

## LEASE TERMS AND CONDITIONS

1. **LEASE.** Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the Equipment (as defined below). The lease of any Equipment is governed by the terms of this Agreement. The Equipment is and shall remain the personal property of Seller.

2. **TERMS.** All capitalized terms used and not otherwise defined herein, will have the meanings set forth in this Agreement. As used in this Agreement, the following definitions shall apply: "**Accessories**" shall mean any additions, attachments, or accessories to the modular buildings, or ancillary services, provided by Lessor to Lessee and identified in this Agreement; "**Equipment**" shall mean the modular buildings, Accessories, and/or Services identified in this Agreement, together with any replacements, repairs, additions, attachments or accessories hereafter rented to Lessee under this Agreement.

3. **PAYMENTS AND PRICE ADJUSTMENTS.** Lessee agrees to pay to Lessor each payment specified herein on a net invoice basis. Payment terms are net due upon receipt unless otherwise agreed upon in writing. All payments due from Lessee pursuant to this Agreement shall be made by Lessee without any abatement or setoff of any kind whatsoever arising from any cause whatsoever. Prices will be increased by Lessor for unknown circumstances or conditions, including, but not limited to, driver waiting time, special transport permits, difficult site conditions and/or increases in fuel prices.

4. **LEASE TERM; EARLY TERMINATION.** The Lease Term and Monthly Rent, each of which are specified in this Agreement, shall commence on the date the Equipment is delivered to the Site ("the Start Rent Date"), unless a different date is mutually agreed upon in writing, and shall continue thereafter for the number of months specified in this Agreement as the Lease Term. Lessee agrees to pay the Total Monthly Charges specified in this Agreement (as may be adjusted pursuant to Section 5 below) for each month during the Lease Term and any extensions thereof. A month is defined as thirty (30) calendar days; rent will be billed monthly unless otherwise specified in this Agreement (but rent shall be due and owing even in the absence of actual receipt by Lessee of an invoice or bill). In the event that Lessee terminates this Agreement prior to the expiration of the Lease Term, Lessor shall be entitled to charge an early termination fee, even if such termination occurs prior to delivery of the Equipment. Such fee shall be determined by Lessor, in its sole discretion, following the receipt of the termination request. Such early termination fee may include, but shall not be limited to, charges related to the preparation of the Equipment for delivery and/or the rental value of this Agreement. In no event shall any such early termination fee exceed the total value of this Agreement. Lessor shall not be liable to Lessee for any failure or delay in obtaining, delivering or setting up the Equipment. If Lessee delays delivery of the Equipment for any reason for thirty (30) days or longer from the original delivery date mutually agreed upon between both parties, Lessor may, in Lessor's sole discretion, charge Lessee a monthly storage fee equal to the Monthly Rent starting on the original delivery date, and/or terminate this Agreement, subject to the early termination provisions set forth above.

5. **EXTENSION OF LEASE TERM.** Upon expiration of the initial Lease Term set forth in this Agreement, the lease of the Equipment shall automatically be extended on a month-to-month basis until the Equipment is returned to Lessor. This Agreement does not expire and the terms and conditions hereof shall remain in full force and effect for any extension of the Lease Term, unless otherwise agreed upon by Lessor and Lessee in writing. Lessor may periodically revise the Total Monthly Charges from those reflected in this Agreement if the lease of the Equipment is extended beyond the initial Lease Term. If the lease of the Equipment is extended beyond the initial Lease Term, Lessor may revise the charges for the Estimated Return-Related Services from those specified in this Agreement to reflect Lessor's then-current market rates for such services.

6. **PREPARATION FOR REMOVAL OF THE EQUIPMENT.** Prior to the scheduled removal of the Equipment, Lessee shall, at a minimum: (a) provide clear access to the Equipment for Lessor to dismantle and remove the Equipment from the Site by industry-standard trucking methods; (b) disconnect all utilities; (c) remove all personal property of Lessee's from the Equipment; and (d) in the case of Equipment that includes plumbing, flush the plumbing lines clean and ensure that no foreign matter remains in any fixtures. Plumbing must be properly disconnected by Lessee at its sole cost and expense. Lessee will be responsible for costs of repair required by improper plumbing disconnection to the extent that the Equipment is damaged. Any components, parts or accessories supplied by Lessor must be returned with the Equipment. In the event that Lessee fails to meet the requirements herein, additional charges may be incurred by Lessee for additional labor, waiting time, or dry-runs in the event that Lessor is unable to return the Equipment as scheduled.

