

This Parking Lease (this "Lease") made this \_\_\_\_ day of October, 2016, between the City of Manitowoc, a municipal corporation, hereinafter called "Lessor" and FOREFRONT MANAGEMENT LLC, hereinafter called "Lessee".

### **RECITALS**

- A. WHEREAS, Lessor holds a Ground Lease dated May 24, 2012 (hereafter, the "Ground Lease," attached as Exhibit B) for the parking lot located at 720 Quay Street, Manitowoc, WI 54220 (hereafter, the "Parking Lot"), and that Ground Lease authorizes Lessor to sub-lease certain parking spaces to others under certain terms and conditions; and
- B. WHEREAS, Lessor and Lessee acknowledge that this Lease is subject and subordinate to the Ground Lease and that a termination or expiration of the Ground Lease shall constitute a termination or expiration of this Lease, and;
- C. WHEREAS, Lessor and Lessee acknowledge that the term of this Lease shall not exceed the term of the Ground Lease and that any consideration related to this Lease would be shared equally between Lessor and the grantor of the Ground Lease, and;
- D. WHEREAS, Lessor has requested that Lessee's employees utilize off-street parking, to the extent available, in order to facilitate available parking for other local downtown businesses, and;
- E. WHEREAS, Lessor acknowledges that Lessee is creating a substantial number of new jobs in the City of Manitowoc and investing in the improvement of real estate at 2 N 8<sup>th</sup> Street, and;
- F. WHEREAS, this Lease provides a short term solution to the immediate parking needs of Lessee, but Lessor and Lessee will continue working toward a more substantial long term solution for downtown parking needs;

NOW, THEREFORE, the parties hereto agree as follows:

1. Location. Lessor hereby leases to Lessee 50 parking stalls described as follows: Fifty stalls as shown on the attached maps (Exhibits A1 and A2) in the Parking Lot.
2. Initial Term. The lease term shall commence on November 1, 2016 and terminate on December 31, 2017, except as provided in paragraph 4.
3. Rental Terms. The parking rate shall be \$0 annually for the duration of the Initial Term and during the renewal term as set forth in paragraph 4.

Lessee will make a good faith effort to have its employees park in the stalls available in this lot, the leased spaces in other municipal lots, or in private off-street parking, in order to facilitate available parking downtown for other local businesses.

Lessee will issue employees an identification sticker to be placed on their vehicle so that Lessor can determine compliance with this requirement.

Lessor and Lessee will both make a good faith effort to coordinate on details of the use of the Parking Lot when community events are taking place on or around the Parking Lot.

4. Renewal. Lessee shall notify Lessor at least thirty (30) days prior to the expiration of this Lease in the event Lessee wishes to renew this lease on such terms as may be mutually agreeable to the parties. Nothing in this Lease agreement, however, shall be construed to require renewal of this Lease on any terms by either party. Upon acceptance of rent by the City for any subsequent rental period, this Lease shall be renewed for an annual period with the annual rate per stall set by the Manitowoc Common Council.

5. Use. The parties hereto agree that the parking stalls which are herewith rented to the Lessee shall be used for the purpose of parking automobiles and no other purpose during normal weekday business hours, specifically, 6:00 a.m. to 5:00 p.m. Monday - Friday. The parties further agree that the parking stalls which are herewith rented to the Lessee may be used for all other purposes for which the Lessor is authorized under its Ground Lease after 5:00 p.m. on weekdays and at all times on weekends.

6. Maintenance. Lessee shall maintain the premises in clean condition and good order throughout the lease term. Lessor shall provide operation of the Parking Lot, including snow removal from the rented parking stalls and necessary repair to the paved surface. The rented stalls shall be kept vacant during such commercially reasonable times as Lessor may direct to facilitate any snow removal, construction or maintenance undertaken by Lessor. To the extent Lessor wishes to close the lot to use by Lessee's employees, Lessor shall use signage and barricades denoting such closure and, to the extent Lessee's employees ignore such signage and barricades and continue to use the Parking Lot, Lessor may issue parking tickets to such employees in the same manner Lessor issues them to the public. Lessor shall use commercially reasonable efforts to complete all such snow removal prior to 7:00 a.m. during weekdays on which Lessee is open for business

7. Signs. In addition to the rent set forth in paragraph 3, the Lessee shall pay to the Lessor a fee of **\$8.00** per stall before the commencement of this Lease for a sign in each stall to be furnished by Lessor designating the spaces as rented stalls. Lessor may waive the requirement of such a sign identifying the leased stalls in cases where a Lessee requests in writing to the Lessor's Building Inspector their desire to install their own sign. All signs installed in leased stalls by Lessee shall be approved by the Lessor's Building Inspector and shall be appropriate in design, size, material, construction and placement as to the Lessor installed signs. Signs may include a logo and business name and shall be limited in size to a maximum of 12 inches by 12 inches. No slogans or other advertising shall be allowed to be placed on said signs.

8. Indemnification. Lessee hereby agrees to indemnify, defend and hold

Lessor harmless from and against all liability, loss, damages, costs and expenses, including reasonable attorney's fees, which Lessor may sustain or incur by reason of any action or omission of Lessee. Lessor agrees to indemnify, defend and hold Lessee harmless from and against all liability, loss, damages, costs and expenses, including reasonable attorney's fees, which Lessee may sustain or incur by reason of any negligent action or omission of Lessor for which Lessor does not have statutory immunity.

9. Assignment. The Lease shall not be assignable by either party without the written consent of the other, provided, however, Lessee may assign this Lease to a purchaser of all or substantially all of Lessee's assets. Lessor hereby acknowledges and understands that Lessee is the administrative and managerial services company for Dermatology Associates of Wisconsin, S.C. d/b/a Forefront Dermatology, and expressly consents to the use of the leased spaces by employees of Forefront Dermatology who are employed or otherwise providing services in any of Lessee's downtown Manitowoc locations.

10. Parties Bound. It is mutually agreed that the terms and conditions of this Lease shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and/or assigns.

IN WITNESS WHEREOF, Lessor has caused this instrument to be signed by the Mayor and countersigned by the City Clerk and Finance Director/Treasurer and the Lessee has caused this instrument to be properly executed on the date and year first above written.

LESSEE:  
FOREFRONT MANAGEMENT, LLC

LESSOR:  
CITY OF MANITOWOC

\_\_\_\_\_  
Chris DeLuca, Chief Financial Officer

By: \_\_\_\_\_  
Justin M. Nickels, Mayor

By: \_\_\_\_\_  
Jennifer Hudon, City Clerk

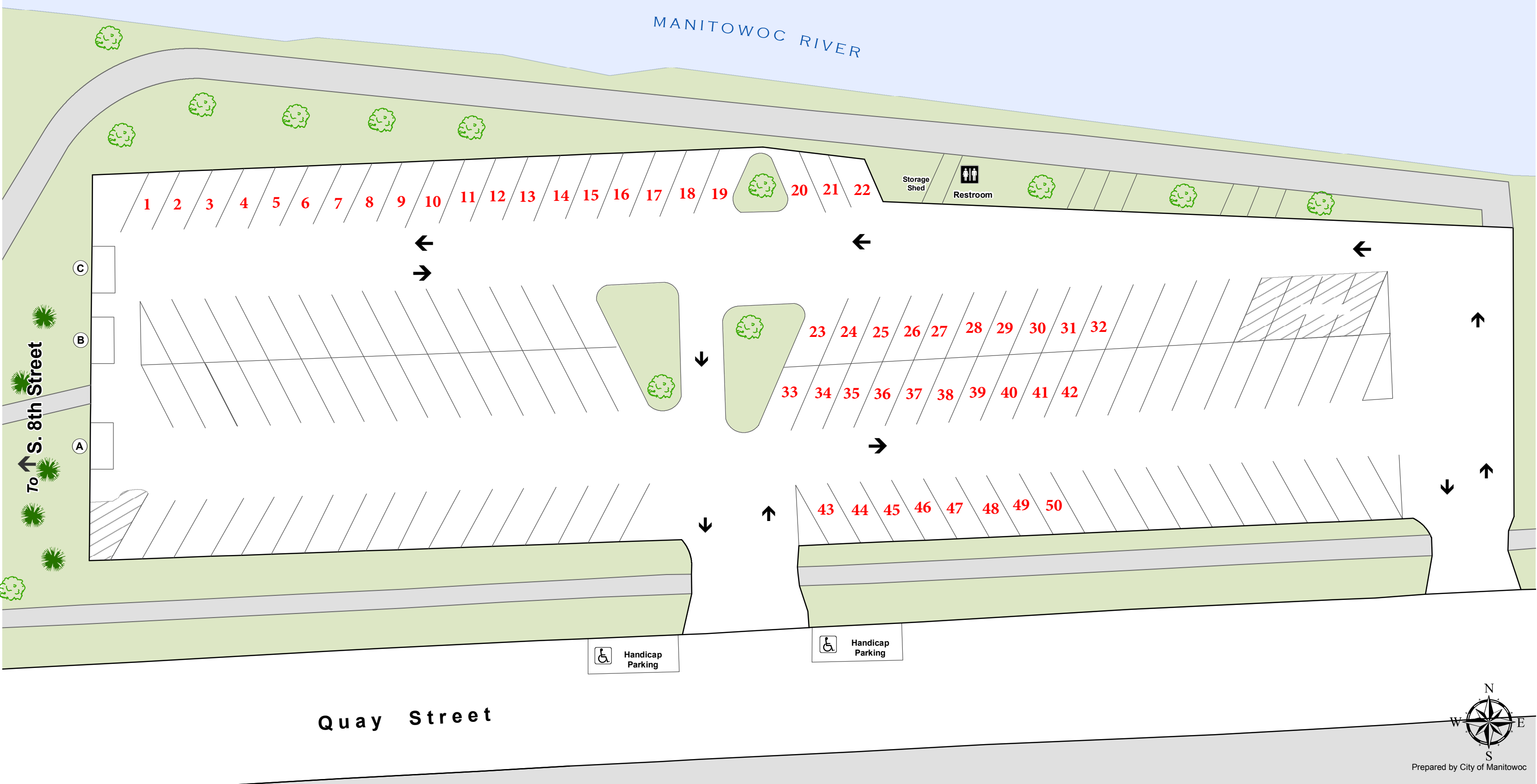
By: \_\_\_\_\_  
Steve Corbeille, Fin. Dir./Treas.

