

HABERSHAM COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Facility Usage Agreement – Old Clarkesville Mill Gymnastics Facility

DATE: June 11th, 2021

(X) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL- \$45,564

() OTHER

CAPITAL-

COMMISSION ACTION REQUESTED ON: June 21st, 2021

PURPOSE: To renew the lease agreement with RES International, LLC located at Old Clarkesville Mill, for gymnastics programs offered to citizens in and around Habersham County.

BACKGROUND / HISTORY: Habersham County entered into a lease agreement with RES International in December of 2013 for 11,330 square feet (Suite C) of space for gymnastics. In 2016, Habersham County renewed its lease with RES International to include an additional 5,000 square feet into C-2, which adjoins Suite C, to expanded training in the program. Throughout the calendar year, Habersham County Gymnastics offers nine (9) class session dates which each range from 4 – 6 weeks each; a team gymnastics program which trains and competes in local, state and national meets; a newly formed competition cheerleading program which trains and competes in Statewide events; along with an 8-week full-day summer fun camp and weeklong spring and Christmas break camp.

FACTS AND ISSUES:

- A. **Revenues:** Expected annual revenues of \$175,000 are to be collected at this site through programs offered by the gymnastics program.
 - B. **Rent:** Rent for year one will be \$45,564.
 - C. **Annual Adjustment:** Each consecutive year a 1.5% adjustment will be made to the current base rent as requested by RES International LLC.
 - D. **Lease Agreement:** The agreement shall be five years, annually renewable.
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OPTIONS:

- 1) Approve recommendation to enter into lease agreement with RES International, five years annually renewable, to offer gymnastics programs and camps.
 - 2) Deny recommendation to enter into lease agreement with RES International, five years annually renewable, to offer gymnastics programs and camps.
 - 3) Commission defined alternative
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RECOMMENDED SAMPLE MOTION:

Approve recommendation to enter into lease agreement with RES International, five years annually renewable, to offer gymnastics programs and camps.

DEPARTMENT:

Prepared by: Kurt Cooper

Director: Kurt Cooper _____

ADMINISTRATIVE

COMMENTS: _____

_____ **DATE:** _____

County Manager

COMMERCIAL LEASE

THIS LEASE is made as of the ____ day of _____, 2021, by and between **RES International LLC**, a Georgia limited liability company, (hereinafter called "Landlord"), **Habersham County Parks & Recreation Department**, a Habersham County Government Agency (hereinafter called "Tenant").

IN CONSIDERATION of the rents, covenants and agreements herein provided to be performed by Tenant, Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, that certain premises consisting of a retail space, being shown as **Suites C & C-2** on the cross hatched area on the attached **Exhibit A** (hereinafter referred to as the "Premises" or "Leased Premises") in the Old Clarkesville Mill Complex (the "Complex") located at 583 Grant Street, Clarkesville, Habersham County, Georgia, for the term and upon the conditions and agreements herein set forth, and Landlord and Tenant hereby agree as follows:

DEFINITION OF CERTAIN TERMS

For the purposes of this Lease, the following terms shall have the meanings and definitions as stated below:

"Commencement Date" means July / 1st / 2021

"Termination Date" means: 5 years from (i) the Commencement Date if the Commencement Date is the first day of a calendar month, or (ii) the first day of the month following the Commencement Date if the Commencement Date is any day other than the first day of a calendar month.

"Base Rent" shall mean \$3,797 per month for the first lease year and any periodic adjustments of base rent thereafter as in section 3.01.1 below.

"Security Deposit" is: \$ 3,750 has been paid under an earlier executed lease by these parties involved.

"Permitted Use" means: Community Center.

"Guarantor" N/A

ARTICLE I TERM

1.01 COMMENCEMENT AND EXPIRATION DATES OF TERM. The term of this Lease (hereinafter sometimes referred to as the "Lease Term") and Tenant's obligation to pay rent and other charges hereunder shall commence on the Commencement Date and shall end, unless sooner terminated in accordance with the provisions hereinafter contained, on the Termination Date. Tenant shall have the option to provide written notice to the landlord of tenant's intention not to continue with their lease 90 days prior to each anniversary date of their original lease commencement date in order to vacate the leased premises on the day before tenant's upcoming anniversary date.

1.02 LEASE YEAR. The first "Lease Year" shall mean the period from the Commencement Date through the day before the anniversary of the Commencement Date. Each successive Lease Year shall be each 12 consecutive full calendar months following the first Lease Year.

1.03 RENEWAL TERM(S). Provided that Tenant has been and remains in compliance with all of its obligations under this Lease, this Lease shall automatically extend for five consecutive successive period of 1 years (herein referred to as the "Renewal Term"). All the Renewal Terms shall begin at the anniversary of the initial Lease start date upon the same terms and conditions as set forth in this Lease, except that the rent shall be increased as provided in this Lease. It shall not be necessary for the parties to execute an extension agreement or other agreement extending the term of the Lease. In the event the Tenant desires not to renew this Lease for any Renewal Term, Tenant

shall give Landlord written notice of election to terminate this Lease no later than Ninety (90) days prior to the expiration of the initial Lease Term or First Renewal Term (as the case may be) and shall vacate the Leased Premises on the Termination Date. If Tenant fails to provide such written notice to Landlord, Tenant shall be deemed to have automatically extended the term of this Lease for the Renewal Term. Furthermore, if Tenant defaults under any of its obligations under this Lease, Landlord shall not be obligated to honor the Renewal Term.

ARTICLE II COMMON AREAS

2.01 USE OF COMMON AREAS. The use and occupancy by Tenant of the Premises shall include the nonexclusive license of Tenant and its customers, employees and invitees during the term of this Lease to use the common areas (being the entrances, driveways, parking areas, service roads, and sidewalks) of the Complex as they from time to time exist and are designated by Landlord as common areas incident to Tenant's business and subject to the reservations and terms of this Lease.

2.02 REARRANGEMENT AND MAINTENANCE OF COMMON AREAS.

(a) Landlord has the right, at any time and from time to time, to reconstruct, renovate and rearrange the common areas; to install pavement, curbs, gutters and signs in the common areas; to allow or cause the construction of buildings or other structures in the common areas; and to grant easements, access and parking rights in the common areas; and to withdraw parts of the Complex as common areas, all without obtaining any consent or approval by Tenant.

