landlord to another party, and the Lease shall remain in full force and effect as to the portion of the Building not so taken, and in such event the Rent shall be reduced as of the date of such taking in the proportion that the Leasable Floor Area of the Building so taken bears to the total Leasable Floor Area of the Building.

Tenant shall not have the right to terminate all or any portion of this Lease if any portion of the Premises other than the Building is taken by exercise of the power of eminent domain, and in the event of such taking, shall have no right to any reduction in Rent.

The term "eminent domain" shall include the taking or damaging of property by, through or under any governmental or quasi-governmental authority, and any purchase or acquisition in lieu thereof, whether or not the taking or damaging is by the government or any other person.

15.2 Damages. In the event that this Lease is terminated as a result of eminent domain, Landlord shall be entitled to the entire damage award or payment for any taking by eminent domain. Tenant hereby grants and assigns to Landlord any right Tenant may now have or hereafter acquires to such damages and agrees to execute and deliver instruments of assignment that Landlord may reasonably request. Tenant further waives in such event any right Tenant has or may have under present or future law to receive any separate award for damages for its interest in the Premises. If the Lease is not terminated as a result of the eminent domain, Tenant may retain the right to claim from the condemning authority, all compensation that may be recoverable by Tenant for relocation and for any loss incurred by Tenant in removing Tenant's trade fixtures, furniture, equipment or personal property, or for damage to Tenant's business, loss of business, and/or loss of leasehold interest; provided, however, that Tenant may claim such damages only if they are awarded separately in the eminent domain proceeding and not as part of Landlord's award. Tenant shall make no claim against Landlord for damages for termination of its leasehold interest in the Premises, for interference with its business or for any loss resulting from a taking by eminent domain.

ARTICLE 16 -SUBORDINATION, ESTOPPEL CERTIFICATES
AND FINANCIAL STATEMENTS

16.1 Subordination, Non-Disturbance and Attornment. Tenant hereby subordinates its rights under this Lease to the lien of any mortgage, deed of trust or other security instrument, now or hereafter in force, against the Premises, and to all advances made or to be made thereon. Tenant shall provide evidence of this subordination of its interest by executing a Subordination, Non-Disturbance and Attornment Agreement in a form reasonably acceptable to Landlord or the holder of any security interest in the Premises. Tenant agrees to attorn and recognize any new owner succeeding to the interest of Landlord in the Premises as its landlord under this Lease, whether or not this Lease has priority over the new owner's interest in the Premises.

16.2 Tenant's Estoppel Certificate. Tenant agrees, within twenty (20) days after Landlord's request, to execute an estoppel certificate in a form reasonably acceptable to Landlord or any third party relying on said estoppel certificate.

16.3 Mortgagee Protection Clause. Tenant agrees to give any mortgagees, trustees or other holders of any security interest in the Premises, by certified or registered mail, a copy of any notice of failure served upon Landlord prior to default. In the event that Landlord does not cure a failure within the time provided for in this Lease, the holder of a security interest shall have an additional thirty (30) days within which to cure the failure prior to default; provided that the holder of a security interest shall have more time to cure the failure if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion. Tenant shall not exercise its remedies under this Lease until Tenant has provided

ARTICLE 17 -SURRENDER OF PREMISES

17.1 Surrender of Possession. No later than nine (9) months after the Expiration Date or no later than nine (9) months after the sooner termination of this Lease, Tenant, at its cost and expense, shall (a) peaceably surrender the Premises broom clean, in good condition and repair, ordinary wear and tear excepted, (b) remove all trade fixtures, furniture, equipment and personal property from the Premises and repair all damage caused by such removal, and (c) complete the following activities and remove the following items and materials from the Premises: take down and remove ready mix plant, silos, fixtures, and equipment, mobile concrete bunkers and anything not affixed to the Land. Tenant has no obligation to remove any of the Buildings and Tenant has no obligation to remove the footings and foundation of the ready mix plant. All property not removed by such date shall be deemed abandoned and may be removed, stored or disposed of by Landlord, at the cost and expense of Tenant. Landlord shall not be responsible for the preservation or safekeeping of such property. Tenant shall pay to Landlord, upon demand, all expenses incurred in such removal, storage or disposal of such property and all costs incurred by Landlord to cause the Premises to be in the condition required under this Section. Upon the Expiration Date or sooner termination of this Lease, ownership of all modifications, improvements, alterations, additions and fixtures not already owned by Landlord that have been made or installed by either Landlord or Tenant upon the Premises shall vest in Landlord and be surrendered with the Premises, except that Tenant's trade fixtures, furniture, equipment and personal property that have not been abandoned shall remain the property of Tenant. Tenant shall promptly surrender all keys to the Premises to Landlord at the place then fixed for the payment of Rent and shall inform Landlord of combinations to any vaults, locks and safes left at the Premises. The acceptance of keys to the Premises by the Landlord, its agents, employees, contractors or any other person on Landlord's behalf, shall not be deemed an acceptance of surrender of the Premises or constitute a termination of this Lease.

