

A 2008-1230-1

When recorded, return to:

City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

271-5108873

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as the "Agreement") is entered into as of the 30th day of December, 2008, by and between the CITY OF FLAGSTAFF, an Arizona municipal corporation (hereinafter referred to as the "City"), and JOY CONE CO., a Pennsylvania corporation (hereinafter referred to as "Joy Cone") (the City and Joy Cone are hereinafter collectively referred to as the "Parties").

RECITALS

- A. Joy Cone owns real property located at the Flagstaff Pulliam Municipal Airport within the City, containing approximately 31.89 acres of land, together with a warehouse and distribution facility constructed and operated by Joy Cone thereon and currently containing approximately 180,000 square feet of interior space (the "Improvements"), which real property is more particularly described in *Exhibit "A"* to this Agreement (hereinafter referred to as the "Property").
- B. Joy Cone intends to expand its warehouse and distribution facility located on the Property by constructing up to an additional 65,000 square feet of additional space and installing additional equipment and fixtures within the Improvements (the "Expansion").
- C. The City values Joy Cone's presence in the community as an outstanding corporate citizen, and desires to assist Joy Cone with the Expansion in order to enhance Joy Cone's presence in the City. By assisting Joy Cone's Expansion, the City wishes to encourage Joy Cone's continued provision of stable, good-paying employment opportunities for the City's residents. The City also believes that its efforts will perpetuate the City's overall economic health and demonstrate the City's attractiveness as a place to do business.
- D. The Parties are entering into this Agreement to facilitate the Expansion and preserve the production and employment therein, and confirm and memorialize their respective actions taken in mutual support of the Expansion. The Parties are agreeing to take these actions in consideration for the actions and assurances of each other.
- E. As part of the City's assistance to Joy Cone in connection with the facilitation of the Expansion, the Parties intend that ownership of the Property and all Improvements thereon shall be transferred to the City, whereupon the City shall lease the Property and the Improvements back to Joy Cone pursuant to and in accordance with the terms and conditions of A.R.S. Section 42-6201, *et seq.*, and, in addition, the Parties intend that ownership of certain taxable equipment and personal property of Joy Cone shall be transferred to the City, whereupon the City shall lease such equipment and personal property back to Joy Cone during the term of the lease for the Property and the Improvements.

- F. This Agreement constitutes a "Development Agreement" pursuant to the terms and conditions set forth in A.R.S. Section 9-500.05.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. Scope of Agreement. The Parties are entering into this Agreement for the purpose of establishing Joy Cone's intent and commitment to the Expansion, and the use of best, commercially reasonable efforts to maintain current levels of employment and employee benefits, and to establish and confirm the City's participation in and support of Joy Cone's Expansion.
2. Tax Incentives. The Parties hereby acknowledge and agree that Joy Cone's acquisition and installation of additional fixtures and equipment within the Improvements and the Expansion contemplated by Joy Cone is economically feasible only by the commitment and obligation of the City (a) to provide Joy Cone with the benefit of a statutorily-authorized tax, the Government Property Lease Excise Tax, available pursuant to the provisions of A.R.S. Section 42-6201, *et seq.*, and (b) to accept title to certain taxable equipment and other personal property of Joy Cone hereinafter described which shall, during the City's period of ownership, not be subject to payment of personal property taxes. In connection therewith, the City hereby agrees to accept the conveyance of the Property and all Improvements thereon from Joy Cone, and to lease-back the Property and all Improvements to Joy Cone as further set forth in **Sections 2.1 and 2.3**, and to accept the conveyance of the taxable equipment and other items of personal property described in **Exhibit "B"** to this Agreement (the "Taxable Personal Property"), and to lease-back the Taxable Personal Property to Joy Cone as further set forth in **Sections 2.2 and 2.3**.
 - 2.1. Transfer of Ownership of Property and Building Improvements To City. Upon satisfaction of the conditions set forth in **Sections 2.1.1, 2.1.2 and 2.1.3** below, Joy Cone shall transfer fee title ownership of the Property and the Improvements to the City for the sum of Ten and no/100 Dollars (\$10.00). Fee simple title to the Property and the Improvements shall be conveyed by Joy Cone to the City pursuant to a special warranty deed executed by Joy Cone, free and clear of all exceptions and encumbrances except for the Permitted Exceptions, as defined in **Section 2.1.1** below. The form of the special warranty deed is attached to this Agreement as **Exhibit "C"**. Joy Cone's obligation to convey the Property and the Improvements to the City hereunder shall be expressly conditioned upon the Parties' execution and delivery of the "Lease" (as defined below) concurrently with such conveyance. The conditions which must be satisfied prior to the conveyance of fee simple title to the Property and the Improvements to the City are as follows:
 - 2.1.1. Title Report. The City shall have reviewed and approved the condition of title to the Property and the Improvements. In connection therewith, as soon as reasonably possible after the date of this Agreement, Joy Cone shall cause to be prepared by a title insurer (hereinafter referred to as the "Title Company") selected by Joy Cone and reasonably acceptable to the City a preliminary title

report (hereinafter referred to as the "Preliminary Title Report") which sets forth all liens, encumbrances and other exceptions to title applicable to the Property and the Improvements (collectively, the "Title Exceptions"), together with, to the extent available, legible copies of all such recorded liens, encumbrances and title exceptions as may be disclosed therein. If the City disapproves of any Title Exception disclosed in the Preliminary Title Report, it shall, within fifteen (15) business days of its receipt of the Preliminary Title Report, notify Joy Cone in writing of same, and any Title Exception not objected to by the City within such period shall be deemed a Permitted Exception. If the City notifies Joy Cone, within such period, of any disapproved Title Exception(s), Joy Cone shall have the right to, up until the date determined for the conveyance of the Property by Joy Cone, eliminate or remedy any such disapproved Title Exception(s); provided, however, if Joy Cone notifies the City that it cannot eliminate or remedy such item, or if Joy Cone is unable to eliminate or remedy such item by the date scheduled for such conveyance, the City may either accept the Property and the Improvements subject to such Title Exception(s) (in which event such Title Exception(s) shall be deemed a Permitted Exception(s) hereunder) or terminate this Agreement by providing written notice to Joy Cone, in which event both parties shall be relieved of all outstanding obligations or commitments hereunder.

- 2.1.2. Release and Conversion of Mortgages. To the extent that the Property and/or the Improvements are encumbered by mortgages, deeds of trust, or other similar liens (referred to herein as the "Fee Title Mortgages"), Joy Cone shall have the Fee Title Mortgages removed from the title to the Property and the Improvements either prior to or concurrently with the conveyance of fee title to the City. The Parties hereby acknowledge that, to the extent such Fee Title Mortgages exist, the Parties' mutual intent is for Joy Cone to convert the Fee Title Mortgages to Leasehold Mortgages, as that term is defined below in **Section 2.3.1** of this Agreement. The City shall cooperate and use reasonable efforts to assist Joy Cone in said conversion.
- 2.1.3. Condition of Property and Improvements. The environmental condition of the Property and the Improvements which are to be conveyed to the City shall be acceptable to the City. In connection therewith, Joy Cone shall provide a current Phase I environmental assessment prepared by an environmental consultant reasonably acceptable to the City in order to provide assurance to the City that no recognizable environmental conditions exist with respect to the Property and/or the Improvements. If, based upon the City's review of any such Phase I environmental assessment, any recognizable environmental condition is identified, then Joy Cone shall provide such additional environmental studies and/or assessments as may be necessary in order to provide the City with assurances that such condition does not violate any applicable Environmental Law (as hereinafter defined). Notwithstanding anything contained herein or elsewhere in this Agreement to the contrary, Joy Cone shall remain responsible for, and shall indemnify, defend and hold the

City harmless for, from and against, any and all claims, losses, liabilities, damages or expenses attributable to the Property and the Improvements failing to comply with any Environmental Law (defined herein as the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* as amended, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 601 *et seq.* as amended, the Emergency Planning and Community Right-to-Know Act 42 U.S.C. Section 11001 *et seq.* as amended, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.* as amended, the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.* as amended, the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.* as amended, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136 *et seq.* as amended, and any other federal, state or local law, regulations, rules, orders, decrees or ordinances relating to pollution, protection of the environment, hazardous or toxic substances or materials, natural resources or human health or safety, which is in effect on the date hereof). In this regard, Joy Cone will remain at all times responsible for any environmental remediation of the Property and/or the Improvements which Joy Cone is legally required to remediate pursuant to any applicable Environmental Law (or which the City is legally required to remediate as a consequence of its fee ownership of the Property and/or the Improvements), and Joy Cone shall fully and completely indemnify, defend and hold the City harmless for, from and against any and all damages, costs, expenses and liabilities incurred or sustained by the City with respect to any such environmental inquiry or remediation of the Property and/or the Improvements; provided, however, that as between the City and Joy Cone, Joy Cone shall have sole control over any and all cleanup or related activities, including responding to any inquiries or mandates by any governmental agencies related to any potential environmental inquiries or remediation and interfacing directly with any governmental agencies having jurisdiction with respect to the environmental condition of the Property and the Improvements. The foregoing indemnification shall survive the termination of the Agreement and the Lease.

- 2.2. Transfer of Ownership of Taxable Personal Property to City. Concurrently with the transfer of fee title ownership of the Property and the Improvements by Joy Cone to the City, Joy Cone shall convey to the City free and clear title to the Taxable Personal Property described in ***Exhibit "B"*** attached to this Agreement pursuant to a Bill of Sale in the form attached hereto as ***Exhibit "D"*** (the "Bill of Sale"). The Taxable Personal Property shall thereupon be leased back by the City to Joy Cone as part of the real and personal property subject to the Lease. In the event that, at any time during the term of the Lease and this Agreement, Joy Cone desires to dispose of any Taxable Personal Property, it shall provide a written request to the City for the City to reconvey title to such portion of the Taxable Personal Property to Joy Cone, whereupon the City shall execute a Bill of Sale in the form attached hereto reconveying title to such portion of the Taxable Personal Property to Joy Cone. In addition, in the event that during the term of the Lease and this Agreement, Joy Cone acquires any additional Taxable Personal Property, Joy Cone shall have the right to convey title to such additional Taxable Personal Property to the City pursuant to a Bill

of Sale in the form attached to this Agreement, whereupon such additional Taxable Personal Property will automatically become part of the real and personal property subject to the Lease. The Parties hereto hereby agree that they shall update and/or supplement **Exhibit "B"** to this Agreement as may be necessary from time to time in order to reflect the elimination or addition of any Taxable Personal Property therefrom as contemplated herein.

- 2.3. Lease of Property, Improvements and Taxable Personal Property to Joy Cone. Concurrently with the conveyance of fee title to the Property and Improvements to the City by Joy Cone, the City and Joy Cone shall enter into a lease in the form attached hereto as **Exhibit "E"** (the "Lease") pursuant to which the City shall lease the Property and Improvements, together with the Taxable Personal Property, to Joy Cone for the sum of One and no/100 Dollar (\$1.00) per year for the term of the Lease and this Agreement. The Parties hereby acknowledge that the Lease is intended to be a "Government Property Lease," as defined in and contemplated by the provisions of A.R.S. Section 42-6201, *et seq.*, and shall contain all provisions required thereby, in addition to any other terms and conditions set forth herein. As more particularly set forth therein, the Lease, as it shall apply to the Property, the Improvements and the Taxable Personal Property, shall (a) commence on the date that Joy Cone transfers fee simple title to the Property and the Improvements to the City, and conveys title to the Taxable Personal Property to the City, (b) provide for an annual rental payment of One and no/100 Dollar (\$1.00) per year, (c) obligate Joy Cone to pay any and all Government Property Excise Lease Taxes owing on the Property and the Improvements pursuant to A.R.S. Section 42-6201, *et seq.*, and (d) terminate automatically upon the fifth (5th) anniversary of the Commencement Date thereof; provided, however, that if Joy Cone has completed construction of at least 50,000 square feet of the Expansion by the fifth (5th) anniversary of the Commencement Date of the Lease, then the term of the Lease and this Agreement shall automatically be extended until the fifteenth (15th) anniversary of the Commencement Date. For purposes of compliance with A.R.S. Section 42-6203(B), the parties acknowledge that (i) the original Certificate of Occupancy for the Improvements was issued on or about April 18, 2000, and (ii) A.R.S. Section 42-6203 (A)(6) and Section 42-6203(E) shall govern the calculation of the initial excise tax rate for the Property and Improvements and, as such, the initial excise tax rate for the entire Property and Improvements shall be Fifteen Cents (\$0.15) per square foot of building space.

2.3.1. Right to Encumber Property and/or the Improvements. The City agrees that Joy Cone will be permitted to encumber its leasehold rights under the Lease through leasehold mortgages or other similar form of liens (hereinafter referred to as the "Leasehold Mortgages"), including but not limited to Leasehold Mortgages for the purpose of financing construction of the Expansion.

2.3.2. Notice and Consent. Joy Cone shall be obligated to notify the City in writing in advance of (a) any financing secured by Leasehold Mortgages that it proposes to enter into with respect to the Property and/or the Improvements, and (b) any encumbrance or lien that has been created on or attached to the Property and/or the Improvements, whether by voluntary act of Joy Cone or

otherwise. The notice shall set forth the name and address of the proposed Mortgagee or other benefited party. Joy Cone shall not enter into any Leasehold Mortgages, whether by express agreement or operation of law, or suffer any monetary encumbrance or lien to be made on or attached to the Property and/or the Improvements, without the prior written consent of the City, which consent shall not be unreasonably withheld. In the event that any Mortgagee of Joy Cone requests confirmation that any proposed lien is authorized by this Agreement, the City Manager or the Deputy City Manager shall each be authorized, and is hereby authorized by the City, to provide such written consent as may be required by such Mortgagee.

2.3.3. Copy of Notice of Default to Mortgagee. Whenever the City shall deliver any notice or demand to Joy Cone with respect to any breach or default by Joy Cone in its obligations or covenants under this Agreement, the City shall, at the same time, forward a copy of such notice or demand to each Mortgagee permitted under the terms of this Agreement at the last address of such Mortgagee set forth in the latest notice delivered to the City. Failure to deliver such notice shall make the notice of default invalid for all purposes until such copy is delivered to each Mortgagee.

2.4. Reconveyance to Joy Cone. Simultaneously upon the expiration or earlier termination of the Lease for any reason (including without limitation the City's termination of the Lease pursuant to any provision thereof or Tenant's termination without "cause" as permitted by Paragraph 16.4 thereof), the City shall transfer fee simple title to the Property and the Improvements to Joy Cone, and shall transfer title to the Taxable Personal Property to Joy Cone. Fee simple title to the Property and the Improvements conveyed by the City to Joy Cone shall be conveyed pursuant to a quit-claim deed executed by the City, free and clear of all liens and encumbrances of any type or nature, except for the Permitted Exceptions described in **Section 2.1.1** above. The form of the quit-claim deed is attached to this Agreement as **Exhibit "F"**. Title to the Taxable Personal Property shall be conveyed by the City to Joy Cone pursuant to a Bill of Sale in the form attached hereto as **Exhibit "D"**. The City shall reconvey title to the Property, the Improvements and the Taxable Personal Property to Joy Cone in an "as is," "where is" condition.

2.5. Successor or Replacement Excise Tax Programs. The City acknowledges that the Expansion contemplated by Joy Cone is considered economically feasible only as a result of the availability of the tax incentives provided by currently available excise tax programs. In the event that, for any reason, any such programs are amended, modified, interpreted, repealed or rescinded such that the full benefits thereof as currently provided on the date of the execution of this Agreement are no longer in effect or are otherwise unavailable to Joy Cone, then, in that event, unless economically adverse or detrimental to the City's interest as experienced under the present statutory scheme, the City will use reasonable good faith efforts to provide alternative development incentives and to cooperate with Joy Cone with respect to any other available tax incentive programs provided by Arizona law or otherwise in order to obtain essentially the same economic benefits for the Property and/or the Improvements as those currently provided by A.R.S. Section 42-6201, *et seq.*

3. Expansion of Improvements. Joy Cone hereby agrees that it shall, at its own cost and expense, expand the Improvements by constructing up to 65,000 additional square feet of "floor area" (as that term is defined in the City's Land Development Code, Section 10-14-004-0001) as an expansion of the Improvements, on or before the fifth (5th) anniversary of the date the Property and the Improvements are conveyed to the City pursuant to **Section 2.1** above, as evidenced by the issuance of a Certificate of Occupancy for said additional floor space by the City.
 - 3.1. Expedited City Review of the Expansion Plans and Construction. The City hereby agrees that it will accelerate its review and response to the construction drawings for the Expansion to the extent reasonably possible and further agrees that no unreasonable, unusual or extraordinary plan or review requirements, conditions or stipulations will be imposed on Joy Cone during said plan review. The City further agrees that it will accelerate its on-site construction inspections to the extent reasonably possible, and agrees that no unreasonable, unusual or extraordinary requirements, conditions or stipulations will be imposed on Joy Cone during said on-site construction inspections.
 - 3.2. Expansion Plans and Construction Review Liaisons. In order to ensure the City's expeditious response to any and all submittals by Joy Cone related to the Expansion and expeditious performance of on-site construction inspections, the City hereby agrees to designate a representative of the City to act as a liaison between the City and Joy Cone and between the City's various internal departments and Joy Cone. Such representative shall be available at all reasonable times to serve as such liaison, it being the intention of this **Section 3.2** to provide Joy Cone with one individual as the City's principal representative with respect to the Property. Joy Cone shall also designate a representative who shall serve as a liaison between Joy Cone and the City. The initial representative for the City shall be Michael Kerski, the Director of the City's Community Investment Division, and the initial representative for Joy Cone shall be John Stanton, General Manager.
4. Employee Benefits. Joy Cone hereby acknowledges and agrees that, as a material part of the consideration to the City for this Agreement, Joy Cone shall use its best, commercially-reasonable efforts to provide an average employee wage for its employees of \$13.50 per hour and to continue to provide health insurance benefits to all of its full-time employees.
5. City Support of State-Provided Incentives. The City hereby acknowledges and agrees that, as an additional part of the consideration to Joy Cone under the terms of this Agreement, the City shall support Joy Cone in connection with its application to the State of Arizona, Department of Commerce, for job training assistance (such as the State's Apprenticeship Program). In connection therewith, the City shall timely provide such supporting documentation, materials and other information which may be required by the Arizona Department of Commerce in order to verify any applications submitted by Joy Cone or which may otherwise be required to qualify Joy Cone for any such programs and incentives, so long as the City is not required to incur undue cost or expense in connection therewith.