Approved as to form:

\_\_\_\_\_  
Kathleen McDaniel, City Attorney

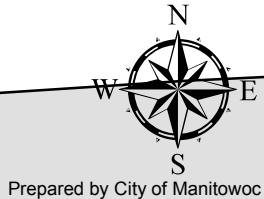
# EXHIBIT A 1

When the City ice skating rink is installed on the Parking Lot, the leased stalls shall be located as shown here.



# EXHIBIT A2

When the City ice skating rink is not installed on the Parking Lot, the leased stalls shall be located as shown here.



Sub Prop. &  
Safety  
5-21-12

GROUND LEASE

THIS GROUND LEASE ("Lease") is made and entered into by RIVERLAND AG CORP., a Delaware corporation ("Lessor") and the CITY OF MANITOWOC, a Wisconsin municipal corporation ("Lessee"), dated as of May 24, 2012 (the "Effective Date"). Lessor and Lessee being sometimes also hereinafter referred to individually as a "Party" or collectively as the "Parties."

RECITALS

This Lease is entered into upon the basis of the following facts, understandings and intentions of the parties:

A. Lessor is the fee owner of certain real property and improvements located thereon, in Manitowoc, Wisconsin, legally described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Ground Leased Premises").

B. Lessor desires to lease to Lessee the Ground Leased Premises, and Lessee desires to lease the Ground Leased Premises from Lessor.

C. It is the intent of the parties that the terms and conditions of this Lease shall be substantially consistent with the framework contained in a "Statement of Intent" between the parties with an effective date of July 29, 2011. In the event of any inconsistencies between this Lease and the Statement of Intent, the terms of this Lease shall control.

D. In consideration for Lessor's lease of the Ground Leased Premises to Lessee, Lessee has consented to the assignment to Lessor of the grantee's rights under that certain Easement (the "Easement") recorded on December 18, 2007 with the Manitowoc County, Wisconsin Register of Deeds in Vol. 2333, page 422 as Document No. 1038945 (the "Consent to Assignment of Easement").

E. The Lease is intended to be an unsubordinated ground lease in which the parties agree that Lessor shall have no obligation to subordinate its interest in the Ground Leased Premises.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 - DEMISE OF GROUND LEASED PREMISES

Section 1.1 Recitals. The Recitals above are deemed to be true and correct.

Section 1.2 Ground Leased Premises. Lessor, for and in consideration of Lessee's execution of the Consent to Assignment of Easement and the covenants and conditions herein set forth, does hereby lease to Lessee, and Lessee does hereby lease from Lessor, the Ground Leased Premises, subject to the terms, conditions and provisions hereof.

Section 1.3 Documentary Stamp Tax and Intangible Tax. Notwithstanding anything in this Lease to the contrary, in the event that at any time this Lease is determined to be a taxable instrument, or represent a taxable transaction by the State of Wisconsin, by any act of Lessee, under provisions relating to documentary stamp tax, or intangible tax or similar taxes, then payment of any such tax or taxes shall be borne by Lessee.

5-21-12

Committee recommends entering into the agreement

~~By~~ ~~Chy~~ ~~to~~  
B. B. ~~Chy~~  
B. B. ~~Chy~~  
E. ~~Chy~~  
J. ~~Chy~~

M. ~~Chy~~  
5/21/12

**Section 1.4 Condition of Ground Leased Premises.** Lessee hereby accepts the Ground Leased Premises "AS IS" and "WHERE IS" with no representation or warranty of Lessor as to the condition thereof. Lessee hereby disclaims any reliance upon any statement or representation whatsoever made by Lessor. LESSOR MAKES NO WARRANTY WITH RESPECT TO THE GROUND LEASED PREMISES OR ANY PART THEREOF, EXPRESS OR IMPLIED, AND LESSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. LESSOR SHALL NOT BE LIABLE TO LESSEE OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE GROUND LEASED PREMISES OR ANY PART THEREOF.

**Section 1.5 Homeland Security.** Lessee acknowledges that its use and possession of the Ground Leased Premises shall be subject to all applicable laws, including, without limitation, directives from the United States Department of Homeland Security ("**Homeland Security**"), which directives may include Lessor cordoning off a portion of the Ground Leased Premises during such times as Lessor is directed by Homeland Security or other government agency.

## ARTICLE 2 – LEASE TERM

**Section 2.1 Lease Commencement.** The commencement date of this Lease ("**Lease Commencement Date**") shall be the Effective Date.

**Section 2.2 Lease Term.** The term of this Lease (the "**Term**") shall be for a period of fifty (50) years commencing on the Lease Commencement Date. The last day of the Term shall be the day immediately preceding the fiftieth (50<sup>th</sup>) anniversary of the Lease Commencement Date (the "**Expiration Date**"), unless sooner terminated as herein provided.

**Section 2.3 Reversion.** At the Expiration Date or sooner termination of this Lease, whether by default, eviction, or otherwise, the Ground Leased Premises and, unless otherwise designated pursuant to Section 5.1, all real property improvements, if any, made by Lessee upon the Ground Leased Premises shall be surrendered to Lessor in good condition and repair, reasonable wear and tear excepted, without compensation to Lessee or any other party, and become the sole property of Lessor or Lessor's designee, free and clear of all claims to or against them by Lessee or any third person, and all liens, security interests, and encumbrances, and any other encumbrances or liens. Any personal property on the Ground Leased Premises belonging to Lessee including, but not limited to vehicles, moveable furniture, equipment or any other type or kind of trade fixture, shall be removed by Lessee on or before the Expiration Date or sooner termination of this Lease. Any such property not so removed as of said date shall be deemed abandoned by Lessee to Lessor and the Lessor may dispose of such property at Lessee's sole cost and expense.

## ARTICLE 3 – CONSIDERATION, TAXES AND UTILITIES

**Section 3.1 Consideration.** The Parties agree that, as consideration for the use and occupancy of the Ground Leased Premises pursuant to the terms hereof, Lessee has executed the Consent to Assignment of Easement. The Easement is for the exclusive benefit of Lessor and Lessor's successors and assigns (subject to Lessor obtaining Lessee's consent to assign its rights under the Easement in accordance with the requirements of the Easement) and provides Lessor with the right to operate a conveyor belt to carry grain in a tunnel under public rights-of-way between the Manitowoc River and Lessor's Existing Facilities (as defined below) and such additional rights as may be set forth in the Easement.



**Section 3.2 Taxes.**

**Section 3.2.1 Real and Personal Property.** From and after the Lease Commencement Date, Lessor shall pay or cause to be paid all real estate taxes, general and special assessments levied, assessed or otherwise due and payable against the Ground Leased Premises. Notwithstanding the foregoing, Lessee shall pay or cause to be paid all personal property taxes relating to any equipment, trade fixtures or other personal property of Lessee on or about the Ground Leased Premises as well as any real estate taxes or general or special assessments relating to any real property improvements or other improvements that Lessee makes or causes to be made to the Ground Leased Premises. Lessee shall make all such payments directly to the appropriate charging or taxing authority at least thirty (30) days before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. Within ten (10) days after each tax and assessment payment is required by this Section to be paid, Lessee shall provide Lessor with evidence satisfactory to Lessor that such payment was made in a timely fashion.