17.2 Holding Over. If Tenant holds over or remains in possession of the Premises later than nine (9) months after the Expiration Date without the execution of a new Lease, no tenancy or interest in the

Premises shall result from Tenant's hold over or possession and Tenant shall be subject to immediate eviction and removal. No notice to Tenant shall be required prior to the commencement of any legal action to gain possession of the Premises. During any hold over or possession, Tenant shall be subject to the applicable terms and conditions set forth in this Lease, except that Base Rent shall be charged in the amount of \$5,000.00 per month for each month later than nine (9) months after the Expiration Date, prorated for the number of days of Tenant's hold over or possession based on a three hundred sixty-five (365) day year. Acceptance of such payment shall not be deemed as a waiver of Landlord's right to immediate possession or as a defense to any eviction action. Tenant shall pay Landlord for all damages incurred as a result of Tenant's hold over or possession of the Premises, including, but not limited to, any claims made by a succeeding tenant and Landlord's attorneys' fees and costs.

17.3 Early Release. Tenant contemplates that prior to the Expiration Date, Tenant may discontinue use of some of the Buildings and some of the areas within the Premises. In such a situation, Landlord and Tenant will reasonable cooperate to determine whether the discontinued areas can be released from this Lease. The determination to release some of the areas shall be subject to the mutual agreement of Landlord and Tenant.

ARTICLE 18 -MISCELLANEOUS

18.1 Successors or Assigns. All the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Landlord, Tenant and their respective heirs, administrators, executors, successors, subtenants, concessionaires and assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

18.2 Authority of Parties. If Landlord or Tenant is a corporation, partnership or other form of business entity, each individual executing this Lease on behalf of Landlord or Tenant respectively represents and warrants that: (a) Landlord or Tenant is a duly organized and validly existing entity; (b) Landlord or Tenant has full right and authority to enter into this Lease; (c) the person executing this Lease is duly authorized to execute and deliver this Lease on behalf of the Landlord or Tenant; and (d) this Lease is binding upon Landlord or Tenant in accordance with its terms. Landlord and Tenant shall provide the other upon request with evidence reasonably confirming the foregoing representations.

18.3 Severability. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, or in conflict with the law of the jurisdiction, the remainder of this Lease or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

18.4 Waiver. The failure of Landlord to enforce any term, covenant, condition or breach of this Lease shall not be deemed a waiver of the right to do so thereafter. The acceptance by Landlord of Rent shall not be deemed a waiver of any term, covenant, condition or breach of this Lease. No waiver of any term, covenant, condition or breach shall be effective unless in writing. A written waiver of any term, covenant, condition or breach of this Lease shall not be deemed a waiver of any subsequent term, covenant, condition or breach, whether such subsequent term, covenant, condition or breach is the same or different, except as specified in writing in the waiver.

18.5 Construction. Landlord and Tenant and their respective counsel have reviewed and revised this Lease. Landlord and Tenant acknowledge that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease.

18.6 Exhibits. All exhibits referenced in this Lease and attached hereto are incorporated into this Lease and made a part of this Lease. All depictions and drawings contained in any exhibit are for informational purposes only, and are not a warranty, representation or agreement that the Building or Premises will be as shown on the exhibits.

18.7 Captions. The captions contained in this Lease are for convenient reference only and shall not affect the construction or interpretation of this Lease.

18.8 Time. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

18.9 Choice of Law. This Lease shall be governed by the laws of the state where the Premises is located.

18.10 Jury Waiver Clause. Landlord and Tenant waive their right to trial by jury in any action, proceeding or claim brought by either party against the other, or with the respect to any issue or defense raised therein, including the right to an advisory jury, on any matters whatsoever relating to this Lease, the relationship of Landlord and Tenant, Tenant's use and occupancy of the Premises, including summary proceedings, possession actions, and any statutory remedy. Notwithstanding the aforesaid, this jury waiver clause shall not apply to actions, proceedings or claims for personal injury or property damage.

