
FORM 10-Q
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Quarterly Period Ended September 30, 2015

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to .

Commission file number: 001-37515

Aqua Metals, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

47-1169572
(I.R.S. Employer
Identification no.)

1010 Atlantic Avenue
Alameda, California 94501
(Address of principal executive offices, including zip code)

(510) 479-7635
(Registrant's telephone number, including area code)

Not Applicable
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company (as defined in Rule 12b-2 of the Act):

Large accelerated filer

Accelerated filer

Non-accelerated filer
(Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of November __, 2015, there were 14,117,442 outstanding shares of the common stock of Aqua Metals, Inc.

PART I — FINANCIAL INFORMATION

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PART I — FINANCIAL INFORMATION

Item 1. Financial Statements

AQUA METALS, INC.
Condensed Consolidated Balance Sheets
(Unaudited)

ASSETS

	<u>September 30, 2015</u>	<u>December 31, 2014</u>
Current assets		
Cash and cash equivalents	\$ 29,280,704	\$ 4,536,601
Inventory - raw materials	342,019	—
Prepaid expenses and other current assets	366,786	12,906
Total current assets	<u>29,989,510</u>	<u>4,549,507</u>
Non-current assets		
Property and equipment, net	1,984,916	245,641
Intellectual property, net	954,772	1,028,554
Deposits	3,052,635	—
Other assets	593,347	—
Total non-current assets	<u>6,585,669</u>	<u>1,274,195</u>
Total assets	<u>\$ 36,575,179</u>	<u>\$ 5,823,702</u>
<u>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</u>		
Current liabilities		
Accounts payable	\$ 687,833	\$ 40,306
Accrued expenses	69,270	12,292
Accrued interest	—	65,589
Convertible notes, net	—	5,090,589
Total current liabilities	<u>757,103</u>	<u>5,208,776</u>
Deferred rent	74,895	—
Derivative liabilities	—	1,384,782
Total liabilities	<u>831,998</u>	<u>6,593,558</u>
Commitments and contingencies	—	—
Stockholders' equity (deficit)		
Common stock; \$0.001 par; 50,000,000 shares authorized; 14,117,442 and 4,363,641 shares issued and outstanding September 30, 2015 and December 31, 2014, respectively	14,117	4,364
Additional paid-in capital	48,067,369	1,599,531
Accumulated deficit	(12,338,306)	(2,373,751)
Total stockholders' equity (deficit)	<u>35,743,181</u>	<u>(769,856)</u>
Total liabilities and stockholders' equity (deficit)	<u>\$ 36,575,179</u>	<u>\$ 5,823,702</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

AQUA METALS, INC.
Condensed Consolidated Statements of Operations
(Unaudited)

	Three Months Ended September 30, 2015	Three Months Ended September 30, 2014	Nine Months Ended September 30, 2015	Period from Inception (June 20, 2014) to September 30, 2014
Operating expenses				
Operations and development costs	\$ 546,112	\$ 37,426	\$ 1,181,306	\$ 55,228
Business development and management costs	776,916	192,138	1,888,844	214,173
Total operating expenses	<u>1,323,028</u>	<u>229,564</u>	<u>3,070,149</u>	<u>269,401</u>
Loss from operations	<u>(1,323,028)</u>	<u>(229,564)</u>	<u>(3,070,149)</u>	<u>(269,401)</u>
Other expense (income)				
Increase in fair value of derivative liabilities	276,937	—	5,776,255	—
Interest expense	492,051	2,942	1,126,090	2,942
Interest income	(7,675)	—	(10,131)	—
Other income	(144)	(19)	(207)	(19)
Total other expenses, net	<u>761,168</u>	<u>2,924</u>	<u>6,892,006</u>	<u>2,924</u>
Loss before income tax expense	<u>(2,084,196)</u>	<u>(232,488)</u>	<u>(9,962,155)</u>	<u>(272,325)</u>
Income tax expense	<u>—</u>	<u>—</u>	<u>2,400</u>	<u>—</u>
Net loss	<u>\$ (2,084,196)</u>	<u>\$ (232,488)</u>	<u>\$ (9,964,555)</u>	<u>\$ (272,325)</u>
Weighted average shares outstanding, basic and diluted	<u>10,759,187</u>	<u>4,363,641</u>	<u>6,495,490</u>	<u>4,363,641</u>
Basic and diluted net loss per common share	<u>\$ (0.19)</u>	<u>\$ (0.05)</u>	<u>\$ (1.53)</u>	<u>\$ (0.06)</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

AQUA METALS, INC.
Condensed Consolidated Statements of Stockholders' Equity (Deficit)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount			
Balances, June 20, 2014 (inception)	—	\$ —	\$ —	\$ —	\$ —
Common stock issued as reimbursement for expenses paid for by founders	261,819	262	39,575	—	39,837
Common stock issued for intellectual property contributed by founders	4,101,822	4,102	633,056	—	637,158
Issuance of financing warrants	—	—	1,000	—	1,000
Issuance of consulting warrants	—	—	713,745	—	713,745
Debt discount - beneficial conversion feature on convertible notes	—	—	212,155	—	212,155
Net loss	—	—	—	(2,373,751)	(2,373,751)
Balances, December 31, 2014	4,363,641	\$ 4,364	\$ 1,599,531	\$ (2,373,751)	\$ (769,856)
Common stock issued upon initial public offering ("IPO"), net of offering costs	6,600,000	6,600	29,891,460	—	29,898,060
Common stock issued for over allotment of the IPO, net of offering costs	641,930	642	2,963,470	—	2,964,112
Conversion of convertible notes and accrued interest at the time of the IPO	2,511,871	2,511	6,277,167	—	6,279,678
Extinguishment of beneficial conversion feature derivative liability	—	—	6,279,677	—	6,279,677
Reclassification of financing warrants (from derivative liability to APIC) upon completion of IPO	—	—	881,359	—	881,359
Stock based compensation - stock options	—	—	174,705	—	174,705
Net loss, nine months ended September 30, 2015	—	—	—	(9,964,555)	(9,964,555)
Balances, September 30, 2015	<u>14,117,442</u>	<u>\$ 14,117</u>	<u>\$ 48,067,369</u>	<u>\$ (12,338,306)</u>	<u>\$ 35,743,181</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

AQUA METALS, INC.
Condensed Consolidated Statements of Cash Flows
(Unaudited)

	Nine Months Ended September 30, 2015	Period from Inception (June 20, 2014) to September 30, 2014
Cash flows from operating activities:		
Net loss	\$ (9,964,555)	\$ (272,325)
Reconciliation of net loss to net cash used in operating activities		
Depreciation	53,921	—
Amortization of intellectual property	80,608	17,650
Fair value of common stock issued as reimbursement for expenses paid by founders	—	39,837
Stock based compensation expense	174,705	—
Change in fair value of derivative liabilities	5,776,255	—
Amortization of debt discount	909,411	—
Non cash interest expense	214,089	—
Changes in operating assets and liabilities		
Inventory	(342,019)	—
Prepaid expenses and other current assets	(353,880)	(25,823)
Accounts payable	647,528	37,877
Accrued expenses	56,978	2,877
Deferred liabilities	74,895	—
Net cash used in operating activities	<u>(2,672,064)</u>	<u>(199,907)</u>
Cash flows from investing activities:		
Purchases of property and equipment	(1,793,196)	(40,924)
Deposits	(3,052,635)	—
Other assets	(593,347)	—
Application fees for intellectual property	(6,826)	—
Net cash used in investing activities	<u>(5,446,004)</u>	<u>(40,924)</u>
Cash flows from financing activities:		
Issuance of common stock, net of offering costs	32,862,172	—
Increase in convertible note payable	—	500,000
Net cash provided by financing activities	<u>32,862,172</u>	<u>500,000</u>
Net increase in cash and cash equivalents	24,744,103	259,169
Cash and cash equivalents at beginning of period	4,536,601	—
Cash and cash equivalents at end of period	<u>\$ 29,280,704</u>	<u>\$ 259,169</u>
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ 2,590	\$ —
Cash paid for taxes	\$ 2,400	\$ —
Non-cash financing activities		
Fair value of common stock issued to founders as reimbursement for expenses paid prior to inception	\$ —	\$ 39,837
Fair value of common stock issued upon conversion of convertible notes and accrued interest	6,279,678	—
Fair value of common stock issued upon extinguishment of beneficial conversion feature derivative liability.	6,279,677	—
Total non-cash financing activities	<u>\$ 12,559,355</u>	<u>\$ 39,837</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Summary of Significant Accounting Policies

Organization

Aqua Metals, Inc. (the “Company”) was incorporated in Delaware on June 20, 2014 and commenced operations on June 20, 2014 (inception). On January 27, 2015, the Company formed two wholly-owned subsidiaries, Aqua Metals Reno, Inc. and Aqua Metals Operations, Inc. (“Subsidiaries”), both incorporated in Delaware. The Subsidiaries have had limited transactions to date and are included in the consolidated financial statements dated September 30, 2015. The Company has developed an innovative process for recycling lead acid batteries. The Company intends to manufacture the equipment it has developed, and will also operate lead acid battery recycling facilities. On July 31, 2015, the Company listed its common shares on the NASDAQ stock market. See Note 9, Stockholder’s Equity, for more detail on the initial public offering.

Use of estimates

The preparation of the consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amount of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of expenses during the period. Significant items subject to such estimates and assumptions include the carrying amount and valuation of long-lived assets, the valuation of conversion features of convertible debt, and the determination of the fair value of stock warrants issued. Actual results could differ from those estimates.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) for interim financial information and with the instructions to Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by such accounting principles for complete financial statements. In the opinion of management, all adjustments (which include normal recurring adjustments) considered necessary to present fairly each of the balance sheet as of September 30, 2015, the statements of operations for the three and nine months ended September 30, 2015 and for the three months ended September 30, 2014, and for the period from June 20, 2014 (inception) to September 30, 2014 and the statements of cash flows for the nine months ended September 30, 2015 and June 20, 2014 (inception) to September 30, 2014 as applicable have been made. The condensed consolidated balance sheet as of December 31, 2014 has been derived from our audited financial statements as of such date, but does not include all disclosures required by U.S. GAAP. The accompanying unaudited condensed consolidated financial statements should be read in conjunction with our audited consolidated financial statements for the period ended December 31, 2014, which are included on Form S-1 filed with the Securities and Exchange Commission on July 30, 2015.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Summary of Significant Accounting Policies (continued)

The condensed consolidated financial statements include the accounts of our wholly-owned subsidiaries. All inter-company balances and transactions have been eliminated.

The results of operations for the three and nine months ended September 30, 2015 are not necessarily indicative of results that may be expected for the year ended December 31, 2015.

Cash and cash equivalents

The Company considers all highly liquid instruments with original or remaining maturities of 90 days or less at the date of purchase to be cash equivalents. The Company maintains its cash balances in large financial institutions. Periodically, such balances may be in excess of federally insured limits.

Inventory - raw materials

The Company values inventory using the First in First out method.

Property and equipment, net

Property and equipment are stated at cost net of accumulated depreciation. Depreciation on property and equipment is calculated on the straight-line basis over the estimated useful lives of the assets. Leasehold improvements are depreciated over the shorter of the life of the asset or the remaining term of the lease.

Intangible and other long-lived assets

The intangible asset consists of a patent application contributed to the Company by five founding stockholders. The useful life of the asset has been determined to be ten years and the asset is being amortized over the estimated ten year life. The Company periodically evaluates its intangible and other long-lived assets for indications that the carrying amount of an asset may not be recoverable. In reviewing for impairment, the Company compares the carrying value of such assets to the estimated undiscounted future cash flows expected from the use of the assets and their eventual disposition. When the estimated undiscounted future cash flows are less than their carrying amount, an impairment loss is recognized equal to the difference between the assets' fair value and their carrying value. In addition to the recoverability assessment, the Company routinely reviews the remaining estimated lives of its long-lived assets. Any reduction in the useful life assumption will result in increased depreciation and amortization expense in the period when such determination is made, as well as in subsequent periods. The Company performed a qualitative assessment of the intangible assets as of September 30, 2015 and determined it was more likely than not that the fair exceeded the carry value, and therefore, no impairment was recorded. The Company determined that the estimated life of the intellectual property properly reflected the current remaining economic life of the asset.

Research and development

Research and development expenditures are expensed as incurred.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Summary of Significant Accounting Policies (continued)

Income taxes

The Company accounts for income taxes in accordance with the liability method of accounting for income taxes. Under the liability method, deferred assets and liabilities are recognized based upon anticipated future tax consequences attributable to differences between financial statement carrying amounts of assets and liabilities and their respective tax bases. The provision for income taxes is comprised of the current tax liability and the changes in deferred tax assets and liabilities. The Company establishes a valuation allowance to the extent that it is more likely than not that deferred tax assets will not be recoverable against future taxable income.

The Company recognizes the effect of uncertain income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs.

Convertible instruments

The Company accounts for hybrid contracts that feature conversion options in accordance with Accounting Standards Codification 815 "Derivative and Hedging Activities," ("ASC 815") and ASC 480 "Distinguishing Liabilities from Equity" ("ASC 480"), which require companies to bifurcate conversion options from their host instruments and account for them as free standing derivative financial instruments according to certain criteria. The criteria includes circumstances in which (i) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (ii) the hybrid instrument that embodies both the embedded derivative's instrument and the host contract is not re-measured at fair value under otherwise applicable generally accepted accounting principles with changes in fair value reported in earnings as they occur and (iii) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument. The Company accounts for convertible instruments which have been determined to be free standing derivative financial instruments (when the Company has determined that the embedded conversion options should be bifurcated from their host instruments) in accordance with ASC 815. Under ASC 815, a portion of the proceeds received upon the issuance of the hybrid contract are allocated to the fair value of the derivative. The derivative is subsequently marked to market each reporting date based on current fair value, with the changes in fair value reported in condensed consolidated statements of operations.

Fair value measurements

The carrying amounts of cash and cash equivalents, prepaid expenses, accounts payable and accrued expenses approximate fair value due to the short-term nature of these instruments.

Fair value is defined as an exit price, representing the amount that would be received upon the sale of an asset or payment to transfer a liability in an orderly transaction between market participants.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Summary of Significant Accounting Policies (continued)

Fair value is a market-based measurement that is determined based on assumptions that market participants would use in pricing an asset or liability. A three-tier fair value hierarchy is used to prioritize the inputs in measuring fair value as follows:

Level 1. Quoted prices in active markets for identical assets or liabilities.

Level 2. Quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable, either directly or indirectly.

Level 3. Significant unobservable inputs that cannot be corroborated by market data.

The asset or liability's fair value measurement within the fair value hierarchy is based upon the lowest level of any input that is significant to the fair value measurement. The following table provides a summary of the liabilities that are measured at fair value on a recurring basis at December 31, 2014, consisting of certain Financing Warrants and the conversion feature of the Company's Convertible Notes, both of which are more fully described in Note 6:

	Total	Level 1	Level 2	Level 3
Derivative liabilities				
Conversion feature	\$ 1,108,955	\$ —	\$ —	\$ 1,108,955
Financing Warrants	275,827	—	—	275,827
Total	<u>\$ 1,384,782</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 1,384,782</u>

On August 5, 2015 all outstanding Convertible Notes were converted into common shares of the Company. Also on August 5, 2015, the variable exercise price of the Financing Warrants was fixed. Accordingly, all derivative liabilities have been reclassified into equity. See Note 9 for details.

Stock-based compensation

The Company recognizes compensation expense for stock-based compensation in accordance with ASC Topic No. 718. For employee stock-based awards, the Company calculates the fair value of the award on the date of grant using the Black-Scholes-Merton method for stock options; the expense is recognized over the service period for awards to vest.

The estimation of stock-based awards that will ultimately vest requires judgement and to the extent actual results or updated estimates differ from the original estimates, such amounts are recorded as a cumulative adjustment in the period estimates are revised. The Company considers many factors when estimating expected forfeitures, including types of awards, employee class and historical experience.

Net loss per share

Basic earnings per share, which excludes dilution, is computed by dividing net loss available to common stockholders by the weighted average number of common shares outstanding for the period. Diluted earnings per share reflects the potential dilution of securities that could be exercised or converted into common shares, and is computed by dividing net loss available to common stockholders by the weighted average of common shares outstanding plus the dilutive potential common shares. Diluted earnings per share exclude the impact of convertible notes and warrants to purchase common stock, as the effect would be anti-dilutive. During a loss period, the assumed exercise of in-the-money stock warrants and other potentially diluted instruments has an anti-dilutive effect and, therefore, these instruments are excluded from the computation of dilutive earnings per share.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Summary of Significant Accounting Policies (continued)

Net loss per share (continued)

Potentially dilutive securities in the table below have been excluded from the computation of diluted net loss per share because the effect of their inclusion would have been anti-dilutive.

	For the Three Months Ended September 30, 2015	For the Nine Months Ended September 30, 2015	For the Period June 20, 2014 (Inception Through September 30, 2014
Consulting Warrants to purchase common stock	436,364	436,364	—
Options to purchase common stock	596,253	376,040	—
Financing, IPO and O-A Warrants to purchase common stock	712,977	384,504	—
Total potential dilutive securities	1,745,594	1,196,908	—

Recent accounting pronouncements

In April 2015, the Financial Accounting Standards Board (“FASB”) issued Accounting Standard Update (“ASU”) 2015-03, *Simplifying the Presentation of Debt Issuance Costs*. Debt issuance costs are specified incremental costs other than those paid to the lender that are directly attributable to issuing a debt (i.e., third party costs). Prior to the adoption of this standard, debt issuance costs were required to be presented in the balance sheet as a deferred charge (i.e., an asset). This presentation differed from the presentation for a debt discount, which is a direct adjustment to the carrying value of the debt (i.e., a contra liability). This new standard requires that all costs incurred to issue debt be presented in the balance sheet as a direct deduction from the carrying value of the debt. This new standard does not affect the recognition and measurement of debt issuance costs. ASU 2015-03 will be effective for us in the first quarter of fiscal 2016 with early adoption permitted. We do not expect the adoption of this accounting standard to have a material impact on our condensed consolidated financial statements.

In May, 2014 the FASB issued ASU 2014-09, *Revenue from Contracts with Customers*. The FASB issued 2014-09 to clarify the principles for recognizing revenue and to develop a common revenue standard for GAAP and International Financial Reporting Standards. The standard outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and superseded the most current revenue recognition guidance. In July 2015 the FASB delayed the effective date of this standard by one year. This guidance is effective for fiscal years and interim periods within those years beginning after December 15, 2017, which is effective for us as of the first quarter of our fiscal year ending December 31, 2018. We are currently evaluating the impact that the implementation of this standard will have on our condensed consolidated financial statements.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Summary of Significant Accounting Policies (continued)

Recent accounting pronouncements (continued)

There were no other recent accounting pronouncements or changes in accounting pronouncements during the nine months ended September 30, 2015 that are of significance or potential significance to the Company.

2. Prepaid expenses and other current assets

Prepaid expenses and other current assets as of September 30, 2015 totaled \$366,786. The amount includes a receivable for \$237,969 in tenant reimbursements, \$63,450 for prepaid insurance, \$39,055 for prepaid rent and \$26,312 miscellaneous other prepaid expenses. Prepaid expenses and other current assets totaled \$12,906 as of December 31, 2014, and consisted solely of miscellaneous items.

3. Property and equipment, net

Property and equipment, net, consisted of the following for the dates indicated:

Asset Class	Useful Life (Years)	September 30, 2015	December 31, 2014
Land	—	\$ 1,047,503	—
Demonstration equipment	5	297,345	\$ 196,671
Shop equipment	5	18,750	18,750
Lab equipment	5	17,996	—
Computer equipment	3	62,801	11,089
Leasehold improvements	5	85,048	15,848
Office equipment	5	5,640	4,581
Building under construction	—	505,052	—
		2,040,135	246,939
Less: accumulated depreciation		(55,219)	(1,298)
		<u>\$ 1,984,916</u>	<u>\$ 245,641</u>

Depreciation expense was \$0, \$31,217 and \$53,921 for the period from June 20, 2014 (inception) to September 30, 2014, and for the three and nine months ended September 30, 2015, respectively.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

4. Intellectual Property

On July 3, 2014, five of the founding stockholders contributed the rights to certain intellectual property to the Company in exchange for the issuance of 4,101,822 shares with a fair value of \$1,059,000. This contribution was recorded as an intangible asset with an offset to equity for \$637,158 and deferred taxes for \$421,842.

Intellectual property, net, is comprised of the following as of the dates indicated:

	September 30, 2015	December 31, 2014
Intellectual property	\$ 1,079,505	\$ 1,072,679
Accumulated amortization	(124,733)	(44,125)
Intellectual property, net	<u>\$ 954,772</u>	<u>\$ 1,028,554</u>

Amortization expense was \$0, \$26,975 and \$80,608 for the three months ended September 30, 2014 and for the three and nine months ended September 30, 2015, respectively.

5. Other Assets

On August 18, 2015, the Company secured a certificate of deposit for \$550,000 as a leasehold security to complete the buildout for the new factory and office space in Alameda, CA. Additionally, the Company provided the landlord a lease deposit of \$43,347.

6. Private Placement

Convertible notes

On October 31, 2014, the Company entered into a securities purchase agreement (the "Securities Purchase Agreement") with accredited investors (the "Investors"), pursuant to which the Company issued an aggregate of \$6,000,000 principal amount of senior secured convertible notes (the "Convertible Notes"). In connection with the sale of the Convertible Notes (the "Bridge Financing"), the Company entered into a registration rights agreement (the "Registration Rights Agreement") and a security agreement (the "Security Agreement") with the Investors. The closing of the Bridge Financing was completed October 31, 2014. The Convertible Notes bore interest at 6% per annum.

The principal, \$6,000,000 and interest, \$279,678, of the Convertible Notes were converted into 2,511,871 shares of the Company's common stock at a conversion price of \$2.50 per share on August 5, 2015.

On September 8, 2014, the Company entered into an agreement (the "Placement Agent Agreement") with National Securities Corporation ("NSC") pursuant to which the Company appointed NSC to act as the Company's placement agent in connection with the sale of the Company's securities ("Offering or Offerings"). Specifically, NSC was the placement agent in connection with the sale of its Convertible Notes. The Placement Agent Agreement will continue in effect until it is terminated by either party with 60 days written notice to the other party.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

6. Private Placement (continued)

Convertible notes (continued)

In connection with the sale of the Convertible Notes, the Company paid NSC a cash fee of \$553,490 and issued on October 31, 2014 to NSC warrants (“Financing Warrants”) to purchase shares of the Company’s common stock. NSC subsequently transferred a portion of the Financing Warrants to associated persons. The Financing Warrants were fully vested upon issuance, have a term of five years, and are immediately exercisable, provided that upon the Company’s consummation of an IPO, the Financing Warrants may not be exercised until 90 days after the consummation of the IPO. Pursuant to the terms of the Financing Warrants, the per share exercise price is determined based upon 120% of the conversion price of the Convertible Notes upon the consummation of the IPO, or upon other events under which the Convertible Notes may convert. As of September 30, 2015, the Financing Warrants were exercisable into 251,187 shares of the Company’s common stock at an exercise price of \$3.00 per share (calculated as 120% of the Convertible Notes conversion price of \$2.50 per share).

The warrant holders have certain registration rights with respect to the common stock issued upon exercise of the Financing Warrants.

Consulting agreement

On September 8, 2014, the Company entered into a consulting agreement with Liquid Patent Consulting, LLC (“LPC”), pursuant to which LPC agreed to provide management, strategic and intellectual property advisory services. The Consulting Agreement had an initial term of 180 days after which it will continue in effect until it is terminated by either party with 30 days written notice to the other party.

As consideration for services provided under the Consulting Agreement the Company issued warrants (“Consulting Warrants”) to LPC for the purchase of an aggregate of 436,364 shares of the Company’s common stock. LPC subsequently transferred a portion of the Consulting Warrants to a third party.

The Consulting Warrants vested upon issue, have a term of three years, an exercise price of \$0.0033475 per share and are immediately exercisable, but may not be exercised until 90 days after the IPO date. The Consulting Warrants may be exercised on a cashless basis.

The warrant holders have certain registration rights with respect to the common stock issued upon exercise of the Consulting Warrants.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

7. Convertible Note Issuance Costs

The costs associated with the issuance of the Convertible Notes were recorded as a reduction to the carrying amount of the Convertible Notes and were being amortized to interest expense over the 14-month life of the notes. The Notes were converted into common shares of the Company on August 5, 2015 and the balance of the issuance costs was expensed at that time:

Issuance costs as of December 31, 2014 were as follows:

	December 31, 2014
Placement fee	\$ 553,490
Fair value of Financing Warrants at time of issuance	212,155
Attorney fees	79,679
Escrow fees	3,500
Beneficial conversion feature	212,155
Accumulated amortization	(151,568)
Net issuance costs	\$ 909,411
Convertible Notes	\$ 6,000,000
Convertible Notes discount net of amortization	(909,411)
Convertible Notes, net of discount	\$ 5,090,589

8. Deferred Rent

On August 7, 2015, the Company signed a lease for 21,697 square feet of mixed office and manufacturing space in Alameda, CA. The term of the lease is 76 months plus 5 months pre commencement date for tenant improvement construction. The total cost of the lease is \$3,070,688 which is being amortized over 81 months. Deferred expense for the three months ending September 30, 2015 was \$74,895.

The future minimum payments related to this lease are as follows as of September 30, 2015:

2015	\$	-
2016		312,437
2017		477,334
2018		492,088
2019		507,710
Thereafter		1,281,119
Total minimum lease payments	\$	3,070,688

9. Stockholders Equity (Deficit)

Authorized capital

Pursuant to the Company's original certificate of incorporation, on June 20, 2014, the Company authorized 5,000 shares of common stock with no par value.

On September 24, 2014, pursuant to an amendment of the Company's certificate of incorporation, the Company increased to 50,000,000 the authorized number of shares of common stock, par value of \$0.001 per share.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

9. Stockholder Equity (continued)

Authorized capital (continued)

The holders of the Company's common stock are entitled to one vote per share. Holders of common stock are entitled to receive a ratable share of dividends, if any, as may be declared by the board of directors.

Common stock issued

On June 20, 2014, the Company issued 261,819 shares of common stock to seven founders of the Company. A total of \$39,837 in expenses incurred prior to incorporation was deemed to be contributed by the founders of the Company.

On September 24, 2014 the Company had a forward stock split whereby each share of issued common stock was converted into 4,800 shares of common stock of the Company.

On June 24, 2015, the Company had a reverse stock split whereby each share of issued common stock was converted into 0.91 shares of common stock of the Company. All share and per share amounts in periods preceding the stock split have been adjusted to reflect the split retroactively.

On July 30, 2015, the Company filed a registration statement on form S-1 with the Securities and Exchange Commission. The registration was for the sale of 6,600,000 shares of common stock to raise proceeds of \$33,000,000 at an issue price of \$5.00 per share. On July 31, 2015, the common shares of the Company began trading on the NADAQ stock exchange. On July 31, 2015, the Company sold 6,600,000 shares of common stock for \$33,000,000 less commissions of \$2,524,500 and expenses of \$577,440 for net proceeds of \$29,898,060. The form S-1 included an over-allotment option of 990,000 shares. On August 13, 2015, the Company sold 641,930 shares of the over-allotment option for \$3,209,650 less commissions of \$245,538 for net proceeds of \$2,964,112.

Warrants issued

In connection with the IPO, the Company issued on August 5, 2015 to NSC warrants ("IPO Warrants") to purchase 660,000 shares of the Company's common stock at an exercise price of \$6.00 per share. The IPO Warrants were fully vested upon issuance, are not exercisable until July 30, 2016 and have a term of five years.

In connection with the over-allotment sale of shares, the Company issued on August 13, 2015 to NSC warrants ("O-A Warrants") to purchase 64,193 shares of the Company's common stock at an exercise price of \$6.00 per share. The O-A Warrants were fully vested upon issuance, are not exercisable until July 30, 2016 and have a term of five years.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

9. Stockholder Equity (continued)

Warrants issued (continued)

The following assumptions were used in the Black-Scholes-Merton pricing model to estimate the fair value of the warrants.

Expected stock volatility	80%
Risk free interest rate	1.57% - 1.64%
Expected years until exercise	5.0
Dividend yield	0.00%

The fair value was \$2,013,870 and \$214,243 for the IPO Warrants and O-A Warrants, respectively. The fair value was recorded as increase to IPO cost and increase in additional paid in-capital.

The warrant holders have certain registration rights with respect to the common stock issued upon exercise of the IPO Warrants and O-A Warrants.

Stock based compensation

The 2014 Stock Incentive Plan (the "2014 Plan") authorized a total of 1,363,637 shares for option grants. As of September 30, 2015, the Company had 708,857 shares available for future grants under the 2014 Stock Incentive Plan (the "2014 Plan").

Options to purchase stock granted under the 2014 Plan may not exceed a ten-year term. Options granted vest over a three-year period; one third the first year, one third the second year and the remaining third vest on a monthly basis in the third year.

The stock-based compensation expense recorded was allocated as follows:

	Period from Inception June 20, 2014 to September 30, 2014	Three Months Ended September 30, 2015	Nine Months Ended September 30, 2015
Operations and development costs	—	\$ 38,337	\$ 70,468
Business development and management costs	—	54,767	104,237
Total	—	\$ 93,104	\$ 174,705

The following assumptions were used in the Black-Scholes-Merton option pricing model to estimate the fair value of the awards granted during the nine-month period ended September 30, 2015.