**Section 3.2.2 Utilities.** From and after the Lease Commencement Date, Lessee shall pay or cause to be paid all charges for water, heat, gas, electricity, trash disposal, sewers and any and all other utilities used by Lessee upon the Ground Leased Premises throughout the Term. Lessee shall make or cause all such payments to be made directly to the appropriate utility as and when due.

**ARTICLE 4 – USE OF GROUND LEASED PREMISES**

**Section 4.1 Use.**

**Section 4.1.1 Use.** Lessee shall use or cause the use of the Ground Leased Premises only for the operation of customary civic or public festivals, exhibitions, fairs or fundraisers, including a farmers' market, and parking ancillary to such uses. Lessee's use and occupation of the Ground Leased Premises, and the condition thereof, shall, at Lessee's sole cost and expense, comply with: (i) all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders and approvals of any governmental agencies, departments, commissions, bureaus, boards or instrumentalities of the United States, the state in which the Ground Leased Premises are located and all political subdivisions thereof, including, without limitation, all health, building, fire, safety and other codes, ordinances and requirements and all applicable standards of the National Board of Fire Underwriters; and (ii) all restrictions, covenants and encumbrances of record with respect to the Ground Leased Premises.

**Section 4.1.2 Rates of Insurance.** Lessee will not cause or permit any act or condition to exist on or about the Ground Leased Premises which will increase any insurance rate thereon, except when such acts are required in the normal course of its use of the Ground Leased Premises as described in Section 4.1.1, in which event Lessee shall pay for such increase or maintain insurance to adequately cover such act or condition in accordance with Article 11 or shall cause any assignee, sublessee, licensee or sublicensee to do so.

**Section 4.1.3 Americans with Disabilities Act.** Without limiting the generality of the other provisions of this Section, and expressly related to any real and personal property improvement to the Ground Leased Premises by Lessee, Lessee shall be responsible for complying with the Americans with Disabilities Act of 1990, as such act may be amended from time to time, and all regulations promulgated thereunder (collectively, the "ADA"). Lessee further agrees that any and all alterations made to the Ground Leased Premises will comply with

the requirements of the ADA. Any subsequent approval or consent to the plans by the Lessor shall not be deemed to be a representation by Lessor that the plans comply with the ADA, which obligation shall remain with Lessee. Lessee agrees that it will defend, indemnify and hold harmless Lessor and Lessor's shareholders, directors, officers, agents and employees from and against any and all claims, demands, causes of action, suits, proceedings, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees, to the extent caused by Lessee's failure to comply with its obligations under this Section.

**Section 4.1.4 Marine Operations.** Lessee hereby acknowledges that Lessor owns real property in close proximity to the Ground Leased Premises legally described as all of Lots 4, 5, 6 and the west 40 feet of Lot 3 of Block 221 in the Original Plat of the City of Manitowoc, Manitowoc County, Wisconsin (the "**Marine Property**"). Lessee hereby acknowledges that Lessor intends (and has the right) to perform marine operations on and about the Marine Property. Such operations will include, without limitation, loading and unloading grain from ships and other vessels as part of the operation of Lessor's grain storage and handling facility in Manitowoc, Wisconsin ("**Lessor's Existing Facility**"). The Marine Property constitutes a portion of Lessor's Existing Facility. Lessee shall not use the Ground Leased Premises in any manner that unreasonably disrupts or interferes with marine operations on the Marine Property. In addition, Lessor agrees to not use the Marine Property in a manner that unreasonably disrupts or interferes with Lessee's use of the Ground Leased Premises for the purpose described in Section 4.1.1 above.

**Section 4.2 Hazardous Materials.**

**Section 4.2.1 Defined.** "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive or corrosive, including, without limitation, petroleum, PCBs, asbestos, materials known to cause cancer or reproductive problems and those materials, substances and/or wastes, including infectious waste, medical waste, and potentially infectious biomedical waste, which are or later become regulated by any local governmental authority, the State of Wisconsin or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*; all corresponding and related State of Wisconsin and local Statutes, ordinances and regulations, including without limitation any dealing with underground storage tanks; and in any other environmental law, regulation or ordinance now existing or hereinafter enacted (collectively, "**Hazardous Materials Laws**").

**Section 4.2.2 Use.** Lessee and Lessee's officers, directors, employees, representatives, agents, contractors, subcontractors, successors, assigns, lessees, sublessees, concessionaires, and invitees and any other occupants authorized by Lessee to use the Ground Leased Premises (for purpose of this Section 4.2, referred to collectively herein as "**Lessee's Representatives**") shall not use, generate, manufacture, refine, produce, process, store or dispose of, on, under or about the Ground Leased Premises or transport to or from the Ground Leased Premises in the future for the purpose of generating, manufacturing, refining, producing, storing, handling, transferring, processing or transporting Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws. Furthermore, Lessee shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Lessee or any of Lessee's Representatives of Hazardous Materials on the Ground Leased Premises.

**Section 4.2.3 Indemnification by Lessee.** Except for the acts caused by the negligence or willful misconduct of Lessor or its officers, directors, agents, members, employees, contractors, subcontractors, successors, assigns and invitees, arising from, related to, or in any way connected with any injury, loss, claim or damage occurring on or about the Ground Leased Premises, Lessee shall indemnify, defend, protect, and hold Lessor, and each of Lessor's employees, agents, shareholders, officers, successors and assigns, free and harmless from and against any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses or expenses (including, without limitation, reasonable attorneys' fees and costs through litigation and all appeals) arising from or related to Lessee's failure to comply with any Hazardous Materials Laws with respect to the Ground Leased Premises. This indemnity shall survive the expiration or sooner termination of this Lease.

**Section 4.2.4 Lessor's Access to the Ground Leased Premises.** Lessor, or its agent nominee, at all reasonable times, shall have reasonable access to the Ground Leased Premises for the purpose of examining or inspecting the condition thereof, to determine if Lessee is performing the covenants and agreements of this Lease, and to post such reasonable notices as Lessor may desire to protect the rights of Lessor, including, but not by way of limitation, notices of non-responsibility for lien claims.

#### ARTICLE 5 – ALTERATIONS

**Section 5.1 Alterations.** Lessee shall not make or allow to be made any alterations, additions or improvements to or on the Ground Leased Premises or any part thereof without the express prior written consent of the Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. In the event Lessor consents to the making of any alterations, additions, or improvements to the Ground Leased Premises by Lessee, then (i) the same shall be made by Lessee at Lessee's sole cost and expense, in conformance with all applicable code and governmental requirements and (ii) Lessor may condition any such approval on Lessee's obligation to remove any such alteration, addition, or improvement on the expiration or earlier termination of the Lease. Notwithstanding the foregoing, Lessee shall have the right to make alterations or additions of a temporary nature that do not require a building permit or involve modifications of any structural elements or electrical systems (the "Permitted Alterations") without first obtaining Lessor's consent; provided, however, that all Permitted Alterations shall be removed from the Ground Leased Premises prior to the expiration or earlier termination of the Lease.

**Section 5.2 Liens.** Notice is hereby given that the Lessor shall not be liable for any work, labor or materials furnished or to be furnished upon credit to or for Lessee or anyone claiming under or expressly authorized Lessee, and that no mechanic's or other liens for any such work, labor or materials shall attach to or affect the estate or interest of the Lessor in and to the Ground Leased Premises. Lessee shall not do or suffer anything to be done whereby the Ground Leased Premises may be encumbered by any mechanic's lien as set forth in Section 8.2.

#### ARTICLE 6 – NO ENCUMBRANCE OF LEASEHOLD ESTATE

**Section 6.1 No Right to Encumber.** Lessee may not encumber by mortgage(s) or other instrument(s) its leasehold interest in the Ground Leased Premises without the express written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Without limiting Lessor's right to withhold such consent, in no event shall: (i) Lessor be required to encumber or subordinate its fee title in the Ground Leased Premises or any part thereof or interest therein for any reason; (ii) any leasehold mortgage prohibit the disposition and application of insurance proceeds and condemnation awards, as provided herein; and (iii) any leasehold mortgage encumber any interest other

than Lessee's interest in the Ground Leased Premises and its interest as owner of any improvements placed on the Ground Leased Premises by Lessee.