6. Participation in Work Keys Program and University to Business Program. As an additional part of the consideration to Joy Cone under the terms of this Agreement and to further assist Joy Cone with the Expansion, the City shall sponsor Joy Cone's participation in Coconino Community College's "Work Keys" program in an effort to reduce employee turnover, which program includes services such as reviewing and analyzing Joy Cone's work environment and providing pre-employment testing and screening of potential employees. In addition, the City shall sponsor Joy Cone's participation in Northern Arizona University's "University to Business" program, which program includes, for example, providing student interns to assist Joy Cone in finding new and innovative ways to save energy, identifying exporting opportunities, analyzing manufacturing and distribution efficiencies, and assisting with new product identification and generation.
7. Term of Agreement; Termination by City in Event of Joy Cone's Cessation of Business Operations. This Agreement shall automatically terminate and be of no further force or effect upon the fifth (5th) anniversary of the date that the Property and Improvements have been conveyed to the City and the Lease term has commenced; provided, however, that if Joy Cone completes construction of at least 50,000 square feet of the Expansion on or before such date, this Agreement and the Lease shall continue in effect until the fifteenth (15th) anniversary of the date the Property and Improvements have been conveyed to the City and the term of the Lease has commenced. Notwithstanding anything contained in this Agreement to the contrary, in the event that Joy Cone suspends or ceases its business operations within the Property for a period in excess of one hundred eighty (180) days for any reason other than an event constituting *force majeure* (as described in **Section 8.1** below), the City shall have the right at any time thereafter to elect to terminate this Agreement and the Lease by written notice to Joy Cone. Upon any termination of this Agreement and the Lease and reconveyance of the Property and Improvements to Joy Cone, the Parties shall be excused from any further rights or responsibilities pursuant to this Agreement, except Joy Cone's environmental indemnity obligations set forth in **Section 2.1.3** above, which shall continue in perpetuity.
8. Default and Remedies.
 - 8.1. Excused Delay in Performance. Either party shall be excused from performance under this Agreement to the extent and during the period that its performance is prevented due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority (other than restrictions or priorities of the City, which shall not excuse performance by the City), unusually severe weather, inability (when the party required to perform is faultless) of any contractor, subcontractor or supplier to perform acts for such party, or acts or the failure to act of any public or governmental agent or entity (other than acts or failure to act of the City, which shall not excuse performance by the City), litigation relating to the Property initiated by a third party other than Joy Cone or the City (and where the party hereto is without fault in connection with such litigation), or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. In the event that one party to this Agreement is unable or fails to perform due to an event constituting *force majeure* as provided above, and such excused delay is the proximate cause of the other party being unable or failing to

perform in accordance with the terms of this Agreement, then the time for the performance of the other party shall be extended for a period of time equal to the period of the delay plus a reasonable start-up period. An extension of time for any such cause shall only be for the period of the forced delay, which period shall commence to run from the time of the commencement of the cause.

- 8.2. Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance, as said time periods may be extended for reasons of *force majeure* or as a result of the failure of the other party to this Agreement to act in a timely manner as may be required, and such breach continues for a period of thirty (30) days after written notice thereof from the nondefaulting party or, if the breach cannot reasonably be cured within thirty (30) days, then the party shall be in default if it fails to commence the cure of such breach and diligently pursue the same to completion; provided, however, that said thirty (30) day period may be extended for reasons of *force majeure* or for the period of time that the other party hereto has failed to perform any obligation as and when required as otherwise set forth in this Agreement.
- 8.3. Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a ninety (90) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbonding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Joy Cone and the City. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and Joy Cone shall request the presiding judge of the Superior Court in and for the County of Coconino, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and Joy Cone, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation ninety (90) days after the date the parties first reached an impasse on the subject matter of the dispute.
- 8.4. City's Remedies. In the event of a default by Joy Cone of any covenant, obligation, representation or warranty set forth in this Agreement, the City shall be entitled to any and all remedies permitted by law, including but not limited to immediate termination of this Agreement. In the event the City chooses to terminate this Agreement pursuant to this Paragraph, the Lease shall concurrently and without requirement of additional notice terminate and the City shall immediately reconvey title to the Property, the Improvements and the Taxable Personal Property to Joy Cone pursuant to the terms set forth in **Section 2.4** of this Agreement.

- 8.5. City's Remedies In The Event of Foreclosure. In the event that any Mortgagee takes legal possession of the Property and/or the Improvements, the City shall be entitled, to any and all remedies permitted by law, including but not limited to immediate termination of this Agreement and the Lease, in which event the City shall immediately convey title to the Property, the Improvements and the Taxable Personal Property to the party legally entitled thereto pursuant to the terms set forth in **Section 2.4** of this Agreement.
- 8.6. Joy Cone's Remedies. In the event of a default by the City under any obligation set forth in this Agreement, Joy Cone shall be entitled to any and all remedies permitted by law, including but not limited to (a) immediate termination of this Agreement, and (b) immediate termination of the Lease described in **Section 2.3** of this Agreement. Should Joy Cone choose to terminate this Agreement or the Lease, the City shall immediately reconvey title to the Property, the Improvements and all Taxable Personal Property to Joy Cone pursuant to the terms set forth in **Section 2.4** of this Agreement. Joy Cone acknowledges that if the Arizona State Legislature repeals or modifies the Government Property Lease Excise Tax system as set forth in A.R.S. Section 42-6201, *et seq.* or the rate of government property lease excise tax charged against the Property and Improvements, Joy Cone shall have the option, as its sole remedy, to terminate this Agreement and obtain the reconveyance of title to the Property, the Improvements and the Taxable Personal Property pursuant to the terms set forth in **Section 2.4** of this Agreement, and that Joy Cone shall be entitled to no further relief or remedy.

9. General Provisions.

- 9.1. Notices. All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail or by courier. Any notice directed to a party shall become effective upon the earliest of the following: (a) actual receipt by that party; (b) hand delivery to such party at its designated notice address; (c) one (1) business day after deposit for delivery with a nationally-recognized overnight courier; (d) telephone facsimile with receipt confirmed; or (e) if given by certified or registered United States mail, forty-eight (48) hours after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown below or such other address as that party, from time to time, may specify by notice to the other party:

TO THE CITY:

City of Flagstaff
 Attention: City Manager
 211 West Aspen Avenue
 Flagstaff, Arizona 86001-5399

With copies to:

City of Flagstaff
 Attention: City Attorney
 211 West Aspen Avenue
 Flagstaff, Arizona 86001-5399

-and-

Gammage & Burnham, PLC
Attention: Jeffrey J. Miller, Esq.
Two North Central Avenue, 18th Floor
Phoenix, Arizona 85004

TO JOY CONE:

Joy Cone Company
Attention: John Stanton, General Manager
2843 West Shamrell Boulevard
Flagstaff, Arizona 86001

With a copy to:

Joy Cone Company
Attention: Scott P. Kalmanek, CFO
3435 Lamor Road
Hermitage, PA 16148-3097

-and-

Tiffany & Bosco, P.A.
Attention: Michael Tiffany, Esq.
2525 East Camelback Road, 3rd Floor
Phoenix, Arizona 85016

Either party hereto shall have the right to change its designated notice address by providing to the other party written notice of such change in the manner described above.

- 9.2. Nonassignability. This Agreement is made exclusively between the City and Joy Cone. The Parties agree that no rights or responsibilities under this Agreement are transferable to any other entity without the consent of the City which will not be unreasonably withheld. Notwithstanding the foregoing, the following transfers may occur without the consent of the City: any (a) assignment by Joy Cone to a wholly owned subsidiary or other related entity of Joy Cone or controlled by, controlling or under common control with Joy Cone, as long as such entity is authorized to transact business in the State of Arizona by the Secretary of State of the State of Arizona, or (b) a Mortgagee acting pursuant to **Section 2.2.1** of this Agreement.
- 9.3. Governing Law and Consent to Exclusive Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Coconino County, Arizona. The Parties hereby consent and agree that jurisdiction for any and all claims arising from this Agreement shall rest solely with federal and state courts located in Arizona, that the proper venue for any state court action shall be the Coconino County Superior Court, and that in the event of any state court action, the parties shall agree upon a Maricopa County Superior Judge to preside over said action, with the parties to share equally in the costs associated with the participation of the Maricopa County Judge in a Coconino County action, notwithstanding the cost-shifting provision set forth in **Section 9.5** below.

- 9.4. Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.
- 9.5. Attorneys' Fees. In the event of any actual litigation between the Parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.
- 9.6. Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.
- 9.7. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein.
- 9.8. Recordation of Agreement. The City shall record this Agreement in the Official Records of Coconino County, Arizona within ten (10) days after its approval and execution by the Parties.
- 9.9. Warranty Against Payment of Consideration for Agreement; Conflict of Interest. This Agreement is subject to and may be terminated by the City in accordance with the provisions of A.R.S. Section 38-511. In connection therewith, Joy Cone warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business, costs of professional services (such as architects, engineers and attorneys). To the best knowledge of Joy Cone, no member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any agreement relating to the Agreement which is prohibited by law.
- 9.10. Nonliability of City Officials and Employees. No member, agent, representative, official or employee of either party shall be personally liable to the other, or any successor-in-interest, in the event of any default or breach by a party or for any amount which may become due to the nonbreaching party or any successor in interest or on any obligation under the terms of this Agreement.
- 9.11. No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Joy Cone and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

- 9.12. Authority. Each of the Parties hereto represents and warrants to the other that the individual executing this Agreement on behalf of the respective Parties are authorized and empowered to bind the party on whose behalf such individual is signing and that this Agreement shall be binding upon such Parties.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have duly executed this Development Agreement effective as of the day and year first above written.

ATTEST:

"CITY"

Laura Matthews for
City Clerk

CITY OF FLAGSTAFF, an Arizona municipal corporation

APPROVED AS TO FORM:

AM Lane for
City Attorney

By [Signature]
Name Sara Presler
Title Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF COCONINO)

On this 30 day of December, 2008, before me, the undersigned officer, personally appeared Sara Presler, who acknowledged her/himself to be Mayor of the CITY OF FLAGSTAFF, an Arizona municipal corporation:

X whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

[Signature]
Notary Public



"JOY CONE"

JOY CONE CO., a Pennsylvania corporation

By [Signature]
Name Scott P. Kalmanek
Title SECRETARY / TREASURER / CFO

STATE OF Pennsylvania)
) ss.
COUNTY OF Mercer)

On this 19 day of December, 2008, before me, the undersigned officer, personally appeared Scott P. Kalmanek, who acknowledged her/himself to be Secretary / Treasurer / CFO of JOY CONE CO., a Pennsylvania corporation:

whom I know personally;
 whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
 whose identity I verified on the basis of his/her _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

[Signature]
Notary Public

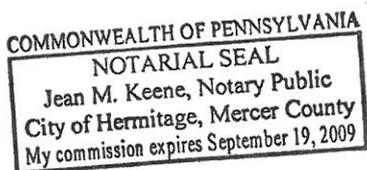


EXHIBIT "A" TO DEVELOPMENT AGREEMENT

Legal Description of Property

TRACK 5A, OF PULLIAM AIRPARK UNIT 1, AMENDED, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF COCONINO COUNTY, ARIZONA, RECORDED IN CASE 6, MAP 44-44E.

EXCEPTING AND RESERVING UNTO THE UNITED STATES ALL URANIUM, THORIUM, OR ALL OTHER MATERIALS DETERMINED PURSUANT TO SECTION 5 (B) (1) OF THE ATOMIC ENERGY ACT OF 1946 (60 STAT. 761) TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS CONTAINED IN WHATEVER CONCENTRATION AS RESERVED BY INSTRUMENT RECORDED IN BOOK 5 OF OFFICIAL RECORDS, PAGE 187.

EXHIBIT "B" TO DEVELOPMENT AGREEMENT

Taxable Personal Property

**Joy Cone Company - Flagstaff
Equipment List
12/31/2008**

EQUIPMENT DESCRIPTION

OVEN DESCRIPTION

JOY 1B OVEN (48 molds, 123 oven)
JOY 10C OVEN MOLDS ONLY (45)
JOY 10D OVEN MOLDS ONLY (45)
JOY 20A OVEN (42 molds, 111 oven), w/ S.S. Merging Conveyor (18' Lg. x 18" W).
JOY 20B OVEN (42 molds, 111 oven)
JOY 20C OVEN (42 molds, 111 oven)
JOY 20D OVEN (42 molds, 111 oven), w/ S.S. Merging Conveyor (18' Lg. X 18" W).
JOY 20E OVEN (42 molds, 111 oven), w/ S.S. Merging Conveyor (18' L x 18" W).
JOY 20F OVEN (42 molds, 111 oven)
JOY 20G OVEN (42 molds, 111 oven)
JOY 20H OVEN (42 molds, 111 oven), w/ S.S. Merging Conveyor (18' L x 18" W).
JOY 22D OVEN (42 molds, 111 oven)
JOY 22E OVEN (42 molds, 111 oven)
JOY 22F OVEN (42 molds, 111 oven)
JOY 22G OVEN (42 molds, 111 oven)
JOY 30 E OVEN
JOY 30 F OVEN
JOY 30 H OVEN
JOY 40C OVEN (39 molds, 123 oven), w/ S.S. Merging Conveyor (20' L x 40" W).
JOY 40D OVEN (39 molds, 123 oven)
JOY 60C OVEN (39 molds, 123 oven)
JOY 60D OVEN (39 molds, 123 oven)
HAAS KIDS CONE "B" STAKI 48 OVEN
HAAS TRO SUGAR CONE C Oven (96 plates), w/ S.S. Merging Conveyor (12' Lg.x21" W).
HAAS VTRO SUGAR CONE D OVEN (96 plates)
HAAS VTRO SUGAR CONE E OVEN (96 plates)
HAAS VTRO SUGAR CONE F Oven (96 plates), w/ S.S. Merging Conveyor (12' Lg.x21"W).
WALTER WAFFLE BOWL "A" (JUPITER 69) OVEN
WALTER WAFFLE CONE "C" (JUPITER 89) OVEN
WALTER WAFFLE CONE "E" (JUPITER 121) OVEN

JACKET DISPENSER DESCRIPTION

22D - JOY C.C. JACKET DISPENSER, Left hand - 3 lanes.
22E - JOY C.C. JACKET DISPENSER, Left hand - 3 lanes.
22F - JOY C.C. JACKET DISPENSER, Left hand - 3 lanes.
22G - JOY C.C. JACKET DISPENSER, Left hand - 3 lanes.
30E - JOY C.C. JACKET DISPENSER, Right hand - 5 lanes.
40D - JOY C.C. JACKET DISPENSER, Right hand - 3 lanes.

EQUIPMENT DESCRIPTION

JACKET DISPENSER DESCRIPTION (continued)

60C - JOY C.C. JACKET DISPENSER, Right hand - 3 lanes.
60D - JOY C.C. JACKET DISPENSER, Right hand - 3 lanes.
HSC C - JOY OVERHEAD SC JACKET DISPENSER, 4 lanes.
HSC D - JOY OVERHEAD SC JACKET DISPENSER, 4 lanes.
HSC E - JOY OVERHEAD SC JACKET DISPENSER, 4 lanes.
HSC F - JOY OVERHEAD SC JACKET DISPENSER, 4 lanes.
WAFFLE C - JOY OVERHEAD WC JACKET & SYRUP DISPENSER, 6 lanes.
WAFFLE E - JOY OVERHEAD WC JACKET & SYRUP DISPENSER, 4 lanes.
3 JOY 30 JACKET DISPENSERS

WRAPPER DESCRIPTION

20-(1) LINE - ILAPAK's Carrera 1000 PC, Lt. Hand, 10 meter infeed.
20-(2) LINE - ILAPAK's Carrera 1000 PC, Lt. Hand, 10 meter infeed.
22 LINE - ILAPAK's Carrera 1000 PC, Rt. Hand, 17 meter infeed.
40 LINE - ILAPAK's Carrera 500 E, Rt. Hand, 1 meter infeed.
60 LINE - ILAPAK's Carrera 500 M
KIDS CONE LINE - ILAPAK's Carrera 500 M
SUGAR LINE - ILAPAK's Carrera 1000 PC
CC JACKET WRAP MACHINE
CC JACKET WRAP MACHINE
WAFFLE BOWL LINE - ILAPAK's 500 PC, Rt. Hand, 6 meter infeed.
WAFFLE CONE LINE - ILAPAK's 500 PC, Rt. Hand, 6 meter infeed.

METAL DETECTOR DESCRIPTION

20-(1) LINE - ERIEZ MFG, 8' Lg. Conveyor w/ 9" W Belt.
20-(2) LINE - FORTRESS, 6' Lg. Conveyor w/ 6" W Belt.
22 LINE - GORING KERR, 6' Lg. Conveyor w/ 9" W Belt.
30 LINE - GORING KERR, 6' Lg. Conveyor w/ 8" W Belt.
40 LINE - GORING KERR, 6' Lg. Conveyor w/ 6" W Belt.
60 LINE - GORING KERR, 8' Lg. Conveyor w/ 10" W Belt.
KIDS CONE LINE - FORTRESS, 6' Lg. Conveyor w/ 6" W Belt.
H.S.C. "C" OVEN - GORING KERR, 6' Lg. Conveyor w/ 4 lanes of Polycord.
H.S.C. "D" OVEN - GORING KERR, 6' Lg. Conveyor w/ 4 lanes of Polycord.
H.S.C. "E" OVEN - GORING KERR, 6' Lg. Conveyor w/ 4 lanes of Polycord.
H.S.C. "F" OVEN - GORING KERR, 6' Lg. Conveyor w/ 4 lanes of Polycord.
H.S.C. LINE - GORING KERR, 6' Lg. Conveyor w/ 6" W Belt.
WAFFLE BOWL "A" LINE - GORING KERR, Timing Belt Conveyor, 48"L x 30" W.
WAFFLE CONE "C" OVEN - GORING KERR, Timing Belt Conveyor, 48"L x 30" W.
WAFFLE CONE "E" OVEN - GORING KERR, Timing Belt Conveyor, 48" L x 26" W.
WAFFLE CONE LINE - GORING KERR, 6' Lg. Conveyor w/ 6" W Belt.
DISPENSER # 1 - GORING KERR
DISPENSER # 2 - INSPECTION SYSTEMS
DISPENSER #3 - FORTRESS
SLEEVE #1
METAL DETECTOR DESCRIPTION-HAAS SUGAR RETAIL LINE

EQUIPMENT DESCRIPTION

X-RAY DESCRIPTION

SUGAR CONE LINE - SAFELINE AVS X-RAY, 6' Lg. Conveyor w/ 9" W Belt.