(b) Without limiting the foregoing, Landlord also may temporarily close any portion of the common areas to construct, renovate or rearrange buildings, structures or other improvements in the Complex or upon contiguous property, to make repairs or alterations in the common areas or to prevent the public or third parties from obtaining prescriptive rights in or to the common areas, or for security reasons. Landlord may perform such other acts (whether similar or dissimilar to the foregoing) in, to, and with respect to, the common areas which Landlord shall determine to be appropriate for the Complex. Landlord may designate parts of the common areas for employee parking or as reserved for the exclusive use of particular tenants.

(c) In the event the common areas are rearranged or modified, the common areas, as defined in this Lease, shall be deemed to mean the reconstructed or modified common areas.

ARTICLE III RENT AND CERTAIN OTHER PAYMENTS

3.01 RENT. Tenant agrees to pay Base Rent to Landlord monthly during the term hereof at Landlord's office or to such other person or to such other place as directed from time to time by written notice to Tenant from Landlord. Base Rent payments are due and payable in advance on the Commencement Date and thereafter during the Lease Term or before the first (1st) day of each calendar month, without notice or demand. Base Rent and other charges due from Tenant hereunder shall be paid without offset or deduction of any kind or for any reason, it being agreed that the covenant to pay Base Rent and other charges is independent of any other covenant herein contained, and any offset or deduction asserted by Tenant may only be enforced by a separate action by Tenant and not by way of counterclaim in an action for rent or eviction.

3.01.1 PERIODIC ADJUSTMENT OF BASE RENT. Commencing with the second Lease Year of the initial term and continuing each Lease Year thereafter for the entire Lease Term and any Renewal Terms, the total Base Rent shall increase by One & One-half (1&1/2%) percent over the Base Rent in effect during the immediately preceding Lease Year.

3.02 TAX AND INSURANCE PAYMENTS; CAM CHARGES. [Intentionally Omitted].

3.03 LATE CHARGES. If any installment of Base Rent or other charges due from Tenant hereunder is not received by Landlord within five (5) days of the date when due, Landlord may, at its sole option, impose a late charge of ten percent (10%) of the delinquent payment to cover the cost of handling late payments. Collection or acceptance by Landlord of such late charge shall not constitute a waiver of any rights or remedies of Landlord provided herein.

3.04 SECURITY DEPOSIT. Tenant has deposited with Landlord as a security deposit the sum as set forth in the Definitions Section of this Lease which deposit may be commingled with other funds of Landlord. Upon any breach of the obligations of the Tenant under this Lease, Landlord may use or expend the Security Deposit or any portion thereof to pay or satisfy any of the Tenant's obligations or cure any

default of the Tenant or to reimburse Landlord for funds expended for such purposes. If Landlord uses any of the Security Deposit for such purposes, Tenant shall promptly upon demand deposit additional funds with Landlord to restore the funds remaining in Landlord's possession as a Security Deposit to the initial amount. Upon the expiration of the Lease Term, the Landlord shall return the Security Deposit or remaining balance within a reasonable time. Prior to returning the Security Deposit, Landlord may inspect the Premises to ensure that they are returned to the Landlord in the condition as required by this Lease.

ARTICLE IV USE OF PREMISES

4.01 USE REQUIRED. Tenant shall use and occupy the Premises only for the purpose of operating the Permitted Use in the Leased Premises. During the Lease Term, Tenant shall continuously use and occupy the Premises and shall not vacate or abandon its Premises. Tenant agrees to maintain business hours in keeping with similar stores or businesses in the community where the Complex is located.

4.02 USES PROHIBITED. Without limiting the foregoing, neither Tenant nor any assignee, subtenant or other occupant under Tenant may use the Premises for any purpose other than the Permitted Use without the express prior written consent of Landlord (which may be granted or withheld in Landlord's sole and absolute discretion), nor shall the Premises be used in such a manner so as to operate or create a nuisance or trespass nor to violate any restrictive covenants affecting the Premises or to interfere with or infringe on the rights or exclusive uses granted to or possessed by other tenants in the Complex; nor in violation of any law, ordinance, regulation, court order or governmental directives; nor for the storage, sale or display of any obscene, erotic or pornographic materials.

ARTICLE V

CONSTRUCTION, ALTERATION, AND MAINTENANCE OF THE PREMISES; RELOCATION

5.01 ALTERATIONS BY TENANT. Tenant shall not alter the exterior of the Premises, including the storefront and/or signs. All construction work done by Tenant within the Premises shall be performed in a good and workmanlike manner, in compliance with all building and safety codes and other governmental requirements, and at such times and in such manner as will cause a minimum of interference with other construction in progress and with the transaction of business in the Complex. Whenever Tenant proposes to do any construction work within the Premises, Tenant shall first furnish to Landlord plans and specifications in such detail as Landlord may reasonably request covering such work. Such plans and specifications shall comply with such requirements as Landlord may from time to time prescribe for construction within the Complex. In no event shall any construction work be commenced or continue within the Premises without Landlord's written approval of such plans and specifications. Tenant agrees that any alterations made by it shall immediately become the property of Landlord and shall remain upon the Premises, unless Landlord shall require the restoration of the Premises to their original condition, in which event Tenant agrees to comply with such requirements prior to the expiration or other termination of this Lease. Tenant shall not, except for installation of fixtures, cut or drill into or secure any fixture, apparatus or equipment of any kind to any part of the Premises without first obtaining Landlord's written consent. Tenant has no right or power to subject the estate or title of Landlord to any mechanic's or materialman's lien, and Tenant agrees to indemnify Landlord against, and keep the Premises and Complex free from, all mechanics' liens or other such liens arising from any work performed, material furnished or obligations incurred by Tenant in connection with the Premises or the Complex. In the event mechanics' liens or other such liens incurred by Tenant are not promptly removed, canceled or bonded, Landlord reserves the right to pay for the removal of such liens. Tenant shall reimburse Landlord the actual costs incurred by Landlord, including attorneys' fees, to remove such liens and such costs shall become additional Rent owed to Landlord, the nonpayment of which, shall constitute a Default under this lease.