#### ARTICLE 7 – MAINTENANCE

**Section 7.1 Maintenance of Ground Leased Premises.** Lessee shall, at its own cost and expense, maintain or cause to be maintained the Ground Leased Premises and any other of Lessee's improvements thereon and appurtenances thereto and every part thereof, in good order, condition and repair and in accordance with all applicable laws, rules, ordinances, orders and regulations of all governmental authorities. Lessee shall issue a written notice to Lessor advising of the nature of the maintenance, cost and timetable of maintenance activities at least fifteen (15) days prior to the date any such activities are scheduled to take place at the Ground Leased Premises. For purposes of this Lease, maintenance shall include, but not be limited to, activities such as re-surfacing and re-stripping of the parking lot, snow removal, and maintenance of landscaped areas. Lessee shall, at its sole cost and expense, restore, rehabilitate or remove the improvements of any type and kind which may be destroyed or damaged by fire, casualty, or any other cause whatsoever as described in this Lease, except for any repairs, replacements or renewals of improvements that are damaged by the negligence or willful misconduct of Lessor or its officers, agents, members, employees, contractors, subcontractors or invitees, arising from, related to, or in any way connected to the Ground Leased Premises or the Marine Property. Upon termination of this Lease, Lessee shall, subject to Section 2.3 of this Lease, peacefully surrender possession of the Ground Leased Premises and improvements thereon in good condition and repair, reasonable wear and tear excepted.

#### ARTICLE 8 – MECHANICS' LIENS

**Section 8.1 Prohibition of Liens on Fee or Leasehold Interest.** Lessee shall not suffer, create or permit any mechanic's liens or other liens to be filed against the fee of the Ground Leased Premises nor against Lessee's leasehold interest in the land, nor any improvements on the Ground Leased Premises, by reason of any work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone holding the Ground Leased Premises or any part thereof through or under Lessee. Pursuant to applicable law, Lessor's interest as herein described shall not be subject to liens for improvements made by Lessee or any assignee, sublessee, licensee or sublicensee. A "Memorandum of Lease" prepared pursuant to Section 17.15 of this Lease shall contain a reference to this provision.

**Section 8.2 Removal of Liens by Lessee.** If anyone claiming under or expressly authorized by Lessee shall at any time file a mechanic's or laborer's liens or materialman's lien against the Ground Leased Premises, Lessee shall promptly have such lien discharged by payment, commence a court action contesting such lien, or by undertaking pursuant to Section 779.08 Wisconsin Statutes, or other applicable law; provided further that if Lessee shall fail to discharge any such lien within sixty (60) days after Lessee receives notice of same, Lessor may discharge such lien, and in any such event, Lessee agrees to pay to Lessor the amount incurred by Lessor to obtain such discharge. Lessee shall indemnify and save Lessor harmless from all liability for damages, including reasonable attorneys' fees and costs, occasioned thereby and shall, in the event of a judgment of foreclosure upon any mechanic's lien, cause the same to be discharged and removed prior to the execution of such judgment, except that the Lessee shall have no obligation or responsibility to discharge liens that are the direct result of damages caused by the negligence or willful misconduct of Lessor or its officers, agents, members, employees, contractors, subcontractors or invitees, arising from, related to, or in any way connected to the Ground Leased Premises or the Marine Property.

## ARTICLE 9 – CONDEMNATION

**Section 9.1 Interests of Parties on Condemnation.** If the Ground Leased Premises or any part thereof shall be taken for public purpose by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Lessor and Lessee in the award or consideration for such transfer, and the allocation of the award and the other effect of the taking or transfer upon this Lease, shall be as provided by this Article 9.

**Section 9.2 Total Taking - Termination.** If the entire Ground Leased Premises is taken or so transferred, this Lease and all of the right, title and interest thereunder shall cease, terminate and be of no further force or effect on the date title to such land so taken or transferred vests in the condemning authority.

**Section 9.3 Partial Taking - Termination.** In the event of the taking or transfer of only a part of the Ground Leased Premises, this Lease and all right, title and interest thereunder may be terminated by either party giving, within sixty (60) days of the occurrence of such event, thirty (30) days' notice to the other party of such intention to terminate the Lease.

**Section 9.4 Partial Taking.** In the event of such taking or transfer of only a part of the Ground Leased Premises that does not result in a termination of this Lease as described in Section 9.3, then this Lease shall terminate only as to the portion of the Ground Leased Premises so taken or transferred as of the date title to such portion vests in the condemning authority, and shall continue in full force and effect as to the portion of the Ground Leased Premises not so taken or transferred.

**Section 9.5 Allocation of Award.** Any and all compensation and damages awarded or payable because of the taking of all or any portion of the Ground Leased Premises by eminent domain shall be divided between the Lessor and Lessee as follows: the total award shall be divided between Lessor and Lessee so that each party shall receive that portion of the total award in the same proportion as the value of such party's interest in the Ground Leased Premises. The value of Lessor's interests shall include (i) the value of the land and (ii) the value of Lessor's residual right to improvements located at the Ground Leased Premises after the termination or expiration of the Lease. The value of Lessee's interests shall include: (i) the value of any improvements at the Ground Leased Premises provided by Lessee, reduced by the value of Lessor's reversionary interest therein, and (ii) the value of Lessee's leasehold estate hereunder had the Ground Leased Premises not been condemned, including the right to use and occupy the Ground Leased Premises for the remainder of the Term.

**Section 9.6 Voluntary Conveyance.** A voluntary conveyance by Lessor to a public utility, agency or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings shall be deemed a taking within the meaning of this Article 9, subject to the methodology outlined in Section 9.5.

## ARTICLE 10 – ASSIGNMENT AND SUBLEASE

**Section 10.1 Limitation on Assignment and Subleasing.** Lessee may not assign or sublease, license or sublicense or otherwise convey this Lease and the leasehold estate created hereby or otherwise transfer its fee interest in the Ground Leased Premises, for purposes of security or otherwise (collectively, "Transfer of Lessee's Interest") without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however that Lessee, without obtaining Lessor's consent, may enter into license agreements authorizing licensees to use all or part of the Ground Leased Premises on a temporary basis for a use permitted pursuant to Section 4.1.1. Without limiting

Landlord's right to withhold such consent, the withholding of such consent may be based upon, but not limited to, the following: (i) use of the Ground Leased Premises shall be limited to a use in compliance with the requirements of Section 4.1.1. of this Lease; (ii) the term of the sublease or license shall not exceed the Term of this Lease; and (iii) any assignment or sublease shall contain provisions acknowledging it is subject and subordinate to this Lease, and agreeing that a termination or expiration of this Lease, shall, at Lessor's sole option, constitute a termination or expiration of the assignment or sublease; and (iv) if Lessee shall sublet or assign the Ground Leased Premises or any part thereof or assign any interest in this Lease for any consideration, then said consideration shall be divided equally between Lessor and Lessee; provided, however, that Lessee shall have no obligation to pay over to Lessor any portion of the licensing fee, permit fee or similar fees that Lessee customarily charges to licensees or sublicensees of the Ground Leased Premises. Notwithstanding anything to the contrary set forth herein, Lessee shall remain fully liable for all of the terms, provisions, covenants, conditions, indemnifications and obligations binding upon Lessee under this Lease; and in the event of an approved Transfer of Lessee's Interest, any approved assignee shall be required to assume in writing the obligations of Lessee under this Lease.

## ARTICLE 11 – INSURANCE AND INDEMNIFICATION

**Section 11.1 Comprehensive Liability Insurance.** Lessee shall, at its cost and expense, at all times during the Term, maintain in force, for the joint benefit of Lessor and Lessee, and any holder of a mortgage on the Ground Leased Premises, a broad form comprehensive coverage policy of public liability insurance issued by a carrier licensed to do business in the State of Wisconsin with a Best's Insurance Guide Rating of A, by the terms of which Lessor and Lessee and any holder of a mortgage on the Ground Leased Premises are named as insureds and are indemnified against liability for damage or injury to the property or person (including death) of Lessee, its invitees or any other persons entering upon or using the Ground Leased Premises, or any structure thereon or any part thereof. Such insurance policy or policies shall be maintained on the minimum basis of Three Million and no/100 Dollars (\$3,000,000) for damage to property and for bodily injury or death as to any person, and Two Million and no/100 Dollars (\$2,000,000.00) as to any one accident, with a commercially reasonable deductible. Lessor reserves the right to require reasonable increases in the limits of coverage from time to time, but no more than every three (3) years, during the Term; and the requested increase will be deemed reasonable if consistent with commercially reasonable practices for similar projects in the same geographic area. Such insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by Lessor. A certificate of said insurance, together with proof of payment of the premium thereof shall be delivered to Lessor on the Lease Commencement Date, effective from and after the Lease Commencement Date, and renewal certificates and proof of payment of premium therefor shall be delivered to Lessor not less than fifteen (15) days prior to the renewal date of any such insurance policies during the Term. Such insurance shall be cancelable only after thirty (30) days' prior written notice to Lessor and Lessee, and any holder of a mortgage on the Ground Leased Premises. In the event Lessee fails to timely pay any premium when due, Lessor shall be authorized to do so, and may charge all costs and expenses thereof, including the premium and interest at the maximum rate allowed by law, to Lessee, to be paid by Lessee.