Expected stock volatility	80%
Risk free interest rate	1.32% - 1.75%
Expected years until exercise	3.5
Dividend yield	0.00%

The following table summarizes the stock option activity for the nine months ended September 30, 2015.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

9. Stockholder Equity (continued)

Stock based compensation (continued)

	Number of Shares	Weighted Average Exercise price Per share	Weighted-Average Remaining Term
Outstanding as of December 31, 2014	—	—	—
Granted	680,235	\$ 3.77	4.6 years
Forfeited	(25,455)	\$ 3.56	—
Outstanding as of September 30, 2015	654,780	\$ 3.78	4.6 years
Vested and exercisable as of September 30, 2015	—	—	—

10. Related Party Transactions

The Company contracted with Preferred Flow for consulting on electrochemical process optimization. Preferred Flow is wholly owned by Richard Clarke, the brother of Stephen Clarke, the Company's Chairman and CEO. Related consulting expenses of \$0, \$24,000 and \$74,494 for the periods from inception (June 20, 2014) to September 30, 2014 and the three and nine months ended September 30, 2015, respectively, were recorded on the condensed consolidated statements of operations.

11. Income Taxes

Utilization of the Company's net operating loss may be subject to substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code and similar state provisions. Such an annual limitation could result in the expiration of net operating loss carryforwards prior to utilization.

The Company's policy is to account for interest and penalties as income tax expense. As of September 30, 2015 and December 31, 2014, the Company has not recognized any interest or penalties related to unrecognized tax benefits.

The Company files income tax returns in the U.S. federal jurisdiction and California state jurisdiction. The Company's tax year for calendar year 2014 is open to examination by the U.S. federal and California state tax authorities.

12. Commitments and Contingencies

The Company issued a purchase order on September 18, 2015 to purchase equipment to be installed in the recycling plant being built in Nevada. An initial payment of \$3,052,635 was made, see Deposits on the Balance Sheet. The balance due upon delivery and commission of the equipment is \$3,052,635. Delivery and commission is not expected until the second quarter of 2016.

AQUA METALS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

13. Subsequent Events

On November 3, 2015, Aqua Metals Reno, Inc., a wholly owned subsidiary, entered into a Loan Agreement with Green Bank, N.A. pursuant to which Green Bank provided us with a loan in the amount of \$10 million. The loan proceeds will be applied towards the expansion of our TRIC facility. The loan accrues interest at an annual rate of the Wall Street Journal Prime Rate Index plus a margin of 2.00%, adjusted quarterly, with a floor rate of 6.00%. Interest-only payments are due monthly for the first twelve months. Thereafter, principal and interest are due monthly and are fully amortized over 20 years. The loan is collateralized by the real estate, plant and fixtures at the TRIC facility and a certificate of deposit of \$1 million at Green Bank. Additionally, the terms of the Loan Agreement contain various affirmative and negative covenants. Among them, Aqua Metals Reno, Inc. must maintain a minimum debt service coverage ratio of 1.25 to 1.0, a maximum debt-to-net worth ratio of 1.0 to 1.0 and a minimum current ratio of 1.5 to 1.0.

The Company has evaluated subsequent events through November 9, 2015 the date which the condensed consolidated financial statements were available to be issued.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Cautionary Statement

The following discussion and analysis should be read in conjunction with our unaudited consolidated financial statements and the related notes thereto contained elsewhere in this report. The information contained in this quarterly report on Form 10-Q is not a complete description of our business or the risks associated with an investment in our common stock. We urge you to carefully review and consider the various disclosures made by us in this report and in our other filings with the Securities and Exchange Commission, or SEC, including our definitive prospectus filed with the SEC on July 31, 2015 and our subsequently filed periodic reports, which discuss our business in greater detail.

In this report we make, and from time to time we otherwise make, written and oral statements regarding our business and prospects, such as projections of future performance, statements of management's plans and objectives, forecasts of market trends, and other matters that are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Statements containing the words or phrases "will likely result," "are expected to," "will continue," "is anticipated," "estimates," "projects," "believes," "expects," "anticipates," "intends," "target," "goal," "plans," "objective," "should" or similar expressions identify forward-looking statements, which may appear in documents, reports, filings with the SEC, news releases, written or oral presentations made by officers or other representatives made by us to analysts, stockholders, investors, news organizations and others, and discussions with management and other of our representatives.

Our future results, including results related to forward-looking statements, involve a number of risks and uncertainties, including those risks included in the section "Risk Factors" set forth in our definitive prospectus filed with the SEC on July 31, 2015. No assurance can be given that the results reflected in any forward-looking statements will be achieved. Any forward-looking statement speaks only as of the date on which such statement is made. Our forward-looking statements are based upon assumptions that are sometimes based upon estimates, data, communications and other information from suppliers, government agencies and other sources that may be subject to revision. Except as required by law, we do not undertake any obligation to update or keep current either (i) any forward-looking statement to reflect events or circumstances arising after the date of such statement or (ii) the important factors that could cause our future results to differ materially from historical results or trends, results anticipated or planned by us, or which are reflected from time to time in any forward-looking statement.

General

We were formed as a Delaware corporation on June 20, 2014 for the purpose of engaging in the business of recycling lead through a novel, proprietary and patent-pending process that we developed and named "AquaRefining". Since our formation, we have focused our efforts on the further development of our AquaRefining process, establishment of strategic relationships and the pursuit of additional working capital. We have not commenced revenue-producing operations and, under our current plan of business, do not expect to do so until the second quarter of 2016.

AquaRefining uses a novel electro-chemical process to produce pure lead (greater than 99.99% purity) recovered from used lead acid batteries. We believe that AquaRefining offers a reduction in production cost over smelting, which is the existing method of producing lead. We also believe that AquaRefining significantly reduces the environmental emissions, health concerns and the permitting, logistics and transport challenges associated with lead smelting. We believe that the combined advantages offered by the AquaRefining process represent a potential step change in lead recycling technology, one which can deliver advantages in economics, footprint and logistics while greatly reducing the environmental impact of lead recycling.

Lead is a globally traded commodity with a worldwide market value in excess of \$20 billion. The chemical properties of lead allow it to be recycled and reused indefinitely. At the same time, most lead mines have become exhausted. Consequently and coupled with rising global demand for lead, recycled lead now makes up approximately 57% of all lead produced worldwide. In many countries, including the US, this percentage is even higher. The main source of recycled lead is lead acid batteries, or LABs, the production of which also represents the majority of the demand for lead.

To date, all lead, both mined and recycled, has been produced through lead smelting, which is an inefficient, wasteful, energy intensive and often highly polluting process. As a consequence of its environmental and health issues, smelting has become increasingly regulated in developed countries. Consequently, the lead smelting industry is migrating to more isolated areas and countries with less stringent regulations. The resulting transportation of used LABs from where they originate in the US to smelters in Mexico and other countries with limited environmental controls represents an increasingly significant cost to recycled lead and new LAB production.

We believe that AquaRefining significantly reduces the permitting, environmental and health issues associated with lead smelting. On this basis, we believe we have the potential to locate multiple smaller facilities closer to the source of used LABs. If this “distributed recycling” approach proves to be possible, we believe it will further enhance the economics of AquaRefining over smelting by reducing transport costs and supply chain bottlenecks. We have entered into formal discussions with three separate suppliers of used LABs. Each of these suppliers has the ability to supply enough used LABs to operate our initial recycling facility at 80 metric tons of produced lead per day and has expressed a desire to do so. Based on these formal discussions and our understanding of the market for used LABs, we believe that used LABs should be readily available to us from a number of sources at competitive prices.

Our primary goal is to monetize the potential multiple advantages that AquaRefining provide over lead smelting. In North America and Europe, we intend to build and operate recycling facilities close to major centers of LAB distribution. We also plan to form partnerships in which we will provide AquaRefining modules to augment or replace smelting operations. In each case, AquaRefining modules will be manufactured, assembled and tested in our own separate and purpose-built facility located in Alameda, California.

The modular nature of AquaRefining makes it possible to start lead production at a much smaller scale than is possible with smelters, thereby significantly reducing the investment risk associated with building a conventional smelter-based lead production facility. Our plan is to actively explore distributed recycling in the US by establishing our own initial recycling operation at the Tahoe Reno Industrial Center (“TRIC”) near Reno, Nevada. This plan is based on our belief that Reno is a hub of the West Coast’s distribution infrastructure and yet very poorly served by LAB recycling. From our initial and scalable recycling facility at TRIC, we intend to expand first throughout the US and then overseas. We will seek to own our own recycling facilities but will also evaluate joint ventures, licensing and direct sales.

Financing Activities

Convertible Note Placement. Prior to our initial public offering, we capitalized our operations with equity contributions and advances from our founders, our receipt of a \$500,000 investment from Wirtz Manufacturing Co. Inc. and our receipt of \$5.5 million of capital from our private placement sale of senior secured convertible promissory notes, which we refer to as our “convertible notes”, in October 2014. Pursuant to the terms of our investment agreement with Wirtz Manufacturing Co. Inc., Wirtz exchanged its investment in our company for a convertible note sold in the October 2014 private placement. As a result, we had issued and outstanding convertible notes in the aggregate principal amount of \$6 million, with accrued and unpaid interest as of June 30, 2015 in the amount of \$244,110. All principal and accrued interest under the convertible notes converted into shares of our common stock at the close of our initial public offering on August 5, 2015.

Initial Public Offering. On July 31, 2015, we conducted an initial public offering of 6.6 million shares of our common stock, at the public offering price of \$5.00 per share. After the payment of underwriter discounts and offering expenses, and after giving effect to the underwriters’ exercise of its overallotment option on August 13, 2015 to purchase an additional 641,930 shares of our common stock at the offering price of \$5.00 per share, we received net proceeds of approximately \$32,862,172.

Pursuant to the terms of our convertible notes, all principal and interest under the convertible notes automatically converted into shares of common stock upon the completion of the initial public offering at the conversion price of \$2.50 per share. As of the close of our initial public offering, all principal and interest, including \$6 million of principal and \$279,678 of accrued interest, under the convertible notes automatically converted into 2,511,871 shares of our common stock.

Green Bank Loan. On November 3, 2015, Aqua Metals Reno, Inc., a wholly owned subsidiary, entered into a Loan Agreement with Green Bank, N.A. pursuant to which Green Bank provided us with a loan in the amount of \$10 million. The loan proceeds will be applied towards the expansion of our TRIC facility, as described further below. The loan accrues interest at an annual rate of the Wall Street Journal Prime Rate Index plus a margin of 2.00%, adjusted quarterly, with a floor rate of 6.00%. Interest-only payments are due monthly for the first twelve months. Thereafter, principal and interest are due monthly and are fully amortized over 20 years. The loan is collateralized by the real estate, plant and fixtures at the TRIC facility and a certificate of deposit of \$1 million at Green Bank. Additionally, the terms of the Loan Agreement contain various affirmative and negative covenants. Among them, Aqua Metals Reno, Inc. must maintain a minimum debt service coverage ratio of 1.25 to 1.0, a maximum debt-to-net worth ratio of 1.0 to 1.0 and a minimum current ratio of 1.5 to 1.0.

The loan is guaranteed by the United States Department of Agriculture Rural Development, or USDA, in the amount of 90% of the principal amount of the loan. We paid a guarantee fee to USDA in the amount of \$270,000 at the time of closing of the Loan Agreement and we will be required to pay to USDA an annual renewal fee in the amount of 0.50% of the guaranteed portion of the outstanding principal balance of the loan as of December 31 of each year.

Plan of Operations

Our plan of operations for the 12-month period following the date of this report is to construct and commence commercial operations at our initial recycling facility in TRIC. In May 2015, we purchased 11.73 acres of undeveloped land within TRIC for the purchase price of \$1,047,503. We have commenced the construction of a 125,000 square foot lead acid battery, or LAB, recycling facility at our TRIC property and have allocated a total of \$22.5 million of the net proceeds of our initial public offering towards the development of the facility. This includes \$13 million towards site construction and \$9.5 million towards the manufacture and installation of eight of our AquaRefining modules, other equipment and fixtures. We intend to allocate approximately \$7 million of the proceeds from the Green Bank loan towards the construction and installation of additional Aqua Refining modules at the TRIC facility.

As of the date of this report, we believe that interest in our first recycling facility and demand for our recycling capacity is strong. Consequently, with the Green Bank loan in place, we have implemented a plan to achieve production at the rate of 80 tonnes of recycled lead per day by the fourth quarter of 2016 and, over time, expand to 160 tonnes per day. Our TRIC facility is designed and is being constructed in order to accommodate a total of 32 AquaRefining modules and additional battery breaking and component separations equipment sufficient to support expansion to 160 tonnes of recycled lead per day.

Construction of the TRIC facility began on August 17, 2015 and is progressing with a completion expected in the second quarter of 2016. We expect to install our first AquaRefining modules in approximately the second quarter 2016 and to install a total of 16 AquaRefining modules to support an initial lead production capacity of 80 tonnes per day by the close of the third quarter of 2016. In keeping with our modular approach, we intend to commence commercial LAB recycling operations shortly after the first AquaRefining module is delivered.

As of the date of this report, we believe that we will not need additional funds and that our cash on hand is sufficient to achieve production at a rate of at 80 tonnes of lead per day. Our goal is to increase our production of lead at our TRIC facility to 160 tonnes per day, and to finance such expansion with internally generated funds, by 2018, as earnings permit, of which there can be no assurance.

Results of Operations

We were formed on June 20, 2014 and have not commenced revenue-producing operations. To date, our operations have consisted of the development and limited testing of our AquaRefining process and the development of our business plan.

For the three months ended September 30, 2015, we incurred \$546,112 of operations and development costs, consisting of \$340,225 of salary and benefits, \$130,646 of supplies and overhead and \$75,241 for consulting fees. We also incurred \$776,916 of business development and management costs, consisting of \$351,210 of salary and benefits, \$184,927 of professional services, \$58,192 of depreciation and amortization and \$182,587 of insurance, travel and overhead. Other expenses for the three months ended September 30, 2015 included \$492,051 of interest expense and \$276,937 resulting from a change in fair value of derivative liabilities relating to our convertible note financing and the related financing warrants. We incurred a net loss of \$2,084,196 for the three months ended September 30, 2015.

For the nine months ended September 30, 2015, we incurred \$1,181,306 of operations and development costs, consisting of \$698,020 of salary and benefits, \$267,058 of supplies and overhead and \$216,228 for consulting fees. We also incurred \$1,888,844 of business development and management costs, consisting of \$1,011,402 of salary and benefits, \$435,149 of professional services, \$134,529 of depreciation and amortization and \$307,764 of insurance, travel and overhead. Other expenses for the nine months ended September 30, 2015 included \$1,126,090 of interest expense and \$5,776,255 resulting from a change in fair value of derivative liabilities relating to our convertible note financing and the related financing warrants. We incurred a net loss of \$9,964,555 for the nine months ended September 30, 2015.

Financial Condition

As of September 30, 2015, we had total assets of \$36,575,179 and working capital of \$29,232,407. We believe that our cash on hand as of the date of this report is sufficient to fund our current business plan over the next 12 months, including the development of our initial recycling facility at TRIC. However, we may require additional capital over the next 12 months, the receipt of which there can be no assurance. In addition, we will require additional capital in order to fund our proposed development of additional AquaRefining recycling facilities. We intend to seek additional funds through various financing sources, including the sale of our equity and debt securities, licensing fees for our technology, joint ventures with capital partners and project financing of our recycling facilities. In addition, we will consider alternatives to our current business plan that may enable to us to achieve revenue producing operations and meaningful commercial success with a smaller amount of capital. However, there can be no guarantees that such funds will be available on commercially reasonable terms, if at all. If such financing is not available on satisfactory terms, we may be unable to further pursue our business plan and we may be unable to continue operations.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet financing arrangements.

Item 3. Quantitative and Qualitative Disclosures about Market Risks

Not applicable.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our chief executive officer and chief financial officer, has evaluated the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15 of the Securities Exchange Act of 1934. Based on this evaluation, management concluded that our disclosure controls and procedures were effective as of September 30, 2015.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the three-month period ended September 30, 2015 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II — OTHER INFORMATION

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Initial Public Offering

On August 13, 2015, we completed our initial public offering, or IPO, of 7,241,930 shares of our common stock, including 641,930 shares of common stock from the partial exercise of the option to purchase additional shares granted to the underwriters, at a price to the public of \$5.00 per share. The offer and sale of all of the shares in our IPO were registered under the Securities Act of 1933 (“Securities Act”) pursuant to a registration statement on Form S-1 (File No. 333-204826), which was declared effective by the SEC on July 30, 2015. The offering commenced on July 31, 2015 and the initial closing took place on August 5, 2015. The offering terminated in connection with the closing of the underwriters’ exercise of their over-allotment option on August 13, 2015.

National Securities Corporation and Northland Capital Markets acted as the underwriters for the offering. The aggregate offering price for shares sold in the offering was \$36,209,650. We raised \$32,862,172 in net proceeds from the offering, after deducting underwriter discounts and commissions of \$2,770,038 and other offering expenses of approximately \$577,440. No payments were made by us to directors, officers or persons owning ten percent or more of our common stock or to their associates, or to our affiliates, other than payments in the ordinary course of business to officers for salaries. Pending the uses described in our definitive prospectus filed with the SEC on July 31, 2015, we have invested the net proceeds from the offering in short-term, investment-grade interest-bearing securities such as money market accounts, certificates of deposit, commercial paper, and guaranteed obligations of the U.S. government.

Unregistered Sales of Equity Securities

In the fourth quarter of 2014, we conducted the private placement sale of senior secured convertible promissory notes in the aggregate principal amount of \$6 million. Pursuant to the terms of our convertible notes, all principal and interest under the convertible notes automatically converted into shares of our common stock upon the initial closing of our IPO at the conversion price of \$2.50 per share. At the initial close of our IPO on August 5, 2015, all principal and interest, including \$6 million of principal and \$279,678 of accrued interest, under the convertible notes automatically converted into 2,511,871 shares of our common stock. The common shares were issued pursuant to the exemption from registration at Section 4(a)(2) of the Securities Act and Rule 506 thereunder.

Each of convertible note holders were accredited investors, as such term is defined in Rule 501 under the Securities Act. The note holders represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in the note conversions. All note holders had adequate access, through their relationships with us, to information about our Company. The issuance of the common shares was made without any general solicitation or advertising.

Item 6. Exhibits

Exhibit No.	Description	Method of Filing
10.1	Contract for Construction dated September 22, 2015 between Aqua Metals, Reno, Inc. and Miles Construction.	Filed electronically herewith
10.2	Loan Agreement dated November 3, 2015 between Aqua Metals Reno, Inc. and Green Bank. N.A.	Filed electronically herewith
10.3	Deed of Trust, Security Agreement and Fixture Filing dated November 3, 2015 made by Aqua Metals Reno, Inc. in favor of Green Bank. N.A	Filed electronically herewith
31.1	Certifications Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	Filed electronically herewith
31.2	Certifications Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	Filed electronically herewith
32.1	Certification of Principal Executive Officer and Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350).	Filed electronically herewith
101.INS	XBRL Instance Document	Filed electronically herewith
101.SCH	XBRL Taxonomy Extension Schema Document	Filed electronically herewith
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	Filed electronically herewith
101.LAB	XBRL Taxonomy Extension Label Linkbase Document	Filed electronically herewith
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	Filed electronically herewith
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document	Filed electronically herewith

SIGNATURES

In accordance with the requirements of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AQUA METALS, INC.

Date: November 10, 2015

By: /s/ Stephen R. Clarke
Stephen R. Clarke,
President and Chief Executive Officer

Date: November 10, 2015

By: /s/ Thomas Murphy
Thomas Murphy,
Chief Financial Officer



Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 22nd day of September in the year 2015
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Aqua Metals Reno, Inc.
1010 Atlantic Avenue
Alameda, California 94501

and the Contractor:
(Name, legal status, address and other information)

Miles Construction
61 Industrial Parkway
Carson City, Nevada 89706

for the following Project:
(Name, location and detailed description)

Aqua Metals Reno
2500 Peru Drive
Reno, Nevada 89434

The Architect:
(Name, legal status, address and other information)

Tectonics Design Group
10451 Double R Blvd.
Reno, Nevada 89521

The Owner and Contractor agree as follows.

In general, Owner shall administer the Contract with the assistance of Architect when requested by Owner, and Architect shall provide support to Owner and shall be responsible for Change Orders, Drawings and Specifications and other documents drafted by Architect. To the extent there are inconsistencies with the foregoing in this Agreement, later provisions of this Agreement shall be interpreted in light of the foregoing.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings and Specifications, listed on Exhibit C other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

The parties hereto acknowledge and agree that this Project is being built on a “fast track” basis. Specifically, as of the time of the Commencement of Construction and execution of the Agreement, Owner has not yet completed the plans and specifications for the Project. Further, the parties agree that there are several material outstanding design issues (including, but not limited to, the applications of certain building codes and requirements – such as fire codes and requirements) that have not been finalized. The parties acknowledge and agree that the Guaranteed Maximum Price (“GMP”) and the proposed Construction Schedule are based on the current set of incomplete plans and specifications. The parties hereby acknowledge and agree that the current GMP, Construction Schedule, and Completion Date are based on the current set of incomplete plans and specifications and that if there are any material changes to the plans and specifications or delays in finalizing the plans and specifications, the parties will, in good faith, negotiate commensurate applicable modifications to the GMP, Construction Schedule, Completion Date, and other applicable Contract Document requirements.

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Notwithstanding the foregoing, Contractor acknowledges that Owner intends for the Contract Sum not to exceed the GMP and efforts to finalize the plans and specifications shall be made so that the GMP is not increased. Contractor should expect that to the extent certain portions of the final plans and specifications result in greater line items costs than currently budgeted, Owner will be making changes in other line items to reduce costs on other aspects of the Project so as not to exceed the GMP. Contractor shall work with Owner to maintain the GMP.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

August 15, 2015.

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

N/A

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than () days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Anticipated construction time frame of 8 months, a detailed construction schedule to be provided within 10 working days of the completed construction documents.

Portion of Work

Substantial Completion date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)

N/A

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

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§ 5.1.1 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

Lump sum overhead \$388,934.00, Lump sum fee \$486,168.00, Percentage of cost of the work 0.9% general liability insurance

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

Percentage of Cost of the Work – 6.75% plus general liability insurance 0.9%

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

N/A

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed one hundred percent (100%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
N/A		

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Thirteen million nine hundred sixty four thousand one hundred thirty four dollars and 00/100 (\$ 13,964,134.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

Exhibit 'B' – Cost Breakdown

An estimated cost breakdown is attached hereto as Exhibit B. Such cost breakdown is being provided for information purposes only. This is not a line item GMP contract and the individual line items in the Cost Breakdown do not constitute GMPs for each line items.

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

N/A

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
1. Masonry Separation Walls	
2. Fire Brick at Kettles	
3. Green Wall and Sustainable Features	
4. Construction Contingency	
5. CMU Wainscot	
6. CMU Bearing Walls	
7. CMU Separation Walls - Allowance	
8. Fire Brick - Allowance	

Init.

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§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

Exhibit 'A' – Qualifications and Exclusions

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

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§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 7.3 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ 7.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

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ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor’s personnel stationed at the Contractor’s principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;
- .2 Expenses of the Contractor’s principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor’s capital expenses, including interest on the Contractor’s capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article 7; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor’s own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection,

§ 10.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

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ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Monthly Progress Billing Applications for Payment of Work completed will be submitted by the contractor to the Owner on the 1st day of each month. The Owner shall pay the Contractor within thirty (30) days of receipt of the application for payment, 5% retention will be held on items, excluding the general conditions line items and the Purchase of the Steel Building. Final payment is to be paid to the Contractor in accordance with § 12.2.4. Line item Retainage may be reduced and/or released prior to completion at the Owner's sole discretion

§ 12.1.3 Provided that an Application for Payment is received by the Owner not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 1st day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of five percent (5%). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion. Retention may be reduced or released on a per line basis at the sole discretion of the owner;

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- .4 Subtract retainage of five percent (5%) from that portion of the Work that the Contractor self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment..3

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's delivery of Contractor's final accounting. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor.

§ 12.2.4 The Owner's final payment to the Contractor shall be made as follows:

Except as otherwise provided in NRS 624.620, any money remaining unpaid for the Work is payable to the Contractor within 30 days after:

- (a) Occupancy or use of the Work by the Owner; or
- (b) The availability of Work for its intended use. The Contractor must have provided to the Owner:
 - a. A written notice of availability on or before the day on which the Contractor claims that the Work became available for use or occupancy; or
 - b. A certificate of occupancy issues by the appropriate building inspector or other authority.

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

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ARTICLE 13 DISPUTE RESOLUTION

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

N/A

(Paragraphs deleted)

§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY AND ALL CLAIMS OR CAUSES OF ACTION ARISING FROM OR RELATING TO THIS AGREEMENT AND/OR THEIR RELATIONSHIP. THE PARTIES ACKNOWLEDGE THAT THEY OTHERWISE HAVE A RIGHT TO HAVE THEIR DISPUTE HEARD BY A JURY, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH INDEPENDENT COUNSEL, AND THAT THIS JURY WAIVER HAS BEEN ENTERED INTO KNOWINGLY AND VOLUNTARILY BY ALL PARTIES TO THIS AGREEMENT..
- Other *(Specify)*

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201–2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

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§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Contractor’s Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

%

§ 15.3 The Owner’s representative:
(Name, address and other information)

Thomas Murphy
Aqua Metals Reno, Inc.
1010 Atlantic Avenue
Alameda, California 94501

§ 15.4 The Contractor’s representative:
(Name, address and other information)

Cary Richardson
Miles Construction
61 Industrial Parkway
Carson City, Nevada 89706

§ 15.5 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ written notice to the other party.

§ 15.6 Other provisions:

N/A

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ 16.1.4 The Specifications:
 (Either list the Specifications here or refer to an exhibit attached to this Agreement.)
 N/A

Section	Title	Date	Pages
---------	-------	------	-------

§ 16.1.5 The Drawings:
 (Either list the Drawings here or refer to an exhibit attached to this Agreement.)
 Exhibit 'C' Plan Records

Number	Title	Date
--------	-------	------

§ 16.1.6 The Addenda, if any;

Number	Date	Pages
N/A		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:
- .2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)
 - Exhibit ‘A’ – Qualifications and Exclusions
 - Exhibit ‘B’ – Cost Breakdown
 - Exhibit ‘C’ – Plan Records

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
General Liability Insurance- Each Occurrence	\$1,000,000.00
General Liability Insurance- General Aggregate	\$2,000,000.00
General Liability Insurance- Excess Liability	\$5,000,000.00
Automobile Liability Insurance	\$1,000,000.00
Builders Risk/Course of Construction Insurance to be provided by Owner- See Article §11.3.1 of A201-2007	

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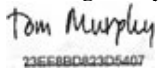
(1498564921)

17.1 The Contractor represents the following to the Owner: (i) that it is financially solvent, able to pay all its debt as they mature, and possessed of sufficient working capital to complete the work and perform all of its obligations hereunder; (ii) that it is able to furnish the plant, tools, material, supplies equipment and labor required to complete the Work and perform its obligations hereunder; (iii) that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work; (iv) that its execution of this Agreement and its performance hereof is within its duly authorized powers.

17.2 If either party commences an action against the other to enforce any of the terms of the Contract Documents or because of the breach by either party of any of the terms of the Contract Documents, the losing or defaulting party, whether by out-of-court settlement or final judgment, shall pay to the prevailing party the actual costs and expenses incurred in connection with the prosecution or defense of such action and any appeals in connection therewith, including actual attorneys' fees and costs. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including, without limitation, actual attorneys' fees and costs incurred in connection with: (i) enforcing, perfecting and executing such judgment; (ii) post-judgment motions; (iii) contempt proceedings; (iv) garnishment, levy, and debtor and third-party examinations; (v) discovery; and (vi) bankruptcy litigation. Any such actions shall be conducted in the Courts of the county in which the Project is located.

This Agreement entered into as of the day and year first written above.

DocuSigned by:

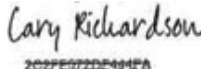

23E68B082305407

9/25/2015

OWNER (Signature)

Thomas Murphy Chief Financial Officer
(Printed name and title)

DocuSigned by:


202F8E222E494FA

CONTRACTOR (Signature)

Cary Richardson Vice President
(Printed name and title)

Init.

/

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AIA® Document A102™ – 2007

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PAGE 1

AGREEMENT made as of the 22nd day of September in the year 2015

...

Aqua Metals Reno, Inc.
1010 Atlantic Avenue
Alameda, California 94501

...

Miles Construction
61 Industrial Parkway
Carson City, Nevada 89706

...

Aqua Metals Reno
2500 Peru Drive
Reno, Nevada 89434

...

Tectonics Design Group
10451 Double R Blvd.
Reno, Nevada 89521

...

In general, Owner shall administer the Contract with the assistance of Architect when requested by Owner, and Architect shall provide support to Owner and shall be responsible for Change Orders, Drawings and Specifications and other documents drafted by Architect. To the extent there are inconsistencies with the foregoing in this Agreement, later provisions of this Agreement shall be interpreted in light of the foregoing.