7. **RETURN OF EQUIPMENT.** Lessee must provide a minimum of thirty (30) days prior, written notice to Lessor when requesting to return the Equipment. Lessee is responsible for complying with the requirements set forth in the "Preparation for Removal of the Equipment" section of these Lease Terms and Conditions. Unless otherwise agreed upon by Lessor in writing, Lessee shall continue to be responsible for payment of the Total Monthly Charges set forth in this Agreement (as may be adjusted pursuant to Section 5 hereto) until return of the Equipment to Lessor is completed. The Total Monthly Charges will be prorated in one-half (1/2) month increments only. If the Equipment is returned within the first fifteen (15) days of the billing period, Lessee shall be responsible for paying half of the Total Monthly Charges; if Equipment is returned between the sixteenth (16th) and thirtieth (30th) days of the billing period, Lessee shall be responsible for paying the entire amount of the Total Monthly Charges. The charges reflected in this Agreement for Estimated Return-Related Services will be adjusted for any Lease Term longer than twelve (12) months or if the Lease is extended beyond the initial Lease Term, pursuant to Section 5.

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8. **WARRANTIES; DISCLAIMER.** Lessor warrants to Lessee that the Equipment, when delivered and set up and under normal use and regular service and maintenance by Lessee, shall be free from major defects in materials and workmanship that prevent any normal use and operation. Accessories supplied by Lessor pursuant to this Agreement but not owned by Lessor shall not be subject to the foregoing warranty, but shall carry the applicable warranty of the Accessory owner, which Lessor hereby assigns to Lessee to the extent transferable. Lessor's liability under this warranty shall be limited to the replacement or repair of the defective Equipment (during Lessor's normal working hours), at Lessor's option; provided, however, that Lessee shall provide written notice of any failure or defect to Lessor within four (4) days after discovery, and within the applicable warranty period, and failure to provide such notice in a timely manner may result in a limitation of this warranty at Lessor's sole option. If Lessee does not grant clear, unobstructed access for any such repairs between 8:00 a.m. and 5:00 p.m., Monday through Friday, Lessee shall bear the cost of repair rates for labor at the applicable overtime rates. This warranty does not extend to any Equipment subjected to improper application, damaged by accident or abuse, or repaired or altered outside of Lessor's facilities without prior written authorization from Lessor. **THE EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT ARE LESSOR'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO THE EQUIPMENT AND SERVICES, AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, GUARANTEES, PROMISES, AFFIRMATION OR REPRESENTATIONS OF ANY KIND, EXPRESSED OR IMPLIED, WHICH MAY BE DEEMED APPLICABLE TO THE EQUIPMENT OR SERVICES, INCLUDING WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, ANY WARRANTY AGAINST INFRINGEMENT OR AS TO TITLE, WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OR TRADE OR ANY OTHER MATTER. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, ALL EQUIPMENT AND SERVICES ARE BEING PROVIDED "AS IS", "WHERE IS, WITH ALL FAULTS". LESSOR SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, THERETO. LESSEE HAS SELECTED ALL EQUIPMENT FOR LESSEE'S INTENDED USE AND RECOGNIZES THAT LESSOR IS NOT A DESIGNER OR MANUFACTURER OF ANY EQUIPMENT.**

9. **TAXES.** Lessee agrees to be responsible for all charges, fees and taxes (local, state and federal) levied or assessed upon Lessee or Lessor relating to the ownership, leasing, rental, sale, possession, use or operation of the Equipment (including, without limitation, sales, use and personal property taxes); provided, however, that the foregoing obligation shall not apply to any local, state or federal income tax assessed against the Lessor as a result of this Agreement which shall continue to be the obligation of Lessor. Lessee shall pay all such taxes for which it is responsible to the appropriate taxing authorities or, if directed or invoiced by Lessor, pay such amounts to Lessor for remittance by Lessor to the appropriate taxing authorities.