**Section 11.2 Property Insurance.** In the event that the Lessee constructs or otherwise maintains any real property improvements on the Ground Leased Premises, Lessee shall, at its cost and expense and at all times during the Term, maintain in force, for the joint benefit of Lessor and Lessee and any holder of a mortgage on the Ground Leased Premises a policy of insurance against loss or damage by fire and lightning, and such other perils as are covered under a standard form of property insurance available in the state of Wisconsin. Lessor and any holder of a mortgage on the Ground Leased Premises shall be named as loss payees on such policy of insurance. If a loss payee designation is not commercially available and any proceeds are directed solely to Lessee, then Lessee covenants and agrees

that Lessee shall hold such amounts for the joint benefit of Lessor and Lessee and shall not pay out, direct or otherwise spend any such amounts without Lessor's prior written consent. Such insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by Lessor. In addition, the deductible for such insurance shall not exceed commercially reasonable amounts. The insurance shall be carried and maintained to the extent of actual replacement cost of the real property improvements. A certificate of said insurance, together with proof of payment of the premium thereof, shall be delivered to Lessor within thirty (30) days of completion of any real property improvement. Any renewal certificates and proof of payment of premium therefor shall be delivered to Lessor not less than fifteen (15) days prior to the renewal date of any such insurance policies during the Term. Such insurance shall be cancelable only after thirty (30) days' prior written notice to Lessor, Lessee, and any holder of a mortgage on the Ground Leased Premises. In the event Lessee fails to timely pay any premium when due, Lessor shall be authorized, but not obligated, to do so, and may charge all costs and expenses thereof, including the premium and interest at the maximum rate allowed by law, to Lessee, to be paid by Lessee.

**Section 11.3 Indemnification.** Lessee hereby agrees to indemnify, protect, defend and save Lessor, its agents, officers, shareholders and employees harmless from and against any and all losses, damages, actions, fines, penalties, demands, damages, liability and expense, including reasonable attorneys' fees and costs through litigation arising from or caused by: (i) any occurrence in, upon, or at the Ground Leased Premises caused by the negligence or willful misconduct of Lessee or its agents, officials, agents, employees, contractors and subcontractors; (ii) the operation, occupancy, use, construction upon and maintenance of the Ground Leased Premises by Lessee or its assignees, sublessees, licensees or sublicensees; or (iii) any act or failure to act, by Lessee and its agents, contractors, employees, invitees, assignees, sublessees, licensees or sublicensees. It is expressly understood and agreed that Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason.

Lessor hereby agrees to indemnify, protect, defend and save Lessee, its agents, officers, agents, employees and invitees (including permitted assignees, sublessees and licensees) harmless from and against any and all losses, damages, actions, fines, penalties, demands, damages, liability and expense, including reasonable attorneys' fees and costs through litigation arising from or caused by any occurrence in, upon, or at the Ground Leased Premises caused by the negligence or willful misconduct of Lessor or its agents, members, employees, contractors, subcontractors or invitees arising from, related to, or in any way connected to the Ground Leased Premises. It is expressly understood and agreed that Lessor's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason.

## ARTICLE 12 – DAMAGE AND DESTRUCTION

**Section 12.1 Lessee's Duty to Restore Ground Leased Premises.** At any time during the Term, if any of Lessee's buildings or real property improvements now or hereafter on the Ground Leased Premises are damaged and/or destroyed in whole or in part by fire, theft, the elements, or any other cause, this Lease shall continue in full force and effect, and Lessee, subject to the election described in the last paragraph of this Section 12.1, at its sole cost and expense, and subject to the conditions set forth in Section 11.2, shall repair and restore the damaged buildings or improvements on the Ground Leased Premises and repair any damage to the asphalt parking areas caused by such casualty to the condition existing on the Commencement Date, all according to such plans as shall be reasonably approved in writing by Lessor, except for any repairs or replacements of improvements that are damaged by the negligence or willful misconduct of Lessor or its officers, agents, members, employees, contractors, subcontractors or invitees, arising from, related to, or in any way connected to the Ground Leased Premises or the Marine Property. The work of repair and restoration shall be commenced by Lessee as soon as reasonably possible, with due consideration given to, among other things, clearing of damaged

portions of the Ground Leased Premises and site preparation, adjustment of insurance claims, redesign, rebidding and repermitting, obtaining a new loan or loans for construction or repair. Lessee shall proceed diligently to commence repairs and restoration. Once construction has commenced, Lessee shall proceed diligently thereafter to complete the construction or repair, and shall complete the same no later than twelve (12) months after the commencement of such construction or repair subject to events of force majeure, as defined in Section 17.23 below.

Notwithstanding the foregoing, Lessee shall have the right to elect not to repair and restore the damaged buildings or improvements. Lessee shall notify Lessor of its election in writing within thirty (30) days following such destruction. If Lessee elects to not repair or restore, Lessee shall, at its expense, within ninety (90) calendar days after such election, (i) tear down and remove all remaining parts of the damaged buildings and improvements as well as the debris resulting from such destruction, and shall restore the Ground Leased Premises to a clean, sightly and safe condition and (ii) repair any damage to the asphalt parking areas caused by such casualty to the condition existing on the Commencement Date.

**Section 12.2 Option to Terminate Lease for Destruction.** Notwithstanding Section 12.1 above, in the event that the Ground Leased Premises or any building and real property improvements thereon are damaged or destroyed by fire, theft or any other casualty, Lessee and Lessor shall each have the option of terminating this Lease on the last calendar day of any month during the Term by giving to Lessor or Lessee, as the case may be, at least sixty (60) days' prior written notice of Lessee's or Lessor's intent to do so; and if Lessee or Lessee elects to terminate this Lease, then Lessee shall also be required to remove, at Lessee's own cost and expense, all debris and remains of Lessee's damaged improvements from the Ground Leased Premises and otherwise perform the obligations set forth in the last paragraph of Section 12.1. Any failure by Lessee to perform its obligation under the last paragraph of Section 12.1 shall constitute an Event of Default under Article 13 of this Lease.

**Section 12.3 Application of Insurance Proceeds.** Any and all insurance proceeds that become payable at any time during the Term because of damage to or destruction of any buildings or improvements on the Ground Leased Premises shall be paid jointly to Lessee and Lessor, and applied toward the cost of repairing and restoring the damaged or destroyed buildings or improvements in the manner required by Section 12.1 of this Lease; provided, however, that should Lessee or Lessor exercise its option granted by Section 12.2 of this Lease to terminate this Lease because of damage to or destruction of buildings or improvements on the Ground Leased Premises, then, in that event, any and all fire or other insurance proceeds that become payable because of such damage or destruction:

(a) Shall be first applied to remove the debris.

(b) Then the balance of the proceeds, if any, shall be paid to Lessor and Lessee based upon their respective interests in the improvements at the Ground Leased Premises at the date of destruction as described in Section 9.5.

## ARTICLE 13 – DEFAULTS AND REMEDIES

**Section 13.1 Defaults.** Each of the following events shall be a default by Lessee and a breach of this Lease and constitute an "Event of Default":

**Section 13.1.1 Attachment or Other Levy.** The subjection of any right or interest of Lessee in the Ground Leased Premises to attachment, execution or other levy, or to seizure under legal process, if not released within sixty (60) days.



**Section 13.1.2 Appointment of Receiver.** The appointment of a receiver to take possession of the Ground Leased Premises or improvements thereof, or of Lessee's interest in the leasehold estate or of Lessee's operations on the Ground Leased Premises, for any reason.

**Section 13.1.3 Insolvency: Bankruptcy.** An assignment by Lessee for the benefit of creditors, or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee bankrupt; or for extending time for payment, adjustment or satisfaction of Lessee's liabilities; or reorganization, dissolution, or arrangement on account of, or to prevent bankruptcy or insolvency; unless, in case of such that are involuntary on Lessee's part, the assignment, proceedings, and all consequent orders, adjudications, custodies and supervisions are dismissed, vacated or terminated within sixty (60) days after the assignment, filing or other initial event.