CARTONER DESCRIPTION

20-(1) LINE - SUPERIOR 30-671 w/ THREE COLOR COALATOR.
--

20-(2) LINE - LANGEN B1-IMA

40 LINE - GLOBAL CARTONER #140-008.

KIDS CONE ADCO 15DZ-60-SS SEMI-AUTOMATIC CARTONER

SUGAR LINE - GLOBAL CARTONER #140-003

WAFFLE BOWL LINE - ADCO SEMI-AUTOMATIC CARTONER

WAFFLE CONE LINE - GLOBAL CARTONER #140-005

MINI-CARTONER #1

JOY MINI-CARTONER #2

STRETCH WRAPPER

LASER PRINTER DESCRIPTION

20-(F) LINE - LYNX XYMARK EFX

20-(P) LINE - DOMINO S100.

DOMINO S100 Kids Cone Line

DOMINO S100. Waffle Bowl Line

DOMINO S100. Waffle Cone Line

40 LINE - LYNX XYMARK 2 (EFX).

SUGAR LINE - LYNX XYMARK EFX

PRINT & APPLY LABELERS

(9)DESKTOP LABELER UNITS (Manual)

CHECK WEIGHER DESCRIPTION

20-(F) LINE - ALPHA #PW-12

20-(P) LINE - ALPHA #PW-12

40 LINE - ALPHA #PW-12

CASEPACKER DESCRIPTION

20-(F) LINE - COMPACKER # II-3

20-(P) LINE - COMPACKER # II-3.

40 LINE - COMPACKER # II-3.

SUGAR LINE - COMPACKER # II-3

20F CASE LINE PACKER wll turn into Waffle Case Line Packer
--

CASE ERECTORS AND SEALERS

22 LINE - MARQ TUFF CASE ERECTOR AND SEALER.
--

KC LINE - O/K DURABLE CASE SEALER, SUPERTAPER 1M
--

WAFFLE BOWL LINE - O/K DURABLE CASE SEALER, SUPERTAPER 1M

WAFFLE CONE LINE - O/K DURABLE CASE SEALER, SUPERTAPER 1M

SPARE - LITTLE DAVID CASE SEALER

30 LINE CASE ERECTOR/SEALER

EQUIPMENT DESCRIPTION

CONVEYOR DESCRIPTION

20-(F) - ROACH GRAVITY WHEEL CONVEYOR, 10' Lg. x 24" W
20-(F) - ROACH GRAVITY WHEEL 90 DEGREE CONVEYOR, 4' OR x 24" W.
20-(P) LINE - PSC FLO-TURN 90 DEGREE BELT CONVEYOR, FT18 8x90
20-(P) LINE - HYTROL POWER BELT CONVEYOR, 14" W BELT X 11' Lg.
20-(P) - HYTROL GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W
20-(P) - HYTROL GRAVITY ROLLER 90 DEGREE CONVEYOR, 4' OR x 24" W.
22 LINE - ROACH GRAVITY WHEEL 90 CURVE CONVEYOR, 4' OR x 24" W.
22 LINE - ROACH GRAVITY WHEEL CONVEYOR, 10' Lg. x 24" W.
40 LINE - ROACH SLIDER BELT CONVEYOR, 10' Lg. x 12" W Belt.
40 LINE - ROACH SLIDER BELT CONVEYOR, 350BOS-12 x 10' Lg.
40 LINE - ROACH GRAVITY ROLLER 90 CURVE CONVEYOR, 4' OR x 24" W.
40 LINE - ROACH GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W.
KC LINE - ROACH GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W
SUGAR LINE - ROACH SLIDER BELT CONVEYOR, 350BOS-12 x 5' Lg.
SUGAR LINE - PSC FLO-TURN 90 DEGREE BELT CONVEYOR, FT18 8x90
SUGAR LINE - HYTROL SLIDER BELT CONVEYOR, 14" W Belt x 6" Lg.
SUGAR LINE - PSC FLO-TURN 90 DEGREE BELT CONVEYOR, FT18 8x90
SUGAR LINE - ROACH SLIDER BELT CONVEYOR, 350BOS-12 x 10' Lg.
SUGAR LINE - GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W
WAFFLE BOWL LINE - GRAVITY ROLLER CONVEYOR, TA 18" W x 10' Lg.
WAFFLE CONE LINE - HYTROL SLIDER BELT CONVEYOR, TA 14" W Belt x 8' Lg.
WAFFLE CONE LINE - JOY F.S. S.S. MERGING INDEX CONVEYOR, 8' x 30".
WAFFLE CONE LINE - HYTROL GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W

COLOR EQUIPMENT DESCRIPTIONS

20E FILIMATIC 3 COLOR PUMPS (#AB-5) AND TRIPLE S.S. CABINETS.
20F FILAMATIC COLOR PUMP (#AB-5) AND S.S. CABINET.
20G FILIMATIC COLOR PUMP (#AB-5) AND S.S. CABINET.
20H FILIMATIC COLOR PUMP (#AB-5) AND S.S. CABINET.

DRY INGREDIENT SUPPORT EQUIPMENT

SHICK 65,000 POUNDS ALUM. SUGAR CONE FLOUR SILO # 1
SHICK 110,000 POUND ALUM. SUGAR CONE FLOUR SILO # 2
SHICK 110,000 POUND ALUM. CAKE CONE FLOUR SILO # 1
SHICK 110,000 POUND ALUM. CAKE CONE FLOUR SILO # 2
SUGAR CONE FLOUR BLOWER - TUTHILL #4606
CAKE CONE FLOUR BLOWER - TUTHILL #4606
SUGAR CONE FLOUR DUST COLLECTOR - SHICK #58AJ25
CAKE CONE FLOUR DUST COLLECTOR
SUGAR AND TAPIOCA LIFT DUMP STATION
SUGAR AND TAPIOCA DUMP STATION
100 CUBIC FOOT SUGAR BIN
SUGAR BIN DUST COLLECTOR - SHICK 58AJ9
100 CUBIC FOOT TAPIOCA BIN
TAPIOCA BIN DUST COLLECTOR - SHICK #58AJ9
CAKE CONE FLOUR SIFTER
SUGAR CONE FLOUR SIFTER
CAKE CONE WEIGH HOPPER

EQUIPMENT DESCRIPTION

DRY INGREDIENT SUPPORT EQUIPMENT (continued)

SUGAR CONE WEIGH HOPPER
CAKE CONE WEIGH HOPPER DUST COLLECTOR - SHICK #36AJ16
SUGAR CONE WEIGH HOPPER DUST COLLECTOR - SHICK #36AJ16

BATTER ROOM EQUIPMENT

CAKE CONE MIXER
SUGAR CONE MIXER - LEE TBD , DOUPLBE RIBBON
FELDEMER STAINLESS STEEL CAKE CONE COOLER
FELDEMER STAINLESS STEEL SUGAR CONE COOLER
FELDERMER STAINLESS STEEL WAFFLE CONE COOLER
STAINLESS STEEL CIP TANK
STAINLESS 50 GALLON VANILLA HOLDING TANK
STAINLESS 50 GALLON ANNATTO COLORING HOLDING TANK
STAINLESS 50 GALLON VEGETABLE OIL HOLDING TANK
STAINLESS 6000 GALLON VEGETABLE OIL HOLDING TANK
BRICK AND BRUELLER WASH DOWN SCALE
(4) - PALOMA PM-24 HOT WATER HEATERS
Cake Cone Chilled Batter Line System - s.s. tubing, copper pipe, valves, panels, etc.

CONE SCRAP SYSTEM EQUIPMENT

BROCK CONE SCRAP DUST COLLECTOR TANK #1 & DUCTWORK.
JOHNSON CONE SCRAP DUST COLLECTOR TANK #2 & DUCTWORK.
SCRAP SYSTEM DROP OUT TANK
10 HP SCRAP SYSTEM BLOWER MOTOR - TUTHILL # 4504
50 HP SCRAP SUCTION FAN #2.
30 HP SCRAP SUCTION FAN #1.
GALVANIZED CONE SCRAP SILO, 50,000 lbs.

AIR COMPRESSOR EQUIPMENT

60 HP SULLAIR ROTARY AIR COMPRESSOR
150 HP SULLAIR LS 20S-150L ROTARY AIR COMPRESSOR #1
150 HP SULLAIR LS 20S-150L ROTARY AIR COMPRESSOR #2
ARROW COMPRESSED AIR DRYER
ZANDER SL 600 WATER OIL SEPARATOR
IR NLM-2 AIR FILTER
1020 GALLON AIR RECEIVER TANK "A"
1020 GALLON AIR RECEIVER TANK "B"
100 GALLON RECEIVER TANK "C"
RECIRCULATING GLYCOL COOLING SYSTEM
SULLAIR AIR REGULATING VALVE - #SFP 1000
PARKER COALESCING AIR FILTER

CHILLED PROCESS WATER EQUIPMENT

RICIRCULATING GLYCOL COMPRESSOR SYSTEM
REPACO FOOD GRADE GLYCOL CHILLER SYSTEM
STAINLESS STEEL PROCESS WATER HOLDING TANK

EQUIPMENT DESCRIPTION

JANITORIAL (CLEAN-UP) EQUIPMENT

250 LB/HR INCINERATOR
HYDRAULIC CARDBOARD BAILER
MAXI-MOVERS BULK DELIVERY TRUCK, 48cu.
MAXI-MOVERS BULK DELIVERY TRUCK, 48cu. - 60 LINE.
MAXI-MOVERS BULK DELIVERY TRUCK, 48cu. - WFL BOWL LINE.
9 MAXI-MOVERS TOTAL, 1 STEEL

MISCELLANEOUS

CULLIGAN HI-FLO 2E WATER SOFTENER
ICE CHEST #1
ICE CHEST #2
MARSH TAPE MACHINE #1 w/ Aluminum Stand.
MARSH TAPE MACHINE #2 w/ Aluminum Stands.
MARSH TAPE MACHINE #3 w/ Aluminum Stands.
MARSH TAPE MACHINE #4 w/ Aluminum Stands.
MARSH TAPE MACHINE #5 w/ Aluminum Stands.
MARSH TAPE MACHINE #6 w/ Aluminum Stands.
MARSH TAPE MACHINE #7 w/ Aluminum Stands.
MARSH TAPE MACHINE #8 w/ Aluminum Stands.
MARSH TAPE MACHINE #9 w/ Aluminum Stands.
MARSH TAPE MACHINE #10 w/ Aluminum Stands.
MARSH TAPE MACHINE #11 w/ Aluminum Stands.
MARSH TAPE MACHINE #12 w/ Aluminum Stands.
MARSH TAPE MACHINE #13 w/ Aluminum Stands.
MARSH TAPE MACHINE #14 w/ Aluminum Stands.
(37) - HEAVY DUTY DEWALT RADIOS (33 TOTAL IN 2006)
LANTECH STRETCH WRAPPER #1 (PR#1)
LANTECH STRETCH WRAPPER #2 (WRHS #1)
LANTECH Q-300 STRETCH WRAPPER #3 (PR#2), S# QM020588
(2) - DYNARIC STRAPPING MACHINE, Model DF-20.
FACILITY ACCESS CONTROL & CCTV
(11) - JOY COOLING WHEELS
OHAUS MB MOISTURE ANALYZER
COMMUNICATION ROOM AIR CONDITIONING UNIT
JOY OVEN GAS BLOWER UPGRADE

MACHINE SHOP EQUIPMENT

T50 PIRANHA PUNCH PRESS
CLAUSING LATHE
BRIDGEPORT
BLAST-N-PEEN SHOT BLASTER
VERTICLE HYDRAULIC PRESS
ACME RADIAL AND VERTICLE BAND SANDER
GROB VERTICLE BAND SAW
LINCOLN MIG WELDER
MILLER TIG WELDER

EQUIPMENT DESCRIPTION

MACHINE SHOP EQUIPMENT (continued)

ATLAS DRILL PRESS
PORTER AND CABLE CHOP SAW
MILLER PORTABLE TIG WELDER
COLD JET DRY ICE MACHINE
LINCOLN ARC WELDER
HEAVY DUTY STEEL WORK BENCH, 6' Lg.x 2.67' W x 3' H, w/ one shelf.
HEAVY DUTY STEEL WELDING BENCH, 8' Lg.x 3' W x 3' H, w/ one shelf.
HEAVY DUTY STEEL MOLD WORK BENCH, 6' Lg.x 3.34' W x 3.33' H, w/ one shelf.

FABRICATION SHOP EQUIPMENT

CUMMINGS DIESEL GENERATOR
ACCURA HORIZONTAL BAND SAW
TENNSMITH BOX AND PAN BRAKE.
ROCKLINIZER
SEARS RADIAL ARM SAW
POWERMAX 600 SPOT WELDER
RIGID PIPE THREADER (UP TO 2 ")
UNIVERSAL SAND BLASTER
4' CONNECTICUT SHEET BRAKE
4' PEXTO METAL SHEAR
HEAVY DUTY STEEL WORK BENCH, 8' Lg.x 6' W x 2.67' H, w/ one shelf.

ROOF EQUIPMENT

McQUAY MAKE UP AIR UNIT #1, 19000 CFM, Model RAH047.
McQUAY MAKE UP AIR UNIT #2, Model RAH047.
McQUAY MAKE UP AIR UNIT #3, Model RAH047.
McQUAY MAKE UP AIR UNIT #4, Model RAH077.
McQUAY MAKE UP AIR UNIT #5, Model RAH077.
McQUAY CHILLER #1 AIR CONDITIONER, 100 TONS, Model ALR100.
McQUAY CHILLER #2 AIR CONDITIONER, 140 TONS, Model ALR140.
1B AEROVENT EXHAUST FAN
10C AEROVENT EXHAUST FAN
20A NY BLOWER EXHAUST FAN
20B NY BLOWER EXHAUST FAN
20C AEROVENT EXHAUST FAN
20D AEROVENT EXHAUST FAN
20E NY BLOWER EXHAUST FAN
20F NY BLOWER EXHAUST FAN
20G NY BLOWER EXHAUST FAN
20H NY BLOWER EXHAUST FAN
22D NY BLOWER EXHAUST FAN
22E NY BLOWER EXHAUST FAN
22F NY BLOWER EXHAUST FAN
H30E NY BLOWER EXHAUST FAN
40C NY BLOWER EXHAUST FAN
40D NY BLOWER EXHAUST FAN
60C NY BLOWER EXHAUST FAN
60D NY BLOWER EXHAUST FAN

EQUIPMENT DESCRIPTION

ROOF EQUIPMENT (continued)

HSC-C AEROVENT EXHAUST FAN
HSC-D NY BLOWER EXHAUST FAN
HSC-E NY BLOWER EXHAUST FAN
HSC-F NY BLOWER EXHAUST FAN
WAFFLE CONE C NY BLOWER EXHAUST FAN
WAFFLE CONE E NY BLOWER EXHAUST FAN
WAFFLE BOWL A NY BLOWER EXHAUST FAN
1B HEAT EXCHANGER - DES CHAMPS #84M-2000
10C HEAT EXCHANGER - DES CHAMPS #84M-2000
10D HEAT EXCHANGER - DES CHAMPS #84M-2000
20A HEAT EXCHANGER - DES CAHMPS #84M-2000
20B HEAT EXCHANGER - DES CAHMPS #84M-2000
20C HEAT EXCHANGER - DES CAHMPS #84M-2000
20D HEAT EXCHANGER - DES CAHMPS #84M-2000
20E HEAT EXCHANGER - DES CHAMPS #84M-3000
20F HEAT EXCHANGER - DES CHAMPS #84M-3000
20G HEAT EXCHANGER - DES CHAMPS #84M-3000
20H HEAT EXCHANGER - DES CAHMPS #84M-3000
22D HEAT EXCHANGER - DES CAHMPS #84M-2000
22E HEAT EXCHANGER - DES CAHMPS #84M-2000
22F HEAT EXCHANGER - DES CAHMPS #84M-2000
22G HEAT EXCHANGER - DES CAHMPS #84M-2000
KC"B" HEAT EXCHANGER - DES CHAMPS 84M-5000
30F HEAT EXCHANGER - DES CHAMPS 84M-5000
40C HEAT EXCHANGER - DES CAHMPS #84M-2000
40D HEAT EXCHANGER - DES CAHMPS #84M-2000
60C HEAT EXCHANGER - DES CAHMPS #84M-2000
60 D HEAT EXCHANGER - DES CAHMPS #84M-2000
HSC-C HEAT EXCHANGER - DES CHAMPS #75M-4
HSC-D HEAT EXCHANGER - DES CHAMPS #75M-4
HSC-E HEAT EXCHANGER - DES CHAMPS #75M-4
HSC-F HEAT EXCHANGER - DES CHAMPS #75M-4
PRODUCTION ROOM #3 HVAC SYSTEM
WAFFLE E HEAT EXCHANGER - DES CHAMPS #84M-5000

GARAGE AND WASTE BATTER ROOM

ROTARY DRUM VAC
PULSATROL PH PROBE
RDV OMEGA FLOW METER
FIRE RISE ROOM OMEGA FLOW METER
GOODWAY POWER WASHER
25 Ton (TSL-50) AIR HYDRAULIC LIFT
CHICAGO PNEUMATIC 1" IMPACT w/ 6" SHANK w/ ACCES.
SEARS PORTABLE AIR COMPRESSOR
IR 7.5 HP (2475N7.5) AIRCOOLED COMPRESSOR
6 HP LAWN MOWER
SALT SPREADER
ISCO WATER SAMPLER

EQUIPMENT DESCRIPTION

GARAGE AND WASTE BATTER ROOM (continued)

AMERICAN ELECTRIC WATER HEATER, 40 GALLONS w/ Expansion Tank.
PORTABLE CLARK FORKLIFT BATTERY CHARGER, RC407, 120V.
TSS METER
HEAVY DUTY STEEL WORK BENCH, 8' Lg.x 2.5' W x 3' H, w/ one shelf.
2 POST CAR LIFT

MOBILE EQUIPMENT & ACCESSORIES

#1 CLARK TM15 ELECTRIC FORKLIFT, 4000 lb. Capacity.
#2 CLARK TM15 ELECTRIC FORKLIFT, 4000 lb. Capacity.
#3 HYSTER ELECTRIC FORKLIFT, 4000 lb.Capacity.
#4 HYSTER ELECTRIC FORKLIFT, 4000 lb. Capacity.
#5 HYSTER ELECTRIC FORKLIFT, 4000 lb. Capacity.
#4 HYSTER BATTERY
#6 CLARK TM15 ELECTRIC FORKLIFT w/ SLIP SHEET ATTACHMENT, 4000 lb. Capacity.
EXIDE WORKHOG FORKLIFT BATTERY CHARGER, W3-18-1050.
GNB FORKLIFT BATTERY CHARGER, SCR100-18-1050TZ.
HAWKER LIFE PLUS FORKLIFT BATTERY CHARGER, Model 2010.
100 YALE PROPANE FORKLIFT, 8000 lb. Capacity.
#1 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#2 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#3 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#4 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#5 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#6 HYSTER MANUAL PALLET JACK, 4000 lb. Capacity.
#7 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
LIFT-RITE MAUAL PALLET JACK, 5000 LB. CAPACITY
LIFT-RITE MAUAL PALLET JACK, 5000 LB. CAPACITY
JLG 1932E2 MOBIL LIFT PLATFORM
JLG STATIONARY SINGLE PERSON LIFT #25AM
TOMCAT 40" RIDE ON FLOOR SCRUBBER
FORKLIFT OPERATED VERTICLE HIGHRISE CAGE.
FORKLIFT OPERATED HORIZONTAL EXTENDED PLATFORM CAGE, 10' x 2'.
GENIE ARTICULATING KNUCKLEBOOM

EXHIBIT "C" TO DEVELOPMENT AGREEMENT

WHEN RECORDED, RETURN TO:

City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001-5399

SPECIAL WARRANTY DEED

For consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, JOY CONE CO., a Pennsylvania corporation, the Grantor herein, does hereby convey to the CITY OF FLAGSTAFF, an Arizona municipal corporation, the Grantee, all of its right, title and interest in and to the real property situated in Coconino County, Arizona, and described in *Exhibit "A"* attached hereto and incorporated herein by this reference, together with all rights and privileges appurtenant thereto;

SUBJECT only to those exceptions set forth in *Exhibit "B"* attached hereto and incorporated herein by reference.