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PAGE 2

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings and Specifications, listed on Exhibit C other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

The parties hereto acknowledge and agree that this Project is being built on a “fast track” basis. Specifically, as of the time of the Commencement of Construction and execution of the Agreement. Owner has not yet completed the plans and specifications for the Project. Further, the parties agree that there are several material outstanding design issues (including, but not limited to, the applications of certain building codes and requirements — such as fire codes and requirements) that have not been finalized. The parties acknowledge and agree that the Guaranteed Maximum Price (“GMP”) and the proposed Construction Schedule are based on the current set of incomplete plans and specifications. The parties hereby acknowledge and agree that the current GMP, Construction Schedule, and Completion Date are based on the current set of incomplete plans and specifications and that if there are any material changes to the plans and specifications or delays in finalizing the plans and specifications, the parties will, in good faith, negotiate commensurate applicable modifications to the GMP, Construction Schedule, Completion Date, and other applicable Contract Document requirements. Notwithstanding the foregoing, Contractor acknowledges that Owner intends for me Contract Sum not to exceed the GMP and efforts to finalize the plans and specifications shall be made so that the GMP is not increased. Contractor should expect that to the extent certain portions of the final plans and specifications result in greater line items costs than currently budgeted. Owner will be making changes in other line items to reduce costs on other aspects of the Project so as not to exceed the GMP. Contractor shall work with Owner to maintain the GMP.

PAGE 3

August 15, 2015.

...

N/A

...

Anticipated construction time frame of 8 months, a detailed construction schedule to be provided within 10 working days of the completed construction documents.

...

N/A

PAGE 4

Lump sum overhead \$388,934.00, Lump sum fee \$486,168.00, Percentage of cost of the work 0.9% general liability insurance

...

Percentage of Cost of the Work – 6.75% plus general liability insurance 0.9%

...

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N/A

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed one hundred percent (100%) of the standard rate paid at the place of the Project.

...

N/A

...

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Thirteen million nine hundred sixty four thousand one hundred thirty four dollars and 00/100 (\$ 13,964,134.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

...

Exhibit 'B' – Cost Breakdown

An estimated cost breakdown is attached hereto as Exhibit B. Such cost breakdown is being provided for information purposes only. This is not a line item GMP contract and the individual line items in the Cost Breakdown do not constitute GMPs for each line items.

...

N/A

...

1. Masonry Separation Walls
2. Fire Brick at Kettles
3. Green Wall and Sustainable Features
4. Construction Contingency
5. CMU Wainscot
6. CMU Bearing Walls
7. CMU Separation Walls - Allowance
8. Fire Brick - Allowance

PAGE 5

Exhibit 'A' – Qualifications and Exclusions

PAGE 9

§ 12.1.1 Based upon Applications for Payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

...

Monthly Progress Billing Applications for Payment of Work completed will be submitted by the contractor to the Owner on the 1st day of each month. The Owner shall pay the Contractor within thirty (30) days of receipt of the application for payment, 5% retention will be held on items, excluding the general conditions line items and the Purchase of the Steel Building. Final payment is to be paid to the Contractor in accordance with § 12.2.4. Line item Retainage may be reduced and/or released prior to completion at the Owner's sole discretion

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§ 12.1.3 Provided that an Application for Payment is received by the Owner not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 1st day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

...

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

...

- .3 Add the Contractor's Fee, less retainage of five percent (5%). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion. Retention may be reduced or released on a per line basis at the sole discretion of the owner;
- .4 Subtract retainage of five percent (5%) from that portion of the Work that the Contractor self-performs;

PAGE 10

- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

...

- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment..3

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's delivery of Contractor's final accounting. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor.

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§ 12.2.4 The Owner's final payment to the Contractor shall be made as follows:

Except as otherwise provided in NRS 624.620, any money remaining unpaid for the Work is payable to the Contractor within 30 days after:

- (a) Occupancy or use of the Work by the Owner; or
- (b) The availability of Work for its intended use. The Contractor must have provided to the Owner:
 - a. A written notice of availability on or before the day on which the Contractor claims that the Work became available for use or occupancy; or
 - b. A certificate of occupancy issues by the appropriate building inspector or other authority.

PAGE 11

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

N/A

...

- Litigation in a court of competent jurisdiction. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY AND ALL CLAIMS OR CAUSES OF ACTION ARISING FROM OR RELATING TO THIS AGREEMENT AND/OR THEIR RELATIONSHIP. THE PARTIES ACKNOWLEDGE THAT THEY OTHERWISE HAVE A RIGHT TO HAVE THEIR DISPUTE HEARD BY A JURY, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH INDEPENDENT COUNSEL, AND THAT THIS JURY WAIVER HAS BEEN ENTERED INTO KNOWINGLY AND VOLUNTARILY BY ALL PARTIES TO THIS AGREEMENT..

PAGE 12

Thomas Murphy
Aqua Metals Reno, Inc.
1010 Atlantic Avenue
Alameda, California 94501

...

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Cary Richardson
Miles Construction
61 Industrial Parkway
Carson City, Nevada 89706

...

N/A

PAGE 13

N/A

...

Exhibit 'C' Plan Records

...

N/A

...

Exhibit 'A' – Qualifications and Exclusions
Exhibit 'B' – Cost Breakdown
Exhibit 'C' – Plan Records

...

<u>General Liability Insurance- Each Occurrence</u>	<u>\$1,000,000.00</u>
<u>General Liability Insurance- General Aggregate</u>	<u>\$2,000,000.00</u>
<u>General Liability Insurance- Excess Liability</u>	<u>\$5,000,000.00</u>
<u>Automobile Liability Insurance</u>	<u>\$1,000,000.00</u>
<u>Builders Risk/Course of Construction Insurance to be provided by Owner- See Article §11.3.1 of A201-2007</u>	

17.1 The Contractor represents the following to the Owner: (i) that it is financially solvent, able to pay all its debt as they mature, and possessed of sufficient working capital to complete the work and perform all of its obligations hereunder; (ii) that it is able to furnish the plant, tools, material, supplies equipment and labor required to complete the Work and perform its obligations hereunder; (iii) that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental mid public and quasi-public authorities having jurisdiction over it and over the Work; (iv) that its execution of this Agreement and its performance hereof is within its duly authorized powers.

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User Notes:

(1498564921)

17.2 If either party commences an action against the other to enforce any of the terms of the Contract Documents or because of the breach by either party of any of the terms of the Contract Documents, the losing or defaulting party, whether by out-of-court settlement or final judgment, shall pay to the prevailing party the actual costs and expenses incurred in connection with the prosecution or defense of such action and any appeals in connection therewith, including actual attorneys' fees and costs. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including, without limitation, actual attorneys' fees and costs incurred in connection with: (i) enforcing, perfecting and executing such judgment; (ii) post-judgment motions; (iii) contempt proceedings; (iv) garnishment, levy, and debtor and third-party examinations; (v) discovery; and (vi) bankruptcy litigation. Any such actions shall be conducted in the Courts of the county in which the Project is located.

PAGE 14

Thomas Murphy Chief Financial Officer

Cary Richardson Vice President

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Certification of Document's Authenticity

AIA[®] Document D401[™] – 2003

I, Cary Richardson, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:08:46 on 09/25/2015 under Order No. 3020359096_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA[®] Document A102[™] – 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

DocuSigned by:

Cary Richardson

2G2FF572DF444FA

(Signed)

Vice President

(Title)

9/25/2015

(Dated)

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User Notes:

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LOAN AGREEMENT

BETWEEN

GREEN BANK, N.A.
as Lender

and

AQUA METALS RENO, INC.
as Borrower

November 3, 2015

LOAN AGREEMENT

This Loan Agreement (“Agreement”) is made and entered into this 3rd day of November, 2015, by and between Green Bank, N.A. (“Lender”) and AQUA METALS RENO, INC, a Delaware corporation (“Borrower”), with the approval of AQUA METALS OPERATIONS, INC., a Delaware corporation, and AQUA METALS, INC., a Delaware corporation (“Guarantor”, whether one or more).

Article 1 **Definitions**

1.1 Certain Defined Terms.

Unless a particular term, word or phrase is otherwise defined or the context otherwise requires, capitalized terms, words and phrases used herein or in the other Loan Documents (as hereinafter defined) have the following meanings (all definitions that are defined in this Agreement in the singular to have the same meanings when used in the plural and vice versa):

Advance means a disbursement by Lender of any proceeds of the Loan or Escrow.

Affiliate means any Person controlling, controlled by or under common control with any other Person. For purposes of this definition, “control” (including “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

Agreement means this Loan Agreement, as it may from time to time be amended, modified, restated or supplemented.

Annual Audited Financial Statements shall mean the annual audited financial statements of a Person, including all notes and supporting schedules thereto, for a fiscal year of such Person, which statements shall include, at a minimum, a balance sheet as of the end of such fiscal year, an income statement, a statement of cash flows, a profit and loss statement showing the result of operations for such fiscal year, and a reconciliation of surplus, each for such fiscal year, all setting forth in comparative form the corresponding figures from the previous fiscal year, all prepared in conformity with GAAP, accompanied by the auditor’s notes and audited with no qualifications and reported upon by a firm of independent certified public accountants acceptable to Lender which shall state, in writing, that such financial statements, in the opinion of such accountants present fairly the financial position of such Person as of the date thereof and the results of its operations for the period covered thereby in conformity with GAAP. Such statements shall include a statement by such accountants that in making the appropriate audit and/or investigation in connection with such report and opinion, such accountants did not become aware of any Event of Default relating to the financial tests set forth in Section 4.2 hereof or, if in the opinion of such accountant any such Event of Default exists, a description of the nature and status thereof.

Assignment of CD means that certain Assignment of Certificate of Deposit, dated as of the Closing Date, in Proper Form, executed by Borrower for the benefit of Lender covering and affecting a certificate of deposit held and controlled by Lender in the amount of \$1,000,000.00, as same may be amended, modified, restated or supplemented from time to time.

Assignment of Rents means that certain Assignment of Leases and Rents, dated as of the Closing Date, in Proper Form, executed by Borrower for the benefit of Lender covering and affecting the Commercial Land and Improvements, as same may be amended, modified, restated or supplemented from time to time.

Bankruptcy Code means the United States Bankruptcy Code, as amended, and any successor statute.

Borrower's Equity Account means the restricted collateral account held and controlled by Lender, into which the Borrower will deposit the required Equity Injection on or before the Closing Date.

Business Day means any day other than a Saturday or Sunday or a legal holiday on which commercial banks are required to close in Houston, Texas or Reno, Nevada.

Closing Date means the date of this Agreement, as set forth above.

Collateral means all Property now or hereafter subject to the Security Documents, as generally described in Exhibit "A" attached hereto and incorporated by reference herein.

Commercial Land means that certain tract of land situated in Storey County, Nevada consisting of approximately 11.73 acres of land, more particularly described on Exhibit A-1 attached hereto and incorporated by reference herein.

Conditional Commitment means the Form 4279-3 Conditional Commitment (with attachment), dated August 5, 2015, issued by the United States of America acting through the USDA in connection with this Loan, a true and correct copy of which is attached hereto and incorporated by reference herein as Exhibit "C".

Construction Rider means the "Construction Rider To Loan Agreement", which is attached hereto and incorporated by reference herein as Exhibit "E".

Current Ratio means the "current ratio" as defined by GAAP.

Debt Service Coverage Ratio means [the net income of the Borrower *plus* interest, taxes, depreciation, and amortization ("EBITDA")] *divided by* the sum of all scheduled payments of principal and interest on all business debt during the period of measurement, as determined by Lender.

Deed of Trust means that certain Deed of Trust, Security Agreement and Fixture Filing dated as of the Closing Date, in Proper Form, executed by Borrower for the benefit of Lender covering and affecting the Commercial Land, Improvements, and other Property described therein, as same may be amended, modified, restated or supplemented from time to time.

Equity Injection means \$4,158,630.00 of Borrower funds, which will be deposited into the Borrower's Equity Account.

Environmental Claim means any third party (including Governmental Authorities and employees) action, lawsuit, claim or proceeding (including claims or proceedings at common law or under the Occupational Safety and Health Act or similar laws relating to safety of employees) which seeks to impose liability for (i) noise; (ii) pollution or contamination of the air, surface water, ground water or land or the cleanup of such pollution or contamination; (iii) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (iv) exposure to Hazardous Materials; (v) the safety or health of employees; or (vi) the manufacture, processing, distribution in commerce or use of Hazardous Materials. An "**Environmental Claim**" includes, but is not limited to, a common law action, as well as a proceeding to issue, modify or terminate an Environmental Permit, or to adopt or amend a regulation to the extent that such a proceeding attempts to redress violations of an applicable permit, license, or regulation as alleged by any Governmental Authority.

Environmental Liabilities includes all liabilities arising from any Environmental Claim, Environmental Permit or Requirements of Environmental Law under any theory of recovery, at law or in equity, and whether based on negligence, strict liability or otherwise, including but not limited to: remedial, removal, response, abatement, investigative, monitoring, personal injury and damage to property or injuries to persons, and any other related costs, expenses, losses, damages, penalties, fines, liabilities and obligations, and all costs and expenses necessary to cause the issuance, reissuance or renewal of any Environmental Permit including attorneys' fees and court costs.

Environmental Permit means any permit, license, approval or other authorization under any applicable Legal Requirement relating to pollution or protection of health or the environment, including laws, regulations or other requirements relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or Hazardous Materials or toxic materials or wastes into ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants or Hazardous Materials.

Escrow means any funds placed on deposit with Lender or Lender's Representative and to be disbursed pursuant to this Agreement or any other agreement including, collectively, the Borrower's Equity Account and the Loan Proceeds Account.

Event of Default shall have the meaning assigned to it in Section 7.1 of this Agreement.

Financing Statements means all such UCC-1 financing statements as Lender shall require, in Proper Form, to give notice of and to perfect or continue perfection of Lender's Liens in all, or a portion, of the Collateral.

GAAP means, as to a particular Person, such accounting practice as, in the opinion of independent certified public accountants of recognized national standing, conforms at the time to generally accepted accounting principles, consistently applied. In addition, GAAP means those principles and practices (a) which are recognized as such by the Financial Accounting Standards Board; and (b) which are consistently applied for all periods after the Closing Date so as to reflect properly the financial condition, and results of operations and changes in financial position, of such Person. If any change in any accounting principle or practice is required by the Financial Accounting Standards Board in order for such principle or practice to continue as GAAP, all reports and financial statements required hereunder may be prepared in accordance with such change. Notwithstanding the foregoing, as to individuals only, GAAP means such accounting principles and practices as, in the opinion of such accountants, conform at the time to such individual's federal income tax basis of accounting, consistently applied.

Governmental Authority means any foreign governmental authority, the United States of America, any State of the United States and any political subdivision of any of the foregoing, and any central bank, agency, department, tribal government, commission, board, bureau, court or other tribunal having jurisdiction over Lender, Borrower, any Party or their respective Property.

Hazardous Materials means and includes gasoline, petroleum, asbestos containing materials, lead, explosives, radioactive materials or any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such under any Law of any Governmental Authority having jurisdiction over the Commercial Land or any portion thereof or its use, including: (i) any "hazardous substance" defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601(14) as may be amended from time to time, or any so-called "superfund" or "superlien" Law, including the judicial interpretation thereof; (ii) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (iii) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (iv) any petroleum, including crude oil or any fraction thereof; (v) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (vi) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; and (vii) any other toxic substance or contaminant that is subject to any other Legal Requirement or other past or present requirement of any Governmental Authority.

Improvements means all buildings and other improvements now or hereafter placed on the Commercial Land, as well as all appurtenances, betterments and additions thereto; all and singular the rights, privileges, hereditaments, and appurtenances in any wise incident or appertaining to said Commercial Land and improvements, including, without limitation, any and all rights to the present or future use of waste water, waste water capacity, drainage, streams, rivers, water or other utility facilities to the extent same pertain to or benefit said Commercial Land or the improvements located thereon, including, without limitation, all reservations of or commitments or letters covering any such use in the future whether now owned or hereafter acquired.

Indebtedness means and include, without duplication, (a) all items which in accordance with GAAP would be included on the liability side of a balance sheet on the date as of which Indebtedness is to be determined (excluding capital stock, surplus, surplus reserves and deferred credits); (b) all guaranties, letters of credit, contingent reimbursement obligations, and other contingent obligations in respect of, or any obligations to purchase or otherwise acquire, Indebtedness of others, and (c) all indebtedness secured by any Lien existing on any interest of the Person with respect to which Indebtedness is being determined in Property owned subject to such Lien whether or not the Indebtedness secured thereby shall have been assumed; provided, that the term "Indebtedness" shall not mean or include any indebtedness in respect of which monies sufficient to pay and discharge the same in full (either on the expressed date of maturity thereof or on such earlier date as such Indebtedness may be duly called for redemption and payment) shall be deposited with a depository, agency or trustee acceptable to Lender in trust for the payment thereof.

Key Agreements means all contracts, permits, licenses and other rights acquired by a person or to which such Person is a party or by which such Person is bound and from time to time material to the ownership of assets or the operations of such Person.

Legal Requirement(s) means any law, statute, ordinance, decree, requirement, order, judgment, rule, or regulation (or interpretation of any of the foregoing) of, and the terms of any license or permit issued by, any Governmental Authority, whether presently existing or arising in the future, including, without limitation, any Requirements of Environmental Law.

Lender's Representative means any agent, employee, attorney, or other Person authorized to act on behalf of Lender.

Lien means any mortgage, pledge, charge, encumbrance, security interest, collateral assignment or other lien whether based on common law, constitutional provision, statute or contract.

Loan means the loan described in Section 2.1 hereof.

Loan Documents means, collectively, the Note, this Agreement, the Security Documents, the authorization agreement for automatic drafts (if required by Lender), and all other documents now or hereafter prepared and/or executed in connection with the Loan, and all instruments, certificates and agreements now or hereafter executed or delivered to Lender pursuant to any of the foregoing or in connection with the Obligations or any commitment regarding the Obligations, and all amendments, modifications, renewals, extensions, increases and rearrangements of, and substitutions for, any of the foregoing.

Loan Proceeds Account means the restricted collateral account held and controlled by Lender, into which the proceeds of the Loan will be disbursed on or about the Closing Date.

Material Adverse Effect means any event, change or effect that is materially adverse to (a) the financial condition, business, operations, assets or prospects of any Borrower or Guarantor, (b) the ability of Borrower or any other Party to perform its respective obligations under the Loan Documents, and/or (c) the ability of Lender to enforce the Loan Documents against Borrower or any other Party.

Maximum Rate shall have the same meaning as defined in the Note.

Note means that certain adjustable rate promissory note dated as of the Closing Date, the form of which is attached hereto and incorporated by reference herein as **Exhibit "B"**, made and executed by Borrower and payable to the order of Lender in the aggregate original principal amount of Ten Million and 00/100 Dollars (\$10,000,000.00), and all modifications, renewals, extensions, increases and rearrangements of, and substitutions for, such promissory note.

Officer's Statement means the Officer's Statement in the form of **Exhibit "D"**, attached hereto and incorporated by reference herein, signed by the duly-elected Chief Financial Officer of Borrower (or other officer acceptable to Lender).

Obligations means, as at any date of determination thereof, the sum of the following: (i) any and all sums, including principal, interest, expenses, Prepayment Consideration, court costs and attorneys' fees called for in the Note, **plus** (ii) all other agreements, covenants, conditions, warranties, representations, liabilities, obligations and indebtedness of any Party now or hereafter created or incurred, in whole or in part, under this Agreement or any other Loan Document, and whether they were heretofore or are hereafter purchased or acquired and any and all amendments, modifications, renewals, extensions, increases, or rearrangements in whole or in part of any of the above.

Organizational Documents means, with respect to a corporation, the articles of incorporation (or certificate of formation), and bylaws of such corporation; with respect to a limited liability company, the articles of organization, the limited liability company operating agreement and the regulations of such limited liability company; with respect to a partnership, the partnership agreement establishing such partnership and the certificate of limited partnership as to any limited partnership; with respect to a joint venture, the joint venture agreement establishing such joint venture; and, with respect to a trust, the instrument establishing such trust; in each case including any and all modifications and amendments thereof as of the date of the Loan Document referring to such Organizational Document and any and all future modifications and amendments thereof.

Parties means Borrower, Guarantor, and any other party (other than Lender) executing any Loan Document.

Person means any individual, corporation, limited liability company, partnership, joint venture, joint stock association, business trust, other business entity, trust, unincorporated organization, Governmental Authority or any other form of entity.

Prepayment Consideration shall have the meaning set forth in the Note.

Proper Form means in form and substance satisfactory to Lender.

Property means any interest in any kind of property or asset, whether real, personal or mixed, tangible or intangible.

Quarterly Financial Statements means the quarterly company-prepared financial statements of a Person, including all notes and supporting schedules thereto, which statements shall include, at a minimum, a balance sheet as of the end of such fiscal quarter, an income statement, a statement of cash flows, a profit and loss statement showing the result of operations for such fiscal quarter and for the calendar year to date, all setting forth in comparative form the corresponding figures for the corresponding fiscal quarter of the preceding year, prepared in accordance with GAAP and certified as fairly reflecting the financial condition of such Person as of the date thereof and for the period covered thereby, subject to normal quarter-end adjustments, by the Chief Financial Officer or other executive officer (as approved by Lender) of such Person. Each submitted Quarterly Financial Statement must be signed by the Person, and contain a certification that (a) such financial statement is true and correct and fairly presents such Person's financial condition as of the date of each such statement, and (b) there has been no Material Adverse Affect occurring subsequent to the date of the most recent previous financial statement supplied to Lender.

Related Person means any individual, corporation, organization or other entity that is an officer, director, owner, stockholder, partner or employee of Borrower.

Remedial Action means any action necessary to ensure compliance with the Requirements of Environmental Law including (i) the removal and disposal or containment (if containment is practical under the circumstances and is permissible within Requirements of Environmental Law) or monitoring of any and all Hazardous Materials at the Property; (ii) the taking of necessary precautions to protect against the release or threatened release of Hazardous Materials at, on, in, about, under, within or near the air, soil, surface water, groundwater or soil vapor at the Property or any public domain affected by the Property or any surrounding areas thereof; (iii) any action necessary to mitigate the usurpation of wetlands, pinelands or other protected land or reclaim the same or to protect and preserve wildlife species; (iv) any action necessary to meet the requirements of an Environmental Permit or (v) any other action required to satisfy Requirements of Environmental Law imposed upon Borrower, the Property and/or any operation thereon.

Required Insurance means all insurance required by the USDA and/or by Lender, including but not limited to flood, fire, comprehensive property damage, public liability, life, disability, worker's compensation, and malpractice, with the Lender named as an additional insured, mortgagee, assignee, or lender's loss payable, as applicable. All Required Insurance shall be issued and maintained in such form, amounts, and by companies satisfactory to Lender, in its sole discretion.

Requirements of Environmental Law means all requirements imposed by any law (including for example and without limitation The Resource Conservation and Recovery Act and The Comprehensive Environmental Response, Compensation, and Liability Act), rule, regulation, or order of any Governmental Authority in effect at the applicable time which relate to (i) noise; (ii) pollution, protection or cleanup of the air, surface water, ground water or land; (iii) solid, gaseous or liquid waste generation, treatment, storage, disposal or transportation; (iv) exposure to Hazardous Materials; (v) the safety or health of employees or (vi) regulation of the manufacture, processing, distribution in commerce, use, discharge or storage of Hazardous Materials.

Rural Area means all territory of a State that is not within the outer boundary of any city having a population of fifty thousand or more and its immediately adjacent urbanized and urbanizing area with a population density of more than one hundred persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

Secretary's Certificate means a certificate, in Proper Form, of the Secretary or an Assistant Secretary or other authorized officer of a Person as to (a) the resolutions of the Board of Directors or other governing body of such Person authorizing the execution, delivery and performance of the documents to be executed by such Person; (b) the incumbency and signature of the officer of such Person executing such documents on behalf of such Person, and (c) the Organizational Documents of such Person.

Security Agreement means that certain Security Agreement dated as of the Closing Date executed by Borrower in favor of Lender covering, among other Property, the personal property Collateral described in Exhibit "A" hereto, together with any and all security agreements hereafter executed in favor of Lender in connection with, or as security for, the Obligations, as any of them may be amended, modified, restated or supplemented from time to time.

Security Documents means this Agreement, the Security Agreement, the Deed of Trust, Assignment of Rents, Assignment of CD, the Financing Statements and any and all other agreements, deeds of trust, mortgages, chattel mortgages, security agreements, pledges, assignments, guaranties, undertakings, subordination agreements and other instruments and financing statements now or hereafter executed and delivered by any Person (other than solely by Lender), as the same may be amended, modified, restated or supplemented from time to time as security for the payment of, the Obligations.

Survey means an ALTA survey of the Commercial Land in Proper Form, performed by a registered public land surveyor duly licensed as such in the state in which the Commercial Land is located, acceptable to the Lender (and, in each instance that the Lender shall so require, to the title company). Each Survey shall be evidenced by a survey plat with north arrow showing the length and direction of the perimeter boundaries of the Commercial Land, the location and dimensions of all improvements in place as of the date of such survey, names of adjacent and nearby streets and roads, setback lines, encroachments, easements, rights-of-way and railroads, if any, affecting the Commercial Land, a legal description of the Commercial Land, and the date of the survey. The print of each Survey shall contain the duly executed and sealed certification of the surveyor certifying to the Lender (and, in each instance that the Lender shall so require, to the title company issuing the Title Insurance).

Title Insurance means a loan policy or policies of title insurance in amount of Ten Million and 00/100 Dollars (\$10,000,000.00), issued in favor of Lender by an underwriter satisfactory to Lender and insuring the Lien of the Deed of Trust as a first and prior lien on the Commercial Land, subject only to such encumbrances as are approved in writing by Lender.

UCC means the Uniform Commercial Code of the State of Texas.

USDA means the United States Department of Agriculture Rural Development, an agency and instrumentality of the United States of America.

USDA Documents means all of the following duly executed by or on behalf of the parties thereto and in Proper Form:

- Loan Note Guarantee (Form 4279-5)
- Certificate of Incumbency (Form 4279-7)
- Lender's Agreement (Form 4279-4)
- Unconditional Guarantee (Form 4279-14)
- Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants (Form AD-3031)

and all amendments, modifications, renewals, extensions, increases and rearrangements of, and substitutions for, any of the foregoing.

USDA Guarantee means that certain Loan Note Guarantee of the United States of America acting through the USDA in the amount of ninety percent (90%) of the amount of the Note.

USDA Guarantee Fee means that certain fee imposed by the USDA in the amount of three percent (3%) of the amount of the USDA Guarantee in connection with this Loan, being Two Hundred Seventy Thousand and 00/100 Dollars (\$270,000.00).

USDA Regulations means, collectively, those various, rules, requirements, conditions, matters, and regulations governing and/or relating to the Loan, Conditional Commitment, and /or the USDA Guarantee including, without limitation, those contained in USDA Rural Development Instructions 4279-A, 4279-B, 7 C.F.R. Section 4279.161(b)(11), and 4287-B, and USDA Form 4279-4.

1.2 **Miscellaneous**. The words "hereof," "herein," and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

Article 2
The Loan

2.1 The Loan. Subject to the terms and conditions of this Agreement, Lender agrees to make a loan to Borrower in an amount not to exceed Ten Million and 00/100 Dollars (\$10,000,000.00).

2.2 Use of Proceeds. The proceeds of the Loan shall be used by Borrower as follows:

- (a) approximately Nine Million Four Hundred Six Thousand Four Hundred and 00/100 Dollars (\$9,406,400.00) to construct a 125,000 square foot industrial building on the Commercial Land.
- (b) approximately Five Hundred Ninety-Three Thousand Six Hundred and No/100 Dollars (\$593,600.00) for fees and costs associated with the Loan.

2.3 Note. The Loan made by Lender to Borrower shall be evidenced by the Note to be executed and delivered by Borrower to Lender on the Closing Date. The Loan shall bear interest from time to time, and be due and payable on the terms and conditions set forth in the Note and in this Agreement.

2.4 Security. The Obligations will be secured by the Security Documents which cover, without limitation, the Collateral.

Article 3
Conditions for Making the Loan

3 . 1 Conditions Precedent to Loan Advance. The obligation of Lender to make an Advance of proceeds of the Loan is conditioned upon and subject to all legal matters incident to the transactions hereby contemplated being satisfactory to Lender and Lender's legal counsel, and is further conditioned upon Lender's receipt of the following in Proper Form or the following conditions precedent having been otherwise fulfilled or waived in writing:

- (a) the Loan Documents and all other agreements, documents and instruments required by Lender to be executed and/or delivered at or prior to Closing, each duly executed where appropriate.
- (b) a duly executed Secretary's Certificate with respect to Borrower and any Party which is not a natural person.
- (c) a duly executed Officer's Statement dated as of the later of the Closing Date or the date of the initial Advance.
- (d) payment in full of all taxes, assessments, and other charges relating to the Commercial Land.