**Section 13.1.4 Default in Payment or Performance Under this Lease.** Failure of Lessee to pay any impositions or other monetary obligations of any nature whatsoever required to be paid by Lessee under this Lease when due and payable; or failure of Lessee to observe or perform any of its other covenants, conditions or agreements under this Lease or the breach of any warranties or representations of Lessee under this Lease.

**Section 13.1.5 Notice and Right to Cure.** If the alleged default is monetary in nature, Lessor shall deliver written notice to Lessee of the default and Lessee will have ten (10) days after the receipt of such written notice to cure the default. As to any non-monetary defaults, Lessee shall have thirty (30) days after written notice is given by Lessor specifying the nature of the default to cure the default or such additional time as may be reasonably necessary. As used herein, non-monetary default shall include, without limitation, a breach of any covenant of Lessee hereunder, Lessee's failure to perform as required hereunder, and a breach of any warranty, representation or other agreement of Lessee under this Lease.

**Section 13.1.6 Remedies.** If any default by Lessee shall continue uncured upon expiration of the applicable curing period, then Lessor may exercise any one or all of the following remedies in addition to all other rights and remedies provided by law or equity, from time to time, to which Lessor may resort cumulatively or in the alternative:

**Section 13.1.7 Termination.** If any default by Lessee shall continue uncured upon expiration of the applicable curing period, Lessor may, at Lessor's election, and without notice, terminate this Lease. All Lessee's rights in the Ground Leased Premises, and in all improvements shall terminate upon termination of this Lease. Promptly after any such termination, Lessee shall surrender and vacate the Ground Leased Premises, and any other improvements in broom-clean condition (except as otherwise provided in Section 5.1), and Lessor may re-enter and take possession of the Ground Leased Premises, and all other improvements. Lessee shall surrender the Ground Leased Premises to Lessor and in accordance with Section 2.3. Termination under this paragraph shall not relieve Lessee from the payment of any sum then due to Lessor, or from any claim for damages previously accrued, or then accruing, against Lessee.

**Section 13.1.8 Lessee's Personal Property.** Lessor may, at Lessor's election, use Lessee's personal property and trade fixtures or any of such property and fixtures without compensation and without liability for use or damage, or store them for the account and at the cost of Lessee. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item, or for the same item at a later time.

**Section 13.1.9 Remedies Cumulative.** Suit or suits for the recovery of damages may be brought by either party from time to time at its election, and nothing contained herein shall be deemed to require a party to postpone suit until the date when the term of this Lease would have expired nor limit or preclude recovery of any sums or damages which, in addition to the damages particularly provided above, may lawfully be entitled by reason of any default hereunder. All the remedies hereinbefore given and all rights and remedies available at law and in equity shall be cumulative and concurrent.

**Section 13.1.10 Lessee's Liability After Default.** If Lessee shall default in the performance of any of its obligations under this Lease, Lessor, without thereby waiving such default, may (but shall not be obligated to) perform the same for the account and at the expense of Lessee, without notice in a case of emergency, and in any other case only if such default continues after the expiration of the curing period applicable, if any, under this Lease. Any expenses incurred by Lessor in connection with any such performance, and all costs, expenses, and disbursements of every kind and nature whatsoever, including reasonable attorneys' fees involved in enforcing or endeavoring to enforce any rights against Lessee or Lessee's obligations hereunder, shall be due and payable upon Lessor's submission of an invoice therefor. All sums advanced by Lessor on account of Lessee under this section, or pursuant to any other provision of this Lease, if delinquent or not paid by Lessee and received by Lessor when due hereunder, shall bear interest at the maximum rate permitted by law, from the due date thereof until paid and the same shall be due and payable upon Lessor's demand therefor.

**Section 13.1.11 Holdover.** If Lessee remains in possession of the Ground Leased Premises or any part thereof after the expiration or sooner termination of the Term or any extension thereof, Lessee shall become a lessee at sufferance. Notwithstanding that Lessor may allow Lessee to continue in possession after the expiration or sooner termination of this Lease, neither that nor the provisions of this Section shall constitute a waiver of any of Lessor's rights under this Section or this Lease. Further, Lessee shall be in continuing breach of this Lease at any time or during any period in which Lessee is a holdover lessee.

**Section 13.1.12 Lessor Default.** If Lessor shall default in the performance of any of Lessor's obligations hereunder, and such default shall not be cured within thirty (30) days after receipt of notice thereof from Lessee, or such additional days as may be reasonably necessary, then Lessee shall have the option of terminating this Lease by giving written notice of termination to Landlord or pursuing any remedies available under Section 13.1.9.

**Section 13.1.13 Emergency Actions.** If Lessee, in its good faith opinion, reasonably believes that a condition exists within the Ground Leased Premises that constitutes an "emergency" by Lessee's Engineer, Police Chief or Fire Chief (an "emergency" is defined herein as a condition arising from actual or imminent failure, that if not corrected immediately, will potentially result in a substantial health or safety hazard, or a loss of life, property or substantial environmental resources, to occupants or to business facilities or dwellings), then Lessee shall proceed to take such action as is reasonable under such circumstances to remedy or otherwise address the emergency.

## ARTICLE 14 – SURRENDER AND REMOVAL

**Section 14.1 Surrender of Possession.** Subject to Section 5.1, upon the expiration of the Term or any earlier termination thereof, Lessee shall surrender to Lessor possession of the Ground Leased Premises and all Lessee's improvements, constructed and installed thereon in good condition and repair, reasonable wear and tear excepted. Lessee shall remove, or cause to be removed, all personal property

and equipment of Lessee, other than permanent fixtures, from the Ground Leased Premises prior to the date of any termination of this Lease and, at Lessee's option, remove all improvements that Lessee made to the Ground Leased Premises during the Term.

**Section 14.2 Lessee's Quitclaim.** Upon the expiration of the Term or any sooner termination of this Lease, Lessee, upon request of Lessor, agrees to execute, acknowledge and deliver to Lessor a proper instrument in writing, releasing and quitclaiming to Lessor all right, title and interest of Lessee in and to the Ground Leased Premises and all improvements.

## ARTICLE 15 – RIGHT OF REFUSAL

**Section 15.1 Right of First Refusal.** During the Term hereof, Lessor shall not convey its fee interest in the Ground Leased Premises, or any portion thereof, to any third party without providing Lessee with the following right of first refusal to purchase the Ground Leased Premises (the "**Right of First Refusal**"). If Lessor receives a bona fide offer by a third party to purchase the Ground Leased Premises, or any portion thereof, which Lessor desires to accept, Lessor shall deliver a copy of said offer to Lessee (the "**Right of First Offer Notice**") Lessor's notice to Lessee shall state: (i) Lessor's desire and intention to sell all or any part of the Ground Leased Premises; and (ii) full details of the bona fide offer received by it, and a description of the purchase price as well as the overall transaction. Lessee shall have twenty (20) days from and after receiving the Right of First Offer Notice to elect to purchase the Ground Leased Premises, or such portion as may be the subject of the bona fide offer, upon the terms and conditions set forth in the Right of First Offer Notice, including all rights, privileges and timetables contained in the bona fide offer and any amendments related thereto which had been accepted by Lessor. If Lessee elects to purchase the Ground Leased Premises, or such portion as may be the subject of the bona fide offer, Lessee shall give Lessor written notice within the twenty (20) day period and the closing shall occur as set forth in the Right of First Offer Notice or at such date as may be mutually agreed upon by and between the parties. If Lessee fails to give Lessor written notice within the twenty (20) day period of its intent to purchase the Ground Leased Premises, or such portion as may be the subject of the bona fide offer, then the Right of First Refusal shall terminate and, upon the closing of the sale to such third party, this Lease shall terminate as well; provided, however, that if such closing does not occur, then the Right of First Refusal and this Lease shall remain in effect. Notwithstanding the foregoing, (a) the Right of First Refusal shall not apply in the event of a sale, transfer or assignment of Lessor's interest in the Ground Leased Premises (i) to any entity controlled by, controlling, or under common control with Lessor or (ii) in connection with the granting or foreclosure of any deed to secure debt, mortgage or other similar security instrument, whether by judicial or non-judicial sale, or any deed or assignment in lieu of foreclosure, covering the Ground Leased Premises or Lessor's fee interest therein, and (b) Lessee shall have no right to exercise the Right of First Refusal if Lessee is in default hereunder at the time Lessor delivers to Lessee the Right of First Offer Notice or at the time of closing on the Ground Leased Premises if Lessee has previously exercised the Right of First Refusal as set forth herein.