And the Grantor hereby binds itself and its successors to warrant and defend the title as against all acts of the Grantor herein and no other.

Upon the occurrence of any event under the Development Agreement between the Grantor and Grantee (recorded at Coconino County Recorder's No. _____) which would cause a requirement that the Grantee convey title to the property described in Exhibit "A" of the Development Agreement to Grantor, then title and all interest of Grantee in such property shall automatically revert to Grantor, unless otherwise agreed by the Grantor and Grantee.

DATED this _____ day of December, 2008.

JOY CONE CO., a Pennsylvania corporation

By _____
Name _____
Title _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of December, 2008, before me, the undersigned officer, personally appeared _____, who acknowledged her/himself to be _____ of JOY CONE CO., a Pennsylvania corporation:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

EXHIBIT "A" TO SPECIAL WARRANTY DEED

Legal Description of Property

EXHIBIT "A" TO SPECIAL WARRANTY DEED

Legal Description of Property

TRACK 5A, OF PULLIAM AIRPARK UNIT 1, AMENDED, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF COCONINO COUNTY, ARIZONA, RECORDED IN CASE 6, MAP 44-44E.

EXCEPTING AND RESERVING UNTO THE UNITED STATES ALL URANIUM, THORIUM, OR ALL OTHER MATERIALS DETERMINED PURSUANT TO SECTION 5 (B) (1) OF THE ATOMIC ENERGY ACT OF 1946 (60 STAT. 761) TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS CONTAINED IN WHATEVER CONCENTRATION AS RESERVED BY INSTRUMENT RECORDED IN BOOK 5 OF OFFICIAL RECORDS, PAGE 187.

EXHIBIT "B" TO SPECIAL WARRANTY DEED

Exceptions

EXHIBIT "B" TO SPECIAL WARRANTY DEED

Title Exceptions

1. Second installment of 2008 taxes, a lien, payable on or before March 1, 2009, and delinquent May 1, 2009.
2. Reservations contained in the Patent from the United States of America, recorded August 13, 1948 in Book 5 of Official Records, Page 187, reading as follows:

Excepting and Reserving unto the United States of America Pursuant to the provision of Executive Order No. 99.08, approved December 5, 1947 (12 Fed Reg 8223) all uranium, thorium, or all other materials determined Pursuant to Section 5 (b) (1) of the Atomic Energy Act of 1946 (60 Stat. 761) to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon said land and prospect for, mine and remove the same.
3. Water rights, claims or title to water, whether or not shown by the public records.
4. Easements, restrictions, reservations, conditions and set-back lines as set forth on the plat recorded as Case 6, Maps 44-44E and recorded as Case 7, Maps 96-96A, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
5. Covenants, conditions and restrictions in the document recorded as Instrument 00-3053477 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes.
6. All matters as set forth in Development Agreement and Property Use Restrictions, recorded October 12, 1999 as Instrument 99-3025388 of Official Records.
7. An easement for drainage, public utilities, to include telephone and cable and one-foot wide non-vehicular access, as shown on the plat recorded as Case 6, Maps 44-44E.
8. Rights of way for telephone and power lines, highways and railways as set forth by document recorded as Book 5 of Official Records, Page 187 and thereafter amended by document recorded as Docket 1258, Page 167. (Undefined)
9. An easement for underground electric lines and incidental purposes, recorded as Docket 821, Page 496. (Undefined)
10. An easement for public utilities and incidental purposes, recorded as Instrument 01-3097035 of Official Records.

11. The right of the State of Arizona to prohibit, limit, control or restrict access to Interstate Highway 17 as set forth in document recorded September 17, 1982 as Docket 900, Page 876.
12. Terms and Conditions as set forth in Items 1 through 4 of the Instrument of Release recorded as Docket 1279, Page 54, and further recorded as Docket 1303, Page 412.
13. All matters as set forth in Ordinance No. 1747, Rezoning, recorded November 13, 1992 as Docket 1520, Page 864.
14. All matters as set forth in City of Flagstaff Ordinance No. 1870, concerning zoning, recorded November 08, 1996 as Docket 1932, Page 833.
15. All matters as set forth in Ordinance No. 1964 establishing an airport influence area, recorded January 22, 1998 as Docket 2060, Page 978.
16. The effect of that certain Conditional Use Permit from the City of Flagstaff, Permitter, and Alamosa L.P., Permittee, recorded as Instrument 01-3121211 of Official Records.
17. The effect of that certain Conditional Use Permit from the City of Flagstaff, Permitter, and AT&T Wireless Permittee, recorded as Instrument 03-3219022 of Official Records.
18. An unrecorded lease dated June 05, 2003, executed by Alamosa Properties L.P., a Texas limited partnership as lessor and AT&T Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Wireless, by AT&T Wireless Services, Inc., a Delaware corporation as lessee, as disclosed by a(n) Memorandum of Agreement recorded October 03, 2003 as Instrument 03-3228412 of Official Records.
19. An unrecorded lease dated September 10, 2008, executed by George and Thomas Cone Company, dba Joy Cone Company, a Pennsylvania company as lessor and New Cingular Wireless PCS, LLC, a Delaware limited liability company as lessee, as disclosed by a(n) Memorandum of Lease recorded September 29, 2008 as Instrument 08-3501322 of Official Records.

EXHIBIT "D" TO DEVELOPMENT AGREEMENT

BILL OF SALE

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, JOY CONE CO., a Pennsylvania corporation ("Joy Cone"), does hereby transfer, sell, set over and assign unto the CITY OF FLAGSTAFF, an Arizona municipal corporation ("City"), its successors and assigns, all of Joy Cone's right, title and interest in and to all of the equipment, fixtures and other items of personal property listed in *Exhibit "A"* attached hereto and located within the real property described in *Exhibit "A-1"* attached hereto and incorporated herein by this reference (collectively, the "Taxable Personal Property").

Joy Cone shall warrant and defend title to the Taxable Personal Property only with respect to the acts of Joy Cone and no other party.

Dated as of the _____ day of December, 2008.

JOY CONE CO., a Pennsylvania corporation

By _____
Name _____
Title _____

EXHIBIT "A" TO BILL OF SALE

Description of Personal Property

EXHIBIT "A" TO BILL OF SALE

Description of Personal Property

**Joy Cone Company - Flagstaff
Equipment List
12/31/2008**

EQUIPMENT DESCRIPTION

OVEN DESCRIPTION

JOY 1B OVEN (48 molds, 123 oven)
JOY 10C OVEN MOLDS ONLY (45)
JOY 10D OVEN MOLDS ONLY (45)
JOY 20A OVEN (42 molds, 111 oven), w/ S.S. Merging Conveyor (18' Lg. x 18" W).
JOY 20B OVEN (42 molds, 111 oven)
JOY 20C OVEN (42 molds, 111 oven)
JOY 20D OVEN (42 molds, 111 oven), w/ S.S. Merging Conveyor (18' Lg. X 18" W).
JOY 20E OVEN (42 molds, 111 oven), w/ S.S. Merging Conveyor (18' L x 18" W).
JOY 20F OVEN (42 molds, 111 oven)
JOY 20G OVEN (42 molds, 111 oven)
JOY 20H OVEN (42 molds, 111 oven), w/ S.S. Merging Conveyor (18' L x 18" W).
JOY 22D OVEN (42 molds, 111 oven)
JOY 22E OVEN (42 molds, 111 oven)
JOY 22F OVEN (42 molds, 111 oven)
JOY 22G OVEN (42 molds, 111 oven)
JOY 30 E OVEN
JOY 30 F OVEN
JOY 30 H OVEN
JOY 40C OVEN (39 molds, 123 oven), w/ S.S. Merging Conveyor (20' L x 40" W).
JOY 40D OVEN (39 molds, 123 oven)
JOY 60C OVEN (39 molds, 123 oven)
JOY 60D OVEN (39 molds, 123 oven)
HAAS KIDS CONE "B" STAKI 48 OVEN
HAAS TRO SUGAR CONE C Oven (96 plates), w/ S.S. Merging Conveyor (12' Lg.x21" W).
HAAS VTRO SUGAR CONE D OVEN (96 plates)
HAAS VTRO SUGAR CONE E OVEN (96 plates)
HAAS VTRO SUGAR CONE F Oven (96 plates), w/ S.S. Merging Conveyor (12' Lg.x21"W).
WALTER WAFFLE BOWL "A" (JUPITER 69) OVEN
WALTER WAFFLE CONE "C" (JUPITER 89) OVEN
WALTER WAFFLE CONE "E" (JUPITER 121) OVEN

JACKET DISPENSER DESCRIPTION

22D - JOY C.C. JACKET DISPENSER, Left hand - 3 lanes.
22E - JOY C.C. JACKET DISPENSER, Left hand - 3 lanes.
22F - JOY C.C. JACKET DISPENSER, Left hand - 3 lanes.
22G - JOY C.C. JACKET DISPENSER, Left hand - 3 lanes.
30E - JOY C.C. JACKET DISPENSER, Right hand - 5 lanes.
40D - JOY C.C. JACKET DISPENSER, Right hand - 3 lanes.

EQUIPMENT DESCRIPTION

JACKET DISPENSER DESCRIPTION (continued)

60C - JOY C.C. JACKET DISPENSER, Right hand - 3 lanes.
60D - JOY C.C. JACKET DISPENSER, Right hand - 3 lanes.
HSC C - JOY OVERHEAD SC JACKET DISPENSER, 4 lanes.
HSC D - JOY OVERHEAD SC JACKET DISPENSER, 4 lanes.
HSC E - JOY OVERHEAD SC JACKET DISPENSER, 4 lanes.
HSC F - JOY OVERHEAD SC JACKET DISPENSER, 4 lanes.
WAFFLE C - JOY OVERHEAD WC JACKET & SYRUP DISPENSER, 6 lanes.
WAFFLE E - JOY OVERHEAD WC JACKET & SYRUP DISPENSER, 4 lanes.
3 JOY 30 JACKET DISPENSERS

WRAPPER DESCRIPTION

20-(1) LINE - ILAPAK's Carrera 1000 PC, Lt. Hand, 10 meter infeed.
20-(2) LINE - ILAPAK's Carrera 1000 PC, Lt. Hand, 10 meter infeed.
22 LINE - ILAPAK's Carrera 1000 PC, Rt. Hand, 17 meter infeed.
40 LINE - ILAPAK's Carrera 500 E, Rt. Hand, 1 meter infeed.
60 LINE - ILAPAK's Carrera 500 M
KIDS CONE LINE - ILAPAK's Carrera 500 M
SUGAR LINE - ILAPAK's Carrera 1000 PC
CC JACKET WRAP MACHINE
CC JACKET WRAP MACHINE
WAFFLE BOWL LINE - ILAPAK's 500 PC, Rt. Hand, 6 meter infeed.
WAFFLE CONE LINE - ILAPAK's 500 PC, Rt. Hand, 6 meter infeed.

METAL DETECTOR DESCRIPTION

20-(1) LINE - ERIEZ MFG, 8' Lg. Conveyor w/ 9" W Belt.
20-(2) LINE - FORTRESS, 6' Lg. Conveyor w/ 6" W Belt.
22 LINE - GORING KERR, 6" Lg. Conveyor w/ 9" W Belt.
30 LINE - GORING KERR, 6' Lg. Conveyor w/ 8" W Belt.
40 LINE - GORING KERR, 6' Lg. Conveyor w/ 6" W Belt.
60 LINE - GORING KERR, 8' Lg. Conveyor w/ 10" W Belt.
KIDS CONE LINE - FORTRESS, 6' Lg. Conveyor w/ 6" W Belt.
H.S.C. "C" OVEN - GORING KERR, 6' Lg. Conveyor w/ 4 lanes of Polycord.
H.S.C. "D" OVEN - GORING KERR, 6' Lg. Conveyor w/ 4 lanes of Polycord.
H.S.C. "E" OVEN - GORING KERR, 6' Lg. Conveyor w/ 4 lanes of Polycord.
H.S.C. "F" OVEN - GORING KERR, 6' Lg. Conveyor w/ 4 lanes of Polycord.
H.S.C. LINE - GORING KERR, 6' Lg. Conveyor w/ 6" W Belt.
WAFFLE BOWL "A" LINE - GORING KERR, Timing Belt Conveyor, 48"L x 30" W.
WAFFLE CONE "C" OVEN - GORING KERR, Timing Belt Conveyor, 48"L x 30" W.
WAFFLE CONE "E" OVEN - GORING KERR, Timing Belt Conveyor, 48" L x 26" W.
WAFFLE CONE LINE - GORING KERR, 6' Lg. Conveyor w/ 6" W Belt.
DISPENSER # 1 - GORING KERR
DISPENSER # 2 - INSPECTION SYSTEMS
DISPENSER #3 - FORTRESS
SLEEVE #1
METAL DETECTOR DESCRIPTION-HAAS SUGAR RETAIL LINE

EQUIPMENT DESCRIPTION

X-RAY DESCRIPTION

SUGAR CONE LINE - SAFELINE AVS X-RAY, 6' Lg. Conveyor w/ 9" W Belt.

CARTONER DESCRIPTION

20-(1) LINE - SUPERIOR 30-671 w/ THREE COLOR COALATOR.
20-(2) LINE - LANGEN B1-IMA
40 LINE - GLOBAL CARTONER #140-008.
KIDS CONE ADCO 15DZ-60-SS SEMI-AUTOMATIC CARTONER
SUGAR LINE - GLOBAL CARTONER #140-003
WAFFLE BOWL LINE - ADCO SEMI-AUTOMATIC CARTONER
WAFFLE CONE LINE - GLOBAL CARTONER #140-005
MINI-CARTONER #1
JOY MINI-CARTONER #2
STRETCH WRAPPER

LASER PRINTER DESCRIPTION

20-(F) LINE - LYNX XYMARK EFX
20-(P) LINE - DOMINO S100.
DOMINO S100 Kids Cone Line
DOMINO S100. Waffle Bowl Line
DOMINO S100. Waffle Cone Line
40 LINE - LYNX XYMARK 2 (EFX).
SUGAR LINE - LYNX XYMARK EFX
PRINT & APPLY LABELERS
(9) DESKTOP LABELER UNITS (Manual)

CHECK WEIGHER DESCRIPTION

20-(F) LINE - ALPHA #PW-12
20-(P) LINE - ALPHA #PW-12
40 LINE - ALPHA #PW-12

CASEPACKER DESCRIPTION

20-(F) LINE - COMPACKER # II-3
20-(P) LINE - COMPACKER # II-3.
40 LINE - COMPACKER # II-3.
SUGAR LINE - COMPACKER # II-3
20F CASE LINE PACKER wll turn into Waffle Case Line Packer

CASE ERECTORS AND SEALERS

22 LINE - MARQ TUFF CASE ERECTOR AND SEALER.
KC LINE - O/K DURABLE CASE SEALER, SUPERTAPER 1M
WAFFLE BOWL LINE - O/K DURABLE CASE SEALER, SUPERTAPER 1M
WAFFLE CONE LINE - O/K DURABLE CASE SEALER, SUPERTAPER 1M
SPARE - LITTLE DAVID CASE SEALER
30 LINE CASE ERECTOR/SEALER

EQUIPMENT DESCRIPTION

CONVEYOR DESCRIPTION

20-(F) - ROACH GRAVITY WHEEL CONVEYOR, 10' Lg. x 24" W
20-(F) - ROACH GRAVITY WHEEL 90 DEGREE CONVEYOR, 4' OR x 24" W.
20-(P) LINE - PSC FLO-TURN 90 DEGREE BELT CONVEYOR, FT18 8x90
20-(P) LINE - HYTROL POWER BELT CONVEYOR, 14" W BELT X 11' Lg.
20-(P) - HYTROL GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W
20-(P) - HYTROL GRAVITY ROLLER 90 DEGREE CONVEYOR, 4' OR x 24" W.
22 LINE - ROACH GRAVITY WHEEL 90 CURVE CONVEYOR, 4' OR x 24" W.
22 LINE - ROACH GRAVITY WHEEL CONVEYOR, 10' Lg. x 24" W.
40 LINE - ROACH SLIDER BELT CONVEYOR, 10' Lg. x 12" W Belt.
40 LINE - ROACH SLIDER BELT CONVEYOR, 350BOS-12 x 10' Lg.
40 LINE - ROACH GRAVITY ROLLER 90 CURVE CONVEYOR, 4' OR x 24" W.
40 LINE - ROACH GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W.
KC LINE - ROACH GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W
SUGAR LINE - ROACH SLIDER BELT CONVEYOR, 350BOS-12 x 5' Lg.
SUGAR LINE - PSC FLO-TURN 90 DEGREE BELT CONVEYOR, FT18 8x90
SUGAR LINE - HYTROL SLIDER BELT CONVEYOR, 14" W Belt x 6" Lg.
SUGAR LINE - PSC FLO-TURN 90 DEGREE BELT CONVEYOR, FT18 8x90
SUGAR LINE - ROACH SLIDER BELT CONVEYOR, 350BOS-12 x 10' Lg.
SUGAR LINE - GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W
WAFFLE BOWL LINE - GRAVITY ROLLER CONVEYOR, TA 18" W x 10' Lg.
WAFFLE CONE LINE - HYTROL SLIDER BELT CONVEYOR, TA 14" W Belt x 8' Lg.
WAFFLE CONE LINE - JOY F.S. S.S. MERGING INDEX CONVEYOR, 8' x 30".
WAFFLE CONE LINE - HYTROL GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W

COLOR EQUIPMENT DESCRIPTIONS

20E FILIMATIC 3 COLOR PUMPS (#AB-5) AND TRIPLE S.S. CABINETS.
20F FILAMATIC COLOR PUMP (#AB-5) AND S.S. CABINET.
20G FILIMATIC COLOR PUMP (#AB-5) AND S.S. CABINET.
20H FILIMATIC COLOR PUMP (#AB-5) AND S.S. CABINET.