- (e) a list and summary of all pending or threatened litigation against Borrower certified to by the President of Borrower.
- (f) evidence satisfactory to Lender that there has been no material deterioration in the Borrower's or Guarantor's financial condition since the issuance of the Conditional Commitment.
- (g) evidence satisfactory to Lender that Borrower has tangible balance sheet equity of at least sixty percent (60.0%), which must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the Borrower's balance sheet. Tangible balance sheet equity will be determined from financial statements prepared in accordance with GAAP, and will not include subordinated debt or appraisal surplus.
- (h) Borrower shall have paid the USDA Guarantee Fee.
- (i) the Title Insurance.
- (j) the USDA Documents.
- (k) each Borrower and Guarantor, if applicable, shall have submitted to Lender evidence that Borrower and/or Guarantor, as the case may be, has obtained all Required Insurance.
- (l) at Lender's request, invoices and/or statements of bills owed or incurred or other evidence that each Advance will be, or has been, used for purposes authorized under this Agreement.
- (m) current Annual Audited Financial Statements of Borrower dated no earlier than ninety (90) days prior to the Closing Date (if required by Lender).
- (n) an environmental assessment of the Commercial Land in Proper Form, approved by Lender on or prior to the Closing Date.
- (o) a current certificate from the appropriate official of the state of organization of Borrower as to the existence and good standing of Borrower.
- (p) a current certificate from the appropriate public official of each jurisdiction other than Borrower's state of organization as to the due qualification to do business and good standing of Borrower where such qualification is necessary to conduct Borrower's business in such jurisdiction.
- (q) the Survey.
- (r) receipt of payment of all costs, fees, and expenses associated with the Loan owing as of the Closing Date.

- (s) a current (less than 12 months old) appraisal of the Commercial Land (and Improvements thereon), acceptable to Lender and USDA and completed in accordance with USPAP and FIRREA indicating a fair market value of at least \$13,500,000.00, excluding any value attributable to business valuation. The appraiser must determine the appraised market value in accordance with RD Instruction 4279-B, Section 4279.144. In addition, the discounted collateral value of the Commercial Land (and Improvements thereon) must be at least equal to the amount of the Loan.
- (t) a pedestrian archeological survey of the Commercial Land, as requested by the Nevada State Historic Preservation Office. A copy of this survey must also be provided to the USDA.
- (u) provide Lender and USDA with a copy of all documentation required to be submitted to the State Department of Environmental Protection for hazardous material compliance.
- (w) deposit of the Equity Injection by Borrower into Borrower's Equity Account.

3.2 Initial Advance of Loan Proceeds. On or about the Closing Date, and subject to full compliance with the conditions set forth in Section 3.1, above, and Section 3.2, below, Lender will Advance the full amount of the Loan. Any Loan proceeds not paid directly to Borrower or third parties on the Closing Date will be placed into the Loan Proceeds Account, and disbursed thereafter in accordance with the terms, conditions, and requirements contained in this Agreement and the Construction Rider. Interest shall begin to accrue on the full amount of the Loan from the date advanced, whether the Advance is to Borrower, third party(ies), or into the Loan Proceeds Account.

3.3 Conditions to Each Advance. As conditions precedent to each Advance from Escrow, including the initial Advance, in addition to all other requirements herein, Borrower must satisfy the following requirements and, if required by Lender, deliver to Lender evidence of such satisfaction:

- (a) All conditions precedent to the initial Advance or stated elsewhere herein shall have been satisfied. The failure, whether intentional or not, of Lender to insist upon full compliance with any requirement stated in Section 3.1, above, shall not constitute a waiver of such requirement(s), and Lender may, in its sole discretion, insist upon full compliance with any such requirement at any time.
- (b) There shall then exist no Event of Default nor shall there have occurred any event which with the giving of notice or the lapse of time, or both, could become an Event of Default.
- (c) The representations and warranties made in the Loan Documents shall be true and correct on and as of the date of each Advance, and the request for an Advance shall constitute the representation and warranty by each Borrower and Guarantor that such representations and warranties are true and correct at such time.

- (d) The following statements shall be true (and each of the giving of the applicable request for Advance and the acceptance by Borrower of the proceeds of such Advance shall constitute a representation and warranty by Borrower that on the date of such Advance such statements are true):
- (i) The representations and warranties contained in Article 6 of this Agreement are correct in all material respects on and as of the date of such Advance, before and after giving effect to such Advance, and to the application of the proceeds therefrom, as though made on and as of such date;
 - (ii) No event has occurred and is continuing, or would result from such Advance or the application of the proceeds therefrom, which would constitute an Event of Default;
 - (iii) No law, regulation, order, judgment or decree of any Governmental Authority shall enjoin, prohibit or restrain, or impose or result in the imposition of any Material Adverse Effect, upon Lender's making the requested Advance; and
 - (iv) No law, regulation, order, judgment or decree of any Governmental Authority shall enjoin, prohibit or restrain, or impose or result in the imposition of any Material Adverse Effect, upon Lender's making the requested Advance.
- (e) If the requested Advance includes any amount related to construction costs or expenses, Borrower must also comply with all terms, conditions, and requirements set out in the Construction Rider.
- (f) Borrower will provide Lender with evidence, in Proper Form, that there has not been any unremedied adverse change in the financial or any other condition of the Borrower since the date of application or since any preceding Advance which would warrant, in Lender's sole discretion, withholding or not making further Advances.

3 . 4 Borrowing Procedures. Within ten (10) Business Days after satisfaction of all of the conditions set forth above, and a written request by Borrower, Lender will make an Advance for the purposes set forth in Section 2.2 (b), above. Advances under Section 2.2(a), above, will be made in accordance with the terms, conditions, and requirements set forth in the Construction Rider.

3.5 Order of Advances. Borrower understands and agrees that Advances from the Escrow will initially be made exclusively out of the Borrower's Equity Account, until those funds are depleted, and then from the Loan Proceeds Account. Borrower understands and agrees it shall have no right to withdraw any funds from Escrow, and that such funds will be utilized and disbursed in accordance with this Agreement and the Construction Rider. Any amounts remaining in Escrow after completion of the Improvements (as that term is used in the Construction Rider), will, at Lender's option, be applied to reduce the balance due under the Loan or held by Lender as additional Collateral.

Article 4
Affirmative Covenants

Until payment in full of and satisfaction of all Obligations (unless full compliance with any of the following provisions has been waived in writing, signed by both Lender and Borrower), Borrower will do and, if necessary, cause to be done, each and all of the following:

4.1 Financial Statements and Information. Without request by Lender (unless otherwise indicated), furnish Lender with true, correct and complete copies of the following documents and instruments, in Proper Form:

- (c) Within ninety (90) days after the end of each fiscal year of Borrower, Borrower's Annual Audited Financial Statements. Borrower's Annual Audited Financial Statements must contain a statement that Borrower is in compliance with all Loan covenants.
- (b) Within forty-five (45) days after the end of each fiscal quarter of Borrower, Borrower's Quarterly Financial Statements.
- (c) Within ninety (90) days after the end of each fiscal year of Borrower, Borrower will furnish an annual Compliance Certificate (herein so called), executed by a responsible and authorized officer or representative of Borrower, and stating that a review of the activities of Borrower during the time period covered by such certificate has been made under his or her supervision and that to the best of his or her knowledge and belief after reasonable investigation, (i) Borrower has observed, performed and fulfilled each and every obligation and covenant contained herein and in each of the other Loan Documents or, if there is any exception to the foregoing, specifying the nature and status thereof, (ii) there exists no Event of Default as of the date of such certificate or, if any such event shall have occurred, specifying the nature and status thereof, and (iii) all information and calculations delivered to Lender with respect to compliance with the Financial Tests (set out in Section 4.2, below) are true, accurate and complete, which information and calculations must be submitted as an attachment to the Compliance Certificate;
- (d) Within ninety (90) days after the end of each fiscal year of each Guarantor, Guarantor's Annual Audited Financial Statements.

- (e) Within forty-five (45) days after the end of each fiscal quarter of each Guarantor, Guarantor's Quarterly Financial Statements.
- (f) Such other financial and other information concerning Borrower or Guarantor as may be requested by USDA and/or Lender from time to time, including without limitation, updated appraisals on real estate, equipment or other Collateral within sixty (60) days from the date Lender or USDA requests such information or appraisals.
- (g) Upon request of Lender, evidence of payment and discharge of all taxes, assessments and governmental charges or levies imposed on Borrower, its income or profits or any of its Property prior to the date on which penalties or liens attach thereto, provided, however, Borrower shall not be required to pay any such tax, assessment, charge, levy or claim the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves have been set up in accordance with GAAP.
- (h) Prompt written notice of all claims, actions or litigation, including, without limitation, all proceedings before any Governmental Authority affecting Borrower or the Property, except litigation or proceedings not materially affecting the financial condition of Borrower.
- (i) Prompt written notice of the occurrence of any Event of Default hereunder or any other event or occurrence which has had or can be expected to have a Material Adverse Effect.

4.2 Financial Tests. Borrower shall have and maintain at all times:

- (a) a minimum Debt Service Coverage Ratio of 1.25 to 1.0, as determined by Lender in accordance with GAAP. This financial test will be tested quarterly, and measured on the previous trailing 12-month period, beginning with the period ending on March 31, 2017;
- (b) a maximum debt-to-net worth ratio of 1.0 to 1.0, as determined by Lender in accordance with GAAP. This financial test will be tested annually, beginning with the period ending on December 31, 2015; and
- (c) a minimum Current Ratio of 1.5 to 1.0. This financial test will be tested annually, beginning with the period ending on December 31, 2015.

4.3 Taxes, Existence, Property, Etc. At all times (a) pay when due all taxes and governmental charges of every kind upon Borrower or against its income, profits or Property, unless and only to the extent that the same shall be contested diligently in good faith and by proper proceedings and against which Borrower has set up adequate reserves in accordance with GAAP and have in operation a depository plan for payment of future withholding taxes when required by GAAP; (b) do all things necessary to preserve its existence, qualifications, rights and franchises in all jurisdictions where its Property or the nature of its business makes such licensing or qualification necessary; and (c) cause the Collateral and its Property necessary or appropriate to the conduct of its business to be protected, maintained and kept in good repair, ordinary wear and tear excepted, and make all replacements and additions to its Property as may be necessary to conduct its business properly and efficiently.

4 . 4 Legal Requirements. Comply with all applicable Legal Requirements in respect of the conduct of its business and the ownership of its Property, including, without limitation, the following:

- (a) Requirements of Environmental Law.
- (b) all equal opportunity and nondiscrimination requirements as more fully set out in USDA Rural Development Instructions 4279A, 4279B and 4287B.
- (c) all requirements under Clean Air Act and Water Pollution Control Act as more fully set out in USDA Rural Development Instructions 4279A, 4279B and 4287B.
- (d) all special laws and regulations as required by USDA Rural Development Instructions 4279A, 4279B and 4287B.
- (e) the Americans with Disabilities Act.

4 . 5 Inspection. Upon three(3) Business Days' prior notice, permit Lender and/or USDA to (a) enter upon and inspect its Property, (b) complete an inventory accounting of all Collateral, (c) examine its files, books and records (except privileged communication with legal counsel and classified governmental material), and (d) discuss its affairs with its officers and accountants, all during normal business hours.

4 . 6 Further Assurances. Promptly execute and deliver, at Borrower's expense, any and all other and further instruments which may be reasonably requested by Lender to cure any defect in the execution and delivery of any Loan Document in order to effectuate the transactions contemplated by the Loan Documents and the Conditional Commitment, and in order to grant, preserve protect and perfect the validity and priority of the Liens created by the Security Documents.

4.7 Books and Records. Maintain books of record and account in such detail, form and scope as Lender and/or USDA shall reasonably require in connection with the administration of the Loan, and in accordance with GAAP.

4.8 Insurance. Borrower will purchase and maintain at Borrower's sole expense insurance with such insurers, on such of its Property, with responsible companies in such amounts, with such deductibles, and against such risks as may be reasonably required by Lender (including, without limitation, all Required Insurance), and naming the Lender as mortgagee and/or loss payee, as applicable, and will furnish Lender reasonably satisfactory evidence thereof promptly upon request. Without limiting the generality of the foregoing, Borrower will maintain hazard (fire, windstorm, lightning, hail, explosion, riot, civil commotion, smoke and property damage), public liability, business interruption, environmental, key man life, and worker's compensation insurance in compliance with all Legal Requirements.

4.9 Protection of Collateral. Lender may at any time after notice to Borrower take such steps as Lender deems necessary to protect Lender's interest in and to preserve the Collateral. Borrower agrees to cooperate fully with all of Lender's efforts to preserve the Collateral and will take such actions to preserve the Collateral as Lender may reasonably require. All of Lender's expenses of preserving the Collateral shall be charged to Borrower's account and added to the Note. Upon the occurrence and continuation of an Event of Default, Lender may use any of Borrower's owned or leased lifts, hoists, trucks or other facilities or equipment for handling or removing the Collateral and Lender shall have, and is hereby granted, a right of ingress or egress to and through any of Borrower's owned or leased Property including, without limitation, the Commercial Land.

4.10 Rural Areas. Borrower will utilize all Loan proceeds in improving, developing or financing business, industry and employment and improving the economic or environmental climate in a Rural Area.

4.11 Additional Conditions and Requirements. All the provisions of the Conditional Commitment are incorporated into this Agreement with the binding effect as if recited in their entirety here. Borrower certifies and represents that it understands, accepts, and will comply with all of the terms, conditions, requirements, and other matters contained in the Conditional Commitment, as same may be modified or waived in writing by the USDA.

4.12 Escrow Fund. At the option of Lender upon an Event of Default which continues beyond any applicable cure period, Lender may require Borrower to establish an Escrow Fund (defined below) sufficient to discharge its obligations for the payment of taxes, insurance premiums, and maintenance as required by the Deed of Trust. The initial deposits together with the amounts set forth in this subsection shall be called the "Escrow Fund"). Initial deposits for taxes, premiums, and maintenance shall be made by Borrower to Lender in amounts determined by Lender in its sole and exclusive discretion on the date hereof to be held in Lender's Escrow Fund. Additionally, Borrower shall pay to Lender or its designee on the first day of each calendar month: (a) one twelfth of an amount which would be sufficient to pay the taxes payable, or estimated by Lender to be payable, upon the due dates established by the appropriate taxing authority during the ensuing twelve (12) months; (b) one-twelfth of an amount which would be sufficient to pay the insurance premiums due for the renewal of the coverage afforded by the policies upon the expiration thereof; and (c) one-twelfth of an amount which would be sufficient to pay all costs associated with assessments and other amounts, if any, owing to TRI Owners Association pursuant to the Declaration of Covenants, Conditions and Restrictions For Tahoe-Reno Industrial Center, recorded at Book No. 123, Page 945 of the Official Records of Storey County, Nevada ("CAM"). Borrower shall notify Lender immediately of any changes to the amounts, schedules and instructions for payment of taxes, insurance premiums, and CAM of which it has obtained knowledge and expressly authorizes Lender or its designee to obtain the bills for taxes and other charges directly from the appropriate authority. The Escrow Fund and the payments of interest or principal, or both, payable pursuant to the Note, shall be added together and shall be paid as the aggregate sum by Borrower to Lender. Provided there are sufficient amounts in the Escrow Fund and no Event of Default exists, Lender shall be obligated to pay on behalf of Borrower the taxes, insurance premiums and CAM as they become due on their respective due dates by applying the Escrow Fund to the payment of such taxes, insurance premiums, and CAM required to be made by Borrower hereunder. If the amount of the Escrow Fund shall not be sufficient to pay the amounts due for taxes, insurance premiums, and CAM herein, Borrower shall promptly pay top Lender, upon demand, an amount which Lender shall estimate to make up the deficiency. The Escrow Fund shall constitute a separate fund and shall not be commingled with other monies held by Lender. No interest or earnings shall be payable to Borrower on the Escrow Fund.

4.13 [Intentionally Deleted]

4.14 Conform to USDA Regulations. As a result of USDA's agreement to guarantee a portion of the Loan, USDA requires that all Loan Documents be consistent and compliant with, the USDA Regulations. Therefore, Borrower and Guarantor agree and acknowledge that the Note, Security Documents, and all other Loan Documents shall be consistent and compliant with the USDA Regulations. Borrower and Guarantor affirmatively represent that it is their unqualified intention and agreement to comply with all of the USDA Regulations in connection with the Loan. Borrower and Guarantor agree that in the event Lender or USDA determine that any portion(s) of the Loan Documents are in conflict with, or fail to include, any of the requirements set forth in the USDA Regulations, then the provisions of the USDA Regulations shall control and be binding. Borrower and Guarantor agree to execute such other documentation as may be required by Lender to amend or add any additional requirement, term, condition, or agreement in order to comply with the USDA Regulations. Notwithstanding anything to the contrary herein, in no case shall Borrower or Guarantor be required to increase their obligations under the Loan Documents in any material way.

4.15 Loan Payments. Borrower agrees that all payments due under the loan will be debited from Borrower's account by way of an ACH (Automated Clearing House) payment. Borrower agrees to such ACH Payments, and will execute an authorization in favor of Lender, in Proper Form, to allow such ACH payments.

4.16 Loans by Affiliates. Any loans or advances to Borrower by any owner, officer, director, shareholder, or Affiliate of Borrower will not be repaid, in whole or in part unless the Loan is current and in good standing. All such loans, and the security therefor (if any), will be subordinate to the Loan, and Lender's lien on the Collateral.

4.17 Compliance with Licensing Requirements. Borrower will obtain, and maintain in good standing, all licenses and permits required by any Governmental Authority. Borrower will notify Lender immediately, but in no event later than thirty (30) Business Days after Borrower's receipt of notice of any material adverse finding made by any Governmental Authority relative to any applicable license, or otherwise related to the operation of Borrower's business, unless the adverse finding is resolved to the satisfaction of the applicable Governmental Authority within that 30-day time period.

4.18 USDA Renewal Fees. Borrower will pay the annual renewal fee required by the USDA. At this time, it is estimated that the annual renewal fee will be .50% of the guaranteed portion of the outstanding principal balance of the Loan as of December 31st of each year.

4.19 Storage of Hazardous Materials. Borrower will comply with all Legal Requirements relative to the storage and handling of any Hazardous Materials.

Article 5 **Negative Covenants**

Until payment in full of and satisfaction of all Obligations, Borrower shall not, without the prior express written consent of Lender and USDA (if deemed necessary by Lender):

5.1 Indebtedness. Create, incur or assume, directly or indirectly, or become or remain liable with respect to any debt whether direct, indirect, contingent or otherwise, other than the Loan and trade payables incurred in the regular course of Borrower's business.

5.2 Contingent Liabilities. Directly or indirectly co-sign, assume, guarantee, endorse or otherwise become liable upon, or agree to purchase or otherwise furnish funds for the payment of, any liability or obligation, including contingent liabilities or obligations, of any Person other than Borrower.

5.3 Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property now owned or hereafter acquired, except (i) liens securing payment of the Note; and (ii) mechanics', carriers', workmen's, repairmen's or other like Liens incurred in the ordinary course of business in respect of obligations which are not overdue or are being contested in good faith by appropriate proceedings, if (a) approved in writing by Lender, and (b) adequate reserves with respect thereto are maintained in accordance with GAAP.

5.4 Nature of Business. Engage in any business other than Borrower's principal business activity or a business activity which is directly related thereto, or change the nature or method of operation or its manner of conducting business in any material respect.

5.5 Loans to Affiliates. Make any outside investment(s) and/or any loan(s) or advance(s) to any owner, officer, director, shareholder, or Affiliate of Borrower. Any existing loans from any owner, officer, director, shareholder, or Affiliate of Borrower must be subordinated to the Loan or converted to equity. No payments are to be made on these debts without Lender's prior written approval.

5.6 Mergers, Consolidations, Dispositions, Acquisitions, Investments. Liquidate or dissolve; form any new subsidiary or merge or consolidate with any corporation or other entity, or sell, lease, assign, transfer or otherwise dispose of (whether in one transaction or a series of transactions) all or substantially all of its assets, whether now owned or hereafter acquired; or acquire by purchase in any acquisitive corporate transaction or otherwise, all or substantially all of the assets of any corporation or other entity or make any investment in the assets of any corporation or other entity or business venture or allow any changes in the current equity ownership of any Borrower, without the prior written consent of Lender and the USDA.

5.7 Capital Expenditures. During any twelve month time period, make or incur any expenditures for acquiring or improving any real property, machinery, equipment, furniture or fixtures by purchase, lease purchase agreement or option, the aggregate cost or annual rental of which is in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00).

5.8 Disposition of Assets. During any calendar year, sell, lease, transfer, encumber, or dispose of (whether in one or more transactions) in any manner any real property, machinery, equipment, furniture or fixtures not constituting Collateral except in the normal course of business to the extent such items no longer have a useful life in connection with Borrower's business or to the extent such items are being replaced, and shall not sell or dispose of any Collateral except in accordance with Section 5.13 hereof.

5.9 Redemptions, Dividends, Distributions. Purchase or retire any ownership interest in Borrower, or consolidate or merge with any other company, or give any preferential treatment, make any advance, directly or indirectly, by way of loan, gift, bonus or otherwise, to any company directly or indirectly controlling or affiliated with or controlled by the Borrower, or any other company, to any officer, director or employee of the Borrower, except for the payment of normal employee salaries and bonuses, without the prior written concurrence of the Lender (and USDA, where required), or make any other distribution of any Property or cash to owners of an equity interest in Borrower (in their capacity as such), or declare or pay any dividend, or make any distribution upon Borrower's capital stock or other equity interest, declare or pay any dividend unless:

- a. After-tax profit was made in the preceding fiscal year,
- b. Borrower is and will remain in compliance with the terms, conditions, covenants, and agreements contained in the Loan Documents and the Conditional Commitment,
- c. All of Borrower's debts are paid to a current status, and
- d. Prior written approval of Lender is obtained.

Lender's prior written approval is not required for dividend payments to cover personal tax liability resulting from profitability of the business. However, notwithstanding satisfaction of all of the above requirements, dividend payments and/or distributions will never be in an amount that, when made, could create a Material Adverse Effect.

5.10 New Management Practices. Implement any new management practices without the prior written consent of Lender.

5.11 Change of Name or Location. Change its name, or the location (a) of its chief executive office, (b) principal place of business, (c) where it keeps its books and records, or (d) of the personal property Collateral. Borrower has never changed its name, whether by amendment of its organizational documents or otherwise, except as previously disclosed to Lender in writing.

5.12 Organizational Documents. Amend, modify, restate or supplement any of its Organizational Documents if such action could be expected to materially and adversely affect the Loan or any Obligation or the abilities of any of the Parties to perform their respective Obligations under any Loan Document.

5.13 Collateral. Sell, lease, transfer, encumber, or dispose of (whether in one or more transactions) in any manner any of the Collateral*, or use the Collateral, permit the same to be used, for any unlawful purpose or in any manner inconsistent with the provisions or requirements of any insurance policy required in the Loan Documents, or allow any tangible Collateral to be moved from its current location, without the prior written consent of Lender. Borrower further agrees that all payments of any kind from any sale, lease, or disposal of any Collateral including but not limited to public or private sale, of any of the Collateral by Borrower, will be made jointly payable to the Lender and the Borrower and shall be kept separate and distinct from other Property of the Borrower. If the Collateral is evidenced by promissory notes or other instruments for the payment of money, Borrower, will, at the request of Lender, immediately deliver them to Lender, appropriately endorsed to Lender's order and regardless of the form of endorsement, Borrower waives presentment, demand, notice of dishonor, protest and notice of protest. (*The prior written approval of both Lender and USDA is required prior to any sale, lease, transfer, encumbrance, or disposition of any of the Collateral).

5.14 Compensation. Advance any monetary compensation, whether bonus, salary, dividends or any other compensation to officers and/or owners of Borrower if payment of same will impair the Borrower's ability to repay the Loan or otherwise create a Material Adverse Effect. In addition, compensation will not be increased year-to-year unless:

- a. After-tax profit was made in the preceding fiscal year,
- b. Borrower is and will remain in compliance with the terms, conditions, covenants, and agreements contained in the Loan Documents and the Conditional Commitment,
- c. All of Borrower's debts are paid to a current status, and
- d. Lender has consented, in writing, to such increase.

5.15 Key Agreements. Amend, modify or grant a waiver of any provision of any of the Key Agreements if such amendment, modification or waiver could have a Material Adverse Effect.

5.16 Related Parties. Engage in any transactions with any Related Person except upon terms equally available in like transactions with other parties.

Article 6
Representations and Warranties

To induce Lender to extend the credit and financial accommodations evidenced by the Loan Documents, Borrower represents and warrants to Lender that:

6.1 Organization. Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority, corporate or otherwise, necessary in order to conduct its business and own the Collateral. Borrower is also in good standing under the laws of all other jurisdictions in which qualification is necessary in order for it to conduct its business and own its Property as conducted and owned in such jurisdictions, if any.

6.2 Financial Statements. The financial statements of Borrower dated September 30, 2015 previously delivered to Lender fairly present the financial condition of the Borrower as at such date and the results of the operations of Borrower for the period ended on such date all in accordance with GAAP, and since the date of such financial statements, no event has occurred which has had or is likely to have a Material Adverse Effect.

6.3 Enforceable Obligations; Authorization. The execution, delivery and performance of the Loan Documents to which Borrower is a party are within its company powers and have been duly authorized by all necessary company action of Borrower. Neither execution nor delivery of any Loan Documents, nor the fulfillment of or compliance with its terms, will contravene or violate (i) Borrower's Organizational Documents, (ii) any Legal Requirement binding on or affecting Borrower or (iii) any mortgage, indenture, contract, agreement or other instrument, or any judgment, order or decree binding upon Borrower. No authorization or approval or other action by, and no notice to or filing with, any franchisor, licensor, distributor, Governmental Authority, regulatory body, or other Person is required for the due execution, delivery and performance by Borrower of the Loan Documents to which it is a party. The Loan Documents have been duly executed and delivered and are legal, valid and binding obligations of Borrower and Guarantor, enforceable against each in accordance with their respective terms. The Improvements and the use of the Commercial Land and Improvements complies in all respects with applicable Legal Requirements.

6.4 Contractual Obligations. Neither Borrower nor Guarantor have received notice, nor they have any actual knowledge that (i) either is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any contractual obligation, including, without limitation, franchise and distribution contracts, applicable to it/them, or (ii) any condition exists which, with the giving of notice or the lapse of time or both, would constitute such a default under such contractual obligations, in each case, except where such default or defaults, if any, will not have or is not likely to have a Material Adverse Effect.

6.5 Litigation. There is no pending or, to the knowledge of Borrower or Guarantor, threatened action or proceeding affecting any Borrower or Guarantor before any court (or other Governmental Authority) or arbitrator, which has had or is likely to have an adverse effect on the financial position of any Borrower or Guarantor or the operations of Borrower or any of its businesses or the ability of any Borrower or Guarantor to perform their respective obligations under the Loan Documents, or would subject any Borrower or Guarantor to any liability not fully covered by insurance, or would be required to be disclosed in the notes to any financial statements of any Borrower or Guarantor prepared in accordance with GAAP.

6.6 Title; Permits. Borrower possesses adequate assets, licenses, permits, patents, patent applications, copyrights, trademarks, trademark applications, trade names, technology, processes, and franchise and distribution rights to continue to conduct its business as heretofore conducted by it. Borrower has and will continue to have good and indefeasible title to its Property free and clear of all Liens other than as permitted by Section 5.3. No Liens exist as of the Closing Date upon or with respect to any Property of Borrower other than Liens permitted under Section 5.3.

6.7 Indebtedness. Except for trade payables arising and endorsements of negotiable instruments for collection, in each case, in the ordinary course of its business, and except as permitted under Section 5.1 of this Agreement, Borrower will not have, as of the Closing Date, (i) any Indebtedness for borrowed money other than the Obligations, or (ii) any obligation to guarantee the obligations of any other Person. As of the Closing Date, Borrower will not have any obligation or liability (including, without limitation, contingent liabilities) which would have a Material Adverse Effect.

6.8 Regulations G, U and X. Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations G, U or X issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or for any purpose which would be inconsistent with the provisions of Regulations G, U or X.

6.9 Company Structure. The outstanding shares of Borrower have been duly authorized, validly issued, and fully paid and are non-assessable. One hundred percent (100%) of the outstanding equity interests in Borrower are owned by a corporation formed under the laws of the State of Delaware.

6.10 No Untrue or Misleading Statements. The representations and warranties of each Borrower and Guarantor in the Loan Documents or other document submitted to Lender in connection with the Loan, and all certificates and other documents delivered pursuant to the terms thereof do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. Neither Borrower nor Guarantor has intentionally withheld any material fact from Lender in regard to any matter relating to the Loan and/or which will have or is likely to have a Material Adverse Effect.

6.11 Ability to Incur Indebtedness. Borrower is not subject to any regulation or other Legal Requirements which limit the ability of Borrower to incur indebtedness or its ability to consummate the transactions contemplated hereby or by the other Loan Documents.

6.12 Solvency. After giving effect to the consummation of the transactions evidenced by the Loan Documents, Borrower has capital sufficient to carry on its respective business and transactions and all businesses and transactions in which it is about to engage and is solvent and able to pay its respective debts as they mature; and Borrower owns Property having a value, both at fair valuation and at present fair salable value, greater than the amount required to pay its respective debts.