18.11 Legal Expenses. In the event of any litigation (including any counterclaim, cross-claim, or claim in a bankruptcy or receivership proceeding) for the enforcement of any of the terms and conditions of this Lease, the prevailing party shall be entitled to recover from the other party all third party costs and expenses actually incurred as a result of the litigation, including, but not limited to, attorneys' fees and costs.

18.12 Recording. Tenant shall not record or file this Lease or any assignment or security document pertaining to this Lease.

18.13 Notices. Any notice required or permitted pursuant to this Lease shall be in writing and deemed properly given: (a) on the date of personal delivery, or attempted personal delivery if refused; (b) on the date the notice is delivered, or attempted to be delivered if refused, by a reputable overnight delivery service with proof of delivery or refusal; and (c) on the date of actual receipt if by facsimile transmission, certified or first class mail, or any other means not set forth above. All notices to the Tenant shall be sent to the address contained in Article 1 or to the address of the Premises or to such other address designated by proper notice. All notices to the Landlord shall be sent to the address contained in Article 1 or to such other address designated by proper notice. Refusal to accept delivery of a notice or the inability to deliver a notice because of an address that was not properly given shall not defeat or delay the giving of notice.

18.14 Brokerage Commissions. Landlord represents that it has not been involved with any real estate brokers or leasing agents on its behalf in connection with this Lease. Tenant represents that it has not been involved with any real estate brokers or leasing agents on its behalf in connection with this Lease. Tenant shall indemnify and hold Landlord harmless from and against any loss, liability, cost, damage or expense from all claims for real estate brokerage or leasing agent commissions or costs arising out of any action, communication or negotiation by Tenant with any real estate broker or leasing agent in connection with this Lease, including, but not limited to, attorneys' fees and costs. Landlord shall indemnify and hold Tenant harmless from and against any loss, liability, cost, damage or expense from all claims for real estate brokerage or leasing agent commissions or costs in connection with this Lease, including, but not limited to, attorneys' fees and costs. In addition, Landlord and Tenant shall indemnify and hold the other harmless from any loss, liability, cost, damage or expense resulting from, or relating to, the breach of its representations contained in this Section. These obligations of Landlord and Tenant shall survive the expiration or earlier termination of this Lease.

18.15 Submission. Submission of this Lease by Landlord to Tenant for examination and/or execution shall not in any manner bind Landlord and no obligations of Landlord shall arise under this Lease unless and until this Lease is fully signed and delivered by Landlord and Tenant; provided, however, the execution and delivery by Tenant of this Lease to Landlord shall constitute an offer by Tenant of the terms, covenants and conditions contained in this Lease, which offer may not be revoked for a period of thirty (30) days after such delivery.

18.16 Force Majeure. The time period within which any party shall be required to perform any act under this Lease, except for payment of money, shall be extended to the extent that the performance of such act shall be delayed by Force Majeure. Notwithstanding the foregoing, Force Majeure shall not excuse Tenant from the prompt and timely payment of the Rent when due under this Lease.

18.17 Entire Agreement/Amendment. This Lease, together with its exhibits, is the entire agreement of the parties and all prior oral and written agreements, understandings, representations, warranties, promises and statements of the parties and their respective officers, directors, partners, agents and brokers shall be merged into this Lease with respect to the subject matter of this Lease and its exhibits. No such prior oral or written agreement, understanding, representation, warranty, promise or statement shall be effective or binding for any reason or purpose unless specifically set forth in this Lease and/or its exhibits. No provision of this Lease may be amended or modified except by an agreement in writing signed by the parties or their respective successors in interest.

18.18 Survival. All obligations of Tenant under this Lease that are not fully performed as of the expiration or earlier termination of this Lease shall survive the expiration or earlier termination of this Lease, including, but not limited to, the obligation to pay Rent and the obligations concerning the condition of the Premises.