10. **LOSS OR DAMAGE.** Upon delivery and until the Equipment is removed from the Site by Lessor or its authorized agent, Lessee assumes all risk of loss or damage to the Equipment. Should any Equipment damaged be capable of repair, the Equipment shall be repaired and restored to its condition existing prior to such damage, at Lessee's sole cost and expense. In the event any of the Equipment is damaged beyond repair or is lost, stolen or wholly destroyed, this Agreement shall cease and terminate as to such Equipment as of the date of the event, accident or occurrence causing such loss or destruction, and Lessee shall pay Lessor within forty-five (45) days thereafter, an amount equal to the full replacement value of the Equipment, which payment obligation shall survive the termination of this Agreement.

11. **INSURANCE.** Lessee shall procure and maintain, at its sole expense (including all premiums, deductibles and self-insured retentions), (i) property insurance covering the loss, theft, destruction, or damage to the Equipment in an amount not less than the full replacement value thereof (and with a deductible no higher than \$25,000), naming Lessor as loss payee of the proceeds, and (ii) commercial general liability insurance (minimum of \$1,000,000 per occurrence and \$2,000,000 in the aggregate) (and with a deductible no higher than \$25,000), naming Lessor and its designees as additional named insureds. Lessee's insurance shall be primary and non-contributory to any insurance maintained by Lessor or any other additional insureds or additional named insureds. The liability insurance policy shall contain coverage for all contractual indemnity obligations of Lessee set forth in this Agreement, cross-liability and waiver of subrogation provisions in favor of Lessor and any other additional insureds. All evidence of all required insurance shall be in a form reasonably acceptable to Lessor and with a company having an A.M. Best rating of A- (VII) or better, and shall not be subject to cancellation without thirty (30) days' prior written notice to Lessor. Lessee shall provide to Lessor insurance certificates and endorsements (including without limitation, additional insured and loss payee endorsements) evidencing compliance with the insurance requirements of this Agreement (including without limitation, the deductible amounts and waiver of subrogation) prior to delivery of the Equipment and shall maintain all required insurance coverage until the Equipment is returned to Lessee. Lessor will not and does not provide insurance for any of Lessee's personal property that may be in or on any Equipment.

### 12. INDEMNIFICATION AND LIMITATION OF LIABILITY.

**(a) LESSEE ON BEHALF OF ITSELF, ITS SUCCESSORS, ASSIGNS, PARENTS, SUBSIDIARIES, VENDORS, SUBCONTRACTORS, AND AFFILIATES, AND THEIR RESPECTIVE REPRESENTATIVES, DIRECTORS, OFFICERS, MANAGERS, VENDORS, MEMBERS, SHAREHOLDERS, PARTNERS, CONTRACTORS, EMPLOYEES, AGENTS, AND ASSIGNS (EACH, A "LESSEE PARTY," AND COLLECTIVELY, THE "LESSEE PARTIES") SHALL INDEMNIFY, DEFEND, RELEASE, AND HOLD HARMLESS LESSOR, ITS SUCCESSORS, ASSIGNS, PARENTS, SUBSIDIARIES, VENDORS, CONTRACTORS, AND AFFILIATES, AND THEIR RESPECTIVE REPRESENTATIVES, DIRECTORS, OFFICERS, MANAGERS, VENDORS, MEMBERS, SHAREHOLDERS, PARTNERS, CONTRACTORS, EMPLOYEES,**