DRY INGREDIENT SUPPORT EQUIPMENT

SHICK 65,000 POUNDS ALUM. SUGAR CONE FLOUR SILO # 1
SHICK 110,000 POUND ALUM. SUGAR CONE FLOUR SILO # 2
SHICK 110,000 POUND ALUM. CAKE CONE FLOUR SILO # 1
SHICK 110,000 POUND ALUM. CAKE CONE FLOUR SILO # 2
SUGAR CONE FLOUR BLOWER - TUTHILL #4606
CAKE CONE FLOUR BLOWER - TUTHILL #4606
SUGAR CONE FLOUR DUST COLLECTOR - SHICK #58AJ25
CAKE CONE FLOUR DUST COLLECTOR
SUGAR AND TAPIOCA LIFT DUMP STATION
SUGAR AND TAPIOCA DUMP STATION
100 CUBIC FOOT SUGAR BIN
SUGAR BIN DUST COLLECTOR - SHICK 58AJ9
100 CUBIC FOOT TAPIOCA BIN
TAPIOCA BIN DUST COLLECTOR - SHICK #58AJ9
CAKE CONE FLOUR SIFTER
SUGAR CONE FLOUR SIFTER
CAKE CONE WEIGH HOPPER

EQUIPMENT DESCRIPTION

DRY INGREDIENT SUPPORT EQUIPMENT (continued)

SUGAR CONE WEIGH HOPPER
CAKE CONE WEIGH HOPPER DUST COLLECTOR - SHICK #36AJ16
SUGAR CONE WEIGH HOPPER DUST COLLECTOR - SHICK #36AJ16

BATTER ROOM EQUIPMENT

CAKE CONE MIXER
SUGAR CONE MIXER - LEE TBD , DOULBLE RIBBON
FELDEMER STAINLESS STEEL CAKE CONE COOLER
FELDEMER STAINLESS STEEL SUGAR CONE COOLER
FELDERMER STAINLESS STEEL WAFFLE CONE COOLER
STAINLESS STEEL CIP TANK
STAINLESS 50 GALLON VANILLA HOLDING TANK
STAINLESS 50 GALLON ANNATTO COLORING HOLDING TANK
STAINLESS 50 GALLON VEGETABLE OIL HOLDING TANK
STAINLESS 6000 GALLON VEGETABLE OIL HOLDING TANK
BRICK AND BRUELLER WASH DOWN SCALE
(4) - PALOMA PM-24 HOT WATER HEATERS
Cake Cone Chilled Batter Line System - s.s. tubing, copper pipe, valves, panels, etc.

CONE SCRAP SYSTEM EQUIPMENT

BROCK CONE SCRAP DUST COLLECTOR TANK #1 & DUCTWORK.
JOHNSON CONE SCRAP DUST COLLECTOR TANK #2 & DUCTWORK.
SCRAP SYSTEM DROP OUT TANK
10 HP SCRAP SYSTEM BLOWER MOTOR - TUTHILL # 4504
50 HP SCRAP SUCTION FAN #2.
30 HP SCRAP SUCTION FAN #1.
GALVANIZED CONE SCRAP SILO, 50,000 lbs.

AIR COMPRESSOR EQUIPMENT

60 HP SULLAIR ROTARY AIR COMPRESSOR
150 HP SULLAIR LS 20S-150L ROTARY AIR COMPRESSOR #1
150 HP SULLAIR LS 20S-150L ROTARY AIR COMPRESSOR #2
ARROW COMPRESSED AIR DRYER
ZANDER SL 600 WATER OIL SEPARATOR
IR NLM-2 AIR FILTER
1020 GALLON AIR RECEIVER TANK "A"
1020 GALLON AIR RECEIVER TANK "B"
100 GALLON RECEIVER TANK "C"
RECIRCULATING GLYCOL COOLING SYSTEM
SULLAIR AIR REGULATING VALVE - #SFP 1000
PARKER COALESCING AIR FILTER

CHILLED PROCESS WATER EQUIPMENT

RICIRCULATING GLYCOL COMPRESSOR SYSTEM
REPACO FOOD GRADE GLYCOL CHILLER SYSTEM
STAINLESS STEEL PROCESS WATER HOLDING TANK

EQUIPMENT DESCRIPTION

JANITORIAL (CLEAN-UP) EQUIPMENT

250 LB/HR INCINERATOR
HYDRAULIC CARDBOARD BAILER
MAXI-MOVERS BULK DELIVERY TRUCK, 48cu.
MAXI-MOVERS BULK DELIVERY TRUCK, 48cu. - 60 LINE.
MAXI-MOVERS BULK DELIVERY TRUCK, 48cu. - WFL BOWL LINE.
9 MAXI-MOVERS TOTAL, 1 STEEL

MISCELLANEOUS

CULLIGAN HI-FLO 2E WATER SOFTENER
ICE CHEST #1
ICE CHEST #2
MARSH TAPE MACHINE #1 w/ Aluminum Stand.
MARSH TAPE MACHINE #2 w/ Aluminum Stands.
MARSH TAPE MACHINE #3 w/ Aluminum Stands.
MARSH TAPE MACHINE #4 w/ Aluminum Stands.
MARSH TAPE MACHINE #5 w/ Aluminum Stands.
MARSH TAPE MACHINE #6 w/ Aluminum Stands.
MARSH TAPE MACHINE #7 w/ Aluminum Stands.
MARSH TAPE MACHINE #8 w/ Aluminum Stands.
MARSH TAPE MACHINE #9 w/ Aluminum Stands.
MARSH TAPE MACHINE #10 w/ Aluminum Stands.
MARSH TAPE MACHINE #11 w/ Aluminum Stands.
MARSH TAPE MACHINE #12 w/ Aluminum Stands.
MARSH TAPE MACHINE #13 w/ Aluminum Stands.
MARSH TAPE MACHINE #14 w/ Aluminum Stands.
(37) - HEAVY DUTY DEWALT RADIOS (33 TOTAL IN 2006)
LANTECH STRETCH WRAPPER #1 (PR#1)
LANTECH STRETCH WRAPPER #2 (WRHS #1)
LANTECH Q-300 STRETCH WRAPPER #3 (PR#2), S# QM020588
(2) - DYNARIC STRAPPING MACHINE, Model DF-20.
FACILITY ACCESS CONTROL & CCTV
(11) - JOY COOLING WHEELS
OHAUS MB MOISTURE ANALYZER
COMMUNICATION ROOM AIR CONDITIONING UNIT
JOY OVEN GAS BLOWER UPGRADE

MACHINE SHOP EQUIPMENT

T50 PIRANHA PUNCH PRESS
CLAUSING LATHE
BRIDGEPORT
BLAST-N-PEEN SHOT BLASTER
VERTICLE HYDRAULIC PRESS
ACME RADIAL AND VERTICLE BAND SANDER
GROB VERTICLE BAND SAW
LINCOLN MIG WELDER
MILLER TIG WELDER

EQUIPMENT DESCRIPTION

MACHINE SHOP EQUIPMENT (continued)

ATLAS DRILL PRESS
PORTER AND CABLE CHOP SAW
MILLER PORTABLE TIG WELDER
COLD JET DRY ICE MACHINE
LINCOLN ARC WELDER
HEAVY DUTY STEEL WORK BENCH, 6' Lg.x 2.67' W x 3' H, w/ one shelf.
HEAVY DUTY STEEL WELDING BENCH, 8' Lg.x 3' W x 3' H, w/ one shelf.
HEAVY DUTY STEEL MOLD WORK BENCH, 6' Lg.x 3.34' W x 3.33' H, w/ one shelf.

FABRICATION SHOP EQUIPMENT

CUMMINGS DIESEL GENERATOR
ACCURA HORIZONTAL BAND SAW
TENNSMITH BOX AND PAN BRAKE.
ROCKLINIZER
SEARS RADIAL ARM SAW
POWERMAX 600 SPOT WELDER
RIGID PIPE THREADER (UP TO 2 ")
UNIVERSAL SAND BLASTER
4' CONNECTICUT SHEET BRAKE
4' PEXTO METAL SHEAR
HEAVY DUTY STEEL WORK BENCH, 8' Lg.x 6' W x 2.67' H, w/ one shelf.

ROOF EQUIPMENT

McQUAY MAKE UP AIR UNIT #1, 19000 CFM, Model RAH047.
McQUAY MAKE UP AIR UNIT #2, Model RAH047.
McQUAY MAKE UP AIR UNIT #3, Model RAH047.
McQUAY MAKE UP AIR UNIT #4, Model RAH077.
McQUAY MAKE UP AIR UNIT #5, Model RAH077.
McQUAY CHILLER #1 AIR CONDITIONER, 100 TONS, Model ALR100.
McQUAY CHILLER #2 AIR CONDITIONER, 140 TONS, Model ALR140.
1B AEROVENT EXHAUST FAN
10C AEROVENT EXHAUST FAN
20A NY BLOWER EXHAUST FAN
20B NY BLOWER EXHAUST FAN
20C AEROVENT EXHAUST FAN
20D AEROVENT EXHAUST FAN
20E NY BLOWER EXHAUST FAN
20F NY BLOWER EXHAUST FAN
20G NY BLOWER EXHAUST FAN
20H NY BLOWER EXHAUST FAN
22D NY BLOWER EXHAUST FAN
22E NY BLOWER EXHAUST FAN
22F NY BLOWER EXHAUST FAN
H30E NY BLOWER EXHAUST FAN
40C NY BLOWER EXHAUST FAN
40D NY BLOWER EXHAUST FAN
60C NY BLOWER EXHAUST FAN
60D NY BLOWER EXHAUST FAN

EQUIPMENT DESCRIPTION

ROOF EQUIPMENT (continued)

HSC-C AEROVENT EXHAUST FAN
HSC-D NY BLOWER EXHAUST FAN
HSC-E NY BLOWER EXHAUST FAN
HSC-F NY BLOWER EXHAUST FAN
WAFFLE CONE C NY BLOWER EXHAUST FAN
WAFFLE CONE E NY BLOWER EXHAUST FAN
WAFFLE BOWL A NY BLOWER EXHAUST FAN
1B HEAT EXCHANGER - DES CHAMPS #84M-2000
10C HEAT EXCHANGER - DES CHAMPS #84M-2000
10D HEAT EXCHANGER - DES CHAMPS #84M-2000
20A HEAT EXCHANGER - DES CAHMPS #84M-2000
20B HEAT EXCHANGER - DES CAHMPS #84M-2000
20C HEAT EXCHANGER - DES CAHMPS #84M-2000
20D HEAT EXCHANGER - DES CAHMPS #84M-2000
20E HEAT EXCHANGER - DES CHAMPS #84M-3000
20F HEAT EXCHANGER - DES CHAMPS #84M-3000
20G HEAT EXCHANGER - DES CHAMPS #84M-3000
20H HEAT EXCHANGER - DES CAHMPS #84M-3000
22D HEAT EXCHANGER - DES CAHMPS #84M-2000
22E HEAT EXCHANGER - DES CAHMPS #84M-2000
22F HEAT EXCHANGER - DES CAHMPS #84M-2000
22G HEAT EXCHANGER - DES CAHMPS #84M-2000
KC"B" HEAT EXCHANGER - DES CHAMPS 84M-5000
30F HEAT EXCHANGER - DES CHAMPS 84M-5000
40C HEAT EXCHANGER - DES CAHMPS #84M-2000
40D HEAT EXCHANGER - DES CAHMPS #84M-2000
60C HEAT EXCHANGER - DES CAHMPS #84M-2000
60 D HEAT EXCHANGER - DES CAHMPS #84M-2000
HSC-C HEAT EXCHANGER - DES CHAMPS #75M-4
HSC-D HEAT EXCHANGER - DES CHAMPS #75M-4
HSC-E HEAT EXCHANGER - DES CHAMPS #75M-4
HSC-F HEAT EXCHANGER - DES CHAMPS #75M-4
PRODUCTION ROOM #3 HVAC SYSTEM
WAFFLE E HEAT EXCHANGER - DES CHAMPS #84M-5000

GARAGE AND WASTE BATTER ROOM

ROTARY DRUM VAC
PULSATROL PH PROBE
RDV OMEGA FLOW METER
FIRE RISE ROOM OMEGA FLOW METER
GOODWAY POWER WASHER
25 Ton (TSL-50) AIR HYDRAULIC LIFT
CHICAGO PNEUMATIC 1" IMPACT w/ 6" SHANK w/ ACCES.
SEARS PORTABLE AIR COMPRESSOR
IR 7.5 HP (2475N7.5) AIRCOOLED COMPRESSOR
6 HP LAWN MOWER
SALT SPREADER
ISCO WATER SAMPLER

EQUIPMENT DESCRIPTION

GARAGE AND WASTE BATTER ROOM (continued)

AMERICAN ELECTRIC WATER HEATER, 40 GALLONS w/ Expansion Tank.
PORTABLE CLARK FORKLIFT BATTERY CHARGER, RC407, 120V.
TSS METER
HEAVY DUTY STEEL WORK BENCH, 8' Lg.x 2.5' W x 3' H, w/ one shelf.
2 POST CAR LIFT

MOBILE EQUIPMENT & ACCESSORIES

#1 CLARK TM15 ELECTRIC FORKLIFT, 4000 lb. Capacity.
#2 CLARK TM15 ELECTRIC FORKLIFT, 4000 lb. Capacity.
#3 HYSTER ELECTRIC FORKLIFT, 4000 lb. Capacity.
#4 HYSTER ELECTRIC FORKLIFT, 4000 lb. Capacity.
#5 HYSTER ELECTRIC FORKLIFT, 4000 lb. Capacity.
#4 HYSTER BATTERY
#6 CLARK TM15 ELECTRIC FORKLIFT w/ SLIP SHEET ATTACHMENT, 4000 lb. Capacity.
EXIDE WORKHOG FORKLIFT BATTERY CHARGER, W3-18-1050.
GNB FORKLIFT BATTERY CHARGER, SCR100-18-1050TZ.
HAWKER LIFE PLUS FORKLIFT BATTERY CHARGER, Model 2010.
100 YALE PROPANE FORKLIFT, 8000 lb. Capacity.
#1 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#2 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#3 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#4 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#5 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#6 HYSTER MANUAL PALLET JACK, 4000 lb. Capacity.
#7 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
LIFT-RITE MAUAL PALLET JACK, 5000 LB. CAPACITY
LIFT-RITE MAUAL PALLET JACK, 5000 LB. CAPACITY
JLG 1932E2 MOBIL LIFT PLATFORM
JLG STATIONARY SINGLE PERSON LIFT #25AM
TOMCAT 40" RIDE ON FLOOR SCRUBBER
FORKLIFT OPERATED VERTICLE HIGHRISE CAGE.
FORKLIFT OPERATED HORIZONTAL EXTENDED PLATFORM CAGE, 10' x 2'.
GENIE ARTICULATING KNUCKLEBOOM

EXHIBIT "A-1" TO BILL OF SALE

Legal Description of Property

EXHIBIT "A" TO BILL OF SALE

Legal Description of Property

TRACK 5A, OF PULLIAM AIRPARK UNIT 1, AMENDED, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF COCONINO COUNTY, ARIZONA, RECORDED IN CASE 6, MAP 44-44E.

EXCEPTING AND RESERVING UNTO THE UNITED STATES ALL URANIUM, THORIUM, OR ALL OTHER MATERIALS DETERMINED PURSUANT TO SECTION 5 (B) (1) OF THE ATOMIC ENERGY ACT OF 1946 (60 STAT. 761) TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS CONTAINED IN WHATEVER CONCENTRATION AS RESERVED BY INSTRUMENT RECORDED IN BOOK 5 OF OFFICIAL RECORDS, PAGE 187.

EXHIBIT "E" TO DEVELOPMENT AGREEMENT

LEASE

THIS LEASE ("Lease") is made and entered as of the 30th day of December, 2008 by and between the CITY OF FLAGSTAFF, an Arizona municipal corporation ("Landlord"), and JOY CONE CO., a Pennsylvania corporation ("Tenant").

RECITALS:

A. Landlord has title of record to certain land described in *Exhibit A* hereto and known as the "Property" under that certain Development Agreement between the Parties dated December 30th 2008, and recorded as Instrument No. ____, Official Records of Coconino County, Arizona (the "Development Agreement"), and the buildings which comprise the improvements constructed on said land and known as the "Improvements" under that same Development Agreement, together with all rights and privileges appurtenant thereto and all future additions thereto or alterations thereof (collectively, the "Premises"). The Premises shall also include all items of Taxable Personal Property with respect to which Landlord holds title and which are located on the Property or within the Improvements. The Improvements consist initially of an approximately 180,000 square foot warehouse and distribution facility. A Certificate of Occupancy for the Improvements has been issued.

B. The Premises are "Government Property Improvements" under A.R.S. Section 42-6201(2), Landlord is a "Government Lessor" under A.R.S. Section 42-6201(1), and Tenant is a "Prime Lessee" under A.R.S. Section 42-6201(4). For purposes of compliance with A.R.S. Section 42-6203, the parties acknowledge that the original Certificate of Occupancy for the Premises was issued on or about April 18, 2000.

C. The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. Section 42-6202; specifically, the parties acknowledge that, during the term hereof, A.R.S. Section 42-6203(A)(6) and Section 42-6203(E) shall govern the calculation of the initial tax rate for the entire Premises (the "Tax"). The Landlord acknowledges that Tenant's proposed expansion of the Improvements will result in direct and indirect substantial tangible and intangible benefits to the Landlord and the general public, including, without limitation, the development of a key commercial area within the corporate boundaries of the City of Flagstaff, the facilitation of the expansion of the employment base within the City of Flagstaff, incentivizing the development of adjacent properties, and other benefits more particularly described in the Development Agreement.