5.02 REPAIRS BY LANDLORD. Landlord agrees to keep in good order and repair all fixtures serving the Premises pertaining to the heating, air conditioning, ventilation system ("HVAC"), water, sewer, electrical and sprinkler systems (if any), roof and exterior walls (exclusive of all glass and plate glass) of the Premises. Landlord shall not be liable to Tenant for any interruption of Tenant's business or inconvenience caused to Tenant or Tenant's customers, employees or other licensees or invitees in the Premises on account of Landlord's performance of any repair, maintenance, or replacement of the aforesaid so long as such work is being conducted by Landlord without gross negligence or gross disregard for Tenant's business operations. Except as otherwise provided herein, Landlord gives to Tenant exclusive control of the Premises and shall be under no obligation to inspect said Premises. Tenant shall at once report in writing to Landlord any defective condition known to it which Landlord is required to repair, and failure to so report such defects shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such defect.

5.03 REPAIRS BY TENANT. Tenant shall, at its own cost and expense, keep, maintain and repair the Premises and appurtenances thereto and every part thereof in good order and repair, except portions of the Premises to be repaired by Landlord pursuant to Section 5.02 hereof. Tenant's repair responsibilities include the obligation to perform all maintenance and repair other than as expressly stated in

Section 5.02 or in this Section 5.03. Tenant agrees also to keep all interior walls and structures in good order and repair, and Tenant shall be liable for any and all damages due to the acts, omissions or negligence of Tenant, its employees, agents, contractors, invitees and visitors. Tenant agrees to return the Premises to Landlord at the expiration or sooner termination of this Lease in as good condition and repair as when first received, reasonable wear and tear and damage by fire or other casualty excepted. All damage or injury to the Premises or the building or the common areas caused by the act or negligence of Tenant, its agents, employees, contractors, licensees, invitees or visitors shall be promptly repaired by Tenant, at its sole cost and expense and to the satisfaction of Landlord. Landlord may make such repairs which are not promptly made by Tenant and charge Tenant for the cost thereof, and Tenant hereby agrees to pay such amounts on demand as additional rent hereunder. Tenant shall have no right to make repairs at the expense of Landlord nor to deduct the cost thereof from the rent due hereunder.

5.04 **RUBBISH REMOVAL.** Tenant shall keep the Premises clean, both inside and outside, at its own expense, and will remove or have removed all refuse from the Premises. Tenant shall not burn any materials or rubbish of any description upon the Premises. Landlord reserves the right to employ rubbish removal service for the Complex, and Tenant agrees to pay the costs of said service attributable to Tenant's Premises.

5.05 **SIGNS AND DISPLAYS.** Tenant shall not place or suffer to be placed and maintained on the exterior of the Premises any sign, awning, advertising matter or other thing of any kind, and will not place or maintain any decorating, lettering or advertising matter on the glass of any window or door of the Premises without first obtaining Landlord's written approval thereof. Landlord shall have the right to relocate or remove such sign at any time and to relocate Tenant's sign location on the pylon sign.

ARTICLE VI DAMAGE OR DESTRUCTION

6.01 **DESTRUCTION OF PREMISES.** If at least fifty percent (50%) of the rental area of the Premises is destroyed or rendered untenantable by any casualty, then Landlord may either elect to terminate this Lease (rent being adjusted as of the date of such termination) or to proceed to rebuild and repair the Premises. Landlord shall give written notice to Tenant of such election within ninety (90) days after the occurrence of such casualty. Should Landlord elect to rebuild and repair the Premises, Base Rent shall abate by the same proportion as the floor area of the Premises destroyed or rendered untenantable bears to the entire floor area of the Premises, and Landlord shall rebuild and repair as expeditiously as reasonably practical. Landlord's obligation to rebuild and repair the Premises is limited to restoring the Premises to substantially the condition in which the same existed prior to the casualty (excepting any Tenant finishes which are not part of Landlord's Work), and any obligation of Landlord's to rebuild and repair is hereby expressly conditioned upon the receipt by Landlord of insurance proceeds for such purposes. Full rent shall recommence when the Premises is rebuilt and repaired.

6.02 **DESTRUCTION OF COMPLEX.** If at least fifty percent (50%) of the gross rental area of Complex is destroyed or substantially damaged by any casualty, notwithstanding that the Premises may be unaffected by such casualty, Landlord may terminate this Lease by giving to Tenant thirty (30) days' prior written notice of Landlord's election so to do, which notice shall be given, if at all, within one year following the date of said occurrence. Rent and other charges shall be adjusted as of the date of such termination.

ARTICLE VII EMINENT DOMAIN

7.01 **TOTAL TAKING / RENT ABATEMENT.** If the whole of the Premises is taken under the power of eminent domain (such term as used herein includes deed in lieu of condemnation), then this Lease shall terminate on the date Tenant is required to yield possession thereof to the condemning or acquiring authority. If the Premises or any portion thereof is taken for a temporary period under eminent domain, then Base Rent shall abate as to the part so taken during the period during which Tenant is deprived of possession of the portion condemned, but this Lease shall otherwise remain in full force.

7.02 **PARTIAL TAKING.** If any portion of the Premises or a material portion of the Complex is taken under eminent domain, then Landlord at its option may terminate this Lease as of the date possession is required to be surrendered to the condemning or acquiring authority by giving Tenant written notice of termination. If more than twenty-five percent (25%) of the floor area of the Premises is taken under eminent domain (except for temporary takings), then Tenant at Tenant's option may terminate this Lease as of the date of surrender of possession by giving Landlord written notice of termination. If any portion of the Premises is taken under eminent domain and this Lease is not cancelled, Base Rent shall be reduced by the same proportion as the floor area of the Premises which is taken bears to the entire floor area of the Premises. Except as provided in this Section 7.02 and as provided for a total taking in Section 7.01 hereinabove, there shall be no termination of this Lease nor reduction of rent or payments due Landlord hereunder due to condemnation or the exercise of the power of eminent domain.

7.03 AWARD. Tenant shall have no right to any award or compensation in connection with any exercise of the power of eminent domain, except that Tenant may separately claim and receive awards for moving expenses, removal of trade fixtures, or damage to Tenant's business if the same are allowed by law.