6.13 Legal Requirements. Borrower is in compliance with all Legal Requirements applicable to it or its business, the violation of which might have a Material Adverse Effect.

6.14 Environmental Matters. To the best of Borrower's knowledge, the operations of Borrower are in compliance with all applicable Requirements of Environmental Law. None of the Properties of Borrower require any Remedial Action. To the best of Borrower's knowledge, there is not now on or in the Properties of Borrower (a) any asbestos containing materials; (b) any underground or aboveground storage tanks (except as disclosed to Lender by Borrower in writing and/or in an environmental assessment report ordered and received by the Lender in connection with the Loan); or (c) any polychlorinated biphenyls (PCBs) used in hydraulic oils, electrical transformers or other equipment. Borrower has not received, or is otherwise aware of, any notice or claim to the effect that Borrower is or may be liable in any respect to any Person as a result of the release or threatened release of Hazardous Materials into the environment. Neither Borrower, nor any of its past or present Properties or operations, are subject to any investigation, judicial or administrative proceeding, order, judgment, decree, settlement or other agreement respecting (i) any Requirements of Environmental Law, (ii) any Remedial Action, or (iii) any Environmental Claim or Environmental Liabilities arising from the release or threatened release of Hazardous Materials into the environment.

6.15 Taxes. Each Borrower and Guarantor has filed (or has obtained a currently effective extension of time for the filing of) all federal and all state, local and other tax returns and other reports which each is required by any Legal Requirement to file, and all taxes, assessments, fees and other governmental charges thereupon and upon its Property, assets, income and franchises which are shown in such returns or reports to be due and payable have been paid other than those taxes, fees, assessments and charges which are being contested pursuant to Section 4.3 hereof and such returns properly reflect the United States income, foreign taxes and/or state taxes of Borrower for the periods covered thereby. Neither Borrower nor Guarantor has any knowledge of any proposed tax assessment against Borrower that will have or is likely to have a Material Adverse Effect.

6.16 Use of Proceeds. Borrower's uses of the proceeds of the Loan are and will continue to be, legal and proper corporate uses (duly authorized by Borrower's Board of Directors, partners or members or managers, as applicable) in connection with Borrower's business and are consistent with this Agreement, the Conditional Commitment, and all applicable Legal Requirements in effect from time to time. None of the proceeds of the Loan will be disbursed to the owner(s), partners, stockholders or beneficiaries of Borrower or any members of their families.

6.17 Security Interests. The Liens of Lender attaching to the Collateral will at all times constitute valid and enforceable first priority Liens in favor of Lender, subject to no prior Lien except as noted in Exhibit "A" of this Agreement. Before any funding under the Note, Borrower will have taken or will have participated with Lender in taking, all necessary action and make all necessary filings to provide Lender with perfected, first priority Liens in the Collateral, except as noted in Exhibit "A" to this Agreement, under the laws of all applicable jurisdictions. The Collateral is free from damage caused by fire or other casualty. Borrower has good and marketable title to and enjoy peaceful and undisturbed possession of all of the Collateral.

6.18 Business Loan. The Loan evidenced by the Note is and shall be for business, commercial, investment or other similar purposes and not primarily for personal, family, household or agricultural use, as such terms are used in the UCC.

6.19 Principal Place of Business & Collateral. Borrower's principal place of business and chief executive office is 1010 Atlantic Avenue, Alameda, California 94501.

6.20 Certificate of Title. No part of the Collateral is covered by a certificate of title or subject to any certificate of title law.

6.21 Commercial Land. The Commercial Land is all of the real estate owned by Borrower.

6.22 ADA Compliance. All of Borrower's facilities that are accessible to the public must be in compliance with the Americans With Disabilities Act (ADA) which became effective January 26, 1992, and all other Legal Requirements applicable to such facilities.

6.23 Commercial Land and Improvements. To Borrower's knowledge, Borrower's premises and Improvements located on the Commercial Land, and the use thereof, complies with all Legal Requirements including, without limitation, all laws, ordinances, zoning, rules and regulations of all Governmental Authorities having jurisdiction. Borrower will provide Lender with any notification of any material non-compliance received by Borrower, and will immediately proceed to remedy the defect. Further, the improvements located on the Commercial Land have an adequate and approved supply of all needed utilities including, without limitation, water, electrical and sewer, and all such utilities are functional.

6.24 Intentionally Omitted.

6.25 No Leased Equipment. Except as previously disclosed to Lender, Borrower does not currently lease any equipment, machinery, or vehicles. In the event any additional such property is leased in the future, Borrower will advise Lender in writing, and grant Lender a security interest in Borrower's rights under such lease(s), free and clear of all liens, rights, interests, and encumbrances, to the extent such leased equipment, machines, or vehicles are material to Borrower's business at the Property.

6.26 USDA Regulations. Borrower certifies that it has received a copy of the USDA Regulations.

6.27 No Default on Federal Debt. Borrower certifies that it is not delinquent, or otherwise in default, on debt owed to the United States of America, or any agency or instrumentality thereof (including, without limitation, all tax debt), or any debt which is guaranteed, in whole or in part, by the United States of America, or any agency or instrumentality thereof.

Article 7
Events of Default and Remedies

7.1 Events of Default. If any of the following events (each, an “**Event of Default**”) shall occur, then the Lender may do any or all of the following without any notice to the Borrower (except as hereinafter expressly provided): (i) declare the Note to be, and thereupon such Note shall forthwith become, immediately due and payable, together with all accrued interest thereon and all fees and other amounts payable hereunder and under the other Loan Documents, without notice of any kind; (ii) exercise its rights of offset against each account and all other Property of any Borrower or Guarantor in the possession of the Lender, which right is hereby granted by Borrower and Guarantor to Lender; (iii) terminate Lender’s obligation to make any further Advances under the Loan and (iv) exercise any and all other rights available to Lender under the Loan Documents, at law or in equity. Borrower and Guarantor hereby knowingly, voluntarily, and expressly waive notice of any kind, including, without limitation, (i) notice of acceleration, (ii) notice of intention to accelerate, (iii) presentment, (iv) demand, and (v) protest, except to the extent set forth below:

- (a) Borrower fails to make any payment of principal of or interest on the Note, or any Borrower or Guarantor fails to make any payment in respect of any other Obligation under any of the Loan Document as and when due, or within five (5) days thereafter; or
- (b) Borrower or Guarantor fails to pay when due, any principal of, or interest on, any other Indebtedness secured by any of the Collateral; or if the holder of such other Indebtedness declares, or may declare, such Indebtedness due prior to its stated maturity because of Borrower’s or Guarantor’s default thereunder; or
- (c) Any representation or warranty made by any Borrower or Guarantor or other authorized representative of Borrower in any of the Loan Documents, or in any certificate, financial statement or other written statement furnished to Lender (including, without limitation, the Officer’s Statement) proves to have been incorrect, false or misleading in any material respect when made; or
- (d) Any Borrower or Guarantor violates any covenant, agreement or condition or otherwise fails to perform any obligation (other than the obligation to pay principal of, or interest on, the Note) contained in this Agreement or any of the other Loan Documents; or

- (e) Final judgment for the payment of money is rendered against the any Borrower or Guarantor and the same is not immediately paid or sufficiently bonded or escrowed; or
- (f) Borrower or any other Party claims, or any court finds or rules, that the Lender does not have a valid Lien on any Collateral under any Security Document or that Lender's Lien on any Collateral is not in the priority required; or
- (g) Borrower or any other Party sells, encumbers, or abandons (except as otherwise expressly permitted by the Loan Documents) any of the Property now or hereafter subject to any of the Security Documents; or any levy, seizure or attachment is made on any material portion thereof or thereon and same is not dismissed within 30 days; or any material portion of such Property is lost, stolen, substantially damaged or destroyed unless such loss, damage or destruction is in Lender's reasonable judgment adequately covered by insurance; or
- (h) Any Borrower or Guarantor makes a general assignment for the benefit of creditors or becomes insolvent or fails generally to pay its debts as they become due, or petitions or applies to any Governmental Authority for the appointment of a trustee, custodian, receiver, (or other similar official) of all or any substantial part of the assets of the any Borrower or Guarantor, or commences a voluntary case or any other proceeding relating to any Borrower or Guarantor under any bankruptcy, reorganization, compromise arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law (herein called the "bankruptcy law") of any jurisdiction; or
- (i) Any such petition or application is filed, or any such proceeding is commenced, against any Borrower or Guarantor and the Borrower or Guarantor, as applicable, by any act or omission indicates its approval, consent, or acquiescence thereto, or an order for relief is entered in an involuntary case under the federal bankruptcy laws as now or hereafter constituted, or an order, judgment or decree is entered appointing any such trustee, custodian, receiver, liquidator, or similar official or adjudicating any Borrower or Guarantor bankrupt or insolvent, or approving the petition in any such proceedings, and such order, judgment, or decree remains in effect for 30 days; or
- (j) Any Borrower or Guarantor conceals, removes, or permits to be concealed or removed, any part of its Property, with intent to hinder, delay or defraud its creditors or any of them, or makes or suffers a transfer of any of its Property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have made any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or
- (k) Any event shall occur or condition exist which results in a Material Adverse Effect; or

- (l) Any litigation commences which hinders or delays the collection of any part of the Obligations or the exercise of any right or option of Lender under the Loan Documents; or
- (m) Dissolution, business failure, merger, or similar event, which has a Material Adverse Effect on Borrower; or
- (n) Borrower uses the Loan proceeds or Collateral in any manner different from the manner contemplated in the Loan Documents; or
- (o) Failure of any Borrower or Guarantor to comply with the terms of the Conditional Commitment or any of the Loan Documents.

Nothing contained in this Agreement shall be construed to limit the events of default contained in any of the other Loan Documents or any other document executed in connection with the Loan and all such events of default shall be cumulative.

Notwithstanding anything contained in this Section 7.1 to the contrary, Lender shall give Borrower five (5) days written notice of an Event of Default under Section 7.1(a), above, and thirty (30) days written notice of any other Event of Default which is capable of being cured, and Borrower shall have an opportunity to cure any such Event of Default within the applicable notice period. Provided, however, if an Event of Default is of a nature that it cannot be reasonably cured within such thirty (30) day period and (i) Borrower has commenced reasonable efforts to cure such default within such thirty (30) day period, and (ii) diligently pursues such cure efforts to completion, the cure period shall be extended to sixty (60) days from the original notification. The notice and cure period specified herein will begin to run on the date said notice is deemed received by Borrower under Section 8.2 of this Agreement. However, Borrower shall not be entitled to more than two (2) such notices of an Event of Default and opportunities to cure within any twelve (12) month time period.

7.2 Other Remedies. In addition to and cumulative of any rights or remedies provided for in Section 7.1 hereof, if any one or more Events of Default shall have occurred, the Lender may proceed to protect and enforce its rights hereunder, by any appropriate proceedings, and the Liens evidenced by the Security Documents shall be subject to foreclosure in any manner provided for therein or provided for by law as the Lender may elect. The Lender may also proceed either by the specific performance of any covenant or agreement contained in this Agreement or the other Loan Documents or to enforce the payment of the Note or to enforce any other legal or equitable right provided under this Agreement or the other Loan Documents, or otherwise existing under any law in favor of the holders of Indebtedness of the Borrower.

Article 8
Miscellaneous

8 . 1 Not an Agent. Nothing contained herein shall be construed to constitute Borrower as Lender's agent for any purpose whatsoever and Lender shall not be responsible or liable for any shortage, discrepancy, damage, loss or destruction of any part of the Collateral wherever same may be located and regardless of the cause thereof. Lender does not, by anything herein or in any assignment or otherwise, assume any of Borrower's obligations under any contract or agreement assigned to Lender and Lender shall not be responsible in any way for the performance by Borrower of any of the terms and conditions hereof.

8 . 2 Notices. Any notice or other communications provided for in this Agreement, or in any of the other Loan Documents, shall be in writing and shall be given to the party to whom addressed at the address specified adjacent to their signature on the signature page(s) of this Agreement, or any such other address as such party shall request in a written notice made in compliance herewith. Except as otherwise provided herein, any notice required or permitted hereunder or under applicable law shall be in writing and shall be deemed effective if either (1) hand delivered, (2) sent by certified mail, return receipt requested, postage prepaid, or (3) sent by overnight courier. All notices sent by U.S. mail must be addressed as required above and shall be deemed received on the earlier of (i) the third Business Day immediately following the date of deposit in the U.S. mail or (ii) the date of actual receipt. All notices which are hand delivered or sent by overnight courier shall be deemed received on the day of delivery to the address required above. The address for notice may be changed by any party by giving notice as provided above.

8 . 3 Waiver; Remedies Cumulative. No failure to exercise and no delay in exercising on the part of Lender of any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other right, power or privilege. The rights and remedies provided in the Loan Documents are cumulative of, and not exclusive of, any rights or remedies provided by law, in equity, or in any other agreement or Loan Document, all of which Lender may pursue at any time and from time to time.

8.4 Assignment. This Agreement shall be binding upon Borrower, Guarantor, and Lender and their respective successors and permitted assigns; provided, however, neither Borrower nor Guarantor may not assign or transfer any of their rights or obligations hereunder without the prior written consent of Lender, and any such assignment or transfer without such consent shall be null and void. Borrower and Guarantor acknowledge and agree that Lender may sell one or more participations or assign its interest in all or any part of the Loan to others.

8 . 5 Severability. If a court of competent jurisdiction finds any provision of this Agreement, the Note, or any other Loan Document to be invalid or unenforceable as to any Person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other Person or circumstance. If feasible, any such unenforceable or invalid provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if such provision cannot be so modified, it shall be stricken and all of the remaining provisions of the Loan Documents in all other respects shall remain valid and enforceable and in no way affected thereby.

8.6 Expenses, Etc. Borrower shall pay or reimburse Lender on demand: (a) the reasonable fees and expenses of legal counsel to Lender, in connection with the preparation, negotiation, execution and delivery of this Agreement (including the Exhibits and schedules hereto), and the other Loan Documents and the making of the Loan, and any modification, supplement or waiver of any of the terms of this Agreement, or any other Loan Document; (b) reasonable out-of-pocket expenses incurred by Lender in connection with the preparation, documentation and administration of the Loan or any of the Loan Documents; and (c) all amounts expended, advanced or incurred by Lender to satisfy any obligation of Borrower or any Party under this Agreement or any other Loan Document to collect the Obligations or to enforce, protect, preserve or defend the rights of Lender under this Agreement or any other Loan Document, including, without limitation, fees and expenses incurred in connection with Lender's participation as a member of a creditor's committee in a case commenced under the Bankruptcy Code or other similar law, fees and expenses incurred in connection with lifting the automatic stay prescribed in Section 362 of the Bankruptcy Code, fees and expenses incurred in connection with any action pursuant to Section 1129 of the Bankruptcy Code and all other customary out-of-pocket expenses incurred by Lender in connection with such matters, together with interest thereon at the Maximum Rate on each such amount until the date of reimbursement to Lender.

8.7 Indemnification. Borrower and Guarantor shall indemnify the Lender and its directors, officers, attorneys, employees and agents from, and hold each of them harmless against, any and all losses, liabilities, claims or damages to which any of them may become subject, **REGARDLESS OF WHETHER CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNIFIED PARTIES**, insofar as such losses, liabilities, claims or damages arise out of or result from any (i) actual or proposed use by Borrower of the proceeds of any extension of credit by Lender hereunder; (ii) breach by any Borrower or Guarantor of this Agreement or any other Loan Document or the breach by any Party (except Lender) of any Loan Document; (iii) violation by any Borrower or Guarantor of any Legal Requirement; (iv) investigation, litigation or other proceeding relating to any of the foregoing, and Borrower and Guarantor shall reimburse Lender and its directors, officers, attorneys, employees and agents, upon demand for any expenses (including reasonable legal fees) incurred in connection with any such investigation or proceeding; or (v) taxes (excluding income taxes and franchise taxes) payable or ruled payable by any Governmental Authority in respect of the Obligations or any Loan Document, together with interest and penalties, if any.

8.8 Amendments, Etc. No amendment or modification of this Agreement, the Note or any other Loan Document shall in any event be effective against any Party unless the same shall be agreed or consented to in writing by such Party. No amendment, modification or waiver of any provision of this Agreement, the Note or any other Loan Document, nor any consent to any departure by Borrower or Guarantor therefrom, shall in any event be effective against the Lender unless the same shall be agreed or consented to in writing by Lender, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

8.9 Limitation of Interest. Borrower and Lender intend to comply with the applicable law governing the Maximum Rate. Interest contracted for, charged, or received shall not exceed the Maximum Rate, and, if in any contingency whatsoever, Lender shall receive anything of value deemed interest under applicable law which would cause the interest contracted for, charged, or received by the holder thereof to exceed the maximum amount of interest permissible under applicable law, the excessive interest shall be applied to the reduction of the unpaid principal balance hereof and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance hereof such excess shall be refunded to Borrower, and the provisions of this Note and any demand on Borrower shall immediately be deemed reformed and the amounts thereafter collectible hereunder shall be reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder. All interest paid or agreed to be paid to the holder hereof shall, to the extent permitted by applicable law, shall be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full (including the period of any renewal or extension hereof) so that the rate or amount of interest on account of such indebtedness does not exceed the Maximum Rate.

8.10 Survival. The obligations of Borrower and Guarantor under each Loan Document to which each is a party shall survive the repayment of the Loan.

8.11 Captions. Captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

8.12 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement and any of the parties hereto may execute this Agreement by signing any such counterpart.

8.13 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the laws of the United States applicable to transactions within the State of Texas.

8.14 Venue. Borrower hereby irrevocably (a) agrees that any legal proceeding against Lender arising out of or in connection with the Loan Documents shall be brought in the district courts of Harris County, Texas, or in the United States District Court for the Southern District of Texas, or elsewhere (collectively, the "Courts"); (b) submits to the nonexclusive jurisdiction of the Courts; (c) agrees and consents that service of process may be made upon it in any proceeding arising out of the Loan Documents or any transaction contemplated thereby by service of process as provided by Texas law; (d) WAIVES, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of any Loan Document or the transactions contemplated thereby in the Courts; and (e) WAIVES any claim that any such suit, action or proceeding in any Court has been brought in an inconvenient forum. Nothing herein shall affect the right of Lender to commence legal proceedings or otherwise proceed against Borrower in any jurisdiction or to serve process in any manner permitted by applicable law. Borrower agrees that a final and nonappealable judgment in any such action or proceeding may be enforced in other jurisdictions in any manner provided by law.

8.15 Conflicts Between This Agreement and the Other Loan Documents. In the event of any irreconcilable conflict between the terms of this Agreement and the terms of any of the other Loan Documents, Lender will have the right, in its sole discretion, to determine which of the conflicting provisions control, and such determination will be final.

8.16 Release of Certificate of Deposit. The Assignment of CD will be released as collateral for the Loan subject to (a) Borrower achieving three (3) consecutive months of positive cash flow, as determined by Lender, and (b) there being no Event of Default.

8.17 Construction Rider. The Construction Rider to Loan Agreement, attached hereto as Exhibit "E", is incorporated by reference herein and forms a part of this Agreement.

8.18 No Oral Agreements. **THIS AGREEMENT AND ALL OTHER DOCUMENTS RELATING TO THE LOAN CONSTITUTE A WRITTEN LOAN AGREEMENT AND REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENT BETWEEN THE PARTIES**

8.19. Waivers. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND GUARANTOR HEREBY JOINTLY, SEVERALLY AND UNCONDITIONALLY WAIVE (A) ALL RIGHTS, REMEDIES, CLAIMS AND DEFENSES BASED UPON OR RELATED TO SECTIONS 51.003, 51.004, AND 51.005 (AS MAY BE AMENDED) OF THE TEXAS PROPERTY CODE (TO THE EXTENT DEEMED APPLICABLE TO THIS TRANSACTION); AND (B) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF ANY OF THE LOAN DOCUMENTS.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH GUARANTOR KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVES THE BENEFITS AND PROTECTIONS AFFORDED BY SECTION 107.095 OF THE NEVADA REVISED STATUTES INCLUDING, WITHOUT LIMITATION, ALL REQUIRED NOTICES THEREUNDER (TO THE EXTENT DEEMED APPLICABLE TO THIS TRANSACTION).

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

LENDER:

Green Bank, N.A.

By: [signature illegible]

Name: _____

Title: _____

Address for Notice:

Attn: _____

4000 Greenbriar

Houston, Texas 77098

BORROWER:

AQUA METALS RENO, INC, a Delaware corporation

By: /s/ Thomas Murphy
Thomas Murphy
Chief Financial Officer

Address for Notice:
Attn: Thomas Murphy
1010 Atlantic Avenue
Oakland, California 94501-1147

GUARANTOR:

AQUA METALS OPERATIONS, INC., a Delaware corporation

By: /s/ Thomas Murphy
Thomas Murphy
Chief Financial Officer

Address for Notice:
Attn: Thomas Murphy
1010 Atlantic Avenue
Oakland, California 94501-1147

AQUA METALS, INC., a Delaware corporation

By: /s/ Thomas Murphy
Thomas Murphy
Chief Financial Officer

Address for Notice:
Attn: Thomas Murphy
1010 Atlantic Avenue
Oakland, California 94501-1147

STATE OF NEVADA §
§
COUNTY OF STOREY §

BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared Thomas Murphy, Chief Financial Officer of **AQUA METALS RENO, INC.**, a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing document and acknowledged to me that he executed the same in the capacity therein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 2015.

NOTARY PUBLIC, State of Nevada

STATE OF NEVADA §
§
COUNTY OF STOREY §

BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared Thomas Murphy, Chief Financial Officer of **AQUA METALS, INC.**, a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing document and acknowledged to me that he executed the same in the capacity therein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 2015.

NOTARY PUBLIC, State of Nevada

STATE OF NEVADA §
§
COUNTY OF STOREY §

BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared Thomas Murphy, Chief Financial Officer of **AQUA METALS OPERATIONS, INC.**, a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing document and acknowledged to me that he executed the same in the capacity therein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 2015.

NOTARY PUBLIC, State of Nevada

EXHIBIT A

- A. First Deed of Trust lien in and on the Commercial Land and Improvements.
 - B. A first and prior assignment of all leases, rents, and revenue in any way relating to the Commercial Land and Improvements.
 - C. A first and prior lien and security interest in the following personal property of Borrower, wherever located, and whether now owned or hereafter acquired or arising, including Proceeds and Supporting Obligations (Any term relating to a Collateral definition used below, shall have the meaning accorded thereto in the UCC):
 - 1. **Accounts**; and
 - 2. **Goods**, including Equipment, Fixtures, Inventory, and Accessions.
 - D. Collateral assignment of a \$1,000,000.00 certificate of deposit to be held and controlled by Lender, subject to Section 8.16 of this Agreement.
 - E. A first and prior lien and security interest in the Loan Proceeds Account, held and controlled by Lender.
 - F. A first and prior lien and security interest in the Borrower's Equity Account, held and controlled by Lender.
-

EXHIBIT "A-1"

Commercial Land

EXHIBIT "B"

[Attach copy of Note]

EXHIBIT "C"

[ATTACH COPY OF CONDITIONAL COMMITMENT]

EXHIBIT "D"

OFFICER'S STATEMENT

This Officer's Statement is made by Thomas Murphy, Chief Financial Officer of AQUA METALS RENO, INC., a Delaware corporation (the "Borrower") and the Borrower itself, to induce GREEN BANK ("Lender") to extend credit to the Borrower. All capitalized terms herein and not otherwise defined shall have the meanings assigned to them in the Agreement to which this is attached. This Statement is being provided with the understanding that the individual executing this Statement shall have no personal liability in any manner whatsoever herein or otherwise related to the transactions contemplated hereby.

The following statements are true and correct to the best of the undersigned's knowledge, information, and belief:

Thomas Murphy is the Chief Financial Officer of the Borrower. Borrower is a corporation duly organized under the law, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority, corporate or otherwise, necessary in order for it to conduct its business and own its Property(ies). Borrower is in good standing under the laws of all other jurisdictions in which qualification is necessary in order for it to conduct its business and own its Property(ies) as conducted and owned in such jurisdictions. Without limiting the generality of the foregoing, Borrower has all requisite power and authority, corporate or otherwise, necessary in order for it to conduct its business and own its Property(ies) in the State of Nevada.

The financial statement of Borrower dated September 30, 2015, previously delivered to Lender, fairly present the financial condition of the Borrower as of such dates and the results of the operations of Borrower for the periods ended on such dates all in accordance with GAAP, and since the dates of such financial statements, no event has occurred which has had or is likely to have a Material Adverse Effect.

The execution, delivery and performance of the Loan Documents to which Borrower is a party are within its company powers and have been duly authorized by all necessary company action of Borrower. Neither execution nor delivery of any Loan Documents, nor the fulfillment of or compliance with its terms, will contravene or violate (i) Borrower's Organizational Documents, (ii) any Legal Requirement binding on or affecting Borrower, or (iii) any mortgage, indenture, contract, agreement or other instrument, or any judgment, order or decree binding upon Borrower. No authorization or approval or other action by, and no notice to or filing with, any franchisor, licensor, distributor, Governmental Authority, regulatory body, or other Person is required for the due execution, delivery and/or performance by Borrower of the Loan Documents to which it is a party. The Loan Documents to which it is a party have been duly executed and delivered and are legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms.

Borrower has not received notice nor does Borrower have any actual knowledge that (i) it is in default in the performance, observance or fulfillment of any of the obligations, covenants, requirements, or conditions contained in any permit, license, or contract applicable to it, or (ii) any condition exists which, with the giving of notice or the lapse of time or both, would constitute such a default under such any such permit, license, or contract, in each case, except where such default or defaults, if any, will not have or is not likely to have a Material Adverse Effect.

Currently, there is no pending or, to the knowledge of Borrower, threatened action or proceeding affecting Borrower before any court (or other Governmental Authority) or arbitrator, which has had or is likely to have a Material Adverse Effect, or would subject Borrower to any liability not fully covered by insurance, or would be required to be disclosed in the notes to any financial statements of Borrower prepared in accordance with GAAP.

Borrower possesses adequate assets, licenses, permits, patents, patent applications, copyrights, trademarks, trademark applications, trade names, technology, processes, and franchise and distribution rights to continue to conduct its business as heretofore conducted by it, and as contemplated by the Loan to be conducted on the Commercial Land. Borrower has and will continue to have good and indefeasible title to its Property, free and clear of all Liens other than as permitted by Section 5.3 of the Agreement. No Liens exist as of the Closing Date upon or with respect to any Property of Borrower other than (a) Liens permitted under Section 5.3 of the Agreement, and (b) Liens to be released on the Closing Date.

Except for trade payables arising, and endorsements of negotiable instruments for collection, in each case, in the ordinary course of its business, Borrower will not have, as of the Closing Date, (i) any obligation or liability (including, without limitation, contingent liabilities) which would have a Material Adverse Effect, (ii) any Indebtedness for borrowed money other than the debt evidenced by the Note, or (iii) any obligation to guarantee the obligation(s) of any other Person.

Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations G, U or X issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or for any purpose which would be inconsistent with the provisions of Regulations G, U or X.

The outstanding membership interests of Borrower are duly authorized, validly issued, fully paid and nonassessable. One hundred percent (100%) of the outstanding equity interests in Borrower are owned by a corporation duly formed under the laws of the State of Delaware.

The representations and warranties of Borrower contained in the Loan Documents, and all certificates and other documents delivered to Lender pursuant to the terms thereof do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. Borrower has not intentionally withheld any material fact from Lender in regard to any matter.

Borrower is not subject to any regulation or other Legal Requirements which limit the ability of Borrower to incur indebtedness or its ability to consummate the transactions contemplated by the Agreement or by the other Loan Documents.

After giving effect to the consummation of the transactions evidenced by the Loan Documents, Borrower has capital sufficient to carry on its business and transactions and all businesses and transactions in which it is about to engage and is solvent and able to pay its debts as they mature; and Borrower owns Property having a value, both at fair valuation and at present fair salable value, greater than the amount required to pay its respective debts.

Borrower is in compliance with all Legal Requirements applicable to it and its business, the violation of which would possibly have a Material Adverse Effect.

The operations of Borrower are in compliance with all applicable Requirements of Environmental Law. No Property of Borrower requires any Remedial Action. To the best of my knowledge, there is not now on or in any Property of Borrower (a) any asbestos containing materials; (b) any underground or aboveground storage tanks; (c) any polychlorinated biphenyls (PCBs) used in hydraulic oils, electrical transformers or other equipment; or any other Hazardous Materials. Borrower has not received, or is otherwise aware of, any notice or claim to the effect that Borrower is or may be liable in any respect to any Person as a result of the release or threatened release of Hazardous Materials into the environment. Neither Borrower, nor any of its past or present Property(ies) or operations, are subject to any investigation, judicial or administrative proceeding, order, judgment, decree, settlement or other agreement respecting (i) any Requirements of Environmental Law, (ii) any Remedial Action, or (iii) any Environmental Claim or Environmental Liabilities arising from the release or threatened release of Hazardous Materials into the environment.