AGREEMENT

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. **Quiet Enjoyment.** Landlord covenants and agrees with Tenant that conditioned upon Tenant's performing and fulfilling all the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant, Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

2. **Term.** The term of this Lease shall commence on the date that fee simple title to the Premises is conveyed by the Tenant to the Landlord (the "Commencement Date") and shall end on the fifth (5th) anniversary of the Commencement Date; provided, however, that if, on or before the fifth (5th) anniversary of the Commencement Date, Tenant completes construction of at least 50,000 square feet of the Expansion, as described in Section 3 of the Development Agreement, then the term of this Lease shall continue until the fifteenth (15th) anniversary of the Commencement Date, whereupon the Lease shall terminate.

3. **Rental.** Tenant covenants to pay to Landlord as rental for the Premises the sum of One Dollar (\$1.00) per year on the Commencement Date and every anniversary thereof. The consideration for this Lease includes, without limitation: Tenant's payment of the entire cost of construction of the improvements constituting the Premises, Tenant's performance of all of the covenants and obligations under this Lease, and Tenant's contribution toward fulfillment of Landlord's policy and desire to promote development and to encourage the creation of jobs within the City of Flagstaff, and to enhance tax revenues resulting from the operation of businesses on the Premises, including the Tax. Tenant, at its option, may prepay the rental for a given portion of the lease term, but upon any early termination of this Lease, Landlord shall not be obligated to refund any portion of the prepaid rental.

4. **Mortgage of Premises.**

4.1 Tenant is hereby given the right, subject to Landlord's consent, said consent not to be unreasonably withheld, to create a security interest in Tenant's leasehold interest under this Lease by mortgage, collateral assignment or otherwise. Any such security interest shall be referred to herein as a "Leasehold Mortgage," and the holder of a Leasehold Mortgage shall be referred to herein as a "Leasehold Mortgagee."

4.2 No liability for the performance of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, and no benefit for the performance of the Landlord's covenants and agreements hereunder shall pass to any such Leasehold Mortgagee in the event a Leasehold Mortgagee forecloses its interest.

4.3 In the event of any notice of foreclosure of its interest by a Leasehold Mortgagee, Landlord shall, at its sole discretion, have the right to immediately terminate this Lease and convey fee simple title to the Premises to the Tenant, and seek any and all remedies available to it as described in **Section 16** of this Lease and the Development Agreement.

5. **Use.** Subject to A.R.S. Section 42-6201(2) and any restrictions expressly set forth in the Development Agreement, the Premises may be used and occupied by Tenant for any lawful purpose.

6. **Landlord Nonresponsibility.** Except as otherwise set forth in the Development Agreement, as may be amended, Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

- (a) utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Premises;
- (b) disruption in the supply of services or utilities to the Premises;
- (c) maintenance, repair or restoration of the Premises;
- (d) any and all property or excise taxes owing on the Premises, including but not limited to Government Property Lease Excise Taxes, imposed pursuant to A.R.S. Section 42-6201, *et seq.*; and
- (e) any other cost, expense, duty, obligation, service or function related to the Premises.

7. **Tenant's Responsibility.** Since this Lease is entered into pursuant to A.R.S. Section 42-6201, *et seq.*, to enable Tenant to receive tax relief for the Premises, Tenant shall have the responsibility, obligation, and liability for any and all expenses set forth in **Section 6** above. In addition, Tenant shall pay upon demand by Landlord, all charges related to any improvement district liens together with any interest or late charges connected therewith which exist against the Premises or which are imposed upon the Premises during the existence of this Lease. If Landlord, during the term of this Lease, is required to pay any costs or expenses in connection with the ownership of the Premises, Tenant shall indemnify, hold harmless, and immediately reimburse Landlord for any costs or expenses, provided Landlord advises Tenant of such cost or expense before it pays same and permits Tenant a reasonable opportunity to challenge the imposition of such cost or expense. Landlord during the term of this Lease shall not create or generate any such cost or expense or encumber or cause any lien to be imposed upon the Premises except for any cost or expense that is imposed upon the Premises during the normal course of government actions or is imposed by law.

8. **Entry by Landlord.** Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection. Notwithstanding anything contained herein to the contrary, the provisions of this **Section 8** shall not be deemed to operate as an express or implied waiver of any rights of privacy of Tenant or any occupant or licensee of any portion of the Premises as guaranteed by the United States or Arizona Constitutions.

9. **Alterations.** So long as Tenant obtains all required building permits in connection therewith, Tenant shall have the right to make alterations, additions or other changes to any improvements or fixtures existing from time to time, and the Premises shall constitute all such improvements as they exist from time to time. In connection with any action which Tenant may take with respect to Tenant's rights and obligations pursuant hereto, Landlord shall not be responsible for and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements, alterations, additions or other changes made by Tenant,

including without limitation materialmen's and mechanic's liens. Tenant covenants and agrees that Landlord shall not be called upon or be obligated to make any improvements, alterations or repairs whatsoever in or about the Premises, and Landlord shall not be liable or accountable for any damages to the Premises or any property located thereon. In making improvements and alterations, Tenant shall not be deemed Landlord's agent and shall hold Landlord harmless for, from and against any and all expense or damage Landlord may incur or suffer. Title to all improvements shall at all times be vested in Landlord.

10. Easements, Dedications and Other Matters. At the request of Tenant, when not in default hereunder, Landlord shall provide reasonable cooperation in efforts by Tenant to (i) dedicate to public use the improvements owned by Landlord within any roads, alleys or easements and convey any portion so dedicated to the appropriate governmental authority; (ii) prepare and submit petitions seeking a change in zoning for all or a portion of the Premises; (iii) make and record, or either, any map, plat, condominium documents, or declaration of covenants, conditions and restrictions of or relating to the Premises or any part thereof; (iv) join in granting any easements on the Premises; and (v) execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, construction, or reconstruction of the Premises. Landlord's obligation to cooperate as Landlord pursuant to this section shall in no way create any obligation on the City of Flagstaff to process or approve any such efforts by Tenant outside of the scope of the City of Flagstaff's obligations under then-existing laws.

11. Insurance. During the term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises, with limits of liability not less than \$5,000,000.00 each occurrence and in the aggregate. A combination of primary general liability policy and umbrella policy may be used to satisfy this limit of insurance. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this *Section 11* shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or nonrenewal without at least thirty (30) days prior notice to Landlord (ten (10) days for nonpayment). In the event that any such policy of insurance required to be maintained by Tenant hereunder is terminated, canceled or not renewed by the carrier thereof, and Tenant fails to immediately cause such insurance policy to be reinstated or secure a new policy as of the effective date of the cancellation, termination or nonrenewal, then, in that event, in addition to all other rights and remedies available to Landlord hereunder, Landlord shall have the right (without first being required to provide any notice or opportunity to cure to Tenant) to immediately obtain all such required insurance, whereupon the premiums paid therefore by Landlord shall be due and payable by Tenant to Landlord immediately upon Tenant's receipt of written notice from the Landlord. Tenant may self-insure the coverages required by this section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

12. Liability: Indemnity. Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the term of this Lease or any extension hereof, or any

occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save harmless Landlord from all, liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, unless caused by the sole and gross negligence or willful misconduct of Landlord, its agents, employees or invitees (“Indemnified Claims”). Landlord agrees that Tenant shall have the right to contest the validity of any and all such Indemnified Claims and defend, settle and compromise any and all such Indemnified Claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this section shall survive the expiration or other termination of this Lease. The obligations of Tenant described herein shall expressly include, without limitation, Tenant's obligation to indemnify, defend, and hold harmless Landlord for, from and against any and all damages, costs, expenses and liabilities incurred or sustained by Landlord (unless caused by the sole and gross negligence or willful misconduct of Landlord, its agents, employees or invitees) with respect to any environmental inquiry or remediation of the Premises required by any local, state or federal agency; provided, however, that as between Landlord and Tenant, Tenant shall have sole control over any and all cleanup or related activities, including responding to any inquiries or mandates by any governmental agencies relating to any potential environmental inquiries or remediation and interfacing directly with any governmental agencies having jurisdiction with respect to the environmental condition of the Premises.

13. Fire and Other Casualty. In the event that all or any improvements or fixtures within the Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, this Lease shall, at Tenant’s election, (i) continue in full force and effect, in which event, Tenant, at Tenant's sole cost and expense, shall be obligated to rebuild or repair the same within eighteen months of said casualty, or (ii) terminate upon Tenant’s written notice of termination to Landlord delivered within ninety (90) days of the occurrence of such damage or destruction. Landlord and Tenant agree that the provisions of A.R.S. Section 33-343 shall not apply to this Lease. Any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be entitled to such proceeds, whether or not Tenant rebuilds or repairs the improvements or fixtures. In the event of a default or breach by Tenant of its obligations set forth in this **Section 13**, Landlord shall be entitled, as its sole and exclusive remedy, to immediate termination of this Lease in the manner set forth in **Section 16.2**. This limitation of remedies shall in no way limit Landlord’s right to any and all remedies permitted by law as set forth in **Section 16.2** for default or breach by Tenant of any other provision of this Lease.

14. Condemnation.

14.1 Entire or Partial Condemnation. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the term of the Lease, this Lease shall terminate with respect to the part of the Premises so taken, and, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs), in consideration of Tenant's payment for all of the cost of construction of the improvements constituting the Premises, Landlord hereby assigns to Tenant all claims, awards and entitlements relating to the Premises arising from the exercise of the power of condemnation or eminent domain, including, without limitation, any claims for loss of fee title interest in the Premises.

14.2 Continuation of Lease. In the event of a taking of less than all of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken.

14.3 Temporary Taking. If the temporary use of the whole or any part of the Premises or the appurtenances thereto shall be taken, the term of this Lease shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, subject to the applicable provisions of any Leasehold Mortgage.

14.4 Notice of Condemnation. In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereto, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Tenant will have the right, at its own cost and expense, to represent its interest and Landlord's interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. Each Leasehold Mortgagee shall have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting: (i) Landlord's interest shall be made without the consent of Landlord, which will not be unreasonably withheld.

15. Assignment and Transfer

15.1 Transfer by Tenant. Tenant shall have the right to assign or transfer this Lease, or to sublease all or any part of the Premises, to a company controlled by, controlling or under common control with Tenant, as long as such entity is authorized to transact business in the State of Arizona by the Secretary of State of the State of Arizona. Tenant shall have the right to assign or transfer its rights and obligations under this Lease to a third party only with the prior written consent of Landlord, which will not be unreasonably withheld.

15.2 Liability. Each assignee hereby assumes all of the obligations of the Tenant under the Lease (but not for liabilities or obligations arising prior to such assignment becoming effective). Each assignment shall automatically release the assignor from any liability in respect of any obligations or liabilities arising under the Lease from and after the date of assignment, and Landlord shall not seek recourse for any such liability against any assignor. Landlord agrees that performance by a subtenant or assignee of Tenant's obligations under this Lease shall satisfy Tenant's obligations hereunder and Landlord shall accept performance by any such subtenant or assignee.

15.3 Transfer or Encumbrance of Landlord's Interest. Landlord may only transfer or convey its interest in this Lease or in the Premises during the term of this Lease to the Tenant.

16. Default; Remedies: Protection of Leasehold Mortgagee and Subtenants.

16.1 Default. The failure by Tenant to observe and perform any provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant, shall constitute a default and breach of this Lease by Tenant; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

16.2 Remedies. In the event of any such default or breach by Tenant, Landlord shall be entitled to any and all monetary and injunctive remedies permitted by law, and may, if it chooses, at any time thereafter terminate this Lease by delivering written notice of termination to Tenant, in which event Landlord shall, concurrent on the termination hereof, transfer and reconvey fee simple title to the Premises back to Tenant under the terms set forth in Section 2.3 of the Development Agreement. Notwithstanding any other provision of this *Section 16.2*, in the event of a default or breach by Tenant of the provisions of *Sections 13 or 19*, Landlord's sole and exclusive remedy shall be the immediate termination of this Lease in the manner set forth in the immediately preceding sentence.

16.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and released of record or the Leasehold Mortgagee shall give to Landlord written notice that said Leasehold Mortgage has been satisfied:

(a) No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent.

(b) If Landlord shall give any notice, demand, election or other communication required hereunder (hereinafter collectively "Notices") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this subsection. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

(c) If Leasehold Mortgagee exercises its right to foreclose on all or any portion of the Premises, the Landlord shall terminate the Lease and convey title to the Premises to the Tenant, in accordance with the procedure set forth in **Section 18.2** of this Lease.

16.4 Landlord's Right to Terminate. Notwithstanding anything contained herein to the contrary, in the event that Tenant suspends or ceases its business operations within the Premises for a period in excess of one hundred eighty (180) days for any reason other than as a result of an event constituting *force majeure* as described in **Section 8.1** of the Development Agreement, Landlord shall have the right to terminate this Lease by providing written notice of such termination to Tenant.

16.5 Tenant's Right to Terminate. Notwithstanding anything contained herein to the contrary, Tenant shall have the right to terminate this Lease at any time during the term hereof, at its convenience and without "cause" by providing at least thirty (30) days prior written notice of termination to Landlord. In the event Tenant exercises its right of termination, Landlord shall, concurrent on such termination, transfer and reconvey fee simple title to the Premises back to Tenant under the terms set forth in Section 2.3 of the Development Agreement.

17. **No Merger.** In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the premises. Such leasehold interest, estate and rights of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

18. Surrender; Reconveyance.

18.1 Reconveyance Upon Termination or Expiration. On the last day of the term of this Lease or upon any termination of this Lease, for any reason (including without limitation Landlord's termination for "cause" as permitted under **Section 16** above, or Tenant's termination without "cause" as permitted under **Section 16.4** above), Landlord shall reconvey to Tenant title to the Premises (including all improvements constituting a part thereof) under the terms set forth herein.

18.2 Reconveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver: (a) a quit-claim deed reconveying the Premises (including all improvements constituting a part thereof) to Tenant (b) a bill of sale reconveying all of Landlord's right title and interest in the fixtures, additions or property attached to or within such improvements to Tenant; (c) a memorandum in recordable form reflecting the termination of this Lease; (d) an assignment of Landlord's right, title and interest in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which Landlord is a party and which are assignable by Landlord, and (e) such other reasonable and customary documents as may be required by Tenant or its title insurer including, without limitation, mechanic's lien affidavits, to confirm the termination of this Lease and the revesting of title to the Premises in Tenant.

18.3 Title and Warranties. The Premises shall be conveyed "as is," "where is," without representation or warranty whatsoever. Upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord without the consent of Tenant.

18.4 Expenses. All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance, except Landlord's own attorneys' fees and any commissions payable to any broker retained by Landlord, shall be paid by Tenant.

19. Trade Fixtures, Machinery and Equipment. Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Premises by Tenant or Tenant's subtenants may be removed by Tenant or Tenant's subtenants, or their agents and employees, in their discretion, at any time and from time to time during the entire term or upon the expiration of this Lease. Tenant's exercise of its rights pursuant to this section shall in no way modify or alter its obligations to maintain production and employment pursuant to the Development Agreement. Tenant agrees that in the event of damage to the Premises due to such removal it will repair or restore the same. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Premises by any subtenant setting forth the fact that Landlord waives, in favor of such vendor, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Premises by the vendor, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in accordance with the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord. In the event of a default or breach by Tenant of its obligations set forth in this *Section 19*, Landlord shall be entitled, as its sole and exclusive remedy, to immediate termination of this Lease in the manner set forth in *Section 16.2*. This limitation of remedies shall in no way limit Landlord's right to any and all remedies permitted by law as set forth in *Section 16.2* for default or breach by Tenant of any other provision of this Lease.

20. Estoppel Certificate.

20.1 Landlord shall at any time and from time to time upon not less than ten (10) days' prior written notice from Tenant or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any; (b) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if they are claimed; and (c) certifying such other matters relating to this Lease as Tenant or the Leasehold Mortgagee may reasonably request. Any such statement may be relied upon by any prospective purchaser or encumbrances of all or any portion of the leasehold estate and/or the improvements.

20.2 Landlord's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord (a) that this Lease is in full force and effect, without modification except as may be represented by Tenant; and (b) that there are no uncured defaults in Tenant's performance.

21. General Provisions.

21.1 Notices. All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail or by courier. Any notice directed to a party shall become effective upon the earliest of the following: (a) actual receipt by that party; (b) hand delivery to such party at its designated notice address; (c) one (1) business day after deposit for delivery with a nationally-recognized overnight courier; (d) telephone facsimile with receipt confirmed; or (e) if given by certified or registered United States mail, forty-eight (48) hours after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown below or such other address as that party, from time to time, may specify by notice to the other party:

If to Landlord: City of Flagstaff
Attention: City Manager
211 West Aspen Avenue
Flagstaff, Arizona 86001-5399

With copies to: City of Flagstaff
Attention: City Attorney
211 West Aspen Avenue
Flagstaff, Arizona 86001-5399
-and-
Gammage & Burnham, PLC
Attention: Jeffrey J. Miller, Esq.
Two North Central Avenue, 18th Floor
Phoenix, Arizona 85004

If to Tenant: Joy Cone Company
Attention: John Stanton, General Manager
2843 West Shamrell Boulevard
Flagstaff, Arizona 86001

With a copy to: Joy Cone Company
Attention: Scott P. Kalmanek, CFO
3435 Lamor Road
Hermitage, Pennsylvania 16148-3097
-and-
Tiffany & Bosco, P.A.
Attention: Michael Tiffany, Esq.
2525 East Camelback Road, 3rd Floor
Phoenix, Arizona 85016

Either party hereto shall have the right to change its designated notice address by providing to the other party written notice of such change in the manner described above.

21.2 Governing Law and Consent to Exclusive Jurisdiction. This Lease shall be governed by and construed in accordance with the laws of the State of Arizona. This Lease has been made and entered into in Coconino County, Arizona. The Parties hereby consent and agree that jurisdiction for any and all claims arising from this Agreement shall rest solely with federal and state courts located in Arizona, that the proper venue for any state court action shall be the Coconino County Superior Court, and that in the event of any state court action, the parties shall agree upon a Maricopa County Superior Judge to preside over said action, with the parties to share equally in the costs associated with the participation of the Maricopa County Judge in a Coconino County action, notwithstanding the cost-shifting provision set forth in **Section 21.4**.

21.3 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

21.4 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Lease, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

21.5 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Lease shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Lease shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.

21.6 Entire Agreement. This Lease constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

21.7 Recordation of Memorandum. The City shall record a Memorandum of this Lease in the Official Records of Coconino County, Arizona within ten (10) days after its approval and execution by the Parties. The form of this Memorandum is attached to this Lease as **Exhibit B**.

21.8 Warranty Against Payment of Consideration for Agreement; Conflict of Interest. Joy Cone warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Lease, other than normal costs of conducting business, costs of professional services (such as architects, engineers and attorneys). To the best knowledge of Joy Cone, no member, official or employee of City shall have any direct or indirect interest in this Lease, nor participate in any agreement relating to the Lease which is prohibited by law.