ARTICLE VIII UTILITIES

Tenant shall pay the cost of water, gas, electricity, fuel, light, heat, power and all other utilities furnished to the Premises or used by Tenant in connection therewith. If any utilities are not separately metered, Landlord will determine Tenant's pro rata share of utility costs using any reasonable method of proration, and Tenant will promptly pay Landlord for prorated utilities upon receipt of a statement therefor. In no event shall Landlord be liable for any interruption or failure in the supply of any such utilities to the Premises.

ARTICLE IX PERSONAL PROPERTY TAXES

Tenant shall pay prior to delinquency all taxes assessed against or levied upon fixtures, furnishings, equipment and all other personal property of Tenant located in the Premises. In the event any or all of Tenant's fixtures, furnishings, equipment or other personal property shall be assessed with said real property, Tenant shall pay to Landlord its share of such taxes attributable to said personal property within ten (10) days after delivery to Tenant of Landlord's statement setting forth the amount of such taxes applicable to Tenant's personal property.

ARTICLE X INSURANCE & INDEMNITY

10.01 TENANT'S INSURANCE. Tenant agrees, at Tenant's expense, that it will procure and maintain in effect during the entire Lease Term and any extensions or renewals the following insurance coverages: (a) commercial general liability insurance on an occurrence basis with reasonable limits of coverage as determined by Landlord from time to time commensurate with the indemnifications provided herein naming Landlord as an additional insured; (b) cause of loss-special form (formerly "all risk") property insurance covering 100% of the replacement cost of all of Tenant's personal property, fixtures and leasehold improvements; and (c) any other insurance Landlord or Landlord's mortgagee may require from time to time. On or before the Commencement Date, Tenant shall furnish Landlord with a certified copy of such insurance policies with evidence of premium payment, and shall similarly furnish such copy and evidence of payment within thirty (30) days of any renewal of such policy. The failure of Tenant either to procure said insurance as required herein or to pay the premiums therefor or to deliver said policies or certificates or duplicates thereof to Landlord shall permit Landlord to procure said insurance and pay the requisite premiums therefor, which premiums shall be repayable to Landlord with the next installment of rent.

10.02 INSURANCE CRITERIA. All of Tenant's insurance policies shall (i) provide that the insurance may not be canceled or materially changed in the scope or amount of coverage unless thirty (30) days' advance notice is given to Landlord and Landlord's mortgagee; (ii) have deductibles not greater than \$3,000; (iii) be maintained during the entire Lease Term and any extensions or renewals; and (iv) contain the waiver of subrogation as herein provided.

10.03 INCREASE IN LANDLORD'S INSURANCE PREMIUM. Tenant agrees it will not keep or use in or upon the Premises any article which may be prohibited by the property insurance policy of the Complex. If Tenant's occupancy causes any increase of premium for any insurance policy on the Premises or the Complex or any part thereof above the rate for the least hazardous type of occupancy legally permitted in the Premises, Tenant shall pay the additional premium on such insurance policies by reason thereof.

10.04 INDEMNIFICATION. Tenant hereby agrees to indemnify and hold harmless Landlord and Landlord's members, managers, officers, directors, employees, agents, successors and assigns (collectively, "Landlord Parties") from all claims, actions, judgments, suits, losses, fines, penalties, demands, costs and expenses and liability whatsoever, including reasonable attorneys' fees, expert fees and court costs ("Indemnified Claims") on account of (i) any damage or liability occasioned in whole or in part by any use or occupancy of the Premises or by any act or omission of Tenant or any of Tenant's agents, employees, subtenants, assignees, licensees, contractors or invitees (collectively, "Tenant Parties"), (ii) the use of the Premises and common areas and conduct of Tenant's business by Tenant or any Tenant Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any Tenant Parties, in or about the Premises or elsewhere on the Complex; and/or (iii) any default by Tenant of any obligations on Tenant's part to be performed under the terms of this Lease. In case any action or proceeding is brought against Landlord or any Landlord Parties by reason of any such Indemnified Claims, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel approved in writing by Landlord, which approval shall not be unreasonably withheld. Tenant shall not be liable for damage or injury

occasioned by the gross negligence or willful acts of Landlord or its agents, contractors, servants or employees unless such damage or injury arises from perils against which Tenant is required by this Lease to insure and then only to the extent of such insurance. Tenant's indemnification obligation under this Section 10.04 shall survive the expiration or earlier termination of this Lease. Tenant's covenants, agreements and indemnification in this Article X are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease.

10.05 RELEASE OF CLAIMS AND WAIVER OF SUBROGATION. Tenant waives any right of recovery against Landlord or any of the Landlord Parties and releases all claims arising in any manner in its favor and against Landlord or any Landlord Parties for any loss or damage to the Tenant's property located within the Complex. Tenant further agrees to have its insurers waive any rights of subrogation that such insurers may have against Landlord. This waiver and release applies to the extent the loss or damage is covered by: (i) the Tenant's insurance; or (ii) the insurance the Tenant is required to carry under this Lease, whichever is greater.

ARTICLE XI DEFAULT AND REMEDIES.

11.01 DEFAULT. The occurrence of any of the following events or omissions shall be a default by Tenant under this Lease:

- (a) If any installment of monthly rent or any other charge or payment due to Landlord pursuant to the terms hereof is not paid to Landlord within five (5) days after same becomes due.
- (b) Tenant shall fail to maintain any of the insurance policies which Tenant is required to maintain pursuant to the terms of this Lease.
- (c) Tenant shall fail to comply with any term, provision, covenant or warranty made under this Lease by Tenant, other than as described in subparagraphs (a) and (b) above, and shall not cure such failure within fifteen (15) days after notice thereof to Tenant.
- (d) Tenant or any Guarantor of this Lease shall become insolvent, or make an assignment for the benefit of creditors.
- (e) Tenant or any Guarantor of this Lease shall file a petition under the Federal Bankruptcy laws, or under any similar law, or there shall be filed against Tenant or any Guarantor of this Lease a petition in bankruptcy, reorganization or insolvency or a similar proceeding, or a receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Tenant.
- (f) Tenant shall abandon or vacate the Premises or fail to take possession thereof as provided in this Lease.
- (g) Tenant shall assign this Lease or sublet the Premises without Landlord's prior written consent.