Borrower has filed (or has obtained a currently effective extension of time for the filing of) all federal and all state, local and other tax returns and other reports which each is required by any Legal Requirement to file, and all taxes, assessments, fees and other governmental charges thereupon and upon their respective Property, assets, income and franchises which are shown in such returns or reports to be due and payable have been paid other than those taxes, fees, assessments and charges which are being contested pursuant to Section 4.3 of the Agreement and such returns properly reflect the United States income, foreign taxes and/or state taxes of Borrower for the periods covered thereby. Borrower does not have any knowledge of any proposed tax assessment against Borrower that will have or is likely to have a Material Adverse Effect.

Borrower's uses of the proceeds of the Loan are and will continue to be, legal and proper company uses (duly authorized by Borrower's Directors and shareholders, as applicable, and are consistent with the Agreement and all applicable Legal Requirements in effect from time to time.

The Liens of Lender attaching to the Collateral will at all times constitute valid and enforceable first priority Liens in favor of Lender, subject to no prior Lien, unless otherwise noted in Exhibit "A" of the Agreement. Before any funding under the Note, Borrower will have taken or will have participated with Lender in taking, all necessary action and make all necessary filings to provide Lender with perfected, first priority Liens in the Collateral (unless a lesser priority Lien is noted in Exhibit "A" to the Agreement), under the laws of all applicable jurisdictions.

The Loan is and shall be for business, commercial, investment or other similar purposes and not primarily for personal, family, household or agricultural use, as such terms are used in the UCC.

Borrower's chief executive office is 1010 Atlantic Avenue, Oakland, California 94501-1147 ("Office Address"), and its principal place of business is (or will be, upon completion of construction of the 125,000 square foot industrial building on the Commercial Land) 2500 Peru Drive, McCarran Nevada 89434, which is the address of the Commercial Land. The personal property Collateral is located at the Office Address and/or on the Commercial Land.

Borrower has performed or complied with all of its covenants and agreements required under the Loan Documents.

No Event of Default has occurred.

Thomas Murphy, Chief Financial Officer

AQUA METALS RENO, INC, a Delaware
corporation

By: _____
Thomas Murphy, Chief Financial Officer

EXHIBIT "E"

CONSTRUCTION RIDER TO LOAN AGREEMENT

EXHIBIT “E”

CONSTRUCTION RIDER TO LOAN AGREEMENT

This Construction Rider To Loan Agreement (this “Construction Rider”) is made and entered as of the Closing Date, by and among Lender and Borrower, with the approval of Guarantor, and shall be a part of the Loan Agreement (the “Agreement”) to which this is attached. In the event the terms and provisions of this Construction Rider are in conflict with the terms and provisions of any of the other Loan Documents, the terms and provisions of this Construction Rider will control. However, the terms, conditions, requirements, and agreements contained herein are intended to be in addition to, and not a replacement of, the terms, conditions, requirements, and agreements contained in the other Loan Documents.

ARTICLE CR-I

DEFINITIONS AND USE OF TERMS

CR-1.1 Definitions. Unless a particular term, word or phrase is otherwise defined or the context otherwise requires, capitalized terms, words and phrases used herein have the meanings set forth in Article 1 of the Agreement:

“**Affidavit of Borrower**” means a sworn affidavit of Borrower (and such other parties as Lender may require) to the effect that all statements, invoices, bills, and other expenses incident to the acquisition of any Commercial Land, if applicable, and/or the construction of the Improvements incurred to a specified date, whether or not specified in the Approved Budget, have been paid in full, except for (a) Retainage, and (b) items to be paid from the proceeds of an Advance then being requested or in another manner satisfactory to Lender.

“**Application for Advance**” means a written application by Borrower (and such other parties as Lender may require) to Lender, in Proper Form, specifying by name, current address, and amount all parties to whom Borrower is obligated for labor, materials, or services supplied for the construction of the Improvements and all other expenses incident to the Loan, the Commercial Land, and the construction of the Improvements, whether or not specified in the Approved Budget, requesting an Advance for the payment of such items, containing, if requested by Lender, an Affidavit of Borrower, accompanied by such schedules, affidavits, releases waivers, statements, invoices, bills, and other documents as Lender may request. Unless the Lender specifies a different form, the Application for Advance will be AIA Document G702 and G703.

“**Approved Budget**” means a budget and cost itemization prepared by Borrower, in Proper Form, and approved in writing by Lender, specifying the cost by item of (a) acquisition of the Commercial Land (if applicable); (b) all labor, materials, and services necessary for the construction of the Improvements in accordance with the Plans and all Legal Requirements; and (c) all other expenses anticipated by Borrower incident to the Loan, the Commercial Land, and the construction of the Improvements.

“Architect” means the architect who prepared the Plans.

“Architectural Contract” means a written agreement, in Proper Form, between Borrower and Architect, if any, for architectural services pertaining to construction of the Improvements.

“Completion Date” means the date of substantial completion set forth in the Construction Contract. If the date of substantial completion cannot be determined by reviewing the Construction Contract, the Completion Date will be thirty (30) days prior to the date on which the first principal and interest payment is due on the Loan, as set forth in the Note.

“Construction Contract” means each agreement, in Proper Form, made by and between Borrower and Contractor for construction of the Improvements.

“Contractor” means each Person with whom Borrower makes a Construction Contract.

“Contractor’s Agreement” means a written agreement, in Proper Form, duly executed by Contractor in favor of Lender (a) consenting to the assignment and encumbrance of the Construction Contract; (b) agreeing to continue performance under the Construction Contract at the request and for the benefit of Lender or its designee; (c) subordinating all liens, security interests and claims of Contractor against the Commercial Land and Borrower, to those of Lender under the Loan Documents; and (d) respecting such other matters as Lender may require.

“Fees” means all fees, costs, and expenses due in connection with the Loan including, without limitation, all fees, costs, and expenses generally described in *Exhibit “I”* hereto.

“Improvements”, as used in this Construction Rider, means the improvements to be constructed, installed, equipped and/or altered on the Commercial Land, as generally described in the Conditional Commitment, and more specifically described in the Construction Contract, Plans, and Approved Budget. The Improvements are generally described as follows: Construction of a 125,000 square foot industrial building per the plans and specifications approved by Lender.

“Inspecting Architect/Engineer” means any architect, engineer, or other qualified professional (as determined by Lender), if any, retained or directed by Lender from time to time to inspect all or any portion of the Commercial Land and Improvements.

“Plans” means the final working drawings and specifications for the construction of the Improvements (including soil reports and engineering calculations) and as modified or supplemented from time to time, which Plans must be approved in writing by (a) Lender, (b) Borrower, (c) Inspecting Architect/Engineer, (d) any lessee of the Commercial Land, if applicable, (d) any architectural review committee, owner’s association, or other Person, if required, and, (e) to the extent necessary, by each Governmental Authority.

“Required Insurance” – The definition of “Required Insurance” in Article 1 of the Agreement is hereby revised to also include (a) contractor’s policies of comprehensive general public liability insurance, including worker’s compensation insurance; (b) hazard insurance against all risks of loss, including collapse, in an amount not less than the full replacement cost of all Improvements, including the cost of debris removal, with annual agreed amount endorsement and sufficient at all times to prevent Borrower from becoming a co-insurer, (c) such insurance prior to completion of the Improvements to be in builder’s risk form on a non-reporting basis, (d) coverage for all materials and equipment, wherever located, intended to be installed in or utilized in the construction of the Improvements, and (e) any other type of insurance Lender may require, all in Proper Form.

“Retainage” means the amount withheld from any approved Advance. The amount of any Retainage will typically be a percentage of the approved Advance, as determined by the Construction Contract or otherwise required by Lender.

ARTICLE CR-II

ADVANCES

CR-2.1 **Procedure for Construction Advances.** Lender shall not be required to make Advances more frequently than monthly. Each Application for Advance shall be submitted by Borrower to Lender at least ten (10) Business Days prior to the requested date (which must be a Business Day) of the Advance. Except as Lender may otherwise determine from time to time, each Advance will be made at Lender’s principal office. All progress payments will be made in accordance with the procedures provided by Lender and the Inspecting Architect/Engineer, if any.

CR-2.2 **Amount of Advances.** Advances for construction of the Improvements shall be made only for costs and expenses specified in the Approved Budget, and then only for work performed, services rendered, or materials furnished; invoices for same must be provided to Lender. Advances shall be based upon the percent of completion of the Improvements, and shall not exceed the aggregate of:

- (a) the costs of labor, materials, and services incorporated into the Improvements in a manner acceptable to Lender, plus

- (b) if approved by Lender, the purchase price of all uninstalled materials to be utilized in the construction of the Improvements, which materials must be stored on the Commercial Land, or elsewhere with the written consent of, and in a manner acceptable to, Lender, less
- (c) the Retainage applicable to such Advance, and less
- (d) all prior Advances for payment of costs of labor, materials, and services for the construction of the Improvements, and the Retainage relating thereto.

CR-2.3 **Conditions to the Initial Construction Advance.** In addition to the conditions set forth in the Agreement as to Advances, as a condition precedent to the initial Advance for labor, materials, or construction services (whether or not it is the initial Advance), Borrower and each Contractor shall have jointly executed and recorded with the county clerk of the county in which the Commercial Land is situated, an affidavit or notice of commencement of work, in Proper Form (if required by applicable law). Borrower's acceptance of the initial Advance for labor, materials, or construction services shall constitute a representation by Borrower that an affidavit/notice of commencement has been properly recorded as required or permitted by applicable law, if at all. In addition to the requirements above, as a condition precedent to the initial Advance for labor, materials, or construction services (whether or not it is the initial Advance), Borrower must satisfy the conditions required herein, pay to Lender, in cash, all Fees, and execute and deliver to, procure for and deposit with, Lender, and if appropriate, record in the proper records, the documents, certificates, and other items referred to in Exhibit "1", hereto, in Proper Form, together with such other documents, certificates and items as Lender may require from time to time.

CR-2.4 **Conditions to Each Construction Advance.** In addition to the matters set forth in the Agreement, as conditions precedent to each Advance relating to the construction of the Improvements, including the initial Advance, and in addition to the Conditions to the Initial Construction Advance, set forth above, each of the following requirements must be satisfied and evidence of such satisfaction, in Proper Form, delivered to Lender:

- (a) The Title Insurance shall be endorsed and extended, if required by Lender, to cover each Advance with no additional title exceptions objectionable to Lender.
- (b) Borrower shall procure and deliver to Lender, if required by Lender, releases or waivers of mechanic's liens and receipted bills showing payment of all amounts due to all parties who have furnished materials or services or performed labor of any kind in connection with the construction of any of the Improvements or otherwise with respect to the Commercial Land.

- (c) An inspection of and acceptable report on the Improvements by the Inspecting Architect/Engineer, if required by Lender.
- (d) If the work to be performed under the Construction Contract is for a new structure or an addition to an existing structure, a batter-board/form survey, if required by Lender, shall have been furnished to Lender for review and approval prior to the pouring of each foundation of the Improvements showing no encroachment of the Improvements on any boundary line, easement, building set back line, or other restricted area.
- (e) The amount of the requested Advance shall not be in excess of the amount then available under the Loan and/or Escrow, excluding Retainage.
- (f) No material changes in the approved Plans will be or have been ordered or permitted without the prior written consent of the Lender and the surety company issuing the surety bond, if any.
- (g) Borrower shall procure and deliver to Lender, if required by Lender, agreements from the Architect, Contractor, subcontractors, and all other persons furnishing labor, materials or services in connection with the design and/or construction of the Improvements, releasing or waiving any lien, claim, charge, or right they may have against Borrower, the Commercial Land, and/or the Improvements, and/or subordinating any such lien, claim, charge, or right to the lien of the Deed of Trust and the rights of Lender thereunder.

CR-2.5 **Final Advance.** Without limitation of other conditions applicable thereto, the final Advance, including all Retainage, will not be made until Lender has received all of the following, in Proper Form:

- (a) A completion certificate from the Contractor and from any Inspecting Architect/Engineer, all in Proper Form.
 - 1) Evidence satisfactory to Lender that all Legal Requirements, and all requirements of any restrictive covenants or other matter affecting the Commercial Land have been satisfied, including, but not limited to, delivery to Lender of final/permanent certificates of occupancy permitting the Improvements to be legally occupied.
 - (b) Evidence that no mechanic's or materialmen's liens or other encumbrances have been filed and remain in effect against the Commercial Land.
 - (c) Final lien releases or waivers by Contractor, Architect (if any), subcontractors, materialmen and all other parties who have supplied labor, materials or services relating to the Improvements, or who otherwise might be entitled to claim any type or kind of Lien against the Commercial Land.

- (d) An “as-built” Survey showing, at a minimum, that the Improvements as completed do not encroach on any boundary line, easement, building set back line, or other restricted area.
- (e) In addition, the final Advance hereunder, including Retainage, shall, at Lender’s option, be withheld until thirty (30) days (or such other period of time within which parties who have supplied labor, materials or services relating to the Improvements are permitted to file a claim of Lien against the Commercial Land) after (i) the “completion” of the Improvements (as determined by Lender and the Inspecting Architect/Engineer, if any), (ii) a notice of completion has been recorded in the real property records of the county in which the Commercial Land is located, if required by applicable law, and (iii) possession of the Improvements shall be delivered to Borrower after final/permanent certificate of occupancy has been issued, and written punch list has been developed, agreed to, and signed and dated by the Borrower and Contractor.

CR-2.6 **Approved Budget Allocations.** Lender shall not be obligated to make an Advance relating to an item allocated in the Approved Budget to the extent that the amount of the Advance relating to such item, when added to the amount of prior Advance relating to such item, would exceed the amount allocated to such item in the Approved Budget. Lender reserves the right to make Advances which are allocated to any of the items in the Approved Budget for such other items therein or in such different proportions as Lender may, in its sole discretion, deem necessary or advisable. Borrower may not reallocate items of cost in, or change, the Approved Budget without the prior written consent of Lender.

ARTICLE CR-III

REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower hereby represents and warrants as follows:

CR-3.1 **Intentionally Deleted.**

CR-3.2 **System Compliance.** To the best of Borrower’s knowledge, the storm and sanitary sewer system, water system, all mechanical systems of the Commercial Land and other parts of the Improvements do (or when constructed will) comply with all Legal Requirements including, without limitation, applicable environmental, pollution control and ecological laws, ordinances, rules and regulations, and Borrower has been issued all necessary permits, licenses or other authorizations for the construction, occupancy, operation, and use of the Improvements.

CR-3.3 **Submittals.** The Loan Documents and all Financial Statements, Plans, budgets, schedules, opinions, certificates, confirmations, Contractor’s statements, application, rent rolls, affidavits, agreements, Construction Contract, Architectural Contract, and other materials submitted to the Lender in connection with or in furtherance of the Loan by or on behalf of the Borrower or any Guarantor fully and fairly state the matters with which they purport to deal, and neither misstate any material fact, nor, separately or in the aggregate, fail to state any material fact necessary to make the statements made not misleading.

CR-3.4 Utility Availability. To the best of Borrower's knowledge, subject only to payment of fees to be paid from the Approved Budget, all utility and municipal services required for the construction, occupancy and operation of the Improvements, including but not limited to, water supply, storm and sanitary sewer systems, gas electric and telephone facilities, are available for use and tap-on at the boundaries of the Commercial Land and will be available in sufficient amounts for the normal and intended use of the Improvements, and written permission has been or will be obtained from the applicable utility companies or municipalities to connect the Improvements into each of said services.

CR-3.5 Inducement to Lender. The representations, covenants, and warranties contained in the Loan Documents and the funding of the Escrow, if any, are made by Borrower as an inducement to Lender to make the Loan, and Borrower understands that Lender is relying on such representations, covenants, and warranties and that such representations, covenants, and warranties shall survive any (a) bankruptcy proceedings involving Borrower, Guarantor, or the Commercial Land, or (b) foreclosure of the Deed of Trust, or (c) conveyance of title to the Commercial Land in lieu of foreclosure of the Deed of Trust. Acceptance of each Advance constitutes reaffirmation, as of the date of such acceptance, of the representations, covenants, and warranties of each Borrower and Guarantor in the Loan Documents, on which Lender shall rely in making such Advance.

ARTICLE CR-IV

COVENANTS AND AGREEMENTS OF BORROWER

Borrower hereby covenants and agrees as follows:

CR-4.1 Compliance with Legal Requirements. All Legal Requirements shall be timely complied with and evidence thereof delivered to Lender. Borrower assumes full responsibility for the compliance of the Plans, the Commercial Land and Improvements with all Legal Requirements and with sound building and engineering practices and, notwithstanding any approvals by Lender and/or any Inspecting Architect/Engineer, Lender and/or any Inspecting Architect/Engineer shall have no obligation or responsibility for the Plans or any other matter incident to the Commercial Land or the construction of the Improvements.

- CR-4.2** **Construction Contract.** Borrower shall become party to no contract, including any Construction Contract, for the performance of any work on the Commercial Land or for the supplying of any labor, materials, or services for the construction of the Improvements except upon such terms and with such parties as shall be approved in writing by Lender. Each Construction Contract shall provide that all liens, claims and charges of the Contractor are subordinate to the Deed of Trust and the rights of Lender thereunder and shall require all subcontracts to contain a provision subordinating the subcontractors' liens, claims and charges to the Deed of Trust and the rights of Lender thereunder. Each Construction Contract shall also provide that no change orders shall be effective without the prior written approval of Lender. No approval by Lender of any Construction Contract or change order shall make Lender responsible for the adequacy, form, or content of any Construction Contract or change order.
- CR-4.3** **Utilities; Access.** Borrower shall take all steps necessary to provide that (a) all utility services necessary for the construction of the Improvements and the operation thereof for their intended purposes are available for connection to the Improvements, including water supply, storm and sanitary sewer facilities, and gas, electric, and telephone facilities; and (b) either all roads necessary for vehicular and pedestrian access to and from the Commercial Land have been completed or the necessary rights-of-way therefor have been acquired by the appropriate Governmental Authority or dedicated to the public use and accepted by such Governmental Authority and all necessary steps have been taken by the Borrower and such Governmental Authority to assure the complete construction and installation thereof prior to the Completion Date.
- CR-4.4** **Construction of the Improvements.** The construction of the Improvements shall be prosecuted with diligence and continuity, in a good and workmanlike manner and in accordance with sound building and engineering practices, all applicable Legal Requirements, the Plans, and the requirements of any lease, if applicable. Borrower shall not permit cessation of work for a period in excess of 10 days, except cessation, for not more than 30 days in the aggregate, caused by acts of God or other causes not within the control of Borrower, without the prior written consent of Lender, and shall complete construction of the Improvements on or before the Completion Date, free and clear of all Liens on the Commercial Land, except the lien of the Deed of Trust.
- CR-4.5** **Correction of Defects.** Borrower shall correct or cause to be corrected (a) any defect in the Improvements; (b) any material departure in the construction of the Improvements from the Plans, sound building and engineering practices, Legal Requirements, or the requirements of any lease, if applicable; or (c) any encroachment by any part of the Improvements or any structure located on the Commercial Land over any building line, easement, property line, or restricted area.
- CR-4.6** **Storage of Materials.** Borrower shall cause all materials supplied for, or intended to be utilized in, the construction of the Improvements, but not affixed to or incorporated into the Improvements or the Commercial Land, to be stored on the Commercial Land or at such other location as may be approved by Lender in writing, with adequate safeguards, as required by Lender, to prevent and insure against loss, theft, damage, or commingling with other materials or projects.

- CR-4.7** **Inspection of the Commercial Land.** Borrower shall permit Lender, USDA, the Inspecting Architect/Engineer (if any), any Governmental Authority, and their agents and representatives, to enter upon the Commercial Land and Improvements, and any location where materials intended to be utilized in the construction of the Improvements are stored, for the purpose of inspection of the Commercial Land and Improvements and such materials at all reasonable times, to the extent provided in Section 4.5 of the Agreement.
- CR-4.8** **Application of Advances.** Borrower shall disburse all Advances for payment of costs and expenses specified in the Approved Budget, and for no other purpose unless approved in writing by Lender.
- CR-4.9** **The Borrower's Deposit.** If from time to time Lender reasonably determines that the unadvanced portion of the Loan and/or Escrow will be insufficient for payment in full of: (a) costs of labor, materials, and services required for the construction of the Improvements; (b) other costs and expenses specified in the Approved Budget; and (c) other costs and expenses required to be paid in connection with the completion of the Improvements in accordance with the Plans, sound building and engineering practices, any Legal Requirements, or the requirements of any lease, if applicable, then Borrower shall, on request of Lender, make a deposit with Lender, which deposit will become part of the Escrow. Lender may advance all or a portion of the Escrow prior to any portion of the Loan proceeds, at Lender's sole discretion. Borrower shall promptly notify Lender in writing if and when the cost of the construction of the Improvements exceeds, or appears likely to exceed, the amount of the unadvanced portion of the Loan and Escrow.
- CR-4.10** **Direct Disbursement and Application by Lender.** Upon an Event of Default which continues beyond any applicable cure period, Lender shall have the right, but not the obligation, to disburse and directly apply the proceeds of the Loan and/or Escrow, including any Advance, to the satisfaction of any of Borrower's obligations under the Loan Documents, the Construction Contract, and/or the Architectural Contract. Borrower hereby authorizes Lender to hold, use, disburse and apply the Escrow to satisfy any of Borrower's obligations under the Loan Documents, the Construction Contract, and/or the Architectural Contract. Borrower hereby assigns and pledges the proceeds of the Escrow and grants therein a security interest to Lender for such purposes. Lender may advance and incur such expenses as Lender reasonably deems necessary to preserve the Commercial Land and Improvements, and any other Collateral, and such expenses shall be proper expenses available to be paid out of the Loan and Escrow. Lender may disburse any portion of any Advance at anytime, and from time to time, to persons other than Borrower for the purposes specified in this Section irrespective of any other provision hereof, and the amount of Advances to which Borrower shall thereafter be entitled shall be correspondingly reduced.

- CR-4.11** **Inspection of Books and Records.** Borrower shall permit Lender and USDA, upon request, to examine and copy all contracts, statements, invoices, bills, and claims for labor, materials and services supplied for the construction of the Improvements, in accordance with Section 4.5 of the Agreement.
- CR-4.12** **No Liability of Lender.** Lender, Lender's Representative, and Inspecting Architect/Engineer shall have no liability, obligation or responsibility with respect to the construction of the Improvements. Lender shall not be obligated to inspect the Commercial Land, Plans, or the construction of the Improvements, nor be liable for the performance or default of Borrower, Architect, the Inspecting Architect/Engineer, Contractor, or any other party, or for any failure to construct, complete, protect or insure the Improvements, or for the payment of costs of labor, materials or services supplied for the construction of the Improvements, or for the performance of any obligation of Borrower. Nothing, including without limitation any Advance or acceptance of any document or instrument, shall be construed as a representation or warranty, express or implied, to any party by Lender. Further, Lender shall not have, has not assumed, and by its execution and acceptance of the Agreement hereby expressly disclaims, any liability or responsibility for the payment or performance of any indebtedness or obligation of Borrower or of any Guarantor, and no term or condition herein, or in any of the other Loan Documents, shall be construed otherwise. Borrower hereby expressly acknowledges and agrees that no term or condition herein, or in any of the Loan Documents, shall be construed so as to deem the relationship between Borrower, any Guarantor, and Lender to be other than that of borrower, guarantor and lender, and Borrower shall at all times represent that the relationship between Borrower, any Guarantor and Lender is solely that of borrower, guarantor and lender. Borrower hereby indemnifies and agrees to hold Lender harmless from and against any liability, loss, cost or expense incurred or suffered by Lender as a result of any assertion or claim of any liability or responsibility of Lender for (i) the Plans, or the construction of the Improvements, and/or (ii) the payment or performance of any indebtedness or obligation of any Borrower or Guarantor.
- CR-4.13** **No Conditional Sale Contracts, Etc.** Except to the extent permitted by the Agreement, no materials, equipment or fixtures shall be supplied, purchased or installed for the construction or operation of the Improvements pursuant to security agreements, conditional sale contracts, lease agreements or other arrangements or understandings whereby a security interest or title is retained by any party or the right is reserved or accrues to any party to remove or repossess any materials, equipment or fixtures intended to be utilized in the construction or operation of the Improvements.
- CR-4.14** **Assignment of Construction Contracts.** As additional security for the payment of the Loan, Borrower hereby transfers and assigns to Lender all of Borrower's rights and interest, but not its obligations in, under, and to each Construction Contract upon the following terms and conditions:

- (a) Borrower represents and warrants that the copy of each Construction Contract it will furnish to Lender is a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, set-off or encumbrance.
- (b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under any Construction Contract, and Borrower shall continue to be solely liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each Construction Contract. Borrower agrees to indemnify and hold Lender harmless against and from any loss, cost, liability or expense (including but not limited to, reasonable attorney's fees) resulting from any failure of Borrower to so perform.
- (c) Upon an Event of Default which continues beyond any applicable cure period, Lender shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower such action as Lender may at any time determine to be necessary or advisable to cure any default under any Construction Contract or to protect the rights of Borrower or Lender thereunder. Lender shall incur no liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid, and Borrower agrees to indemnify and hold Lender harmless against and from any loss, cost, liability or expense (including but not limited to, reasonable attorneys' fees) incurred in connection with any such action, or any inaction.
- (d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact, in Borrower's or Lender's name, to enforce all rights of Borrower under each Construction Contract.
- (e) Prior to the occurrence of a Event of Default, Borrower shall have the right to exercise its rights under each Construction Contract, provided that Borrower shall not cancel or amend any Construction Contract or do or suffer to be done any act which impairs the security constituted by this assignment without the prior written consent of Lender.
- (f) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Commercial Land and/or Improvements, and any Entity formed by or on behalf of Lender which assumes Lender's rights and obligations under the Agreement.

CR-4.15 **Assignment of Plans.** As additional security for the Loan, Borrower hereby transfers and assigns to Lender all of Borrower's right, title and interest in and to the Plans and hereby represents and warrants to and agrees with Lender as follows:

- (a) Each schedule of the Plans delivered or to be delivered to Lender is and shall be a complete and accurate description of the Plans.

- (b) The Plans are for the construction of the Improvements and there have been no modifications thereof except as described in such schedule. The Plans shall not be modified without the prior written consent of Lender.
- (c) Lender may use the Plans for any purpose relating to the Improvements, including but not limited to inspections of construction and the completion of the Improvements.
- (d) Lender's acceptance of this assignment shall not constitute approval of the Plans by Lender. Lender has no liability or obligation in connection with the Plans and no responsibility for the adequacy thereof or for the construction of the Improvements contemplated by the Plans. Lender has no duty to inspect the Improvements, and if Lender should inspect the Improvements, Lender shall have no liability or obligation to Borrower or any other party arising out of such inspection. No such inspection, nor any failure by Lender to make objections after any such inspection, shall constitute a representation or belief by Lender that the Improvements are constructed in accordance with the Plans or any other requirement, or constitute a waiver of Lender's right thereafter to insist that the Improvements be constructed in accordance with the Plans or any other requirement.
- (e) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Commercial Land and/or Improvements, and any Entity formed by or on behalf of Lender which assumes Lender's rights and obligations under the Agreement.

CR-4.16 **Prohibition on Assignment.** Borrower shall not assign or encumber any interest of Borrower hereunder without the prior written consent of Lender.

CR-4.17 **Payment of Claims.** Borrower shall promptly pay or cause to be paid when due all costs and expenses incurred in connection with the construction of the Improvements. In the event Borrower refuses to pay any such amount due to a dispute with any Architect, Contractor, subcontractor, and/or any other person furnishing labor, materials or services in connection with the design and/or construction of the Improvements, Borrower will purchase a bond (in Proper Form), or provide such additional security, in such amounts as are required by Lender and the Title Company, the purpose of such bond or other security being to ensure that no claim of Lien or other encumbrance (a) will be superior to Lender's Lien on the Commercial Land and Improvements, and (b) will remain on the Commercial Land in the event of an adverse determination or resolution of Borrower's dispute.

CR-4.18 **Advertising by Lender.** Lender may erect and maintain on the Commercial Land one or more advertising signs indicating that the construction financing for the Commercial Land has been provided by Lender.