## ARTICLE 16 – LESSOR'S TERMINATION RIGHT

**Section 16.1 Lessor's Termination Right.** At any time during the Term, Lessor shall have the option (the "**Expansion Option**") to use the Ground Leased Premises to construct an expansion of Lessor's Existing Facility or other facilities (the "**Facilities Expansion**"). The term "Facilities Expansion" is defined herein as construction of a structure housing a use that is related to the operations of Lessor's Existing Facility and is not in violation of any law, ordinance, permit or governmental regulation (including those related to building and zoning.) To exercise the Expansion Option, Lessor shall deliver to Lessee a written notice of expansion (the "**Expansion Notice**"). Lessor will use commercially reasonable efforts to accommodate Lessee's continued use of the Ground Leased Premises. If such continued use is possible, as determined by Lessor in its reasonable discretion, then the Expansion

Notice shall include an amendment to this Lease, which shall include adjusting the size of the Ground Leased Premises to that area of the Ground Leased Premises that is not necessary to accommodate the Facilities Expansion and modifies any other relevant terms and conditions of the Lease. If such continued use is not possible, as determined by Lessor in its reasonable discretion, then this Lease shall terminate as of the later of (a) the date that the following conditions are satisfied: (i) Lessee's Planning Department approves a site plan for the Facilities Expansion, if site plan approval is required for the Facilities Expansion, and (ii) Lessee's Building Inspection Department issues a building permit for the Facilities Expansion, if a building permit is required for the Facilities Expansion (the "Effective Date of Termination") or (b) one hundred twenty (120) days after the date of the Expansion Notice. Upon such termination, neither party shall have any further obligations hereunder, except as otherwise provided herein.

If Lessor exercises the Expansion Option and this Lease Terminates, but Lessor does not commence construction of the Facilities Expansion within one hundred eighty (180) days of the Effective Date of Termination, subject to extension as provided in Section 17.23, then Lessee shall have the right to reinstate this Ground Lease upon delivery of thirty (30) days written notice to Lessor. Upon the expiration of such thirty (30) day period, this Ground Lease will be reinstated unless Lessor shall have commenced construction of the Facilities Expansion prior to the expiration of such thirty (30) day period. Any such reinstatement shall be subject to the terms and conditions of this Lease including, without limitation, the Expansion Option.

If Lessor exercises the Expansion Option and this Lease terminates, then Lessor agrees to use commercially reasonable efforts to locate and construct the Facilities Expansion upon the eastern portion of the Ground Leased Premises to minimize any material negative visual impacts of views of the Manitowoc River and Lake Michigan from Lessee's existing public library. Lessor, however, shall have no obligations under this paragraph if Lessor determines that the construction of the Facilities Expansion upon the eastern portion of the Ground Leased Premises is not commercially feasible. By way of example and without limiting the generality of the foregoing, Lessor's determination may be based upon Lessee's conclusion that construction of the Facilities Expansion upon the eastern portion of the Ground Leased Premises (i) will be materially more expensive than alternative locations within the Ground Leased Premises, (ii) is not permitted or is materially restricted by any applicable law, or (iii) does not satisfactorily integrate the Facilities Expansion with Lessor's Existing Facility.

If Lessor exercises the Expansion Option and this Lease terminates, then Lessor shall provide to Lessee a permanent public access easement to Lessee in the location of the existing pedestrian walkway on the north portion of the Ground Leased Premises adjacent to the south side of the Manitowoc River upon such terms and conditions to be mutually agreed upon by and between the Parties (the "Walkway Easement"). Notwithstanding the foregoing, Lessor shall have no obligation to provide to Lessee the Walkway Easement if (i) the Walkway Easement is not permitted or is materially restricted by any applicable law, (ii) the Walkway Easement would unreasonably interfere with the planned location or operation of the Facilities Expansion, (iii) the Walkway Easement would create unsafe or otherwise dangerous conditions for the public or Lessor's employees or invitees, or (iv) the existing pedestrian walkway no longer exists as of the Effective Date of Termination.

## ARTICLE 17 – GENERAL PROVISIONS

**Section 17.1 Conditions and Covenants.** All of the provisions of this Lease shall be deemed as running with the land, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

**Section 17.2 Survival of Indemnities.** All representations, warranties and indemnities under this Lease shall survive the expiration or sooner termination of this Lease.

**Section 17.3 No Waiver of Breach.** No failure by either party to insist upon the strict performance by the other party of any covenant, agreement, term or condition of this Lease, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver by either party of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

**Section 17.4 Notices.** Unless otherwise specifically provided in this Lease or by law, any and all notices or other communications required or permitted by this Lease or by law to be served on, given to, or delivered to any party to this Lease shall be in writing and shall be deemed duly served, given, delivered and received when personally delivered (including confirmed overnight delivery service to the party to whom it is directed), or in lieu of such personal delivery, when three (3) business days have elapsed following deposit thereof in the United States mail, first-class postage prepaid, certified, return receipt requested, addressed to:

LESSOR: Riverland Ag. Corp.  
1660 South Highway 100  
Suite 350  
St. Louis Park, MN 55416  
Attention: Chief Operating Officer

LESSEE: City of Manitowoc  
900 Quay Street  
Manitowoc, WI 54220-4543  
Attention: City Clerk

Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice. By giving at least five (5) consecutive calendar day's prior written notice thereof, either party may change its address for the purpose of this paragraph.

The parties further agree that electronically reproduced signatures such as by email transmission are valid for execution or amendment of the Lease, and that electronic transmission/email is an authorized form of notice as that term is used in the Lease.

**Section 17.5 Gender.** The use herein of (1) any gender includes all others, and (2) the singular number includes the plural and vice-versa, whenever the context so requires.

**Section 17.6 Entire Agreement.** This Lease contains the entire agreement between the parties regarding the subject matter hereof. Any oral or written representations, agreements, understandings and/or statements shall be of no force and effect.

**Section 17.7 Waiver; Amendment.** No modification, waiver, amendment, discharge or change of this Lease shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

**Section 17.8 Attorneys' Fees.** If either party retains an attorney to enforce or interpret this Lease, the prevailing party shall be entitled to recover, in addition to all other items of recovery permitted by law, reasonable attorneys' fees and costs incurred through litigation, bankruptcy proceedings and all

appeals, including the time and benefits associated with in-house counsel, as in the case of a municipal attorney.

**Section 17.9 Time.** Time is of the essence of each obligation of each party hereunder.

**Section 17.10 Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of Wisconsin.

**Section 17.11 Binding Effect.** Subject to any provision of this Lease that may prohibit or curtail assignment of any rights hereunder, this Lease shall bind and inure to the benefit of the respective heirs, assigns, personal representatives, and successors of the parties hereto.

**Section 17.12 Execution of Other Instruments.** Each party agrees that it shall, upon the other's request, take any and all steps, and execute, acknowledge and deliver to the other party and all further instruments necessary or expedient to effectuate the purpose of this Lease.

**Section 17.13 Severability.** If any term, provision, covenant or condition of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**Section 17.14 Estoppel Certificate.** Either party shall execute, acknowledge and deliver to the other party, within twenty (20) days after requested by the other party, a statement in writing certifying, if such is the case, that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (whether one or more, hereinafter referred to as "modifications") (or if there have been modifications that the same is in full force and effect as modified); the date of commencement of this Lease; the dates for which charges have been paid; any alleged defaults and claims against the other party; and providing such other information as shall be reasonably requested by the requesting party.

**Section 17.15 Memorandum of Lease.** Upon request from either party, Lessor and Lessee shall execute and acknowledge a Memorandum of this Lease for purpose of recordation. Lessee shall be responsible for payment of the cost of recording the Memorandum of Lease.

**Section 17.16 Lessor Liability.** Notwithstanding anything to the contrary provided in this Lease, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Lease by Lessor, that Lessee shall look solely to the Ground Leased Premises for the satisfaction of each and every remedy of Lessee in the event of any breach by Lessor of any of the terms, covenants and conditions of this Lease to be performed by Lessor, or any other matter in connection with this Lease or the Ground Leased Premises, such exculpation of liability to be absolute and without any exception whatsoever.