11.02 LANDLORD'S RIGHTS ON DEFAULT. Upon the occurrence of any of the aforesaid events of default, or upon the occurrence of any other default by Tenant under this Lease, Landlord shall have the option to pursue any one or more of the following remedies:

- (a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearage in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor, Tenant hereby agreeing to pay to Landlord on demand all loss and damage which Landlord may suffer by reason of termination, whether through inability to re-let the Premises on satisfactory terms or otherwise.
- (b) Enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force, if necessary, without being liable for prosecution of any claim for damages therefor, and if Landlord so elects, re-let the Premises on such terms as Landlord may deem advisable and receive the rent therefor, Tenant hereby agreeing to pay to Landlord on demand any deficiency between the rent hereunder and the avails of such re-letting.
- (c) Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim of damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for any expenses, including, without limitation, reasonable attorneys' fees, which Landlord may incur in thus effecting compliance with Tenant's

obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant for such action, whether caused by the negligence of Landlord or otherwise.

11.03 **GENERAL.** Pursuit by Landlord of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided or any other remedy provided by law or at equity, nor shall pursuit by Landlord of any remedy herein provided (including termination) constitute (a) an election of remedies thereby excluding the later election of an alternate remedy, or (b) waiver of any rent, or other charges and assessments payable by Tenant to Landlord hereunder (including rent and other charges thereafter coming due for the remainder of the scheduled term of this Lease) or of any damages accruing to Landlord by reason of the violation of any of the terms, covenants, warranties and provisions herein contained. No action taken by or on behalf of Landlord shall be construed to be an acceptance of a surrender of this Lease. Forbearance by Landlord to declare a default or enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. In determining the amount of loss or damage which Landlord may suffer by reason of termination of this Lease or the deficiency arising by reason of any re-letting of the Premises by Landlord as above provided, allowance shall be made for expense of repossession and any repairs or remodeling undertaken by Landlord following repossession, together with brokerage fees, if any. Tenant agrees to pay to Landlord all costs and expenses incurred by Landlord in the enforcement of this Lease.

ARTICLE XII ASSIGNMENT AND SUBLETTING

Tenant shall not, either voluntarily or by operation of law, sell, assign, hypothecate or transfer this Lease, or sublet the Premises or any part thereof, or permit the Premises or any part thereof to be used for any purpose which would violate Article IV above, without the prior written consent of Landlord in each instance. Any sale, assignment, mortgage, transfer or subletting of this Lease or the Premises or any part hereof or thereof by Tenant which is not in compliance with the provisions of this Article shall be void and shall, at the option of Landlord, terminate this Lease. The consent by Landlord to an assignment or subletting shall not be construed as relieving Tenant from obtaining the express written consent of Landlord to any further assignment or subletting or as releasing Tenant from any liability or obligation hereunder, whether or not then accrued. If Tenant is a corporation, partnership, limited liability company or other artificial entity, the sale of fifty percent (50%) or more of the ownership interests of Tenant in one or more transactions shall be deemed an assignment of this Lease and require the consent of Landlord.

ARTICLE XIII SUBORDINATION AND ESTOPPELS

13.01 **SUBORDINATION.** This Lease and Tenant's rights hereunder are and shall be subordinate to any security deed or mortgage now or hereafter encumbering the Complex or any part thereof and any modification, extension or renewal thereof. The foregoing shall be self-executing and no further instrument of subordination shall be required. However, upon request of Landlord, Tenant shall promptly execute and deliver, in recordable form, such instruments or certificates as may be required by Landlord to confirm such subordination. If any mortgagee of the Complex or any part thereof elects to have this Lease superior to its mortgage and signifies its election in writing in the instrument creating its lien or by separate instrument, then this Lease shall be superior to such mortgage. The term "mortgage" as used herein, includes a deed to secure debt, deed of trust, security deed or other security instrument, and the term "mortgagee" includes the holder of the indebtedness secured by a mortgage. Tenant, within ten (10) days of any request therefor, shall execute and deliver to any mortgagee an agreement, satisfactory in form to said mortgagee, which provides in pertinent part that in the event any proceedings are brought for the foreclosure or exercise of power of sale under any mortgage on the Complex or any part thereof, or in the event of transfer of title by deed in lieu of foreclosure to any mortgagee or its designee, Tenant, at the election and request of the mortgagee or the designee thereof, shall attorn to the mortgagee purchaser at foreclosure or to the designee of any mortgagee who obtains title to the Complex.

13.02 **ESTOPPEL CERTIFICATES.** Tenant shall, at any time and from time to time, upon not less than ten (10) days' prior written notice by Landlord, execute, acknowledge and deliver to Landlord or its designee a statement in writing certifying the status of the Lease. Any such statement delivered pursuant hereto may be relied upon by any owner of the Complex, by any prospective purchaser of the Complex, any mortgagee or prospective mortgagee of the Complex or of Landlord's interest or any prospective assignee of such mortgage.

ARTICLE XIV ACCESS BY LANDLORD

Landlord and its agents shall have the right to enter the Premises at all reasonable times for the purpose of examining or inspecting the same, showing the same to prospective purchasers or tenants of the Complex, and making such alterations, repairs, improvements or additions to the Premises or the building of which they are a part as Landlord may deem necessary or desirable, whether

or not required of Landlord hereunder. During the last three (3) months of the term hereof, Landlord shall have the right to place upon the Premises the notices "To Let" or "For Sale", or any variation thereof, which notices Tenant shall not remove or molest.

ARTICLE XV SURRENDER OF PREMISES

At the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord broom clean, free of debris, in good order, and in the same condition as when tendered by Landlord, reasonable wear and tear excepted. If not then in default, Tenant shall have the right to remove any equipment, furniture, trade fixtures or other personal property placed in the Premises by Tenant, provided that Tenant promptly repairs any damage to the Premises caused by such removal, and provided further that such property is removed from the Premises no later than the expiration or termination of this Lease. Any such property not removed prior to the expiration or termination of this Lease shall, at the option of Landlord, be deemed abandoned by Tenant, and Landlord may thereafter remove, retain, sell or otherwise dispose of same at any time thereafter and charge Tenant for the reasonable cost of removing and storing such property.