- CR-4.19** **No Occupancy Contrary to Builder's Risk Policy.** The Improvements shall not be occupied until Borrower has obtained and furnished to Lender a "permission to occupy" endorsement to the builder's risk insurance policy, which endorsement is satisfactory to Lender, or Borrower has obtained replacement coverage in the form of an all-risk insurance policy upon the completed Improvements, which policy will not be impaired by the occupancy of the Improvements and is satisfactory to Lender.
- CR-4.20** **Compliance With Lender's Construction Requirements.** Borrower will comply with Lender's construction requirements, regardless of whether such requirements are specifically set out in the Agreement or this Construction Rider, and will ensure that Contractor also complies with Lender's construction requirements. Borrower further agrees to pay all costs, fees and other charges associated with Borrower's and/or Contractor's compliance with Lender's construction requirements.
- CR-4.21** **Cultural Materials.** If cultural materials are encountered during any construction or other activity, work will immediately cease in the area of discovery. Work may continue in the project area where no cultural materials are present, with the written approval from the USDA. Upon discovery of any cultural materials, the Borrower and the Contractor must immediately notify the Lender, Inspecting Architect/Engineer, and the USDA Rural Development State Environmental Coordinator at (775) 857-8500.
- CR-4.22** **Compliance With Conditional Commitment.** To the extent not otherwise required by the Agreement and/or this Construction Rider, Borrower agrees(a) to ensure that all Improvements are designed and completed in accordance with accepted architectural and engineering practices and conform to (1) the Construction Contract, (2) the Architectural Contract, (3) the Plans, and (4) all Legal Requirements, (b) to ensure that all Improvements will be completed with available funds, (c) that Borrower will be responsible for, and will immediately pay, all cost overruns, (d) the Improvements will be used only for the purpose as approved in writing by Lender, (e) Borrower will produce the quality and quantity of products proposed in its loan application to the USDA, and (f) ensure compliance with all terms, conditions and requirements contained in the Conditional Commitment. To the extent any the terms, conditions and/or requirements in the Conditional Commitment impose any obligation(s) and/or responsibility(ies) on Lender and/or Contractor, Borrower agrees that Borrower will be fully, independently, and solely responsible to ensure compliance with each such term, condition and/or requirement, and will indemnify and hold Lender and/or Contractor, as applicable, harmless for its failure to comply with same.
- CR-4.23** **No Profit on Construction.** In the event that Borrower, or any Affiliate of Borrower, constructs, or performs any construction services in connection with the Improvements (including, without limitation, acting as a contractor). Borrower agrees that it shall not be paid, nor receive, a profit for such work. Borrower will submit all documentation and other information requested by Lender, in Proper Form, to satisfy Lender that Borrower has complied with this restriction including, without limitation, a cost breakdown of all work performed.

CR-4.24 **Storm Run-Off.** Borrower will mitigate potential storm run-off during construction of the Improvements using best management practices.

CR-4.25 **Compliance with Federal Law.** Without limiting the generality of any other affirmative covenant or other agreement contained in the Agreement and/or this Construction Rider, Borrower agrees that it will ensure that (1) the Contractor complies with (i) the Americans with Disabilities Act, which became effective on January 26, 1992, and all supplements and amendments thereto, and (ii) Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented by Department of Labor regulations (41 C.F.R., part 60); (2) all project facilities are designed utilizing accepted architectural and engineering practices, and conform to applicable Federal, state, and local codes and requirements including, without limitation, the Americans With Disabilities Act; (3) the project will be completed using the available funds and, once completed, will be used for its intended purpose and produce products in the quality and quantity proposed in the completed application approved by the USDA; (4) construction conforms with all applicable Legal Requirements; (5) proceeds of the Loan are used in accordance with the approved Plans, and other contract documents; and (6) Loan and Escrow funds are used only for eligible project costs.

ARTICLE CR-V

RIGHTS AND REMEDIES OF LENDER

CR-5.1 **Rights of Lender.** Upon the occurrence of an Event of Default which continues beyond any applicable cure period, Lender shall have the right, in addition to any other Right of Lender set forth elsewhere in the Agreement, this Construction Rider, and/or other Loan Documents, but not the obligation, in its own name or in the name of Borrower to enter into possession of the Commercial Land; to perform all work necessary to complete the construction of the Improvements, and/or to employ security guards and employ other safeguards to protect the Commercial Land, Improvements and other Collateral. Borrower hereby appoints Lender as its attorney-in-fact, with full power of substitution, and in the name of Borrower, if Lender elects to do so, upon the occurrence of an Event of Default which continues beyond any applicable cure period, to (a) use such sums as necessary, including any of the Escrow, make such changes or corrections in the Plans, and employ such architects, engineers, and contractors as may be required for the purpose of completing the construction of the Improvements, (b) execute all applications, certificates, and other documents in the name of Borrower which may be required for completion of construction of the Improvements, (c) endorse the name of Borrower on any checks or drafts representing proceeds of any insurance policy, or other checks or instruments payable to Borrower with respect to the Commercial Land, Improvements and/or other property, (d) do every act with respect to the construction of the Improvements which Borrower may do, (e) prosecute or defend any action or proceeding incident to the Commercial Land, Improvements, and other Collateral, and (f) apply the remaining balance of the Loan and/or Escrow held to the unpaid principal balance of the Note. The power of attorney granted hereby is a power coupled with an interest and is irrevocable. Lender shall have no obligation to undertake any of the forgoing actions, and, if Lender should do so, it shall have no liability to Borrower or any other Person for the sufficiency or adequacy of any such actions taken by Lender.

CR-5.2 **No Waiver or Exhaustion.** No waiver by Lender of any of its rights or remedies hereunder, in the other Loan Documents, or otherwise, shall be considered a waiver of any or other subsequent right or remedy of Lender; no delay or omission in the exercise or enforcement by Lender of any rights or remedies shall ever be construed as a waiver of any right or remedy of Lender; and no exercise or enforcement of any such rights or remedies shall ever be held to exhaust any right or remedy of Lender.

ARTICLE CR-VI

DEFAULT

CR-6.1 **Default.** The term “Event of Default”, as used in the Agreement, shall also include the occurrence of any one or more of the following events:

- (a) The cessation of the construction of the Improvements for more than 30 days without the written consent of Lender, except cessation, for not more than 30 days in the aggregate, caused by acts of God or other causes not within the control of Borrower.
- (b) A failure of the construction of any part of the Improvements, or of any of the materials, articles or fixtures supplied for incorporation into the construction of the Improvements, to comply with the Plans, sound building and engineering practices, any Legal Requirement, or the requirements of any lease, if applicable, to the extent that any of the foregoing has a Material Adverse Effect.
- (c) A determination by Lender that construction of the Improvements will not be completed on or before the Completion Date, to the extent the foregoing is reasonably believed by Lender to have a Material Adverse Effect.
- (d) Any material dispute with any Contractor or Architect that remains unresolved to the satisfaction of Lender by written agreement of Borrower and Contractor or Architect, as applicable, within thirty (30) days.
- (e) Any material misrepresentation, or any breach of, or failure to perform, any covenant, condition, or agreement contained in this Construction Rider in any material respect.

EXHIBIT "1"
TO
CONSTRUCTION RIDER TO LOAN AGREEMENT

Fees:

Fees for the Inspecting Architect/Engineer.

All fees, costs, and other charges relating to any and all of the documents, certificates, and other items generally described below and/or required or incurred in connection with, or relating to, the design, construction, or protection of the Improvements.

Documents, certificates, and other items:

An appraisal of the Commercial Land upon completion of the Improvements, made by a qualified MAI appraiser approved by Lender, in form, scope and substance satisfactory to Lender.

The Construction Contract, Contractor's Agreement, Contractor's Qualification Statement (AIA A305), Architectural Contract (if in writing), and the Plans.

Project schedule and Schedule of Values (AIA G703)

100 percent payment and performance bond, in Proper Form, from a Treasury-rated insurer satisfactory to Lender.

Evidence of Contractor's builder's risk and liability insurance satisfactory to Lender.

Evidence of Contractor's worker's compensation insurance, with a waiver of subrogation in favor of Lender.

Building permit and all other permits required by any Governmental Authority with respect to the construction and development of the Commercial Land.

Evidence satisfactory to Lender of Borrower's compliance with or satisfaction of all conditions applicable to any leases affecting the Commercial Land.

Evidence satisfactory to Lender that all zoning ordinances or restrictive covenants affecting the Commercial Land permit the present and intended uses of the Commercial Land and have been and will be complied with. Zoning evidence shall include a letter or certificate from an authorized representative of the zoning authority, addressed to Lender, adequately identifying the Commercial Land on an attached photocopy of the applicable zoning map, stating the zoning classification applicable to the Commercial Land and the uses permitted by that classification, and specifying all applicable height restrictions, off street parking requirements and building set-back requirements. If required by Lender, certified copies of the applicable portions of the zoning ordinance shall be provided.

Evidence satisfactory to Lender of compliance with all Legal Requirements.

Evidence satisfactory to Lender that there are no restrictions on the use and enjoyment of the streets providing access to the Commercial Land that adversely affect, limit, or impair Borrower's ability to develop and construct the Improvements.

Breakdown of all costs and expenses required to complete development and construction of the Improvements, in detail and in amounts acceptable to Lender.

Application for Advance.

List of true full names and addresses, then available to Borrower, of all contractors, subcontractors and materialmen who are to provide labor, materials or services in the construction of the Improvements.

APN: 005-071-55

RECORDING REQUESTED BY,
AND AFTER RECORDING, MAIL TO:

Green Bank, N.A.
4000 Greenbriar
Houston, Texas 77098

Affirmation Statement: Per NRS 239B.030, the undersigned hereby affirms that this document, including any exhibit, hereby submitted for recording does not contain the social security number of any person or persons.

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

from

AQUA METALS RENO, INC.,
a Delaware corporation
(“Grantor”)

to

FIRST AMERICAN TITLE INSURANCE COMPANY,
a Nebraska corporation
(“Trustee”)

for the benefit of

GREEN BANK, N.A.
(“Beneficiary”)

Dated: November 3, 2015

THIS DEED OF TRUST SECURES FUTURE ADVANCES

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

STATE OF NEVADA

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF STOREY

§

§

THIS DEED OF TRUST is made this 3rd day of November, 2015 between **AQUA METALS OF RENO, INC., a Delaware corporation** ("Grantor"), whose mailing address is 1010 Atlantic Avenue, Oakland, California 94501-1147; and **First American Title Insurance Company**, a Nebraska corporation whose mailing address is 5310 Kietzke Lane, Suite 100, Reno, Nevada 89511 (hereinafter called "Trustee"); for the benefit of **Green Bank, N.A.** ("Beneficiary") whose address is 400 Greenbriar, Houston, Texas 77098; Grantor and Beneficiary covenant and agree to as follows:

In consideration of the debt and trust hereinafter mentioned, Grantor does hereby **GRANT, BARGAIN, SELL, TRANSFER, ASSIGN, and CONVEY** unto Trustee, in trust, with power of sale for the benefit of Beneficiary, all of Grantor's right, title, and interest in and to the following described property:

1 . Real Property. The real estate situated in Storey County, Nevada, which is more particularly described in Exhibit "A" attached hereto and made a part hereof by reference for all purposes, together with all buildings, structures, and other improvements (such buildings, structures, and other improvements being hereinafter sometimes called the "Improvements") now or hereafter situated thereon (such real estate, and Improvements being hereinafter sometimes called the "Land"). The Land or its address is commonly known as 2500 Peru Drive, Reno, Nevada 89434.

2 . Fixtures and Personal Property. All fixtures, equipment, and personal property in which Grantor now has, or at any time hereafter acquires, an interest, and which are now, or at any time hereafter, either a part of the Land or situated in, on, or about the Land and utilized in connection with the operation of the Land, or acquired or delivered to the Land for use or incorporation in construction of any improvements on the Land, including, but not limited to, building and construction materials and equipment; all plans and specifications for improvements to be placed on the Land; all contracts and subcontracts relating to the Land; all deposits (including tenant's security deposits), funds, accounts, contract rights, instruments, documents, general intangibles; all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Land; all proceeds arising from or by virtue of the sale, lease, or other disposition of any of the real or personal property described herein; and all renewals, replacements, and substitutions thereof and additions thereto (all property described or referred to in this paragraph sometimes called "Accessories").

3. As-Extracted Collateral. To the extent now owned and/or hereafter acquired by Grantor: all As-Extracted Collateral (as defined in the Code) and other substances which may be extracted from the Land, including without limitation, oil and gas, all Hydrocarbon Property (as defined below), including all General Intangibles, Accounts, and all other rights to payment arising from the foregoing and all rights to payment arising therefrom, including but not limited to, royalties, rentals, and other rights to payment from sale of any of the foregoing.

4. Other Property. To the extent now owned and/or hereafter acquired by Grantor: all rights, titles, interests and estates in and to the oil gas and other minerals in and under the Land and the oil and gas leases and/or oil, gas and other mineral leases relating to the Land or the lands spaced, pooled or unitized therewith and including all wellbore interests and other interests and estates and the lands and premises covered or affected thereby (collectively called the "Hydrocarbon Property"). All other interest of every kind and character which Grantor now has or at any time hereafter acquires in and to the property described or referred to in paragraphs 1, 2, and 3 preceding, including but not limited to (a) proceeds from the condemnation or threatened condemnation of the Land, (b) proceeds of any and all insurance covering the Land, (c) property which is used in connection with the operation of the Land and Accessories, (d) all water, water allocations, and water rights appurtenant to or used in connection with the Land (including tributary, nontributary, and not nontributary), now owned or hereafter acquired, decreed or adjudicated, and (e) all other interest of Grantor in water, such as ditch and ditch rights, reservoir or reservoir rights and storage rights, water stock, wells, well permits, decrees and leased used or to be used in connection with the Land.

All properties, rights, and interests described or referred to in paragraphs 1, 2, 3, and 4 preceding are sometimes referred to collectively as the "Property".

5. Leasehold Estates. In the event the estate of the Grantor in and to any of the Property is a leasehold estate, this conveyance shall include, and the lien, security interest, and assignment created hereby shall encumber and extend to all other further or additional title, estates, interest, or rights which may exist now or at any time be acquired by Grantor in or to the Property demised under the lease creating such leasehold estate and including Grantor's rights, if any, to the Property demised under such lease and, if fee simple title to any of such Property shall ever become vested in the Grantor such fee simple interest shall be encumbered by this Deed of Trust in the same manner as if Grantor had fee simple title to said Property as of the date of execution hereof.

TO HAVE AND TO HOLD the above-described Property, together with all improvements thereon and all the rights, hereditaments, and appurtenances in anywise appertaining or belonging thereto, unto Trustee, and his successors or substitutes in this trust, and his and their assigns, against the claim or claims of all persons claiming or to claim the same or any part thereof.

Grantor, for Grantor and Grantor's successors, hereby agrees to warrant and forever defend, all and singular, the Property unto Trustee, and his successors or substitutes in this trust, and his and their assigns, in trust and for the uses and purposes hereinafter set forth, forever.

Grantor hereby grants to Beneficiary and its successors and assigns, a security interest in the Property, and each and every part thereof, and in all proceeds from the sale, lease, or other disposition thereof and in all sums, proceeds, funds, and reserves described or referred to in Section 5.7, 5.8, and 5.9 hereof; provided that the grant of a security interest in proceeds shall not be deemed to authorize any action otherwise prohibited herein.

ARTICLE I. The Obligation

Section 1.1 Beneficiary and Obligation. This Deed of Trust [as used herein, the expression "this Deed of Trust" shall mean this Deed of Trust, Security Agreement and Fixture Filing] and all rights, title, interest, liens, security interest, powers, and privileges created hereto or arising by virtue hereof, are given to secure payment and performance of the following indebtedness, obligations, and liabilities: **(a)** the indebtedness(es) evidenced by that certain promissory note of even date herewith (the "Note") executed by Grantor, payable to the order of Beneficiary in the principal amount of **TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00)** bearing interest as therein specified, containing an attorney's fee clause, interest and principal being payable as therein specified, and finally maturing twenty one (21) years from the date of the Note; **(b)** all indebtedness, obligations, and liabilities arising pursuant to the provisions of this Deed of Trust, the Note, that certain Loan Agreement between Borrower and Beneficiary of even date herewith (the "Loan Agreement"; capitalized terms in this Deed of Trust not otherwise defined herein shall have the same meanings ascribed to such terms in the Loan Agreement), any guaranty or such other documents evidencing, securing or pertaining to the indebtedness(es) referred to in subsection (a) of this Section 1.1, as shall from time to time be executed and delivered to Beneficiary by Grantor, any guarantor or any other party (collectively, the "Loan Documents"); and **(c)** any and all renewals, modifications, rearrangements, amendments, or extensions of all or any part of the indebtedness, obligations, and liabilities described or referred to in Subsections 1.1(a), and 1.1(b). The word "Obligation", as used herein, shall mean all of the indebtedness, obligations, and liabilities described or referred to in Subsections 1.1(a) and 1.1(b) preceding and as described and referred to in this subsection 1.1(c). The word "Beneficiary", as used herein, shall mean the Beneficiary named in the initial paragraph on Page 2 of this Deed of Trust and all subsequent Beneficiaries of the Obligation at the time in question. **Notice to Grantor: The Note contains a variable interest rate.**

ARTICLE II.

**Certain Representations;
Warranties, and Covenants of Grantor**

Section 2.1 Warranties and Representations. Grantor represents, warrants, and undertakes that **(a)** Grantor has full right and authority to execute and deliver this Deed of Trust; and **(b)** Grantor has in its own right good and indefeasible title in fee simple to the Property free from any encumbrance superior to the indebtedness hereby secured.

Section 2.2 Covenants. Grantor, for Grantor and Grantor's successors and permitted assigns hereunder, covenants, agrees, and undertakes to: **(a)** except as permitted under the Loan Agreement, pay, or cause to be paid, before delinquent, all taxes and assessments of every kind or character in respect to the Property, or any part thereof, from time to time, and, upon request of Beneficiary, to furnish to Beneficiary evidence satisfactory to Beneficiary of the timely payment of such taxes and assessments and governmental charges (including, but not limited to, any general or special taxes or ditch or water assessments levied or accruing against the Property); **(b)** purchase policies of insurance with respect to the Property with such insurers, in such amounts and covering such risks as shall be satisfactory to Beneficiary, including, but not limited to, **(1)** owner's and contractors' policies of comprehensive general public liability insurance; **(2)** hazard insurance against all risks of loss, including collapse, in an amount not less than the full replacement cost of all Improvements, including the cost of debris removal, with annual agreed amount endorsement and sufficient at all times to prevent Grantor from becoming a co-insurer, such insurance prior to completion of the Improvements to be in builder's risk form on a non-reporting basis and including coverage for all materials and equipment, wherever located, intended to be installed in or utilized in the construction of the Improvements; **(3)** if the Property is in a "Flood Hazard Area", a flood insurance policy, or binder therefor, in an amount equal to the principal amount of the Note or the maximum amount available under the Flood Disaster Protection Act of 1973, and regulations issued pursuant thereto, as amended from time to time, whichever is less, in form complying with the "insurance purchase requirements" of that act; **(4)** such policies of mortgagee's title insurance insuring the validity and priority of this Deed of Trust and any future renewals or extensions of this Deed of Trust, including any such mortgagee's title insurance which the Beneficiary may require during the term of the Obligation to supplement or replace any mortgagee's title policy earlier provided to Beneficiary insuring the validity and priority of the Deed of Trust; and **(5)** such other insurance, if any, as Beneficiary may require from time to time, or which is required by the Loan Documents; **(c)** cause all insurance carried in accordance with Section 2.2(b) to be payable to Beneficiary as a mortgagee, to deliver the original policies of insurance carried by each Lessee (as that term is hereinafter defined) for the benefit of Grantor, and to cause all such policies to be payable to Beneficiary as its interest may appear; **(d)** pay, or cause to be paid, all premiums for such insurance at least ten (10) days before such premiums become due, furnish to Beneficiary satisfactory proof of the timeliness of such payments and deliver all renewal policies to Beneficiary before the expiration date of each expiring policy; **(e)** comply with all federal, state, or municipal laws, rules, ordinances, and regulations applicable to the Property and its ownership, use and operation, including but not limited to maintenance of the Property in compliance with the Americans with Disabilities Act of 1990, and comply with all, and not violate any, easements, restrictions, agreements, covenants, and conditions with respect to or affecting the Property or any part thereof; **(f)** at all times maintain, preserve, and keep the Property in good repair and condition and presenting a first-class appearance, and from time to time make all necessary and proper repairs, replacements, and renewals, and not commit or permit any waste on or of the Property, and not do anything to the Property that may impair its value; **(g)** except as permitted by the Loan Agreement, promptly pay all bills for labor and materials incurred in connection with the Property and never permit to be created or to exist in respect to the Property or any part thereof any lien or security interest even though inferior to the liens and security interest hereof for any such bill, and in any event never permit to be created or exist in respect to the Property or any part thereof any other or additional lien or security interest on a parity with or superior to any of the liens or security interest hereof; **(h)** at any time, and from time to time, upon request of Beneficiary, forthwith, execute and deliver to Beneficiary any and all additional instruments and further assurances, and do all other acts and things, as may be reasonably necessary or proper, in Beneficiary's opinion, to effect the intent of these presents, more fully evidence and perfect the rights, titles, liens, and security interests herein created or intended to be created and to protect the rights, remedies, powers, and privileges of Beneficiary hereunder; **(i)** from time to time, upon request of Beneficiary, promptly furnish to Beneficiary financial statements and reports relating to the Grantor and the Property as required in the Loan Documents; **(j)** continuously maintain Grantor's existence and its right to do business in every state in which it transacts business; **(k)** pay and perform all of the Obligation in accordance with the terms thereof or of this Deed of Trust; **(l)** at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Obligation, or any part thereof, pay all such taxes on or prior to when due; provided that, in the alternative, Grantor may, in the event of the enactment of such a law, and must, if it is unlawful for Grantor to pay such taxes, prepay the Obligation in full within sixty (60) days after demand therefor by Beneficiary; **(m)** at any time and from time to time, furnish promptly upon request of Beneficiary a written statement or affidavit, in such form as shall be satisfactory to Beneficiary, stating the unpaid balance of the Obligation and that there are no offsets or defenses against full payment of the Obligation and the terms hereof, or, if there are any such offsets or defenses, specifying them; **(n)** punctually and properly perform all of Grantor's covenants, duties, and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, contract, or assignment of any kind now or hereafter existing as security for or in connection with payment of the Obligation, or any part thereof (each such security agreement being herein called "other security instrument"); **(o)** in accordance with the provisions of the Loan Agreement, allow Beneficiary from time to time to inspect the Property and all records relating thereto or to the Obligation, and to make and take away copies of such records; **(p)** not cause or permit the Accessories, or any part thereof, without the prior written consent of the Lender, to be removed from the county and state where the Land is located, except items of the Accessories which are not material to the business of Borrower, or have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new; **(q)** not without the prior written consent of Beneficiary sell, trade, transfer, assign, or exchange or otherwise dispose of (or suffer or permit any of the same to occur with respect to) **(1)** any capital stock of Grantor if Grantor is a corporation, **(2)** any partnership interest either general or limited if Grantor is a partnership, or **(3)** any membership interest in Grantor, if Grantor is a limited liability company, except by devise, descent, or operation of law upon the death of a shareholder, partner, joint venturer, or member, as the case may be; and **(r)** pay, or cause to be paid, any and all reasonable attorneys' fees, filing fees and expenses incurred by Beneficiary for the preparation and recordation of any and all legal instruments which the Beneficiary may require at the time of the creation of this Obligation (including this Deed of Trust and/or any and all other instruments which Beneficiary may require in connection herewith) or which Beneficiary may require during the term of the Obligation.

Section 2.3 Nevada Covenants. The following covenants, Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 of NRS 107.030 are hereby adopted and made a part of this Deed of Trust (the "Covenants"). To the extent possible, the Covenants will be construed so as to augment, and be compatible with, but not replace, the other agreements contained in this Deed of Trust and the other Loan Documents. However, to the extent that any of the Covenants are determined to be in conflict with any of the other agreements and covenants contained in this Deed of Trust and/or the other Loan Documents, or in conflict with any other right or procedure allowed by applicable law, the agreement, covenant, right, or procedure which are set forth in the Loan Documents shall control and be enforceable by Beneficiary. With respect to Covenant No. 2, the amount of required insurance shall be the full replacement value of all buildings and improvements now and/or hereafter located on the Land. With respect to Covenant No. 4, the rate of interest shall be the Maximum Rate (hereafter defined). With respect to Covenant No. 7, in lieu of the percentage to be allowed, the "expenses of the trust", as referenced therein, shall mean reasonable counsel fees and costs actually incurred.

ARTICLE III.

Respecting Defaults and Remedies of Beneficiary

Section 3.1 Beneficiary's Remedies Upon Default. Upon an Event of Default which continues beyond any applicable cure period, Beneficiary may, at its option, do any one or more of the following:

(a) If Grantor has failed to keep or perform any covenant whatsoever contained in this Deed of Trust, Beneficiary may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be a part of the Obligation, and Grantor promises, upon demand, to pay to Beneficiary, at the place where the Note is payable, or at such other place as Beneficiary may direct by written notice, all sums so advanced or paid by Beneficiary, with interest from the date when paid or incurred by Beneficiary at the rate provided in the Note. No such payment by Beneficiary shall constitute a waiver of any default. In addition to the liens and security interest hereof, Beneficiary shall be subrogated to all rights, titles, liens, and security interest securing the payment of any debt, claim, tax, or assessment for the payment of which Beneficiary may make an advance, or which Beneficiary may pay.

(b) Unless otherwise modified herein, Beneficiary may, without notice, demand, or presentment, which are hereby waived by Grantor and all other parties obligated in any manner whatsoever on the Obligation, declare the entire unpaid balance of the Obligation immediately due and payable, and upon such declaration, the entire unpaid balance of the Obligation shall be immediately due and payable (hereinafter called "Acceleration"). Grantor hereby waives all notices allowed by law, including without limitation, demand, presentment, notice of dishonor, protest, notice of intent to accelerate maturity and notice of acceleration.

(c) Beneficiary may request Trustee to proceed with foreclosure, and in such event Trustee is hereby authorized and empowered, and it shall be his special duty, upon such request of Beneficiary, to sell the Property, or any part thereof, to the highest bidder or bidders for cash, in the manner prescribed or allowed by law. After such sale, Trustee shall make good and sufficient deeds and assignments to the purchaser or purchasers thereunder in the name of Grantor, conveying the Property, or any part thereof, so sold to the purchaser or purchasers with general warranty of title by Grantor. Sale of a part of the Property shall not exhaust the power of sale, but sales may be made from time to time until the Obligation is paid and performed in full. It shall not be necessary to have present or to exhibit at any such sale any of the Accessories. In addition to the rights and powers of sale granted under the preceding provisions of this Subsection 3.1(c), if default is made in the payment of any installment of the Obligation, Beneficiary may, at its option, at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire Obligation to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Property subject to such unmatured indebtedness and the liens and security interest securing its payment, in the same manner, all as provided in the preceding provisions of this Subsection 3.1(c). After such sale, Trustee shall make due conveyance to the purchaser or purchasers. Sales made without maturing the Obligation may be made hereunder whenever there is a default in the payment of any installment of the Obligation, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this Subsection 3.1(c), the unmatured balance of the Obligation (except as to any proceeds of any sale which Beneficiary may apply as prepayment of the Obligation) or the liens and security interests securing payment of the Obligation. It is intended by each of the foregoing provisions of this Subsection 3.1(c) that Trustee may, after any request or direction by Beneficiary, sell, not only the Land but also the Accessories and other interests constituting a part of the Property, or any part thereof, along with the Land, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Property separately from the remainder of the Property. It is agreed that, in any deed or deeds given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Beneficiary, or as to the occurrence or existence of any default, or as to the acceleration of the maturity of the Obligation, or as to the request to sell, notice of sale, time, place, terms, and manner of sale, and receipt, distribution, and application of the money realized therefrom, or as to the due and proper appointment of a substitute trustee, and, without being limited by the foregoing, as to any other act or thing having been duly done by Beneficiary or by Trustee, shall be taken by all courts of law and equity as prima facie evidence that the said statements or recitals state facts and are without further question to be so accepted, and Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof. In the event of the resignation or death of Trustee, or his removal from his county of residence stated on the first page hereof, or his failure, refusal, or inability, for any reason, to make any such sale or to perform any of the trusts herein declared, or, at the option of Beneficiary, with or without cause, then Beneficiary may appoint, in writing, but without the necessity of recordation, notice or any other formality (unless required by applicable law), a substitute trustee, who shall thereupon succeed to all the estates, titles, rights, powers, and trusts herein granted to and vested in Trustee. If Beneficiary is a corporation or an association, such appointment may be made on behalf of such Beneficiary by any person who is then the president, or a vice-president, or the cashier or secretary, or any other authorized officer or agent of Beneficiary. In the event of the resignation or death of any such substitute trustee, or his failure, refusal, or inability to make any such sale or perform such trusts, or, at the option of Beneficiary, without cause, successive substitute trustees may thereafter, from time to time, be appointed in the same manner. Wherever herein the word "Trustee" is used, the same shall mean the person who is the duly appointed trustee or substitute trustee hereunder at the time in question.

(d) Beneficiary may, or Trustee may upon written request of Beneficiary, proceed by suit or suits, at law or in equity, to enforce the payment and performance of the Obligation in accordance with the terms hereof and of the Note or other instruments evidencing it, to foreclose the liens, security interest and this Deed of Trust as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction.

(e) Beneficiary, as a matter of right and without regard to the sufficiency of the security, and without any showing of insolvency, fraud, or mismanagement on the part of Grantor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Property, or any part thereof, and of the income, rents, issues, and profits thereof.

(f) Beneficiary may enter upon the Land, take possession of the Property and remove the Accessories, or any part thereof, with or without judicial process, and, in connection therewith, without any responsibility or liability on the part of Beneficiary, take possession of any property located on or in the Property which is not a part of the Property and hold or store such property at Grantor's expense.

(g) Beneficiary may require Grantor to assemble the Accessories, or any part thereof, and make them available to Beneficiary at a place to be designated by Beneficiary which is reasonably convenient to Grantor and Beneficiary.