21.9 Nonliability of City Officials and Employees. No member, agent, representative, official or employee of either party shall be personally liable to the other, or any successor-in-interest, in the event of any default or breach by a party or for any amount which may become due to the nondefaulting party or any successor in interest or on any obligation under the terms of this Lease.

21.10 No Partnership; Third Parties. It is not intended by this Lease to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Joy Cone and the City. No term or provision of this Lease is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

21.11 Authority. Each of the parties hereto represents and warrants to the other that the individual executing this Lease on behalf of the respective parties are authorized and empowered to bind the party on whose behalf such individual is signing and that this Lease shall be binding upon such parties.

21.12 Leasehold Mortgagee; Further Assurances. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date and year first written above.

ATTEST:

"LANDLORD"

CITY OF FLAGSTAFF, an Arizona municipal corporation

City Clerk

APPROVED AS TO FORM:

By _____
Name _____
Title _____

City Attorney

"TENANT"

JOY CONE CO., a Pennsylvania corporation

By _____
Name _____
Title _____

EXHIBIT "A" TO LEASE

Legal Description of Property

EXHIBIT "A" TO LEASE

Legal Description of Property

TRACT 5A, OF PULLIAM AIRPARK UNIT 1, AMENDED, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF COCONINO COUNTY, ARIZONA, RECORDED IN CASE 6, MAP 44-44E.

EXCEPTING AND RESERVING UNTO THE UNITED STATES ALL URANIUM, THORIUM, OR ALL OTHER MATERIALS DETERMINED PURSUANT TO SECTION 5 (B) (1) OF THE ATOMIC ENERGY ACT OF 1946 (60 STAT. 761) TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS CONTAINED IN WHATEVER CONCENTRATION AS RESERVED BY INSTRUMENT RECORDED IN BOOK 5 OF OFFICIAL RECORDS, PAGE 187.

EXHIBIT "B" TO LEASE

WHEN RECORDED, RETURN TO:

City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001-5399

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into this 30th day of December, 2008, by and between the CITY OF FLAGSTAFF, an Arizona municipal corporation ("Landlord"), and JOY CONE CO., a Pennsylvania corporation ("Tenant").

1. The Parties have entered into and executed that certain Lease dated December 30th, 2008 (the "Lease") whereby Landlord has leased to Tenant, and Tenant has leased from Landlord, the land described in *Exhibit "A"* attached hereto and incorporated herein by this reference, together with all improvements owned by Landlord thereon, together with all rights and privileges appurtenant thereto and all present and future improvements thereon (collectively the "Premises"), for the term as set forth in a Development Agreement between the Parties recorded by the Coconino County Recorder as Document No. _____. The Lease sets forth all terms and provision relative to the lease of the Premises by Landlord to Tenant. Tenant has the right to mortgage its leasehold interest as described in **Section 4** of the Lease and there are restrictions on the right of Parties to transfer or encumber their respective interests in the Premises or the Lease as described in **Section 15** of the Lease.

2. The Parties consider the Lease to be a binding agreement between them creating vested rights in and for Tenant superior to the right, title and interest of any party hereafter acquiring any interest in the Premises, including but not limited to purchasers of the Premises or lien holders acquiring any lien or encumbrance interest against the Premises. All persons dealing with the Premises are advised to contact Tenant and Landlord to ascertain the current status of the Lease and Lessee's tenancy rights and leasehold interests in the Premises. The Parties are executing and recording this Memorandum, as authorized by the Lease, to provide notice to all persons dealing with the Premises of the binding and vested rights of Tenant and the leasehold interests of Tenant created by the Lease.

EXHIBIT "A" TO MEMORANDUM OF LEASE

Legal Description of Property

EXHIBIT "A" TO MEMORANDUM OF LEASE

Legal Description of Property

TRACT 5A, OF PULLIAM AIRPARK UNIT 1, AMENDED, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF COCONINO COUNTY, ARIZONA, RECORDED IN CASE 6, MAP 44-44E.

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EXHIBIT "F" TO DEVELOPMENT AGREEMENT

WHEN RECORDED, RETURN TO:

Joy Cone Company
2843 West Shamrell Boulevard
Flagstaff, Arizona 86001
Attention: General Manager

QUIT-CLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY OF FLAGSTAFF, an Arizona municipal corporation, does hereby quit-claim to JOY CONE CO., a Pennsylvania corporation, all right, title and interest in and to the real property located in Coconino County, Arizona, described on *Exhibit "A"* attached hereto and by this reference incorporated herein.

IN WITNESS WHEREOF, the undersigned has executed this instrument this _____ day of December, 2008.

ATTEST:

"CITY"

City Clerk

CITY OF FLAGSTAFF, an Arizona
municipal corporation

APPROVED AS TO FORM:

City Attorney

By _____
Name _____
Title _____

STATE OF ARIZONA)
) ss.
COUNTY OF COCONINO)

On this _____ day of December, 2008, before me, the undersigned officer, personally appeared _____, who acknowledged her/himself to be _____ of the CITY OF FLAGSTAFF, an Arizona municipal corporation:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

EXHIBIT "A" TO QUIT-CLAIM DEED

Legal Description of Property

EXHIBIT "A" TO QUIT-CLAIM DEED

Legal Description of Property

TRACT 5A, OF PULLIAM AIRPARK UNIT 1, AMENDED, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF COCONINO COUNTY, ARIZONA, RECORDED IN CASE 6, MAP 44-44E.

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BILL OF SALE

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, JOY CONE CO., a Pennsylvania corporation ("Joy Cone"), does hereby transfer, sell, set over and assign unto the CITY OF FLAGSTAFF, an Arizona municipal corporation ("City"), its successors and assigns, all of Joy Cone's right, title and interest in and to all of the equipment, fixtures and other items of personal property listed in *Exhibit "A"* attached hereto and located within the real property described in *Exhibit "A-1"* attached hereto and incorporated herein by this reference (collectively, the "Taxable Personal Property").

Joy Cone shall warrant and defend title to the Taxable Personal Property only with respect to the acts of Joy Cone and no other party.

Dated as of the 19th day of December, 2008.

JOY CONE CO., a Pennsylvania corporation

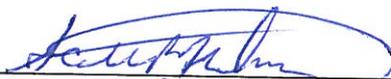
By 
Name Scott P. Kalamnik
Title SECRETARY / TREASURER / CFO

EXHIBIT "A" TO BILL OF SALE

Description of Personal Property

Joy Cone Company - Flagstaff Equipment List 12/31/2008

EQUIPMENT DESCRIPTION

OVEN DESCRIPTION

JOY 1B OVEN (48 molds, 123 oven)
JOY 10C OVEN MOLDS ONLY (45)
JOY 10D OVEN MOLDS ONLY (45)
JOY 20A OVEN (42 molds, 111 oven), w/ S.S. Merging Conveyor (18' Lg. x 18" W).
JOY 20B OVEN (42 molds, 111 oven)
JOY 20C OVEN (42 molds, 111 oven)
JOY 20D OVEN (42 molds, 111 oven), w/ S.S. Merging Conveyor (18' Lg. X 18" W).
JOY 20E OVEN (42 molds, 111 oven), w/ S.S. Merging Conveyor (18' L x 18" W).
JOY 20F OVEN (42 molds, 111 oven)
JOY 20G OVEN (42 molds, 111 oven)
JOY 20H OVEN (42 molds, 111 oven), w/ S.S. Merging Conveyor (18' L x 18" W).
JOY 22D OVEN (42 molds, 111 oven)
JOY 22E OVEN (42 molds, 111 oven)
JOY 22F OVEN (42 molds, 111 oven)
JOY 22G OVEN (42 molds, 111 oven)
JOY 30 E OVEN
JOY 30 F OVEN
JOY 30 H OVEN
JOY 40C OVEN (39 molds, 123 oven), w/ S.S. Merging Conveyor (20' L x 40" W).
JOY 40D OVEN (39 molds, 123 oven)
JOY 60C OVEN (39 molds, 123 oven)
JOY 60D OVEN (39 molds, 123 oven)
HAAS KIDS CONE "B" STAKI 48 OVEN
HAAS TRO SUGAR CONE C Oven (96 plates), w/ S.S. Merging Conveyor (12' Lg.x21" W).
HAAS VTRO SUGAR CONE D OVEN (96 plates)
HAAS VTRO SUGAR CONE E OVEN (96 plates)
HAAS VTRO SUGAR CONE F Oven (96 plates), w/ S.S. Merging Conveyor (12' Lg.x21"W).
WALTER WAFFLE BOWL "A" (JUPITER 69) OVEN
WALTER WAFFLE CONE "C" (JUPITER 89) OVEN
WALTER WAFFLE CONE "E" (JUPITER 121) OVEN

JACKET DISPENSER DESCRIPTION

22D - JOY C.C. JACKET DISPENSER, Left hand - 3 lanes.
22E - JOY C.C. JACKET DISPENSER, Left hand - 3 lanes.
22F - JOY C.C. JACKET DISPENSER, Left hand - 3 lanes.
22G - JOY C.C. JACKET DISPENSER, Left hand - 3 lanes.
30E - JOY C.C. JACKET DISPENSER, Right hand - 5 lanes.
40D - JOY C.C. JACKET DISPENSER, Right hand - 3 lanes.

EQUIPMENT DESCRIPTION

JACKET DISPENSER DESCRIPTION (continued)

60C - JOY C.C. JACKET DISPENSER, Right hand - 3 lanes.
60D - JOY C.C. JACKET DISPENSER, Right hand - 3 lanes.
HSC C - JOY OVERHEAD SC JACKET DISPENSER, 4 lanes.
HSC D - JOY OVERHEAD SC JACKET DISPENSER, 4 lanes.
HSC E - JOY OVERHEAD SC JACKET DISPENSER, 4 lanes.
HSC F - JOY OVERHEAD SC JACKET DISPENSER, 4 lanes.
WAFFLE C - JOY OVERHEAD WC JACKET & SYRUP DISPENSER, 6 lanes.
WAFFLE E - JOY OVERHEAD WC JACKET & SYRUP DISPENSER, 4 lanes.
3 JOY 30 JACKET DISPENSERS

WRAPPER DESCRIPTION

20-(1) LINE - ILAPAK's Carrera 1000 PC, Lt. Hand, 10 meter infeed.
20-(2) LINE - ILAPAK's Carrera 1000 PC, Lt. Hand, 10 meter infeed.
22 LINE - ILAPAK's Carrera 1000 PC, Rt. Hand, 17 meter infeed.
40 LINE - ILAPAK's Carrera 500 E, Rt. Hand, 1 meter infeed.
60 LINE - ILAPAK's Carrera 500 M
KIDS CONE LINE - ILAPAK's Carrera 500 M
SUGAR LINE - ILAPAK's Carrera 1000 PC
CC JACKET WRAP MACHINE
CC JACKET WRAP MACHINE
WAFFLE BOWL LINE - ILAPAK's 500 PC, Rt. Hand, 6 meter infeed.
WAFFLE CONE LINE - ILAPAK's 500 PC, Rt. Hand, 6 meter infeed.

METAL DETECTOR DESCRIPTION

20-(1) LINE - ERIEZ MFG, 8' Lg. Conveyor w/ 9" W Belt.
20-(2) LINE - FORTRESS, 6' Lg. Conveyor w/ 6" W Belt.
22 LINE - GORING KERR, 6' Lg. Conveyor w/ 9" W Belt.
30 LINE - GORING KERR, 6' Lg. Conveyor w/ 8" W Belt.
40 LINE - GORING KERR, 6' Lg. Conveyor w/ 6" W Belt.
60 LINE - GORING KERR, 8' Lg. Conveyor w/ 10" W Belt.
KIDS CONE LINE - FORTRESS, 6' Lg. Conveyor w/ 6" W Belt.
H.S.C. "C" OVEN - GORING KERR, 6' Lg. Conveyor w/ 4 lanes of Polycord.
H.S.C. "D" OVEN - GORING KERR, 6' Lg. Conveyor w/ 4 lanes of Polycord.
H.S.C. "E" OVEN - GORING KERR, 6' Lg. Conveyor w/ 4 lanes of Polycord.
H.S.C. "F" OVEN - GORING KERR, 6' Lg. Conveyor w/ 4 lanes of Polycord.
H.S.C. LINE - GORING KERR, 6' Lg. Conveyor w/ 6" W Belt.
WAFFLE BOWL "A" LINE - GORING KERR, Timing Belt Conveyor, 48"L x 30" W.
WAFFLE CONE "C" OVEN - GORING KERR, Timing Belt Conveyor, 48"L x 30" W.
WAFFLE CONE "E" OVEN - GORING KERR, Timing Belt Conveyor, 48" L x 26" W.
WAFFLE CONE LINE - GORING KERR, 6' Lg. Conveyor w/ 6" W Belt.
DISPENSER # 1 - GORING KERR
DISPENSER # 2 - INSPECTION SYSTEMS
DISPENSER #3 - FORTRESS
SLEEVE #1
METAL DETECTOR DESCRIPTION-HAAS SUGAR RETAIL LINE

EQUIPMENT DESCRIPTION

X-RAY DESCRIPTION

SUGAR CONE LINE - SAFELINE AVS X-RAY, 6' Lg. Conveyor w/ 9" W Belt.

CARTONER DESCRIPTION

20-(1) LINE - SUPERIOR 30-671 w/ THREE COLOR COALATOR.

20-(2) LINE - LANGEN B1-IMA

40 LINE - GLOBAL CARTONER #140-008.

KIDS CONE ADCO 15DZ-60-SS SEMI-AUTOMATIC CARTONER

SUGAR LINE - GLOBAL CARTONER #140-003

WAFFLE BOWL LINE - ADCO SEMI-AUTOMATIC CARTONER

WAFFLE CONE LINE - GLOBAL CARTONER #140-005

MINI-CARTONER #1

JOY MINI-CARTONER #2

STRETCH WRAPPER

LASER PRINTER DESCRIPTION

20-(F) LINE - LYNX XYMARK EFX

20-(P) LINE - DOMINO S100.

DOMINO S100 Kids Cone Line

DOMINO S100. Waffle Bowl Line

DOMINO S100. Waffle Cone Line

40 LINE - LYNX XYMARK 2 (EFX).

SUGAR LINE - LYNX XYMARK EFX

PRINT & APPLY LABELERS

(9)DESKTOP LABELER UNITS (Manual)

CHECK WEIGHER DESCRIPTION

20-(F) LINE - ALPHA #PW-12

20-(P) LINE - ALPHA #PW-12

40 LINE - ALPHA #PW-12

CASEPACKER DESCRIPTION

20-(F) LINE - COMPACKER # II-3

20-(P) LINE - COMPACKER # II-3.

40 LINE - COMPACKER # II-3.

SUGAR LINE - COMPACKER # II-3

20F CASE LINE PACKER wll turn into Waffle Case Line Packer

CASE ERECTORS AND SEALERS

22 LINE - MARQ TUFF CASE ERECTOR AND SEALER.

KC LINE - O/K DURABLE CASE SEALER, SUPERTAPER 1M

WAFFLE BOWL LINE - O/K DURABLE CASE SEALER, SUPERTAPER 1M

WAFFLE CONE LINE - O/K DURABLE CASE SEALER, SUPERTAPER 1M

SPARE - LITTLE DAVID CASE SEALER

30 LINE CASE ERECTOR/SEALER

EQUIPMENT DESCRIPTION

CONVEYOR DESCRIPTION

20-(F) - ROACH GRAVITY WHEEL CONVEYOR, 10' Lg. x 24" W
20-(F) - ROACH GRAVITY WHEEL 90 DEGREE CONVEYOR, 4' OR x 24" W.
20-(P) LINE - PSC FLO-TURN 90 DEGREE BELT CONVEYOR, FT18 8x90
20-(P) LINE - HYTROL POWER BELT CONVEYOR, 14" W BELT X 11' Lg.
20-(P) - HYTROL GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W
20-(P) - HYTROL GRAVITY ROLLER 90 DEGREE CONVEYOR, 4' OR x 24" W.
22 LINE - ROACH GRAVITY WHEEL 90 CURVE CONVEYOR, 4' OR x 24" W.
22 LINE - ROACH GRAVITY WHEEL CONVEYOR, 10' Lg. x 24" W.
40 LINE - ROACH SLIDER BELT CONVEYOR, 10' Lg. x 12" W Belt.
40 LINE - ROACH SLIDER BELT CONVEYOR, 350BOS-12 x 10' Lg.
40 LINE - ROACH GRAVITY ROLLER 90 CURVE CONVEYOR, 4' OR x 24" W.
40 LINE - ROACH GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W.
KC LINE - ROACH GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W
SUGAR LINE - ROACH SLIDER BELT CONVEYOR, 350BOS-12 x 5' Lg.
SUGAR LINE - PSC FLO-TURN 90 DEGREE BELT CONVEYOR, FT18 8x90
SUGAR LINE - HYTROL SLIDER BELT CONVEYOR, 14" W Belt x 6" Lg.
SUGAR LINE - PSC FLO-TURN 90 DEGREE BELT CONVEYOR, FT18 8x90
SUGAR LINE - ROACH SLIDER BELT CONVEYOR, 350BOS-12 x 10' Lg.
SUGAR LINE - GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W
WAFFLE BOWL LINE - GRAVITY ROLLER CONVEYOR, TA 18" W x 10' Lg.
WAFFLE CONE LINE - HYTROL SLIDER BELT CONVEYOR, TA 14" W Belt x 8' Lg.
WAFFLE CONE LINE - JOY F.S. S.S. MERGING INDEX CONVEYOR, 8' x 30".
WAFFLE CONE LINE - HYTROL GRAVITY ROLLER CONVEYOR, 10' Lg. x 24" W

COLOR EQUIPMENT DESCRIPTIONS

20E FILIMATIC 3 COLOR PUMPS (#AB-5) AND TRIPLE S.S. CABINETS.
20F FILAMATIC COLOR PUMP (#AB-5) AND S.S. CABINET.
20G FILIMATIC COLOR PUMP (#AB-5) AND S.S. CABINET.
20H FILIMATIC COLOR PUMP (#AB-5) AND S.S. CABINET.