18.19 Counterparts. This Lease may be executed separately and independently in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

ARTICLE 19 -ADDITIONAL DEFINITIONS

19.1 Additional Definitions. Capitalized terms referenced in this Lease shall have the meaning set forth in the Article 1 and as set forth below:

- (a) “ADA” - Americans with Disabilities Act.
- (b) “Additional Rent” - Shall have the meaning set forth in Article 1 and shall include all payments required to be made by Tenant under any of the terms of this Lease not otherwise specifically defined as Base Rent. Except as specifically set forth to the contrary in this Lease, all Additional Rent shall be due within ten (10) days after written notice by Landlord setting forth the amount due. All Additional Rent not paid when due shall accrue interest at the Default Rate of Interest from the date of submission of the amount due to Tenant.
- (c) “Default Rate of Interest” - The lesser of twelve and one-half percent (12½%) per annum or the maximum rate of interest legally allowed to be charged pursuant to the laws of the state where the Premises is located.
- (d) “Effective Date” - The date first set forth on page 1 of this Lease.
- (e) “Expiration Date” - The date which is the last day of the Lease Term.

- (f) “Force Majeure” – An act of God, fire, windstorm, flood, explosion, collapse of structure or other casualty, epidemic, infectious disease, riot, war, terrorism, military power, labor disputes, failure of utility service, restrictive Governmental Regulations, court order, inability to obtain materials, adverse weather that is unusual and unanticipated for the period of time, or an act of like nature that is beyond the reasonable control of such party. The definition of Force Majeure shall not include inadequacy of insurance proceeds, financial inability or the lack of suitable financing.
- (g) “Governmental Regulations” - All federal, state, county or municipal laws, ordinances, rules, regulations, directives, orders and/or requirements now in force or which may hereafter be in force with respect to the Premises.
- (h) “Hazardous Substances” - Any infectious, hazardous or toxic wastes or substances, pollutant, petroleum product, oil, asbestos, PCB or other substance regulated, prohibited, restricted or controlled by Governmental Regulations related to the protection of health or the environment or posing a risk to the health and safety of a person.
- (i) “HVAC” - Heating, ventilation and air conditioning system.
- (j) “Leasable Floor Area” - Leasable Floor Area shall be the gross floor area of the Building, whether or not if available for use by Tenant, measured to the exterior of the outside walls, and shall include the floor area of any: (1) any enclosed corridors, entryways, bathrooms or other similar areas; (2) utility, mechanical, maintenance or service rooms, passageways or corridors; (3) basements; (4) mezzanines; or (5) storage areas. Leasable Floor Area shall be determined by an architect selected in the sole discretion of Landlord.
- (k) “Lease” - This agreement and its exhibits.
- (l) “Lease Year” - A twelve (12) month period starting on the following date and each anniversary date thereafter: (1) the Rent Commencement Date if such date is the first day of the calendar month; or (2) the first day of the calendar month next following the Rent Commencement Date if such date is not the first day of the calendar month. The first Lease Year shall include the period from the Rent Commencement Date to the first anniversary date and may be for a period longer than twelve (12) months.
- (m) “Real Estate Taxes” - All real estate taxes, special assessments and other reoccurring governmental charges of any kind with respect to the Premises that are due and payable during the Lease Term. In the event a special assessment extends beyond the Lease Term, the special assessment may be paid in full by Landlord and amortized over the life of the improvement, which life shall not exceed ten (10) years. Only the amortized amount of such special assessment shall be included in the definition of Real Estate Taxes during the Lease Term.
- (n) “Rent” - Base Rent and Additional Rent.
- (o) “Worth” - The Worth shall be computed by applying the primary credit discount rate of the Federal Reserve Bank of Minneapolis or an equivalent rate selected by Landlord if no longer published as of the date of termination to get a present value.

[Remainder of page intentionally blank; signature page follows]

IN WITNESS WHEREOF, the parties have made and entered into this Lease as of the Effective Date.

LANDLORD:

CITY OF OWATONNA,
a home rule city and political
subdivision of the State of Minnesota

By: _____

Print: Thomas J. Kuntz_____

Its: Mayor_____

By: _____

Print: Kris M. Busse_____

Its: City Administrator_____

IN WITNESS WHEREOF, the parties have made and entered into this Lease as of the Effective Date.

TENANT:

CEMSTONE CONCRETE MATERIALS, LLC,
an Iowa limited liability company

By: _____
Print: Tim Becken
Its: President and Chief Manager

Exhibit A-1 to Lease

Legal Description of the Premises

Steele County Parcels:

17-208-0201

17-009-1403

17-009-1405

17-009-1408

17-009-1409

Exhibit A-2 to Lease

Depiction of the Premises

(depiction of the Premises attached)