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AGENTS, AND ASSIGNS (EACH A "LESSOR INDEMNIFIED PARTY," AND COLLECTIVELY, THE "LESSOR INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LOSSES, FEES, COSTS, EXPENSES, CLAIMS, LIABILITIES, DAMAGES, PENALTIES, FINES, FORFEITURES, AND SUITS (INCLUDING COSTS OF DEFENSE, SETTLEMENT AND REASONABLE ATTORNEYS' FEES, ENVIRONMENTAL CONSULTANTS AND EXPERT WITNESS FEES AT TRIAL AND ON APPEAL) (COLLECTIVELY, "LOSSES") RELATING TO, ARISING OUT OF OR IN CONNECTION WITH: (1) ANY BREACH OR NON-FULFILLMENT OF ANY COVENANT, AGREEMENT, OR OBLIGATION TO BE PERFORMED BY LESSEE PURSUANT TO THIS AGREEMENT, OR ANY INACCURACY IN OR BREACH OF ANY OF THE REPRESENTATIONS OF LESSEE SET FORTH IN THIS AGREEMENT; (2) THE OCCURRENCE OF ANY EVENT SET FORTH IN SECTION 13; (3) THE SELECTION, USE, POSSESSION, DELIVERY, RENTING, LEASING, SUBLEASING, OPERATION, TRANSPORT, MAINTENANCE, CONDITION, REPAIR, REPLACEMENT, REPOSSESSION, RETURN OR STORAGE OF ANY EQUIPMENT OR ANY SERVICES; (4) ANY FAILURE BY ANY LESSEE PARTY TO COMPLY WITH ANY APPLICABLE LAW IN CONNECTION WITH ANY EQUIPMENT OR THE SERVICES OR THIS AGREEMENT; (5) ANY DEATH OR BODILY INJURY TO ANY PERSON OR DESTRUCTION OR DAMAGE TO ANY PROPERTY TO WHICH THE ACTS OR OMISSIONS OF A LESSEE PARTY CONTRIBUTED; OR (6) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF ANY LESSEE PARTY FOR ANY ACTION RELATED TO OR ANY USE OF ANY EQUIPMENT. THIS INDEMNITY SHALL APPLY EVEN IF SAID LOSSES ARE OCCASIONED, BROUGHT ABOUT OR CAUSED BY THE CONCURRENT NEGLIGENCE OF ANY LESSOR INDEMNIFIED PARTY, UNLESS A COURT OF COMPETENT JURISDICTION SHOULD DETERMINE THAT THE LOSSES WERE PROXIMATELY CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL ACTS OR OMISSIONS OF A LESSOR INDEMNIFIED PARTY. IF THE FOREGOING OBLIGATIONS ARE NOT ENFORCEABLE AGAINST LESSEE UNDER APPLICABLE LAW, LESSEE AGREES TO INDEMNIFY, DEFEND, RELEASE AND HOLD HARMLESS LESSOR INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL LOSSES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, TO THE EXTENT OF THE ACTS OR OMISSIONS OF THE LESSEE PARTIES' NEGLIGENT OR WORSE CONDUCT. THIS INDEMNIFICATION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

(b) TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, LESSOR'S LIABILITY, IF ANY, SHALL BE LIMITED TO THE VALUE OF RENTAL FEES AND ALL OTHER AMOUNTS PAID BY LESSEE AND RECEIVED BY LESSOR UNDER THIS AGREEMENT FOR THE EQUIPMENT AND/OR SERVICES, AND LESSOR SHALL HAVE NO LIABILITY TO LESSEE OR ANY THIRD-PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

13. **EVENTS OF DEFAULT; REMEDIES.** Each of the following shall constitute an "Event of Default": (1) failure by Lessee to make any payment within ten (10) days after its due date; (2) failure by Lessee to perform any other obligation under this Agreement, and the continuance of such default for ten (10) days after written notice thereof by Lessor to Lessee; (3) any material misrepresentation or false statement of fact by Lessee; (4) the loss, theft, damage, destruction or the attempted sale or encumbrance by Lessee of any of the Equipment; or (5) Lessee's dissolution, termination of existence, discontinuance of business, insolvency, or the commencement of any bankruptcy proceedings by or against, Lessee. Lessee acknowledges that any Event of Default will substantially impair the lease value of the Equipment hereof. Upon the occurrence of any Event of Default, Lessor may, without notice, exercise one or more of the following remedies: (1) declare all unpaid payments under this Agreement to be immediately due and payable; (2) terminate this Agreement as to any or all items of the Equipment; (3) take possession of the Equipment wherever found, and for this purpose enter upon any premises of Lessee and remove the Equipment, without any liability to Lessee; (4) direct Lessee at its expense to promptly prepare the Equipment for pickup by Lessor; (5) proceed by appropriate action either in law or in equity to enforce performance by Lessee of the terms of this Agreement or to recover damages for the breach hereof, including attorneys' fees and any other expenses paid or incurred by Lessor in connection with the repossession of the Equipment; (6) apply the security deposit specified in this Agreement ("Security Deposit") to payment of Lessor's costs, expenses and attorney fees in enforcing the terms of this Agreement and to indemnify Lessor against any damages sustained by Lessor; and/or (7) recover the replacement cost of any Equipment which Lessor is unable to repossess. Lessor's waiver of any Event of Default shall not constitute a waiver of any other Event of Default or of any term or condition of this Agreement. No right or remedy referred to herein is intended to be exclusive and each may be exercised concurrently or separately and from time to time. In the event of repossession, Lessee waives any bond posting requirement.

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