ARTICLE XVI NOTICES

Any notice required or permitted to be given hereunder to any party to this Lease shall be in writing, signed by or on behalf of the party giving the notice or demand (or by its attorney or agent), and may be given by personal delivery (which includes delivery by commercial courier or overnight service) or by certified mail, postage prepaid, return receipt requested, addressed to the party notified at the address noted by the signature hereto of the respective parties. Any notice which is delivered by overnight mail shall be deemed effectively given and received on the next business day after the date the notice is sent to the address of the party notified and any notice which is mailed shall be deemed given and received three (3) business days after the notice is mailed. Either party may, by notice to the other, specify a different address for notice purposes. Upon Tenant's occupancy of the Premises, either the Premises or the address stated below shall constitute Tenant's address for notice purposes, and a notice to either address shall be a valid and effective notice.

ARTICLE XVII ANTI-TERRORISM AND MONEY LAUNDERING REPRESENTATION AND INDEMNIFICATION.

Tenant certifies that: (i) neither it nor its officers, directors or controlling owners is acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order, the United States Department of Justice, or the United States Treasury Department as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control ("SDN"); (ii) neither it nor its officers, directors or controlling owners is engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation; and (iii) neither it nor its officers, directors or controlling owners is in violation of Presidential Executive Order 13224, the USA Patriot Act, the Bank Secrecy Act, the Money Laundering Control Act or any regulations promulgated pursuant thereto. Tenant hereby agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorneys fees and costs) arising from or related to any breach of the foregoing certification. This indemnification shall survive the expiration or termination of this Lease. Should Tenant, during the term of this Lease, be designated an SDN, Landlord may, at its sole option, terminate this Lease.

ARTICLE XVIII INABILITY TO PERFORM

This Lease and the obligations of Tenant hereunder shall not be affected or impaired because Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike or other labor troubles, civil commotion, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material, permit, service or financing, Acts of God or by any other cause beyond the control of Landlord.

ARTICLE XIX HAZARDOUS SUBSTANCES

19.01 DEFINITIONS. The term "Hazardous Substances," means any hazardous, toxic or polluting substance, including, without limitation, flammables, explosives, radioactive materials, asbestos, chemicals known to cause cancer, and substances declared to be hazardous or toxic under any Environmental Law. "Environmental Law" shall mean any federal, state or local law, ordinance, rule, regulation or ruling now or hereafter enacted or established by any Authority relating to environmental protection, or to the storage, transportation, use or disposal of Hazardous Substances. "Authority" shall mean the U. S. Government, the state government in which the

Premises are located and all departments, bureaus, agencies, authorities and other governmental entities having the right or obligation to enforce any Environmental Law.

19.02 RESTRICTION ON HAZARDOUS SUBSTANCES. Tenant shall not cause or permit any violation of any Environmental Law on, under, or about the Premises, or arising from Tenant's use or occupancy of the Premises, nor shall Tenant cause or permit the use, generation, release, manufacture, production, processing, storage, or disposal of any Hazardous Substance in, on, under, or about the Premises, or the transportation to or from the Premises of any Hazardous Substance, except ordinary products sold or used in the normal course of business by retail establishments permitted by this Lease and in conformance with Environmental Law.

19.03 CLEANUP. Should any Authority require that a cleanup be undertaken because of any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the term of this Lease, or any extension or renewal hereof, at or from the Premises, or which arises at any time from Tenant's use or occupancy of the Premises, then Tenant shall prepare and submit to Landlord the required plans and all related bonds and other financial assurances; and Tenant shall carry out all such cleanup plans at its sole cost and expense. Tenant shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Substances that is requested by Landlord. If Tenant fails to fulfill any duty imposed under this paragraph within a reasonable time, Landlord may do so, and in such case, Tenant shall cooperate with Landlord in order to prepare all documents which Landlord deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises and Tenant's use thereof, and for compliance therewith, and Tenant shall execute all documents promptly upon Landlord's request. No such action by Landlord and no attempt made by Landlord to mitigate damages under any Environmental Law shall constitute a waiver of any of Tenant's obligations under this Paragraph 19.03.

19.04 INDEMNITY. Tenant shall indemnify, defend, and hold the Landlord and Landlord Parties harmless from all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including reasonable attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Premises, or which arises from Tenant's use or occupancy of the Premises, or from Tenant's failure to comply with any Environmental Law, unless due to Landlord's negligence. Tenant's obligations under this Article shall survive the expiration or termination of this Lease.

ARTICLE XX MISCELLANEOUS

20.01 ATTORNEYS' FEES. Tenant shall pay reasonable attorneys' fees of Landlord in the event Landlord is required to use the services of an attorney to collect rent or for the enforcement against Tenant of any of the terms, covenants or provisions hereof.

20.02 INTEREST ON PAST DUE OBLIGATIONS. Any amount due from Tenant to Landlord hereunder which is not paid when due shall bear interest at the rate equal to the lesser of fifteen percent (15%) per annum or the maximum rate permitted by any applicable usury law, from the due date until paid, but the payment of interest shall not excuse or cure any default by Tenant under this Lease.

20.03 TIME OF ESSENCE. Except as specifically noted herein, time is of the essence with respect to the performance of every provision of this Lease.

20.04 HOLDING OVER. Should Tenant remain in possession of the Premises after the expiration of the term of this Lease or any renewal or extension thereof, without the distinct written agreement of the parties, Tenant shall be and become a tenant-at-sufferance at a Base Rent equivalent to one hundred fifty (150%) percent of the Base Rent due under this Lease immediately prior to the expiration of the term, plus all additional charges due hereunder, and there shall be no renewal of this Lease by operation of law.

20.05 PARTIAL INVALIDITY. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

20.06 EXCULPATION. Landlord's liability for default or breach of this Lease or any judgment against Landlord arising from any such liability or breach may be enforced only against Landlord's interest in the Complex and not against any other property or assets of Landlord.

20.07 DAMAGE OR THEFT OF PERSONAL PROPERTY. All property owned by Tenant or brought onto the Premises by Tenant, Tenant's employees or invitees, shall be at the risk of Tenant or the owner thereof, and Landlord shall not be liable for theft thereof or any damage thereto occasioned from any act of co-tenants, occupants, invitees or other users of the Complex, or any gas, smoke, water, rain,

ice or snow, which issues, leaks or forms from any part of the Complex or from the pipes or plumbing work of the same, or from any other place or quarter whatsoever.