**Section 17.17 Subordination.** Lessee's rights under this Lease are and shall always be subordinate to the operation and effect of any mortgage, deed of trust, ground lease, assignment of leases or other security instrument or operating agreement now or hereafter placed or governing the Building or related improvements and the Project, or any part thereof by Lessor, and to any advances thereunder, interest thereon, and all renewals, replacements and extensions thereof. This clause shall be self-operative, and no further instrument of subordination shall be required. In confirmation thereof, Lessee shall execute such further assurances as may be required by Lessor or any mortgagee, trustee, beneficiary, ground lessor or assignee under such mortgage, deed of trust, ground lease, assignment of leases or other security instrument. The foregoing notwithstanding, any mortgagee, trustee, beneficiary, lessee or assignee may elect that this Lease shall have priority over its mortgage, deed of trust, ground

lease or other security instrument, and upon notification of such election by any such mortgagee, beneficiary or ground lessor to Lessee, this Lease shall be deemed to have priority over said mortgage, deed of trust, ground lease, assignment of leases or other security instrument whether this Lease is dated prior to or subsequent to the date of such mortgage, deed of trust, ground lease, assignment of leases or other security instrument. Lessee agrees to execute all instruments required by any such mortgagee, trustee, beneficiary, ground lessor or assignee to confirm such priority or subordination, as the case may be. Lessee hereby attorns to any successor to Lessor's interest in this Lease, and shall recognize such successor as Lessor hereunder. Lessee agrees to execute all instruments requested by such successor to confirm such attornment. Lessee by virtue of its attornment upon the compliance, performance and discharge of the terms, conditions, covenants and obligations on the part of Lessee to be performed hereunder, shall have the right to the peaceable possession of the Leased Premises for the term of this Lease and any extension or renewal thereof and shall not be disturbed in the event of the termination or foreclosure of any mortgage, deed of trust, ground lease, assignment of leases, or security instrument now or hereafter placed or governing the Leased Premises, and such successor in title to Lessor hereunder shall acknowledge and confirm to Lessee that Lessee's right to continue to occupy said Leased Premises pursuant to the term of this Lease shall in no way be affected by such termination. If, in the future, the Ground Leased Premises becomes subject to the lien of a mortgage, Lessor agrees to exercise commercially reasonable efforts to attempt to obtain for the benefit of Lessee a commercially reasonable subordination, non-disturbance and attornment agreement from the lender holding such interest (pursuant to such lender's form agreement). Any provision of this Section 17.17 to the contrary notwithstanding, Lessee's right of possession of the Ground Leased Premises will not be disturbed by any lender so long as no Event of Default has occurred hereunder.

**Section 17.18 Counterparts.** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**Section 17.19 Quiet Enjoyment.** Lessor covenants, warrants and represents that Lessee and any of Lessee's agents, employees, tenants, licensees, invitees, successors and assigns shall have the right to use and enjoy the Ground Leased Premises, subject to the terms of the Lease and provided (i) such use does not unreasonably interfere with the use of the Ground Leased Premises by Lessor and (ii) that Lessee does not default in the performance of its obligations hereunder.

**Section 17.20 Relationship of Parties.** Nothing in this Lease nor any act of either of the parties shall be deemed or construed to create any relationship of third party beneficiary, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the parties hereto.

**Section 17.21 Construction.** The parties have contributed to the drafting of this Lease. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against the parties hereunder by virtue of the Lessor or Lessee having drafted this Lease or any portion thereof.

**Section 17.22 No Vested Rights Granted.** Except as expressly provided in the Lease, no vested right in connection with the interest and rights granted hereunder shall inure to the parties until the date the Lease is fully executed, nor does Lessee warrant by this Lease that Lessor is entitled to any other approvals requested.

**Section 17.23 Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by a party hereunder, there shall be excluded from the computation of any such period of time, any

delays due to strikes, riots, acts of god, shortages of labor or materials, war, governmental laws, regulations, or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of such party.

**Section 17.24 Headings.** The section titles have been inserted in the Lease primarily for convenience and do not define, limit or construe the contents of any provision set forth herein. If headings conflict with the text, the text shall control.

IN WITNESS WHEREOF, this Lease has been executed as of the date and year first above written.

**LESSOR:**

**RIVERLAND AG CORP.**

By: Craig R. Reiners  
Name: CRAG R. REINERS  
Title: COO

**LESSEE:**

**CITY OF MANITOWOC**

By: Justin M. Nickels  
Justin M. Nickels, Mayor  
By: Jennifer Hudon  
Jennifer Hudon, City Clerk



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF GROUND LEASED PREMISES**

Lots 1, 2, 3 and 4 of Block 219; and Lots 3, 4, 5 and 6 of Block 220, ALL IN the Original Plat of the City of Manitowoc, Manitowoc County, Wisconsin, according to the recorded plat of said Original Plat.

5052862\_6.DOC

**COPY**

1116457

**MEMORANDUM OF GROUND LEASE**

THIS MEMORANDUM OF GROUND LEASE ("Memorandum") is made and entered into by RIVERLAND AG CORP., a Delaware corporation ("Lessor") and the CITY OF MANITOWOC, a Wisconsin municipal corporation ("Lessee"), dated as of May 24, 2012 (the "Effective Date"). Lessor and Lessee being sometimes also hereinafter referred to individually as a "Party" or collectively as the "Parties."

RECITALS



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This Memorandum is entered into upon the basis of the following facts, understandings and intentions of the parties:

A. Lessor is the fee owner of certain real property and improvements located thereon (the "Ground Leased Premises"), in Manitowoc, Wisconsin, legally described as:

Lots 1, 2, 3 and 4 of Block 219; and Lots 3, 4, 5 and 6 of Block 220, ALL IN the Original Plat of the City of Manitowoc, Manitowoc County, Wisconsin, according to the recorded plat of said Original Plat.

Tax Parcel No. 000-219-010

STATE OF WI - MTWC CO  
PRESTON JONES REG/DEEDS  
RECEIVED FOR RECORD  
06/27/2012 8:52:00 AM

B. Lessor desires to lease to Lessee the Ground Leased Premises, and Lessee desires to lease the Ground Leased Premises from Lessor.

C. Pursuant to a certain Ground Lease with an effective date of May 24, 2012, Lessor leased to Lessee, and Lessee leased from Lessor the Ground Leased Premises, upon the terms and conditions set forth therein.

D. The parties wish to place notice of the existence of the Ground Lease on record for the purpose of evidencing Lessee's interest in the Ground Leased Premises upon the terms and conditions set forth in the Ground Lease for a term of 50 years beginning May 24, 2012.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, the receipt and sufficiency of which is hereby acknowledged, the parties state and agree as follows:

1. Recitals. The Recitals above are deemed to be true and correct.

2. Terms and Conditions. All terms and conditions of the Ground Lease, and any amendments related thereto, are incorporated into this Memorandum by reference, and is executed by the parties with the understanding and agreement that nothing contained herein shall in any manner alter, modify or vary the terms or conditions of the Ground Lease. In the event of a conflict between the terms of the Ground Lease and this Memorandum, the terms of the Ground Lease shall control.

3. Right of First Refusal. During the term of the Ground Lease, Lessor shall not convey its fee interest in the Ground Leased Premises, or any portion thereof, to any third party without providing Lessee with a right of first refusal to purchase the Ground Leased Premises as detailed in Section 15.1 of the Ground Lease.

4. Lessor's Termination Right. At any time during the term of the Ground Lease, Lessor shall, pursuant to Section 16.1 of the Ground Lease, have the option to use the Ground Leased Premises to construct an expansion of Lessor's existing facility or other facilities.

IN WITNESS WHEREOF, the parties have executed and delivered this Memorandum as of the date and year first above written.

RIVERLAND AG CORP, A Delaware Corporation

By: Craig M. Reimers 05/31/2012  
Date

STATE OF MINNESOTA)  
COUNTY )ss.

Personally came before me this 31 day of MAY, 2012, the above named CRAIG REIMERS, to me known who executed the foregoing instrument as CEO of Riverland Ag Corp., and acknowledged that he executed the foregoing instrument as such Officer of said corporation, by its authority.

James Leroy Backus  
Notary Public  
Henrieville County, Minnesota  
My commission (expires)(is):  
January 31, 2016



CITY OF MANITOWOC, a Wisconsin Municipal Corporation

By: Justin M. Nickels 5/24/12  
Justin M. Nickels, Mayor Date

By: Jennifer Hudon 5/24/12  
Jennifer Hudon, City Clerk Date

STATE OF WISCONSIN)  
MANITOWOC COUNTY )ss.

Personally came before me this 24 day of MAY, 2012, the above named Justin M. Nickels, Mayor and Jennifer Hudon, City Clerk, to me known who executed the foregoing instrument and to me known to be such Mayor and City Clerk of the City of Manitowoc, WI, a Wisconsin Municipal Corporation, and acknowledged that they executed the foregoing instrument as such Officers of said City, by its authority.

Debrah A. Newser  
Notary Public  
Manitowoc County, Wisconsin  
My commission (expires)(is):  
8-17-14

Drafted by: David Less, City Planner  
City of Manitowoc