(h) After notification, if any, hereafter provided in this Subsection 3.1(h), Beneficiary may sell, lease, or otherwise dispose of, at the office of Beneficiary, or on the Land, or elsewhere, as chosen by Beneficiary, all or any part of the Accessories, in their then condition, or following any commercially reasonable preparation or processing, and each Sale (as used in this Subsection, the term "Sale" means any such sale, lease, or other disposition made pursuant to this Subsection 3.1(h)) may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts, and at any Sale, it shall not be necessary to exhibit the Accessories, or part thereof, being sold. The Sale of any part of the Accessories shall not exhaust Beneficiary's power of Sale, but Sales may be made from time to time until the Obligation is paid and performed in full. Reasonable notification of the time and place of any public Sale pursuant to this Subsection 3.1(h), or reasonable notification of the time after which any private Sale is to be made pursuant to this Subsection 3.1(h), shall be sent to Grantor and to any other person entitled to notice under the Uniform Commercial Code in effect under the laws of the state of Texas (the "Code"); provided that if the Accessories or part thereof being sold are perishable, or threaten to decline rapidly in value, or are of a type customarily sold on a recognized market, Beneficiary may sell, lease, or otherwise dispose of the Accessories, or part thereof, without notification, advertisement, or other notice of any kind. It is agreed that notice sent or given not less than ten (10) calendar days prior to the taking of the action to which the notice relates is reasonable notification and notice for the purposes of this Subsection 3.1(h).

(i) Beneficiary may surrender the insurance policies maintained pursuant to Subsection 2.2(b) hereof, or any part thereof, and receive and apply the unearned premiums as a credit on the Obligation, and in connection therewith, Grantor hereby appoints Beneficiary as the agent and attorney-in-fact for Grantor to collect such premiums.

(j) Beneficiary may retain the Accessories in satisfaction of the Obligation whenever the circumstances are such that Beneficiary is entitled to do so under the Code.

(k) Beneficiary may buy the Property, or any part thereof, at any public or judicial sale.

(l) Beneficiary may buy the Accessories, or any part thereof, at any private sale if the Accessories, or part thereof, being sold are a type customarily sold in a recognized market or are a type which is the subject of widely distributed standard price quotations.

(m) Beneficiary shall have and may exercise any and all other rights and remedies which Beneficiary may have at law or in equity, or by virtue of any other security instrument, or under the Code, or otherwise.

(n) Beneficiary may apply the reserves, if any, required by Section 5.9 hereof, toward payment of the Obligation.

Section 3.2 Beneficiary as Purchaser. If Beneficiary is the purchaser of the Property, or any part thereof, at any sale thereof, whether such sale be under the power of sale hereinabove vested in Trustee, or upon any other foreclosure of the liens and security interest hereof, or otherwise, Beneficiary shall, upon any such purchase, acquire good title to the Property so purchased, free of the liens and security interest of these presents.

Section 3.3 Other Rights of Beneficiary. Should any part of the Property come into the possession of Beneficiary, whether before or after default, Beneficiary may use or operate the Property for the purpose of preserving it or its value, pursuant to the order of a court of appropriate jurisdiction, or in accordance with any other rights held by Beneficiary in respect to the Property. Grantor covenants to promptly reimburse and pay to Beneficiary, at the place where the Note is payable, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges), incurred by Beneficiary in connection with its custody, preservation, use, or operation of the Property, together with interest thereon from the date incurred by Beneficiary at the rate provided in the Note, and all such expenses, costs, taxes, interest, and other charges shall be a part of the Obligation. It is agreed, however, that the risk of loss or damage to the Property is on Grantor, and Beneficiary shall have no liability whatsoever for decline in value of the Property, or for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured.

Section 3.4 Possession After Foreclosure. In case the liens or security interest hereof shall be foreclosed by Trustee's sale or by judicial action, the purchaser at any such sale shall receive, as an incident to his ownership, immediate possession of the property purchased, and if Grantor or Grantor's successors shall hold possession of said Property, or any part thereof, subsequent to foreclosure, Grantor and Grantor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale, and anyone occupying the Property after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

Section 3.5 Application of Sales Proceeds Upon Foreclosure. The proceeds from any sale, lease, or other disposition made pursuant to this Article III, or the proceeds from surrendering any insurance policies pursuant to Subsection 3.1(i) hereof, or the reserves required by Section 5.9 hereof, or sums received pursuant to Section 5.7 hereof, or proceeds from insurance which Beneficiary elects to apply to the Obligation pursuant to Section 5.8 hereof, shall be applied by Trustee, or by Beneficiary, as the case may be, as follows: First, to the payment of all expenses of advertising, preserving, selling, and conveying the Property, or part thereof, including reasonable attorney's fees, and including a reasonable commission to Trustee; second, to interest on the Obligation; third, to principal on the matured portion of the Obligation; fourth, to prepayment of the unmatured portion, if any, of the Obligation applied to installments of principal in inverse order of maturity; and fifth, the balance, if any, remaining after the full and final payment and performance of the Obligation, to the person or persons legally entitled thereto.

Section 3.6 Abandonment of Sale. In the event a foreclosure hereunder should be commenced by Trustee in accordance with Subsection 3.1(c) hereof, Beneficiary may at any time before the sale, direct Trustee to abandon the sale, and may then institute suit for the collection of the Note, and for the foreclosure of the liens and security interest hereof. If Beneficiary should institute a suit for the collection of the Note, and for a foreclosure of the liens and security interest hereof, it may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee to sell the Property, or any part thereof, in accordance with the provisions of this Deed of Trust.

ARTICLE IV

Miscellaneous

Section 4.1 Release. If the Obligation is paid in full in accordance with the terms of this Deed of Trust and the Note and other instruments evidencing or securing such Obligation, and if Grantor shall well and truly perform all of Grantor's covenants contained herein and in the other Loan Documents, then this conveyance shall become null and void and be released at Grantor's request and expense.

Section 4.2 Rights Cumulative. All rights, remedies, powers, and privileges and all liens, titles, and security interests herein expressly conferred are cumulative, and shall not be deemed to deprive Beneficiary or Trustee of any other legal or equitable rights, remedies, powers, privileges, liens, titles, or security interests by or through judicial proceedings or otherwise appropriate to enforce the conditions, covenants, and terms of this Deed of Trust, the Note, and other and other Loan Documents.

Section 4.3 Waiver. Any and all covenants in this Deed of Trust may from time to time, by instrument in writing signed by Beneficiary and delivered to Grantor, be waived to such extent and in such manner as Beneficiary may desire, but no such waiver shall ever affect or impair Beneficiary's rights, remedies, powers, privileges, liens, titles, and security interest hereunder, except to the extent so specifically stated in such written agreement. Neither the exercise of, nor the failure to exercise any option or remedy under the terms of this Deed of Trust shall be considered as a waiver of the right to exercise same, or any other option or remedy given herein.

Section 4.4 Maximum Rate of Interest. Grantor and Beneficiary intend to comply with the applicable law governing the Maximum Rate (hereafter defined). All agreements between Grantor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no event whatsoever, whether by reason of acceleration of the maturity of the Obligation or otherwise, shall the interest contracted for, charged, or received by Beneficiary hereunder or otherwise exceed the Maximum Rate. If, in any contingency whatsoever, Beneficiary shall receive anything of value deemed interest under applicable law which would cause the interest contracted for, charged, or received by the Beneficiary to exceed the Maximum Rate, the excessive interest shall be applied to the reduction of the unpaid principal balance of the Obligation and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance of the Obligation, such excess shall be refunded to Grantor, and the provisions herein and any demand on Grantor shall immediately be deemed reformed, and the amounts thereafter collectible hereunder shall be reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder. All interest paid or agreed to be paid to the Beneficiary, to the extent permitted by applicable law, shall be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full (including the period of any renewal or extension hereof) so that the rate or amount of interest on account of such indebtedness does not exceed the Maximum Rate.

The term "Maximum Rate," as used herein, shall mean the maximum nonusurious interest rate, if any, that at any time, or from time to time, may under applicable law be contracted for, taken, reserved, charged or received on the Obligation, or any portion thereof, under the laws which are presently in effect of the United States and the State of Texas applicable to such Beneficiary and such indebtedness or, to the extent allowed by law under such applicable laws of the United States of America and the State of Texas which may hereafter be in effect, which allow a higher maximum non-usurious interest rate than applicable laws now allow; provided, that in determining the Maximum Rate, due regard shall be given, to the extent required by applicable law, to any and all relevant payments, fees, charges, deposits, balances, agreements and calculations which may constitute or be deemed to constitute interest, or be deducted from principal to calculate the interest rate or otherwise affect interest rate determinations, so that in no event shall the Beneficiary contract for, charge, receive, take, collect, reserve or apply, on the Obligation, or any portion thereof, any amount in excess of the maximum non-usurious rate of interest permitted by applicable law.

Section 4.5 Effect of Transfer on Grantor's Liability. If the ownership of the Property or any part thereof becomes vested in a person other than Grantor or in the event of a change in ownership of any Grantor other than an individual, Beneficiary may, without notice to Grantor or Grantor's successors, deal with such successor or successors in interest with reference to this Deed of Trust and the Obligation, either by way of forbearance on the part of Beneficiary, or extension of time of payment of the Obligation, or release of all or any part of the Property or any other property securing payment of the Obligation, or otherwise, without in any way modifying or affecting Beneficiary's rights and liens hereunder or the liability of Grantor or any other party liable for payment of the Obligation, in whole or in part.

Section 4.6 Waiver of Right to Marshal. Grantor hereby waives all rights of marshaling in event of any foreclosure of the liens and security interests hereby created.

Section 4.7 Condemnation Proceeds. Beneficiary shall be entitled to receive any and all sums which may be awarded or become payable to Grantor for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for damages caused by public works or construction on or near the Property. All such sums are hereby assigned to Beneficiary, and Grantor shall, upon request of Beneficiary, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time to enable Beneficiary to collect and receipt for any such sums. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such sums. Any sums received by Beneficiary in the event of condemnation shall be applied to installments on the Obligation in inverse order of maturity. Notwithstanding anything to the contrary herein, and subject to Beneficiary's prior written consent, which will not be unreasonably withheld or delayed, and so long as there is no Event of Default and Beneficiary reasonably determines that the Property can be fully restored or repaired to its original value with available funds, the proceeds of any award shall be disbursed to Grantor for use to restore or repair the Property, subject to Beneficiary's standard construction disbursement procedures.

Section 4.8 Insurance Proceeds. The proceeds of any and all insurance upon the Property shall be collected by Beneficiary. However, subject to Beneficiary's prior written consent, which will not be unreasonably withheld or delayed, and so long as there is no Event of Default and Beneficiary reasonably determines that the Property can be fully restored or repaired to its original value with available funds, the proceeds of any award shall be disbursed to Grantor for use to restore or repair the Property, subject to Beneficiary's standard construction disbursement procedures.

Section 4.9 Reserve for Taxes and Insurance Premiums. At the request of Beneficiary upon an Event of Default which continues beyond any applicable cure period, Grantor shall create a fund or reserve for the payment of all insurance premiums, taxes, and assessments against or affecting the Property in accordance with the Loan Agreement. Any excess reserve shall, at the discretion of Beneficiary, be credited by Beneficiary on subsequent reserve payments or subsequent payments to be made on the Note by the maker thereof, and all deficiency shall be paid by Grantor to Beneficiary on or before the date when such premiums, taxes, and assessments shall become delinquent. In the event there exists a deficiency in such fund or reserve at any time when taxes, assessments, or insurance premiums are due and payable, Beneficiary may, but shall not be obligated to, advance the amount of such deficiency on behalf of the Grantor, and such amounts so advanced shall become a part of the Obligation, shall be immediately due and payable and shall bear interest at the rate provided in the Note from the date of such advance through and including the date of repayment. Transfer of legal title to the Property shall automatically transfer the interest of Grantor in all sums deposited with Beneficiary under the provisions hereof or otherwise. In the event that Beneficiary does not request that such a fund be established, Grantor hereby agrees that he will promptly pay all premiums, taxes, and assessments when due, and will furnish to Beneficiary proof of payment within 45 days of the due date by submitting cancelled checks along with the statement concerning such taxes, premiums, or assessments.

Section 4.10 Right to Accelerate Upon Transfer. If Grantor shall sell, convey, assign, or transfer all or any part of the Property or any interest therein or any beneficial interest in the Grantor in violation of the Loan Documents, Beneficiary may at Beneficiary's option, declare the Obligation to be immediately due and payable, which option may be exercised at any time following such sale, conveyance, assignment, or transfer. Beneficiary may in its sole discretion and at Grantor's request decide not to exercise said option in which event Beneficiary's forbearance may be predicated on such terms and conditions as Beneficiary may in its sole discretion require, including but not limited to Beneficiary's approval of the transferee's credit worthiness and management ability, and the execution and delivery to Beneficiary by transferee, prior to the sale, transfer, assignment, or conveyance of a written assumption agreement containing such terms as Beneficiary may require, including but not limited to, a payment of a part of the principal amount of the Obligation, the payment of an assumption fee, a modification of the term of the Obligation, and such other terms as Beneficiary may require. Should the Property be sold, traded, transferred, assigned, exchanged, or otherwise disposed of without the prior written consent of Beneficiary and payment of any portion of the Obligation is thereafter accepted by the Beneficiary such acceptance shall not be deemed a waiver of the requirement of Beneficiary's consent in writing thereto or with respect to any other sale, trade, transfer, assignment, exchange, or other disposition.

Section 4.11 Prohibition Against Subordinate Financing. If Grantor without the prior written consent of Beneficiary, executes or delivers any pledge, security agreement, mortgage, or deed of trust covering all or any portion of the Property (hereafter called "Subordinate Mortgage") Beneficiary may, at Beneficiary's option, which option may be exercised at any time following such pledge, security agreement, mortgage, or deed of trust, declare the Obligation to be immediately due and payable. In the event of consent by Beneficiary to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, Grantor will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Beneficiary not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect: **(a)** that the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien, security interest, and assignment evidenced by this Deed of Trust and each term and provision hereof; **(b)** that if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Property will be named as a party defendant, or will any action be taken with respect to the Property which would terminate any occupancy or tenancy of the Property without the prior written consent of Beneficiary; **(c)** that the rents and profits, if collected through a receiver or by the Beneficiary of the Subordinate Mortgage, shall be applied first to the Obligations, including principal and interest due and owing on or to become due and owing on the Note and the other indebtedness secured hereby and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Property; and **(d)** that if any action or proceeding shall be brought to foreclose the Subordinate Mortgage, (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), written notice of the commencement thereof will be given to Beneficiary contemporaneously with the commencement of such action or proceeding.

Section 4.12 Subrogation. It is understood and agreed that the proceeds of the Note, to the extent the same are utilized to renew or extend any indebtedness or take up any outstanding liens against the Property, or any portion thereof, have been advanced by Beneficiary at Grantor's request and upon Grantor's representation that such amounts are due and payable. Beneficiary shall be subrogated to any and all rights, remedies, powers, privileges, liens, titles, and security interests owned or claimed by any owner or Beneficiary of said outstanding indebtedness or lien, however remote, regardless of whether said indebtedness or lien is acquired by assignment or is released by the Beneficiary thereof upon payment.

Section 4.13 Covenant to Perform. Grantor and each and every subsequent owner of the Property, or any part thereof, covenants and agrees that Grantor will perform or cause to be performed, each and every condition, term, provision, and covenant of this Deed of Trust, except that Grantor shall have no duty to pay the indebtedness evidenced by the Note except in accordance with the terms of the Note and all renewals and extensions thereof, and this Deed of Trust or in accordance with the terms of the transfer to Grantor.

Section 4.14 Notice. Any notice or other written communication required or permitted hereunder shall be made in accordance with Section 8.2 of the Loan Agreement.

Section 4.15 Enforceability. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the Obligation, the unsecured portion of the Obligation shall be completely paid prior to the payment of the remaining and secured portion of the Obligation, and all payments made on the Obligation shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Obligation.

Section 4.16 Successors and Assigns. This Deed of Trust is binding upon Grantor and Grantor's successors, and shall inure to the benefit of Beneficiary, and its successors and assigns, and the provisions hereof shall be covenants running with the Land. The duties, covenants, conditions, obligations, and warranties of Grantor in this Deed of Trust shall be joint and several obligations of Grantor and Grantor's successors.

Section 4.17 Counterparts. This Deed of Trust may be executed in a number of identical counterparts, each of which, for all purposes, shall be deemed an original. If any Grantor is a corporation, this instrument is executed, sealed, and attested by Grantor's officers hereunto duly authorized.

Section 4.18 Financing Statement. This Deed of Trust is intended to be a financing statement filed as a fixture filing with respect to the Accessories and the goods described at the beginning of this Deed of Trust which are or are to become fixtures relating to the Land. The address of Grantor (Debtor) is set forth on the first page hereof and the address of Beneficiary (Secured Party) is set forth in Section 1.1 hereof. This Deed of Trust is to be filed for record in the real property records of the county clerk of the county or counties where the Land is located. Grantor is the record owner of the Land. A carbon, photographic, or other reproduction of this Deed of Trust or of a financing statement pursuant hereto is sufficient as a financing statement.

Section 4.19 Partial Invalidity. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Land, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

Section 4.20 Appraisal. Beneficiary may from time to time obtain, or require Grantor to obtain for Beneficiary, an appraisal performed by a licensed or certified appraiser acceptable to Beneficiary of any real property securing any extension of credit by Beneficiary to Grantor. Grantor shall insure that such appraiser has free and full access to the subject real property for the purpose of making an appraisal. Grantor consents to such access by appraiser. If Grantor is not in possession of the real property at the time of the appraisal, Grantor shall obtain any consent and cooperation of any person in possession of the real property at the time of the appraisal. Unless prohibited by applicable law, Grantor shall pay to Beneficiary, on demand, any fees incurred by Beneficiary in obtaining any appraisal required under a regulation or policy of any applicable governmental authority or required under Beneficiary's loan policy. Grantor's obligation under this paragraph shall be secured by Beneficiary's lien upon the subject real property unless the real property is the homestead of the Grantor. However, notwithstanding the foregoing, Beneficiary will not require more than one (1) such appraisal in any calendar year unless there is an Event of Default which continues beyond any applicable cure period

Section 4.21 Attorneys' Fees. If this Deed of Trust or any document related to it is given by Beneficiary to an attorney for enforcement, or if suit is brought for collection or enforcement, or if this Deed of Trust or any document related to it is collected or enforced through probate, bankruptcy or other judicial proceeding (or Beneficiary takes action to protect its interests through probate, bankruptcy or other judicial proceedings), Grantor shall pay Beneficiary reasonable attorneys' fees, court costs and expenses in addition to other amounts due hereunder.

Section 4.22 Severability. Except as expressly provided to the contrary herein, each section, part, term, or provision of this Deed of Trust shall be considered severable, and if for any reason any article, section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other effect on other sections, parts, terms, or provisions of this Deed of Trust as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms, or provisions shall not be deemed to be a part of this Deed of Trust.

Section 4.23 No Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the Beneficiary or by any other party as creating the relationship between them of (i) principal and agent, (ii) a partnership, or (iii) a joint venture.

Section 4.24 Cross-Default Provision. It is expressly understood and agreed that should Grantor, fail to pay any other indebtedness or any part thereof, principal or interest, as the same shall become due and payable, which may be secured by a lien or liens on the Property herein described, the Obligation hereby secured, at the option of the Beneficiary, shall become due and payable. Grantor hereby assigns to Beneficiary any right Grantor may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance.

Section 4.25 Nevada-Specific Provisions.

- (a) Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Section 4.25 and other terms and conditions of this Deed of trust, the terms and conditions of this Section 4.25 shall control and be binding.
- (b) Fixture Filing. Supplementing the provisions of Section 4.18 of this Deed of Trust, this Deed of Trust shall constitute a fixture filing pursuant to NRS 104.9402, as amended from time to time. Some or all of the collateral may be or become a fixture in which Beneficiary has a security interest under the security agreement provided for in Section 4.18 above (the "Security Agreement"). The rights, remedies and interests of Beneficiary are independent and cumulative, and there shall be no merger of any lien hereunder with any security interest created by the Security Agreement.
- (c) Future Advances. This Deed of Trust secures future advances, as defined in NRS 106.320, and is to be governed by NRS 106.300 to 106.400, inclusive. The maximum principal amount to be secured hereby is \$15,000,000. The maximum amount of advances of principal to be secured by this Deed of Trust may increase or decrease from time to time by amendment of this Deed of Trust.
- (d) Cure Period. The time period for curing a default under the loan evidenced by the Note, if any, shall run concurrently with the 35 day statutory cure period under NRS 107.080(2)(a)(2).
- (e) Subject to NRS 107.080 Foreclosure Procedures. Beneficiary's rights and remedies under this Deed of Trust shall be subject to NRS 107.080 *et seq.*
- (f) Power to Enter for Environmental Issues. Without limiting any rights or remedies of Beneficiary under any of the Loan Documents, Grantor agrees that Beneficiary shall have, at a minimum, the same right, power and authority to enter and inspect the Property as is granted to a secured lender under NRS 40.507, and that Beneficiary will have the right to appoint a receiver to enforce the right to enter and inspect the Property to the extent such authority is provided under the Loan Documents and/or Nevada law, including, without limitation, the authority granted to a secured lender under NRS 32.015.

- (g) Ability to Waive Lien for Environmental Issues. In the event that any portion of the Property is determined to be “environmentally impaired” (as “environmentally impaired” is defined in NRS 40.503, then, without otherwise limiting or in any way affecting Beneficiary’s or Trustee’s rights or remedies under this Deed of Trust, Beneficiary may elect to exercise its right under NRS 40.501 through 40.512, inclusive, to (i) waive its lien on such environmentally impaired or affected portion of the Property, and (ii) exercise the rights and remedies of an unsecured creditor, including the reduction of its claim against Grantor to judgment and any other rights and remedies permitted by applicable laws. Grantor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of NRS 40.505, if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant or user of any portion of the Property and Grantor knew or should have known of the activity by such lessee, occupant or user which caused or contributed to the release or threatened release. Beneficiary shall have the right under this Deed of Trust to allocate amounts recovered on the Obligation first to those portions thereof other than damages and other amounts recoverable under NRS 40.509, and thereafter to damages and other amounts recoverable under said statute.
- (h) Personal Property May Be Sold as a Single Parcel by Election of Beneficiary. Any sale of personal property may be held as a part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Property in order that the Property, including the personal property, may be sold as a single parcel if the Beneficiary elects, as permitted by NRS 104.9604, and grantor agrees that such sale of personal property together with real property constitutes a commercially reasonable sale of the personal property.
- (i) Conflicts with Nevada Gaming Laws. All rights, remedies and powers provided in this Deed of Trust may be exercise don to the extent that the exercise thereof does not violate any applicable provision of the Nevada Gaming Laws, and all provisions of this Deed of trust are intended to be subject to all applicable mandatory provisions of the Nevada Gaming Laws which may be controlling and to be limited to the extent necessary so that they will not render this Deed of Trust invalid or unenforceable, in whole or in part.
- (j) Waiver of Condemnation Proceeds. Grantor hereby specifically, unconditionally and irrevocably waives all rights of a property owner granted under applicable law which provide for allocation of condemnation proceeds between a property owner and a lienholder, including the provisions of NRS 37.115.
- (k) **WAIVER OF CHAPTER 40 PROTECTIONS. GRANTOR DOES HEREBY RELINQUISH AND SHALL CAUSE THE GUARANTOR, IF ANY, TO WAIVE AND RELINQUISH ALL RIGHTS AND REMEDIES ACCORDED BY APPLICABLE LAW TO GRANTORS AND GUARANTORS GENERALLY AND AGREES NOT TO ASSERT OR TAKE ADVANTAGE OF ANY SUCH RIGHTS OR REMEDIES, INCLUDING, WITHOUT LIMITATION: ANY RIGHT PROVIDED BY NRS 40.430 AND JUDICIAL DECISIONS RELATING THERETO, AND NRS 40.451 THROUGH 40.4639, INCLUSIVE. AND JUDICIAL DECISIONS RELATING THERETO, OR ANY OTHER STATUTE OR DECISION, TO REQUIRE BENEFICIARY TO PROCEED AGAINST GRANTOR OR ANY OTHER PERSON OR TO PROCEED AGAINST OR EXHAUST ANY SECURITY HELD AT ANY TIME OR TO PURSUE ANY OTHER REMEDY IN BENEFICIARY’S POWER BEFORE PROCEEDING AGAINST THE GRANTOR, GRANTOR SPECIFICALLY AGREEING THAT SUCH WAIVERS ARE INTENDED TO TAKE ADVANTAGE OF THE WAIVERS PERMITTED BY NRS 40.495(2) TO THE MAXIMUM EXTENT PERMITTED.**

EXECUTED and SEALED as of the date first above written.

AQUA METALS RENO, INC., a
Delaware corporation

By: /s/ Thomas Murphy
Thomas Murphy
Chief Financial Officer

**DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE
FILING**

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STATE OF NEVADA

§
§
§

COUNTY OF STOREY

THE FOREGOING INSTRUMENT was acknowledged before me on this _____ day of November, 2015, by **Thomas Murphy, Chief Financial Officer of AQUA METALS RENO, INC.**

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission Expires: _____

Notary Public, State of Nevada

**DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE
FILING**

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LEGAL DESCRIPTION

A TRACT OR PARCEL OF LAND CONTAINING 0.8205 ACRES OF LAND, (35,742 SQUARE FEET), BEING A PORTION OF UNRESTRICTED RESERVE "B", NOTTINGHAM COUNTRY, SECTION 7, A SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 265, PAGE 1, OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS, SAID 0.8205 ACRE TRACT OF LAND BEING THAT CERTAIN CALLED 0.8205 ACRE TRACT OF LAND AS CONVEYED TO JAMES D. SAWYER AND LAWRENCE D. FIEGLEIN GENERAL PARTNERSHIP BY INSTRUMENT RECORDED IN DOCUMENT CF NO. V507351 OF THE OFFICIAL PUBLIC RECORDS OF HARRIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: (BEARING BASIS: VOLUME 265, PAGE 1, OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS).

BEGINNING at a calculated point for the most southeasterly cutback corner at the intersection of the south right-of-way line of Kingsland Boulevard, (100.00 Foot Right-of-Way), with the west right-of-way line of Shillington Drive, (60.00 Foot Right-of-Way), same being the most easterly northeast corner of said Reserve "B" same being the most easterly northeast corner and POINT OF BEGINNING of the herein described tract;

Thence, S 01°47'36" E, with the west right-of-way line of Shillington Drive, a distance of 163.66 feet to a 5/8" iron rod found for the northeast corner of that certain called 1.4320 acre tract of land as conveyed to KOA Group, Inc., by instrument recorded in Document CF No. 20130518899 of the Official Public Records of Harris County, Texas, same being the southeast corner of the herein described tract;

Thence, N 82°55'25" W, with the common line of said 1.4320 Acre Tract, a distance of 229.54 feet to a calculated point on the common line of that certain called 1.3652 acre tract of land as conveyed to Mustang Kingsland, L.P., by instrument recorded in Document CF No. X237326 of the Official Public Records of Harris County, Texas, for the northwest corner of said 1.4320 Acre Tract, same being the southwest corner of the herein described tract;

Thence, N 07°04'35" E, with the common line of said 1.3652 Acre Tract, a distance of 162.00 feet to a capped, (Precision), iron rod set on the south right-of-way line of Kingsland Boulevard, on the arc of a curve to the left, for the northeast corner of said 1.3652 Acre Tract, same being the northwest corner of the herein described tract;

Thence, Southeasterly, with the south right-of-way line of Kingsland Boulevard, along the arc of said curve to the left, having an included angle of 05°08'42", a radius of 2150.00 feet, a chord that bears, S 85°29'48" E, a chord distance of 193.00 feet, for an arc distance of 193.06 feet to a calculated point for the most northwesterly cutback corner at the intersection of the south right-of-way line of Kingsland Boulevard with the west right-of-way line of Shillington Drive, same being the most northwesterly northeast corner of the herein described tract;

Thence, S 44°59'50" E, with the south right-of-way line of Kingsland Boulevard, a distance of 14.58 feet to the POINT OF BEGINNING and containing 0.8205 acres of land, (35,742 square feet), more or less.

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

Section 302 Certification

I, Stephen R. Clarke, certify that:

- 1) I have reviewed this quarterly report on Form 10-Q of Aqua Metals, Inc.;
- 2) Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fiscal quarter presented in this report that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial data information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 10, 2015

By: /s/ Stephen R. Clarke
Stephen R. Clarke, President and Chief Executive Officer

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

Section 302 Certification

I, Thomas Murphy, certify that:

- 1) I have reviewed this quarterly report on Form 10-Q of Aqua Metals, Inc.;
- 2) Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fiscal quarter presented in this report that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial data information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 10, 2015

By: /s/ Thomas Murphy
Thomas Murphy, Chief Financial Officer

CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Aqua Metals, Inc. (the "Company") on Form 10-Q for the quarterly period ended September 30, 2015, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Stephen R. Clarke, President and Chief Executive Officer, and Thomas Murphy, Chief Financial Officer, of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

By: /s/ Stephen R. Clarke Dated: November 10, 2015
Stephen R. Clarke
Title: President and Chief Executive Officer

By: /s/ Thomas Murphy Dated: November 10, 2015
Thomas Murphy
Title: Chief Financial Officer

This certification is made solely for the purposes of 18 U.S.C. Section 1350, subject to the knowledge standard contained therein, and not for any other purpose.