DRY INGREDIENT SUPPORT EQUIPMENT

SHICK 65,000 POUNDS ALUM. SUGAR CONE FLOUR SILO # 1
SHICK 110,000 POUND ALUM. SUGAR CONE FLOUR SILO # 2
SHICK 110,000 POUND ALUM. CAKE CONE FLOUR SILO # 1
SHICK 110,000 POUND ALUM. CAKE CONE FLOUR SILO # 2
SUGAR CONE FLOUR BLOWER - TUTHILL #4606
CAKE CONE FLOUR BLOWER - TUTHILL #4606
SUGAR CONE FLOUR DUST COLLECTOR - SHICK #58AJ25
CAKE CONE FLOUR DUST COLLECTOR
SUGAR AND TAPIOCA LIFT DUMP STATION
SUGAR AND TAPIOCA DUMP STATION
100 CUBIC FOOT SUGAR BIN
SUGAR BIN DUST COLLECTOR - SHICK 58AJ9
100 CUBIC FOOT TAPIOCA BIN
TAPIOCA BIN DUST COLLECTOR - SHICK #58AJ9
CAKE CONE FLOUR SIFTER
SUGAR CONE FLOUR SIFTER
CAKE CONE WEIGH HOPPER

EQUIPMENT DESCRIPTION

DRY INGREDIENT SUPPORT EQUIPMENT (continued)

SUGAR CONE WEIGH HOPPER
CAKE CONE WEIGH HOPPER DUST COLLECTOR - SHICK #36AJ16
SUGAR CONE WEIGH HOPPER DUST COLLECTOR - SHICK #36AJ16

BATTER ROOM EQUIPMENT

CAKE CONE MIXER
SUGAR CONE MIXER - LEE TBD , DOUPLBE RIBBON
FELDEMER STAINLESS STEEL CAKE CONE COOLER
FELDEMER STAINLESS STEEL SUGAR CONE COOLER
FELDERMER STAINLESS STEEL WAFFLE CONE COOLER
STAINLESS STEEL CIP TANK
STAINLESS 50 GALLON VANILLA HOLDING TANK
STAINLESS 50 GALLON ANNATTO COLORING HOLDING TANK
STAINLESS 50 GALLON VEGETABLE OIL HOLDING TANK
STAINLESS 6000 GALLON VEGETABLE OIL HOLDING TANK
BRICK AND BRUELLER WASH DOWN SCALE
(4) - PALOMA PM-24 HOT WATER HEATERS
Cake Cone Chilled Batter Line System - s.s. tubing, copper pipe, valves, panels, etc.

CONE SCRAP SYSTEM EQUIPMENT

BROCK CONE SCRAP DUST COLLECTOR TANK #1 & DUCTWORK.
JOHNSON CONE SCRAP DUST COLLECTOR TANK #2 & DUCTWORK.
SCRAP SYSTEM DROP OUT TANK
10 HP SCRAP SYSTEM BLOWER MOTOR - TUTHILL # 4504
50 HP SCRAP SUCTION FAN #2.
30 HP SCRAP SUCTION FAN #1.
GALVANIZED CONE SCRAP SILO, 50,000 lbs.

AIR COMPRESSOR EQUIPMENT

60 HP SULLAIR ROTARY AIR COMPRESSOR
150 HP SULLAIR LS 20S-150L ROTARY AIR COMPRESSOR #1
150 HP SULLAIR LS 20S-150L ROTARY AIR COMPRESSOR #2
ARROW COMPRESSED AIR DRYER
ZANDER SL 600 WATER OIL SEPARATOR
IR NLM-2 AIR FILTER
1020 GALLON AIR RECEIVER TANK "A"
1020 GALLON AIR RECEIVER TANK "B"
100 GALLON RECEIVER TANK "C"
RECIRCULATING GLYCOL COOLING SYSTEM
SULLAIR AIR REGULATING VALVE - #SFP 1000
PARKER COALESCING AIR FILTER

CHILLED PROCESS WATER EQUIPMENT

RICIRCULATING GLYCOL COMPRESSOR SYSTEM
REPACO FOOD GRADE GLYCOL CHILLER SYSTEM
STAINLESS STEEL PROCESS WATER HOLDING TANK

EQUIPMENT DESCRIPTION

JANITORIAL (CLEAN-UP) EQUIPMENT

250 LB/HR INCINERATOR
HYDRAULIC CARDBOARD BAILER
MAXI-MOVERS BULK DELIVERY TRUCK, 48cu.
MAXI-MOVERS BULK DELIVERY TRUCK, 48cu. - 60 LINE.
MAXI-MOVERS BULK DELIVERY TRUCK, 48cu. - WFL BOWL LINE.
9 MAXI-MOVERS TOTAL, 1 STEEL

MISCELLANEOUS

CULLIGAN HI-FLO 2E WATER SOFTENER
ICE CHEST #1
ICE CHEST #2
MARSH TAPE MACHINE #1 w/ Aluminum Stand.
MARSH TAPE MACHINE #2 w/ Aluminum Stands.
MARSH TAPE MACHINE #3 w/ Aluminum Stands.
MARSH TAPE MACHINE #4 w/ Aluminum Stands.
MARSH TAPE MACHINE #5 w/ Aluminum Stands.
MARSH TAPE MACHINE #6 w/ Aluminum Stands.
MARSH TAPE MACHINE #7 w/ Aluminum Stands.
MARSH TAPE MACHINE #8 w/ Aluminum Stands.
MARSH TAPE MACHINE #9 w/ Aluminum Stands.
MARSH TAPE MACHINE #10 w/ Aluminum Stands.
MARSH TAPE MACHINE #11 w/ Aluminum Stands.
MARSH TAPE MACHINE #12 w/ Aluminum Stands.
MARSH TAPE MACHINE #13 w/ Aluminum Stands.
MARSH TAPE MACHINE #14 w/ Aluminum Stands.
(37) - HEAVY DUTY DEWALT RADIOS (33 TOTAL IN 2006)
LANTECH STRETCH WRAPPER #1 (PR#1)
LANTECH STRETCH WRAPPER #2 (WRHS #1)
LANTECH Q-300 STRETCH WRAPPER #3 (PR#2), S# QM020588
(2) - DYNARIC STRAPPING MACHINE, Model DF-20.
FACILITY ACCESS CONTROL & CCTV
(11) - JOY COOLING WHEELS
OHAUS MB MOISTURE ANALYZER
COMMUNICATION ROOM AIR CONDITIONING UNIT
JOY OVEN GAS BLOWER UPGRADE

MACHINE SHOP EQUIPMENT

T50 PIRANHA PUNCH PRESS
CLAUSING LATHE
BRIDGEPORT
BLAST-N-PEEN SHOT BLASTER
VERTICLE HYDRAULIC PRESS
ACME RADIAL AND VERTICLE BAND SANDER
GROB VERTICLE BAND SAW
LINCOLN MIG WELDER
MILLER TIG WELDER

EQUIPMENT DESCRIPTION

MACHINE SHOP EQUIPMENT (continued)

ATLAS DRILL PRESS
PORTER AND CABLE CHOP SAW
MILLER PORTABLE TIG WELDER
COLD JET DRY ICE MACHINE
LINCOLN ARC WELDER
HEAVY DUTY STEEL WORK BENCH, 6' Lg.x 2.67' W x 3' H, w/ one shelf.
HEAVY DUTY STEEL WELDING BENCH, 8' Lg.x 3' W x 3' H, w/ one shelf.
HEAVY DUTY STEEL MOLD WORK BENCH, 6' Lg.x 3.34' W x 3.33' H, w/ one shelf.

FABRICATION SHOP EQUIPMENT

CUMMINGS DIESEL GENERATOR
ACCURA HORIZONTAL BAND SAW
TENNSMITH BOX AND PAN BRAKE.
ROCKLINIZER
SEARS RADIAL ARM SAW
POWERMAX 600 SPOT WELDER
RIGID PIPE THREADER (UP TO 2")
UNIVERSAL SAND BLASTER
4' CONNECTICUT SHEET BRAKE
4' PEXTO METAL SHEAR
HEAVY DUTY STEEL WORK BENCH, 8' Lg.x 6' W x 2.67' H, w/ one shelf.

ROOF EQUIPMENT

McQUAY MAKE UP AIR UNIT #1, 19000 CFM, Model RAH047.
McQUAY MAKE UP AIR UNIT #2, Model RAH047.
McQUAY MAKE UP AIR UNIT #3, Model RAH047.
McQUAY MAKE UP AIR UNIT #4, Model RAH077.
McQUAY MAKE UP AIR UNIT #5, Model RAH077.
McQUAY CHILLER #1 AIR CONDITIONER, 100 TONS, Model ALR100.
McQUAY CHILLER #2 AIR CONDITIONER, 140 TONS, Model ALR140.
1B AEROVENT EXHAUST FAN
10C AEROVENT EXHAUST FAN
20A NY BLOWER EXHAUST FAN
20B NY BLOWER EXHAUST FAN
20C AEROVENT EXHAUST FAN
20D AEROVENT EXHAUST FAN
20E NY BLOWER EXHAUST FAN
20F NY BLOWER EXHAUST FAN
20G NY BLOWER EXHAUST FAN
20H NY BLOWER EXHAUST FAN
22D NY BLOWER EXHAUST FAN
22E NY BLOWER EXHAUST FAN
22F NY BLOWER EXHAUST FAN
H30E NY BLOWER EXHAUST FAN
40C NY BLOWER EXHAUST FAN
40D NY BLOWER EXHAUST FAN
60C NY BLOWER EXHAUST FAN
60D NY BLOWER EXHAUST FAN

EQUIPMENT DESCRIPTION

ROOF EQUIPMENT (continued)

HSC-C AEROVENT EXHAUST FAN
HSC-D NY BLOWER EXHAUST FAN
HSC-E NY BLOWER EXHAUST FAN
HSC-F NY BLOWER EXHAUST FAN
WAFFLE CONE C NY BLOWER EXHAUST FAN
WAFFLE CONE E NY BLOWER EXHAUST FAN
WAFFLE BOWL A NY BLOWER EXHAUST FAN
1B HEAT EXCHANGER - DES CHAMPS #84M-2000
10C HEAT EXCHANGER - DES CHAMPS #84M-2000
10D HEAT EXCHANGER - DES CHAMPS #84M-2000
20A HEAT EXCHANGER - DES CAHMPS #84M-2000
20B HEAT EXCHANGER - DES CAHMPS #84M-2000
20C HEAT EXCHANGER - DES CAHMPS #84M-2000
20D HEAT EXCHANGER - DES CAHMPS #84M-2000
20E HEAT EXCHANGER - DES CHAMPS #84M-3000
20F HEAT EXCHANGER - DES CHAMPS #84M-3000
20G HEAT EXCHANGER - DES CHAMPS #84M-3000
20H HEAT EXCHANGER - DES CAHMPS #84M-3000
22D HEAT EXCHANGER - DES CAHMPS #84M-2000
22E HEAT EXCHANGER - DES CAHMPS #84M-2000
22F HEAT EXCHANGER - DES CAHMPS #84M-2000
22G HEAT EXCHANGER - DES CAHMPS #84M-2000
KC"B" HEAT EXCHANGER - DES CHAMPS 84M-5000
30F HEAT EXCHANGER - DES CHAMPS 84M-5000
40C HEAT EXCHANGER - DES CAHMPS #84M-2000
40D HEAT EXCHANGER - DES CAHMPS #84M-2000
60C HEAT EXCHANGER - DES CAHMPS #84M-2000
60 D HEAT EXCHANGER - DES CAHMPS #84M-2000
HSC-C HEAT EXCHANGER - DES CHAMPS #75M-4
HSC-D HEAT EXCHANGER - DES CHAMPS #75M-4
HSC-E HEAT EXCHANGER - DES CHAMPS #75M-4
HSC-F HEAT EXCHANGER - DES CHAMPS #75M-4
PRODUCTION ROOM #3 HVAC SYSTEM
WAFFLE E HEAT EXCHANGER - DES CHAMPS #84M-5000

GARAGE AND WASTE BATTER ROOM

ROTARY DRUM VAC
PULSATROL PH PROBE
RDV OMEGA FLOW METER
FIRE RISE ROOM OMEGA FLOW METER
GOODWAY POWER WASHER
25 Ton (TSL-50) AIR HYDRAULIC LIFT
CHICAGO PNEUMATIC 1" IMPACT w/ 6" SHANK w/ ACCES.
SEARS PORTABLE AIR COMPRESSOR
IR 7.5 HP (2475N7.5) AIRCOOLED COMPRESSOR
6 HP LAWN MOWER
SALT SPREADER
ISCO WATER SAMPLER

EQUIPMENT DESCRIPTION

GARAGE AND WASTE BATTER ROOM (continued)

AMERICAN ELECTRIC WATER HEATER, 40 GALLONS w/ Expansion Tank.
PORTABLE CLARK FORKLIFT BATTERY CHARGER, RC407, 120V.
TSS METER
HEAVY DUTY STEEL WORK BENCH, 8' Lg.x 2.5' W x 3' H, w/ one shelf.
2 POST CAR LIFT

MOBILE EQUIPMENT & ACCESSORIES

#1 CLARK TM15 ELECTRIC FORKLIFT, 4000 lb. Capacity.
#2 CLARK TM15 ELECTRIC FORKLIFT, 4000 lb. Capacity.
#3 HYSTER ELECTRIC FORKLIFT, 4000 lb. Capacity.
#4 HYSTER ELECTRIC FORKLIFT, 4000 lb. Capacity.
#5 HYSTER ELECTRIC FORKLIFT, 4000 lb. Capacity.
#4 HYSTER BATTERY
#6 CLARK TM15 ELECTRIC FORKLIFT w/ SLIP SHEET ATTACHMENT, 4000 lb. Capacity.
EXIDE WORKHOG FORKLIFT BATTERY CHARGER, W3-18-1050.
GNB FORKLIFT BATTERY CHARGER, SCR100-18-1050TZ.
HAWKER LIFE PLUS FORKLIFT BATTERY CHARGER, Model 2010.
100 YALE PROPANE FORKLIFT, 8000 lb. Capacity.
#1 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#2 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#3 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#4 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#5 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
#6 HYSTER MANUAL PALLET JACK, 4000 lb. Capacity.
#7 CROWN MANUAL PALLET JACK, 5000 lb. Capacity.
LIFT-RITE MAUAL PALLET JACK, 5000 LB. CAPACITY
LIFT-RITE MAUAL PALLET JACK, 5000 LB. CAPACITY
JLG 1932E2 MOBIL LIFT PLATFORM
JLG STATIONARY SINGLE PERSON LIFT #25AM
TOMCAT 40" RIDE ON FLOOR SCRUBBER
FORKLIFT OPERATED VERTICLE HIGHRISE CAGE.
FORKLIFT OPERATED HORIZONTAL EXTENDED PLATFORM CAGE, 10' x 2'.
GENIE ARTICULATING KNUCKLEBOOM

EXHIBIT "A" TO BILL OF SALE

Legal Description of Property

TRACK 5A, OF PULLIAM AIRPARK UNIT 1, AMENDED, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF COCONINO COUNTY, ARIZONA, RECORDED IN CASE 6, MAP 44-44E.

EXCEPTING AND RESERVING UNTO THE UNITED STATES ALL URANIUM, THORIUM, OR ALL OTHER MATERIALS DETERMINED PURSUANT TO SECTION 5 (B) (1) OF THE ATOMIC ENERGY ACT OF 1946 (60 STAT. 761) TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS CONTAINED IN WHATEVER CONCENTRATION AS RESERVED BY INSTRUMENT RECORDED IN BOOK 5 OF OFFICIAL RECORDS, PAGE 187.

BILL OF SALE

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, JOY CONE CO., a Pennsylvania corporation ("Joy Cone"), does hereby transfer, sell, set over and assign unto the CITY OF FLAGSTAFF, an Arizona municipal corporation ("City"), its successors and assigns, all of Joy Cone's right, title and interest in and to all of the equipment, fixtures and other items of personal property listed in *Exhibit "A"* attached hereto and located within the real property described in *Exhibit "A-1"* attached hereto and incorporated herein by this reference (collectively, the "Taxable Personal Property").

Joy Cone shall warrant and defend title to the Taxable Personal Property only with respect to the acts of Joy Cone and no other party.

Dated as of the 31st day of December, 2009.

JOY CONE CO., a Pennsylvania corporation

By 
Name SCOTT P. KALMANEK
Title CFO

EXHIBIT "A" TO BILL OF SALE

**Joy Cone Company - Flagstaff
2009 Additions
12/31/2009**

EQUIPMENT DESCRIPTION

Additions

HAAS WAFFLE CONE "F" (VTRO 48G) OVEN
WAFFLE CONE LINE - ROACH GRAVITY ROLLER CONVEYOR, 8' Lg. x 24" W
WAFFLE CONE LINE - ROACH GRAVITY SKATE WHEEL CONVEYOR, 10' Lg. x 24"
W
WAFFLE CONE LINE - (2) ROACH GRAVITY SKATE WHEEL CONVEYOR, 90° x 24"
W
WAFFLE CONE LINE - PSC FLO-TURN 90 DEGREE BELT CONVEYOR, FT1818x90
WAFFLE CONE LINE - ROACH M#450 BOS SLIDER BED 5' L X 24" W (INCLINE)
(2) B-TEK SCALE, M# 7500B
B-TEK SCALE, M# 7500B
BECKER INDUSTRIAL VACCUM SYSTEM, Model TS250LIII
NY UPBLAST ROOF VENTILATOR, Size 18, Model # NYJDC
SUGAR AND TAPIOCA DUMP STATION MAGNET
SUGAR CONE FLOUR SIFTER, GREAT WESTERN M# 611-4
TAPIOCA FLOUR SIFTER, GREAT WESTERN M# 611-3
(2) - HEAVY DUTY DEWALT RADIOS
JOHNSON MARCRAFT AIR-ROTATION SYSTEM, AR75DC-6-MG (WRHS #3)
RIGID #300 POWER DRIVE THREADING MACHINE, 2 STANDS, EXTRA DIE.
McQUAY MAKE UP AIR UNIT #7, Model RAH077CLY, 50000 cfm
WAFFLE CONE F NY BLOWER EXHAUST FAN
#7 CLARK TM15 ELECTRIC FORKLIFT, 4000 lb. Capacity.
#8 CLARK TMX20 ELECTRIC FORKLIFT, 4000 lb. Capacity.
HAWKER LIFE PLUS FORKLIFT BATTERY CHARGER #3, Model TC3 LP
HAWKER LIFE PLUS FORKLIFT BATTERY CHARGER #4, Model TC3 LP

EXHIBIT "A-1" TO BILL OF SALE

Legal Description of Property

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EXCEPTING AND RESERVING UNTO THE UNITED STATES ALL URANIUM, THORIUM, OR ALL OTHER MATERIALS DETERMINED PURSUANT TO SECTION 5 (B) (1) OF THE ATOMIC ENERGY ACT OF 1946 (60 STAT. 761) TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS CONTAINED IN WHATEVER CONCENTRATION AS RESERVED BY INSTRUMENT RECORDED IN BOOK 5 OF OFFICIAL RECORDS, PAGE 187.