20.08 WAIVER. No waiver by Landlord of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act by Tenant shall not eliminate the necessity of obtaining the Landlord's consent to or approval of any subsequent act. No agreement to accept Tenant's surrender of the Premises shall be valid unless in writing and signed by Landlord.

20.09 QUIET ENJOYMENT. Upon Tenant's paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all of the provisions of this Lease.

20.10 SUCCESSORS AND ASSIGNS. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

20.11 DEFINITIONS AND TERMS. The article and section captions contained in this Lease are for convenience only and do not in any way limit any term or provision. The terms "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular, the neuter shall include the masculine and feminine genders and, if there be more than one tenant, the obligations herein imposed upon Tenant shall be joint and several. The word "including" when used in this Lease shall be deemed to be followed by the words "but not limited to."

20.12 NO ESTATE BY TENANT. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant. No estate shall pass out of Landlord.

20.13 ENTIRE AGREEMENT. This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter, and there is no prior agreement or understanding nor any oral representation, inducement or warranty with regard to this Lease or the transactions herein contemplated. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto.

20.14 RULES AND REGULATIONS. Tenant shall observe faithfully and comply with the Rules and Regulations attached to this Lease or hereinafter established by Landlord and delivered to Tenant. Landlord may amend the rules or make additional rules and regulations from time to time as Landlord deems appropriate for the proper, safe and efficient operation of the Complex, and Tenant will comply with such additions and amendments. Landlord shall not be liable to Tenant for any violation of the Rules and Regulations, or for the breach of any covenant or condition in any lease by any other tenant of the Complex.

20.15 BROKERAGE COMMISSIONS. Landlord shall pay a brokerage commission to Broker pursuant to a separate agreement. Otherwise, each party represents and warrants to the other that they have not engaged or used a broker or finder in connection with the procurement or execution of this Lease. If any party has violated the aforesaid representations, such party shall be responsible for indemnifying the other and paying any brokerage commission so incurred.

20.16 JUDICIAL INTERPRETATION. Should any provision of this Lease require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

20.17 GOVERNING LAW. This Lease is made and intended as a contract under the laws of the State of Georgia and shall be construed and enforced in accordance therewith.

20.18 COUNTERPARTS. This Lease and any subsequent amendments may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument, and may be executed and delivered by facsimile, pdf file or similar electronic means.

20.19 **SPECIAL STIPULATIONS.** The Special Stipulations set forth on **Exhibit D** (if any) are incorporated herein by reference. To the extent of any conflict between the terms and provisions of the Special Stipulations and the terms and provisions of this Lease, the Special Stipulations shall control.

IN WITNESS WHEREOF, Landlord and Tenant, either individually or by their authorized officer, partner or agent have duly signed, sealed and delivered this Lease as of the date above written.

LANDLORD:

RES International , LLC
a Georgia limited liability company

Landlord's Address:
400 Curie Dr
Alpharetta, GA. 30005

By: _____(Seal)
Name: _____
Title: _____

TENANT:

Habersham County Parks & Recreation Department
a Habersham County Government Agency

Tenant's Address:
583 Grant Street, Clarkesville,
Habersham County, Georgia Suite C

By: _____(Seal)
Name: _____
Title: _____

EXHIBIT A

DESCRIPTION OF PREMISES.

(Cross hatch of lease space)

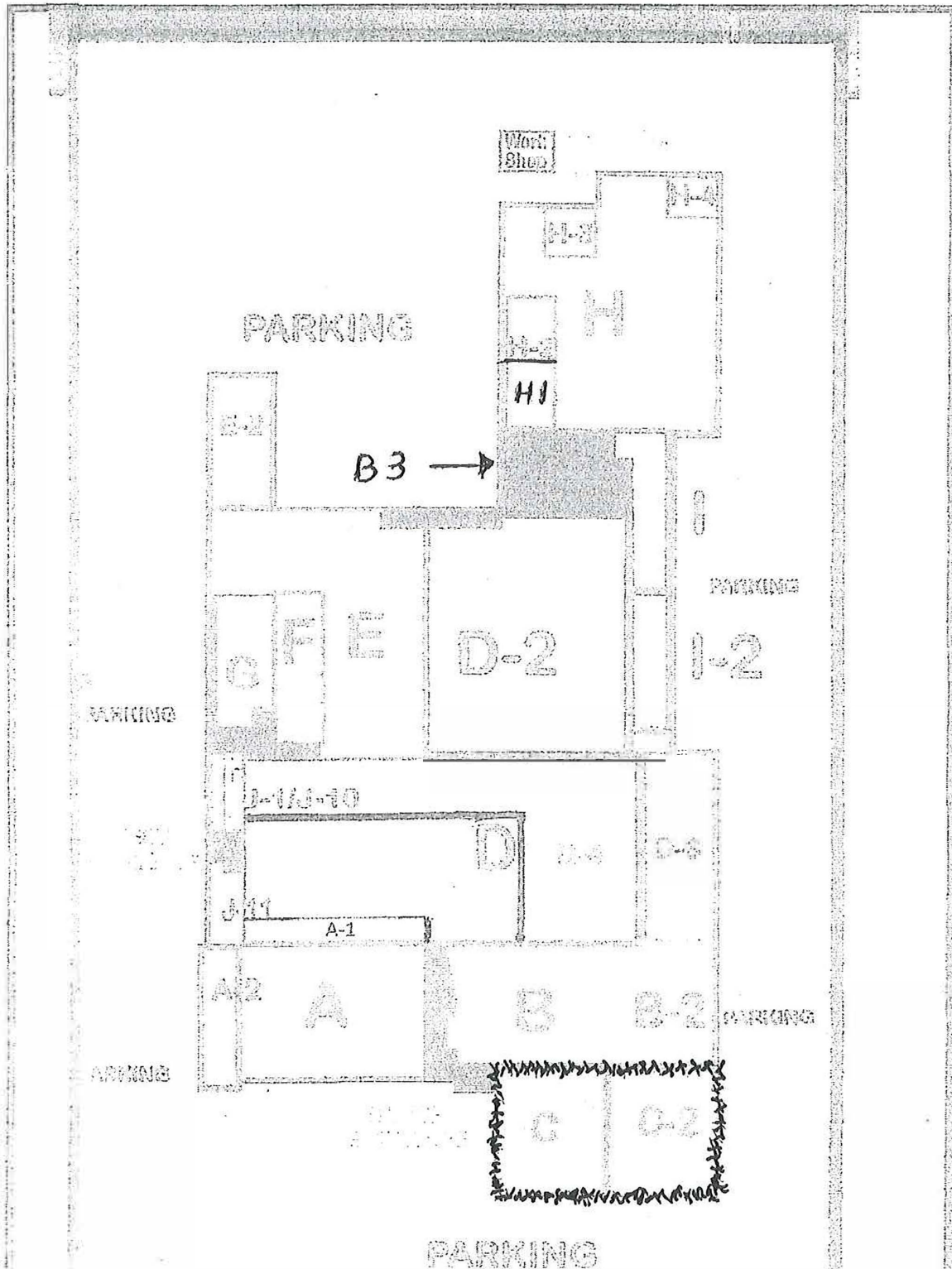


EXHIBIT B
LANDLORD'S WORK

Landlord shall:

EXHIBIT C
LEASE GUARANTY
(the "Guaranty")

The undersigned guarantor(s) (herein whether one or more than one, called "Guarantor"), in consideration of \$10.00 and other valuable consideration, the receipt and sufficiency of which are acknowledged, and of the leasing by **RES INTERNATIONAL, LLC** (herein the "Landlord") to _____ (herein the "Tenant"), of certain premises located in Habersham County, Georgia, being more particularly described in Exhibit "A" attached hereto, pursuant to and as defined in a Complex Lease between Landlord and Tenant dated on or about this date (herein, as now or hereafter amended or modified from time to time, called the "Lease"), which Lease is to the direct interest and advantage of Guarantor, does hereby unconditionally guarantee the payment of all rent and other charges and the performance by the Tenant of all of the obligations of the Tenant under the Lease, including but not limited to the Tenant's indemnities as set forth in the Lease. And the Guarantor further covenants and agrees with Landlord, as follows:

(a) That if an event of default, as defined in said Lease, shall have occurred and be continuing, Guarantor will, on demand, well and truly pay to Landlord any and all payments that will become due to Landlord under the Lease, and will perform or cause to be performed all of the covenants in the Lease to be performed by Tenant and, in addition, will pay all damages that may arise in consequence of such event of default and all costs and reasonable attorneys' fees that may be incurred by Landlord in enforcing Tenant's covenants and agreements set forth in the Lease or in enforcing the covenants and agreements of the Guarantor herein.

(b) That, at Landlord's option, the Guarantor may be brought into any action or proceeding commenced by Landlord against Tenant in connection with and based upon the Lease or any provision thereof, or Landlord may proceed separately against Guarantor, and recovery may be had against Guarantor in any such action or proceeding or in any independent action or proceeding against Guarantor, without any requirement that Landlord, its successors or assigns, first assert, prosecute or exhaust any remedy or claim against Tenant, its successors and assigns.

(c) That in the event of any bankruptcy, reorganization, winding-up or similar proceedings with respect to Tenant, no discharge, modification or limitation of Tenant's liability under the Lease which may now or hereafter be imposed by any federal, state or other law or regulation applicable to such proceedings shall discharge, limit or modify the obligation of Guarantor hereunder, which obligation is co-extensive with Tenant's liability as set forth in the Lease without regard to any such discharge, limitation or modification.

(d) That this Guaranty shall remain in full force and effect as to any renewal, extension, modification or amendment of the Lease and shall guarantee performance and payment under the Lease by any assignee of the interest of the Tenant under the Lease.

(e) That Landlord's interest under this Guaranty may be assigned by it by way of security or otherwise.

(f) Guarantor waives notice of events of default under the Lease and notices or demands given by Landlord to Tenant.

(g) Landlord may, from time to time, without notice to or consent of Guarantor, (i) retain or obtain the primary or secondary liability of any party or parties, in addition to the undersigned, with respect to any of the obligations guaranteed hereby, (ii) extend or renew for any period (whether or not longer than the original period) or alter any of the obligations guaranteed hereby, (iii) release or compromise any liability of the Tenant or any liability of any other party or parties primarily or secondarily liable on any of the obligations guaranteed hereby, and (iv) release, compromise or subordinate its title or security interest, if any, in all or any property now or hereafter securing any of the obligations guaranteed hereby.

(h) The undersigned waives: (i) notice of the existence or creation of all or any of the obligations guaranteed hereby, (ii) notice of any alteration, amendment, increase, extension or exchange of any of the obligations guaranteed hereby or of any events of a nature set out in the preceding or succeeding paragraphs, (iii) notice of any amendment or modification of the Lease, (iv) all diligence in collection or protection of or realization upon the obligations guaranteed hereby or any thereof, any obligation hereunder, or any security therefor, (v) the right to require Landlord to proceed against Tenant on any of the obligations guaranteed hereby, and (vi) any rights Guarantor may have pursuant to O.C.G.A. § 10-7-24.

(i) No delay or failure on the part of Landlord in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Landlord of any right or remedy shall preclude other or future exercise thereof or the exercise of any other right or remedy. No action of Landlord permitted hereunder shall impair or affect this Guaranty.

(j) Guarantor waives any right of subrogation or contribution which Guarantor may have or hereafter obtain as against the Tenant. Without limiting the foregoing, Guarantor subordinates any claim which it may have or obtain against the Tenant and any debt which Guarantor holds or hereafter obtains from Tenant to the indebtedness due Landlord under the Lease and this Guaranty.

(k) This Guaranty has been made and delivered in the state of Georgia and shall be construed and governed under Georgia law.

(l) Wherever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition of invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

(m) If this Guaranty is signed by more than one guarantor, their obligations are joint and several. Masculine pronouns include the feminine and neuter. This Guaranty binds and inures to the benefit of Landlord, Guarantor and their heirs, successors and assigns.

IN WITNESS WHEREOF, the Guarantor(s) has/have signed and sealed this Guaranty the ____ day of _____, 2021.

GUARANTOR(S):

_____(SEAL)

GUARANTOR(S):

_____(SEAL)
